P

P. An abbreviation for "page;" also for "Paschalis," (Easter term,) in the Year Books, and for numerous other words of which it is the initial.

P. C. An abbreviation for "Pleas of the Crown;" sometimes also for "Privy Council," "Parliamentary Cases," "Patent Cases," "Practice Cases," "Penal Code," or "Political Code."

P. H. V. An abbreviation for "*pro hac vice*," for this turn, for this purpose or occasion.

P. J. An abbreviation for "president" (or presiding) "judge," (or justice.)

P. L. An abbreviation for "Pamphlet Laws" or "Public Laws."

P. M. An abbreviation for "postmaster;" also for "*post-meridian*," afternoon.

P. O. An abbreviation of "public officer;" also of "post-office."

P. P. An abbreviation for "*propria persona*," in his proper person, in his own person.

P. S. An abbreviation for "Public Statutes;" also for "postscript."

PAAGE. In old English law. A toll for passage through another's land. The same as "pedage."

PACARE. L. Lat. To pay.

PACATIO. Payment. Mat. Par. A. D. 1248.

PACE. A measure of length containing two feet and a half, being the ordinary length of a step.

PACEATUR. Lat. Let him be freed or discharged.

Paci sunt maxime contraria vis et injuria. Co. Litt. 161. Violence and injury are the things chiefly hostile to peace.

PACIFICATION. The act of making peace between two hostile or belligerent states; re-establishment of public tranquility.

PACK. To put together in sorts with a fraudulent design. To pack a jury is to use unlawful, improper, or deceitful means to have the jury made up of persons favorably disposed to the party so contriving, or who have been or can be improperly influenced to give the verdict he seeks. The term imports the improper and corrupt selection of a jury sworn and impaneled for the trial of a cause. Mix v. Woodward, 12 Conn. 289.

PACK OF WOOL. A horse load, which consists of seventeen stone and two pounds, or two hundred and forty pounds weight. Fleta, l. 2, c. 12; Cowell.

PACKAGE. A package means a bundle put up for transportation or commercial handling; a thing in form to become, as such, an article of merchandise or delivery from hand to hand. A parcel is a small package; "parcel" being the diminutive of "package." Each of the words denotes a thing in form suitable for transportation or handling, or sale from hand to hand. U. S. v. Goldback, 1 Hughes, 529, Fed. Cas. No. 15,222; Haley v. State, 42 Neb. 556, 60 N. W. 962, 47 Am. St. Rep. 718; State v. Parsons, 124 Mo. 436, 27 S. W. 1102, 46 Am. St. Rep. 457.

"Package," in old English law, signifies one of various duties charged in the port of London on the goods imported and exported by aliens, or by denizens the sons of aliens. Tomlins.

—Original package. See ORIGINAL.

PACKED PARCELS. The name for a consignment of goods, consisting of one large parcel made up of several small ones, (each bearing a different address,) collected from different persons by the immediate consignor, (a carrier,) who unites them into one for his own profit, at the expense of the railway by which they are sent, since the railway company would have been paid more for the carriage of the parcels singly than together. Wharton.

PACT. A bargain; compact; agreement. This word is used in writings on Roman law and on general jurisprudence as the English form of the Latin "*pactum*," (which see.)

—Nude pact. A translation of the Latin "*nudum pactum*," a bare or naked pact, that is, a promise or agreement made without any consideration on the other side, which is therefore not enforceable.—**Pact de non alienando.** An agreement not to alienate incumbered (particularly mortgaged) property. This stipulation, sometimes found in mortgages made in Louisiana, and derived from the Spanish law, binds the mortgagor not to sell or incumber the mortgaged premises to the prejudice of the mortgagee; it does not avoid a sale made to a third person, but enables the mortgagee to proceed directly against the mortgaged property in a proceeding against the mortgagor alone and without notice to the purchaser. See Dodds v. Lanaux, 45 La. Ann. 287, 12 South. 345.

Pacta conventa quæ neque contra leges neque dolo malo inita sunt omni modo observanda sunt. Agreements which are not contrary to the laws nor entered in-

N to with a fraudulent design are in all respects to be observed. Cod. 2, 3, 39; Broom, Max. 698, 732.

Pacta dant legem contractui. Hob. 118. The stipulations of parties constitute the law of the contract.

Pacta privata juri publico derogare non possunt. 7 Coke, 23. Private compacts cannot derogate from public right.

Pacta quæ contra leges constitutionesque, vel contra bonos mores fiunt, nullam vim habere, indubitati juris est. That contracts which are made against law or against good morals have no force is a principle of undoubted law. Cod. 2, 3, 6.

Pacta quæ turpem causam continent non sunt observanda. Agreements founded upon an immoral consideration are not to be observed. Dig. 2, 14, 27, 4; Broom, Max. 732.

PACTIO. Lat. In the civil law. A bargaining or agreeing of which *pactum* (the agreement itself) was the result. Calvin. It is used, however, as the synonym of "*pactum*."

PACTIONAL. Relating to or generating an agreement; by way of bargain or covenant.

PACTIONS. In international law. Contracts between nations which are to be performed by a single act, and of which execution is at an end at once. 1 Bouv. Inst. no. 100.

Pactis privatorum juri publico non derogatur. Private contracts do not derogate from public law. Broom, Max. 695.

PACTITIOUS. Settled by covenant.

Pacto aliquod licitum est, quod sine pacto non admittitur. Co. Litt. 166. By special agreement things are allowed which are not otherwise permitted.

PACTUM. Lat. **In the civil law.** A pact. An agreement or convention without specific name, and without consideration, which, however, might, in its nature, produce a civil obligation. Heinecc. Elem. lib. 3, tit. 14, § 775.

In Roman law. With some exceptions, those agreements that the law does not directly enforce, but which it recognizes only as a valid ground of defense, were called "*pacta*." Those agreements that are enforced, in other words, are supported by actions, are called "*contractus*." The exceptions are few, and belong to a late period. Hunter, Rom. Law, 546.

—Nudum pactum. A bare or naked pact or agreement; a promise or undertaking made without any consideration for it, and therefore not enforceable.—**Pactum constitutæ pecuniæ.** In the civil law. An agreement by which a person appointed to his creditor a certain day or a certain time at which he promised to pay; or an agreement by which a person promises to pay a creditor. Wharton.—**Pactum de non alienando.** A pact or agreement binding the owner of property not to alienate it, intended to protect the interests of another; particularly an agreement by the mortgagor of real estate that he will not transfer the title to a third person until after satisfaction of the mortgage. See Mackeld. Rom. Law, § 461.—**Pactum de non petendo.** In the civil law. An agreement not to sue. A simple convention whereby a creditor promises the debtor that he will not enforce his claim. Mackeld. Rom. Law, § 542.—**Pactum de quota litis.** In the civil law. An agreement by which a creditor promised to pay a portion of a debt difficult to recover to a person who undertook to recover it. Wharton.

PADDER. A robber; a foot highwayman; a foot-pad.

PADDOCK. A small inclosure for deer or other animals.

PAGA. In Spanish law. Payment. Las Partidas, pt. 5, tit. 14, l. 1. *Pagamento*, satisfaction.

PAGARCHUS. A petty magistrate of a *pagus* or little district in the country.

PAGODA. A gold or silver coin, of several kinds and values, formerly current in India. It was valued, at the United States custom-house, at $1.94.

PAGUS. A county. Jacob.

PAINE FORTE ET DURE. See PEINE FORTE ET DURE.

PAINS AND PENALTIES, BILLS OF. The name given to acts of parliament to attaint particular persons of treason or felony, or to inflict pains and penalties beyond or contrary to the common law, to serve a special purpose. They are in fact new laws, made *pro re nata*.

PAINTINGS. It is held that colored imitations of rugs and carpets and colored working designs, each of them valuable and designed by skilled persons and hand painted, but having no value as works of art, are not "paintings," within the meaning of that term as used in a statute on the liability of carriers. 3 Ex. Div. 121.

PAIRING-OFF. In the practice of legislative bodies, this is the name given to a species of negative proxies, by which two members, who belong to opposite parties or are on opposite sides with regard to a given question, mutually agree that they will both be absent from voting, either for a specified period or when a division is had on the particular question. By this mutual agreement a vote is neutralized on each side of the

question, and the relative numbers on the division are precisely the same as if both members were present. May, Parl. Pr. 370.

PAIS, PAYS. Fr. The country; the neighborhood. A trial *per pais* signifies a trial by the country; that is, by jury. An assurance by matter *in pais* is an assurance transacted between two or more private persons "in the country;" that is, upon the very spot to be transferred. Matter *in pais* signifies matter of fact, probably because matters of fact are triable by the country; *i. e.*, by jury; estoppels *in pais* are estoppels by conduct, as distinguished from estoppels by deed or by record.

PAIS, CONVEYANCES IN. Ordinary conveyances between two or more persons *in the country; i. e.*, upon the land to be transferred.

PALACE COURT. A court formerly existing in England. It was created by Charles I., and abolished in 1849. It was held in the borough of Southwark, and had jurisdiction of all personal actions arising within twelve miles of the royal palace of Whitehall, exclusive of London.

PALAGIUM. A duty to lords of manors for exporting and importing vessels of wine at any of their ports. Jacob.

PALAM. Lat. In the civil law. Openly; in the presence of many. Dig. 50, 16, 33.

PALATINE. Possessing royal privileges. See COUNTY PALATINE.

PALATINE COURTS formerly were the court of common pleas at Lancaster, the chancery court of Lancaster, and the court of pleas at Durham, the second of which alone now exists. (See the respective titles.) Sweet.

PALATIUM. Lat. A palace. The emperor's house in Rome was so called from the *Mons Palatinus* on which it was built. Adams, Rom. Ant. 613.

PALFRIDUS. A palfrey; a horse to travel on.

PALINGMAN. In old English law. A merchant denizen; one born within the English *pale*. Blount.

PALLIO COOPERIRE. In old English law. An ancient custom, where children were born out of wedlock, and their parents afterwards intermarried. The children, together with the father and mother, stood under a cloth extended while the marriage was solemnized. It was in the nature of adoption. The children were legitimate by the civil, but not by the common, law. Jacob.

PALMER ACT. A name given to the English statute 19 & 20 Vict. c. 16, enabling a person accused of a crime committed out of the jurisdiction of the central criminal court, to be tried in that court.

PAMPHLET. A small book, bound in paper covers, usually printed in the octavo form, and stitched. See U. S. v. Chase, 135 U. S. 255, 10 Sup. Ct. 756, 34 L. Ed. 117.

PAMPHLET LAWS. The name given in Pennsylvania to the publication, in pamphlet or book form, containing the acts passed by the state legislature at each of its biennial sessions.

PANDECTS. A compilation of Roman law, consisting of selected passages from the writings of the most authoritative of the older jurists, methodically arranged, prepared by Tribonian with the assistance of sixteen associates, under a commission from the emperor Justinian. This work, which is otherwise called the "Digest," comprises fifty books, and is one of the four great works composing the *Corpus Juris Civilis*. It was first published in A. D. 533.

PANDOXATOR. In old records. A brewer.

PANDOXATRIX. An ale-wife; a woman that both brewed and sold ale and beer.

PANEL. The roll or slip of parchment returned by the sheriff in obedience to a *venire facias*, containing the names of the persons whom he has summoned to attend the court as jurymen. Beasley v. People, 89 Ill. 571; People v. Coyodo, 40 Cal. 592.

The panel is a list of jurors returned by a sheriff, to serve at a particular court or for the trial of a particular action. Pen. Code Cal. § 1057.

The word is also used to denote the whole body of persons summoned as jurors for a particular term of court.

In Scotch law. The prisoner at the bar, or person who takes his trial before the court of justiciary for any crime. This name is given to him after his appearance. Bell.

PANIER, in the parlance of the English bar societies, is an attendant or domestic who waits at table and gives bread, (*panis,*) wine, and other necessary things to those who are dining. The phrase was in familiar use among the knights templar, and from them has been handed down to the learned societies of the inner and middle temples, who at the present day occupy the halls and buildings once belonging to that distinguished order, and who have retained a few of their customs and phrases. Brown.

PANIS. Lat. In old English law. Bread; loaf; a loaf. Fleta, lib. 2, c. 9.

PANNAGE. A common of pannage is the right of feeding swine on mast and acorns at certain seasons in a commonable wood or forest. Elton, Commons, 25; Williams, Common, 168.

Pannagium est pastus porcorum, in nemoribus et in silvis, ut puta, de glandibus, etc. 1 Bulst. 7. A pannagium is a pasture of hogs, in woods and forests, upon acorns, and so forth.

PANNELLATION. The act of impaneling a jury.

PANTOMIME. A dramatic performance in which gestures take the place of words. See 3 C. B. 871.

PAPER. A written or printed document or instrument. A document filed or introduced in evidence in a suit at law, as, in the phrase "papers in the case" and in "papers on appeal." Any writing or printed document, including letters, memoranda, legal or business documents, and books of account, as in the constitutional provision which protects the people from unreasonable searches and seizures in respect to their "papers" as well as their houses and persons. A written or printed evidence of debt, particularly a promissory note or a bill of exchange, as in the phrases "accommodation paper" and "commercial paper."

In English practice. The list of causes or cases intended for argument, called "the paper of causes." 1 Tidd, Pr. 504.

—Accommodation paper. See that title.—**Commercial paper.** See COMMERCIAL.—**Paper blockade.** See BLOCKADE.—**Paper book.** In practice. A printed collection or abstract, in methodical order, of the pleadings, evidence, exhibits, and proceedings in a cause, or whatever else may be necessary to a full understanding of it, prepared for the use of the judges upon a hearing or argument on appeal. Copies of the proceedings on an issue in law or demurrer, of cases, and of the proceedings on error, prepared for the use of the judges, and delivered to them previous to bringing the cause to argument. 3 Bl. Comm. 317; Archb. New Pr. 353; 5 Man. & G. 98. In proceedings on appeal or error in a criminal case, copies of the proceedings with a note of the points intended to be argued, delivered to the judges by the parties before the argument. Archb. Crim. Pl. 205; Sweet.—**Paper credit.** Credit given on the security of any written obligation purporting to represent property.—**Paper days.** In English law. Certain days in term-time appointed by the courts for hearings or arguments in the cases set down in the various special papers.—**Paper money.** Bills drawn by a government against its own credit, engaging to pay money, but which do not profess to be immediately convertible into specie, and which are put into compulsory circulation as a substitute for coined money.—**Paper office.** In English law. An ancient office in the palace of Whitehall, where all the public writings, matters of state and council, proclamations, letters, intelligences, negotiations of the queen's ministers abroad, and generally all the papers and dispatches that pass through the offices of the secretaries of state, are deposited. Also an office or room in the court of queen's bench where the records belonging to that court are deposited; sometimes called "paper-mill." Wharton.—**Paper title.** See TITLE.

PAPIST. One who adheres to the communion of the Church of Rome. The word seems to be considered by the Roman Catholics themselves as a nickname of reproach, originating in their maintaining the supreme ecclesiastical power of the pope. Wharton.

PAR. In commercial law. Equal; equality. An equality subsisting between the nominal or face value of a bill of exchange, share of stock, etc., and its actual selling value. When the values are thus equal, the instrument or share is said to be "at par;" if it can be sold for more than its nominal worth, it is "above par;" if for less, it is "below par." Ft. Edward v. Fish, 156 N. Y. 363, 50 N. E. 973; Evans v. Tillman, 38 S. C. 238, 17 S. E. 49.

—Par of exchange. In mercantile law. The precise equality or equivalency of any given sum or quantity of money in the coin of one country, and the like sum or quantity of money in the coin of any other foreign country into which it is to be exchanged, supposing the money of such country to be of the precise weight and purity fixed by the mint standard of the respective countries. Story, Bills, § 30. Murphy v. Kastner, 50 N. J. Eq. 220, 24 Atl. 564; Blue Star S. S. Co. v. Keyser (D. C.) 81 Fed. 510. The par of the currencies of any two countries means the equivalence of a certain amount of the currency of the one in the currency of the other, supposing the currency of both to be of the precise weight and purity fixed by their respective mints. The exchange between the two countries is said to be at par when bills are negotiated on this footing; *i. e.*, when a bill for £100 drawn on London sells in Paris for 2,520 frs., and *vice versa*. Bowen, Pol. Econ. 284.

PAR. Lat. Equal.

—Par delictum. Equal guilt. "This is not a case of *par delictum*. It is oppression on one side and submission on the other. It never can be predicated as *par delictum* when one holds the rod and the other bows to it." 6 Maule & S. 165.—**Par oneri.** Equal to the burden or charge; equal to the detriment or damage.

Par in parem imperium non habet. Jenk. Cent. 174. An equal has no dominion over an equal.

PARACHRONISM. Error in the computation of time.

PARACIUM. The tenure between parceners, viz., that which the youngest owes to the eldest without homage or service. Domesday.

PARAGE, or PARAGIUM. An equality of blood or dignity, but more especially of land, in the partition of an inheritance between co-heirs; more properly, however, an equality of condition among nobles, or

persons holding by a noble tenure. Thus, when a fief is divided among brothers, the younger hold their part of the elder by parage; *i. e.*, without any homage or service. Also the portion which a woman may obtain on her marriage. Cowell.

PARAGRAPH. A part or section of a statute, pleading, affidavit, etc., which contains one article, the sense of which is complete. McClellan v. Hein, 56 Neb. 600, 77 N. W. 120; Hill v. Fairhaven & W. R. Co., 75 Conn. 177, 52 Atl. 725; Marine v. Packham, 52 Fed. 579, 3 C. C. A. 210; Bailey v. Mosher, 63 Fed. 488, 11 C. C. A. 304.

PARALLEL. For two lines of street railway to be "parallel," within the meaning of a statute, it may not be necessary that the two lines should be parallel for the whole length of each or either route. Exact parallelism is not contemplated. Cronin v. Highland St. Ry. Co., 144 Mass. 254, 10 N. E. 833. And see East St. Louis Connecting Ry. Co. v. Jarvis, 92 Fed. 735, 34 C. C. A. 639; Louisville & N. R. Co. v. Kentucky, 161 U. S. 677, 16 Sup. Ct. 714, 40 L. Ed. 849.

PARAMOUNT. Above; upwards. That which is superior; usually applied to the highest lord of the fee of lands, tenements, or hereditaments, as distinguished from the *mesne* (or intermediate) lord. Fitzh. Nat. Brev. 135.

In the law of real property, the term "paramount title" properly denotes one which is superior to the title with which it is compared, in the sense that the former is the source or origin of the latter. It is, however, frequently used to denote a title which is simply better or stronger than another, or will prevail over it. But this use is scarcely correct, unless the superiority consists in the seniority of the title spoken of as "paramount." See Hoopes v. Meyer, 1 Nev. 444.

—Paramount equity. An equitable right or claim which is prior, superior, or preferable to that with which it is compared.

PARAPHERNA. In the civil law. Goods brought by wife to husband over and above her dowry.

PARAPHERNAL PROPERTY. See PARAPHERNALIA.

PARAPHERNALIA. In the civil law. The separate property of a married woman, other than that which is included in her dowry, or *dos*.

The separate property of the wife is divided into dotal and extradotal. Dotal property is that which the wife brings to the husband to assist him in bearing the expenses of the marriage establishment. Extradotal property, otherwise called "paraphernal property," is that which forms no part of the dowry. Civ. Code La. art. 2335.

The wife's paraphernalia shall not be subject to the debts or contracts of the husband, and shall consist of the apparel of herself and her children, her watch, and ornaments suitable to her condition in life, and all such articles of personalty as have been given to her for her own use and comfort. Code Ga. 1882, § 1773.

In English law. Those goods which a woman is allowed to have, after the death of her husband, *besides* her *dower*, consisting of her apparel and ornaments, suitable to her rank and degree. 2 Bl. Comm. 436.

PARAPHERNAUX, BIENS. Fr. In French law. All the wife's property which is not subject to the *régime dotal* is called by this name; and of these articles the wife has the entire administration; but she may allow the husband to enjoy them, and in that case he is not liable to account. Brown.

PARASCEVE. The sixth day of the last week in Lent, particularly called "Good Friday." In English law, it is a *dies non juridicus*.

PARASYNEXIS. In the civil law. A conventicle, or unlawful meeting.

PARATITLA. In the civil law. Notes or abstracts prefixed to titles of law, giving a summary of their contents. Cod. 1, 17, 1 12.

PARATUM HABEO. Lat. I have him in readiness. The return by the sheriff to a *capias ad respondendum*, signifying that he has the defendant in readiness to be brought into court.

PARATUS EST VERIFICARE. Lat. He is ready to verify. The Latin form for concluding a pleading with a *verification*, (*q. v.*)

PARAVAIL. Inferior; subordinate. Tenant paravail signified the lowest tenant of land, being the tenant of a mesne lord. He was so called because he was supposed to make "avail" or profit of the land for another. Cowell; 2 Bl. Comm. 60.

PARCEL. In the law of real property parcel signifies a part or portion of land. As used of chattels, it signifies a small package or bundle. See State v. Jordan, 36 Fla. 1, 17 South. 742; Miller v. Burke, 6 Daly (N. Y.) 174; Johnson v. Sirret, 153 N. Y. 51, 46 N. E. 1035.

—Parcel makers. Two officers in the exchequer who formerly made the parcels or items of the escheators' accounts, wherein they charged them with everything they had levied for the king during the term of their office. Cowell.—**Parcels.** A description of property, formerly set forth in a conveyance, together with the

N boundaries thereof, in order to its easy identification.—**Parcels, bill of.** An account of the items composing a parcel or package of goods, transmitted with them to the purchaser.

PARCELLA TERRÆ. A parcel of land.

O **PARCENARY.** The state or condition of holding title to lands jointly by parceners or co-parceners, before a division of the joint estate.

P **PARCENER.** A joint heir; one who, with others, holds an estate in co-parcenary, (*q. v.*)

PARCHMENT. Sheep-skins dressed for writing, so called from *Pergamus*, Asia Minor, where they were invented. Used for deeds, and used for writs of summons in England previous to the judicature act, 1875. Wharton.

PARCO FRACTO. Pound-breach; also the name of an old English writ against one chargeable with pound-breach.

PARCUS. A park, (*q. v.*) A pound for stray cattle. Spelman.

PARDON. An act of grace, proceeding from the power intrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed. U. S. v. Wilson, 7 Pet. 160, 8 L. Ed. 640; Ex parte Garland, 4 Wall. 380, 18 L. Ed. 366; Moore v. State, 43 N. J. Law, 241, 39 Am. Rep. 558; Rich v. Chamberlain, 104 Mich. 436, 62 N. W. 584, 27 L. R. A. 573; Edwards v. Com., 78 Va. 39, 49 Am. Rep. 377.

"Pardon" is to be distinguished from "amnesty." The former applies only to the individual, releases him from the punishment fixed by law for his specific offense, but does not affect the criminality of the same or similar acts when performed by other persons or repeated by the same person. The latter term denotes an act of grace, extended by the government to all persons who may come within its terms, and which obliterates the criminality of past acts done, and declares that they shall not be treated as punishable.

—Conditional pardon. A conditional pardon is one granted on the condition that it shall only endure until the voluntary doing of some act by the person pardoned, or that it shall be revoked by a subsequent act on his part, as, that he shall leave the state and never return. Ex parte Janes, 1 Nev. 319; State v. Wolfer, 53 Minn. 135, 54 N. W. 1065, 19 L. R. A. 783, 39 Am. St. Rep. 582; State v. Barnes, 32 S. C. 14, 10 S. E. 611, 6 L. R. A. 743, 17 Am. St. Rep. 832; People v. Burns, 77 Hun, 92, 28 N. Y. Supp. 300.—**General pardon.** One granted to all the persons participating in a given criminal or treasonable offense (generally political), or to all offenders of a given class or against a certain statute or within certain limits of time. But "amnesty" is the more appropriate term for this.

PARDONERS. In old English law. Persons who carried about the pope's indulgences, and sold them to any who would buy them.

PARENS. Lat. In Roman law. A parent; originally and properly only the father or mother of the person spoken of; but also, by an extension of its meaning, any relative, male or female, in the line of direct ascent.

—Parens patriæ. Parent of the country. In England, the king. In the United States, the state, as a sovereign, is the *parens patriæ*.

"Parens" est nomen generale ad omne genus cognationis. Co. Litt. 80. "Parent" is a name general for every kind of relationship.

PARENT. The lawful father or the mother of a person. Appeal of Gibson, 154 Mass. 378, 28 N. E. 296. This word is distinguished from "ancestors" in including only the immediate progenitors of the person, while the latter embraces his more remote relatives in the ascending line.

PARENTELA, or *de parentela se tollere*, in old English law, signified a renunciation of one's kindred and family. This was, according to ancient custom, done in open court, before the judge, and in the presence of twelve men, who made oath that they believed it was done for a just cause. We read of it in the laws of Henry I. After such abjuration, the person was incapable of inheriting anything from any of his relations, etc. Enc. Lond.

PARENTHESIS. Part of a sentence occurring in the middle thereof, and inclosed between marks like ( ), the omission of which part would not injure the *grammatical* construction of the rest of the sentence. Wharton; In re Schilling, 53 Fed. 81, 3 C. C. A. 440.

PARENTICIDE. One who murders a parent; also the crime so committed.

Parentum est liberos alere etiam nothos. It is the duty of parents to support their children even when illegitimate. Lofft, 222.

PARERGON. One work executed in the intervals of another; a subordinate task. Particularly, the name of a work on the Canons, in great repute, by Ayliffe.

PARES. Lat. A person's peers or equals; as the jury for the trial of causes, who were originally the vassals or tenants of the lord, being the equals or peers of the parties litigant; and, as the lord's vassals judged each other in the lord's courts, so the sovereign's vassals, or the lords themselves, judged each other in the sovereign's courts. 3 Bl. Comm. 349.

—Pares curiæ. Peers of the court. Vassals who were bound to attend the lord's court.—**Pares regni.** Peers of the realm. Spelman.

PARESIS. In medical jurisprudence. Progressive general paralysis, involving or leading to the form of insanity known as "*dementia paralytica*." Popularly, but not very correctly, called "softening of the brain." See INSANITY.

PARI CAUSA. Lat. With equal right; upon an equal footing; equivalent in rights or claims.

PARI DELICTO. Lat. In equal fault. See IN PARI DELICTO.

PARI MATERIA. Lat. Of the same matter; on the same subject; as, laws *pari materia* must be construed with reference to each other. Bac. Abr. "Statute," I, 3.

PARI PASSU. Lat. By an equal progress; equably; ratably; without preference. Coote, Mortg. 56.

PARI RATIONE. Lat. For the like reason; by like mode of reasoning.

Paria copulantur paribus. Like things unite with like. Bac. Max.

Paribus sententiis reus absolvitur. Where the opinions are equal, [where the court is equally divided,] the defendant is acquitted. 4 Inst. 64.

PARIENTES. In Spanish law. Relations. White, New Recop. b. 1, tit. 7, c. 5, § 2.

PARIES. Lat. In the civil law. A wall. *Paries est, sive murus, sive maceria est.* Dig. 50, 16, 157.

—Paries communis. A common wall; a party-wall. Dig. 29, 2, 39.

PARIS, DECLARATION OF. See DECLARATION.

PARISH. In English law. A circuit of ground, committed to the charge of one parson or vicar, or other minister having cure of souls therein. 1 Bl. Comm. 111. Wilson v. State, 34 Ohio St. 199. The precinct of a parish church, and the particular charge of a secular priest. Cowell. An ecclesiastical division of a town or district, subject to the ministry of one pastor. Brande.

In New England. A corporation established for the maintenance of public worship, which may be coterminous with a town, or include only part of it.

A precinct or parish is a corporation established solely for the purpose of maintaining public worship, and its powers are limited to that object. It may raise money for building and keeping in repair its meeting-house and supporting its minister, but for no other purpose. A town is a civil and political corporation, established for municipal purposes. They may both subsist together in the same territory, and be composed of the same persons. Milford v. Godfrey, 1 Pick. (Mass.) 91.

In Louisiana. A territorial division of the state corresponding to what is elsewhere called a "county." See Sherman v. Parish of Vermillion, 51 La. Ann. 880, 25 South. 538; Attorney General v. Detroit Common Council, 112 Mich. 148, 70 N. W. 450, 37 L. R. A. 211.

—Parish apprentice. In English law. The children of parents unable to maintain them may, by law, be apprenticed, by the guardians or overseers of their parish, to such persons as may be willing to receive them as apprentices. Such children are called "parish apprentices." 2 Steph. Comm. 230.**—Parish church.** This expression has various significations. It is applied sometimes to a select body of Christians, forming a local spiritual association, and sometimes to the building in which the public worship of the inhabitants of a parish is celebrated; but the true legal notion of a parochial church is a consecrated place, having attached to it the rights of burial and the administration of the sacraments. Story, J., Pawlet v. Clark, 9 Cranch, 326, 3 L. Ed. 735.**—Parish clerk.** In English law. An officer, in former times often in holy orders, and appointed to officiate at the altar; now his duty consists chiefly in making responses in church to the minister. By common law he has a freehold in his office, but it seems now to be falling into desuetude. 2 Steph. Comm. 700; Mozley & Whitley.**—Parish constable.** A petty constable exercising his functions within a given parish. Mozley & Whitley.**—Parish court.** The name of a court established in each parish in Louisiana, and corresponding to the county courts or common pleas courts in the other states. It has a limited civil jurisdiction, besides general probate powers.**—Parish officers.** Church-wardens, overseers, and constables.**—Parish priest.** In English law. The parson; a minister who holds a parish as a benefice. If the predial tithes are appropriated, he is called "rector;" if impropriated, "vicar." Wharton.

PARISHIONERS. Members of a parish. In England, for many purposes they form a body politic.

PARITOR. A beadle; a summoner to the courts of civil law.

Parium eadem est ratio, idem jus. Of things equal, the reason is the same, and the same is the law.

PARIUM JUDICIUM. The judgment of peers; trial by a jury of one's peers or equals.

PARK. In English law. A tract of inclosed ground privileged for keeping wild beasts of the chase, particularly deer; an inclosed chase extending only over a man's own grounds. 2 Bl. Comm. 38.

In American law. An inclosed pleasure-ground in or near a city, set apart for the recreation of the public. Riverside v. MacLain, 210 Ill. 308, 71 N. E. 408, 66 L. R. A. 288, 102 Am. St. Rep. 164; People v. Green, 52 How. Prac. (N. Y.) 440; Archer v. Salinas City, 93 Cal. 43, 28 Pac. 839, 16

L. R. A. 145; Ehmen v. Gothenburg, 50 Neb. 715, 70 N. W. 237.

PARK-BOTE. To be quit of inclosing a park or any part thereof.

PARKER. A park-keeper.

PARKING. In municipal law and administration. A strip of land, lying either in the middle of the street or in the space between the building line and the sidewalk, or between the sidewalk and the driveway, intended to be kept as a park-like space, that is, not built upon, but beautified with turf, trees, flower-beds, etc. See Downing v. Des Moines, 124 Iowa, 289, 99 N. W. 1066.

PARLE HILL, or PARLING HILL. A hill where courts were anciently held. Cowell.

PARLIAMENT. The supreme legislative assembly of Great Britain and Ireland, consisting of the king or queen and the three estates of the realm, viz., the lords spiritual, the lords temporal, and the commons. 1 Bl. Comm. 153.

—High court of parliament. In English law. The English parliament, as composed of the house of peers and house of commons; or the house of lords sitting in its judicial capacity.

PARLIAMENTARY. Relating or belonging to, connected with, enacted by or proceeding from, or characteristic of, the English parliament in particular, or any legislative body in general.

—Parliamentary agents. Persons who act as solicitors in promoting and carrying private bills through parliament. They are usually attorneys or solicitors, but they do not usually confine their practice to this particular department. Brown.—**Parliamentary committee.** A committee of members of the house of peers or of the house of commons, appointed by either house for the purpose of making inquiries, by the examination of witnesses or otherwise, into matters which could not be conveniently inquired into by the whole house. Wharton.—**Parliamentary law.** The general body of enacted rules and recognized usages which governs the procedure of legislative assemblies and other deliberative bodies.—**Parliamentary taxes.** See TAX.

PARLIAMENTUM. L. Lat. A legislative body in general or the English parliament in particular.

—Parliamentum diabolicum. A parliament held at Coventry, 38 Hen. VI., wherein Edward, Earl of March, (afterwards King Edward IV.,) and many of the chief nobility were attainted, was so called; but the acts then made were annulled by the succeeding parliament. Jacob.—**Parliamentum indoctum.** Unlearned or lack-learning parliament. A name given to a parliament held at Coventry in the sixth year of Henry IV. under an ordinance requiring that no lawyer should be chosen knight, citizen, or burgess; "by reason whereof," says Sir Edward Coke, "this parliament was fruitless, and never a good law made thereat." 4 Inst. 48; 1 Bl. Comm. 177.—**Parliamentum insanum.** A parliament assembled at Oxford, 41 Hen. III., so styled from the madness of their proceedings, and because the lords came with armed men to it, and contentions grew very high between the king, lords, and commons, whereby many extraordinary things were done. Jacob.—**Parliamentum religiosorum.** In most convents there has been a common room into which the brethren withdrew for conversation; conferences there being termed "*parliamentum.*" Likewise, the societies of the two temples, or inns of court, call that assembly of the benchers or governors wherein they confer upon the common affairs of their several houses a "parliament." Jacob.

Parochia est locus quo degit populus alicujus ecclesiæ. 5 Coke, 67. A parish is a place in which the population of a certain church resides.

PAROCHIAL. Relating or belonging to a parish.

—Parochial chapels. In English law. Places of public worship in which the rites of sacrament and sepulture are performed.

PAROL. A word; speech; hence, oral or verbal; expressed or evidenced by speech only; not expressed by writing; not expressed by sealed instrument.

The pleadings in an action are also, in old law French, denominated the "parol," because they were formerly actual *viva voce* pleadings in court, and not mere written allegations, as at present. Brown.

As to parol "Agreement," "Arrest," "Demurrer," "Evidence," "Lease," and "Promise," see those titles.

PAROLE. In military law. A promise given by a prisoner of war, when he has leave to depart from custody, that he will return at the time appointed, unless discharged. Webster.

An engagement by a prisoner of war, upon being set at liberty, that he will not again take up arms against the government by whose forces he was captured, either for a limited period or while hostilities continue.

PAROLS DE LEY. L. Fr. Words of law; technical words.

Parols font plea. Words make the plea. 5 Mod. 458.

PARQUET. In French law. **1.** The magistrates who are charged with the conduct of proceedings in criminal cases and misdemeanors.

2. That part of the *bourse* which is reserved for stock-brokers.

PARRICIDE. The crime of killing one's father; also a person guilty of killing his father.

PARRICIDIUM. Lat. In the civil law. Parricide; the murder of a parent. Dig. 48, 9, 9.

PARS. Lat. A part; a party to a deed, action, or legal proceeding.

—Pars enitia. In old English law. The privilege or portion of the eldest daughter in the partition of lands by lot.**—Pars gravata.** In old practice. A party aggrieved; the party aggrieved. Hardr. 50; 3 Leon. 237.**—Pars pro toto.** Part for the whole; the name of a part used to represent the whole; as the roof for the house, ten spears for ten armed men, etc. **—Pars rationabilis.** That part of a man's goods which the law gave to his widow and children. 2 Bl. Comm. 492.**—Pars rea.** A party defendant. St. Marlbr. c. 13.**—Pars viscerum matris.** Part of the bowels of the mother; *i. e.*, an unborn child.

PARSON. The rector of a church; one that has full possession of all the rights of a parochial church. The appellation of "parson," however it may be depreciated by familiar, clownish, and indiscriminate use, is the most legal, most beneficial, and most honorable title that a parish priest can enjoy, because such a one, Sir Edward Coke observes, and he only, is said *vicem seu personam ecclesiæ gerere*, (to represent and bear the person of the church.) 1 Bl. Comm. 384.

—Parson imparsonee. In English law. A clerk or parson in full possession of a benefice. Cowell.**—Parson mortal.** A rector instituted and inducted for his own life. But any collegiate or conventional body, to whom a church was forever appropriated, was termed "*persona immortalis.*" Wharton.

PARSONAGE. A certain portion of lands, tithes, and offerings, established by law, for the maintenance of the minister who has the cure of souls. Tomlins.

The word is more generally used for the house set apart for the residence of the minister. Mozley & Whitley. See Wells' Estate v. Congregational Church, 63 Vt. 116, 21 Atl. 270; Everett v. First Presbyterian Church, 53 N. J. Eq. 500, 32 Atl. 747; Reeves v. Reeves, 5 Lea (Tenn.) 644.

PART. A portion, share, or purpart. One of two duplicate originals of a conveyance or covenant, the other being called "counterpart." Also, in composition, partial or incomplete; as part payment, part performance. Cairo v. Bross, 9 Ill. App. 406.

—Part and pertinent. In the Scotch law of conveyancing. Formal words equivalent to the English "appurtenances." Bell.

As to part "Owner," "Payment," and "Performance," see those titles.

PARTAGE. In French law. A division made between co-proprietors of a particular estate held by them in common. It is the operation by means of which the goods of a succession are divided among the co-heirs; while licitation (*q. v.*) is an adjudication to the highest bidder of objects which are not divisible. Duverger.

PARTE INAUDITA. Lat. One side being unheard. Spoken of any action which is taken *ex parte*.

PARTE NON COMPARENTE. Lat. The party not having appeared. The condition of a cause called "default."

Parte quacumque integrante sublata, tollitur totum. An integral part being taken away, the whole is taken away. 8 Coke, 41.

Partem aliquam recte intelligere nemo potest, antequam totum, iterum atque iterum, perlegerit. 3 Coke, 52. No one can rightly understand any part until he has read the whole again and again.

PARTES FINIS NIHIL HABUERUNT. In old pleading. The parties to the fine had nothing; that is, had no estate which could be conveyed by it. A plea to a fine which had been levied by a stranger. 2 Bl. Comm. 357; 1 P. Wms. 520.

PARTIAL. Relating to or constituting a part; not complete; not entire or universal.

—Partial account. An account of an executor, administrator, guardian, etc., not exhibiting his entire dealings with the estate or fund from his appointment to final settlement, but covering only a portion of the time or of the estate. See Marshall v. Coleman, 187 Ill. 556, 58 N. E. 628.**—Partial average.** Another name for particular average. See AVERAGE. And see Peters v. Warren Ins. Co., 19 Fed. Cas. 370.**—Partial evidence.** See EVIDENCE.**—Partial insanity.** Mental unsoundness always existing, although only occasionally manifest; monomania. 3 Add. 79.**—Partial loss.** See LOSS.**—Partial verdict.** See VERDICT.

PARTIARIUS. Lat. In Roman law. A legatee who was entitled, by the directions of the will, to receive a share or portion of the inheritance left to the heir.

PARTICEPS. Lat. A participant; a sharer; anciently, a part owner, or parcener.

—Particeps criminis. A participant in a crime; an accomplice. One who shares or co-operates in a criminal offense, tort, or fraud. Alberger v. White, 117 Mo. 347, 23 S. W. 92; State v. Fox, 70 N. J. Law, 353, 57 Atl. 270.

Participes plures sunt quasi unum corpus in eo quod unum jus habent, et oportet quod corpus sit integrum, et quod in nulla parte sit defectus. Co. Litt. 4. Many parceners are as one body, inasmuch as they have one right, and it is necessary that the body be perfect, and that there be a defect in no part.

PARTICULA. A small piece of land.

PARTICULAR. This term, as used in law, is almost always opposed to "general," and means either individual, local, partial, special, or belonging to a single person, place, or thing.

—Particular statement. This term, in use in Pennsylvania, denotes a statement which a plaintiff may be required to file, exhibiting in detail the items of his claim, (or its nature, if

single,) with the dates and sums. It is a species of declaration, but is informal and not required to be methodical. Dixon v. Sturgeon, 6 Serg. & R. (Pa.) 28.—**Particular tenant.** The tenant of a particular estate. 2 Bl. Comm. 274. See ESTATE.

As to particular "Average," "Custom," "Estate," "Lien," "Malice," and "Partnership," see those titles.

PARTICULARITY, in a pleading, affidavit, or the like, is the detailed statement of particulars.

PARTICULARS. The details of a claim, or the separate items of an account. When these are stated in an orderly form, for the information of a defendant, the statement is called a "bill of particulars," (*q. v.*)

—**Particulars of breaches and objections.** In an action brought, in England, for the infringement of letters patent, the plaintiff is bound to deliver with his declaration (now with his statement of claim) particulars (*i. e.*, details) of the breaches which he complains of. Sweet.—**Particulars of criminal charges.** A prosecutor, when a charge is general, is frequently ordered to give the defendant a statement of the acts charged, which is called, in England, the "particulars" of the charges.—**Particulars of sale.** When property such as land, houses, shares, reversions, etc., is to be sold by auction, it is usually described in a document called the "particulars," copies of which are distributed among intending bidders. They should fairly and accurately describe the property. Dart, Vend. 113; 1 Dav. Conv. 511.

PARTIDA. Span. Part; a part. See LAS PARTIDAS.

PARTIES. The persons who take part in the performance of any act, or who are directly interested in any affair, contract, or conveyance, or who are actively concerned in the prosecution and defense of any legal proceeding. U. S. v. Henderlong (C. C.) 102 Fed. 2; Robbins v. Chicago, 4 Wall. 672, 18 L. Ed. 427; Green v. Bogue, 158 U. S. 478, 15 Sup. Ct. 975, 39 L. Ed. 1061; Hughes v. Jones, 116 N. Y. 67, 22 N. E. 446, 5 L. R. A. 637, 15 Am. St. Rep. 386. See also PARTY.

In the Roman civil law, the parties were designated as "*actor*" and "*reus*." In the common law, they are called "plaintiff" and "defendant;" in real actions, "demandant" and "tenant;" in equity, "complainant" or "plaintiff" and "defendant;" in Scotch law, "pursuer" and "defender;" in admiralty practice, "libelant" and "respondent;" in appeals, "appellant" and "respondent," sometimes, "plaintiff in error" and "defendant in error;" in criminal proceedings, "prosecutor" and "prisoner."

Classification. *Formal* parties are those who have no interest in the controversy between the immediate litigants, but have an interest in the subject-matter which may be conveniently settled in the suit, and thereby prevent further litigation; they may be made parties or not, at the option of the complainant. Chadbourne v. Coe, 51 Fed. 479, 2 C. C. A. 327.—*Necessary* parties are those parties who have such an interest in the subject-matter of a suit in equity, or whose rights are so involved in the controversy, that no complete and effective decree can be made, disposing of the matters in issue and dispensing complete justice, unless they are before the court in such a manner as to entitle them to be heard in vindication or protection of their interests. See Chandler v. Ward, 188 Ill. 322, 58 N. E. 919; Phœnix Nat. Bank v. Cleveland Co., 58 Hun, 606, 11 N. Y. Supp. 873; Chadbourne v. Coe, 51 Fed. 480, 2 C. C. A. 327; Burrill v. Garst, 19 R. I. 38, 31 Atl. 436; Castle v. Madison, 113 Wis. 346, 89 N. W. 156; Iowa County Sup'rs v. Mineral Point R. Co., 24 Wis. 132. *Nominal* parties are those who are joined as plaintiffs or defendants, not because they have any real interest in the subject-matter or because any relief is demanded as against them, but merely because the technical rules of pleading require their presence on the record. It should be noted that some courts make a further distinction between "necessary" parties and "indispensable" parties. Thus, it is said that the supreme court of the United States divides parties in equity suits into three different classes: (1) Formal parties, who have no interest in the controversy between the immediate litigants, but have such an interest in the subject-matter as may be conveniently settled in the suit, and thereby prevent further litigation; (2) necessary parties, who have an interest in the controversy, but whose interests are separable from those of the parties before the court, and will not be directly affected by a decree which does complete and full justice between them; (3) indispensable parties, who not only have an interest in the subject-matter of the controversy, but an interest of such a nature that a final decree cannot be made without either affecting their interests or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. Hicklin v. Marco, 56 Fed. 552, 6 C. C. A. 10, citing Shields v. Barrow, 17 How. 139, 15 L. Ed. 158; Ribon v. Railroad Co., 16 Wall. 450, 21 L. Ed. 367; Williams v. Bankhead, 19 Wall. 571, 22 L. Ed. 184; Kendig v. Dean, 97 U. S. 425, 24 L. Ed. 1061. —**Parties and privies.** Parties to a deed or contract are those with whom the deed or contract is actually made or entered into. By the term "privies," as applied to contracts, is frequently meant those between whom the contract is mutually binding, although not literally parties to such contract. Thus, in the case of a lease, the lessor and lessee are both parties and privies, the contract being literally made between the two, and also being mutually binding; but, if the lessee assign his interest to a third party, then a privity arises between the assignee and the original lessor, although such assignee is not literally a party to the original lease. Brown.

PARTITIO. Lat. In the civil law. Partition; division. This word did not always signify *dimidium*, a dividing into halves. Dig. 50, 16, 164, 1.

—**Partitio legata.** A testamentary partition. This took place where the testator, in his will, directed the heir to divide the inheritance and deliver a designated portion thereof to a named legatee. See Mackeld. Rom. Law, §§ 781, 785.

PARTITION. The dividing of lands held by joint tenants, coparceners, or tenants in common, into distinct portions, so that they may hold them in severalty. And, in a less technical sense, any division of real or personal property between co-owners or coproprietors, Meacham v. Meacham, 91 Tenn. 532, 19 S. W. 757; Hudgins v. Sansom, 72 Tex. 229, 10 S. W. 104; Weiser v. Weiser, 5 Watts (Pa.) 279, 30 Am. Dec. 313; Gay v.

Parpart, 106 U. S. 679, 1 Sup. Ct. 456, 27 L. Ed. 256.

—Owelty of partition. See OWELTY. **Partition, deed of.** In conveyancing. A species of primary or original conveyance between two or more joint tenants, coparceners, or tenants in common, by which they divide the lands so held among them in severalty, each taking a distinct part. 2 Bl. Comm. 323, 324.**—Partition of a succession.** The partition of a succession is the division of the effects of which the succession is composed, among all the co-heirs, according to their respective rights. Partition is voluntary or judicial. It is voluntary when it is made among all the co-heirs present and of age, and by their mutual consent. It is judicial when it is made by the authority of the court, and according to the formalities prescribed by law. Every partition is either definitive or provisional. Definitive partition is that which is made in a permanent and irrevocable manner. Provisional partition is that which is made provisionally, either of certain things before the rest can be divided, or even of everything that is to be divided, when the parties are not in a situation to make an irrevocable partition. Civ. Code La. art. 1293, *et seq.*

PARTNER. A member of a copartnership or firm; one who has united with others to form a partnership in business. See PARTNERSHIP.

—Dormant partners. Those whose names are not known or do not appear as partners, but who nevertheless are silent partners, and partake of the profits, and thereby become partners, either absolutely to all intents and purposes, or at all events in respect to third parties. Dormant partners, in strictness of language, mean those who are merely passive in the firm, whether known or unknown, in contradistinction to those who are active and conduct the business of the firm, as principals. See Story, Partn. § 80; Rowland v. Estes, 190 Pa. 111, 42 Atl. 528; National Bank of Salem v. Thomas, 47 N. Y. 15; Metcalf v. Officer (C. C.) 2 Fed. 640; Pooley v. Driver, 5 Ch. Div. 458; Jones v. Fegely, 4 Phila. (Pa.) 1.**—Liquidating partner.** The partner who, upon the dissolution or insolvency of the firm, is appointed to settle its accounts, collect assets, adjust claims, and pay debts.**—Nominal partner.** One whose name appears in connection with the business as a member of the firm, but who has no real interest in it.**—Ostensible partner.** One whose name appears to the world as such, or who is held out to all persons having dealings with the firm in the character of a partner, whether or not he has any real interest in the firm. Civ. Code Ga. § 1889.**—Quasi partners.** Partners of lands, goods, or chattels who are not actual partners are sometimes so called. Poth. de Société, App. no. 184.**—Silent partner, sleeping partner.** Popular names for dormant partners or special partners.**—Special partner.** A member of a limited partnership, who furnishes certain funds to the common stock, and whose liability extends no further than the fund furnished. A partner whose responsibility is restricted to the amount of his investment. 3 Kent, Comm. 34.**—Surviving partner.** The partner who, on the dissolution of the firm by the death of his copartner, occupies the position of a trustee to settle up its affairs.

PARTNERSHIP. A voluntary contract between two or more competent persons to place their money, effects, labor, and skill, or some or all of them, in lawful commerce or business, with the understanding that there shall be a proportional sharing of the profits and losses between them. Story, Partn. § 2; Colly. Partn. § 2; 3 Kent, Comm. 23.

Partnership is the association of two or more persons for the purpose of carrying on business together, and dividing its profits between them. Civ. Code Cal. § 2395.

Partnership is a synallagmatic and commutative contract made between two or more persons for the mutual participation in the profits which may accrue from property, credit, skill, or industry, furnished in determined proportions by the parties. Civ. Code La. art. 2801.

Partnership is where two or more persons agree to carry on any business or adventure together, upon the terms of mutual participation in its profits and losses. Mozley & Whitley. And see Macomber v. Parker, 13 Pick. (Mass.) 181; Bucknam v. Barnum, 15 Conn. 71; Farmers' Ins. Co. v. Ross, 29 Ohio St. 431; In re Gibb's Estate, 157 Pa. 59, 27 Atl. 383, 22 L. R. A. 276; Wild v. Davenport, 48 N. J. Law, 129, 7 Atl. 295, 57 Am. Rep. 552; Morse v. Pacific Ry. Co., 191 Ill. 356, 61 N. E. 104.

—General partnership. A partnership in which the parties carry on all their trade and business, whatever it may be, for the joint benefit and profit of all the parties concerned, whether the capital stock be limited or not, or the contributions thereto be equal or unequal. Story, Partn. § 74; Bigelow v. Elliot, 3 Fed. Cas. 351; Eldridge v. Troost, 3 Abb. Prac., N. S. (N. Y.) 23.**—Limited partnership.** A partnership consisting of one or more general partners, jointly and severally responsible as ordinary partners, and by whom the business is conducted, and one or more special partners, contributing in cash payments a specific sum as capital to the common stock, and who are not liable for the debts of the partnership beyond the fund so contributed. 1 Rev. St. N. Y. 764. And see Moorhead v. Seymour (City Ct. N. Y.) 77 N. Y. Supp. 1054; Taylor v. Webster, 39 N. J. Law, 104.**—Mining partnership.** See MINING.**—Particular partnership.** One existing where the parties have united to share the benefits of a single individual transaction or enterprise. Spencer v. Jones (Tex. Civ. App.) 47 S. W. 665.**—Partnership assets.** Property of any kind belonging to the firm as such (not the separate property of the individual partners) and available to the recourse of the creditors of the firm in the first instance.**—Partnership at will.** One designed to continue for no fixed period of time, but only during the pleasure of the parties, and which may be dissolved by any partner without previous notice.**—Partnership debt.** One due from the partnership or firm as such and not (primarily) from one of the individual partners.**—Partnership in commendam.** Partnership *in commendam* is formed by a contract by which one person or partnership agrees to furnish another person or partnership a certain amount, either in property or money, to be employed by the person or partnership to whom it is furnished, in his or their own name or firm, on condition of receiving a share in the profits, in the proportion determined by the contract, and of being liable to losses and expenses to the amount furnished and no more. Civ. Code La. art. 2839.**—Secret partnership.** One where the existence of certain persons as partners is not avowed to the public by any of the partners. Deering v. Flanders, 49 N. H. 225.**—Special partnership.** At common law. One formed for the prosecution of a special

branch of business, as distinguished from the general business of the parties, or for one particular venture or subject. Bigelow v. Elliot, 3 Fed. Cas. 351. Under statutes. A limited partnership, (*q. v.*)—**Subpartnership.** One formed where one partner in a firm makes a stranger a partner with him in his share of the profits of that firm.—**Universal partnership.** One in which the partners jointly agree to contribute to the common fund of the partnership the whole of their property, of whatever character, and future, as well as present. Poth. Société, 29; Civ. Code La. 1900, art. 2829.

PARTURITION. The act of giving birth to a child.

PARTUS. Lat. Child; offspring; the child just before it is born, or immediately after its birth.

Partus ex legitimo thoro non certius noscit matrem quam genitorem suum. Fortes. 42. The offspring of a legitimate bed knows not his mother more certainly than his father.

Partus sequitur ventrem. The offspring follows the mother; the brood of an animal belongs to the owner of the dam; the offspring of a slave belongs to the owner of the mother, or follow the condition of the mother. A maxim of the civil law, which has been adopted in the law of England in regard to animals, though never allowed in the case of human beings. 2 Bl. Comm. 390, 94; Fortes. 42.

PARTY. A person concerned or having or taking part in any affair, matter, transaction, or proceeding, considered individually. See PARTIES.

The term "parties" includes all persons who are directly interested in the subject-matter in issue, who have a right to make defense, control the proceedings, or appeal from the judgment. Strangers are persons who do not possess these rights. Hunt v. Haven, 52 N. H. 162.

"Party" is a technical word, and has a precise meaning in legal parlance. By it is understood he or they by or against whom a suit is brought, whether in law or equity; the party plaintiff or defendant, whether composed of one or more individuals, and whether natural or legal persons, (they are parties in the writ, and parties on the record;) and all others who may be affected by the suit, indirectly or consequentially, are persons interested, but not parties. Merchants' Bank v. Cook, 4 Pick. 405.

—**Party and party.** This phrase signifies the contending parties in an action; *i. e.*, the plaintiff and defendant, as distinguished from the attorney and his client. It is used in connection with the subject of costs, which are differently taxed between party and party and between attorney and client. Brown.—**Real party.** In statutes requiring suits to be brought in the name of the "real party in interest," this term means the person who is actually and substantially interested in the subject-matter, as distinguished from one who has only a nominal, formal, or technical interest in it or connection with it. Hoagland v. Van Etten, 22 Neb. 681, 35 N. W. 870; Gruber v. Baker, 20 Nev. 453, 23 Pac. 858, 9 L. R. A. 302; Chew v. Brumagem, 13 Wall. 504, 20 L. Ed. 668.—**Third parties.** A term used to include all persons who are not parties to the contract, agreement, or instrument of writing by which their interest in the thing conveyed is sought to be affected. Morrison v. Trudeau (La.) 1 Mart. (N. S.) 384.

PARTY, *adj.* Relating or belonging to, or composed of, two or more parts or portions, or two or more persons or classes of persons.

—**Party jury.** A jury *de medietate linguæ;* (which title see.)—**Party structure** is a structure separating buildings, stories, or rooms which belong to different owners, or which are approached by distinct staircases or separate entrances from without, whether the same be a partition, arch, floor, or other structure. (St. 18 & 19 Vict. c. 122, § 3.) Mozley & Whitley. —**Party-wall.** A wall built partly on the land of one owner, and partly on the land of another, for the common benefit of both in supporting timbers used in the construction of contiguous buildings. Brown v. Werner, 40 Md. 19. In the primary and most ordinary meaning of the term, a party-wall is (1) a wall of which the two adjoining owners are tenants in common. But it may also mean (2) a wall divided longitudinally into two strips, one belonging to each of the neighboring owners; (3) a wall which belongs entirely to one of the adjoining owners, but is subject to an easement or right in the other to have it maintained as a dividing wall between the two tenements, (the term is so used in some of the English building acts;) or (4) a wall divided longitudinally into two moieties, each moiety being subject to a cross-easement in favor of the owner of the other moiety. Sweet.

PARUM. Lat. Little; but little.

Parum cavet natura. Nature takes little heed. Vandenheuvel v. United Ins. Co., 2 Johns. Cas. (N. Y.) 127, 166.

PARUM CAVISSE VIDETUR. Lat. In Roman law. He seems to have taken too little care; he seems to have been incautious, or not sufficiently upon his guard. A form of expression used by the judge or magistrate in pronouncing sentence of death upon a criminal. Festus, 325; Tayl. Civil Law, 81; 4 Bl. Comm. 362, note.

Parum differunt quæ re concordant. 2 Bulst. 86. Things which agree in substance differ but little.

Parum est latam esse sententiam nisi mandetur executioni. It is little [or to little purpose] that judgment be given unless it be committed to execution. Co. Litt. 289.

Parum proficit scire quid fieri debet, si non cognoscas quomodo sit facturum. 2 Inst. 503. It profits little to know what ought to be done, if you do not know how it is to be done.

PARVA SERJEANTIA. Petty serjeanty, (*q. v.*)

PARVISE. An afternoon's exercise or moot for the instruction of young students, bearing the same name originally with the *Parvisia* (little-go) of Oxford. Wharton.

PARVUM CAPE. See PETIT CAPE.

PAS. In French. Precedence; right of going foremost.

PASCH. The passover; Easter.

PASCHA. In old English law and practice. Easter. *De termino Paschæ*, of the term of Easter. Bract. fol. 246*b*.

—Pascha clausum. The octave of Easter, or Low-Sunday, which closes that solemnity.—**Pascha floridum.** The Sunday before Easter, called "Palm-Sunday."—**Pascha rents.** In English ecclesiastical law. Yearly tributes paid by the clergy to the bishop or archdeacon at their Easter visitations.

PASCUA. A particular meadow or pasture land set apart to feed cattle.

PASCUA SILVA. In the civil law. A feeding wood; a wood devoted to the feeding of cattle. Dig. 50, 16, 30, 5.

PASCUAGE. The grazing or pasturage of cattle.

PASS, *v.* **1.** In practice. To utter or pronounce; as when the court *passes* sentence upon a prisoner. Also to proceed; to be rendered or given; as when judgment is said to *pass* for the plaintiff in a suit.

2. In legislative parlance, a bill or resolution is said to *pass* when it is agreed to or enacted by the house, or when the body has sanctioned its adoption by the requisite majority of votes; in the same circumstances, the body is said to *pass* the bill or motion.

3. When an auditor appointed to examine into any accounts certifies to their correctness, he is said to *pass* them; *i. e.*, they pass through the examination without being detained or sent back for inaccuracy or imperfection. Brown.

4. The term also means to examine into anything and then authoritatively determine the disputed questions which it involves. In this sense a jury is said to *pass upon* the rights or issues in litigation before them.

5. In the language of conveyancing, the term means to move from one person to another; to be transferred or conveyed from one owner to another; as in the phrase "the word 'heirs' will *pass* the fee."

6. To publish; utter; transfer; circulate; impose fraudulently. This is the meaning of the word when the offense of *passing* counterfeit money or a forged paper is spoken of.

"Pass," "utter," "publish," and "sell" are in some respects convertible terms, and, in a given case, "pass" may include utter, publish, and sell. The words "uttering" and "passing," used of notes, do not necessarily import that they are transferred as genuine. The words include any delivery of a note to another for value, with intent that it shall be put into circulation as money. U. S. v. Nelson, 1 Abb. (U. S.) 135, Fed. Cas. No. 15,861.

Passing a paper is putting it off in payment or exchange. Uttering it is a declaration that it is good, with an intention to pass, or an offer to pass it.

PASS, *n.* Permission to pass; a license to go or come; a certificate, emanating from authority, wherein it is declared that a designated person is permitted to go beyond certain boundaries which, without such authority, he could not lawfully pass. Also a ticket issued by a railroad or other transportation company, authorizing a designated person to travel free on its lines, between certain points or for a limited time.

PASS-BOOK. A book in which a bank or banker enters the deposits made by a customer, and which is retained by the latter. Also a book in which a merchant enters the items of sales on credit to a customer, and which the latter carries or keeps with him.

PASSAGE. A way over water; an easement giving the right to pass over a piece of private water.

Travel by sea; a voyage over water; the carriage of passengers by water; money paid for such carriage.

Enactment; the act of carrying a bill or resolution through a legislative or deliberative body in accordance with the prescribed forms and requisites; the emergence of the bill in the form of a law, or the motion in the form of a resolution.

PASSAGE COURT. An ancient court of record in Liverpool, once called the "mayor's court of *pays sage*," but now usually called the "court of the passage of the borough of Liverpool." This court was formerly held before the mayor and two bailiffs of the borough, and had jurisdiction in actions where the amount in question exceeded forty shillings. Mozley & Whitley.

PASSAGE MONEY. The fare of a passenger by sea; money paid for the transportation of persons in a ship or vessel; as distinguished from "freight" or "freight-money," which is paid for the transportation of goods and merchandise.

PASSAGIO. An ancient writ addressed to the keepers of the ports to permit a man who had the king's leave to pass over sea. Reg. Orig. 193.

PASSAGIUM REGIS. A voyage or expedition to the Holy Land made by the kings of England in person. Cowell.

PASSATOR. He who has the interest or command of the passage of a river; or a lord to whom a duty is paid for passage. Wharton.

PASSENGER. A person whom a common carrier has contracted to carry from one place to another, and has, in the course of

N the performance of that contract, received under his care either upon the means of conveyance, or at the point of departure of that means of conveyance. Bricker v. Philadelphia & R. R. Co., 132 Pa. 1, 18 Atl. 983, 19 Am. St. Rep. 585; Schepers v. Union Depot R. Co., 126 Mo. 665, 29 S. W. 712; Pennsylvania R. Co. v. Price, 96 Pa. 256; The Main v. Williams, 152 U. S. 122, 14 Sup. Ct. 486, 38 L. Ed. 381; Norfolk & W. R. Co. v. Tanner, 100 Va. 379, 41 S. E. 721.

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PASSIAGIARIUS. A ferryman. Jacob.

PASSING-TICKET. In English law. A kind of permit, being a note or check which the toll-clerks on some canals give to the boatmen, specifying the lading for which they have paid toll. Wharton.

PASSIO. Pannage; a liberty for hogs to run in forests or woods to feed upon mast. Mon. Angl. 1, 682.

PASSION. In the definition of manslaughter as homicide committed without premeditation but under the influence of sudden "passion," this term means any intense and vehement emotional excitement of the kind prompting to violent and aggressive action, as, rage, anger, hatred, furious resentment, or terror. See Stell v. State (Tex. Cr. App.) 58 S. W. 75; State v. Johnson, 23 N. C. 362, 35 Am. Dec. 742.

PASSIVE. As used in law, this term means inactive; permissive; consisting in endurance or submission, rather than action; and in some connections it carries the implication of being subjected to a burden or charge.

As to passive "Debt," "Title," "Trust," and "Use," see those titles.

PASSPORT. In international law. A document issued to a neutral merchant vessel, by her own government, during the progress of a war, and to be carried on the voyage, containing a sufficient description of the vessel, master, voyage, and cargo to evidence her nationality and protect her against the cruisers of the belligerent powers. This paper is otherwise called a "pass," "sea-pass," "sea-letter," "sea-brief."

A license or safe-conduct, issued during the progress of a war, authorizing a person to remove himself or his effects from the territory of one of the belligerent nations to another country, or to travel from country to country without arrest or detention on account of the war.

In American law. A special instrument intended for the protection of American vessels against the Barbary powers, usually called a "Mediterranean pass." Jac. Sea Laws, 69.

In modern European law. A warrant of protection and authority to travel, granted to persons moving from place to place, by the competent officer. Brande.

PASTO. In Spanish law. Feeding; pasture; a right of pasture. White, New Recop. b. 2, tit. 1, c. 6, § 4.

PASTOR. Lat. A shepherd. Applied to a minister of the Christian religion, who has charge of a congregation, hence called his "flock." See First Presbyterian Church v. Myers, 5 Okl. 809, 50 Pac. 70, 38 L. R. A. 687.

PASTURE. Land on which cattle are fed; also the right of pasture. Co. Litt. 4*b*.

PASTUS. In feudal law. The procuration or provision which tenants were bound to make for their lords at certain times, or as often as they made a progress to their lands. It was often converted into money.

PATEAT UNIVERSIS PER PRÆSENTES. Know all men by these presents. Words with which letters of attorney anciently commenced. Reg. Orig. 305*b*, 306.

PATENT, *adj.* Open; manifest; evident; unsealed. Used in this sense in such phrases as "patent ambiguity," "patent writ," "letters patent."

—Letters patent. Open letters, as distinguished from letters close. An instrument proceeding from the government, and conveying a right, authority, or grant to an individual, as a patent for a tract of land, or for the exclusive right to make and sell a new invention. Familiarly termed a "patent." See International Tooth Crown Co. v. Hanks Dental Ass'n (C. C.) 111 Fed. 918.—**Patent ambiguity.** See AMBIGUITY.—**Patent defect.** In sales of personal property, one which is plainly visible or which can be discovered by such an inspection as would be made in the exercise of ordinary care and prudence. See Lawson v. Baer, 52 N. C. 461.—**Patent writ.** In old practice. An open writ; one not closed or sealed up. See CLOSE WRITS.

PATENT, *n.* A grant of some privilege, property, or authority, made by the government or sovereign of a country to one or more individuals. Phil. Pat. 1.

In English law. A grant by the sovereign to a subject or subjects, under the great seal, conferring some authority, title, franchise, or property; termed "letters patent" from being delivered open, and not closed up from inspection.

In American law. The instrument by which a state or government grants public lands to an individual.

A grant made by the government to an inventor, conveying and securing to him the exclusive right to make and sell his invention for a term of years. Atlas Glass Co. v. Simonds Mfg. Co., 102 Fed. 647, 42 C. C. A. 554; Société Anonyme v. General Electric Co.

(C. C.) 97 Fed. 605; Minnesota v. Barber, 136 U. S. 313, 10 Sup. Ct. 862, 34 L. Ed. 455; Pegram v. American Alkali Co. (C. C.) 122 Fed. 1000.

—Patent bill office. The attorney general's patent bill office is the office in which were formerly prepared the drafts of all letters patent issued in England, other than those for inventions. The draft patent was called a "bill," and the officer who prepared it was called the "clerk of the patents to the queen's attorney and solicitor general." Sweet.**—Patent of precedence.** Letters patent granted, in England, to such barristers as the crown thinks fit to honor with that mark of distinction, whereby they are entitled to such rank and preaudience as are assigned in their respective patents, which is sometimes next after the attorney general, but more usually next after her majesty's counsel then being. These rank promiscuously with the king's (or queen's) counsel, but are not the sworn servants of the crown. 3 Bl. Comm. 28; 3 Steph. Comm. 274.**—Patent-office.** In the administrative system of the United States, this is one of the bureaus of the department of the interior. It has charge of the issuing of patents to inventors and of such business as is connected therewith.**—Patent-right.** A right secured by patent; usually meaning a right to the exclusive manufacture and sale of an invention or patented article. Avery v. Wilson (C. C.) 20 Fed. 856; Crown Cork & Seal Co. v. State, 87 Md. 687, 40 Atl. 1074, 53 L. R. A. 417; Com. v. Central, etc., Tel. Co., 145 Pa. 121, 22 Atl. 841, 27 Am. St. Rep. 677.**—Patent-right dealer.** Any one whose business it is to sell, or offer for sale, patent-rights. 14 St. at Large, 118.**—Patent rolls.** The official records of royal charters and grants; covering from the reign of King John to recent times. They contain grants of offices and lands, restitutions of temporalities to ecclesiastical persons, confirmations of grants made to bodies corporate, patents of creation of peers, and licenses of all kinds. Hubb. Succ. 617; 32 Phila. Law Lib. 429.**—Pioneer patent.** A patent for an invention covering a function never before performed, or a wholly novel device, or one of such novelty and importance as to mark a distinct step in the progress of the art, as distinguished from a mere improvement or perfecting of what has gone before. Westinghouse v. Boyden Power-Brake Co., 170 U. S. 537, 18 Sup. Ct. 707, 42 L. Ed. 1136.

PATENTABLE. Suitable to be patented; entitled by law to be protected by the issuance of a patent. Heath Cycle Co. v. Hay (C. C.) 67 Fed. 246; Maier v. Bloom (C. C.) 95 Fed. 166; Boyd v. Cherry (C. C.) 50 Fed. 282; Providence Rubber Co. v. Goodyear, 9 Wall. 796, 19 L. Ed. 566.

PATENTEE. He to whom a patent has been granted. The term is usually applied to one who has obtained letters patent for a new invention.

PATER. Lat. A father; the father. In the civil law, this word sometimes included *avus*, (grandfather.) Dig. 50, 16, 201.

—Pater patriæ. Father of the country. See PARENS PATRIÆ.

Pater is est quem nuptiæ demonstrant. The father is he whom the marriage points out. 1 Bl. Comm. 446; Tate v. Penne, 7 Mart. (N. S. La.) 548, 553; Dig. 2, 4, 5; Broom, Max. 516.

PATERFAMILIAS. The father of a family.

In Roman law. The head or master of a family.

This word is sometimes employed, in a wide sense, as equivalent to *sui juris*. A person *sui juris* is called "*paterfamilias*" even when under the age of puberty. In the narrower and more common use, a *paterfamilias* is any one invested with *potestas* over any person. It is thus as applicable to a grandfather as to a father. Hunter, Rom. Law, 49.

PATERNA PATERNIS. Lat. Paternal estates to paternal heirs. A rule of the French law, signifying that such portion of a decedent's estate as came to him from his father must descend to his heirs on the father's side.

PATERNAL. That which belongs to the father or comes from him.

—Paternal power. The authority lawfully exercised by parents over their children. This phrase is also used to translate the Latin "*patria potestas*," (*q. v.*)**—Paternal property.** That which descends or comes to one from his father, grandfather, or other ascendant or collateral on the paternal side of the house.

PATERNITY. The fact of being a father; the relationship of a father.

The Latin "*paternitas*" is used in the canon law to denote a kind of spiritual relationship contracted by baptism. Heinecc. Elem. lib. 1, tit. 10, § 161, note.

PATHOLOGY. In medical jurisprudence. The science or doctrine of diseases. That part of medicine which explains the nature of diseases, their causes, and their symptoms. See Bacon v. U. S. Mut. Acc. Ass'n, 123 N. Y. 304, 25 N. E. 399, 9 L. R. A. 617, 20 Am. St. Rep. 748.

PATIBULARY. Belonging to the gallows.

PATIBULATED. Hanged on a gibbet.

PATIBULUM. In old English law. A gallows or gibbet. Fleta, lib. 2, c. 3, § 9.

PATIENS. Lat. One who suffers or permits; one to whom an act is done; the passive party in a transaction.

PATRIA. Lat. The country, neighborhood, or vicinage; the men of the neighborhood; a jury of the vicinage. Synonymous, in this sense, with "*pais*."

Patria laboribus et expensis non debet fatigari. A jury ought not to be harassed by labors and expenses. Jenk. Cent. 6.

PATRIA POTESTAS. Lat. In Roman law. Paternal authority; the paternal power. This term denotes the aggregate of those peculiar powers and rights which, by the civil law of Rome, belonged to the head of a

family in respect to his wife, children, (natural or adopted,) and any more remote descendants who sprang from him through males only. Anciently, it was of very extensive reach, embracing even the power of life and death, but was gradually curtailed, until finally it amounted to little more than a right in the *paterfamilias* to hold as his own any property or acquisitions of one under his power. Mackeld. Rom. Law, § 589.

Patria potestas in pietate debet, non in atrocitate, consistere. Paternal power should consist [or be exercised] in affection, not in atrocity.

PATRIARCH. The chief bishop over several countries or provinces, as an archbishop is of several dioceses. Godb. 20.

PATRICIDE. One who has killed his father. As to the punishment of that offense by the Roman law, see Sandars' Just. Inst. (5th Ed.) 496.

PATRICIUS. In the civil law. A title of the highest honor, conferred on those who enjoyed the chief place in the emperor's esteem.

PATRIMONIAL. Pertaining to a patrimony; inherited from ancestors, but strictly from the direct male ancestors.

PATRIMONIUM. In the civil law. The private and exclusive ownership or dominion of an individual. Things capable of being possessed by a single person to the exclusion of all others (or which are actually so possessed) are said to be *in patrimonio;* if not capable of being so possessed, (or not actually so possessed,) they are said to be *extra patrimonium.* See Gaius, bk. 2, § 1.

PATRIMONY. A right or estate inherited from one's ancestors, particularly from direct male ancestors.

PATRINUS. In old ecclesiastical law. A godfather. Spelman.

PATRITIUS. An honor conferred on men of the first quality in the time of the English Saxon kings.

PATROCINIUM. In Roman law. Patronage; protection; defense. The business or duty of a patron or advocate.

PATROLMAN. A policeman assigned to duty in patrolling a certain beat or district; also the designation of a grade or rank in the organized police force of large cities, a patrolman being generally a private in the ranks, as distinguished from roundsmen, sergeants, lieutenants, etc. See State v. Walbridge, 153 Mo. 194, 54 S. W. 447.

PATRON. In ecclesiastical law. He who has the right, title, power, or privilege of presenting to an ecclesiastical benefice.

In Roman law. The former master of an emancipated slave.

In French marine law. The captain or master of a vessel.

PATRONAGE. In English ecclesiastical law. The right of presentation to a church or ecclesiastical benefice; the same with advowson, (*q. v.*) 2 Bl. Comm. 21.

The right of appointing to office, considered as a perquisite, or personal right; not in the aspect of a public trust.

PATRONATUS. Lat. **In Roman law.** The condition, relation, right, or duty of a patron.

In ecclesiastical law. Patronage, (*q. v.*)

Patronum faciunt dos, ædificatio, fundus. Dod. Adv. 7. Endowment, building, and land make a patron.

PATRONUS. Lat. In Roman law. A person who stood in the relation of protector to another who was called his "client." One who advised his client in matters of law, and advocated his causes in court. Gilb. Forum Rom. 25.

PATROON. The proprietors of certain manors created in New York in colonial times were so called.

PATRUELIS. Lat. In the civil law. A cousin-german by the father's side; the son or daughter of a father's brother. Wharton.

PATRUUS. Lat. An uncle by the father's side; a father's brother.

—Patruus magnus. A grandfather's brother; granduncle.—**Patruus major.** A great-grandfather's brother.—**Patruus maximus.** A great-grandfather's father's brother.

PAUPER. A person so poor that he must be supported at public expense; also a suitor who, on account of poverty, is allowed to sue or defend without being chargeable with costs. In re Hoffen's Estate, 70 Wis. 522, 36 N. W. 407; Hutchings v. Thompson, 10 Cush. (Mass.) 238; Charleston v. Groveland, 15 Gray (Mass.) 15; Lee County v. Lackie, 30 Ark. 764.

—Dispauper. To deprive one of the status of a pauper and of any benefits incidental thereto: particularly, to take away the right to sue *in forma pauperis* because the person so suing, during the progress of the suit, has acquired money or property which would enable him to sustain the costs of the action.

PAUPERIES. Lat. In Roman law. Damage or injury done by an irrational animal, without active fault on the part of the owner, but for which the latter was bound

to make compensation. Inst. 4, 9; Mackeld. Rom. Law, § 510.

PAVAGE. Money paid towards paving the streets or highways.

PAVE. To pave is to cover with stones or brick, or other suitable material, so as to make a level or convenient surface for horses, carriages, or foot-passengers, and a sidewalk is paved when it is laid or flagged with flat stones, as well as when paved with brick, as is frequently done. In re Phillips, 60 N. Y. 22; Buell v. Ball, 20 Iowa, 282; Harrisburg v. Segelbaum, 151 Pa. 172, 24 Atl. 1070, 20 L. R. A. 834.

PAWN, *v.* To deliver personal property to another in pledge, or as security for a debt or sum borrowed.

PAWN, *n.* A bailment of goods to a creditor, as security for some debt or engagement; a pledge. Story, Bailm. § 7; Coggs v. Bernard, 2 Ld. Raym. 913; Barrett v. Cole, 49 N. C. 40; Surber v. McClintic, 10 W. Va. 242; Commercial Bank v. Flowers, 116 Ga. 219, 42 S. E. 474.

Pawn, or pledge, is a bailment of goods by a debtor to his creditor, to be kept till the debt is discharged. Wharton.

Also the specific chattel delivered to the creditor in this contract.

In the law of Louisiana, *pawn* is known as one species of the contract of *pledge*, the other being *antichresis;* but the word "pawn" is sometimes used as synonymous with "pledge," thus including both species. Civ. Code La. art. 3101.

PAWNBROKER. A person whose business is to lend money, usually in small sums, on security of personal property deposited with him or left in pawn. Little Rock v. Barton, 33 Ark. 444; Schaul v. Charlotte, 118 N. C. 733, 24 S. E. 526; Chicago v. Hulbert, 118 Ill. 632, 8 N. E. 812, 59 Am. Rep. 400.

Whoever loans money on deposit or pledges of personal property, or who purchases personal property or choses in action, on condition of selling the same back again at a stipulated price, is hereby defined and declared to be a pawnbroker. Rev. St. Ohio 1880, § 4387. See, also, 14 U. S. St. at Large, 116.

PAWNEE. The person receiving a pawn, or to whom a pawn is made; the person to whom goods are delivered by another in pledge.

PAWNOR. The person pawning goods or delivering goods to another in pledge.

PAX ECCLESIÆ. Lat. In old English law. The peace of the church. A particular privilege attached to a church; sanctuary, (*q. v.*) Crabb, Eng. Law, 41; Cowell.

PAX REGIS. Lat. The peace of the king; that is, the peace, good order, and security for life and property which it is one of the objects of government to maintain, and which the king, as the personification of the power of the state, is supposed to guaranty to all persons within the protection of the law.

This name was also given, in ancient times, to a certain privileged district or sanctuary. The *pax regis*, or verge of the court, as it was afterwards called, extended from the palace-gate to the distance of three miles, three furlongs, three acres, nine feet, nine palms, and nine barleycorns. Crabb, Eng. Law, 41.

PAY. To pay is to deliver to a creditor the value of a debt, either in money or in goods, for his acceptance, by which the debt is discharged. Beals v. Home Ins. Co., 36 N. Y. 522.

PAYABLE. A sum of money is said to be payable when a person is under an obligation to pay it. "Payable" may therefore signify an obligation to pay at a future time, but, when used without qualification, "payable" means that the debt is payable at once, as opposed to "owing." Sweet. And see First Nat. Bank v. Greenville Nat. Bank, 84 Tex. 40, 19 S. W. 334; Easton v. Hyde, 13 Minn. 91 (Gil. 83).

PAYEE. In mercantile law. The person in whose favor a bill of exchange, promissory note, or check is made or drawn; the person to whom or to whose order a bill, note, or check is made payable. 3 Kent, Comm. 75.

PAYER, or PAYOR. One who pays, or who is to make a payment; particularly the person who is to make payment of a bill or note. Correlative to "payee."

PAYMASTER. An officer of the army or navy whose duty is to keep the pay-accounts and pay the wages of the officers and men. Any official charged with the disbursement of public money.

—Paymaster general. In English law. The officer who makes the various payments out of the public money required for the different departments of the state by issuing drafts on the Bank of England. Sweet. In American law, the officer at the head of the pay corps of the army is so called, also the naval officer holding corresponding office and rank with reference to the pay department of the navy.

PAYMENT. The performance of a duty, promise, or obligation, or discharge of a debt or liability, by the delivery of money or other value. Also the money or other thing so delivered. Brady v. Wasson, 6 Heisk. (Tenn.) 135; Bloodworth v. Jacobs, 2 La. Ann. 24; Root v. Kelley, 39 Misc. Rep. 530, 80 N. Y. Supp. 482; Moulton v. Robison, 27 N. H. 554; Clay v. Lakenan, 101 Mo. App. 563, 74 S. W. 391; Claflin v. Continental Works, 85

Ga. 27, 11 S. E. 721; Huffmans v. Walker, 26 Grat. (Va.) 316.

By "payment" is meant not only the delivery of a sum of money, when such is the obligation of the contract, but the performance of that which the parties respectively undertook, whether it be to give or to do. Civ. Code La. art. 2131.

Performance of an obligation for the delivery of money only is called "payment." Civ. Code Cal. § 1478.

In pleading. When the defendant alleges that he has paid the debt or claim laid in the declaration, this is called a "plea of payment."

—Part payment. The reduction of any debt or demand by the payment of a sum less than the whole amount originally due. Young v. Perkins, 29 Minn. 173, 12 N. W. 515; Moffitt v. Carr, 48 Neb. 403, 67 N. W. 150, 58 Am. St. Rep. 696.**—Payment into court.** In practice. The act of a defendant in depositing the amount which he admits to be due, with the proper officer of the court, for the benefit of the plaintiff and in answer to his claim.**—Voluntary payment.** A payment made by a debtor of his own will and choice, as distinguished from one exacted from him by process of execution or other compulsion. Redmond v. New York, 125 N. Y. 632, 26 N. E. 727; Rumford Chemical Works v. Ray, 19 R. I. 456, 34 Atl. 814; Taggart v. Rice, 37 Vt. 47; Maxwell v. Griswold, 10 How. 255, 13 L. Ed. 405.

PAYS. Fr. Country. Trial *per pays*, trial by jury, (the country.) See PAIS.

PEACE. As applied to the affairs of a state or nation peace may be either external or internal. In the former case, the term denotes the prevalence of amicable relations and mutual good will between the particular society and all foreign powers. In the latter case, it means the tranquility, security, and freedom from commotion or disturbance which is the sign of good order and harmony and obedience to the laws among all the members of the society. In a somewhat technical sense, peace denotes the quiet, security, good order, and decorum which is guarantied by the constitution of civil society and by the laws. People v. Rounds, 67 Mich. 482, 35 N. W. 77; Corvallis v. Carlile, 10 Or. 139, 45 Am. Rep. 134.

The concord or final agreement in a fine of lands. 18 Edw. I. "*Modus Levandi Finis.*"

—Articles of the peace. See ARTICLES.**—Bill of peace.** See BILL.**—Breach of peace.** See BREACH.**—Conservator of the peace.** See CONSERVATOR.**—Justice of the peace.** See that title.**—Peace of God and the church.** In old English law. That rest and cessation which the king's subjects had from trouble and suit of law between the terms and on Sundays and holidays. Cowell; Spelman.**—Peace of the state.** The protection, security, and immunity from violence which the state undertakes to secure and extend to all persons within its jurisdiction and entitled to the benefit of its laws. This is part of the definition of murder, it being necessary that the victim should be "in the peace of the state," which now practically includes all persons except armed public enemies. See MURDER. And see State v. Dunkley, 25 N. C. 121.**—Peace officers.** This term is variously defined by statute in the different states; but generally it includes sheriffs and their deputies, constables, marshals, members of the police force of cities, and other officers whose duty is to enforce and preserve the public peace. See People v. Clinton, 28 App. Div. 478, 51 N. Y. Supp. 115; Jones v. State (Tex. Cr. App.) 65 S. W. 92.**—Public peace.** The peace or tranquillity of the community in general; the good order and repose of the people composing a state or municipality. See Neuendorff v. Duryea, 6 Daly (N. Y.) 280; State v. Benedict, 11 Vt. 236, 34 Am. Dec. 688.

PEACEABLE. Free from the character of force, violence, or trespass; as, a "peaceable entry" on lands. "Peaceable possession" of real estate is such as is acquiesced in by all other persons, including rival claimants, and not disturbed by any forcible attempt at ouster nor by adverse suits to recover the possession or the estate. See Stanley v. Schwalby, 147 U. S. 508, 13 Sup. Ct. 418, 37 L. Ed. 259; Allaire v. Ketcham, 55 N. J. Eq. 168, 35 Atl. 900; Bowers v. Cherokee Bob, 45 Cal. 504; Gitten v. Lowry, 15 Ga. 336.

Peccata contra naturam sunt gravissima. 3 Inst. 20. Crimes against nature are the most heinous.

Peccatum peccato addit qui culpæ quam facit patrocinia defensionis adjungit. 5 Coke, 49. He adds fault to fault who sets up a defense of a wrong committed by him.

PECIA. A piece or small quantity of ground. Paroch. Antiq. 240.

PECK. A measure of two gallons; a dry measure.

PECORA. Lat. In Roman law. Cattle; beasts. The term included all quadrupeds that fed in flocks. Dig. 32, 65, 4.

PECULATION. In the civil law. The unlawful appropriation, by a depositary of public funds, of the property of the government intrusted to his care, to his own use, or that of others. Domat. Supp. au Droit Public, l. 3, tit. 5. See Bork v. People, 91 N. Y. 16.

PECULATUS. Lat. In the civil law. The offense of stealing or embezzling the public money. Hence the common English word "peculation," but "embezzlement" is the proper legal term. 4 Bl. Comm. 121, 122.

PECULIAR. In ecclesiastical law. A parish or church in England which has jurisdiction of ecclesiastical matters within itself, and independent of the ordinary, and is subject only to the metropolitan.

PECULIARS, COURT OF. In English law. 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.

PECULIUM. Lat. In Roman law. Such private property as might be held by a slave, wife, or son who was under the *patria potestas*, separate from the property of the father or master, and in the personal disposal of the owner.

—Peculium castrense. In Roman law. That kind of *peculium* which a son acquired in war, or from his connection with the camp, (*castrum.*) Heinecc. Elem. lib. 2, tit. 9, § 474.

PECUNIA. Lat. Originally and radically, property in cattle, or cattle themselves. So called because the wealth of the ancients consisted in cattle. Co. Litt. 207*b*.

In the civil law. Property in general, real or personal; anything that is actually the subject of private property. In a narrower sense, personal property; fungible things. In the strictest sense, money. This has become the prevalent, and almost the exclusive, meaning of the word.

In old English law. Goods and chattels. Spelman.

—Pecunia constituta. In Roman law. Money owing (even upon a moral obligation) upon a day being fixed (*constituta*) for its payment, became recoverable upon the implied promise to pay on that day, in an action called "*de pecunia constituta*," the implied promise not amounting (of course) to a *stipulatio*. Brown. **—Pecunia non numerata.** In the civil law. Money not paid. The subject of an exception or plea in certain cases. Inst. 4, 13, 2.**—Pecunia numerata.** Money numbered or counted out; *i. e.*, given in payment of a debt.**—Pecunia sepulchralis.** Money anciently paid to the priest at the opening of a grave for the good of the deceased's soul.**—Pecunia trajectitia.** In the civil law. A loan in money, or in wares which the debtor purchases with the money to be sent by sea, and whereby the creditor, according to the contract, assumes the risk of the loss from the day of the departure of the vessel till the day of her arrival at her port of destination. Interest does not necessarily arise from this loan, but when is stipulated for it is termed "*nauticum fœnus*," (maritime interest,) and, because of the risk which the creditor assumes, he is permitted to receive a higher interest than usual. Mackeld. Rom. Law, § 433.

Pecunia dicitur a pecus, omnes enim veterum divitiæ in animalibus consistebant. Co. Litt. 207. Money (*pecunia*) is so called from cattle, (*pecus,*) because all the wealth of our ancestors consisted in cattle.

PECUNIARY. Monetary; relating to money; consisting of money.

—Pecuniary causes. In English ecclesiastical practice. Causes arising from the withholding of ecclesiastical dues, or the doing or neglecting some act relating to the church, whereby some damage accrues to the plaintiff. 3 Bl. Comm. 88.**—Pecuniary consideration.** See CONSIDERATION.**—Pecuniary damages.** See DAMAGES.**—Pecuniary legacy.** See LEGACY. **—Pecuniary loss.** A pecuniary loss is a loss of money, or of something by which money, or something of money value, may be acquired. Green v. Hudson River R. Co., 32 Barb. (N. Y.) 33.

PECUS. Lat. In Roman law. Cattle; a beast. Under a bequest of *pecudes* were included oxen and other beasts of burden. Dig. 32, 81, 2.

PEDAGE. In old English law. A toll or tax paid by travelers for the privilege of passing, on foot or mounted, through a forest or other protected place. Spelman.

PEDAGIUM. L. Lat. Pedage, (*q. v.*)

PEDANEUS. Lat. In Roman law. At the foot; in a lower position; on the ground. See JUDEX PEDANEUS.

PEDDLERS. Itinerant traders; persons who sell small wares, which they carry with them in traveling about from place to place. In re Wilson, 19 D. C. 341, 12 L. R. A. 624; Com. v. Farnum, 114 Mass. 270; Hall v. State, 39 Fla. 637, 23 South. 119; Graffty v. Rushville, 107 Ind. 502, 8 N. E. 609, 57 Am. Rep. 128; In re Pringle, 67 Kan. 364, 72 Pac. 864.

Persons, except those peddling newspapers, Bibles, or religious tracts, who sell, or offer to sell, at retail, goods, wares, or other commodities, traveling from place to place, in the street, or through different parts of the country. 12 U. S. St. at Large, p. 458, § 27.

PEDE PULVEROSUS. In old English and Scotch law. Dusty-foot. A term applied to itinerant merchants, chapmen, or peddlers who attended fairs.

PEDERASTY. In criminal law. The unnatural carnal copulation of male with male, particularly of a man with a boy; a form of sodomy, (*q. v.*)

PEDIGREE. Lineage; line of ancestors from which a person descends; genealogy. An account or register of a line of ancestors. Family relationship. Swink v. French, 11 Lea (Tenn.) 80, 47 Am. Rep. 277; People v. Mayne, 118 Cal. 516, 50 Pac. 654, 62 Am. St. Rep. 256.

PEDIS ABSCISSIO. Lat. In old criminal law. The cutting off a foot; a punishment anciently inflicted instead of death. Fleta, lib. 1, c. 38.

PEDIS POSITIO. Lat. In the civil and old English law. A putting or placing of the foot. A term used to denote the possession of lands by actual corporal entry upon them. Waggoner v. Hastings, 5 Pa. 303.

PEDIS POSSESSIO. Lat. A foothold; an actual possession. To constitute adverse possession there must be *pedis possessio*, or a substantial inclosure. 2 Bouv. Inst. no.

2193; Bailey v. Irby, 2 Nott & McC. (S. C.) 343, 10 Am. Dec. 609.

PEDONES. Foot-soldiers.

PEERAGE. The rank or dignity of a peer or nobleman. Also the body of nobles taken collectively.

PEERESS. A woman who belongs to the nobility, which may be either in her own right or by right of marriage.

PEERS. In feudal law. The vassals of a lord who sat in his court as judges of their co-vassals, and were called "peers," as being each other's equals, or of the same condition.

The nobility of Great Britain, being the lords temporal having seats in parliament, and including dukes, marquises, earls, viscounts, and barons.

Equals; those who are a man's equals in rank and station; this being the meaning in the phrase "trial by a jury of his peers."

PEERS OF FEES. Vassals or tenants of the same lord, who were obliged to serve and attend him in his courts, being equal in function. These were termed "peers of fees," because holding fees of the lord, or because their business in court was to sit and judge, under their lords, of disputes arising upon fees; but, if there were too many in one lordship, the lord usually chose twelve, who had the title of peers, by way of distinction; whence, it is said, we derive our common juries and other peers. Cowell.

PEINE FORTE ET DURE. L. Fr. In old English law. A special form of punishment for those who, being arraigned for felony, obstinately "stood mute;" that is, refused to plead or to put themselves upon trial. It is described as a combination of solitary confinement, slow starvation, and crushing the naked body with a great load of iron. This atrocious punishment was vulgarly called "pressing to death." See 4 Bl. Comm. 324–328; Britt. cc. 4, 22; 2 Reeve, Eng. Law, 134; Cowell.

PELA. A peal, pile, or fort. Cowell.

PELES. Issues arising from or out of a thing. Jacob.

PELFE, or PELFRE. Booty; also the personal effects of a felon convict. Cowell.

PELLAGE. The custom or duty paid for skins of leather.

PELLEX. Lat. In Roman law. A concubine. Dig. 50, 16, 144.

PELLICIA. A pilch or surplice. Spelman.

PELLIPARIUS. A leather-seller or skinner. Jacob.

PELLOTA. The ball of a foot. 4 Inst. 308.

PELLS, CLERK OF THE. An officer in the English exchequer, who entered every seller's bill on the parchment rolls, the roll of receipts, and the roll of disbursements.

PELT-WOOL. The wool pulled off the skin or pelt of dead sheep. 8 Hen. VI. c. 22.

PENAL. Punishable; inflicting a punishment; containing a penalty, or relating to a penalty.

—Penal action. In practice. An action upon a penal statute; an action for the recovery of a penalty given by statute. 3 Steph. 535, 536. Distinguished from a popular or *qui tam* action, in which the action is brought by the informer, to whom part of the penalty goes. A penal action or information is brought by an officer, and the penalty goes to the king. 1 Chit. Gen. Pr. 25, note; 2 Archb. Pr. 188. But in American law, the term includes actions brought by informers or other private persons, as well as those instituted by governments or public officers. In a broad sense, the term has been made to include all actions in which there may be a recovery of exemplary or vindictive damages, as suits for libel and slander, or in which special, double, or treble damages are given by statute, such as actions to recover money paid as usury or lost in gaming. See Bailey v. Dean, 5 Barb. (N. Y.) 303; Ashley v. Frame, 4 Kan. App. 265, 45 Pac. 927; Cole v. Groves, 134 Mass. 472. But in a more particular sense it means (1) an action on a statute which gives a certain penalty to be recovered by any person who will sue for it, (In re Barker, 56 Vt. 20,) or (2) an action in which the judgment against the defendant is in the nature of a fine or is intended as a punishment, actions in which the recovery is to be compensatory in its purpose and effect not being penal actions but civil suits, though they may carry special damages by statute. See Moller v. U. S., 57 Fed. 490, 6 C. C. A. 459; Atlanta v. Chattanooga Foundry & Pipe Works, 127 Fed. 23, 61 C. C. A. 387, 64 L. R. A. 721.**—Penal bill.** An instrument formerly in use, by which a party bound himself to pay a certain sum or sums of money, or to do certain acts, or, in default thereof, to pay a certain specified sum by way of penalty; thence termed a "penal sum." These instruments have been superseded by the use of a bond in a penal sum, with conditions. Brown.**—Penal bond.** A bond promising to pay a named sum of money (the penalty) with a condition underwritten that, if a stipulated collateral thing, other than the payment of money, be done or forborne, as the case may be, the obligation shall be void. Burnside v. Wand, 170 Mo. 531, 71 S. W. 337, 62 L. R. A. 427.**—Penal clause.** A penal clause is a secondary obligation, entered into for the purpose of enforcing the performance of a primary obligation. Civ. Code La. art. 2117. Also a clause in a statute declaring a penalty for a violation of the preceding clauses.**—Penal laws.** Those which prohibit an act and impose a penalty for the commission of it. 2 Cro. Jac. 415. Strictly and properly speaking, a penal law is one imposing a penalty or punishment (and properly a pecuniary fine or mulct) for some offense of a public nature or wrong committed against the state. Sackett v. Sackett, 8 Pick. (Mass.) 320; Kilton v. Providence Tool Co., 22 R. I. 605, 48 Atl. 1039; Drew v. Russell, 47 Vt. 252; Nebraska Nat. Bank v. Walsh, 68 Ark. 433, 59 S. W. 952, 82 Am. St. Rep. 301. Strictly speaking, statutes giving a private action against a wrongdoer are not penal in their nature, neither the liability imposed nor the remedy given being penal. If the wrong

done is to the individual, the law giving him a right of action is remedial, rather than penal, though the sum to be recovered may be called a "penalty" or may consist in double or treble damages. See Huntington v. Attrill, 146 U. S. 657, 13 Sup. Ct. 224, 36 L. Ed. 1123; Diversey v. Smith, 103 Ill. 390, 42 Am. Rep. 14; Cullinan v. Burkhard, 41 Misc. Rep. 321, 84 N. Y. Supp. 825; People v. Common Council of Bay City, 36 Mich. 189.—**Penal servitude,** in English criminal law, is a punishment which consists in keeping an offender in confinement, and compelling him to labor. Steph. Crim. Dig. 2.—**Penal statutes.** See *"penal laws," supra.* —**Penal sum.** A sum agreed upon in a bond, to be forfeited if the condition of the bond is not fulfilled.

PENALTY. 1. The sum of money which the obligor of a bond undertakes to pay by way of penalty, in the event of his omitting to perform or carry out the terms imposed upon him by the conditions of the bond. Brown; Tayloe v. Sandiford, 7 Wheat. 13, 5 L. Ed. 384; Watt v. Sheppard, 2 Ala. 445.

A penalty is an agreement to pay a greater sum, to secure the payment of a less sum. It is conditional, and can be avoided by the payment of the less sum before the contingency agreed upon shall happen. By what name it is called is immaterial. Henry v. Thompson, Minor (Ala.) 209, 227.

2. A punishment; a punishment imposed by statute as a consequence of the commission of a certain specified offense. Lancaster v. Richardson, 4 Lans. (N. Y.) 136; People v. Nedrow, 122 Ill. 363, 13 N. E. 533; Iowa v. Chicago, etc., R. Co. (C. C.) 37 Fed. 497, 3 L. R. A. 554.

The terms "fine," "forfeiture," and "penalty" are often used loosely, and even confusedly; but, when a discrimination is made, the word "penalty" is found to be generic in its character, including both fine and forfeiture. A "fine" is a pecuniary penalty, and is commonly (perhaps always) to be collected by suit in some form. A "forfeiture" is a penalty by which one loses his rights and interest in his property. Gosselink v. Campbell, 4 Iowa, 300.

3. The term also denotes money recoverable by virtue of a statute imposing a payment by way of punishment.

PENANCE. In ecclesiastical law. An ecclesiastical punishment inflicted by an ecclesiastical court for some spiritual offense. Ayl. Par. 420.

PENDENCY. Suspense; the state of being pendent or undecided; the state of an action, etc., after it has been begun, and before the final disposition of it.

PENDENS. Lat. Pending; as *lis pendens,* a pending suit.

PENDENTE LITE. Lat. Pending the suit; during the actual progress of a suit; during litigation.

Pendente lite nihil innovetur. Co. Litt. 344. During a litigation nothing new should be introduced.

PENDENTES. In the civil law. The fruits of the earth not yet separated from the ground; the fruits hanging by the roots. Ersk. Inst. 2, 2, 4.

PENDICLE. In Scotch law. A piece or parcel of ground.

PENDING. Begun, but not yet completed; unsettled; undetermined; in process of settlement or adjustment. Thus, an action or suit is said to be "pending" from its inception until the rendition of final judgment. Wentworth v. Farmington, 48 N. H. 210; Mauney v. Pemberton, 75 N. C. 221; Ex parte Munford, 57 Mo. 603.

PENETRATION. A term used in criminal law, and denoting (in cases of alleged rape) the insertion of the male part into the female parts to however slight an extent; and by which insertion the offense is complete without proof of emission. Brown.

PENITENTIARY. A prison or place of punishment; the place of punishment in which convicts sentenced to confinement and hard labor are confined by the authority of the law. Millar v. State, 2 Kan. 175.

PENNON. A standard, banner, or ensign carried in war.

PENNY. An English coin, being the twelfth part of a shilling. It was also used in America during the colonial period.

PENNYWEIGHT. A Troy weight, equal to twenty-four grains, or one-twentieth part of an ounce.

PENSAM. The full weight of twenty ounces.

PENSIO. Lat. In the civil law. A payment, properly, for the use of a thing. A rent; a payment for the use and occupation of another's house.

PENSION. A stated allowance out of the public treasury granted by government to an individual, or to his representatives, for his valuable services to the country, or in compensation for loss or damage sustained by him in the public service. Price v. Society for Savings, 64 Conn. 362, 30 Atl. 139, 42 Am. St. Rep. 198; Manning v. Spry, 121 Iowa, 191, 96 N. W. 873; Frisbie v. U. S., 157 U. S. 160, 15 Sup. Ct. 586, 39 L. Ed. 657.

In English practice. An annual payment made by each member of the inns of court. Cowell; Holthouse.

Also an assembly of the members of the society of Gray's Inn, to consult of their affairs.

In the civil, Scotch, and Spanish law. A rent; an annual rent.

—**Pension of churches.** In English ecclesiastical law. Certain sums of money paid to

clergymen in lieu of tithes. A spiritual person may sue in the spiritual court for a pension originally granted and confirmed by the ordinary, but, where it is granted by a temporal person to a clerk, he cannot; as, if one grant an annuity to a parson, he must sue for it in the temporal courts. Cro. Eliz. 675.—**Pension writ.** A peremptory order against a member of an inn of court who is in arrear for his pensions, (that is, for his periodical dues,) or for other duties. Cowell.

PENSIONER. One who is supported by an allowance at the will of another; a dependent. It is usually applied (in a public sense) to those who receive pensions or annuities from government, who are chiefly such as have retired from places of honor and emolument. Jacob.

Persons making periodical payments are sometimes so called. Thus, resident undergraduates of the university of Cambridge, who are not on the foundation of any college, are spoken of as "pensioners." Mozley & Whitley.

PENT-ROAD. A road shut up or closed at its terminal points. Wolcott v. Whitcomb, 40 Vt. 41.

PENTECOSTALS. In ecclesiastical law. Pious oblations made at the feast of Pentecost by parishioners to their priests, and sometimes by inferior churches or parishes to the principal mother churches. They are also called "Whitsun farthings." Wharton.

PEON. In Mexico. A debtor held by his creditor in a qualified servitude to work out the debt; a serf. Webster.

In India. A footman; a soldier; an inferior officer; a servant employed in the business of the revenue, police, or judicature.

PEONAGE. The state or condition of a peon as above defined; a condition of enforced servitude, by which the servitor is restrained of his liberty and compelled to labor in liquidation of some debt or obligation, real or pretended, against his will. Peonage Cases (D. C.) 123 Fed. 671; In re Lewis (C. C.) 114 Fed. 963; U. S. v. McClellan (D. C.) 127 Fed. 971; Rev. St. U. S. § 5526 (U. S. Comp. St. 1901, p. 3715).

PEONIA. In Spanish-American law. A lot of land of fifty feet front, and one hundred feet deep. Originally the portion granted to foot-soldiers of spoils taken or lands conquered in war.

PEOPLE. A state; as the people of the state of New York. A nation in its collective and political capacity. Nesbitt v. Lushington, 4 Term R. 783; U. S. v. Quincy, 6 Pet. 467, 8 L. Ed. 458; U. S. v. Trumbull (D. C.) 48 Fed. 99. In a more restricted sense, and as generally used in constitutional law, the entire body of those citizens of a state or nation who are invested with political power for political purposes, that is, the qualified voters or electors. See Koehler v. Hill, 60 Iowa, 543, 15 N. W. 609; Dred Scott v. Sandford, 19 How. 404, 15 L. Ed. 691; Boyd v. Nebraska, 143 U. S. 135, 12 Sup. Ct. 375, 36 L. Ed. 103; Rogers v. Jacob, 88 Ky. 502, 11 S. W. 513; People v. Counts, 89 Cal. 15, 26 Pac. 612; Blair v. Ridgely, 41 Mo. 63, 97 Am. Dec. 248; Beverly v. Sabin, 20 Ill. 357; In re Incurring of State Debts, 19 R. I. 610, 37 Atl. 14.

The word "people" may have various significations according to the connection in which it is used. When we speak of the rights of the people, or of the government of the people by law, or of the people as a non-political aggregate, we mean all the inhabitants of the state or nation, without distinction as to sex, age, or otherwise. But when reference is made to the people as the repository of sovereignty, or as the source of governmental power, or to popular government, we are in fact speaking of that selected and limited class of citizens to whom the constitution accords the elective franchise and the right of participation in the offices of government. Black, Const. Law (3d Ed.) p. 30.

PEPPERCORN. A dried berry of the black pepper. In English law, the reservation of a merely nominal rent, on a lease, is sometimes expressed by a stipulation for the payment of a peppercorn.

PER. Lat. By. When a writ of entry is sued out against the alienee of the original intruder or disseisor, or against his heir to whom the land has descended, it is said to be brought "in the *per*," because the writ then states that the tenant had not entry but by (*per*) the original wrong-doer. 3 Bl. Comm. 181.

PER ÆS ET LIBRAM. Lat. In Roman law. The sale *per æs et libram* (with copper and scales) was a ceremony used in transferring *res mancipi*, in the emancipation of a son or slave, and in one of the forms of making a will. The parties having assembled, with a number of witnesses, and one who held a balance or scales, the purchaser struck the scales with a copper coin, repeating a formula by which he claimed the subject-matter of the transaction as his property, and handed the coin to the vendor.

PER ALLUVIONEM. Lat. In the civil law. By alluvion, or the gradual and imperceptible increase arising from deposit by water.

Per alluvionem id videtur adjici quod ita paulatim adjicitur ut intelligere non possumus quantum quoquo momento temporis adjiciatur. That is said to be added by alluvion which is so added little by little that we cannot tell how much is added at any one moment of time. Dig. 41, 1, 7, 1; Fleta, l. 3, c. 2, § 6.

PER AND CUI. When a writ of entry is brought against a second alienee or de-

scendant from the disseisor, it is said to be in the *per* and *cui*, because the form of the writ is that the tenant had not entry but *by* and *under* a prior alienee, *to* whom the intruder himself demised it. 3 Bl. Comm. 181.

PER AND POST. To come in in the *per* is to claim by or through the person last entitled to an estate; as the heirs or assigns of the grantee. To come in in the *post* is to claim by a paramount and prior title; as the lord by escheat.

PER ANNULUM ET BACULUM. L. Lat. In old English law. By ring and staff, or crozier. The symbolical mode of conferring an ecclesiastical investure. 1 Bl. Comm. 378, 379.

PER ANNUM. Lat. By the year. A phrase still in common use. Ramsdell v. Hulett, 50 Kan. 440, 31 Pac. 1092; State v. McFetridge, 64 Wis. 130, 24 N. W. 140; Haney v. Caldwell, 35 Ark. 168.

PER AUTRE VIE. L. Fr. For or during another's life; for such period as another person shall live.

PER AVERSIONEM. Lat. In the civil law. By turning away. A term applied to that kind of sale where the goods are taken in bulk, and not by weight or measure, and for a single price; or where a piece of land is sold as containing in gross, by estimation, a certain number of acres. Poth. Cont. Sale, nn. 256, 309. So called because the buyer acts without particular examination or discrimination, *turning* his face, as it were, *away*. Calvin.

PER BOUCHE. L. Fr. By the mouth; orally. 3 How. State Tr. 1024.

PER CAPITA. Lat. By the heads or polls; according to the number of individuals; share and share alike. This term, derived from the civil law, is much used in the law of descent and distribution, and denotes that method of dividing an intestate estate by which an equal share is given to each of a number of persons, all of whom stand in equal degree to the decedent, without reference to their stocks or the right of representation. It is the antithesis of *per stirpes*, (*q. v.*)

PER CENT. An abbreviation of the Latin "*per centum*," meaning by the hundred, or so many parts in the hundred, or so many hundredths. See Blakeslee v. Mansfield, 66 Ill. App. 119; Code Va. 1887, § 5 (Code 1904, p. 7.)

PER CONSEQUENS. Lat. By consequence; consequently. Yearb. M. 9 Edw. III. 8.

PER CONSIDERATIONEM CURIÆ. Lat. In old practice. By the consideration (judgment) of the court. Yearb. M. 1 Edw. II. 2.

PER CURIAM. Lat. By the court. A phrase used in the reports to distinguish an opinion of the whole court from an opinion written by any one judge. Sometimes it denotes an opinion written by the chief justice or presiding judge. See Clarke v. Western Assur. Co., 146 Pa. 561, 23 Atl. 248, 15 L. R. A. 127, 28 Am. St. Rep. 821.

PER EUNDEM. Lat. By the same. This phrase is commonly used to express "by, or from the mouth of, the same judge." So "*per eundem in eadem*" means "by the same judge in the same case."

PER EXTENSUM. Lat. In old practice. At length.

PER FORMAM DONI. L. Lat. In English law. By the form of the gift; by the designation of the giver, and not by the operation of law. 2 Bl. Comm. 113, 191.

PER FRAUDEM. Lat. By fraud. Where a plea alleges matter of discharge, and the replication avers that the discharge was fraudulently obtained and is therefore invalid, it is called a "replication *per fraudem*."

PER INCURIAM. Lat. Through inadvertence. 35 Eng. Law & Eq. 302.

PER INDUSTRIAM HOMINIS. Lat. In old English law. By human industry. A term applied to the reclaiming or taming of wild animals by art, industry, and education. 2 Bl. Comm. 391.

PER INFORTUNIUM. Lat. By misadventure. In criminal law, homicide *per infortunium* is committed where a man, doing a lawful act, without any intention of hurt, unfortunately kills another. 4 Bl. Comm. 182.

PER LEGEM ANGLIÆ. Lat. By the law of England; by the curtesy. Fleta, lib. 2, c. 54, § 18.

PER LEGEM TERRÆ. Lat. By the law of the land; by due process of law. U. S. v. Kendall, 26 Fed. Cas. 748; Appeal of Ervine, 16 Pa. 263, 55 Am. Dec. 499; Rhinehart v. Schuyler, 7 Ill. 519.

PER METAS ET BUNDAS. L. Lat. In old English law. By metes and bounds.

PER MINAS. Lat. By threats. See DURESS.

PER MISADVENTURE. In old English law. By mischance. 4 Bl. Comm. 182. The same with *per infortunium*, (*q. v.*)

PER MITTER LE DROIT. L. Fr. By passing the right. One of the modes by which releases at common law were said to inure was "*per mitter le droit*," as where a person who had been disseised released to the disseisor or his heir or feofee. In such case, by the release, the right which was in the releasor was added to the possession of the releasee, and the two combined perfected the estate. Miller v. Emans, 19 N. Y. 387.

PER MITTER L'ESTATE. L. Fr. By passing the estate. At common law, where two or more are seised, either by deed, devise, or descent, as joint tenants or coparceners of the same estate, and one of them releases to the other, this is said to inure by way of "*per mitter l'estate.*" Miller v. Emans, 19 N. Y. 388.

PER MY ET PER TOUT. L. Fr. By the half and by the whole. A phrase descriptive of the mode in which joint tenants hold the joint estate, the effect of which, technically considered, is that for purposes of tenure and survivorship each is the holder of the whole, but for purposes of alienation each has only his own share, which is presumed in law to be equal. 1 Washb. Real Prop. 406.

PER PAIS, TRIAL. Trial by the country; *i. e.*, by jury.

PER PROCURATION. By proxy; by one acting as an agent with special powers; as under a letter of attorney. These words "give notice to all persons that the agent is acting under a special and limited authority." 10 C. B. 689. The phrase is commonly abbreviated to "*per proc.*," or "*p. p.*," and is more used in the civil law and in England than in American law.

PER QUÆ SERVITIA. Lat. A real action by which the grantee of a seigniory could compel the tenants of the grantor to attorn to himself. It was abolished by St. 3 & 4 Wm. IV. c. 27, § 35.

PER QUOD. Lat. Whereby. When the declaration in an action of tort, after stating the acts complained of, goes on to allege the consequences of those acts as a ground of special damage to the plaintiff, the recital of such consequences is prefaced by these words, "*per quod*," whereby; and sometimes the phrase is used as the name of that clause of the declaration.

PER QUOD CONSORTIUM AMISIT. Lat. In old pleading. Whereby he lost the company [of his wife.] A phrase used in the old declarations in actions of trespass by a husband, for beating or ill using his wife, descriptive of the special damage he had sustained. 3 Bl. Comm. 140; Cro. Jac. 501, 538; Crocker v. Crocker (C. C.) 98 Fed. 703.

PER QUOD SERVITIUM AMISIT. Lat. In old pleading. Whereby he lost the service [of his servant.] A phrase used in the old declarations in actions of trespass by a master, for beating or ill using his servant, descriptive of the special damage he had himself sustained. 3 Bl. Comm. 142; 9 Coke, 113*a*; Callaghan v. Lake Hopatcong Ice Co., 69 N. J. Law, 100, 54 Atl. 223.

Per rationes pervenitur ad legitimam rationem. Litt. § 386. By reasoning we come to true reason.

Per rerum naturam factum negantis nulla probatio est. It is in the nature of things that he who denies a fact is not bound to give proof.

PER SALTUM. Lat. By a leap or bound; by a sudden movement; passing over certain proceedings. 8 East, 511.

PER SE. Lat. By himself or itself; in itself; taken alone; inherently; in isolation; unconnected with other matters.

PER STIRPES. Lat. By roots or stocks; by representation. This term, derived from the civil law, is much used in the law of descents and distribution, and denotes that method of dividing an intestate estate where a class or group of distributees take the share which their stock (a deceased ancestor) would have been entitled to, taking thus by their right of representing such ancestor, and not as so many individuals; while other heirs, who stand in equal degree with such ancestor to the decedent, take each a share equal to his. See Rotmanskey v. Heiss, 86 Md. 633, 39 Atl. 415.

PER TOTAM CURIAM. L. Lat. By the whole court. A common phrase in the old reports.

PER TOUT ET NON PER MY. L. Fr. By the whole, and not by the moiety. Where an estate in fee is given to a man and his wife, they cannot take the estate by moieties, but both are seised of the entirety, *per tout et non per my.* 2 Bl. Comm. 182.

PER UNIVERSITATEM. Lat. In the civil law. By an aggregate or whole; as an entirety. The term described the acquisition of an entire estate by one act or fact, as distinguished from the acquisition of single or detached things.

PER VADIUM. L. Lat. In old practice. By gage. Words in the old writs of attachment or *pone*. 3 Bl. Comm. 280.

Per varios actus legem experientia facit. By various acts experience frames the law. 4 Inst. 50.

PER VERBA DE FUTURO. Lat. By words of the future [tense.] A phrase applied to contracts of marriage. 1 Bl. Comm. 439; 2 Kent, Comm. 87.

PER VERBA DE PRÆSENTI. Lat. By words of the present [tense.] A phrase applied to contracts of marriage. 1 Bl. Comm. 439.

PER VISUM ECCLESIÆ. Lat. In old English law. By view of the church; under the supervision of the church. The disposition of intestates' goods *per visum ecclesiæ* was one of the articles confirmed to the prelates by King John's *Magna Charta*. 3 Bl. Comm. 96.

PER VIVAM VOCEM. Lat. In old English law. By the living voice; the same with *viva voce*. Bract. fol. 95.

PER YEAR, in a contract, is equivalent to the word "annually." Curtiss v. Howell, 39 N. Y. 211.

PERAMBULATION. The act of walking over the boundaries of a district or piece of land, either for the purpose of determining them or of preserving evidence of them. Thus, in many parishes in England, it is the custom for the parishioners to perambulate the boundaries of the parish in rogation week in every year. Such a custom entitles them to enter any man's land and abate nuisances in their way. Phillim. Ecc. Law, 1867; Hunt, Bound. 103; Sweet. See Greenville v. Mason, 57 N. H. 385.

PERAMBULATIONE FACIENDA, WRIT DE. In English law. The name of a writ which is sued by consent of both parties when they are in doubt as to the bounds of their respective estates. It is directed to the sheriff to make perambulation, and to set the bounds and limits between them in certainty. Fitzh. Nat. Brev. 133..

PERCA. A perch of land; sixteen and one-half feet. See PERCH.

PERCEPTION. Taking into possession. Thus, perception of crops or of profits is reducing them to possession.

PERCEPTURA. In old records. A wear; a place in a river made up with banks, dams, etc., for the better convenience of preserving and taking fish. Cowell.

PERCH. A measure of land containing five yards and a half, or sixteen feet and a half in length; otherwise called a "rod" or "pole." Cowell.

As a unit of solid measure, a perch of masonry or stone or brick work contains, according to some authorities and in some localities, sixteen and one-half cubic feet, but elsewhere, or according to others, twenty-five. Unless defined by statute, it is a very indefinite term and must be explained by evidence. See Baldwin Quarry Co. v. Clements, 38 Ohio St. 587; Harris v. Rutledge, 19 Iowa, 388, 87 Am. Dec. 441; Sullivan v. Richardson, 33 Fla. 1, 14 South. 692; Wood v. Vermont Cent. R. Co., 24 Vt. 608.

PERCOLATE, as used in the cases relating to the right of land-owners to use water on their premises, designates any flowage of sub-surface water other than that of a running stream, open, visible, clearly to be traced. Mosier v. Caldwell, 7 Nev. 363.

—Percolating waters. See WATER.

PERDONATIO UTLAGARIÆ. L. Lat. A pardon for a man who, for contempt in not yielding obedience to the process of a court, is outlawed, and afterwards of his own accord surrenders. Reg. Orig. 28.

PERDUELLIO. Lat. In Roman law. Hostility or enmity towards the Roman republic; traitorous conduct on the part of a citizen, subversive of the authority of the laws or tending to overthrow the government. Calvin; Vicat.

PERDURABLE. As applied to an estate, perdurable signifies lasting long or forever. Thus, a disseisor or tenant in fee upon condition has as high and great an estate as the rightful owner or tenant in fee-simple absolute, but not so perdurable. The term is chiefly used with reference to the extinguishment of rights by unity of seisin, which does not take place unless both the right and the land out of which it issues are held for equally high and perdurable estates. Co. Litt. 313*a*, 313*b*; Gale, Easem. 582; Sweet.

PEREGRINI. Lat. In Roman law. The class of *peregrini* embraced at the same time both those who had no capacity in law, (capacity for rights or jural relations,) namely, the slaves, and the members of those nations which had not established amicable relations with the Roman people. Sav. Dr. Rom. § 66.

PEREMPT. In ecclesiastical procedure an appeal is said to be perempted when the appellant has by his own act waived or barred his right of appeal; as where he partially complies with or acquiesces in the sentence of the court. Phillim. Ecc. Law, 1275.

PEREMPTION. A nonsuit; also a quashing or killing.

PEREMPTORIUS. Lat. In the civil law. That which takes away or destroys forever; hence, *exceptio peremptoria*, a plea which is a perpetual bar. Calvin.

PEREMPTORY. Imperative; absolute; not admitting of question, delay, or recon-

sideration. Positive; final; decisive; not admitting of any alternative. Self-determined; arbitrary; not requiring any cause to be shown.

—Peremptory day. A day assigned for trial or hearing in court, absolutely and without further opportunity for postponement.**—Peremptory exception.** In the civil law. Any defense which denies entirely the ground of action.**—Peremptory paper.** A list of the causes which were enlarged at the request of the parties, or which stood over from press of business in court.**—Peremptory rule.** In practice. An absolute rule; a rule without any condition or alternative of showing cause.**—Peremptory undertaking.** An undertaking by a plaintiff to bring on a cause for trial at the next sittings or assizes. Lush, Pr. 649.

As to peremptory "Challenge," "Defense," "Instruction," "Mandamus," "Nonsuit," "Plea," and "Writ," see those titles.

PERFECT. Complete; finished; executed; enforceable.

—Perfect condition. In a statement of the rule that, when two claims exist in "perfect condition" between two persons, either may insist on a set-off, this term means that state of a demand when it is of right demandable by its terms. Taylor v. New York, 82 N. Y. 17.**—Perfect instrument.** An instrument such as a deed or mortgage is said to become perfect when recorded (or registered) or filed for record, because it then becomes good as to all the world. See Wilkins v. McCorkle, 112 Tenn. 688, 80 S. W. 834.**—Perfect trust.** An executed trust, (*q. v.*)

As to perfect "Equity," "Machine," "Obligation," "Ownership," "Title," and "Usufruct," see those titles.

PERFECTING BAIL. Certain qualifications of a property character being required of persons who tender themselves as bail, when such persons have justified, *i. e.*, established their sufficiency by satisfying the court that they possess the requisite qualifications, a rule or order of court is made for their allowance, and the bail is then said to be perfected, *i. e.*, the process of giving bail is finished or completed. Brown.

Perfectum est cui nihil deest secundum suæ perfectionis vel naturæ modum. That is perfect to which nothing is wanting, according to the measure of its perfection or nature. Hob. 151.

PERFIDY. The act of one who has engaged his faith to do a thing, and does not do it, but does the contrary. Wolff, Inst. § 390.

PERFORM. To perform an obligation or contract is to execute, fulfill, or accomplish it according to its terms. This may consist either in action on the part of the person bound by the contract or in omission to act, according to the nature of the subject-matter; but the term is usually applied to any action in discharge of a contract other than payment.

PERFORMANCE. The fulfillment or accomplishment of a promise, contract, or other obligation according to its terms.

—Part performance. The doing some portion, yet not the whole, of what either party to a contract has agreed to do. Borrow v. Borrow, 34 Wash. 684, 76 Pac. 305.**—Specific performance.** Performance of a contract in the specific form in which it was made, or according to the precise terms agreed upon. This is frequently compelled by a bill in equity filed for the purpose. 2 Story, Eq. Pl. § 712, *et seq.* The doctrine of specific performance is that, where damages would be an inadequate compensation for the breach of an agreement, the contractor will be compelled to perform specifically what he has agreed to do. Sweet.

PERGAMENUM. In old practice. Parchment. *In pergameno scribi fecit.* 1 And. 54.

PERICARDITIS. In medical jurisprudence. An inflammation of the lining membrane of the heart.

PERICULOSUS. Lat. Dangerous; perilous.

Periculosum est res novas et inusitatas inducere. Co. Litt. 379*a*. It is perilous to introduce new and untried things.

Periculosum existimo quod bonorum virorum non comprobatur exemplo. 9 Coke, 97*b*. I consider that dangerous which is not approved by the example of good men.

PERICULUM. Lat. In the civil law. Peril; danger; hazard; risk.

Periculum rei venditæ, nondum traditæ, est emptoris. The risk of a thing sold, and not yet delivered, is the purchaser's. 2 Kent, Comm. 498, 499.

PERIL. The risk, hazard, or contingency insured against by a policy of insurance.

—Perils of the lakes. As applied to navigation of the Great Lakes, this term has the same meaning as "perils of the sea." See *infra.***—Perils of the sea.** In maritime and insurance law. Natural accidents peculiar to the sea, which do not happen by the intervention of man, nor are to be prevented by human prudence. 3 Kent, Comm. 216. Perils of the sea are from (1) storms and waves; (2) rocks, shoals, and rapids; (3) other obstacles, though of human origin; (4) changes of climate; (5) the confinement necessary at sea; (6) animals peculiar to the sea; (7) all other dangers peculiar to the sea. Civ. Code Cal. § 2199. All losses caused by the action of wind and water acting on the property insured under extraordinary circumstances, either directly or mediately, without the intervention of other independent active external causes, are losses by "perils of the sea or other perils and dangers," within the meaning of the usual clause in a policy of marine insurance. Baily, Perils of Sea, 6. In an enlarged sense, all losses which occur from maritime adventure may be said to arise from the perils of the sea; but underwriters are not bound to this extent. They insure against losses from extraordinary occurrences only; such as stress of weather, winds and waves, lightning, tempests, etc. These are understood to be meant by the phrase "the perils

of the sea," in a marine policy, and not those ordinary perils which every vessel must encounter. Hazard v. New England Mar. Ins. Co., 8 Pet. 557, 8 L. Ed. 1043.

PERINDE VALERE. A dispensation granted to a clerk, who, being defective in capacity for a benefice or other ecclesiastical function, is *de facto* admitted to it. Cowell.

PERIOD. Any point, space, or division of time. "The word 'period' has its etymological meaning, but it also has a distinctive signification, according to the subject with which it may be used in connection. It may mean any portion of complete time, from a thousand years or less to the period of a day; and when used to designate an act to be done or to be begun, though its completion may take an uncertain time, as, for instance, the act of exportation, it must mean the day on which the exportation commences, or it would be an unmeaning and useless word in its connection in the statute." Sampson v. Peaslee, 20 How. 579, 15 L. Ed. 1022.

PERIODICAL. Recurring at fixed intervals; to be made or done, or to happen, at successive periods separated by determined intervals of time; as periodical payments of interest on a bond.

PERIPHRASIS. Circumlocution; use of many words to express the sense of one.

PERISH. To come to an end; to cease to be; to die.

PERISHABLE ordinarily means subject to speedy and natural decay. But, where the time contemplated is necessarily long, the term may embrace property liable merely to material depreciation in value from other causes than such decay. Webster v. Peck, 31 Conn. 495.

—Perishable goods. Goods which decay and lose their value if not speedily put to their intended use.

Perjuri sunt qui servatis verbis juramenti decipiunt aures eorum qui accipiunt. 3 Inst. 166. They are perjured, who, preserving the words of an oath, deceive the ears of those who receive it.

PERJURY. In criminal law. The willful assertion as to a matter of fact, opinion, belief, or knowledge, made by a witness in a judicial proceeding as part of his evidence, either upon oath or in any form allowed by law to be substituted for an oath, whether such evidence is given in open court, or in an affidavit, or otherwise, such assertion being known to such witness to be false, and being intended by him to mislead the court, jury, or person holding the proceeding. 2 Whart. Crim. Law, § 1244; Herring v. State, 119 Ga. 709, 46 S. E. 876; Beecher v. Anderson, 45 Mich. 543, 8 N. W. 539; Schmidt v. Witherick, 29 Minn. 156, 12 N. W. 448; State v. Simons, 30 Vt. 620; Miller v. State, 15 Fla. 585; Clark v. Clark, 51 N. J. Eq. 404, 26 Atl. 1012; Hood v. State, 44 Ala. 81.

Perjury shall consist in willfully, knowingly, absolutely, and falsely swearing, either with or without laying the hand on the Holy Evangelist of Almighty God, or affirming, in a matter material to the issue or point in question, in some judicial proceeding, by a person to whom a lawful oath or affirmation is administered. Code Ga. 1882, § 4460.

Every person who, having taken an oath that he will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which such an oath may by law be administered, willfully, and contrary to such oath, states as truth any material matter which he knows to be false, is guilty of perjury. Pen. Code Cal. § 118.

The willful giving, under oath, in a judicial proceeding or course of justice, of false testimony material to the issue or point of inquiry. 2 Bish. Crim. Law, § 1015.

Perjury, at common law, is the "taking of a willful false oath by one who, being lawfully sworn by a competent court to depose the truth in any judicial proceeding, swears, absolutely and falsely in a matter material to the point in issue, whether he believed or not." Comm. v. Powell, 2 Metc. (Ky.) 10; Cothran v. State, 39 Miss. 541.

It will be observed that, at common law, the crime of perjury can be committed only in the course of a suit or judicial proceeding. But statutes have very generally extended both the definition and the punishment of this offense to willful false swearing in many different kinds of affidavits and depositions, such as those required to be made in tax returns, pension proceedings, transactions at the custom house, and various other administrative or non-judicial proceedings.

PERMANENT. Fixed, enduring, abiding, not subject to change. Generally opposed in law to "temporary."

—Permanent abode. A domicile or fixed home, which the party may leave as his interest or whim may dictate, but which he has no present intention of abandoning. Dale v. Irwin, 78 Ill. 170; Moffett v. Hill, 131 Ill. 239, 22 N. E. 821; Berry v. Wilcox, 44 Neb. 82, 62 N. W. 249, 48 Am. St. Rep. 706.**—Permanent building and loan association.** One which issues its stock, not all at once or in series, but at any time when application is made therefor. Cook v. Equitable B. & L. Ass'n, 104 Ga. 814, 30 S. E. 911.

As to permanent "Alimony," "Injunction," and "Trespass," see those titles.

PERMISSION. A license to do a thing; an authority to do an act which, without such authority, would have been unlawful.

PERMISSIONS. Negations of law, arising either from the law's silence or its express declaration. Ruth. Inst. b. 1, c. 1.

PERMISSIVE. Allowed; allowable; that which may be done.

—Permissive use. See USE.**—Permissive waste.** See WASTE.

PERMIT. A license or instrument granted by the officers of excise, (or customs,) certifying that the duties on certain goods

N have been paid, or secured, and permitting their removal from some specified place to another. Wharton.

A written license or warrant, issued by a person in authority, empowering the grantee to do some act not forbidden by law, but not O allowable without such authority.

PERMUTATIO. Lat. In the civil law. Exchange; barter. Dig. 19, 4.

P **PERMUTATION.** The exchange of one movable subject for another; barter.

PERMUTATIONE. A writ to an ordinary, commanding him to admit a clerk to a benefice upon exchange made with another. Reg. Orig. 307.

PERNANCY. Taking; a taking or receiving; as of the profits of an estate. Actual pernancy of the profits of an estate is the taking, perception, or receipt of the rents and other advantages arising therefrom. 2 Bl. Comm. 163.

PERNOR OF PROFITS. He who receives the profits of lands, etc.; he who has the actual pernancy of the profits.

PERNOUR. L. Fr. A taker. *Le pernour ou le detenour*, the taker or the detainer. Britt. c. 27.

PERPARS. L. Lat. A purpart; a part of the inheritance.

PERPETRATOR. Generally, this term denotes the person who actually commits a crime or delict, or by whose immediate agency it occurs. But, where a servant of a railroad company is killed through the negligence of a co-employe, the company itself may be regarded as the "perpetrator" of the act, within the meaning of a statute giving an action against the perpetrator. Philo v. Illinois Cent. R. Co., 33 Iowa, 47.

Perpetua lex est nullam legem humanam ac positivam perpetuam esse, et clausula quæ abrogationem excludit ab initio non valet. It is a perpetual law that no human and positive law can be perpetual, and a clause [in a law] which precludes the power of abrogation is void *ab initio*. Bac. Max. p. 77, in reg. 19.

PERPETUAL. Never ceasing; continuous; enduring; lasting; unlimited in respect of time; continuing without intermission or interval. See Scanlan v. Crawshaw, 5 Mo. App. 337.

—Perpetual edict. In Roman law. Originally the term "perpetua" was merely opposed to "occasional" and was used to distinguish the general edicts of the prætors from the special edicts or orders which they issued in their judicial capacity. But under Hadrian the edict was revised by the jurist Julianus, and was republished as a permanent act of legislation. It was then styled "perpetual," in the sense of being calculated to endure *in perpetuum*, or until abrogated by competent authority. Aust. Jur. 855.—**Perpetual succession.** That continuous existence which enables a corporation to manage its affairs, and hold property without the necessity of perpetual conveyances, for the purpose of transmitting it. By reason of this quality, this ideal and artificial person remains, in its legal entity and personality, the same, though frequent changes may be made of its members. Field, Corp. § 58; Scanlan v. Crawshaw, 5 Mo. App. 340.

As to perpetual "Curacy," "Injunction," "Lease," and "Statute," see those titles

PERPETUATING TESTIMONY. A proceeding for taking and preserving the testimony of witnesses, which otherwise might be lost before the trial in which it is intended to be used. It is usually allowed where the witnesses are aged and infirm or are about to remove from the state. 3 Bl. Comm. 450.

PERPETUITY. A future limitation, whether executory or by way of remainder, and of either real or personal property, which is not to vest until after the expiration of or will not necessarily vest within the period fixed and prescribed by law for the creation of future estates and interests, and which is not destructible by the persons for the time being entitled to the property subject to the future limitation, except with the concurrence of the individual interested under that limitation. Lewis, Perp. 164; 52 Law Lib. 139.

Any limitation tending to take the subject of it out of commerce for a longer period than a life or lives in being, and twenty-one years beyond, and, in case of a posthumous child, a few months more, allowing for the term of gestation. Rand. Perp. 48.

Such a limitation of property as renders it unalienable beyond the period allowed by law. Gilb. Uses, (Sugd. Ed.) 260. And see Ould v. Washington Hospital, 95 U. S. 303, 24 L. Ed. 450; Duggan v. Slocum, 92 Fed. 806, 34 C. C. A. 676; Waldo v. Cummings, 45 Ill. 421; Franklin v. Armfield, 2 Sneed (Tenn.) 354; Stevens v. Annex Realty Co., 173 Mo. 511, 73 S. W. 505; Griffin v. Graham, 8 N. C. 130, 9 Am. Dec. 619; In re John's Will, 30 Or. 494, 47 Pac. 341, 36 L. R. A. 242.

PERPETUITY OF THE KING. That fiction of the English law which for certain political purposes ascribes to the king in his political capacity the attribute of immortality; for, though the reigning monarch may die, yet by this fiction the king never dies, *i. e.*, the office is supposed to be reoccupied for all political purposes immediately on his death. Brown.

PERQUISITES. In its most extensive sense, "perquisites" signifies anything obtained by industry or purchased with money, dif-

ferent from that which descends from a father or ancestor. Bract. l. 2, c. 30, n. 3.

Profits accruing to a lord of a manor by virtue of his court-baron, over and above the yearly profits of his land; also other things that come casually and not yearly. Mozley & Whitley.

In modern use. Emoluments or incidental profits attaching to an office or official position, beyond the salary or regular fees. Delaplane v. Crenshaw, 15 Grat. (Va.) 468; Vansant v. State, 96 Md. 110, 53 Atl. 711; Wren v. Luzerne County, 6 Kulp (Pa.) 37.

PERQUISITIO. Purchase. Acquisition by one's own act or agreement, and not by descent.

PERQUISITOR. In old English law. A purchaser; one who first acquired an estate to his family; one who acquired an estate by sale, by gift, or by any other method, except only that of descent. 2 Bl. Comm. 220.

PERSECUTIO. Lat. In the civil law. A following after; a pursuing at law; a suit or prosecution. Properly that kind of judicial proceeding before the prætor which was called "extraordinary." In a general sense, any judicial proceeding, including not only "actions," (*actiones,*) properly so called, but other proceedings also. Calvin.

PERSEQUI. Lat. In the civil law. To follow after; to pursue or claim in form of law. An action is called a "*jus persequendi.*"

PERSON. A man considered according to the rank he holds in society, with all the rights to which the place he holds entitles him, and the duties which it imposes. 1 Bouv. Inst. no. 137.

A human being considered as capable of having rights and of being charged with duties; while a "thing" is the object over which rights may be exercised.

—Artificial persons. Such as are created and devised by law for the purposes of society and government, called "corporations" or "bodies politic."**—Natural persons.** Such as are formed by nature, as distinguished from *artificial* persons, or corporations.**—Private person.** An individual who is not the incumbent of an office.

PERSONA. Lat. **In the civil law.** Character, in virtue of which certain rights belong to a man and certain duties are imposed upon him. Thus one man may unite many characters, (*personæ,*) as, for example, the characters of father and son, of master and servant. Mackeld. Rom. Law, § 129.

In ecclesiastical law. The rector of a church instituted and inducted, for his own life, was called "*persona mortalis;*" and any collegiate or conventual body, to whom the church was forever appropriated, was termed "*persona immortalis.*" Jacob.

—Persona designata. A person pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character.**—Persona ecclesiæ.** The parson or personation of the church.**—Persona non grata.** In international law and diplomatic usage, a person not acceptable (for reasons peculiar to himself) to the court or government to which it is proposed to accredit him in the character of an ambassador or minister.**—Persona standi in judicio.** Capacity of standing in court or in judgment; capacity to be a party to an action; capacity or ability to sue.

Persona conjuncta æquiparatur interesse proprio. A personal connection [literally, a united person, union with a person] is equivalent to one's own interest; nearness of blood is as good a consideration as one's own interest. Bac. Max. 72, reg.

Persona est homo cum statu quodam consideratus. A person is a man considered with reference to a certain *status.* Heinecc. Elem. l. 1, tit. 3, § 75.

Persona regis mergitur persona ducis. Jenk. Cent. 160. The person of duke merges in that of king.

PERSONABLE. Having the rights and powers of a person; able to hold or maintain a plea in court; also capacity to take anything granted or given.

Personæ vice fungitur municipium et decuria. Towns and boroughs act as if persons. Warner v. Beers, 23 Wend. (N. Y.) 103, 144.

PERSONAL. Appertaining to the person; belonging to an individual; limited to the person; having the nature or partaking of the qualities of human beings, or of movable property.

As to personal "Action," "Assets," "Chattels," "Contract," "Covenant," "Credit," "Demand," "Disability," "Franchise," "Injury," "Judgment," "Knowledge," "Law," "Liability," "Liberty," "Notice," "Property," "Replevin," "Representatives," "Rights," "Security," "Service," "Servitude," "Statute," "Tax," "Tithes," "Tort," and "Warranty," see those titles.

Personal things cannot be done by another. Finch, Law, b. 1, c. 3, n. 14.

Personal things cannot be granted over. Finch, Law, b. 1, c. 3, n. 15.

Personal things die with the person. Finch, Law, b. 1, c. 3, n. 16.

Personalia personam sequuntur. Personal things follow the person. Flanders v. Cross, 10 Cush. (Mass.) 516.

PERSONALIS ACTIO. Lat. **In the civil law.** A personal action; an action

against the person, (*in personam.*) Dig. 50, 16, 178, 2.

In old English law. A personal action. In this sense, the term was borrowed from the civil law by Bracton. The English form is constantly used as the designation of one of the chief divisions of civil actions.

PERSONALITER. In old English law. Personally; in person.

PERSONALITY. In modern civil law. The incidence of a law or statute upon persons, or that quality which makes it a *personal* law rather than a *real* law. "By the personality of laws, foreign jurists generally mean all laws which concern the condition, state, and capacity of persons." Story, Confl. Laws, § 16.

PERSONALTY. Personal property; movable property; chattels.

An abstract of *personal.* In old practice, an action was said to be in the personalty, where it was brought against the right person or the person against whom in law it lay. Old Nat. Brev. 92; Cowell.

—Quasi personalty. Things which are movable in point of law, though fixed to things real, either actually, as emblements, (*fructus industriales,*) fixtures, etc.; or fictitiously, as chattels-real, leases for years, etc.

PERSONATE. In criminal law. To assume the person (character) of another, without his consent or knowledge, in order to deceive others, and, in such feigned character, to fraudulently do some act or gain some advantage, to the harm or prejudice of the person counterfeited. See 2 East, P. C. 1010.

PERSONERO. In Spanish law. An attorney. So called because he represents the *person* of another, either in or out of court. Las Partidas, pt. 3, tit. 5, l. 1.

PERSONNE. Fr. A person. This term is applicable to men and women, or to either. Civ. Code Lat. art. 3522, § 25.

Perspicua vera non sunt probanda. Co. Litt. 16. Plain truths need not be proved.

PERSUADE, PERSUADING. To persuade is to induce to act. Persuading is inducing others to act. Crosby v. Hawthorn, 25 Ala. 221; Wilson v. State, 38 Ala. 411; Nash v. Douglass, 12 Abb. Prac. (N. S.) (N. Y.) 190.

PERSUASION. The act of persuading; the act of influencing the mind by arguments or reasons offered, or by anything that moves the mind or passions, or inclines the will to a determination. See Marx v. Threet, 131 Ala. 340, 30 South. 831.

PERTAIN. To belong or relate to, whether by nature, appointment, or custom. See People v. Chicago Theological Seminary, 174 Ill. 177, 51 N. E. 198.

PERTENENCIA. In Spanish law. The claim or right which one has to the property in anything; the territory which belongs to any one by way of jurisdiction or property; that which is accessory or consequent to a principal thing, and goes with the ownership of it, as when it is said that such an one buys such an estate with all its appurtenances, (*pertenencias.*) Escriche. See Castillero v. United States, 2 Black. 17, 17 L. Ed. 360.

PERTICATA TERRÆ. The fourth part of an acre. Cowell.

PERTICULAS. A pittance; a small portion of alms or victuals. Also certain poor scholars of the Isle of Man. Cowell.

PERTINENT. Applicable; relevant. Evidence is called "pertinent" when it is directed to the issue or matters in dispute, and legitimately tends to prove the allegations of the party offering it; otherwise it is called "impertinent." A pertinent hypothesis is one which, if sustained, would logically influence the issue. Whitaker v. State, 106 Ala. 30, 17 South. 456.

PERTINENTS. In Scotch law. Appurtenances. "Parts and pertinents" are formal words in old deeds and charters. 1 Forb. Inst. pt. 2, pp. 112, 118.

PERTURBATION. In the English ecclesiastical courts, a "suit for perturbation of seat" is the technical name for an action growing out of a disturbance or infringement of one's right to a pew or seat in a church. 2 Phillim. Ecc. Law, 1813.

PERTURBATRIX. A woman who breaks the peace.

PERVERSE VERDICT. A verdict whereby the jury refuse to follow the direction of the judge on a point of law.

PERVISE, PARVISE. In old English law. The court or yard of the king's palace at Westminster. Also an afternoon exercise or moot for the instruction of students. Cowell; Blount.

PESA. A weight of two hundred and fifty-six pounds. Cowell.

PESAGE. In England. A toll charged for weighing avoirdupois goods other than wool. 2 Chit. Com. Law, 16.

PESQUISIDOR. In Spanish law. Coroner. White, New Recop. b. 1, tit. 1, § 3.

PESSIMI EXEMPLI. Lat. Of the worst example.

PESSONA. Mast of oaks, etc., or money taken for mast, or feeding hogs. Cowell.

PESSURABLE WARES. Merchandise which takes up a good deal of room in a ship. Cowell.

PETENS. Lat. In old English law. A demandant; the plaintiff in a real action. Bract. fols. 102, 106*b*.

PETER-PENCE. An ancient levy or tax of a penny on each house throughout England, paid to the pope. It was called "Peterpence," because collected on the day of St. Peter, *ad vincula;* by the Saxons it was called "Rome-feoh," "Rome-scot," and "Rome-pennying," because collected and sent to Rome; and, lastly, it was called "hearth money," because every dwelling-house was liable to it, and every religious house, the abbey of St. Albans alone excepted. Wharton.

PETIT. Fr. Small; minor; inconsiderable. Used in several compounds, and sometimes written "petty."

—Petit cape. A judicial writ, issued in the old actions for the recovery of land, requiring the sheriff to take possession of the estate, where the tenant, after having appeared in answer to the summons, made default in a subsequent stage of the proceedings.

As to petit "Jury," "Larceny," "Sergeanty," and "Treason," see those titles.

PETITE ASSIZE. Used in contradistinction from the *grand assize*, which was a jury to decide on questions of property. *Petite assize*, a jury to decide on questions of possession. Britt. c. 42; Glan. lib. 2, cc. 6, 7.

PETITIO. Lat. **In the civil law.** The plaintiff's statement of his cause of action in an action *in rem.* Calvin.

In old English law. Petition or demand; the count in a real action; the form of words in which a title to land was stated by the demandant, and which commenced with the word "*peto*." 1 Reeve, Eng. Law, 176.

PETITIO PRINCIPII. In logic. Begging the question, which is the taking of a thing for true or for granted, and drawing conclusions from it as such, when it is really dubious, perhaps false, or at least wants to be proved, before any inferences ought to be drawn from it.

PETITION. A written address, embodying an application or prayer from the person or persons preferring it, to the power, body, or person to whom it is presented, for the exercise of his or their authority in the redress of some wrong, or the grant of some favor, privilege, or license.

In practice. An application made to a court *ex parte*, or where there are no parties in opposition, praying for the exercise of the judicial powers of the court in relation to some matter which is not the subject for a suit or action, or for authority to do some act which requires the sanction of the court; as for the appointment of a guardian, for leave to sell trust property, etc.

The word "petition" is generally used in judicial proceedings to describe an application in writing, in contradistinction to a motion, which may be *viva voce*. Bergen v. Jones, 4 Metc. (Mass.) 371.

In the practice of some of the states, the word "petition" is adopted as the name of that initiatory pleading in an action which is elsewhere called a "declaration" or "complaint." See Code Ga. 1882, § 3332.

In equity practice. An application in writing for an order of the court, stating the circumstances upon which it is founded; a proceeding resorted to whenever the nature of the application to the court requires a fuller statement than can be conveniently made in a notice of motion. 1 Barb. Ch. Pr. 578.

—Petition de droit. L. Fr. In English practice. A petition of right; a form of proceeding to obtain restitution from the crown of either real or personal property, being of use where the crown is in possession of any hereditaments or chattels, and the petitioner suggests such a right as controverts the title of the crown, grounded on facts disclosed in the petition itself. 3 Bl. Comm. 256.**—Petition in bankruptcy.** A paper filed in a court of bankruptcy, or with the clerk, by a debtor praying for the benefits of the bankruptcy act, or by creditors alleging the commission of an act of bankruptcy by their debtor and praying an adjudication of bankruptcy against him.**—Petition of right.** In English law. A proceeding in chancery by which a subject may recover property in the possession of the king. See PETITION DE DROIT.**—Petition of rights.** A parliamentary declaration of the liberties of the people, assented to by King Charles I. in 1629. It is to be distinguished from the bill of rights, (1689,) which has passed into a permanent constitutional statute. Brown.

PETITIONER. One who presents a petition to a court, officer, or legislative body. In legal proceedings begun by petition, the person against whom action or relief is prayed, or who opposes the prayer of the petition, is called the "respondent."

PETITIONING CREDITOR. The creditor at whose instance an adjudication of bankruptcy is made against a bankrupt.

PETITORY ACTION. A droitural action; that is, one in which the plaintiff seeks to establish and enforce, by an appropriate legal proceeding, his right of property, or his title, to the subject-matter in dispute; as distinguished from a *possessory* action, where the right to the possession is the point in litigation, and not the mere right of property. The term is chiefly used in admiralty. 1 Kent, Comm. 371; The Tilton, 5 Mason, 465, Fed. Cas. No. 14,054.

In Scotch law. Actions in which damages are sought.

PETO. Lat. In Roman law. I request. A common word by which a *fideicommissum*, or trust, was created in a will. Inst. 2, 24, 3.

PETRA. A stone weight. Cowell.

PETTIFOGGER. A lawyer who is employed in a small or mean business, or who carries on a disreputable business by unprincipled or dishonorable means.

"We think that the term 'pettifogging shyster' needed no definition by witnesses before the jury. This combination of epithets, every lawyer and citizen knows, belongs to none but unscrupulous practitioners who disgrace their profession by doing mean work, and resort to sharp practice to do it." Bailey v. Kalamazoo Pub. Co., 40 Mich. 256.

PETTY. Small, minor, of less or inconsiderable importance. The English form of "*petit*," and sometimes used instead of that word in such compounds as "petty jury," "petty larceny," and "petty treason." See PETIT.

—Petty bag office. In English law. An office in the court of chancery, for suits against attorneys and officers of the court, and for process and proceedings by extent on statutes, recognizances, *ad quod damnum*, and the like. Termes de la Ley.—**Petty officers.** Inferior officers in the naval service, of various ranks and kinds, corresponding to the non-commissioned officers in the army. See U. S. v. Fuller, 160 U. S. 593, 16 Sup. Ct. 386, 40 L. Ed. 549.

As to petty "Average," "Constable," and "Sessions," see those titles.

PEW. An inclosed seat in a church. O'Hear v. De Goesbriand, 33 Vt. 606, 80 Am. Dec. 653; Trustees of Third Presbyterian Congregation v. Andruss, 21 N. J. Law, 328; Gay v. Baker, 17 Mass. 435, 9 Am. Dec. 159,

PHAROS. A watch-tower, light-house, or sea-mark.

PHLEBITIS. In medical jurisprudence. An inflammation of the veins, which may originate in *septicæmia* (bacterial blood-poisoning) or *pyæmia* (poisoning from *pus*), and is capable of being transmitted to other tissues, as, the brain or the muscular tissue of the heart. In the latter case, an inflammation of the heart is produced which is called "*endocarditis*" and which may result fatally. See Succession of Bidwell, 52 La. Ann. 744, 27 South. 281.

PHOTOGRAPHER. Any person who makes for sale photographs, ambrotypes, daguerrotypes, or pictures, by the action of light. Act Cong. July 13, 1866, § 9; 14 St. at Large, 120.

PHYLASIST. A jailer.

PHYSICAL. Relating or pertaining to the body, as distinguished from the mind or soul or the emotions; material, substantive, having an objective existence, as distinguished from imaginary or fictitious; real, having relation to facts, as distinguished from moral or constructive.

—Physical disability. See DISABILITY.—**Physical fact.** In the law of evidence. A fact having a physical existence, as distinguished from a mere conception of the mind; one which is visible, audible, or palpable; such as the sound of a pistol shot, a man running, impressions of human feet on the ground. Burrill, Circ. Ev. 130. A fact considered to have its seat in some inanimate being, or, if in an animate being, by virtue, not of the qualities by which it is constituted animate, but of those which it has in common with the class of inanimate beings. 1 Benth. Jud. Ev. 45.—**Physical force.** Force applied to the body; actual violence. State v. Wells, 31 Conn. 212.—**Physical incapacity.** In the law of marriage and divorce, impotence, inability to accomplish sexual coition, arising from incurable physical imperfection or malformation. Anonymous, 89 Ala. 291, 7 South. 100, 7 L. R. A. 425, 18 Am. St. Rep. 116; Franke v. Franke (Cal.) 31 Pac. 574, 18 L. R. A. 375.—**Physical injury.** Bodily harm or hurt, excluding mental distress, fright, or emotional disturbance. Deming v. Chicago, etc., R. Co., 80 Mo. App. 157.—**Physical necessity.** A condition in which a person is absolutely compelled to act in a particular way by overwhelming superior force; as distinguished from *moral* necessity, which arises where there is a duty incumbent upon a rational being to perform, which he ought at the time to perform. The Fortitude, 3 Sumn. 248, Fed. Cas. No. 4,953.

PHYSICIAN. A practitioner of medicine; a person duly authorized or licensed to treat diseases; one lawfully engaged in the practice of medicine, without reference to any particular school. State v. Beck, 21 R. I. 288, 43 Atl. 366, 45 L. R. A. 269; Raynor v. State, 62 Wis. 289, 22 N. W. 430; Nelson v. State Board of Health, 108 Ky. 769, 57 S. W. 501, 50 L. R. A. 383.

PIA FRAUS. Lat. A pious fraud; a subterfuge or evasion considered morally justifiable on account of the ends sought to be promoted. Particularly applied to an evasion or disregard of the laws in the interests of religion or religious institutions, such as circumventing the statutes of mortmain.

PIACLE. An obsolete term for an enormous crime.

PICAROON. A robber; a plunderer.

PICK-LOCK. An instrument by which locks are opened without a key.

PICK OF LAND. A narrow slip of land running into a corner.

PICKAGE. Money paid at fairs for breaking ground for booths.

PICKERY. In Scotch law. Petty theft; stealing of trifles, punishable arbitrarily. Bell.

PICKETING, by members of a trade union on strike, consists in posting members

at all the approaches to the works struck against, for the purpose of observing and reporting the workmen going to or coming from the works, and of using such influence as may be in their power to prevent the workmen from accepting work there. See Beck v. Railway Teamsters' Protective Union, 118 Mich. 497, 77 N. W. 13, 42 L. R. A. 407, 74 Am. St. Rep. 421; Cumberland Glass Mfg. Co. v. Glass Bottle Blowers' Ass'n, 59 N. J. Eq. 49, 46 Atl. 208.

PICKLE, PYCLE, or PIGHTEL. A small parcel of land inclosed with a hedge, which, in some countries, is called a "pingle." Enc. Lond.

PICKPOCKET. A thief who secretly steals money or other property from the person of another.

PIEPOUDRE. See COURT OF PIEPOUDRE.

PIER. A structure extending from the solid land out into the water of a river, lake, harbor, etc., to afford convenient passage for persons and property to and from vessels along the sides of the pier. Seabright v. Allgor, 69 N. J. Law, 641, 56 Atl. 287.

PIERAGE. The duty for maintaining piers and harbors.

PIGNORATIO. Lat. In the civil law. The contract of pledge; and also the obligation of such contract.

PIGNORATITIA ACTIO. Lat. In the civil law. An action of pledge, or founded on a pledge, which was either *directa*, for the debtor, after payment of the debt, or *contraria*, for the creditor. Heinecc. Elem. lib. 3, tit. 13, §§ 824–826.

PIGNORATIVE CONTRACT. In the civil law. A contract of pledge, hypothecation, or mortgage of realty.

PIGNORIS CAPIO. Lat. In Roman law. This was the name of one of the *legis actiones*. It was employed only in certain particular kinds of pecuniary cases, and consisted in that the creditor, without preliminary suit and without the co-operation of the magistrate, by reciting a prescribed formula, took an article of property from the debtor to be treated as a pledge or security. The proceeding bears a marked analogy to distress at common law. Mackeld. Rom. Law, § 203; Gaius, bk. 4, §§ 26–29.

PIGNUS. Lat. In the civil law. A pledge or pawn; a delivery of a thing to a creditor, as security for a debt. Also a thing delivered to a creditor as security for a debt.

PILA. In old English law. That side of coined money which was called "pile," because it was the side on which there was an impression of a church built on piles. Fleta, lib. 1, c. 39.

PILETTUS. In the ancient forest laws. An arrow which had a round knob a little above the head, to hinder it from going far into the mark. Cowell.

PILFER. To pilfer, in the plain and popular sense, means to steal. To charge another with pilfering is to charge him with stealing, and is slander. Becket v. Sterrett, 4 Blackf. (Ind.) 499.

PILFERER. One who steals petty things.

PILLAGE. Plunder; the forcible taking of private property by an invading or conquering army from the enemy's subjects. American Ins. Co. v. Bryan, 26 Wend. (N. Y.) 573, 37 Am. Dec. 278.

PILLORY. A frame erected on a pillar, and made with holes and movable boards, through which the heads and hands of criminals were put.

PILOT. A particular officer serving on board a ship during the course of a voyage, and having the charge of the helm and the ship's route; or a person taken on board at any particular place for the purpose of conducting a ship through a river, road, or channel, or from or into a port. People v. Francisco, 10 Abb. Prac. (N. Y.) 32; State v. Turner, 34 Or. 173, 55 Pac. 92; Chapman v. Jackson, 9 Rich. Law (S. C.) 212; State v. Jones, 16 Fla. 306.

—Branch pilot. One possessing a license, commission, or certificate of competency issued by the proper authority and usually after an examination. U. S. v. Forbes, 25 Fed. Cas. 1141; Petterson v. State (Tex. Cr. R.) 58 S. W. 100; Dean v. Healy, 66 Ga. 503; State v. Follett, 33 La. Ann. 228.

PILOTAGE. The navigation of a vessel by a pilot; the duty of a pilot. The charge or compensation allowed for piloting a vessel.

PILOTAGE AUTHORITIES. In English law. Boards of commissioners appointed and authorized for the regulation and appointment of pilots, each board having jurisdiction within a prescribed district.

PIMP-TENURE. A very singular and odious kind of tenure mentioned by the old writers, *"Wilhelmus Hoppeshort tenet dimidiam virgatam terræ per servitium custodiendi sex damisellas, scil. meretrices ad usum domini regis."* Wharton.

PIN-MONEY. An allowance set apart by a husband for the personal expenses of his wife, for her dress and pocket money.

PINCERNA. In old English law. Butler; the king's butler, whose office it was to select out of the cargo of every vessel laden with wine, one cask at the prow and another at the stern, for the king's use. Fleta, lib. 2, c. 22.

PINNAGE. Poundage of cattle.

PINNER. A pounder of cattle; a pound-keeper.

PINT. A liquid measure of half a quart, or the eighth part of a gallon.

PIONEER PATENT. See PATENT.

PIOUS USES. See CHARITABLE USES.

PIPE. A roll in the exchequer; otherwise called the "great roll." A liquid measure containing two hogsheads.

PIRACY. In criminal law. A robbery or forcible depredation on the high seas, without lawful authority, done *animo furandi*, in the spirit and intention of universal hostility. United States v. Palmer, 3 Wheat. 610, 4 L. Ed. 471. This is the definition of this offense by the law of nations. 1 Kent, Comm. 183. And see Talbot v. Janson, 3 Dall. 152, 1 L. Ed. 540; Dole v. Insurance Co., 51 Me. 467; U. S. v. Smith, 5 Wheat. 161, 5 L. Ed. 57; U. S. v. The Ambrose Light (D. C.) 25 Fed. 408; Davison v. Seal-skins, 7 Fed. Cas. 192.

There is a distinction between the offense of piracy, as known to the law of nations, which is justiciable everywhere, and offenses created by statutes of particular nations, cognizable only before the municipal tribunals of such nations. Dole v. Insurance Co., 2 Cliff. 394, 418, Fed. Cas. No. 3,966.

The term is also applied to the illicit reprinting or reproduction of a copyrighted book or print or to unlawful plagiarism from it.

Pirata est hostis humani generis. 3 Inst. 113. A pirate is an enemy of the human race.

PIRATE. A person who lives by piracy; one guilty of the crime of piracy. A sea-robber, who, to enrich himself, by subtlety or open force, setteth upon merchants and others trading by sea, despoiling them of their loading, and sometimes bereaving them of life and sinking their ships. Ridley, Civil & Ecc. Law, pt. 2, c. 1, § 3.

A pirate is one who acts solely on his own authority, without any commission or authority from a sovereign state, seizing by force, and appropriating to himself without discrimination, every vessel he meets with. Robbery on the high seas is piracy; but to constitute the offense the taking must be felonious. Consequently the *quo animo* may be inquired into. Davison v. Seal-skins, 2 Paine, 324, Fed. Cas. No. 3,661.

Pirates are common sea-rovers, without any fixed place of residence, who acknowledge no sovereign and no law, and support themselves by pillage and depredations at sea; but there are instances wherein the word "*pirata*" has been formerly taken for a sea-captain. Spelman.

PIRATICAL. "Where the act uses the word 'piratical,' it does so in a general sense; importing that the aggression is unauthorized by the law of nations, hostile in its character, wanton and criminal in its commission, and utterly without any sanction from any public authority or sovereign power. In short, it means that the act belongs to the class of offenses which pirates are in the habit of perpetrating, whether they do it for purposes of plunder, or for purposes of hatred, revenge, or wanton abuse of power." U. S. v. The Malek Adhel, 2 How. 232, 11 L. Ed. 239.

PIRATICALLY. A technical word which must always be used in an indictment for piracy. 3 Inst. 112.

PISCARY. The right or privilege of fishing. Thus, common of piscary is the right of fishing in waters belonging to another person.

PISTAREEN. A small Spanish coin. It is not made current by the laws of the United States. United States v. Gardner, 10 Pet. 618, 9 L. Ed. 556.

PIT. In old Scotch law. An excavation or cavity in the earth in which women who were under sentence of death were drowned.

PIT AND GALLOWS. In Scotch law. A privilege of inflicting capital punishment for theft, given by King Malcolm, by which a woman could be drowned in a pit, (*fossa,*) or a man hanged on a gallows, (*furca.*) Bell.

PITCHING-PENCE. In old English law. Money, commonly a penny, paid for pitching or setting down every bag of corn or pack of goods in a fair or market. Cowell.

PITHATISM. In medical jurisprudence. A term of recent introduction to medical science, signifying curability by means of persuasion, and used as synonymous with "hysteria," in effect limiting the scope of the latter term to the description of psychic or nervous disorders which may be cured uniquely by psychotherapy or persuasion. Babinski.

PITTANCE. A slight repast or refection of fish or flesh more than the common allowance; and the pittancer was the officer who distributed this at certain appointed festivals. Cowell.

PIX. A mode of testing coin. The ascertaining whether coin is of the proper standard is in England called "pixing" it;

and there are occasions on which resort is had for this purpose to an ancient mode of inquisition called the "trial of the pix," before a jury of members of the Goldsmiths' Company. 2 Steph. Comm. 540, note.

—Pix jury. A jury consisting of the members of the corporation of the goldsmiths of the city of London, assembled upon an inquisition of very ancient date, called the "trial of the pix."

PLACARD. An edict; a declaration; a manifesto. Also an advertisement or public notification.

PLACE. An old form of the word "pleas." Thus the "Court of Common Pleas" was sometimes called the "Court of Common Place."

PLACE. This word is a very indefinite term. It is applied to any locality, limited by boundaries, however large or however small. It may be used to designate a country, state, county, town, or a very small portion of a town. The extent of the locality designated by it must generally be determined by the connection in which it is used. Law v. Fairfield, 46 Vt. 432.

—Place of contract. The place (country or state) in which a contract is made, and whose law must determine questions affecting the execution, validity, and construction of the contract. Scudder v. Union Nat. Bank, 91 U. S. 412, 23 L. Ed. 245.**—Place of delivery.** The place where delivery is to be made of goods sold. If no place is specified in the contract, the articles sold must, in general, be delivered at the place where they are at the time of the sale. Hatch v. Standard Oil Co., 100 U. S. 134, 25 L. Ed. 554.**—Place where.** A phrase used in the older reports, being a literal translation of *locus in quo*, (*q. v.*)

PLACEMAN. One who exercises a public employment, or fills a public station.

PLACER. In mining law. A superficial deposit of sand, gravel, or disintegrated rock, carrying one or more of the precious metals, along the course or under the bed of a water-course, ancient or current, or along the shore of the sea. Under the acts of congress, the term includes all forms of mineral deposits, except veins of quartz or other rock in place. Rev. St. U. S. § 2329 (U. S. Comp. St. 1901, p. 1432). See Montana Coal & Coke Co. v. Livingston, 21 Mont. 59, 52 Pac. 780; Gregory v. Pershbaker, 73 Cal. 109, 14 Pac. 401; Freezer v. Sweeney, 8 Mont. 508, 21 Pac. 20.

—Placer claim. A mining claim located on the public domain for the purpose of placer mining, that is, ground within the defined boundaries which contains mineral in its earth, sand, or gravel; ground which includes valuable deposits not "in place," that is, not fixed in rock, or which are in a loose state. U. S. v. Iron Silver Min. Co., 128 U. S. 673, 9 Sup. Ct. 195, 32 L. Ed. 571; Clipper Min. Co. v. Eli Min. Co., 194 U. S. 220, 24 Sup. Ct. 632, 48 L. Ed. 944; Wheeler v. Smith, 5 Wash. 704, 32 Pac. 784.**—Placer location.** A placer claim located and occupied on the public domain.

PLACIT, or PLACITUM. Decree; determination.

PLACITA. In old English law. The public assemblies of all degrees of men where the sovereign presided, who usually consulted upon the great affairs of the kingdom. Also pleas, pleadings, or debates, and trials at law; sometimes penalties, fines, mulcts, or emendations; also the style of the court at the beginning of the record at *nisi prius*, but this is now omitted. Cowell.

In the civil law. The decrees or constitutions of the emperor; being the expressions of his will and pleasure. Calvin.

—Placita communia. Common pleas. All civil actions between subject and subject. 3 Bl. Comm. 38, 40.**—Placita coronæ.** Pleas of the crown. All trials for crimes and misdemeanors, wherein the king is plaintiff, on behalf of the people. 3 Bl. Comm. 40.**—Placita juris.** Pleas or rules of law; "particular and positive learnings of laws;" "Grounds and positive learnings received with the law and set down;" as distinguished from maxims or the formulated conclusions of legal reason. Bac. Max. pref., and reg. 12.

Placita de transgressione contra pacem regis, in regno Angliæ vi et armis facta, secundum legem et consuetudinem Angliæ sine brevi regis placitari non debent. 2 Inst. 311. Pleas of trespass against the peace of the king in the kingdom of England, made with force and arms, ought not, by the law and custom of England, to be pleaded without the king's writ.

Placita negativa duo exitum non faciunt. Two negative pleas do not form an issue. Lofft, 415.

PLACITABILE. In old English law. Pleadable. Spelman.

PLACITAMENTUM. In old records. The pleading of a cause. Spelman.

PLACITARE. To plead.

PLACITATOR. In old records. A pleader. Cowell; Spelman.

PLACITORY. Relating to pleas or pleading.

PLACITUM. In old English law. A public assembly at which the king presided, and which comprised men of all degrees, met for consultation about the great affairs of the kingdom. Cowell.

A court; a judicial tribunal; a lord's court. *Placita* was the style or title of the courts at the beginning of the old *nisi prius* record.

A suit or cause in court; a judicial proceeding; a trial. *Placita* were divided into *placita coronæ* (crown cases or pleas of the crown, *i. e.*, criminal actions) and *placita*

communia, (common cases or common pleas, *i. e.*, private civil actions.)

A fine, mulct, or pecuniary punishment.

A pleading or plea. In this sense, the term was not confined to the defendant's answer to the declaration, but included all the pleadings in the cause, being *nomen generalissimum*. 1 Saund. 388, n. 6.

In the old reports and abridgments, "*placitum*" was the name of a paragraph or subdivision of a title or page where the point decided in a cause was set out separately. It is commonly abbreviated "pl."

In the civil law. An agreement of parties; that which is their *pleasure* to arrange between them.

An imperial ordinance or constitution; literally, the prince's pleasure. Inst. 1, 2, 6.

A judicial decision; the judgment, decree, or sentence of a court. Calvin.

Placitum aliud personale, aliud reale, aliud mixtum. Co. Litt. 284. Pleas [*i. e.*, actions] are personal, real, and mixed.

PLACITUM FRACTUM. A day past or lost to the defendant. 1 Hen. I. c. 59.

PLACITUM NOMINATUM. The day appointed for a criminal to appear and plead and make his defense. Cowell.

PLAGIARISM. The act of appropriating the literary composition of another, or parts or passages of his writings, or the ideas or language of the same, and passing them off as the product of one's own mind.

PLAGIARIST, or PLAGIARY. One who publishes the thoughts and writings of another as his own.

PLAGIARIUS. Lat. In the civil law. A man-stealer; a kidnapper. Dig. 48, 15, 1; 4 Bl. Comm. 219.

PLAGIUM. Lat. In the civil law. Man-stealing; kidnapping. The offense of enticing away and stealing men, children, and slaves. Calvin. The persuading a slave to escape from his master, or the concealing or harboring him without the knowledge of his master. Dig. 48, 15, 6.

PLAGUE. Pestilence; a contagious and malignant fever.

PLAIDEUR. Fr. An obsolete term for an attorney who pleaded the cause of his client; an advocate.

PLAIN STATEMENT is one that may be readily understood, not merely by lawyers, but by all who are sufficiently acquainted with the language in which it is written. Mann v. Morewood, 5 Sandf. (N. Y.) 557, 564.

PLAINT. In English practice. A private memorial tendered in open court to the judge, wherein the party injured sets forth his cause of action. A proceeding in inferior courts by which an action is commenced without original writ. 3 Bl. Comm. 373. This mode of proceeding is commonly adopted in cases of replevin. 3 Steph. Comm. 666.

In the civil law. A complaint; a form of action, particularly one for setting aside a testament alleged to be invalid. This word is the English equivalent of the Latin "*querela*."

PLAINTIFF. A person who brings an action; the party who complains or sues in a personal action and is so named on the record. Gulf, etc., R. Co. v. Scott (Tex. Civ. App.) 28 S. W. 458; Canaan v. Greenwoods Turnpike Co., 1 Conn. 1.

—Plaintiff in error. The party who sues out a writ of error to review a judgment or other proceeding at law.—**Use plaintiff.** One for whose use (benefit) an action is brought in the name of another. Thus, where the assignee of a chose in action is not allowed to sue in his own name, the action would be entitled "A. B. (the assignor) for the use of C. D. (the assignee) against E. F." In this case, C. D. is called the "use plaintiff."

PLAN. A map, chart, or design; being a delineation or projection on a plane surface of the ground lines of a house, farm, street, city, etc., reduced in absolute length, but preserving their relative positions and proportion. Jenney v. Des Moines, 103 Iowa, 347, 72 N. W. 550; Wetherill v. Pennsylvania R. Co., 195 Pa. 156, 45 Atl. 658.

PLANT. The fixtures, tools, machinery, and apparatus which are necessary to carry on a trade or business. Wharton. Southern Bell Tel. Co. v. D'Alemberte, 39 Fla. 25, 21 South. 570; Sloss-Sheffield Steel Co. v. Mobley, 139 Ala. 425, 36 South. 181; Maxwell v. Wilmington Dental Mfg. Co. (C. C.) 77 Fed. 941.

PLANTATION. In English law. A colony; an original settlement in a new country. See 1 Bl. Comm. 107.

In American law. A farm; a large cultivated estate. Used chiefly in the southern states.

In North Carolina, "plantation" signifies the land a man owns which he is cultivating more or less in annual crops. Strictly, it designates the place planted; but in wills it is generally used to denote more than the inclosed and cultivated fields, and to take in the necessary woodland, and, indeed, commonly all the land forming the parcel or parcels under culture as one farm, or even what is worked by one set of hands. Stowe v. Davis, 32 N. C. 431.

PLAT, or PLOT. A map, or representation on paper, of a piece of land subdivided into lots, with streets, alleys, etc., usually drawn to a scale. McDaniel v. Mace, 47

Iowa, 510; Burke v. McCowen, 115 Cal. 481, 47 Pac. 367.

PLAY-DEBT. Debt contracted by gaming.

PLAZA. A Spanish word, meaning a public square in a city or town. Sachs v. Towanda, 79 Ill. App. 441.

PLEA. In old English law. A suit or action. Thus, the power to "hold pleas" is the power to take cognizance of actions or suits; so "common pleas" are actions or suits between private persons. And this meaning of the word still appears in the modern declarations, where it is stated, *e. g.*, that the defendant "has been summoned to answer the plaintiff in a *plea* of debt."

In common-law practice. A pleading; any one in the series of pleadings. More particularly, the first pleading on the part of the defendant. In the strictest sense, the answer which the defendant in an action at law makes to the plaintiff's declaration, and in which he sets up matter of *fact* as defense, thus distinguished from a demurrer, which interposes objections on grounds of *law*.

In equity. A special answer showing or relying upon one or more things as a cause why the suit should be either dismissed or delayed or barred. Mitf. Eq. Pl. 219; Coop. Eq. Pl. 223.

A short statement, in response to a bill in equity, of facts which, if inserted in the bill, would render it demurrable; while an answer is a complete statement of the defendant's case, and contains answers to any interrogatories the plaintiff may have administered. Hunt, Eq. pt. 1, c. 3.

—Affirmative plea. One which sets up a single fact, not appearing in the bill, or sets up a number of circumstances all tending to establish a single fact, which fact, if existing, destroys the complainant's case. Potts v. Potts (N. J. Ch.) 42 Atl. 1055.—**Anomalous plea.** One which is partly affirmative and partly negative. Baldwin v. Elizabeth, 42 N. J. Eq. 11, 6 Atl. 275; Potts v. Potts (N. J. Ch.) 42 Atl. 1055.—**Bad plea.** One which is unsound or insufficient in form or substance, or which does not technically answer or correspond with the pleading which preceded it in the action.—**Common pleas.** Common causes or suits; civil actions brought and prosecuted between subjects or citizens, as distinguished from pleas of the crown or criminal cases.—**Counter-plea.** A plea to some matter incidental to the main object of the suit, and out of the direct line of pleadings. In the more ancient system of pleading, counter-plea was applied to what was, in effect, a replication to aid prayer, (*q. v.*;) that is, where a tenant for life or other limited interest in land, having an action brought against him in respect to the title to such land, prayed in aid of the lord or reversioner for his better defense, that which the demandant alleged against either request was called a "counter-plea." Cowell.—**Dilatory pleas.** See DILATORY.—**Double plea.** One having the technical fault of duplicity; one consisting of several distinct and independent matters alleged to the same point and requiring different answers.—**False plea.** A sham plea. See *infra*. And see People v. McCumber, 18 N. Y. 321, 72 Am. Dec. 515; Pierson v. Evans, 1 Wend. (N. Y.) 30.—**Foreign plea.** A plea objecting to the jurisdiction of a judge, on the ground that he had not cognizance of the subject-matter of the suit. Cowell.—**Negative plea.** One which does not undertake to answer the various allegations of the bill, but specifically denies some particular fact or matter the existence of which is essential to entitle the complainant to any relief. See Potts v. Potts (N. J. Ch.) 42 Atl. 1056.—**Peremptory pleas.** "Pleas in bar" are so termed in contradistinction to that class of pleas called "dilatory pleas." The former, viz., peremptory pleas, are usually pleaded to the merits of the action, with the view of raising a material issue between the parties; while the latter class, viz., dilatory pleas, are generally pleaded with a view of retarding the plaintiff's proceedings, and not for the purpose of raising an issue upon which the parties may go to trial and settle the point in dispute. Peremptory pleas are also called "pleas in bar," while dilatory pleas are said to be in abatement only. Brown.—**Plea in abatement.** In practice. A plea which goes to *abate* the plaintiff's action; that is, to suspend or put it off for the present. 3 Bl. Comm. 301; Hurst v. Everett (C. C.) 21 Fed. 221; Wilson v. Winchester & P. R. Co. (C. C.) 82 Fed. 18; Middlebrook v. Ames, 5 Stew. & P. (Ala.) 166.—**Plea in bar.** In practice. A plea which goes to *bar* the plaintiff's action; that is, to defeat it absolutely and entirely. 1 Burrill, Pr. 162; 3 Bl. Comm. 303; Rawson v. Knight, 71 Me. 102; Norton v. Winter, 1 Or. 48, 62 Am. Dec. 297; Wilson v. Knox County, 132 Mo. 387, 34 S. W. 45.—**Plea in discharge.** One which admits that the plaintiff had a cause of action, but shows that it was discharged by some subsequent or collateral matter, as, payment or accord and satisfaction. Nichols v. Cecil, 106 Tenn. 455, 61 S. W. 768.—**Plea in reconvention.** In the civil law. A plea which sets up new matter, not in defense to the action, but by way of cross-complaint, set-off, or counterclaim.—**Plea of release.** One which admits the cause of action, but sets forth a release subsequently executed by the party authorized to release the claim. Landis v. Morrissey, 69 Cal. 83, 10 Pac. 258.—**Plea side.** The plea side of a court is that branch or department of the court which entertains or takes cognizance of civil actions and suits, as distinguished from its criminal or crown department. Thus the court of king's bench is said to have a plea side and a crown or criminal side; the one branch or department of it being devoted to the cognizance of civil actions, the other to criminal proceedings and matters peculiarly concerning the crown. So the court of exchequer is said to have a plea side and a crown side; the one being appropriated to civil actions, the other to matters of revenue. Brown.—**Pleas of the crown.** In English law. A phrase now employed to signify criminal causes, in which the king is a party. Formerly it signified royal causes for offenses of a greater magnitude than mere misdemeanors.—**Pleas roll.** In English practice. A record upon which are entered all the pleadings in a cause, in their regular order, and the issue.—**Pure plea.** In equity pleading. One which relies wholly on some matter outside those referred to in the bill; as a plea of a release on a settled account.—**Sham plea.** A false plea; a plea of false or fictitious matter, subtly drawn so as to entrap an opponent, or create delay. 3 Chit. Pr. 729, 730. A vexatious or false defense, resorted to under the old system of pleading for purposes of delay and annoyance. Steph. Pl. 383. Mr. Chitty defines sham pleas to be pleas so palpably and manifestly untrue that the court will assume them to be so; pleas manifestly absurd. When answers or defenses admit of lawyer-like argument, such

as courts should listen to, they are not "sham," in the sense of the statute. When it needs argument to prove that an answer or demurrer is frivolous, it is not frivolous, and should not be stricken off. To warrant this summary mode of disposing of a defense, the mere reading of the pleadings should be sufficient to disclose, without deliberation and without a doubt, that the defense is sham or irrelevant. Cottrill v. Cramer, 40 Wis. 559.—**Special plea.** A special kind of plea in bar, distinguished by this name from the general issue, and consisting usually of some new affirmative matter, though it may also be in the form of a traverse or denial. See Steph. Pl. 52, 162; Allen v. New Haven & N. Co., 49 Conn. 245.—**Special plea in bar.** One which advances new matter. It differs from the general, in this: that the latter denies some material allegation, but never advances new matter. Gould, Pl. c. 2, § 38.

PLEAD. To make, deliver, or file any pleading; to conduct the pleadings in a cause. To interpose any pleading in a suit which contains allegations of fact; in this sense the word is the antithesis of "demur." More particularly, to deliver in a formal manner the defendant's answer to the plaintiff's declaration, or to the indictment, as the case may be.

To appear as a pleader or advocate in a cause; to argue a cause in a court of justice. But this meaning of the word is not technical, but colloquial.

—**Plead a statute.** Pleading a statute is stating the facts which bring the case within it; and "counting" on it, in the strict language of pleading, is making express reference to it by apt terms to show the source of right relied on. McCullough v. Colfax County, 4 Neb. (Unof.) 543, 95 N. W. 31.—**Plead issuably.** This means to interpose such a plea as is calculated to raise a material issue, either of law or of fact.—**Plead over.** To pass over, or omit to notice, a material allegation in the last pleading of the opposite party; to pass by a defect in the pleading of the other party without taking advantage of it. In another sense, to plead the general issue, after one has interposed a demurrer or special plea which has been dismissed by a judgment of *respondeat ouster*.—**Plead to the merits.** This is a phrase of long standing and accepted usage in the law, and distinguishes those pleas which answer the cause of action and on which a trial may be had from all pleas of a different character. Rahn v. Gunnison, 12 Wis. 529.

PLEADED. Alleged or averred, in form, in a judicial proceeding.

It more often refers to matter of defense, but not invariably. To say that matter in a declaration or replication is not well pleaded would not be deemed erroneous. Abbott.

PLEADER. A person whose business it is to draw pleadings. Formerly, when pleading at common law was a highly technical and difficult art, there was a class of men known as "special pleaders not at the bar," who held a position intermediate between counsel and attorneys. The class is now almost extinct, and the term "pleaders" is generally applied, in England, to junior members of the common-law bar. Sweet.

—**Special pleader.** In English practice. A person whose professional occupation is to give verbal or written opinions upon statements made verbally or in writing, and to draw pleadings, civil or criminal, and such practical proceedings as may be out of the usual course. 2 Chit. Pr. 42.

PLEADING. The peculiar science or system of rules and principles, established in the common law, according to which the pleadings or responsive allegations of litigating parties are framed, with a view to preserve technical propriety and to produce a proper issue.

The process performed by the parties to a suit or action, in alternately presenting written statements of their contention, each responsive to that which precedes, and each serving to narrow the field of controversy, until there evolves a single point, affirmed on one side and denied on the other, called the "issue," upon which they then go to trial.

The act or step of interposing any one of the pleadings in a cause, but particularly one on the part of the defendant; and, in the strictest sense, one which sets up allegations of fact in defense to the action.

The name "a pleading" is also given to any one of the formal written statements of accusation or defense presented by the parties alternately in an action at law; the aggregate of such statements filed in any one cause are termed "the pleadings."

The oral advocacy of a client's cause in court, by his barrister or counsel, is sometimes called "pleading;" but this is a popular, rather than technical, use.

In chancery practice. Consists in making the formal written allegations or statements of the respective parties on the record to maintain the suit, or to defeat it, of which, when contested in matters of fact, they propose to offer proofs, and in matters of law to offer arguments to the court. Story, Eq. Pl. § 4, note.

—**Double pleading.** This is not allowed either in the declaration or subsequent pleadings. Its meaning with respect to the former is that the declaration must not, in support of a single demand, allege several distinct matters, by any one of which that demand is sufficiently supported. With respect to the subsequent pleadings, the meaning is that none of them is to contain several distinct answers to that which preceded it; and the reason of the rule in each case is that such pleading tends to several issues in respect of a single claim. Wharton.—**Special pleading.** When the allegations (or "pleadings," as they are called) of the contending parties in an action are not of the general or ordinary form, but are of a more complex or special character, they are denominated "special pleadings;" and, when a defendant pleads a plea of this description, (*i. e.*, a special plea,) he is said to plead specially, in opposition to pleading the general issue. These terms have given rise to the popular denomination of that science which, though properly called "pleading," is generally known by the name of "special pleading." Brown. The allegation of special or new matter in opposition or explanation of the last previous averments on the other side, as distinguished from a direct denial of matter previously alleged by the opposite party. Gould, Pl. c. 1, § 18. In popular

language, the adroit and plausible advocacy of a client's case in court. Stimson, Law Gloss.

PLEADINGS. The pleadings are the formal allegations by the parties of their respective claims and defenses, for the judgment of the court. Code Civ. Proc. Cal. § 420.

The individual allegations of the respective parties to an action at common law, proceeding from them alternately, in the order and under the distinctive names following: The plaintiff's *declaration*, the defendant's *plea*, the plaintiff's *replication*, the defendant's *rejoinder*, the plaintiff's *surrejoinder*, the defendant's *rebutter*, the plaintiff's *surrebutter;* after which they have no distinctive names. Burrill.

The term "pleadings" has a technical and well-defined meaning. Pleadings are written allegations of what is affirmed on the one side, or denied on the other, disclosing to the court or jury having to try the cause the real matter in dispute between the parties. Desnoyer v. Hereux, 1 Minn. 17 (Gil. 1).

PLEBANUS. In old English ecclesiastical law. A rural dean. Cowell.

PLEBEIAN. One who is classed among the common people, as distinguished from the nobles.

PLEBEITY, or PLEBITY. The common or meaner sort of people; the plebeians.

PLEBEYOS. In Spanish law. Commons; those who exercise any trade, or who cultivate the soil. White, New Recop. b. 1, tit. 5, c. 3, § 6, and note.

PLEBIANA. In old records. A mother church.

PLEBISCITE. In modern constitutional law, the name "*plebiscite*" has been given to a vote of the entire people, (that is, the aggregate of the enfranchised individuals composing a state or nation,) expressing their choice for or against a proposed law or enactment, submitted to them, and which, if adopted, will work a radical change in the constitution, or which is beyond the powers of the regular legislative body. The proceeding is extraordinary, and is generally revolutionary in its character; an example of which may be seen in the *plebiscites* submitted to the French people by Louis Napoleon, whereby the Second Empire was established. But the principle of the *plebiscite* has been incorporated in the modern Swiss constitution, (under the name of "*referendum*,") by which a revision of the constitution must be undertaken when demanded by the vote of fifty thousand Swiss citizens. Maine, Popular Govt. 40, 96.

PLEBISCITUM. Lat. In Roman law. A law enacted by the *plebs* or commonalty, (that is, the citizens, with the exception of the patricians and senators,) at the request or on the proposition of a plebeian magistrate, such as a "tribune." Inst. 1, 2, 4.

PLEBS. Lat. In Roman law. The commonalty or citizens, exclusive of the patricians and senators. Inst. 1, 2, 4.

PLEDABLE. L. Fr. That may be brought or conducted; as an action or "plea," as it was formerly called. Britt. c. 32.

PLEDGE. In the law of bailment. A bailment of goods to a creditor as security for some debt or engagement. A bailment or delivery of goods by a debtor to his creditor, to be kept till the debt be discharged. Story, Bailm. § 7; Civ. Code La. art. 3133; 2 Kent, Comm. 577; Stearns v. Marsh, 4 Denio (N. Y.) 229, 47 Am. Dec. 248; Sheridan v. Presas, 18 Misc. Rep. 180, 41 N. Y. Supp. 451; Bank of Rochester v. Jones, 4 N. Y. 507, 55 Am. Dec. 290; Eastman v. Avery, 23 Me. 250; Belden v. Perkins, 78 Ill. 452; Wilcox v. Jackson, 7 Colo. 521, 4 Pac. 966; Gloucester Bank v. Worcester, 10 Pick. (Mass.) 531; Lilienthal v. Ballou, 125 Cal. 183, 57 Pac. 897.

Pledge is a deposit of personal property by way of security for the performance of another act. Civ. Code Cal. § 2986.

The specific article delivered to the creditor in security is also called a "pledge" or "pawn."

There is a clear distinction between mortgages and pledges. In a pledge the legal title remains in the pledgor; in a mortgage it passes to the mortgagee. In a mortgage the mortgagee need not have possession; in a pledge the pledgee must have possession, though it be only constructive. In a mortgage, at common law, the property on non-payment of the debt passes wholly to the mortgagee; in a pledge the property is sold, and only so much of the proceeds as will pay his debt passes to the pledgee. A mortgage is a conditional conveyance of property, which becomes absolute unless redeemed at a specified time. A pledge is not strictly a conveyance at all, nor need any day of redemption be appointed for it. A mortgagee can sell and deliver the thing mortgaged, subject only to the right of redemption. A pledgee cannot sell and deliver his pawn until the debt is due and payment denied. Bouvier.

There are two varieties of the contract of pledge known to the law of Louisiana, viz., *pawn* and *antichresis;* the former relating to chattel securities, the latter to landed securities. See Civ. Code La. art. 3101; and see those titles.

—Pledges of prosecution. In old English law. No person could prosecute a civil action without having in the first stage of it two or more persons as pledges of prosecution; and if judgment was given against the plaintiff, or he deserted his suit, both he and his pledges were liable to amercement to the king *pro falso clamore*. In the course of time, however, these pledges were disused, and the names of fictitious persons substituted for them, two ideal persons, John Doe and Richard Roe, having become the common pledges of every suitor; and now the use of such pledges is altogether

discontinued. Brown.—**Pledges to restore.** In England, before the plaintiff in foreign attachment can issue execution against the property in the hands of the garnishee, he must find "pledges to restore," consisting of two householders, who enter into a recognizance for the restoration of the property, as a security for the protection of the defendant; for, as the plaintiff's debt is not proved in any stage of the proceedings, the court guards the rights of the absent defendant by taking security on his behalf, so that if he should afterwards disprove the plaintiff's claim he may obtain restitution of the property attached. Brand. For. Attachm. 93; Sweet.

PLEDGEE. The party to whom goods are pledged, or delivered in pledge. Story, Bailm. § 287.

PLEDGERY. Suretyship, or an undertaking or answering for another. Gloucester Bank v. Worcester, 10 Pick. (Mass.) 531.

PLEDGOR. The party delivering goods in pledge; the party pledging. Story, Bailm. § 287.

PLEGIABILIS. In old English law. That may be pledged; the subject of pledge or security. Fleta, lib. 1, c. 20, § 98.

PLEGII DE PROSEQUENDO. Pledges to prosecute with effect an action of replevin.

PLEGII DE RETORNO HABENDO. Pledges to return the subject of distress, should the right be determined against the party bringing the action of replevin. 3 Steph. Comm. (7th Ed.) 422*n*.

PLEGIIS ACQUIETANDIS. A writ that anciently lay for a surety against him for whom he was surety, if he paid not the money at the day. Fitzh. Nat. Brev. 137.

PLENA ÆTAS. Lat. In old English law. Full age.

Plena et celeris justitia fiat partibus. 4 Inst. 67. Let full and speedy justice be done to the parties.

PLENA FORISFACTURA. A forfeiture of all that one possesses.

PLENA PROBATIO. In the civil law. A term used to signify full proof, (that is, proof by two witnesses,) in contradistinction to *semi-plena probatio*, which is only a presumption. Cod. 4, 19, 5.

PLENARTY. In English law. Fullness; a state of being full. A term applied to a benefice when full, or possessed by an incumbent. The opposite state to a *vacation*, or vacancy. Cowell.

PLENARY. Full; entire; complete; unabridged.

In the ecclesiastical courts, (and in admiralty practice,) causes are divided into plenary and summary. The former are those in whose proceedings the order and solemnity of the law is required to be exactly observed, so that if there is the least departure from that order, or disregard of that solemnity, the whole proceedings are annulled. Summary causes are those in which it is unnecessary to pursue that order and solemnity. Brown.

—**Plenary confession.** A full and complete confession. An admission or confesssion, whether in civil or criminal law, is said to be "plenary" when it is, if believed, conclusive against the person making it. Best, Ev. 664; Rosc. Crim. Ev. 39.

PLENE. Lat. Completely; fully; sufficiently.

—**Plene administravit.** In practice. A plea by an executor or administrator that he has fully administered all the assets that have come to his hands, and that no assets remain out of which the plaintiff's claim could be satisfied.—**Plene administravit præter.** In practice. A plea by an executor or administrator that he has "fully administered" all the assets that have come to his hands, "except" assets to a certain amount, which are not sufficient to satisfy the plaintiff. 1 Tidd, Pr. 644.—**Plene computavit.** He has fully accounted. A plea in an action of account render, alleging that the defendant has fully accounted.

PLENIPOTENTIARY. One who has full power to do a thing; a person fully commissioned to act for another. A term applied in international law to ministers and envoys of the second rank of public ministers. Wheat. Hist. Law Nat. 266.

PLENUM DOMINIUM. Lat. In the civil law. Full ownership; the property in a thing united with the usufruct. Calvin.

PLEYTO. In Spanish law. The pleadings in a cause. White, New Recop. b. 3, tit. 7.

PLIGHT. In old English law. An estate, with the habit and quality of the land; extending to a rent charge and to a possibility of dower. Co. Litt. 221*b*; Cowell.

PLOK-PENNIN. A kind of earnest used in public sales at Amsterdam. Wharton.

PLOTTAGE. A term used in appraising land values and particularly in eminent domain proceedings, to designate the additional value given to city lots by the fact that they are contiguous, which enables the owner to utilize them as large blocks of land. See In re Armory Board, 73 App. Div. 152, 76 N. Y. Supp. 766.

PLOW-ALMS. The ancient payment of a penny to the church from every plow-land. 1 Mon. Angl. 256.

PLOW-BOTE. An allowance of wood which tenants are entitled to, for repairing their plows and other implements of husbandry.

PLOW-LAND. A quantity of land "not of any certain content, but as much as a plow can, by course of husbandry, plow in a year." Co. Litt. 69*a*.

PLOW-MONDAY. The Monday after twelfth-day.

PLOW-SILVER. Money formerly paid by some tenants, in lieu of service to plow the lord's lands.

PLUMBATURA. Lat. In the civil law. Soldering. Dig. 6, 1, 23, 5.

PLUMBUM. Lat. In the civil law. Lead. Dig. 50, 16, 242, 2.

PLUNDER, *v.* The most common meaning of the term "to plunder" is to take property from persons or places by open force, and this may be in course of a lawful war, or by unlawful hostility, as in the case of pirates or banditti. But in another and very common meaning, though in some degree figurative, it is used to express the idea of taking property from a person or place, without just right, but not expressing the nature or quality of the wrong done. Carter v. Andrews, 16 Pick. (Mass.) 9; U. S. v. Stone (C. C.) 8 Fed. 246; U. S. v. Pitman, 27 Fed. Cas. 540.

PLUNDER, *n.* Personal property belonging to an enemy, captured and appropriated on land; booty. Also the act of seizing such property. See BOOTY; PRIZE.

PLUNDERAGE. In maritime law. The embezzlement of goods on board of a ship is so called.

PLURAL. Containing more than one; consisting of or designating two or more. Webster.

—Plural marriage. See MARRIAGE.

Pluralis numerus est duobus contentus. 1 Rolle, 476. The plural number is satisfied by two.

PLURALIST. One that holds more than one ecclesiastical benefice, with cure of souls.

PLURALITER. In the plural. 10 East, 158, arg.

PLURALITY. In the law of elections. The excess of the votes cast for one candidate over those cast for any other. Where there are only two candidates, he who receives the greater number of the votes cast is said to have a *majority;* when there are more than two competitors for the same office, the person who receives the greatest number of votes has a *plurality,* but he has not a majority unless he receives a greater number of votes than those cast for all his competitors combined.

In ecclesiastical law, "plurality" means the holding two, three, or more benefices by the same incumbent; and he is called a "pluralist." Pluralities are now abolished, except in certain cases. 2 Steph. Comm. 691, 692.

Plures cohæredes sunt quasi unum corpus propter unitatem juris quod habent. Co. Litt. 163. Several co-heirs are, as it were, one body, by reason of the unity of right which they possess.

Plures participes sunt quasi unum corpus, in eo quod unum jus habent. Co. Litt. 164. Several parceners are as one body, in that they have one right.

PLURIES. Lat. Often; frequently. When an original and *alias* writ have been issued and proved ineffectual, a third writ, called a "*pluries* writ," may frequently be issued. It is to the same effect as the two former, except that it contains the words, "as we have often commanded you," ("*sicut pluries præcepimus,*") after the usual commencement, "We command you." 3 Bl. Comm. 283; Archb. Pr. 585.

PLURIS PETITIO. Lat. In Scotch practice. A demand of more than is due. Bell.

Plus exempla quam peccata nocent. Examples hurt more than crimes.

Plus peccat author quam actor. The originator or instigator of a crime is a worse offender than the actual perpetrator of it. 5 Coke, 99*a*. Applied to the crime of subornation of perjury. Id.

PLUS PETITIO. In Roman law. A phrase denoting the offense of claiming more than was just in one's pleadings. This more might be claimed in four different respects, viz.: (1) *Re, i. e.,* in amount, (*e. g.,* £50 for £5;) (2) *loco, i. e.,* in place, (*e. g.,* delivery at some place more difficult to effect than the place specified;) (3) *tempore, i. e.,* in time, (*e. g.,* claiming payment on the 1st of August of what is not due till the 1st of September;) and (4) *causa, i. e.,* in quality, (*e. g.,* claiming a dozen of champagne, when the contract was only for a dozen of wine generally.) Prior to Justinian's time, this offense was in general fatal to the action; but, under the legislation of the emperors Zeno and Justinian, the offense (if *re, loco,* or *causa*) exposed the party to the payment of three times the damage, if any, sustained by the other side, and (if *tempore*) obliged him to postpone his action for double the time, and to pay the costs of his first action before commencing a second. Brown.

Plus valet consuetudo quam concessio. Custom is more powerful than grant.

Plus valet unus oculatus testis quam auriti decem. One eye-witness is of more weight than ten ear-witnesses, [or those who speak from hearsay.] 4 Inst. 279.

Plus vident oculi quam oculus. Several eyes see more than one. 4 Inst. 160.

PO. LO. SUO. An old abbreviation for the words "*ponit loco suo*," (puts in his place,) used in warrants of attorney. Townsh. Pl. 431.

POACH. To steal game on a man's land.

POACHING. In English criminal law. The unlawful entry upon land for the purpose of taking or destroying game; the taking or destruction of game upon another's land, usually committed at night. Steph. Crim. Law 119, et seq.; 2 Steph. Comm. 82.

POBLADOR. In Spanish law. A colonizer; he who peoples; the founder of a colony.

POCKET. This word is used as an adjective in several compound legal phrases, carrying a meaning suggestive of, or analogous to, its signification as a pouch, bag, or secret receptacle. For these phrases, see "Borough," "Judgment," "Record," "Sheriff," and "Veto."

PŒNA. Lat. Punishment; a penalty. Inst. 4, 6, 18, 19.

—Pœna corporalis. Corporal punishment.—**Pœna pilloralis.** In old English law. Punishment of the pillory. Fleta, lib. 1, c. 38, § 11.

Pœna ad paucos, metus ad omnes perveniat. If punishment be inflicted on a few, a dread comes to all.

Pœna ex delicto defuncti hæres teneri non debet. The heir ought not to be bound by a penalty arising out of the wrongful act of the deceased. 2 Inst. 198.

Pœna non potest, culpa perennis erit. Punishment cannot be, crime will be, perpetual. 21 Vin. Abr. 271.

Pœna suos tenere debet actores et non alios. Punishment ought to bind the guilty, and not others. Bract. fol. 380*b*.

Pœnæ potius molliendæ quam exasparandæ sunt. 3 Inst. 220. Punishments should rather be softened than aggravated.

Pœnæ sint restringendæ. Punishments should be restrained. Jenk. Cent. 29.

PŒNALIS. Lat. In the civil law. Penal; imposing a penalty; claiming or enforcing a penalty. *Actiones pœnales*, penal actions. Inst. 4, 6, 12.

PŒNITENTIA. Lat. In the civil law. Repentance; reconsideration; changing one's mind; drawing back from an agreement already made, or rescinding it.

—Locus pœnitentiæ. Room or place for repentence or reconsideration; an opportunity to withdraw from a negotiation before finally concluding the contract or agreement. Also, in criminal law, an opportunity afforded by the circumstances to a person who has formed an intention to kill or to commit another crime, giving him a chance to reconsider and relinquish his purpose.

POINDING. The process of the law of Scotland which answers to the distress of the English law. Poinding is of three kinds:

Real poinding or poinding of the ground. This is the action by which a creditor, having a security on the land of his debtor, is enabled to appropriate the rents of the land, and the goods of the debtor or his tenants found thereon, to the satisfaction of the debt.

Personal poinding. This consists in the seizure of the goods of the debtor, which are sold under the direction of a court of justice, and the net amount of the sales paid over to the creditor in satisfaction of his debt; or, if no purchaser appears, the goods themselves are delivered.

Poinding of *stray cattle*, committing depredations on corn, grass, or plantations, until satisfaction is made for the damage. Bell.

POINT. A distinct proposition or question of law arising or propounded in a case.

—Point reserved. When, in the progress of the trial of a cause, an important or difficult point of law is presented to the court, and the court is not certain of the decision that should be given, it may *reserve* the point, that is, decide it provisionally as it is asked by the party, but reserve its more mature consideration for the hearing on a motion for a new trial, when, if it shall appear that the first ruling was wrong, the verdict will be set aside. The point thus treated is technically called a "point reserved."—**Points.** The distinct propositions of law, or chief heads of argument, presented by a party in his paper-book, and relied upon on the argument of the cause. Also the marks used in punctuation. Duncan v. Kohler, 37 Minn. 379, 34 N. W. 594; Commonwealth Ins. Co. v. Pierro, 6 Minn. 570 (Gil. 404).

POISON. In medical jurisprudence. A substance having an inherent deleterious property which renders it, when taken into the system, capable of destroying life. 2 Whart. & S. Med. Jur. § 1.

A substance which, on being applied to the human body, internally or externally, is capable of destroying the action of the vital functions, or of placing the solids and fluids in such a state as to prevent the continuance of life. Wharton. See Boswell v. State, 114 Ga. 40, 39 S. E. 897; People v. Van Deleer, 53 Cal. 148; Dougherty v. People, 1 Colo. 514; State v. Slagle, 83 N. C. 630; United States Mut. Acc. Ass'n v. Newman, 84 Va. 52, 3 S. E. 805.

POLE. A measure of length, equal to five yards and a half.

POLICE. Police is the function of that branch of the administrative machinery of government which is charged with the preservation of public order and tranquillity, the promotion of the public health, safety, and morals, and the prevention, detection, and punishment of crimes. See State v. Hine, 59 Conn. 50, 21 Atl. 1024, 10 L. R. A. 83; Monet v. Jones, 10 Smedes & M. (Miss.) 247; People v. Squire, 107 N. Y. 593, 14 N. E. 820, 1 Am. St. Rep. 893; Logan v. State, 5 Tex. App. 314.

The police of a state, in a comprehensive sense, embraces its whole system of internal regulation, by which the state seeks not only to preserve the public order and to prevent offenses against the state, but also to establish for the intercourse of citizen with citizen those rules of good manners and good neighborhood which are calculated to prevent a conflict of rights, and to insure to each the uninterrupted enjoyment of his own, so far as is reasonably consistent with a like enjoyment of rights by others. Cooley, Const. Lim. *572.

It is defined by Jeremy Bentham in his works: "Police is in general a system of precaution, either for the prevention of crime or of calamities. Its business may be distributed into eight distinct branches: (1) Police for the prevention of offenses; (2) police for the prevention of calamities; (3) police for the prevention of epidemic diseases; (4) police of charity; (5) police of interior communications; (6) police of public amusements; (7) police for recent intelligence; (8) police for registration." Canal Com'rs v. Willamette Transp. Co., 6 Or. 222.

—Police court. The name of a kind of inferior court in several of the states, which has a summary jurisdiction over minor offenses and misdemeanors of small consequence, and the powers of a committing magistrate in respect to more serious crimes, and, in some states, a limited jurisdiction for the trial of civil causes. In English law. Courts in which stipendiary magistrates, chosen from barristers of a certain standing, sit for the dispatch of business. Their general duties and powers are the same as those of the unpaid magistracy, except that one of them may usually act in cases which would require to be heard before two other justices. Wharton.—**Police de chargement.** Fr. In French law. A bill of lading. Ord. Mar. liv. 3, tit. 2.—**Police jury,** in Louisiana, is the designation of the board of officers in a parish corresponding to the commissioners or supervisors of a county in other states.—**Police justice.** A magistrate charged exclusively with the duties incident to the common-law office of a conservator or justice of the peace; the prefix "police" serving merely to distinguish them from justices having also civil jurisdiction. Wenzler v. People, 58 N. Y. 530.—**Police magistrate.** See MAGISTRATE.—**Police officer.** One of the staff of men employed in cities and towns to enforce the municipal police, *i. e.*, the laws and ordinances for preserving the peace and good order of the community. Otherwise called "policeman."—**Police power.** The power vested in a state to establish laws and ordinances for the regulation and enforcement of its police as above defined. The power vested in the legislature to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same. Com. v. Alger, 7 Cush. (Mass.) 85. The police power of the state is an authority conferred by the American constitutional system upon the individual states, through which they are enabled to establish a special department of police; adopt such regulations as tend to prevent the commission of fraud, violence, or other offenses against the state; aid in the arrest of criminals; and secure generally the comfort, health, and prosperity of the state, by preserving the public order, preventing a conflict of rights in the common intercourse of the citizens, and insuring to each an uninterrupted enjoyment of all the privileges conferred upon him by the laws of his country. Lalor, Pol. Enc. *s. v.* It is true that the legislation which secures to all protection in their rights, and the equal use and enjoyment of their property, embraces an almost infinite variety of subjects. Whatever affects the peace, good order, morals, and health of the community comes within its scope; and every one must use and enjoy his property subject to the restrictions which such legislation imposes. What is termed the "police power" of the state, which, from the language often used respecting it, one would suppose to be an undefined and irresponsible element in government, can only interfere with the conduct of individuals in their intercourse with each other, and in the use of their property, so far as may be required to secure these objects. Munn v. Illinois, 94 U. S. 145, 24 L. Ed. 77. For other definitions, see Slaughterhouse Cases, 16 Wall. 62, 21 L. Ed. 394; Stone v. Mississippi, 101 U. S. 818, 25 L. Ed. 1079; Thorpe v. Rutland & B. R. Co., 27 Vt. 140, 62 Am. Dec. 625; People v. Steele, 231 Ill. 340, 83 N. E. 236, 14 L. R. A. (N. S.) 361, 121 Am. St. Rep. 321; Dreyfus v. Boone, 88 Ark. 353, 114 S. W. 718; Carpenter v. Reliance Realty Co., 103 Mo. App. 480, 77 S. W. 1004; State v. Dalton, 22 R. I. 77, 46 Atl. 234, 48 L. R. A. 775, 84 Am. St. Rep. 818; Deems v. Baltimore, 80 Md. 164, 30 Atl. 648, 26 L. R. A. 541, 45 Am. St. Rep. 339; In re Clark, 65 Conn. 17, 31 Atl. 522, 28 L. R. A. 242; Mathews v. Board of Education, 127 Mich. 530, 86 N. W. 1036, 54 L. R. A. 736.—**Police regulations.** Laws of a state, or ordinances of a municipality, which have for their object the preservation and protection of public peace and good order, and of the health, morals, and security of the people. State v. Greer, 78 Mo. 194; Ex parte Bourgeois, 60 Miss. 663, 45 Am. Rep. 420; Sonora v. Curtin, 137 Cal. 583, 70 Pac. 674; Roanoke Gas Co. v. Roanoke, 88 Va. 810, 14 S. E. 665.—**Police supervision.** In England, subjection to police supervision is where a criminal offender is subjected to the obligation of notifying the place of his residence and every change of his residence to the chief officer of police of the district, and of reporting himself once a month to the chief officer or his substitute. Offenders subject to police supervision are popularly called "habitual criminals." Sweet.

POLICIES OF INSURANCE, COURT OF. A court established in pursuance of the statutes 43 Eliz. c. 12, and 13 & 14 Car. II. c. 23. Composed of the judge of the admiralty, the recorder of London, two doctors of the civil law, two common lawyers, and eight merchants; any three of whom, one being a civilian or a barrister, could determine in a summary way causes concerning policies of assurance in London, with an appeal to chancery. No longer in existence. 3 Bl. Comm. 74.

POLICY. The general principles by which a government is guided in its management of public affairs, or the legislature in its measures.

This term, as applied to a law, ordinance, or rule of law, denotes its general purpose or tendency considered as directed to the

welfare or prosperity of the state or community.

—**Policy of a statute.** The "policy of a statute," or "of the legislature," as applied to a penal or prohibitive statute, means the intention of discouraging conduct of a mischievous tendency. See L. R. 6 P. C. 134; 5 Barn. & Ald. 335; Pol. Cont. 235.—**Policy of the law.** By this phrase is understood the disposition of the law to discountenance certain classes of acts, transactions, or agreements, or to refuse them its sanction, because it considers them immoral, detrimental to the public welfare, subversive of good order, or otherwise contrary to the plan and purpose of civil regulations. —**Public policy.** The principles under which the freedom of contract or private dealings is restricted by law for the good of the community. Wharton. The term "policy," as applied to a statute, regulation, rule of law, course of action, or the like, refers to its probable effect, tendency, or object, considered with reference to the social or political well-being of the state. Thus, certain classes of acts are said to be "against public policy," when the law refuses to enforce or recognize them, on the ground that they have a mischievous tendency, so as to be injurious to the interests of the state, apart from illegality or immorality. Sweet. And see Egerton v. Earl Brownlow, 4 H. L. Cas. 235; Smith v. Railroad Co., 115 Cal. 584, 47 Pac. 582, 35 L. R. A. 309, 56 Am. St. Rep. 119; Tarbell v. Railroad Co., 73 Vt. 347, 51 Atl. 6, 56 L. R. A. 656, 87 Am. St. Rep. 734; Hartford F. Ins. Co. v. Chicago, etc., R. Co., 175 U. S. 91, 20 Sup. Ct. 33, 44 L. Ed. 84; Enders v. Enders, 164 Pa. 266, 30 Atl. 129, 27 L. R. A. 56, 44 Am. St. Rep. 598; Smith v. Du Bose, 78 Ga. 413, 3 S. E. 309, 6 Am. St. Rep. 260; Billingsley v. Clelland, 41 W. Va. 234, 23 S. E. 812.

POLICY OF INSURANCE. A mercantile instrument in writing, by which one party, in consideration of a premium, engages to indemnify another against a contingent loss, by making him a payment in compensation, whenever the event shall happen by which the loss is to accrue. 2 Steph. Comm. 172.

The written instrument in which a contract of insurance is set forth is called a "policy of insurance." Civ. Code Cal. § 2586.

—**Blanket policy.** A policy of fire insurance which contemplates that the risk is shifting, fluctuating, or varying, and is applied to a class of property rather than to any particular article or thing. Insurance Co. v. Baltimore Warehouse Co., 93 U. S. 541, 23 L. Ed. 868.—**Endowment policy.** In life insurance. A policy the amount of which is payable to the assured himself at the end of a fixed term of years, if he is then living, or to his heirs or a named beneficiary if he shall die sooner.—**Floating policy.** A policy of fire insurance not applicable to any specific described goods, but to any and all goods which may at the time of the fire be in a certain building.—**Interest policy.** One where the assured has a real, substantial, and assignable interest in the thing insured; as opposed to a wager policy—**Mixed policy.** A policy of marine insurance in which not only the time is specified for which the risk is limited, but the voyage also is described by its local termini; as opposed to policies of insurance for a particular voyage, without any limits as to time, and also to purely time policies, in which there is no designation of local termini at all. Mozley & Whitley. And see Wilkins v. Tobacco Ins. Co., 30 Ohio, 340, 27 Am. Rep. 455.—**Open policy.** In insurance. One in which the value of the subject insured is not fixed or agreed upon in the policy, as between the assured and the underwriter, but is left to be estimated in case of loss. The term is opposed to "valued policy," in which the value of the subject insured is fixed for the purpose of the insurance, and expressed on the face of the policy. Mozley & Whitley. Riggs v. Fire Protection Ass'n, 61 S. C. 448, 39 S. E. 614; Cox v. Insurance Co., 3 Rich. Law, 331, 45 Am. Dec. 771; Insurance Co. v. Butler, 38 Ohio St. 128. But this term is also sometimes used in America to describe a policy in which an aggregate amount is expressed in the body of the policy, and the specific amounts and subjects are to be indorsed from time to time. London Assur. Corp. v. Paterson, 106 Ga. 538, 32 S. E. 650.—**Paid-up policy.** In life insurance. A policy on which no further payments are to be made in the way of annual premiums.—**Time policy.** In fire insurance, one made for a defined and limited time, as, one year. In marine insurance, one made for a particular period of time, irrespective of the voyage or voyages upon which the vessel may be engaged during that period. Wilkins v. Tobacco Ins. Co., 30 Ohio St. 339, 27 Am. Rep. 455; Greenleaf v. St. Louis Ins. Co., 37 Mo. 29.—**Valued policy.** One in which the value of the thing insured is settled by agreement between the parties and inserted in the policy. Cushman v. Insurance Co., 34 Me. 491; Riggs v. Insurance Co., 61 S. C. 448, 39 S. E. 614; Luce v. Insurance Co., 15 Fed. Cas. 1071.—**Voyage policy.** A policy of marine insurance effected for a particular voyage or voyages of the vessel, and not otherwise limited as to time. Wilkins v. Tobacco Ins. Co., 30 Ohio St. 339, 27 Am. Rep. 455.—**Wager policy.** An insurance upon a subject-matter in which the party assured has no real, valuable, or insurable interest. A mere wager policy is that in which the party assured has no interest in the thing assured, and could sustain no possible loss by the event insured against, if he had not made such wager. Sawyer v. Insurance Co., 37 Wis. 539; Embler v. Insurance Co., 8 App. Div. 186, 40 N. Y. Supp. 450; Amory v. Gilman, 2 Mass. 1; Gambs v. Insurance Co., 50 Mo. 47.

Politiæ legibus non leges politiis adaptandæ. Politics are to be adapted to the laws, and not the laws to politics. Hob. 154.

POLITICAL. Pertaining or relating to the policy or the administration of government, state or national. See People v. Morgan, 90 Ill. 558; In re Kemp, 16 Wis. 396.

—**Political arithmetic.** An expression sometimes used to signify the art of making calculations on matters relating to a nation; the revenues, the value of land and effects; the produce of lands and manufactures; the population, and the general statistics of a country. Wharton. —**Political corporation.** A public or municipal corporation; one created for political purposes, and having for its object the administration of governmental powers of a subordinate or local nature. Winspear v. Holman Dist. Tp., 37 Iowa, 544; Auryansen v. Hackensack Imp. Com'n, 45 N. J. Law, 115; Curry v. District Tp., 62 Iowa, 102, 17 N. W. 191.—**Political economy.** The science which describes the methods and laws of the production, distribution, and consumption of wealth, and treats of economic and industrial conditions and laws, and the rules and principles of rent, wages, capital, labor, exchanges, money, population, etc. The science which determines what laws men ought to adopt in order that they may, with the least possible exertion, procure the greatest abundance of things useful for the satisfaction of their wants, may distribute them justly, and consume them rationally. De Laveleye, Pol. Econ. The science which treats of the administration of the revenues of a nation, or the management and

regulation of its resources, and productive property and labor. Wharton.—**Political law.** That branch of jurisprudence which treats of the science of politics, or the organization and administration of government.—**Political liberty.** See LIBERTY.—**Political offenses.** As a designation of a class of crimes usually excepted from extradition treaties, this term denotes crimes which are incidental to and form a part of political disturbances; but it might also be understood to include offenses consisting in an attack upon the political order of things established in the country where committed, and even to include offenses committed to obtain any political object. 2 Steph. Crim. Law, 70.—**Political office.** See OFFICE.—**Political questions.** Questions of which the courts of justice will refuse to take cognizance, or to decide, on account of their purely political character, or because their determination would involve an encroachment upon the executive or legislative powers; *e. g.*, what sort of government exists in a state, whether peace or war exists, whether a foreign country has become an independent state, etc. Luther v. Borden, 7 How. 1, 12 L. Ed. 581; Kenneth v. Chambers, 14 How. 38, 14 L. Ed. 316; U. S. v. 129 Packages, Fed. Cas. No. 15,941.—**Political rights.** Those which may be exercised in the formation or administration of the government. People v. Morgan, 90 Ill. 563. Rights of citizens established or recognized by constitutions which give them the power to participate directly or indirectly in the establishment or administration of government. People v. Barrett, 203 Ill. 99, 67 N. E. 742, 96 Am. St. Rep. 296; People v. Washington, 36 Cal. 662; Winnett v. Adams, 71 Neb. 817, 99 N. W. 684.

POLITICS. The science of government; the art or practice of administering public affairs.

POLITY. The form of government; civil constitution.

POLL, *v.* In practice. To single out, one by one, of a number of persons. To examine each juror separately, after a verdict has been given, as to his concurrence in the verdict. 1 Burrill, Pr. 238.

POLL, *n.* A head; an individual person; a register of persons. In the law of elections, a list or register of heads or individuals who may vote in an election; the aggregate of those who actually cast their votes at the election, excluding those who stay away. De Soto Parish v. Williams, 49 La. Ann. 422, 21 South. 647, 37 L. R. A. 761. See, also, POLLS.

POLL, *adj.* Cut or shaved smooth or even; cut in a straight line without indentation. A term anciently applied to a deed, and still used, though with little of its former significance. 2 Bl. Comm. 296.

POLL-MONEY. A tax ordained by act of parliament, (18 Car. II. c. 1,) by which every subject in the kingdom was assessed by the head or poll, according to his degree. Cowell. A similar personal tribute was more anciently termed "poll-silver."

POLL-TAX. A capitation tax; a tax of a specific sum levied upon each person within the jurisdiction of the taxing power and within a certain class (as, all males of a certain age, etc.) without reference to his property or lack of it. See Southern Ry. Co. v. St. Clair County, 124 Ala. 491, 27 South. 23; Short v. State, 80 Md. 392, 31 Atl. 322, 29 L. R. A. 404; People v. Ames, 24 Colo. 422, 51 Pac. 426.

POLLARDS. A foreign coin of base metal, prohibited by St. 27 Edw. I. c. 3, from being brought into the realm, on pain of forfeiture of life and goods. 4 Bl. Comm. 98. It was computed at two pollards for a sterling or penny. Dyer, 82*b*.

POLLENGERS. Trees which have been lopped; distinguished from timber-trees. Plowd. 649.

POLLICITATION. In the civil law. An offer not yet accepted by the person to whom it is made. Langd. Cont. § 1. See McCulloch v. Eagle Ins. Co., 1 Pick. (Mass.) 283.

POLLIGAR, POLYGAR. In Hindu law. The head of a village or district; also a military chieftain in the peninsula, answering to a hill *zemindar* in the northern *circars*. Wharton.

POLLING THE JURY. To *poll* a jury is to require that each juror shall himself declare what is his verdict.

POLLS. The place where electors cast in their votes.

Heads; individuals; persons singly considered. A challenge to the *polls* (*in capita*) is a challenge to the individual jurors composing the panel, or an exception to one or more particular jurors. 3 Bl. Comm. 358, 361.

POLYANDRY. The civil condition of having more husbands than one to the same woman; a social order permitting plurality of husbands.

Polygamia est plurium simul virorum uxorumve connubium. 3 Inst. 88. Polygamy is the marriage with many husbands or wives at one time.

POLYGAMY. In criminal law. The offense of having several wives or husbands at the same time, or more than one wife or husband at the same time. 3 Inst. 88. And see Reynolds v. U. S., 98 U. S. 145, 25 L. Ed. 244.

The offense committed by a layman in marrying while any previous wife is living and undivorced; as distinguished from bigamy in the sense of a breach of ecclesiastical law involved in any second marriage by a clerk.

Polygamy, or bigamy, shall consist in knowingly having a plurality of husbands or

wives at the same time. Code Ga. 1882, § 4530.

A bigamist or polygamist, in the sense of the eighth section of the act of congress of March 22, 1882, is a man who, having contracted a bigamous or polygamous marriage, and become the husband at one time, of two or more wives, maintains that relation and *status* at the time when he offers to be registered as a voter; and this without reference to the question whether he was at any time guilty of the offense of bigamy or polygamy, or whether any prosecution for such offense was barred by the lapse of time; neither is it necessary that he should be guilty of polygamy under the first section of the act of March 22, 1882. Murphy v. Ramsey, 114 U. S. 16, 5 Sup. Ct. 747, 29 L. Ed. 47; Cannon v. U. S., 116 U. S. 55, 6 Sup. Ct. 278, 29 L. Ed. 561.

Bigamy literally means a second marriage distinguished from a third or other; while polygamy means many marriages,—implies more than two.

POLYGARCHY. A term sometimes used to denote a government of many or several; a government where the sovereignty is shared by several persons; a collegiate or divided executive.

POMARIUM. In old pleading. An apple-tree; an orchard.

POND. A body of stagnant water without an outlet, larger than a puddle and smaller than a lake; or a like body of water with a small outlet. Webster. And see Rockland Water Co. v. Camden & R. Water Co., 80 Me. 544, 15 Atl. 785, 1 L. R. A. 388; Concord Mfg. Co. v. Robertson, 66 N. H. 1, 25 Atl. 718, 18 L. R. A. 679.

A standing ditch cast by labor of man's hand, in his private grounds, for his private use, to serve his house and household with necessary waters; but a *pool* is a low plat of ground by nature, and is not cast by man's hand. Call. Sew. 103.

—Great ponds. In Maine and Massachusetts, natural ponds having a superficial area of more than ten acres, and not appropriated by the proprietors to their private use prior to a certain date. Barrows v. McDermott, 73 Me. 441; West Roxbury v. Stoddard, 7 Allen (Mass.) 158. **—Public pond.** In New England, a great pond; a pond covering a superficial area of more than ten acres. Brastow v. Rockport Ice Co., 77 Me. 100; West Roxbury v. Stoddard, 7 Allen (Mass.) 170.

Ponderantur testes, non numerantur. Witnesses are weighed, not counted. 1 Starkie, Ev. 554; Best, Ev. p. 426, § 389; Bakeman v. Rose, 14 Wend. (N. Y.) 105, 109.

PONDUS. In old English law. Poundage; *i. e.*, a duty paid to the crown according to the weight of merchandise.

—Pondus regis. The king's weight; the standard weight appointed by the king. Cowell.

PONE. In English practice. An original writ formerly used for the purpose of removing suits from the court-baron or county court into the superior courts of common law. It was also the proper writ to remove all suits which were before the sheriff by writ of justices. But this writ is now in disuse, the writ of *certiorari* being the ordinary process by which at the present day a cause is removed from a county court into any superior court. Brown.

PONE PER VADIUM. In English practice. An obsolete writ to the sheriff to summon the defendant to appear and answer the plaintiff's suit, on his putting in sureties to prosecute. It was so called from the words of the writ, "*pone per vadium et salvos plegios*," "put by gage and safe pledges, A. B., the defendant."

PONENDIS IN ASSISIS. An old writ directing a sheriff to impanel a jury for an assize or real action.

PONENDUM IN BALLIUM. A writ commanding that a prisoner be bailed in cases bailable. Reg. Orig. 133.

PONENDUM SIGILLUM AD EXCEPTIONEM. A writ by which justices were required to put their seals to exceptions exhibited by a defendant against a plaintiff's evidence, verdict, or other proceedings, before them, according to the statute Westm. 2, (13 Edw. I. St. 1, c. 31.)

PONERE. Lat. To put, place, lay, or set. Often used in the Latin terms and phrases of the old law.

PONIT SE SUPER PATRIAM. Lat. He puts himself upon the country. The defendant's plea of not guilty in a criminal action is recorded, in English practice, in these words, or in the abbreviated form "*po. se.*"

PONTAGE. In old English law. Duty paid for the reparation of bridges; also a due to the lord of the fee for persons or merchandises that pass over rivers, bridges, etc. Cowell.

PONTIBUS REPARANDIS. An old writ directed to the sheriff, commanding him to charge one or more to repair a bridge.

POOL. 1. A combination of persons or corporations engaged in the same business, or for the purpose of engaging in a particular business or commercial or speculative venture, where all contribute to a common fund, or place their holdings of a given stock or other security in the hands and control of a managing member or committee, with the object of eliminating competition as between the several members of the pool, or of establishing a monopoly or controlling prices or rates by the weight and power of their combined capital, or of raising or depressing

prices on the stock market, or simply with a view to the successful conduct of an enterprise too great for the capital of any member individually, and on an agreement for the division of profits or losses among the members, either equally or pro rata. Also, a similar combination not embracing the idea of a pooled or contributed capital, but simply the elimination of destructive competition between the members by an agreement to share or divide the profits of a given business or venture, as, for example, a contract between two or more competing railroads to abstain from "rate wars" and (usually) to maintain fixed rates, and to divide their earnings from the transportation of freight in fixed proportions. See Green v. Higham, 161 Mo. 333, 61 S. W. 798; Mollyneaux v. Wittenberg, 39 Neb. 547, 58 N. W. 205; Kilbourn v. Thompson, 103 U. S. 195, 26 L. Ed. 377; American Biscuit Co. v. Klotz (C. C.) 44 Fed. 725; U. S. v. Trans-Missouri Freight Ass'n, 58 Fed. 65, 7 C. C. A. 15, 24 L. R. A. 73.

2. In various methods of gambling, a "pool" is a sum of money made up of the stakes contributed by various persons, the whole of which is then wagered as a stake on the event of a race, game, or other contest, and the winnings (if any) are divided among the contributors to the pool pro rata. Or it is a sum similarly made up by the contributions of several persons, each of whom then makes his guess or prediction as to the event of a future contest or hazard, the successful better taking the entire pool. See Ex parte Powell, 43 Tex. Cr. R. 391, 66 S. W. 298; Com. v. Ferry, 146 Mass. 203, 15 N. E. 484; James v. State, 63 Md. 248; Lacey v. Palmer, 93 Va. 159, 24 S. E. 930, 31 L. R. A. 822, 57 Am. St. Rep. 795; People v. McCue, 87 App. Div. 72, 83 N. Y. Supp. 1088.

3. A body of standing water, without a current or issue, accumulated in a natural basin or depression in the earth, and not artificially formed.

POOLING CONTRACTS. Agreements between competing railways for a division of the traffic, or for a *pro rata* distribution of their earnings united into a "pool" or common fund. 15 Fed. 667, note. See POOL.

POOR. As used in law, this term denotes those who are so destitute of property or of the means of support, either from their own labor or the care of relatives, as to be a public charge, that is, dependent either on the charity of the general public or on maintenance at the expense of the public. The term is synonymous with "indigent persons" and "paupers." See State v. Osawkee Tp., 14 Kan. 421, 19 Am. Rep. 99; In re Hoffen's Estate, 70 Wis. 522, 36 N. W. 407; Heuser v. Harris, 42 Ill. 430; Juneau County v. Wood County, 109 Wis. 330, 85 N. W. 387; Sayres v. Springfield, 8 N. J. Law, 169.

—Poor debtor's oath. An oath allowed, in some jurisdictions, to a person who is arrested for debt. On swearing that he has not property enough to pay the debt, he is set at liberty.—**Poor law.** That part of the law which relates to the public or compulsory relief of paupers. **—Poor-law board.** The English official body appointed under St. 10 & 11 Vict. c. 109, passed in 1847, to take the place of the poor-law commissioners, under whose control the general management of the poor, and the funds for their relief throughout the country, had been for some years previously administered. The poor-law board is now superseded by the local government board, which was established in 1871 by St. 34 & 35 Vict. c. 70. 3 Steph. Comm. 49. **—Poor-law guardians.** See GUARDIANS OF THE POOR.—**Poor rate.** In English law. A tax levied by parochial authorities for the relief of the poor.

POPE. The bishop of Rome, and supreme head of the Roman Catholic Church. 4 Steph. Comm. (7th Ed.) 168–185.

POPE NICHOLAS' TAXATION. The first fruits (*primitiæ* or *annates*) were the first year's profits of all the spiritual preferments in the kingdom, according to a rate made by Walter, bishop of Norwich, in the time of Pope Innocent II., and afterwards advanced in value in the time of Pope Nicholas IV. This last valuation was begun A. D. 1288, and finished 1292, and is still preserved in the exchequer. The taxes were regulated by it till the survey made in the twenty-sixth year of Henry VIII. 2 Steph. Comm. 567.

POPERY. The religion of the Roman Catholic Church, comprehending doctrines and practices.

POPULACE, or POPULACY. The vulgar; the multitude.

POPULAR ACTION. An action for a statutory penalty or forfeiture, given to any such person or persons as will sue for it; an action given to the *people* in general. 3 Bl. Comm. 160.

POPULAR SENSE. In reference to the construction of a statute, this term means that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it. 1 Exch. Div. 248.

POPULISCITUM. Lat. In Roman law. A law enacted by the people; a law passed by an assembly of the Roman people, in the *comitia centuriata*, on the motion of a senator; differing from a *plebiscitum*, in that the latter was always proposed by one of the tribunes.

POPULUS. Lat. In Roman law. The people; the whole body of Roman citizens, including as well the patricians as the plebeians.

PORCION. In Spanish law. A part or portion; a lot or parcel; an allotment of

land. See Downing v. Diaz, 80 Tex. 436, 16 S. W. 49.

PORRECTING. Producing for examination or taxation, as porrecting a bill of costs, by a proctor.

PORT. A place for the lading and unlading of the cargoes of vessels, and the collection of duties or customs upon imports and exports. A place, either on the seacoast or on a river, where ships stop for the purpose of loading and unloading, from whence they depart, and where they finish their voyages. The Wharf Case, 3 Bland (Md.) 361; Packwood v. Walden, 7 Mart. N. S. (La.) 88; Devato v. Barrels of Plumbago (D. C.) 20 Fed. 515; Petrel Guano Co. v. Jarnette (C. C.) 45 Fed. 675; De Longuemere v. Insurance Co., 10 Johns. (N. Y.) 125.

In French maritime law. Burden, (of a vessel;) size and capacity.

—Foreign port. A foreign port is properly one exclusively within the jurisdiction of a foreign nation, hence one without the United States. King v. Parks, 19 Johns. (N. Y.) 375; Bigley v. New York & P. R. S. S. Co. (D. C.) 105 Fed. 74. But the term is also applied to a port in any state other than the state where the vessel belongs or her owner resides. The Canada (D. C.) 7 Fed. 124; The Lulu, 10 Wall. 200, 19 L. Ed. 906; Negus v. Simpson, 99 Mass. 393.**—Home port.** The port at which a vessel is registered or enrolled or where the owner resides.**—Port charges, dues, or tolls.** Pecuniary exactions upon vessels availing themselves of the commercial conveniences and privileges of a port.**—Port-greve.** The chief magistrate of a sea-port town is sometimes so called.**—Port of delivery.** In maritime law. The port which is to be the terminus of any particular voyage, and where the vessel is to unlade or deliver her cargo, as distinguished from any port at which she may touch, during the voyage, for other purposes. The Two Catharines, 24 Fed. Cas. 429.**—Port of destination.** In maritime law and marine insurance, the term includes both ports which constitute the termini of the voyage, the home-port and the foreign port to which the vessel is consigned, as well as any usual stopping places for the receipt or discharge of cargo. Gookin v. New England Mut. Marine Ins. Co., 12 Gray (Mass.) 501, 74 Am. Dec. 609.**—Port of discharge,** in a policy of marine insurance, means the place where the substantial part of the cargo is discharged, although there is an intent to complete the discharge at another basin. Bramhall v. Sun Mut. Ins. Co., 104 Mass. 510, 6 Am. Rep. 261.**—Port of entry.** One of the ports designated by law, at which a custom-house or revenue office is established for the execution of the laws imposing duties on vessels and importations of goods. Cross v. Harrison, 16 How. 164, 14 L. Ed. 889.**—Port-reeve,** or **port-warden.** An officer maintained in some ports to oversee the administration of the local regulations; a sort of harbor-master.**—Port-risk.** In marine insurance. A risk upon a vessel while lying in port, and before she has taken her departure upon another voyage. Nelson v. Sun Mut. Ins. Co., 71 N. Y. 459.

PORTATICA. In English law. The generic name for port duties charged to ships. Harg. Law Tract, 64.

PORTEOUS. In old Scotch practice. A roll or catalogue containing the names of indicted persons, delivered by the justice-clerk to the coroner, to be attached and arrested by him. Otherwise called the "Porteous Roll." Bell.

PORTER. 1. In old English law, this title was given to an officer of the courts who carried a rod or staff before the justices.

2. A person who keeps a gate or door; as the door-keeper of the houses of parliament.

3. One who carries or conveys parcels, luggage, etc., particularly from one place to another in the same town.

PORTERAGE. A kind of duty formerly paid at the English custom-house to those who attended the water-side, and belonged to the package-office; but it is now abolished. Also the charge made for sending parcels.

PORTIO LEGITIMA. Lat. In the civil law. The birthright portion; that portion of an inheritance to which a given heir is entitled, and of which he cannot be deprived by the will of the decedent, without special cause, by virtue merely of his relationship to the testator.

PORTION. The share falling to a child from a parent's estate or the estate of any one bearing a similar relation. State v. Crossley, 69 Ind. 209; Lewis's Appeal, 108 Pa. 136; In re Miller's Will, 2 Lea (Tenn.) 57.

Portion is especially applied to payments made to younger children out of the funds comprised in their parents' marriage settlement, and in pursuance of the trusts thereof. Mozley & Whitley.

PORTION DISPONIBLE. Fr. In French law. That part of a man's estate which he may bequeath to other persons than his natural heirs. A parent leaving one legitimate child may dispose of one-half only of his property; one leaving two, one-third only; and one leaving three or more, one-fourth only; and it matters not whether the disposition is *inter vivos* or by will.

PORTIONER. In old English law. A minister who serves a benefice, together with others; so called because he has only a portion of the tithes or profits of the living; also an allowance which a vicar commonly has out of a rectory or impropriation. Cowell.

In Scotch law. The proprietor of a small feu or portion of land. Bell.

PORTIONIST. One who receives a portion; the allottee of a portion. One of two or more incumbents of the same ecclesiastical benefice.

PORTMEN. The burgesses of Ipswich and of the Cinque Ports were so called.

PORTMOTE. In old English law. A court held in ports or haven towns, and

sometimes in inland towns also. Cowell; Blount.

PORTORIA. In the civil law. Duties paid in ports on merchandise. Taxes levied in old times at city gates. Tolls for passing over bridges.

PORTSALE. In old English law. An auction; a public sale of goods to the highest bidder; also a sale of fish as soon as it is brought into the haven. Cowell.

PORTSOKA, or PORTSOKEN. The suburbs of a city, or any place within its jurisdiction. Somner; Cowell.

Portus est locus in quo exportantur et importantur merces. 2 Inst. 148. A port is a place where goods are exported or imported.

POSITIVE. Laid down, enacted, or prescribed. Express or affirmative. Direct, absolute, explicit.

As to positive "Condition," "Evidence," "Fraud," "Proof," and "Servitude," see those titles.

POSITIVE LAW. Law actually and specifically enacted or adopted by proper authority for the government of an organized jural society.

"A 'law,' in the sense in which that term is employed in jurisprudence, is enforced by a sovereign political authority. It is thus distinguished not only from all rules which, like the principles of morality and the so-called laws of honor and of fashion, are enforced by an indeterminate authority, but also from all rules enforced by a determinate authority which is either, on the one hand, superhuman, or, on the other hand, politically subordinate. In order to emphasize the fact that 'laws,' in the strict sense of the term, are thus authoritatively imposed, they are described as *positive* laws." Holl. Jur. 37.

POSTIVI JURIS. Lat. Of positive law. "That was a rule *positivi juris;* I do not mean to say an unjust one." Lord Ellenborough, 12 East, 639.

Posito uno oppositorum, negatur alterum. One of two opposite positions being affirmed, the other is denied. 3 Rolle, 422.

POSSE. Lat. A possibility. A thing is said to be *in posse* when it may possibly be; *in esse* when it actually is.

POSSE COMITATUS. Lat. The power or force of the county. The entire population of a county above the age of fifteen, which a sheriff may summon to his assistance in certain cases; as to aid him in keeping the peace, in pursuing and arresting felons, etc. 1 Bl. Comm. 343. See Com. v. Martin, 7 Pa. Dist. R. 224.

POSSESS. To occupy in person; to have in one's actual and physical control; to have the exclusive detention and control of; also to own or be entitled to. See Fuller v. Fuller, 84 Me. 475, 24 Atl. 946; Brantly v. Kee, 58 N. C. 337.

POSSESSED. This word is applied to the right and enjoyment of a termor, or a person having a term, who is said to be possessed, and not seised. Bac. Tr. 335; Poph. 76; Dyer, 369.

POSSESSIO. Lat. **In the civil law.** That condition of fact under which one can exercise his power over a corporeal thing at his pleasure, to the exclusion of all others. This condition of fact is called "detention," and it forms the substance of possession in all its varieties. Mackeld. Rom. Law, § 238.

"Possession," in the sense of "detention," is the actual exercise of such a power as the owner has a right to exercise. The term "*possessio*" occurs in the Roman jurists in various senses. There is *possessio* simply, and *possessio civilis*, and *possessio naturalis*. *Possessio* denoted, originally, bare detention. But this detention, under certain conditions, becomes a legal state, inasmuch as it leads to ownership, through *usucapio*. Accordingly, the word "*possessio*," which required no qualification so long as there was no other notion attached to *possessio*, requires such qualification when detention becomes a legal state. This detention, then, when it has the conditions necessary to *usucapio*, is called "*possessio civilis*;" and all other *possessio* as opposed to *civilis* is *naturalis*. Sandars, Just. Inst. 274. Wharton.

In old English law. Possession; seisin. The detention of a corporeal thing by means of a physical act and mental intent, aided by some support of right. Bract. fol. 38*b*.

—Pedis possessio. A foothold; an actual possession of real property, implying either actual occupancy or enclosure and use. See Lawrence v. Fulton, 19 Cal. 690; Porter v. Kennedy, 1 McMul. (S. C.) 357.**—Possessio bona fide.** Possession in good faith. *Possessio mala fide*, possession in bad faith. A possessor *bona fide* is one who believes that no other person has a better right to the possession than himself. A possessor *mala fide* is one who knows that he is not entitled to the possession. Mackeld. Rom. Law, § 243.**—Possessio bonorum.** In the civil law. The possession of goods. More commonly termed "*bonorum possessio*," (*q. v.*) **—Possessio civilis.** In Roman law. A legal possession, *i. e.*, a possessing accompanied with the intention to be or to thereby become owner; and, as so understood, it was distinguished from "*possessio naturalis*," otherwise called "*nuda detentio*," which was a possessing without any such intention. *Possessio civilis* was the basis of *usucapio* or of *longi temporis possessio*, and was usually (but not necessarily) adverse possession. Brown.**—Possessio fratris.** The possession or seisin of a brother; that is, such possession of an estate by a brother as would entitle his sister of the whole blood to succeed him as heir, to the exclusion of a half-brother. Hence, derivatively, that doctrine of the older English law of descent which shut out the half-blood from the succession to estates; a doctrine which was abolished by the descent act, 3 & 4 Wm. IV. c. 106. See 1 Steph. Comm. 385; Broom, Max. 532.**—Possessio longi temporis.** See USUCAPIO.**—Possessio naturalis.** See POSSESSIO CIVILIS.

Possessio fratris de feodo simplici facit sororem esse hæredem. The brother's pos-

Nsession of an estate in fee-simple makes the sister to be heir. 3 Coke, 41; Broom, Max. 532.

Possessio pacifica pour anns 60 facit jus. Peaceable possession for sixty years **O** gives a right. Jenk. Cent. 26.

POSSESSION. The detention and control, or the manual or ideal custody, of anything which may be the subject of property, **P** for one's use and enjoyment, either as owner or as the proprietor of a qualified right in it, and either held personally or by another who exercises it in one's place and name. That condition of facts under which one can exercise his power over a corporeal thing at his pleasure to the exclusion of all other persons. See Staton v. Mullis, 92 N. C. 632; Sunol v. Hepburn, 1 Cal. 263; Cox v. Devinney, 65 N. J. Law, 389, 47 Atl. 570; Churchill v. Onderdonk, 59 N. Y. 136; Rice v. Frayser (C. C.) 24 Fed. 460; Travers v. McElvain, 181 Ill. 382, 55 N. E. 135; Emmerson v. State, 33 Tex. Cr. R. 89, 25 S. W. 289; Slater v. Rawson, 6 Metc. (Mass.) 444.

—Actual possession. This term, as used in the provisions of Rev. St. N. Y. p. 312, § 1, authorizing proceedings to compel the determination of claims to real property, means a possession in fact effected by actual entry upon the premises; an actual occupation. Churchill v. Onderdonk, 59 N. Y. 134. It means an actual occupation or possession in fact, as contradistinguished from that constructive one which the legal title draws after it. The word "actual" is used in the statute in opposition to virtual or constructive, and calls for an open, visible occupancy. Cleveland v. Crawford, 7 Hun (N. Y.) 616.**—Adverse possession.** The actual, open, and notorious possession and enjoyment of real property, or of any estate lying in grant, continued for a certain length of time, held adversely and in denial and opposition to the title of another claimant, or under circumstances which indicate an assertion or color of right or title on the part of the person maintaining it, as against another person who is out of possession. Costello v. Edson, 44 Minn. 135, 46 N. W. 299; Taylor v. Philippi, 35 W. Va. 554, 14 S. E. 130; Pickett v. Pope, 74 Ala. 122; Martin v. Maine Cent. R. Co., 83 Me. 100, 21 Atl. 740; Dixon v. Cook, 47 Miss. 220.**—Chose in possession.** A thing (subject of personal property) in actual possession, as distinguished from a "chose in action," which is not presently in the owner's possession, but which he has a right to demand, receive, or recover by suit.**—Civil possession.** In modern civil law and in the law of Louisiana, that possession which exists when a person ceases to reside in a house or on the land which he occupied, or to detain the movable which he possessed, but without intending to abandon the possession. It is the detention of a thing by virtue of a just title and under the conviction of possessing as owner. Civ. Code La. art. 3391 et seq.**—Constructive possession.** Possession not actual but assumed to exist, where one claims to hold by virtue of some title, without having the actual occupancy, as, where the owner of a tract of land, regularly laid out, is in possession of a part, he is constructively in possession of the whole. Fleming v. Maddox, 30 Iowa, 241.**—Derivative possession.** The kind of possession of one who is in the lawful occupation or custody of the property, but not under a claim of title of his own, but under a right derived from another, as, for example, a tenant, bailee, licensee, etc.**—Dispossession.** The act of ousting or removing one from the possession of property previously held by him, which may be tortious and unlawful, as in the case of a forcible amotion, or in pursuance of law, as where a landlord "dispossesses" his tenant at the expiration of the term or for other cause by the aid of judicial process.**—Estate in possession.** An estate whereby a present interest passes to and resides in the tenant, not depending on any subsequent circumstance or contingency; an estate where the tenant is in actual pernancy or receipt of the rents and profits.**—Naked possession.** The actual occupation of real estate, but without any apparent or colorable right to hold and continue such possession; spoken of as the lowest and most imperfect degree of title. 2 Bl. comm. 195; Birdwell v. Burleson, 31 Tex. Civ. App. 31, 72 S. W. 446.**—Natural possession.** That by which a man detains a thing corporeally, as, by occupying a house, cultivating ground, or retaining a movable in possession; natural possession is also defined to be the corporeal detention of a thing which we possess as belonging to us, without any title to that possession or with a title which is void. Civ. Code La. 1900, arts. 3428, 3430. And see Railroad Co. v. Le Rosen, 52 La. Ann. 192, 26 South. 854; Sunol v. Hepburn, 1 Cal. 262.**—Open possession.** Possession of real property is said to be "open" when held without concealment or attempt at secrecy, or without being covered up in the name of a third person, or otherwise attempted to be withdrawn from sight, but in such a manner that any person interested can ascertain who is actually in possession by proper observation and inquiry. See Bass v. Pease, 79 Ill. App. 318.**—Peaceable possession.** See PEACEABLE.**—Possession money.** In English law. The man whom the sheriff puts in possession of goods taken under a writ of *fieri facias* is entitled, while he continues so in possession, to a certain sum of money *per diem*, which is thence termed "possession money." The amount is 3s. 6d. per day if he is boarded, or 5s. per day if he is not boarded. Brown.**—Possession, writ of.** Where the judgment in an action of ejectment is for the delivery of the land claimed, or its possession, this writ is used to put the plaintiff in possession. It is in the nature of execution. **—Quasi possession** is to a right what possession is to a thing; it is the exercise or enjoyment of the right, not necessarily the continuous exercise, but such an exercise as shows an intention to exercise it at any time when desired. Sweet.**—Scrambling possession.** By this term is meant a struggle for possession on the land itself, not such a contest as is waged in the courts, or possession gained by an act of trespass, such as building a fence. Spiers v. Duane, 54 Cal. 177; Lobdell v. Keene, 85 Minn. 90, 88 N. W. 426; Dyer v. Reitz, 14 Mo. App. 45.**—Unity of possession.** Joint possession of two rights by several titles, as where a lessee of land acquires the title in fee-simple, which extinguishes the lease. The term also describes one of the essential properties of a joint estate, each of the tenants having the entire possession as well of every parcel as of the whole. 2 Bl. Comm. 182.**—Vacant possession.** An estate which has been abandoned, vacated, or forsaken by the tenant.

In the older books, "possession" is sometimes used as the synonym of "seisin;" but, strictly speaking, they are entirely different terms. "The difference between possession and seisin is: Lessee for years is possessed, and yet the lessor is still seised; and therefore the terms of law are that of chattels a man is possessed, whereas in feoffments, gifts in tail, and leases for life he is described as 'seised.'" Noy, Max. 64.

"Possession" is used in some of the books in the sense of property. "A possession is an hereditament or chattel." Finch, Law, b. 2, c. 3.

Possession is a good title where no better title appears. 20 Vin. Abr. 278.

Possession is nine-tenths of the law. This adage is not to be taken as true to the full extent, so as to mean that the person in possession can only be ousted by one whose title is nine times better than his, but it places in a strong light the legal truth that every claimant must succeed by the strength of his own title, and not by the weakness of his antagonist's. Wharton.

POSSESSION VAUT TITRE. Fr. In English law, as in most systems of jurisprudence, the fact of possession raises a *prima facie* title or a presumption of the right of property in the thing possessed. In other words, the possession is as good as the title (about.) Brown.

POSSESSOR. One who possesses; one who has possession.

—Possessor bona fide. He is a *bona fide* possessor who possesses as owner by virtue of an act sufficient in terms to transfer property, the defects of which he was ignorant of. He ceases to be a *bona fide* possessor from the moment these defects are made known to him, or are declared to him by a suit instituted for the recovery of the thing by the owner. Civ. Code La. art. 503.**—Possessor mala fide.** The possessor in bad faith is he who possesses as master, but who assumes this quality, when he well knows that he has no title to the thing, or that his title is vicious and defective. Civ. Code La. art. 3452.

POSSESSORY. Relating to possession; founded on possession; contemplating or claiming possession.

—Possessory action. See next title.**—Possessory claim.** The title of a pre-emptor of public lands who has filed his declaratory statement but has not paid for the land. Enoch v. Spokane Falls & N. Ry. Co., 6 Wash. 393, 33 Pac. 966.**—Possessory judgment.** In Scotch practice. A judgment which entitles a person who has uninterruptedly been in possession for seven years to continue his possession until the question of right be decided in due course of law. Bell.**—Possessory lien.** One which attaches to such articles of another's as may be at the time in the possession of the lienor, as, for example, an attorney's lien on the papers and documents of the client in his possession. Weed Sewing Mach. Co. v. Boutelle, 56 Vt. 570, 48 Am. Rep. 821.

POSSESSORY ACTION. An action which has for its immediate object to obtain or recover the actual *possession* of the subject-matter; as distinguished from an action which merely seeks to vindicate the plaintiff's *title*, or which involves the bare right only; the latter being called a "petitory" action.

An action founded on possession. Trespass for injuries to personal property is called a "possessory" action, because it lies only for a plaintiff who, at the moment of the injury complained of, was in actual or constructive, immediate, and exclusive possession. 1 Chit. Pl. 168, 169.

In admiralty practice. A possessory suit is one which is brought to recover the possession of a vessel, had under a claim of title. The Tilton, 5 Mason, 465, Fed. Cas. No. 14,054; 1 Kent, Comm. 371.

In old English law. A real action which had for its object the regaining possession of the freehold, of which the demandant or his ancestors had been unjustly deprived by the present tenant or possessor thereof.

In Scotch law. An action for the vindication and recovery of the possession of heritable or movable goods; *e. g.*, the action of molestation. Paters. Comp.

In Louisiana. An action by which one claims to be maintained in the possession of an immovable property, or of a right upon or growing out of it, when he has been disturbed, or to be reinstated to that possession, when he has been divested or evicted. Code Proc. La. § 6.

POSSIBILITAS. Lat. Possibility; a possibility. *Possibilitas post dissolutionem executionis nunquam reviviscatur*, a possibility will never be revived after the dissolution of its execution. 1 Rolle, 321. *Post executionem status, lex non patitur possibilitatem*, after the execution of an estate the law does not suffer a possibility. 3 Bulst. 108.

POSSIBILITY. An uncertain thing which may happen. A contingent interest in real or personal estate. Kinzie v. Winston, 14 Fed. Cas. 651; Bodenhamer v. Welch, 89 N. C. 78; Needles v. Needles, 7 Ohio St. 442, 70 Am. Dec. 85.

It is either *near*, (or *ordinary*,) as where an estate is limited to one after the death of another, or *remote*, (or *extraordinary*,) as where it is limited to a man, provided he marries a certain woman, and that she shall die and he shall marry another.

—Bare possibility. The same as a "naked" possibility. See *infra*.**—Naked possibility.** A bare chance or expectation of acquiring a property or succeeding to an estate in the future, but without any present right in or to it which the law would recognize as an estate or interest. See Rogers v. Felton, 98 Ky. 148, 32 S. W. 406.**—Possibility coupled with an interest.** An expectation recognized in law as an estate or interest, such as occurs in executory devises and shifting or springing uses; such a possibility may be sold or assigned.**—Possibility of reverter.** This term denotes no estate, but only a possibility to have the estate at a future time. Of such possibilities there are several kinds, of which two are usually denoted by the term under consideration, (1) the possibility that a common-law fee may return to the grantor by breach of a condition subject to which it was granted, (2) the possibility that a common-law fee other than a fee simple may revert to the grantor by the natural determina-

tion of the fee. Carney v. Kain, 40 W. Va. 758, 23 S. E. 650.—**Possibility on a possibility.** A remote possibility, as if a remainder be limited in particular to A.'s son John, or Edward, it is bad if he have no son of that name, for it is too remote a possibility that he should not only have a son, but a son of that particular name. 2 Coke, 51.

POSSIBLE. Capable of existing or happening; feasible. In another sense, the word denotes extreme improbability, without excluding the idea of feasibility. It is also sometimes equivalent to "practicable" or "reasonable," as in some cases where action is required to be taken "as soon as possible." See Palmer v. St. Paul Fire & Marine Ins. Co., 44 Wis. 208.

POST. Lat. After; occurring in a report or a text-book, is used to send the reader to a subsequent part of the book.

POST. A conveyance for letters or dispatches. The word is derived from "*positi*," the horses carrying the letters or dispatches being kept or placed at fixed stations. The word is also applied to the person who conveys the letters to the houses where he takes up and lays down his charge, and to the stages or distances between house and house. Hence the phrases, post-boy, post-horse, post-house, etc. Wharton.

POST-ACT. An after-act; an act done afterwards.

POST CONQUESTUM. After the Conquest. Words inserted in the king's title by King Edward I., and constantly used in the time of Edward III. Tomlins.

POST-DATE. To date an instrument as of a time later than that at which it is really made.

POST DIEM. After the day; as, a plea of payment *post diem*, after the day when the money became due. Com. Dig. "Pleader," 2.

In old practice. The return of a writ after the day assigned. A fee paid in such case. Cowell.

POST DISSEISIN. In English law. The name of a writ which lies for him who, having recovered lands and tenements by force of a novel disseisin, is again disseised by a former disseisor. Jacob.

POST ENTRY. When goods are weighed or measured, and the merchant has got an account thereof at the custom-house, and finds his entry already made too small, he must make a post or additional entry for the surplusage, in the same manner as the first was done. As a merchant is always in time, prior to the clearing of the vessel, to make his post, he should take care not to over-enter, to avoid as well the advance as the trouble of getting back the overplus. McCul. Dict.

Post executionem status lex non patitur possibilitatem. 3 Bulst. 108. After the execution of the estate the law suffers not a possibility.

POST FACTO. After the fact. See EX POST FACTO.

POST-FACTUM, or POSTFACTUM. An after-act; an act done afterwards; a post-act.

POST-FINE. In old conveyancing. A fine or sum of money, (otherwise called the "king's silver") formerly due on granting the *licentia concordandi*, or leave to agree, in levying a fine of lands. It amounted to three-twentieths of the supposed annual value of the land, or ten shillings for every five marks of land. 2 Bl. Comm. 350.

POST HAC. Lat. After this; after this time; hereafter.

POST LITEM MOTAM. Lat. After suit moved or commenced. Depositions in relation to the subject of a suit, made after litigation has commenced, are sometimes so termed. 1 Starkie, Ev. 319.

POST-MARK. A stamp or mark put on letters received at the post-office for transmission through the mails.

POST-MORTEM. After death. A term generally applied to an autopsy or examination of a dead body, to ascertain the cause of death, or to the inquisition for that purpose by the coroner. See Wehle v. United States Mut. Acc. Ass'n, 11 Misc. Rep. 36, 31 N. Y. Supp. 865; Stephens v. People, 4 Parker Cr. R. (N. Y.) 475.

POST NATUS. Born afterwards. A term applied by old writers to a second or younger son. It is used in private international law to designate a person who was born *after* some historic event, (such as the American Revolution or the act of union between England and Scotland,) and whose rights or *status* will be governed or affected by the question of his birth before or after such event.

POST-NOTES. A species of bank-notes payable at a distant period, and not on demand.

They are a species of obligation resorted to by banks when the exchanges of the country, and especially of the banks, have become embarrassed by excessive speculations. Much concern is then felt for the country, and through the newspapers it is urged that post-notes be issued by the banks "for aiding domestic and foreign exchanges," as a "mode of relief," or a "remedy for the distress," and "to take the place of the southern and foreign exchanges."

And so presently this is done. Post-notes are therefore intended to enter into the circulation of the country as a part of its medium of exchanges; the smaller ones for ordinary business, and the larger ones for heavier operations. They are intended to supply the place of demand notes, which the banks cannot afford to issue or reissue, to relieve the necessities of commerce or of the banks, or to avoid a compulsory suspension. They are under seal, or without seal, and at long or short dates, at more or less interest, or without interest, as the necessities of the bank may require. Appeal of Hogg, 22 Pa. 488.

POST-NUPTIAL. After marriage. Thus, an agreement entered into by a father after the marriage of his daughter, by which he engages to make a provision for her, would be termed a "post-nuptial agreement." Brown.

—Post-nuptial settlement. A settlement made after marriage upon a wife or children; otherwise called a "voluntary" settlement. 2 Kent, Comm. 173.

POST OBIT BOND. A bond given by an expectant, to become due on the death of a person from whom he will have property. A bond or agreement given by a borrower of money, by which he undertakes to pay a larger sum, exceeding the legal rate of interest, on or *after the death* of a person from whom he has expectations, in case of surviving him. Crawford v. Russell, 62 Barb. (N. Y.) 92; Boynton v. Hubbard, 7 Mass. 119.

POST-OFFICE. A bureau or department of government, or under governmental superintendence, whose office is to receive, transmit, and deliver letters, papers, and other mail-matter sent by post. Also the office established by government in any city or town for the local operations of the postal system, for the receipt and distribution of mail from other places, the forwarding of mail there deposited, the sale of postage stamps, etc.

—Post-office department. The name of one of the departments of the executive branch of the government of the United States, which has charge of the transmission of the mails and the general postal business of the country.**—Post-office order.** A letter of credit furnished by the government, at a small charge, to facilitate the transmission of money.

POST PROLEM SUSCITATAM. After issue born, (raised.) Co. Litt. 19*b*.

POST ROADS. The roads or highways, by land or sea, designated by law as the avenues over which the mails shall be transported. Railway Mail Service Cases, 13 Ct. Cl. 204. A "post route," on the other hand, is the appointed course or prescribed line of transportation of the mail. U. S. v. Kochersperger, 26 Fed. Cas. 803; Blackham v. Gresham (C. C.) 16 Fed. 611.

POST-TERMINAL SITTINGS. Sittings after term. See SITTINGS.

POST TERMINUM. After term, or post-term. The return of a writ not only after the day assigned for its return, but after the term also, for which a fee was due. Cowell.

POST, WRIT OF ENTRY IN. In English law. An abolished writ given by statute of Marlbridge, 52 Hen. III. c. 30, which provided that when the number of alienations or descents exceeded the usual degrees, a new writ should be allowed, without any mention of degrees at all.

POSTAGE. The fee charged by law for carrying letters, packets, and documents by the public mails.

—Postage stamp. A ticket issued by government, to be attached to mail-matter, and representing the postage or fee paid for the transmission of such matter through the public mails.

POSTAL. Relating to the mails; pertaining to the post-office.

—Postal currency. During a brief period following soon after the commencement of the civil war in the United States, when specie change was scarce, postage stamps were popularly used as a substitute; and the first issues of paper representatives of parts of a dollar, issued by authority of congress, were called "postal currency." This issue was soon merged in others of a more permanent character, for which the later and more appropriate name is "fractional currency." Abbott.

POSTEA. In the common-law practice, a formal statement, indorsed on the *nisi prius* record, which gives an account of the proceedings at the trial of the action. Smith, Act. 167.

POSTED WATERS. In Vermont. Waters flowing through or lying upon inclosed or cultivated lands, which are preserved for the exclusive use of the owner or occupant by his posting notices (according to the statute) prohibiting all persons from shooting, trapping, or fishing thereon, under a prescribed penalty. See State v. Theriault, 70 Vt. 617, 41 Atl. 1030, 43 L. R. A. 290, 67 Am. St. Rep. 695.

POSTERIORES. Lat. This term was used by the Romans to denote the descendants in a direct line beyond the sixth degree.

POSTERIORITY. This is a word of comparison and relation in tenure, the correlative of which is the word "priority." Thus, a man who held lands or tenements of two lords was said to hold of his more ancient lord by priority, and of his less ancient lord by posteriority. Old Nat. Brev. 94. It has also a general application in law consistent with its etymological meaning, and, as so used, it is likewise opposed to priority. Brown.

POSTERITY. All the descendants of a person in a direct line to the remotest gen-

N eration. Breckinridge v. Denny, 8 Bush (Ky.) 527.

POSTHUMOUS CHILD. One born after the death of its father; or, when the Cæsarean operation is performed, after that of the mother.

O

Posthumus pro nato habetur. A posthumous child is considered as though born, [at the parent's death.] Hall v. Hancock, 15 Pick. (Mass.) 258, 26 Am. Dec. 598.

P

POSTLIMINIUM. Lat. In the civil law. A doctrine or fiction of the law by which the restoration of a person to any *status* or right formerly possessed by him was considered as relating back to the time of his original loss or deprivation; particularly in the case of one who, having been taken prisoner in war, and having escaped and returned to Rome, was regarded, by the aid of this fiction, as having never been abroad, and was thereby reinstated in all his rights. Inst. 1, 12, 5.

The term is also applied, in international law, to the recapture of property taken by an enemy, and its consequent restoration to its original owner.

Postliminium fingit eum qui captus est in civitate semper fuisse. Postliminy feigns that he who has been captured has never left the state. Inst. 1, 12, 5; Dig. 49, 51.

POSTLIMINY. See POSTLIMINIUM.

POSTMAN. A senior barrister in the court of exchequer, who has precedence in motions; so called from the place where he sits. 2 Bl. Comm. 28. A letter-carrier.

POSTMASTER. An officer of the United States, appointed to take charge of a local post-office and transact the business of receiving and forwarding the mails at that point, and such other business as is committed to him under the postal laws.

—Postmaster general. The head of the post-office department. He is one of the president's cabinet.

POSTNATI. Those born after. See POST NATUS.

POSTPONE. To put off; defer; delay; continue; adjourn; as when a hearing is *postponed*. Also to place after; to set below something else; as when an earlier lien is for some reason *postponed* to a later lien.

The word "postponement," in speaking of legal proceedings, is nearly equivalent to "continuance;" except that the former word is generally preferred when describing an adjournment of the cause to another day during the same ter , and the latter when the case goes over to another term. See State v. Underwood, 76 Mo. 639; State v. Nathaniel, 52 La. Ann. 558, 26 South. 1008.

POSTREMO-GENITURE. Borough-English, (*q. v.*)

POSTULATIO. Lat. **In Roman law.** A request or petition. This was the name of the first step in a criminal prosecution, corresponding somewhat to "swearing out a warrant" in modern criminal law. The accuser appeared before the prætor, and stated his desire to institute criminal proceedings against a designated person, and prayed the authority of the magistrate therefor.

In old English ecclesiastical law. A species of petition for transfer of a bishop.

—Postulatio actionis. In Roman law. The demand of an action; the request made to the prætor by an *actor* or plaintiff for an action or formula of suit; corresponding with the application for a writ in old English practice. Or, as otherwise explained, the *actor's* asking of leave to institute his action, on appearance of the parties before the prætor. Hallifax, Civil Law, b. 3, c. 9, no. 12.

POT-DE-VIN. In French law. A sum of money frequently paid, at the moment of entering into a contract, beyond the price agreed upon. It differs from *arrha*, in this: that it is no part of the price of the thing sold, and that the person who has received it cannot, by returning double the amount, or the other party by losing what he has paid, rescind the contract. 18 Toullier, no. 52.

POTENTATE. A person who possesses great power or sway; a prince, sovereign, or monarch.

By the naturalization law of the United States, an alien is required to renounce all allegiance to any foreign "prince, potentate, or sovereign whatever."

POTENTIA. Lat. Possibility; power.

—Potentia propinqua. Common possibility. See POSSIBILITY.

Potentia debet sequi justitiam, non antecedere. 3 Bulst. 199. Power ought to follow justice, not go before it.

Potentia est duplex, remota et propinqua; et potentia remotissima et vana est quæ nunquam venit in actum. 11 Coke, 51. Possibility is of two kinds, remote and near; that which never comes into action is a power the most remote and vain.

Potentia inutilis frustra est. Useless power is to no purpose. Branch, Princ.

POTENTIAL. Existing in possibility but not in act; naturally and probably expected to come into existence at some future time, though not now existing; for example, the future product of grain or trees already planted, or the successive future instalments or payments on a contract or engagement already made. Things having a "potential existence" may be the subject of mortgage, as

signment, or sale. See Campbell v. Grant Co., 36 Tex. Civ. App. 641, 82 S. W. 796; Dickey v. Waldo, 97 Mich. 255, 56 N. W. 608, 23 L. R. A. 449; Cole v. Kerr, 19 Neb. 553, 26 N. W. 598; Long v. Hines, 40 Kan. 220, 19 Pac. 796, 10 Am. St. Rep. 192.

Potest quis renunciare pro se et suis juri quod pro se introductum est. Bract. 20. One may relinquish for himself and his heirs a right which was introduced for his own benefit.

POTESTAS. Lat. In the civil law. Power; authority; domination; empire. *Imperium*, or the jurisdiction of magistrates. The power of the father over his children, *patria potestas*. The authority of masters over their slaves. See Inst. 1, 9, 12; Dig. 2, 1, 13, 1; Id., 14, 1; Id. 14, 4, 1, 4.

Potestas stricte interpretatur. A power is strictly interpreted. Jenk. Cent. p. 17, case 29, in marg.

Potestas suprema seipsum dissolvere potest, ligare non potest. Supreme power can dissolve [unloose] but cannot bind itself. Branch, Princ.; Bacon.

Potior est conditio defendentis. Better is the condition of the defendant, [than that of the plaintiff.] Broom, Max. 740; Cowp. 343; Williams v. Ingell, 21 Pick. (Mass.) 289; White v. Franklin Bank, 22 Pick. (Mass.) 186, 187; Cranson v. Goss, 107 Mass. 440, 9 Am. Rep. 45.

POTWALLOPER. A term formerly applied to voters in certain boroughs of England, where all who boil (*wallop*) a *pot* were entitled to vote. Webster.

POULTRY COUNTER. The name of a prison formerly existing in London. See COUNTER.

POUND. **1.** A place, inclosed by public authority, for the temporary detention of stray animals. Harriman v. Fifield, 36 Vt. 345; Wooley v. Groton, 2 Cush. (Mass.) 308.

A pound-*overt* is said to be one that is open overhead; a pound-*covert* is one that is close, or covered over, such as a stable or other building.

2. A measure of weight. The pound avoirdupois contains 7,000 grains; the pound troy 5,760 grains.

In New York, the unit or standard of weight, from which all other weights shall be derived and ascertained, is declared to be the *pound*, of such magnitude that the weight of a cubic foot of distilled water, at its maximum density, weighed in a vacuum with brass weights, shall be equal to sixty-two and a half such pounds. 1 Rev. St. N. Y. p. 617, § 8.

3. "Pound" is also the name of a denomination of English money, containing twenty shillings. It was also used in the United States, in computing money, before the introduction of the federal coinage.

—Pound breach. The act or offense of breaking a pound, for the purpose of taking out the cattle or goods impounded. 3 Bl. Comm. 12, 146; State v. Young, 18 N. H. 544.—**Pound-keeper.** An officer charged with the care of a pound, and of animals confined there.—**Pound of land.** An uncertain quantity of land, said to be about fifty-two acres.

POUNDAGE. **In practice.** An allowance to the sheriff of so much in the pound upon the amount levied under an execution. Bowe v. Campbell, 2 Civ. Proc. R. (N. Y.) 234.

The money which an owner of animals impounded must pay to obtain their release.

In old English law. A subsidy to the value of twelve pence in the *pound*, granted to the king, of all manner of merchandise of every merchant, as well denizen as alien, either exported or imported. Cowell.

POUR ACQUIT. Fr. In French law. The formula which a creditor prefixes to his signature when he gives a receipt.

POUR COMPTE DE QUI IL APPARTIENT. Fr. For account of whom it may concern.

POUR FAIRE PROCLAIMER. L. Fr. An ancient writ addressed to the mayor or bailiff of a city or town, requiring him to make proclamation concerning nuisances, etc. Fitzh. Nat. Brev. 176.

POUR SEISIR TERRES. L. Fr. An ancient writ whereby the crown seized the land which the wife of its deceased tenant, who held *in capite*, had for her dower, if she married without leave. It was grounded on the statute *De Prærogativa Regis*, 7, (17 Edw. II. St. 1, c. 4.) It is abolished by 12 Car. II. c. 24.

POURPARLER. Fr. In French law. The preliminary negotiations or bargainings which lead to a contract between the parties. As in English law, these form no part of the contract when completed. The term is also used in this sense in international law and the practice of diplomacy.

POURPARTY. To make *pourparty* is to divide and sever the lands that fall to parceners, which, before partition, they held jointly and *pro indiviso*. Cowell.

POURPRESTURE. An inclosure. Anything done to the nuisance or hurt of the public demesnes, or the highways, etc., by inclosure or building, endeavoring to make that private which ought to be public. The difference between a *pourpresture* and a public nuisance is that *pourpresture* is an invasion of the *jus privatum* of the crown; but where the *jus publicum* is violated it is a

Nnuisance. Skene makes three sorts of this offense; (1) Against the crown; (2) against the lord of the fee; (3) against a neighbor. 2 Inst. 38; 1 Reeve, Eng. Law, 156.

POURSUIVANT. The king's messenger; a royal or state messenger. In the heralds' college, a functionary of lower rank than a herald, but discharging similar duties, called also "poursuivant at arms."

POURVEYANCE. In old English law. The providing corn, fuel, victuals, and other necessaries for the king's house. Cowell.

POURVEYOR, or PURVEYOR. A buyer; one who provided for the royal household.

POUSTIE. In Scotch law. Power. See LIEGE POUSTIE. A word formed from the Latin *"potestas."*

POVERTY AFFIDAVIT. An affidavit, made and filed by one of the parties to a suit, that he is not able to furnish security for the final costs. The use of the term is confined to a few states. Cole v. Hoeburg, 36 Kan. 263, 13 Pac. 275.

POWER. In real property law. A power is an authority to do some act in relation to real property, or to the creation or revocation of an estate therein, or a charge thereon, which the owner granting or reserving such power might himself perform for any purpose. Civ. Code Dak. § 298; How. St. Mich. § 5591.

"Power" is sometimes used in the same sense as "right," as when we speak of the powers of user and disposition which the owner of property has over it, but, strictly speaking, a power is that which creates a special or exceptional right, or enables a person to do something which he could not otherwise do. Sweet.

Technically, an authority by which one person enables another to do some act for him. 2 Lil. Abr. 339.

An authority enabling a person to dispose, through the medium of the statute of uses, of an interest, vested either in himself or in another person. Sugd. Powers, 82. An authority expressly reserved to a grantor, or expressly given to another, to be exercised over lands, etc., granted or conveyed at the time of the creation of such power. Watk. Conv. 157. A proviso, in a conveyance under the statute of uses, giving to the grantor or grantee, or a stranger, authority to revoke or alter by a subsequent act the estate first granted. 1 Steph. Comm. 505. See also Burleigh v. Clough, 52 N. H. 267, 13 Am. Rep. 23; Griffith v. Maxfield, 66 Ark. 513, 51 S. W. 832; Bouton v. Doty, 69 Conn. 531, 37 Atl. 1064; Dana v. Murray, 122 N. Y. 604, 26 N. E. 21; Carson v. Cochran, 52 Minn. 67, 53 N. W. 1130; Law Guarantee & Trust Co. v. Jones, 103 Tenn. 245, 58 S. W. 219.

—General and special powers. A power is general when it authorizes the alienation in fee, by means of a conveyance, will, or charge, of the lands embraced in the power to any alienee whatsoever. It is special (1) when the persons or class of persons to whom the disposition of the lands under the power is to be made are designated, or (2) when the power authorizes the alienation, by means of a conveyance, will, or charge, of a particular estate or interest less than a fee. Coster v. Lorillard, 14 Wend. (N. Y.) 324; Thompson v. Garwood, 3 Whart. (Pa.) 305, 31 Am. Dec. 502.**—General and special powers in trust.** A general power is in trust when any person or class of persons other than the grantee of such power is designated as entitled to the proceeds or any portion of the proceeds or other benefits to result from the alienation. A special power is in trust (1) when the disposition or charge which it authorizes is limited to be made to any person or class of persons other than the holder of the power, or (2) when any person or class of persons other than the holder is designated as entitled to any benefit from the disposition or charge authorized by the power. Cutting v. Cutting, 20 Hun (N. Y.) 360; Dana v. Murray, 122 N. Y. 612, 26 N. E. 23; Wilson's Rev. & Ann. St. Okl. 1903, §§ 4107, 4108. **—Ministerial powers.** A phrase used in English conveyancing to denote powers given for the good, not of the donee himself exclusively, or of the donee himself necessarily at all, but for the good of several persons, including or not including the donee also. They are so called because the donee of them is as a minister or servant in his exercise of them. Brown.**—Naked power.** One which is simply collateral and without interest in the donee, which arises when, to a mere stranger, authority is given of disposing of an interest, in which he had not before, nor has by the instrument creating the power, any estate whatsoever. Bergen v. Bennett, 1 Caines Cas. (N. Y.) 15, 2 Am. Dec. 281; Atwater v. Perkins, 51 Conn. 198; Clark v. Hornthal, 47 Miss. 534; Hunt v. Ennis, 12 Fed. Cas. 915.**—Powers appendant and in gross.** A power appendant is where a person has an estate in land, and the estate to be created by the power is to, or may, take effect in possession during the tenancy of the estate to which the power is annexed. A power in gross is where the person to whom it is given has an estate in the land, but the estate to be created under or by virtue of the power is not to take effect until after the determination of the estate to which it relates. Wilson v. Troup, 2 Cow. (N. Y.) 236, 14 Am. Dec. 458; Garland v. Smith, 164 Mo. 1, 64 S. W. 188.

For other compound terms, such as "Power of Appointment," "Power of Sale," etc., see the following titles.

In constitutional law. The right to take action in respect to a particular subject-matter or class of matters, involving more or less of discretion, granted by the constitutions to the several departments or branches of the government, or reserved to the people. Powers in this sense are generally classified as legislative, executive, and judicial. See those titles.

—Implied powers are such as are necessary to make available and carry into effect those powers which are expressly granted or conferred, and which must therefore be presumed to have been within the intention of the constitutional or legislative grant. Madison v. Daley (C. C.) 58 Fed. 755; People v. Pullman's Palace Car Co., 175 Ill. 125, 51 N. E. 664, 64 L. R. A. 366; First M. E. Church v. Dixon, 178 Ill. 260, 52 N. E. 887.

In the law of corporations. The right or capacity to act or be acted upon in a particular manner or in respect to a particular subject; as, the power to have a corporate seal, to sue and be sued, to make by-laws, to carry on a particular business or construct a given work. See Freligh v. Saugerties, 70 Hun, 589, 24 N. Y. Supp. 182; In re Lima & H. F. Ry. Co., 68 Hun, 252, 22 N. Y. Supp. 967; Baltimore v. Marriott, 9 Md. 160.

POWER COUPLED WITH AN INTEREST. By this phrase is meant a right or power to do some act, together with an interest in the subject-matter on which the power is to be exercised. It is distinguished from a *naked* power, which is a mere authority to act, not accompanied by any interest of the donee in the subject-matter of the power.

Is it an interest in the subject on which the power is to be exercised, or is it an interest in that which is produced by the exercise of the power? We hold it to be clear that the interest which can protect a power after the death of a person who creates it must be an interest in the thing itself. In other words, the power must be engrafted on an estate in the thing. The words themselves would seem to import this meaning. "A power coupled with an interest" is a power which accompanies or is connected with an interest. The power and the interest are united in the same person. But, if we are to understand by the word "interest" an interest in that which is to be produced by the exercise of the power, then they are never united. The power to produce the interest must be exercised, and by its exercise is extinguished. The power ceases when the interest commences, and therefore cannot, in accurate law language, be said to be "coupled" with it. Hunt v. Rousmanier, 8 Wheat. 203, 5 L. Ed. 589. And see Missouri v. Walker, 125 U. S. 339, 8 Sup. Ct. 929, 31 L. Ed. 769; Griffith v. Maxfield, 66 Ark. 513, 51 S. W. 832; Johnson v. Johnson, 27 S. C. 309, 3 S. E. 606, 13 Am. St. Rep. 636; Yeates v. Pryor, 11 Ark. 78; Alworth v. Seymour, 42 Minn. 526, 44 N. W. 1030; Hunt v. Ennis, 12 Fed. Cas. 915.

POWER OF APPOINTMENT. A power or authority conferred by one person by deed or will upon another (called the "donee") to appoint, that is, to select and nominate, the person or persons who are to receive and enjoy an estate or an income therefrom or from a fund, after the testator's death, or the donee's death, or after the termination of an existing right or interest. See Heinemann v. De Wolf, 25 R. I. 243, 55 Atl. 707.

Powers are either: *Collateral*, which are given to strangers; *i. e.*, to persons who have neither a present nor future estate or interest in the land. These are also called simply "collateral," or powers not coupled with an interest, or powers not being interests. These terms have been adopted to obviate the confusion arising from the circumstance that powers in gross have been by many called powers collateral. Or they are powers relating to the land. These are called "appendant" or "appurtenant," because they strictly depend upon the estate limited to the person to whom they are given. Thus, where an estate for life is limited to a man, with a power to grant leases in possession, a lease granted under the power may operate wholly out of the life-estate of the party executing it, and must in every case have its operation out of his estate during his life. Such an estate must be created, which will attach on an interest actually vested in himself. Or they are called "in gross," if given to a person who had an interest in the estate at the execution of the deed creating the power, or to whom an estate is given by the deed, but which enabled him to create such estates only as will not attach on the interest limited to him. Of necessity, therefore, where a man seised in fee settles his estate on others, reserving to himself only a particular power, the power is in gross. A power to a tenant for life to appoint the estate after his death among his children, a power to jointure a wife after his death, a power to raise a term of years to commence from his death, for securing younger children's portions, are all powers in gross. An important distinction is established between *general* and *particular* powers. By a general power we understand a right to appoint to whomsoever the donee pleases. By a particular power it is meant that the donee is restricted to some objects designated in the deed creating the power, as to his own children. Wharton.

We have seen that a general power is *beneficial* when no person other than the grantee has, by the terms of its creation, any interest in its execution. A general power is *in trust* when any person or class of persons, other than the grantee of such power, is designated as entitled to the proceeds, or any portion of the proceeds, or other benefits to result from the alienation. Cutting v. Cutting, 20 Hun (N. Y.) 364.

When a power of appointment among a class requires that each shall have a share, it is called a "distributive" or "non-exclusive" power; when it authorizes, but does not direct, a selection of one or more to the exclusion of the others, it is called an "exclusive" power, and is also distributive; when it gives the power of appointing to a certain number of the class, but not to all, it is exclusive only, and not distributive. Leake, 389. A power authorizing the donee either to give the whole to one of a class or to give it equally among such of them as he may select (but not to give one a larger share than the others) is called a "mixed" power. Sugd. Powers, 448. Sweet.

POWER OF ATTORNEY. An instrument authorizing a person to act as the agent or attorney of the person granting it. See LETTER OF ATTORNEY.

POWER OF DISPOSITION. Every power of disposition is deemed absolute, by means of which the donee of such power is enabled in his life-time to dispose of the entire fee for his own benefit; and, where a general and beneficial power to devise the inheritance is given to a tenant for life or years, it is absolute, within the meaning of the statutes of some of the states. Code Ala. 1886, § 1853. See POWER OF APPOINTMENT.

POWER OF SALE. A clause sometimes inserted in mortgages and deeds of trust, giving the mortgagee (or trustee) the right and power, on default in the payment of the debt secured, to advertise and sell the mortgaged property at public auction (but without resorting to a court for authority), satisfy the creditor out of the net proceeds, convey by deed to the purchaser, return the surplus, if any, to the mortgagor, and thereby divest

the latter's estate entirely and without any subsequent right of redemption. See Capron v. Attleborough Bank, 11 Gray (Mass.) 493; Appeal of Clark, 70 Conn. 195, 39 Atl. 155.

POYNDING. See POINDING.

POYNINGS' ACT. An act of parliament, made in Ireland, (10 Hen. VII. c. 22, A. D. 1495;) so called because Sir Edward Poynings was lieutenant there when it was made, whereby all general statutes before then made in England were declared of force in Ireland, which, before that time, they were not. 1 Broom & H. Comm. 112.

PRACTICAL. A practical construction of a constitution or statute is one determined, not by judicial decision, but practice sanctioned by general consent. Farmers' & Mechanics' Bank v. Smith, 3 Serg. & R. (Pa.) 69; Bloxham v. Consumers' Electric Light, etc., Co., 36 Fla. 519, 18 South. 444, 29 L. R. A. 507, 51 Am. St. Rep. 44.

PRACTICE. The form or mode of proceeding in courts of justice for the enforcement of rights or the redress of wrongs, as distinguished from the substantive law which gives the right or denounces the wrong. The form, manner, or order of instituting and conducting a suit or other judicial proceeding, through its successive stages to its end, in accordance with the rules and principles laid down by law or by the regulations and precedents of the courts. The term applies as well to the conduct of criminal actions as to civil suits, to proceedings in equity as well as at law, and to the defense as well as the prosecution of any proceeding. See Fleischman v. Walker, 91 Ill. 321; People v. Central Pac. R. Co., 83 Cal. 393, 23 Pac. 303; Kring v. Missouri, 107 U. S. 221, 2 Sup. Ct. 443, 27 L. Ed. 506; Opp v. Ten Eyck, 99 Ind. 351; Beardsley v. Littell, 14 Blatchf. 102, Fed. Cas. No. 1,185; Union Nat. Bank v. Byram, 131 Ill. 92, 22 N. E. 842.

It may include pleading, but is usually employed as excluding both pleading and evidence, and to designate all the incidental acts and steps in the course of bringing matters pleaded to trial and proof, and procuring and enforcing judgment on them.

PRACTICE COURT. In English law. A court attached to the court of king's bench, which heard and determined common matters of business and ordinary motions for writs of *mandamus*, prohibition, etc. It was usually called the "bail court." It was held by one of the puisne justices of the king's bench.

PRACTICES. A succession of acts of a similar kind or in a like employment.

PRACTICKS. In Scotch law. The decisions of the court of session, as evidence of the *practice* or custom of the country. Bell.

PRACTITIONER. He who is engaged in the exercise or employment of any art or profession.

PRÆCEPTORES. Lat. Masters. The chief clerks in chancery were formerly so called, because they had the direction of making out remedial writs. 2 Reeve, Eng. Law, 251.

PRÆCEPTORIES. In feudal law. A kind of benefices, so called because they were possessed by the more eminent templars, whom the chief master by his authority created and called "*Præceptores Templi.*"

PRÆCIPE. Lat. In practice. An original writ, drawn up in the alternative, commanding the defendant to do the thing required, or show the reason why he had not done it. 3 Bl. Comm. 274.

Also an order, written out and signed, addressed to the clerk of a court, and requesting him to issue a particular writ.

—Præcipe in capite. When one of the king's immediate tenants *in capite* was deforced, his writ of right was called a writ of "*præcipe in capite.*"—**Præcipe quod reddat.** Command that he render. A writ directing the defendant to restore the possession of land, employed at the beginning of a common recovery.—**Præcipe quod teneat conventionem.** The writ which commenced the action of covenant in fines, which are abolished by 3 & 4 Wm. IV. c. 74.—**Præcipe, tenant to the.** A person having an estate of freehold in possession, against whom the *præcipe* was brought by a tenant in tail, seeking to bar his estate by a recovery.

PRÆCIPITIUM. The punishment of casting headlong from some high place.

PRÆCIPUT CONVENTIONNEL. In French law. Under the *régime en communauté*, when that is of the conventional kind, if the surviving husband or wife is entitled to take any portion of the common property by a paramount title and before partition thereof, this right is called by the somewhat barbarous title of the conventional "*præciput*," from "*præ*," before, and "*capere*," to take. Brown.

PRÆCO. Lat. In Roman law. A herald or crier.

PRÆCOGNITA. Things to be previously known in order to the understanding of something which follows. Wharton.

PRÆDIA. In the civil law. Lands; estates; tenements; properties. See PRÆDIUM.

—Prædia bellica. Booty. Property seized in war.—**Prædia stipendiaria.** In the civil law. Provincial lands belonging to the people. **—Prædia tributaria.** In the civil law. Provincial lands belonging to the emperor.—**Prædia volantia.** In the duchy of Brabant, certain things movable, such as beds, tables, and other heavy articles of furniture, were ranked

among immovables, and were called "*prædia volantia*," or "volatile estates." 2 Bl. Comm. 428.

PRÆDIAL SERVITUDE. A right which is granted for the advantage of one piece of land over another, and which may be exercised by every possessor of the land entitled against every possessor of the servient land. It always presupposes two pieces of land (*prædia*) belonging to different proprietors; one burdened with the servitude, called "*prædium serviens*," and one for the advantage of which the servitude is conferred, called "*prædium dominans*." Mackeld Rom. Law, § 314.

PRÆDIAL TITHES. Such as arise merely and immediately from the ground; as grain of all sorts, hops, hay, wood, fruit, herbs. 2 Bl. Comm. 23; 2 Steph. Comm. 722.

PRÆDICTUS. Lat. Aforesaid. Hob. 6.

Of the three words, "*idem*," "*prædictus*," and "*præfatus*," "*idem*" was most usually applied to plaintiffs or demandants; "*prædictus*," to defendants or tenants, places, towns, or lands; and "*præfatus*," to persons named, not being *actors* or parties. Townsh. Pl. 15. These words may all be rendered in English by "said" or "aforesaid."

PRÆDIUM. Lat. In the civil law. Land; an estate; a tenement; a piece of landed property. See Dig. 50, 16, 115.

—Prædium dominans. In the civil law. The name given to an estate to which a servitude is due; the dominant tenement. Morgan v. Mason, 20 Ohio, 409, 55 Am. Dec. 464.—**Prædium rusticum.** In Roman law. A rustic or rural estate. Primarily, this term denoted an estate lying in the country, *i. e.*, beyond the limits of the city, but it was applied to any landed estate or heritage other than a dwelling-house, whether in or out of the town. Thus, it included gardens, orchards, pastures, meadows, etc. Mackeld. Rom. Law, § 316. A rural or country estate; an estate or piece of land principally destined or devoted to agriculture; an empty or vacant space of ground without buildings.—**Prædium serviens.** In the civil law. The name of an estate which suffers a servitude or easement to another estate; the servient tenement. Morgan v. Mason, 20 Ohio, 409, 55 Am. Dec. 464. —**Prædium urbanum.** In the civil law. A building or edifice intended for the habitation and use of man, whether built in cities or in the country. Colq. Rom. Civil Law, § 937.

Prædium servit prædio. Land is under servitude to land, [*i. e.*, servitudes are not personal rights, but attach to the dominant tenement.] Tray. Lat. Max. 455.

PRÆDO. Lat. In Roman law. A robber. See Dig. 50, 17, 126.

PRÆFATUS. Lat. Aforesaid. Sometimes abbreviated to "*præfat*," and "*p. fat.*"

PRÆFECTURÆ. In Roman law. Conquered towns, governed by an officer called a "prefect," who was chosen in some instances by the people, in others by the prætors. Butl. Hor. Jur. 29.

PRÆFECTUS URBI. Lat. In Roman law. The name of an officer who, from the time of Augustus, had the superintendence of the city and its police, with jurisdiction extending one hundred miles from the city, and power to decide both civil and criminal cases. As he was considered the direct representative of the emperor, much that previously belonged to the *prætor urbanus* fell gradually into his hands. Colq. Rom. Civil Law, § 2395.

PRÆFECTUS VIGILUM. Lat. In Roman law. The chief officer of the night watch. His jurisdiction extended to certain offenses affecting the public peace, and even to larcenies; but he could inflict only slight punishments. Colq. Rom. Civil Law, § 2395.

PRÆFECTUS VILLÆ. The mayor of a town.

PRÆFINE. The fee paid on suing out the writ of covenant, on levying fines, before the fine was passed. 2 Bl. Comm. 350.

PRÆJURAMENTUM. In old English law. A preparatory oath.

PRÆLEGATUM. Lat. In Roman law. A payment in advance of the whole or part of the share which a given heir would be entitled to receive out of an inheritance; corresponding generally to "advancement" in English and American law. See Mackeld. Rom. Law, § 762.

PRÆMIUM. Lat. Reward; compensation. *Præmium assecurationis*, compensation for insurance; premium of insurance. Locc. de Jur. Mar. lib. 2, c. 5, § 6.

—Præmium emancipationis. In Roman law. A reward or compensation anciently allowed to a father on emancipating his child, consisting of one-third of the child's separate and individual property, not derived from the father himself. See Mackeld. Rom. Law, § 605.—**Præmium pudicitiæ.** The price of chastity; or compensation for loss of chastity. A term applied to bonds and other engagements given for the benefit of a seduced female. Sometimes called "*præmium pudoris*." 2 Wils. 339, 340.

PRÆMUNIRE. In English law. The name of an offense against the king and his government, though not subject to capital punishment. So called from the words of the writ which issued preparatory to the prosecution: "*Præmunire facias A. B. quod sit coram nobis*," etc.; "Cause A. B. to be forewarned that he appear before us to answer the contempt with which he stands charged." The statutes establishing this offense, the first of which was made in the thirty-first year of the reign of Edward I., were framed to encounter the papal usurpations in England; the original meaning of

N the offense called "*præmunire*" being the introduction of a foreign power into the kingdom, and creating *imperium in imperio*, by paying that obedience to papal process which constitutionally belonged to the king alone. The penalties of *præmunire* were afterwards O applied to other heinous offenses. 4 Bl. Comm. 103–117; 4 Steph. Comm. 215–217.

PRÆNOMEN. Lat. Forename, or first name. The first of the three names by which P the Romans were commonly distinguished. It marked the individual, and was commonly written with one letter; as "A." for "Aulus;" "C." for "Caius," etc. Adams, Rom. Ant. 35.

PRÆPOSITUS. In old English law. An officer next in authority to the alderman of a hundred, called "*præpositus regius*;" or a steward or bailiff of an estate, answering to the "*wicnere*."

Also the person from whom descents are traced under the old canons.

—Præpositus ecclesiæ. A church-reeve, or warden. Spelman.**—Præpositus villæ.** A constable of a town, or petty constable.

Præpropera consilia raro sunt prospera. 4 Inst. 57. Hasty counsels are rarely prosperous.

PRÆSCRIPTIO. Lat. In the civil law. That mode of acquisition whereby one becomes proprietor of a thing on the ground that he has for a long time possessed it as his own; prescription. Dig. 41, 3. It was anciently distinguished from "*usucapio*," (*q. v.*,) but was blended with it by Justinian.

Præscriptio est titulus ex usu et tempore substantiam capiens ab auctoritate legis. Co. Litt. 113. Prescription is a title by authority of law, deriving its force from use and time.

Præscriptio et executio non pertinent ad valorem contractus, sed ad tempus et modum actionis instituendæ. Prescription and execution do not affect the validity of the contract, but the time and manner of bringing an action. Pearsall v. Dwight, 2 Mass. 84, 3 Am. Dec. 35; Decouche v. Savetier, 3 Johns. Ch. (N. Y.) 190, 219, 8 Am. Dec. 478.

PRÆSCRIPTIONES. Lat. In Roman law. Forms of words (of a qualifying character) inserted in the *formulæ* in which the claims in actions were expressed; and, as they occupied an early place in the *formulæ*, they were called by this name, *i. e.*, qualifications *preceding* the claim. For example, in an action to recover the arrears of an annuity, the claim was preceded by the words "so far as the annuity is due and unpaid," or words to the like effect, ("*cujus rei dies fuit.*") Brown.

Præsentarę nihil aliud est quam præsto dare seu offere. To present is no more than to give or offer on the spot. Co. Litt. 120.

Præsentia corporis tollit errorem nominis; et veritas nominis tollit errorem demonstrationis. The presence of the body cures error in the name; the truth of the name cures an error of description. Broom, Max. 637, 639, 640.

PRÆSES. Lat. In Roman law. A president or governor. Called a "*nomen generale*," including pro-consuls, legates, and all who governed provinces.

PRÆSTARE. Lat. In Roman law. "*Præstare*" meant to make good, and, when used in conjunction with the words "*dare*," "*facere*," "*oportere*," denoted obligations of a personal character, as opposed to real rights.

Præstat cautela quam medela. Prevention is better than cure. Co. Litt. 304*b*.

Præsumatur pro justitia sententiæ. The presumption should be in favor of the justice of a sentence. Best, Ev. Introd. 42.

Præsumitur pro legitimatione. The presumption is in favor of legitimacy. 1 Bl. Comm. 457; 5 Coke, 98*b*.

Præsumitur pro negante. It is presumed for the negative. The rule of the house of lords when the numbers are equal on a motion. Wharton.

PRÆSUMPTIO. Lat. Presumption; a presumption. Also intrusion, or the unlawful taking of anything.

—Præsumptio fortior. A strong presumption; a presumption of fact entitled to great weight. One which determines the tribunal in its belief of an alleged fact, without, however, excluding the belief of the possibility of its being otherwise; the effect of which is to shift the burden of proof to the opposite party, and, if this proof be not made, the presumption is held for truth. Hub. Præl. J. C. lib. 22, tit. 3, n. 16; Burrill, Circ. Ev. 66.**—Præsumptio hominis.** The presumption of the man or individual; that is, natural presumption unfettered by strict rule.**—Præsumptio juris.** A legal presumption or presumption of law; that is, one in which the law assumes the existence of something until it is disproved by evidence; a conditional, inconclusive, or rebuttable presumption. Best, Ev. § 43.**—Præsumptio juris et de jure.** A presumption of law and of right; a presumption which the law will not suffer to be contradicted; a conclusive or irrebuttable presumption.**—Præsumptio muciana.** In Roman law. A presumption of law that property in the hands of a wife came to her as a gift from her husband and was not acquired from other sources; available only in doubtful cases and until the contrary is shown. See Mackeld. Rom. Law, § 560.

Præsumptio, ex eo quod plerumque fit. Presumptions arise from what general-

ly happens. Post v. Pearsall, 22 Wend. (N. Y.) 425, 475.

Præsumptio violenta plena probatio. Co. Litt. 6b. Strong presumption is full proof.

Præsumptio violenta valet in lege. Strong presumption is of weight in law. Jenk. Cent. p. 56, case 3.

Præsumptiones sunt conjecturæ ex signo verisimili ad probandum assumptæ. Presumptions are conjectures from probable proof, assumed for purposes of evidence. J. Voet, Com. ad Pand. l. 22, tit. 3, n. 14.

PRÆTERITIO. Lat. A passing over or omission. Used in the Roman law to describe the act of a testator in excluding a given heir from the inheritance by silently passing him by, that is, neither instituting nor formally disinheriting him. See Mackeld. Rom. Law, § 711.

Prætextu liciti non debet admitti illicitum. Under pretext of legality, what is illegal ought not to be admitted. Wing. Max. p. 728, max. 196.

PRÆTEXTUS. Lat. A pretext; a pretense or color. *Prætextu cujus*, by pretense, or under pretext whereof. 1 Ld. Raym. 412.

PRÆTOR. Lat. In Roman law. A municipal officer of the city of Rome, being the chief judicial magistrate, and possessing an extensive equitable jurisdiction.

—Prætor fidei-commissarius. In the civil law. A special prætor created to pronounce judgment in cases of trusts or *fidei-commissa*. Inst. 2, 23, 1.

PRÆVARICATOR. Lat. In the civil law. One who betrays his trust, or is unfaithful to his trust. An advocate who aids the opposite party by betraying his client's cause. Dig. 47, 15, 1.

PRÆVENTO TERMINO. In old Scotch practice. A form of action known in the forms of the court of session, by which a delay to discuss a suspension or advocation was got the better of. Bell.

PRAGMATIC SANCTION. In French law. An expression used to designate those ordinances which concern the most important objects of the civil or ecclesiastical administration. Merl. Répert.

In the civil law. The answer given by the emperors on questions of law, when consulted by a corporation or the citizens of a province or of a municipality, was called a "pragmatic sanction." Lec. El. Dr. Rom. § 53.

PRAGMATICA. In Spanish colonial law. An order emanating from the sovereign, and differing from a *cedula* only in form and in the mode of promulgation. Schm. Civil Law, Introd. 93, note.

PRAIRIE. An extensive tract of level or rolling land, destitute of trees, covered with coarse grass, and usually characterized by a deep, fertile soil. Webster. See Buxton v. Railroad Co., 58 Mo. 45; Brunell v. Hopkins, 42 Iowa, 429.

PRATIQUE. A license for the master of a ship to traffic in the ports of a given country, or with the inhabitants of a given port, upon the lifting of quarantine or production of a clean bill of health.

PRAXIS. Lat. Use; practice.

Praxis judicum est interpres legum. Hob. 96. The practice of the judges is the interpreter of the laws.

PRAY IN AID. In old English practice. To call upon for assistance. In real actions, the tenant might *pray in aid* or call for assistance of another, to help him to plead, because of the feebleness or imbecility of his own estate. 3 Bl. Comm. 300.

PRAYER. The request contained in a bill in equity that the court will grant the process, aid, or relief which the complainant desires. Also, by extension, the term is applied to that part of the bill which contains this request.

PRAYER OF PROCESS is a petition with which a bill in equity used to conclude, to the effect that a writ of subpœna might issue against the defendant to compel him to answer upon oath all the matters charged against him in the bill.

PREAMBLE. A clause at the beginning of a constitution or statute explanatory of the reasons for its enactment and the objects sought to be accomplished. See Townsend v. State, 147 Ind. 624, 47 N. E. 19, 37 L. R. A. 294, 62 Am. St. Rep. 477; Fenner v. Luzerne County, 167 Pa. 632, 31 Atl. 862; Lloyd v. Urison, 2 N. J. Law, 224; Coverdale v. Edwards, 155 Ind. 374, 58 N. E. 495.

PREAPPOINTED EVIDENCE. The kind and degree of evidence prescribed in advance (as, by statute) as requisite for the proof of certain facts or the establishment of certain instruments. It is opposed to *casual* evidence, which is left to grow naturally out of the surrounding circumstances.

PREAUDIENCE. The right of being heard before another. A privilege belonging to the English bar, the members of which are entitled to be heard in their order, according to rank, beginning with the king's attorney general, and ending with barristers at large. 3 Steph. Comm. 387, note.

PREBEND. In English ecclesiastical law. A stipend granted in cathedral churches; also, but improperly, a prebendary. A simple prebend is merely a revenue; a prebend with dignity has some jurisdiction attached to it. The term "prebend" is generally confounded with "canonicate;" but there is a difference between them. The former is the stipend granted to an ecclesiastic in consideration of his officiating and serving in the church; whereas the canonicate is a mere title or spiritual quality which may exist independently of any stipend. 2 Steph. Comm. 674, note.

PREBENDARY. An ecclesiastical person serving on the staff of a cathedral, and receiving a stated allowance or stipend from the income or endowment of the cathedral, in compensation for his services.

PRECARIÆ, or PRECES. Day-works which the tenants of certain manors were bound to give their lords in harvest time. *Magna precaria* was a great or general reaping day. Cowell.

PRECARIOUS. Liable to be returned or rendered up at the mere demand or request of another; hence held or retained only on sufferance or by permission; and by an extension of meaning, doubtful, uncertain, dangerous, very liable to break, fail, or terminate.

—Precarious circumstances. The circumstances of an executor are *precarious*, within the meaning and intent of a statute, only when his character and conduct present such evidence of improvidence or recklessnss in the management of the trust-estate, or of his own, as in the opinion of prudent and discreet men endangers its security. Shields v. Shields, 60 Barb. (N. Y.) 56.**—Precarious loan.** A bailment by way of loan which is not to continue for any fixed time, but may be recalled at the mere will and pleasure of the lender.**—Precarious possession.** In modern civil law, possession is called "precarious" which one enjoys by the leave of another and during his pleasure. Civ. Code La. 1900, art. 3556.**—Precarious right.** The right which the owner of a thing transfers to another, to enjoy the same until it shall please the owner to revoke it.**—Precarious trade.** In international law. Such trade as may be carried on by a neutral between two belligerent powers by the mere suffera ce of the latter.

PRECARIUM. Lat. In the civil law. A convention whereby one allows another the use of a thing or the exercise of a right gratuitously till revocation. The bailee acquires thereby the lawful possession of the thing, except in certain cases. The bailor can redemand the thing at any time, even should he have allowed it to the bailee for a designated period. Mackeld. Rom. Law, § 447.

PRECATORY. Having the nature of prayer, request, or entreaty; conveying or embodying a recommendation or advice or the expression of a wish, but not a positive command or direction.

—Precatory trust. A trust created by certain words, which are more like words of entreaty and permission than of command or certainty. Examples of such words, which the courts have held sufficient to constitute a trust, are "wish and request," "have fullest confidence," "heartily beseech," and the like. Rapalje & Lawrence. See Hunt v. Hunt, 18 Wash. 14, 50 Pac. 578; Bohon v. Barrett, 79 Ky. 378; Aldrich v. Aldrich, 172 Mass. 101, 51 N. E. 449.**—Precatory words.** Words of entreaty, request, desire, wish, or recommendation, employed in wills, as distinguished from direct and imperative terms. 1 Williams, Ex'rs, 88, 89, and note. And see Pratt v. Miller, 23 Neb. 496, 37 N. W. 263; Pratt v. Pratt Hospital, 88 Md. 610, 42 Atl. 51.

PRECEDENCE, or PRECEDENCY. The act or state of going before; adjustment of place.

—Precedence, patent of. In English law. A grant from the crown to such barristers as it thinks proper to honor with that mark of distinction, whereby they are entitled to such rank and preaudience as are assigned in their respective patents. 3 Steph. Comm. 274.

PRECEDENT. An adjudged case or decision of a court of justice, considered as furnishing an example or authority for an identical or similar case afterwards arising or a similar question of law.

A draught of a conveyance, settlement, will, pleading, bill, or other legal instrument, which is considered worthy to serve as a pattern for future instruments of the same nature.

PRECEDENT CONDITION. Such as must happen or be performed before an estate can vest or be enlarged. See CONDITION PRECEDENT.

PRECEDENTS SUB SILENTIO. Silent uniform course of practice, uninterrupted though not supported by legal decisions. See Calton v. Bragg, 15 East, 226; Thompson v. Musser, 1 Dall. 464, 1 L. Ed. 222.

Precedents that pass sub silentio are of little or no authority. 16 Vin. Abr. 499.

PRECEPARTIUM. The continuance of a suit by consent of both parties. Cowell.

PRECEPT. In English and American law. An order or direction, emanating from authority, to an officer or body of officers, commanding him or them to do some act within the scope of their powers.

Precept is not to be confined to civil proceedings, and is not of a more restricted meaning than "process." It includes warrants and processes in criminal as well as civil proceedings. Adams v. Vose, 1 Gray (Mass.) 51, 58.

"Precept" means a commandment in writing, sent out by a justice of the peace or

other like officer, for the bringing of a person or record before him. Cowell.

The direction formerly issued by a sheriff to the proper returning officers of cities and boroughs within his jurisdiction for the election of members to serve in parliament. 1 Bl. Comm. 178.

The direction by the judges or commissioners of assize to the sheriff for the summoning a sufficient number of jurors. 3 Steph. Comm. 516.

The direction issued by the clerk of the peace to the overseers of parishes for making out the jury lists. 3 Steph. Comm. 516, note.

In old English criminal law. Instigation to commit a crime. Bract. fol. 138*b*; Cowell.

In Scotch law. An order, mandate, or warrant to do some act. The precept of seisin was the order of a superior to his bailie, to give infeftment of certain lands to his vassal. Bell.

In old French law. A kind of letters issued by the king in subversion of the laws, being orders to the judges to do or tolerate things contrary to law.

—Precept of clare constat. A deed in the Scotch law by which a superior acknowledges the title of the heir of a deceased vassal to succeed to the lands.

PRECES. Lat. In Roman law. Prayers. One of the names of an application to the emperor. Tayl. Civil Law, 230.

PRECES PRIMARIÆ. In English ecclesiastical law. A right of the crown to name to the first prebend that becomes vacant after the accession of the sovereign, in every church of the empire. This right was exercised by the crown of England in the reign of Edward I. 2 Steph. Comm. 670, note.

PRECINCT. A constable's or police district. The immediate neighborhood of a palace or court. A poll-district. See Union Pac. Ry. Co. v. Ryan, 113 U. S. 516, 5 Sup. Ct. 601, 28 L. Ed. 1098; Railway Co. v. Oconto, 50 Wis. 189, 6 N. W. 607, 36 Am. Rep. 840; State v. Anslinger, 171 Mo. 600, 71 S. W. 1041.

PRECIPE. Another form of the name of the written instructions to the clerk of court; also spelled "*præcipe*," (*q. v.*)

PRECIPITIN TEST. Precipitins are formations in the blood of an animal induced by repeated injections into its veins of the blood-serum of an animal of another species; and their importance in diagnosis lies in the fact that when the blood-serum of an animal so treated is mixed with that of any animal of the second species (or a closely related species) and the mixture kept at a temperature of about 98 degrees for several hours, a visible precipitate will result, but not so if the second ingredient of the mixture is drawn from an animal of an entirely different species. In medico-legal practice, therefore, a suspected stain or clot having been first tested by other methods and demonstrated to be blood, the question whether it is the blood of a human being or of other origin is resolved by mixing a solution of it with a quantity of blood-serum taken from a rabbit or some other small animal which has been previously prepared by injections of human blood-serum. After treatment as above described, the presence of a precipitate will furnish strong presumptive evidence that the blood tested was of human origin. The test is not absolutely conclusive, for the reason that blood from an anthropoid ape would produce the same result, in this experiment, as human blood. But if the alternative hypothesis presented attributed the blood in question to some animal of an unrelated species (as, a dog, sheep, or horse) the precipitin test could be fully relied on, as also in the case where no precipitate resulted.

PRÉCIPUT. In French law. A portion of an estate or inheritance which falls to one of the co-heirs over and above his equal share with the rest, and which is to be taken out before partition is made.

PRECLUDI NON. Lat. In pleading. The commencement of a replication to a plea in bar, by which the plaintiff "says that, by reason of anything in the said plea alleged, he *ought not to be barred* from having and maintaining his aforesaid action against him, the said defendant, because he says," etc. Steph. Pl. 440.

PRECOGNITION. In Scotch practice. Preliminary examination. The investigation of a criminal case, preliminary to committing the accused for trial. 2 Alis. Crim. Pr. 134.

PRECOGNOSCE. In Scotch practice. To examine beforehand. Arkley, 232.

PRECONIZATION. Proclamation.

PRECONTRACT. A contract or engagement made by a person, which is of such a nature as to preclude him from lawfully entering into another contract of the same nature. See 1 Bish. Mar. & Div. §§ 112, 272.

PREDECESSOR. One who goes or has gone before; the correlative of "successor." Applied to a body politic or corporate, in the same sense as "ancestor" is applied to a natural person. Lorillard Co. v. Peper (C. C.) 65 Fed. 598.

In Scotch law. An ancestor. 1 Kames Eq. 371.

PREDIAL SERVITUDE. A real or predial servitude is a charge laid on an estate for the use and utility of another estate belonging to another owner. Civil Code La. art. 647. See PRÆDIAL SERVITUDE.

PREDICATE. In logic. That which is said concerning the subject in a logical proposition; as, "The law is the perfection of common sense." "Perfection of common sense," being affirmed concerning the law, (the subject,) is the predicate or thing predicated. Wharton; Bourland v. Hildreth, 26 Cal. 232.

PREDOMINANT. This term, in its natural and ordinary signification, is understood to be something greater or superior in power and influence to others, with which it is connected or compared. So understood, a "predominant motive," when several motives may have operated, is one of greater force and effect, in producing the given result, than any other motive. Matthews v. Bliss, 22 Pick. (Mass.) 53.

PRE-EMPTION. In international law. The right of pre-emption is the right of a nation to detain the merchandise of strangers passing through her territories or seas, in order to afford to her subjects the preference of purchase. 1 Chit. Com. Law, 103.

In English law. The first buying of a thing. A privilege formerly enjoyed by the crown, of buying up provisions and other necessaries, by the intervention of the king's purveyors, for the use of his royal household, at an appraised valuation, in preference to all others, and even without consent of the owner. 1 Bl. Comm. 287; Garcia v. Callender, 125 N. Y. 307, 26 N. E. 283.

In the United States, the right of pre-emption is a privilege accorded by the government to the actual settler upon a certain limited portion of the public domain, to purchase such tract at a fixed price to the exclusion of all other applicants. Nix v. Allen, 112 U. S. 129, 5 Sup. Ct. 70, 28 L. Ed. 675; Bray v. Ragsdale, 53 Mo. 170.

—Pre-emption claimant. One who has settled upon land subject to pre-emption, with the intention to acquire title to it, and has complied, or is proceeding to comply, in good faith, with the requirements of the law to perfect his right to it. Hosmer v. Wallace, 97 U. S. 575, 581, 24 L. Ed. 1130.**—Pre-emption entry.** See ENTRY.**—Pre-emption right.** The right given to settlers upon the public lands of the United States to purchase them at a limited price in preference to others.

PRE-EMPTIONER. One who, by settlement upon the public land, or by cultivation of a portion of it, has obtained the right to purchase a portion of the land thus settled upon or cultivated, to the exclusion of all other persons. Dillingham v. Fisher, 5 Wis. 480. And see Doe v. Beck, 108 Ala. 71, 19 South. 802.

PREFECT. In French law. The name given to the public functionary who is charged in chief with the administration of the laws, in each department of the country. Merl. Répert. See Crespin v. U. S., 168 U. S. 208, 18 Sup. Ct. 53, 42 L. Ed. 438. The term is also used, in practically the same sense, in Mexico. But in New Mexico, a prefect is a probate judge.

PREFER. To bring before; to prosecute; to try; to proceed with. Thus, preferring an indictment signifies prosecuting or trying an indictment.

To give advantage, priority, or privilege; to select for first payment, as to prefer one creditor over others.

PREFERENCE. The act of an insolvent debtor who, in distributing his property or in assigning it for the benefit of his creditors, pays or secures to one or more creditors the full amount of their claims or a larger amount than they would be entitled to receive on a *pro rata* distribution.

Also the right held by a creditor, in virtue of some lien or security, to be preferred above others (*i. e.*, paid first) out of the debtor's assets constituting the fund for creditors. See Pirie v. Chicago Title & Trust Co., 182 U. S. 438, 21 Sup. Ct. 906, 45 L. Ed. 1171; Ashby v. Steere, 2 Fed. Cas. 15; Chadbourne v. Harding, 80 Me. 580, 16 Atl. 248; Chism v. Citizens' Bank, 77 Miss. 599, 27 South. 637; In re Ratliff (D. C.) 107 Fed. 80; In re Stevens, 38 Minn. 432, 38 N. W. 111.

PREFERENCE SHARES. A term used in English law to designate a new issue of shares of stock in a company, which, to facilitate the disposal of them, are accorded a priority or preference over the original shares.

Such shares entitle their holders to a preferential dividend, so that a holder of them is entitled to have the whole of his dividend (or so much thereof as represents the extent to which his shares are, by the constitution of the company, to be deemed preference shares) paid before any dividend is paid to the ordinary shareholders. Mozley & Whitley.

PREFERENTIAL ASSIGNMENT. An assignment of property for the benefit of creditors, made by an insolvent debtor, in which it is directed that a preference (right to be paid first in full) shall be given to a creditor or creditors therein named.

PREFERRED. Possessing or accorded a priority, advantage, or privilege. Generally denoting a prior or superior claim or right of payment as against another thing of

the same kind or class. See State v. Cheraw & C. R. Co., 16 S. C. 528.

—Preferred creditor. A creditor whom the debtor has directed shall be paid before other creditors.—**Preferred debt.** A demand which has priority; which is payable in full before others are paid at all.—**Preferred dividend.** See DIVIDEND.—**Preferred stock.** See STOCK.

PREGNANCY. In medical jurisprudence. The state of a female who has within her ovary or womb a fecundated germ, which gradually becomes developed in the latter receptacle. Dungl. Med. Dict.

—Pregnancy, plea of. A plea which a woman capitally convicted may plead in stay of execution; for this, though it is no stay of judgment, yet operates as a respite of execution until she is delivered. Brown.

PREGNANT NEGATIVE. See NEGATIVE PREGNANT.

PREJUDICE. A forejudgment; bias; preconceived opinion. A leaning towards one side of a cause for some reason other than a conviction of its justice. Willis v. State, 12 Ga. 449; Hungerford v. Cushing, 2 Wis. 405; State v. Anderson, 14 Mont. 541, 37 Pac. 1; Hinkle v. State, 94 Ga. 595, 21 S. E. 595; Keen v. Brown, 46 Fla. 487, 35 South. 401.

The word "prejudice" seemed to imply nearly the same thing as "opinion," a *prejudgment* of the case, and not necessarily an enmity or ill will against either party. Com. v. Webster, 5 Cush. (Mass.) 297, 52 Am. Dec. 711.

"Prejudice" also means injury, loss, or damnification. Thus, where an offer or admission is made "without prejudice," or a motion is denied or a bill in equity dismissed "without prejudice," it is meant as a declaration that no rights or privileges of the party concerned are to be considered as thereby waived or lost, except in so far as may be expressly conceded or decided.

PRELATE. A clergyman of a superior order, as an archbishop or a bishop, having authority over the lower clergy; a dignitary of the church. Webster.

PRÉLÈVEMENT. Fr. In French law. A preliminary deduction; particularly, the portion or share which one member of a firm is entitled to take out of the partnership assets before a division of the property is made between the partners.

PRELIMINARY. Introductory; initiatory; preceeding; temporary and provisional; as preliminary examination, injunction, articles of peace, etc.

—Preliminary act. In English admiralty practice. A document stating the time and place of a collision between vessels, the names of the vessels, and other particulars, required to be filed by each solicitor in actions for damage by such collision, unless the court or a judge shall otherwise order. Wharton.—**Preliminary injunction.** See INJUNCTION.—**Preliminary proof.** In insurance. The first proof offered of a loss occurring under the policy, usually sent in to the underwriters with the notification of claim.

PREMEDITATE. To think of an act beforehand; to contrive and design; to plot or lay plans for the execution of a purpose. See DELIBERATE.

PREMEDITATION. The act of meditating in advance; deliberation upon a contemplated act; plotting or contriving; a design formed to do something before it is done. See State v. Spivey, 132 N. C. 989, 43 S. E. 475; Fahnestock v. State, 23 Ind. 231; Com. v. Perrier, 3 Phila. (Pa.) 232; Atkinson v. State, 20 Tex. 531; State v. Reed, 117 Mo. 604, 23 S. W. 886; King v. State, 91 Tenn. 617, 20 S. W. 169; State v. Carr, 53 Vt. 46; State v. Dowden, 118 N. C. 1145, 24 S. E. 722; Savage v. State, 18 Fla. 965; Com. v. Drum, 58 Pa. 16; State v. Lindgrind, 33 Wash. 440, 74 Pac. 565.

PREMIER. A principal minister of state; the prime minister.

PREMIER SERJEANT, THE QUEEN'S. This officer, so constituted by letters patent, has preaudience over the bar after the attorney and solicitor general and queen's advocate. 3 Steph. Comm. (7th Ed.) 274, note.

PREMISES. That which is put before; that which precedes; the foregoing statements. Thus, in logic, the two introductory propositions of the syllogism are called the "premises," and from hem the conclusion is deduced. So, in pleading, the expression "in consideration of the premises" frequently occurs, the meaning being "in consideration of the matters hereinbefore stated." See Teutonia F. Ins. Co. v. Mund, 102 Pa. 93; Alaska Imp. Co. v. Hirsch, 119 Cal. 249, 47 Pac. 124.

In conveyancing. That part of a deed which precedes the *habendum*, in which are set forth the names of the parties with their titles and additions, and in which are recited such deeds, agreements, or matters of fact as are necessary to explain the reasons upon which the present transaction is founded; and it is here, also, the consideration on which it is made is set down and the certainty of the thing granted. 2 Bl. Comm. 298. And see Miller v. Graham, 47 S. C. 288, 25 S. E. 165; Brown v. Manter, 21 N. H. 533, 53 Am. Dec. 223; Rouse v. Steamboat Co., 59 Hun, 80, 13 N. Y. Supp. 126.

In estates. Lands and tenements; an estate; the subject-matter of a conveyance.

The term "premises" is used in common parlance to signify land, with its appurtenances; but its usual and appropriate meaning in a conveyance is the thing demised or granted by the deed. New Jersey Zinc Co. v. New Jersey Franklinite Co., 13 N. J. Eq. 322; In re Rohr-

Nbacher's Estate, 168 Pa. 158, 32 Atl. 30; Cummings v. Dearborn, 56 Vt. 441; State v. French, 120 Ind. 229, 22 N. E. 108.

The word is also used to denote the subject-matter insured in a policy. 4 Campb. 89.

O **In equity pleading.** The stating part of a bill. It contains a narrative of the facts and circumstances of the plaintiff's case, and the wrongs of which he complains, and the names of the persons by whom done and against whom he seeks redress. Story, Eq. P Pl. § 27.

PREMIUM. The sum paid or agreed to be paid by an assured to the underwriter as the consideration for the insurance; being a certain rate per cent. on the amount insured. 1 Phil. Ins. 205; State v. Pittsburg, etc., Ry. Co., 68 Ohio St. 9, 67 N. E. 93, 64 L. R. A. 405, 96 Am St. Rep. 635; Hill v. Insurance Co., 129 Mich. 141, 88 N. W. 392.

A bounty or bonus; a consideration given to invite a loan or a bargain; as the consideration paid to the assignor by the assignee of a lease, or to the transferrer by the transferee of shares of stock, etc. So stock is said to be "at a premium" when its market price exceeds its nominal or face value. Rhode Island Hospital Trust Co. v. Armington, 21 R. I. 33, 41 Atl. 571; White v. Williams, 90 Md. 719, 45 Atl. 1001; Washington, etc., Ass'n v. Stanley, 38 Or. 319, 63 Pac. 489, 58 L. R. A. 816, 84 Am. St. Rep. 793; Building Ass'n v. Eklund, 190 Ill. 257, 60 N. E. 521, 52 L. R. A. 637. See PAR.

In granting a lease, part of the rent is sometimes capitalized and paid in a lump sum at the time the lease is granted. This is called a "premium."

—Premium note. A promissory note given by the insured for part or all of the amount of the premium.**—Premium pudicitiæ.** The price of chastity. A compensation for the loss of chastity, paid or promised to, or for the benefit of, a seduced female.

PREMUNIRE. See PRÆMUNIRE.

PRENDA. In Spanish law. Pledge. White, New Recop. b. 2, tit. 7.

PRENDER, PRENDRE. L. Fr. To take. The power or right of taking a thing without waiting for it to be offered. See A PRENDER.

PRENDER DE BARON. L. Fr. In old English law. A taking of husband; marriage. An exception or plea which might be used to disable a woman from pursuing an appeal of murder against the killer of her former husband. Staundef. P. C. lib. 3, c. 59.

PREPENSE. Forethought; preconceived; premeditated. See Territory v. Bannigan, 1 Dak. 451, 46 N. W. 597; People v. Clark, 7 N. Y. 385.

PREPONDERANCE. This word means something more than "weight;" it denotes a superiority of weight, or outweighing. The words are not synonymous, but substantially different. There is generally a "weight" of evidence on each side in case of contested facts. But juries cannot properly act upon the weight of evidence, in favor of the one having the *onus*, unless it overbear, in some degree, the weight upon the other side. Shinn v. Tucker, 37 Ark. 588. And see Hoffman v. Loud, 111 Mich. 158, 69 N. W. 231; Willcox v. Hines, 100 Tenn. 524, 45 S. W. 781, 66 Am. St. Rep. 761; Mortimer v. McMullen, 202 Ill. 413, 67 N. E. 20; Bryan v. Chicago, etc., R. Co., 63 Iowa, 464, 19 N. W. 295.

PREROGATIVE. An exclusive or peculiar privilege. The special power, privilege, immunity, or advantage vested in an official person, either generally, or in respect to the things of his office, or in an official body, as a court or legislature. See Attorney General v. Blossom, 1 Wis. 317; Attorney General v. Eau Claire, 37 Wis. 443.

In English law. That special pre-eminence which the king (or queen) has over and above all other persons, in right of his (or her) regal dignity. A term used to denote those rights and capacities which the sovereign enjoys alone, in contradistinction to others. 1 Bl. Comm. 239.

—Prerogative court. In English law. A court established for the trial of all testamentary causes, where the deceased left *bona notabilia* within two different dioceses; in which case the probate of wills belonged to the archbishop of the province, by way of special prerogative. And all causes relating to the wills, administrations, or legacies of such persons were originally cognizable herein, before a judge appointed by the archbishop, called the "judge of the prerogative court," from whom an appeal lay to the privy council. 3 Bl. Comm. 66; 3 Steph. Comm. 432. In New Jersey the prerogative court is the court of appeal from decrees of the orphans' courts in the several counties of the state. The court is held before the chancellor, under the title of the "ordinary." See In re Coursen's Will, 4 N. J. Eq. 413; Flanigan v. Guggenheim Smelting Co., 63 N. J. Law, 647, 44 Atl. 762; Robinson v. Fair, 128 U. S. 53, 9 Sup. Ct. 30, 32 L. Ed. 415.**—Prerogative law.** That part of the common law of England which is more particularly applicable to the king. Com. Dig. tit. "Ley," A.**—Prerogative writs.** In English law, the name is given to certain judicial writs issued by the courts only upon proper cause shown, never as a mere matter of right, the theory being that they involve a direct interference by the government with the liberty and property of the subject, and therefore are justified only as an exercise of the extraordinary power (prerogative) of the crown. In America, a theory has sometimes been advanced that these writs should issue only in cases *publici juris* and those affecting the sovereignty of the state, or its franchises or prerogatives, or the liberties of the people. But their issuance is now generally regulated by statute, and the use of the term "prerogative," in describing them, amounts only to a reference to their origin and history. These writs are the writs of mandamus, procedendo, prohibition, quo warranto, habeas corpus, and certiorari. See 3 Steph. Comm. 629; Territory

v. Ashenfelter, 4 N. M. 93, 12 Pac. 879; State v. Archibald, 5 N. D. 359, 66 N. W. 234; Duluth Elevator Co. v. White, 11 N. D. 534, 90 N. W. 12; Attorney General v. Eau Claire, 37 Wis. 400.

PRES. L. Fr. Near. *Cy pres*, so near; as near. See CY PRES.

PRESBYTER. Lat. In civil and ecclesiastical law. An elder; a presbyter; a priest. Cod. 1, 3, 6, 20; Nov. 6.

PRESBYTERIUM. That part of the church where divine offices are performed; formerly applied to the choir or chancel, because it was the place appropriated to the bishop, priest, and other clergy, while the laity were confined to the body of the church. Jacob.

PRESCRIBABLE. That to which a right may be acquired by prescription.

PRESCRIBE. To assert a right or title to the enjoyment of a thing, on the ground of having hitherto had the uninterrupted and immemorial enjoyment of it.

To direct; define; mark out. In modern statutes relating to matters of an administrative nature, such as procedure, registration, etc., it is usual to indicate in general terms the nature of the proceedings to be adopted, and to leave the details to be *prescribed* or regulated by rules or orders to be made for that purpose in pursuance of an authority contained in the act. Sweet. And see Mansfield v. People, 164 Ill. 611, 45 N. E. 976; Ex parte Lothrop, 118 U. S. 113, 6 Sup. Ct. 984, 30 L. Ed. 108; Field v. Marye, 83 Va. 882, 3 S. E. 707.

PRESCRIPTION. A mode of acquiring title to incorporeal hereditaments grounded on the fact of immemorial or long-continued enjoyment. See Lucas v. Turnpike Co., 36 W. Va. 427, 15 S. E. 182; Gayetty v. Bethune, 14 Mass. 52, 7 Am. Dec. 188; Louisville & N. R. Co. v. Hays, 11 Lea (Tenn.) 388, 47 Am. Rep. 291; Clarke v. Clarke, 133 Cal. 667, 66 Pac. 10; Alhambra Addition Water Co. v. Richardson, 72 Cal. 598, 14 Pac. 379; Stevens v. Dennett, 51 N. H. 329.

Title by prescription is the right which a possessor acquires to property by reason of the continuance of his possession for a period of time fixed by the laws. Code Ga. 1882, § 2678.

"Prescription" is the term usually applied to incorporeal hereditaments, while "adverse possession" is applied to lands. Hindley v. Metropolitan El. R. Co., 42 Misc. Rep. 56, 85 N. Y. Supp. 561.

In Louisiana, prescription is defined as a manner of acquiring the ownership of property, or discharging debts, by the effect of time, and under the conditions regulated by law. Each of these prescriptions has its special and particular definition. The prescription by which the ownership of property is acquired, is a right by which a mere possessor acquires the ownership of a thing which he possesses by the continuance of his possession during the time fixed by law. The prescription by which debts are released, is a peremptory and perpetual bar to every species of action, real or personal, when the creditor has been silent for a certain time without urging his claim. Civ. Code La. arts. 3457–3459. In this sense of the term it is very nearly equivalent to what is elsewhere expressed by "limitation of actions," or rather, the "bar of the statute of limitations."

"Prescription" and "custom" are frequently confounded in common parlance, arising perhaps from the fact that immemorial usage was essential to both of them; but, strictly, they materially differ from one another, in that custom is properly a local impersonal usage, such as borough-English, or postremogeniture, which is annexed to a given estate, while prescription is simply personal, as that a certain man and his ancestors, or those whose estate he enjoys, have immemorially exercised a right of pasture-common in a certain parish. Again, prescription has its origin in a grant, evidenced by usage, and is allowed on account of its loss, either actual or supposed, and therefore only those things can be prescribed for which could be raised by a grant previously to 8 & 9 Vict. c. 106, § 2; but this principle does not necessarily hold in the case of a custom. Wharton.

The difference between "prescription," "custom," and "usage" is also thus stated: "Prescription hath respect to a certain person who, by intendment, may have continuance forever, as, for instance, he and all they whose estate he hath in such a thing,—this is a prescription; while custom is local, and always applied to a certain place, and is common to all; while usage differs from both, for it may be either to persons or places." Jacob.

—Corporations by prescription. In English law. Those which have existed beyond the memory of man, and therefore are looked upon in law to be well created, such as the city of London.**—Prescription act.** The statute 2 & 3 Wm. IV. c. 71, passed to limit the period of prescription in certain cases.**—Prescription in a que estate.** A claim of prescription based on the immemorial enjoyment of the right claimed, by the claimant and those former owners "whose estate" he has succeeded to and holds. See Donnell v. Clark, 19 Me. 182.**—Time of prescription.** The length of time necessary to establish a right claimed by prescription or a title by prescription. Before the act of 2 & 3 Wm. IV. c. 71, the possession required to constitute a prescription must have existed "time out of mind" or "beyond the memory of man," that is, before the reign of Richard I.; but the time of prescription, in certain cases, was much shortened by that act. 2 Steph. Comm. 35.

PRESENCE. The existence of a person in a particular place at a given time, particularly with reference to some act done there and then. Besides actual presence, the law recognizes *constructive* presence, which latter may be predicated of a person who, though not on the very spot, was near enough to be accounted present by the law, or who was actively co-operating with another who was actually present. See Mitchell v. Com., 33 Grat. (Va.) 868.

PRESENT, *v.* In English ecclesiastical law. To offer a clerk to the bishop of the diocese, to be instituted. 1 Bl. Comm. 389.

In criminal law. To find or represent judicially; used of the official act of a grand jury when they take notice of a crime or offense from their own knowledge or observation, without any bill of indictment laid before them.

In the law of negotiable instruments. Primarily, to present is to tender or offer. Thus, to present a bill of exchange for acceptance or payment is to exhibit it to the drawee or acceptor, (or his authorized agent,) with an express or implied demand for acceptance or payment. Byles, Bills, 183, 201.

PRESENT, *n.* A gift; a gratuity; anything presented or given.

PRESENT, *adj.* Now existing; at hand; relating to the present time; considered with reference to the present time.

—Present enjoyment. The immediate or present possession and use of an estate or property, as distinguished from such as is postponed to a future time.**—Present estate.** An estate in immediate possession; one now existing, or vested at the present time; as distinguished from a *future* estate, the enjoyment of which is postponed to a future time.**—Present interest.** One which entitles the owner to the immediate possession of the property. Civ. Code Mont. 1895, § 1110; Rev. Codes N. D. 1899, § 3288; Civ. Code S. D. 1903, § 204. **—Present use.** One which has an immediate existence, and is at once operated upon by the statute of uses.

PRESENTATION. In ecclesiastical law. The act of a patron or proprietor of a living in offering or presenting a clerk to the ordinary to be instituted in the benefice.

—Presentation office. The office of the lord chancellor's official, the secretary of presentations, who conducts all correspondence having reference to the twelve canonries and six hundred and fifty livings in the gift of the lord chancellor, and draws and issues the fiats of appointment. Sweet.

PRESENTATIVE ADVOWSON. See ADVOWSON.

PRESENTEE. In ecclesiastical law. A clerk who has been presented by his patron to a bishop in order to be instituted in a church.

PRESENTER. One that presents.

PRESENTLY. Immediately; now; at once. A right which may be exercised "presently" is opposed to one in reversion or remainder.

PRESENTMENT. In criminal practice. The written notice taken by a grand jury of any offense, from their own knowledge or observation, without any bill of indictment laid before them at the suit of the government. 4 Bl. Comm. 301.

A presentment is an informal statement in writing, by the grand jury, representing to the court that a public offense has been committed which is triable in the county, and that there is reasonable ground for believing that a particular individual named or described therein has committed it. Pen. Code Cal. § 916. And see In re Grosbois, 109 Cal. 445, 42 Pac. 444; Com. v. Green, 126 Pa. 531, 17 Atl. 878, 12 Am. St. Rep. 894; Mack v. People, 82 N. Y. 237; Eason v. State, 11 Ark. 482; State v. Kiefer, 90 Md. 165, 44 Atl. 1043.

In its limited sense, a presentment is a statement by the grand jury of an offense from their own knowledge, without any bill of indictment laid before them, setting forth the name of the party, place of abode, and the offense committed, informally, upon which the officer of the court afterwards frames an indictment. Collins v. State, 13 Fla. 651, 663.

The difference between a presentment and an inquisition is this: that the former is found by a grand jury authorized to inquire of offenses generally, whereas the latter is an accusation found by a jury specially returned to inquire concerning the particular offense. 2 Hawk. P. C. c. 25, § 6.

The writing which contains the accusation so presented by a grand jury is also called a "presentment."

Presentments are also made in courts-leet and courts-baron, before the stewards. Steph. Comm. 644.

In contracts. The production of a bill of exchange to the drawee for his acceptance, or to the drawer or acceptor for payment; or of a promissory note to the party liable, for payment of the same.

PRESENTS. The present instrument. The phrase "these presents" is used in any legal document to designate the instrument in which the phrase itself occurs.

PRESERVATION. Keeping safe from harm; avoiding injury, destruction, or decay. This term always presupposes a real or existing danger. See Gribble v. Wilson, 101 Tenn. 612, 49 S. W. 736; Neuendorff v. Duryea, 52 How. Prac. (N. Y.) 269.

PRESIDE. To preside over a court is to "hold" it,—to direct, control, and govern it as the chief officer. A judge may "preside" whether sitting as a sole judge or as one of several judges. Smith v. People, 47 N. Y. 334.

PRESIDENT. One placed in authority over others; a chief officer; a presiding or managing officer; a governor, ruler, or director.

The chairman, moderator, or presiding officer of a legislative or deliberative body, appointed to keep order, manage the proceedings, and govern the administrative details of their business.

The chief officer of a corporation, company, board, committee, etc., generally having the

main direction and administration of their concerns. Roe v. Bank of Versailles, 167 Mo. 406, 67 S. W. 303.

The chief executive magistrate of a state or nation, particularly under a democratic form of government; or of a province, colony, or dependency.

In English law. A title formerly given to the king's lieutenant in a province; as the president of Wales. Cowell.

This word is also an old though corrupted form of "precedent," (*q. v.*,) used both as a French and English word. *Le president est rare.* Dyer, 136.

—President of the council. In English law. A great officer of state; a member of the cabinet. He attends on the sovereign, proposes business at the council-table, and reports to the sovereign the transactions there. 1 Bl. Comm. 230.**—President of the United States.** The official title of the chief executive officer of the federal government in the United States.

PRESIDENTIAL ELECTORS. A body of electors chosen in the different states, whose sole duty it is to elect a president and vice-president of the United States. Each state appoints, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the state is entitled in congress. Const. U. S. art. 2, § 1.

PRESS. In old practice. A piece or skin of parchment, several of which used to be sewed together in making up a roll or record of proceedings. See 1 Bl. Comm. 183; Townsh. Pl. 486.

Metaphorically, the aggregate of publications issuing from the press, or the giving publicity to one's sentiments and opinions through the medium of printing; as in the phrase "liberty of the press."

PRESSING SEAMEN. See IMPRESSMENT.

PRESSING TO DEATH. See PEINE FORTE ET DURE.

PREST. In old English law. A duty in money to be paid by the sheriff upon his account in the exchequer, or for money left or remaining in his hands. Cowell.

PREST-MONEY. A payment which binds those who receive it to be ready at all times appointed, being meant especially of soldiers. Cowell.

PRESTATION. In old English law. A payment or performance; the rendering of a service.

PRESTATION-MONEY. A sum of money paid by archdeacons yearly to their bishop; also purveyance. Cowell.

PRESTIMONY, or PRÆSTIMONIA. In canon law. A fund or revenue appropriated by the founder for the subsistence of a priest, without being erected into any title or benefice, chapel, prebend, or priory. It is not subject to the ordinary; but of it the patron, and those who have a right from him, are the collators. Wharton.

PRESUMPTIO. See PRÆSUMPTIO; PRESUMPTION.

PRESUMPTION. An inference affirmative or disaffirmative of the truth or falsehood of any proposition or fact drawn by a process of probable reasoning in the absence of actual certainty of its truth or falsehood, or until such certainty can be ascertained. Best, Pres. § 3.

A rule of law that courts and judges shall draw a particular inference from a particular fact, or from particular evidence, unless and until the truth of such inference is disproved. Steph. Ev. 4. And see Lane v. Missouri Pac. Ry. Co., 132 Mo. 4, 33 S. W. 645; State v. Tibbetts, 35 Me. 81; Newton v. State, 21 Fla. 98; Ulrich v. Ulrich, 136 N. Y. 120, 32 N. E. 606, 18 L. R. A. 37; U. S. v. Sykes (D. C.) 58 Fed. 1000; Snediker v. Everingham, 27 N. J. Law, 153; Cronan v. New Orleans, 16 La. Ann. 374; U. S. v. Searcey (D. C.) 26 Fed. 437; Doane v. Glenn, 1 Colo. 495.

A presumption is a deduction which the law expressly directs to be made from particular facts. Code Civ. Proc. Cal. § 1959.

Presumptions are consequences which the law or the judge draws from a known fact to a fact u known. Civ. Code La. art. 2284.

An inference affirmative or disaffirmative of the existence of a disputed fact, drawn by a judicial tribunal, by a process of probable reasoning, from some one or more matters of fact, either admitted in the cause or otherwise satisfactorily established. Best, Pres. § 12.

A presumption is an inference as to the existence of a fact not known, arising from its connection with the facts that are known, and founded upon a knowledge of human nature and the motives which are known to influence human conduct. Jackson v. Warford, 7 Wend. (N. Y.) 62.

Classification.—Presumptions are either presumptions *of law* or presumptions *of fact.* "A presumption of law is a juridical postulate that a particular predicate is universally assignable to a particular subject. A presumption of fact is a logical argument from a fact to a fact; or, as the distinction is sometimes put, it is an argument which infers a fact otherwise doubtful from a fact which is proved." 2 Whart. Ev. § 1226. See Code Ga. § 2752. And see Home Ins. Co. v. Weide, 11 Wall. 438, 20 L. Ed. 197; Podolski v. Stone, 186 Ill. 540, 58 N. E. 340; McIntyre v. Ajax Min. Co., 20 Utah, 323, 60 Pac. 552; U. S. v. Sykes (D. C.) 58 Fed. 1000; Sun Mut. Ins. Co. v. Ocean Ins. Co., 107 U. S. 485, 1 Sup. Ct. 582, 27 L. Ed. 337; Lyon v. Guild, 5 Heisk. (Tenn.) 182; Com. v. Frew, 3 Pa. Co. Ct. R. 496.

Presumptions of law are rules which, in certain cases, either forbid or dispense with any ulterior inquiry. 1 Greenl. Ev. § 14. Inferences or positions established, for the most part, by the common, but occasionally by the statute, law, which are obligatory alike on judges and juries. Best, Pres. § 15.

Presumptions of fact are inferences as to the existence of some fact drawn from the existence

of some other fact; inferences which common sense draws from circumstances usually occurring in such cases. 1 Phil. Ev. 436.

Presumptions are divided into *præsumptiones juris et de jure*, otherwise called "irrebuttable presumptions," (often, but not necessarily, fictitious,) which the law will not suffer to be rebutted by any counter-evidence; as, that an infant under seven years is not responsible for his actions; *præsumptiones juris tantum*, which hold good in the absence of counter-evidence, but against which counter-evidence may be admitted; and *præsumptiones hominis*, which are not necessarily conclusive, though no proof to the contrary be adduced. Mozley & Whitley.

There are also certain *mixed* presumptions, or presumptions of fact recognized by law, or presumptions of mixed law and fact. These are certain presumptive inferences, which, from their strength, importance, or frequent occurrence, attract, as it were, the observation of the law. The presumption of a "lost grant" falls within this class. Best, Ev. 436. See Dickson v. Wilkinson, 3 How. 57, 11 L. Ed. 491.

Presumptions of law are divided into *conclusive* presumptions and *disputable* presumptions. A conclusive presumption is a rule of law determining the quantity of evidence requisite for the support of a particular averment which is not permitted to be overcome by any proof that the fact is otherwise. 1 Greenl. Ev. § 15; U. S. v. Clark, 5 Utah, 226, 14 Pac. 288; Brandt v. Morning Journal Ass'n, 81 App. Div. 183, 80 N. Y. Supp. 1002. These are also called "absolute" and "irrebuttable" presumptions. A disputable presumption is an inference of law which holds good until it is invalidated by proof or a stronger presumption.

A *natural* presumption is that species of presumption, or process of probable reasoning, which is exercised by persons of ordinary intelligence, in inferring one fact from another, without reference to any technical rules. Otherwise called "*præsumptio hominis.*" Burrill, Circ. Ev. 11, 12, 22, 24.

Legitimate presumptions have been denominated "violent" or "probable," according to the amount of weight which attaches to them. Such presumptions as are drawn from inadequate grounds are termed "light" or "rash" presumptions. Brown.

—Presumption of survivorship. A presumption of fact, to the effect that one person survived another, applied for the purpose of determining a question of succession or similar matter, in a case where the two persons perished in the same catastrophe, and there are no circumstances extant to show which of them actually died first, except those on which the presumption is founded, viz., differences of age, sex, strength, or physical condition.

PRESUMPTIVE. Resting on presumption; created by or arising out of presumption; inferred; assumed; supposed; as, "presumptive" damages, evidence, heir, notice, or title. See those titles.

PRÊT. In French law. Loan. A contract by which one of the parties delivers an article to the other, to be used by the latter, on condition of his returning, after having used it, the same article in nature or an equivalent of the same species and quality. Duverger.

—Prêt à intérêt. Loan at interest. A contract by which one of the parties delivers to the other a sum of money, or commodities, or other movable or fungible things, to receive for their use a profit determined in favor of the lender. Duverger.—**Prêt à usage.** Loan for use. A contract by which one of the parties delivers an article to the other, to be used by the latter, the borrower agreeing to return the specific article after having used it. Duverger. A contract identical with the *commodatum* (*q. v.*) of the civil law.—**Prêt de consommation.** Loan for consumption. A contract by which one party delivers to the other a certain quantity of things, such as are consumed in the use, on the undertaking of the borrower to return to him an equal quantity of the same species and quality. Duverger. A contract identical with the *mutuum* (*q. v.*) of the civil law.

PRETEND. To feign or simulate; to hold that out as real which is false or baseless. Brown v. Perez (Tex. Civ. App.) 25 S. W. 983; Powell v. Yeazel, 46 Neb. 225, 64 N. W. 695. As to the rule against the buying and selling of "any pretended right or title," see PRETENSED RIGHT OR TITLE.

PRETENSE. See FALSE PRETENSE.

PRETENSED RIGHT, or TITLE. Where one is in possession of land, and another, who is out of possession, claims and sues for it. Here the pretensed right or title is said to be in him who so claims and sues for the same. Mod. Cas. 302.

—Pretensed title statute. The English statute 32 Hen. VIII. c. 9, § 2. It enacts that no one shall sell or purchase any pretended right or title to land, unless the vendor has received the profits thereof for one whole year before such grant, or has been in actual possession of the land, or of the reversion or remainder, on pain that oth purchaser and vendor shall each forfeit the value of such land to the king and the prosecutor. See 4 Broom & H. Comm. 150.

PRETENSES. Allegations sometimes made in a bill in chancery for the purpose of negativing an anticipated defense. Hunt, Eq. pt. I. c. 1.

—False pretenses. See FALSE.

PRETENSION. In French law. The claim made to a thing which a party believes himself entitled to demand, but which is not admitted or adjudged to be his.

PRETER LEGAL. Not agreeable to law; exceeding the limits of law; not legal.

PRETERITION. In the civil law. The omission by a testator of some one of his heirs who is legally entitled to a portion of the inheritance.

PRETEXTS. In international law. Reasons alleged as justificatory, but which are so only in appearance, or which are even absolutely destitute of all foundation. The name of "pretexts" may likewise be applied to reasons which are in themselves true and well-founded, but, not being of sufficient importance for undertaking a war, [or other international act,] are made use of only to cover ambitious views. Vatt. Law Nat. bk. 3, c. 3, § 32.

PRETIUM. Lat. Price; cost; value; the price of an article sold.

—Pretium affectionis. An imaginary value put upon a thing by the fancy of the owner, and growing out of his attachment for the specific article, its associations, his sentiment for the donor, etc. Bell; The H. F. Dimock, 77 Fed. 233, 23 C. C. A. 123.**—Pretium periculi.** The price of the risk, *e. g.*, the premium paid on a policy of insurance; also the interest paid on money advanced on bottomry or respondentia.**—Pretium sepulchri.** A mortuary, (*q. v.*)

Pretium succedit in locum rei. The price stands in the place of the thing sold. 1 Bouv. Inst. no. 939; 2 Bulst. 312.

PRETORIUM. In Scotch law. A courthouse, or hall of justice. 3 How. State Tr. 425.

PREVAILING PARTY. That one of the parties to a suit who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, though not to the extent of his original contention. See Belding v. Conklin, 2 Code Rep. (N. Y.) 112; Weston v. Cushing, 45 Vt. 531; Hawkins v. Nowland, 53 Mo. 329; Pomroy v. Cates, 81 Me. 377, 17 Atl. 311.

PREVARICATION. In the civil law. Deceitful, crafty, or unfaithful conduct; particularly, such as is manifested in concealing a crime. Dig. 47, 15, 6.

In English law. A collusion between an informer and a defendant, in order to a feigned prosecution. Cowell. Also any secret abuse committed in a public office or private commission; also the willful concealment or misrepresentation of truth, by giving evasive or equivocating evidence.

PREVENT. To hinder or preclude. To stop or intercept the approach, access, or performance of a thing. Webster; U. S. v. Souders, 27 Fed. Cas. 1,269; Green v. State, 109 Ga. 536, 35 S. E. 97; Burr v. Williams, 20 Ark. 171; In re Jones, 78 Ala. 421.

PREVENTION. In the civil law. The right of a judge to take cognizance of an action over which he has concurrent jurisdiction with another judge.

In canon law. The right which a superior person or officer has to lay hold of, claim, or transact an affair prior to an inferior one, to whom otherwise it more immediately belongs. Wharton.

PREVENTION OF CRIMES ACT. The statute 34 & 35 Vict. c. 112, passed for the purpose of securing a better supervision over habitual criminals. This act provides that a person who is for a second time convicted of crime may, on his second conviction, be subjected to police supervision for a period of seven years after the expiration of the punishment awarded him. Penalties are imposed on lodging-house keepers, etc., for harboring thieves or reputed thieves. There are also provisions relating to receivers of stolen property, and dealers in old metals who purchase the same in small quantities. This act repeals the habitual criminals act of 1869, (32 & 33 Vict. c. 99.) Brown.

PREVENTIVE JUSTICE. The system of measures taken by government with reference to the direct prevention of crime. It generally consists in obliging those persons whom there is probable ground to suspect of future misbehavior to give full assurance to the public that such offense as is apprehended shall not happen, by finding pledges or securities to keep the peace, or for their good behavior. See 4 Bl. Comm. 251; 4 Steph. Comm. 290.

PREVENTIVE SERVICE. The name given in England to the coast-guard, or armed police, forming a part of the customs service, and employed in the prevention and detection of smuggling.

Previous intentions are judged by subsequent acts. Dumont v. Smith, 4 Denio (N. Y.) 319, 320.

PREVIOUS QUESTION. In the procedure of parliamentary bodies, moving the "previous question" is a method of avoiding a direct vote on the main subject of discussion. It is described in May, Parl. Prac. 277.

PREVIOUSLY. An adverb of time, used in comparing an act or state named with another act or state, subsequent in order of time, for the purpose of asserting the priority of the first. Lebrecht v. Wilcoxon, 40 Iowa, 94.

PRICE. The consideration (usually in money) given for the purchase of a thing.

It is true that "price" generally means the sum of money which an article is sold for; but this is simply because property is generally sold for money, not because the word has necessarily such a restricted meaning. Among writers on political economy, who use terms with philosophical accuracy, the word "price" is not always or even generally used as denoting the moneyed equivalent of property sold. They generally treat and regard price as the equivalent or compensation, in whatever form received, for property sold. The Latin word from which "price" is derived sometimes means "reward," "value," "estimation," "equivalent." Hudson Iron Co. v. Alger, 54 N. Y. 177.

—Price current. A list or enumeration of various articles of merchandise, with their prices, the duties, if any, payable thereon, when imported or exported, with the drawbacks occasionally allowed upon their exportation, etc. Wharton.

PRICKING FOR SHERIFFS. In England, when the yearly list of persons nominated for the office of sheriff is submitted to the sovereign, he takes a pin, and to insure

N impartiality, as it is said, lets the point of it fall upon one of the three names nominated for each county, etc., and the person upon whose name it chances to fall is sheriff for the ensuing year. This is called "pricking for sheriffs." Atk. Sher. 18.

O

PRICKING NOTE. Where goods intended to be exported are put direct from the station of the warehouse into a ship alongside, the exporter fills up a document to authorize the receiving the goods on board. This document is called a "pricking note," from a practice of pricking holes in the paper corresponding with the number of packages counted into the ship. Hamel, Cust. 181.

P

PRIEST. A minister of a church. A person in the second order of the ministry, as distinguished from bishops and deacons.

PRIMA FACIE. Lat. At first sight; on the first appearance; on the face of it; so far as can be judged from the first disclosure; presumably.

A litigating party is said to have a *prima facie* case when the evidence in his favor is sufficiently strong for his opponent to be called on to answer it. A *prima facie* case, then, is one which is established by sufficient evidence, and can be overthrown only by rebutting evidence adduced on the other side. In some cases the only question to be considered is whether there is a *prima facie* case or no. Thus a grand jury are bound to find a true bill of indictment, if the evidence before them creates a *prima facie* case against the accused; and for this purpose, therefore, it is not necessary for them to hear the evidence for the defense. Mozley & Whitley. And see State v. Hardelein, 169 Mo. 579, 70 S. W. 130; State v. Lawlor, 28 Minn. 216, 9 N. W. 698.

—Prima facie evidence. See EVIDENCE.

PRIMA TONSURA. The first mowing; a grant of a right to have the first crop of grass. 1 Chit. Pr. 181.

PRIMÆ IMPRESSIONIS. A case *primæ impressionis* (of the first impression) is a case of a new kind, to which no established principle of law or precedent directly applies, and which must be decided entirely by reason as distinguished from authority.

PRIMÆ PRECES. Lat. In the civil law. An imperial prerogative by which the emperor exercised the right of naming to the first prebend that became vacant after his accession, in every church of the empire. 1 Bl. Comm. 381.

PRIMAGE. In mercantile law. A small allowance or compensation payable to the master and mariners of a ship or vessel; to the former for the use of his cables and ropes to discharge the goods of the merchant; to the latter for lading and unlading in any port or haven. Abb. Shipp. 404; Peters v. Speights, 4 Md. Ch. 381; Blake v. Morgan, 3 Mart. O. S. (La.) 381.

PRIMARIA ECCLESIA. The mother church. 1 Steph. Comm. (7th Ed.) 118.

PRIMARY. First; principal; chief; leading.

—Primary allegation. The opening pleading in a suit in the ecclesiastical court. It is also called a "primary plea."**—Primary disposal of the soil.** In acts of congress admitting territories as states, and providing that no laws shall be passed interfering with the primary disposal of the soil, this means the disposal of it by the United States government when it parts with its title to private persons or corporations acquiring the right to a patent or deed in accordance with law. See Oury v. Goodwin, 3 Ariz. 255, 26 Pac. 377; Topeka Commercial Security Co. v. McPherson, 7 Okl. 332, 54 Pac. 489.**—Primary powers.** The principal authority given by a principal to his agent. It differs from "mediate powers." Story, Ag. § 58.

As to primary "Conveyance," "Election," "Evidence," and "Obligation," see those titles.

PRIMATE. A chief ecclesiastic; part of the style and title of an archbishop. Thus, the archbishop of Canterbury is styled "Primate of all England;" the archbishop of York is "Primate of England." Wharton.

PRIME. Fr. In French law. The price of the risk assumed by an insurer; premium of insurance. Emerig. Traite des Assur. c. 3, § 1, nn. 1, 2.

PRIME, *v.* To stand first or paramount; to take precedence or priority of; to outrank; as, in the sentence "taxes prime all other liens."

PRIME SERJEANT. In English law. The king's first serjeant at law.

PRIMER. A law French word, signifying first; primary.

—Primer election. A term used to signify first choice; *e. g.*, the right of the eldest coparcener to first choose a purpart.**—Primer fine.** On suing out the writ or *præcipe* called a "writ of covenant," there was due to the crown, by ancient prerogative, a *primer fine*, or a noble for every five marks of land sued for. That was one-tenth of the annual value. 1 Steph. Comm. (7th Ed.) 560.**—Primer seisin.** See SEISIN.

PRIMICERIUS. In old English law. The first of any degree of men. 1 Mon. Angl. 838.

PRIMITIÆ. In English law. First fruits; the first year's whole profits of a spiritual preferment. 1 Bl. Comm. 284.

PRIMO BENEFICIO. Lat. A writ directing a grant of the first benefice in the sovereign's gift. Cowell.

Primo excutienda est verbi vis, ne sermonis vitio obstruatur oratio, sive lex sine argumentis. Co. Litt. 68. The

full meaning of a word should be ascertained at the outset, in order that the sense may not be lost by defect of expression, and that the law be not without reasons.

PRIMO VENIENTI. Lat. To the one first coming. An executor anciently paid debts as they were presented, whether the assets were sufficient to meet all debts or not. Stim. Law Gloss.

PRIMOGENITURE. **1.** The state of being the first-born among several children of the same parents; seniority by birth in the same family.

2. The superior or exclusive right possessed by the eldest son, and particularly, his right to succeed to the estate of his ancestor, in right of his seniority by birth, to the exclusion of younger sons.

PRIMOGENITUS. Lat. In old English law. A first-born or eldest son. Bract. fol. 33.

PRIMUM DECRETUM. Lat. In the canon law. The first decree; a preliminary decree granted on the non-appearance of a defendant, by which the plaintiff was put in possession of his goods, or of the thing itself which was demanded. Gilb. Forum Rom. 32, 33.

PRINCE. In a general sense, a sovereign; the ruler of a nation or state. More particularly, the son of a king or emperor, or the issue of a royal family; as princes of the blood. The chief of any body of men. Webster.

—Prince of Wales. The eldest son of the English sovereign. He is the heir-apparent to the crown.

PRINCEPS. Lat. In the civil law. The prince; the emperor.

Princeps et respublica ex justa causa possunt rem meam auferre. 12 Coke, 13. The prince and the republic, for a just cause, can take away my property.

Princeps legibus solutus est. The emperor is released from the laws; is not bound by the laws. Dig. 1, 3, 31.

Princeps mavult domesticos milites quam stipendiarios bellicis opponere casibus. Co. Litt. 69. A prince, in the chances of war, had better employ domestic than stipendiary troops.

PRINCES OF THE ROYAL BLOOD. In English law. The younger sons and daughters of the sovereign, and other branches of the royal family who are not in the immediate line of succession.

PRINCESS ROYAL. In English law. The eldest daughter of the sovereign. 3 Steph. Comm. 450.

PRINCIPAL. Chief; leading; highest in rank or degree; most important or considerable; primary; original; the source of authority or right.

In the law relating to real and personal property, "principal" is used as the correlative of "accessory," and denotes the more important or valuable subject, with which others are connected in a relation of dependence or subservience, or to which they are incident or appurtenant.

In criminal law. A chief actor or perpetrator, as distinguished from an "accessary." A principal in the first degree is he that is the actor or absolute perpetrator of the crime; and, in the second degree, he who is present, aiding and abetting the fact to be done. 4 Bl. Comm. 34. And see Bean v. State, 17 Tex. App. 60; Mitchell v. Com., 33 Grat. (Va.) 868; Cooney v. Burke, 11 Neb. 258, 9 N. W. 57; Red v. State, 39 Tex. Cr. R. 667, 47 S. W. 1003, 73 Am. St. Rep. 965; State v. Phillips, 24 Mo. 481; Travis v. Com., 96 Ky. 77, 27 S. W. 863.

All persons concerned in the commission of crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, are principals. Pen. Code Dak. § 27.

A criminal offender is either a principal or an accessary. A principal is either the actor (*i. e.*, the actual perpetrator of the crime) or else is present, aiding and abetting the fact to be done; an accessary is he who is not the chief actor in the offense, nor yet present at its performance, but is some way concerned therein, either before or after the fact committed. 1 Hale, P. C. 613, 618.

In the law of guaranty and suretyship. The principal is the person primarily liable, and for whose performance of his obligation the guarantor or surety has become bound.

In the law of agency. The employer or constitutor of an agent; the person who gives authority to an agent or attorney to do some act for him. Adams v. Whittlesey, 3 Conn. 567.

One, who, being competent *sui juris* to do any act for his own benefit or on his own account, confides it to another person to do for him. 1 Domat, b. 1, tit. 15.

The term also denotes the capital sum of a debt or obligation, as distinguished from interest or other additions to it. Christian v. Superior Court, 122 Cal. 117, 54 Pac. 518.

An heir-loom, mortuary, or corse-present. Wharton.

—Vice principal. In the law of master and servant, this term means one to whom the employer has confided the entire charge of the business or of a distinct branch of it, giving him authority to superintend, direct, and control the workmen and make them obey his orders, the master himself exercising no particular oversight and giving no particular orders, or one to whom the master has delegated a duty of his own, which is a direct, personal, and absolute obligation. See Durkin v. Kingston Coal Co., 171 Pa. 193, 33 Atl. 237, 29 L. R. A. 808, 50 Am. St. Rep. 801; Moore v. Rail-

Noway Co., 85 Mo. 588; Railroad Co. v. Bell, 112 Pa. 400, 4 Atl. 50; Lewis v. Seifert, 116 Pa. 628, 11 Atl. 514, 2 Am. St. Rep. 631; Minneapolis v. Lundin, 58 Fed. 525, 7 C. C. A. 344; Lindvall v. Woods (C. C.) 44 Fed. 855; Perras v. Booth, 82 Minn. 191, 84 N. W. 739; Van Dusen v. Letellier, 78 Mich. 492, 44 N. W. 572; Hanna v. Granger, 18 R. I. 507, 28 Atl. 659.

O As to principal "Challenge," "Contract," "Fact," "Obligation," and "Office," see those titles.

P **PRINCIPALIS.** Lat. Principal; a principal debtor; a principal in a crime.

Principalis debet semper excuti antequam perveniatur ad fideijussores. The principal should always be exhausted before coming upon the sureties. 2 Inst. 19.

Principia data sequuntur concomitantia. Given principles are followed by their concomitants.

Principia probant, non probantur. Principles prove; they are not proved. 3 Coke, 50*a*. Fundamental principles require no proof; or, in Lord Coke's words, "they ought to be approved, because they cannot be proved." Id.

Principiis obsta. Withstand beginnings; oppose a thing in its early stages, if you would do so with success.

Principiorum non est ratio. There is no reasoning of principles; no argument is required to prove fundamental rules. 2 Bulst. 239.

Principium est potissima pars cujusque rei. 10 Coke, 49. The principle of anything is its most powerful part.

PRINCIPLE. In patent law, the principle of a machine is the particular means of producing a given result by a mechanical contrivance. Parker v. Stiles, 5 McLean, 44, 63, Fed. Cas. No. 10,749.

The *principle* of a machine means the *modus operandi*, or that which applies, modifies, or combines mechanical powers to produce a certain result; and, so far, a principle, if new in its application to a useful purpose, may be patentable. See Barrett v. Hall, 1 Mason, 470, Fed. Cas. No. 1,047.

PRINCIPLES. Fundamental truths or doctrines of law; comprehensive rules or doctrines which furnish a basis or origin for others; settled rules of action, procedure, or legal determination.

PRINTING. The art of impressing letters; the art of making books or papers by impressing legible characters. Arthur v. Moller, 97 U. S. 365, 24 L. Ed. 1046; Le Roy v. Jamison, 15 Fed. Cas. 373; Forbes Lithograph Mfg. Co. v. Worthington (C. C.) 25 Fed. 900. The term may include typewriting. Sunday v. Hagenbuch, 18 Pa. Co. Ct. 541. Compare State v. Oakland, 69 Kan. 784, 77 Pac. 696.

—**Public printing** means such as is directly ordered by the legislature, or performed by the agents of the government authorized to procure it to be done. Ellis v. State, 4 Ind. 1.

PRIOR. Lat. The former; earlier; preceding; preferable or preferred.

—**Prior petens.** The person first applying.

PRIOR, *n.* The chief of a convent; next in dignity to an abbot.

PRIOR, *adj.* Earlier; elder; preceding; superior in rank, right, or time; as, a prior lien, mortgage, or judgment. See Fidelity, etc., Safe Deposit Co. v. Roanoke Iron Co. (C. C.) 81 Fed. 447.

Prior tempore potior jure. He who is first in time is preferred in right. Co. Litt. 14*a*; Broom, Max. 354, 358.

PRIORI PETENTI. To the person first applying. In probate practice, where there are several persons equally entitled to a grant of administration, (*e. g.*, next of kin of the same degree,) the rule of the court is to make the grant *priori petenti*, to the first applicant. Browne, Prob. Pr. 174; Coote, Prob. Pr. 173, 180.

PRIORITY. A legal preference or precedence. When two persons have similar rights in respect of the same subject-matter, but one is entitled to exercise his right to the exclusion of the other, he is said to have priority.

In old English law. An antiquity of tenure, in comparison with one not so ancient. Cowell.

PRISAGE. An ancient hereditary revenue of the crown, consisting in the right to take a certain quantity from cargoes of wine imported into England. In Edward I.'s reign it was converted into a pecuniary duty called "butlerage." 2 Steph. Comm. 561.

PRISE. Fr. In French law. Prize; captured property. Ord. Mar. liv. 3, tit. 9. See Dole v. Insurance Co., 6 Allen (Mass.) 373.

PRISEL EN AUTER LIEU. L. Fr. A taking in another place. A plea in abatement in the action of replevin. 2 Ld. Raym. 1016, 1017.

PRISON. A public building for the confinement or safe custody of persons, whether as a punishment imposed by the law or otherwise in the course of the administration of justice. See Scarborough v. Thornton, 9 Pa. 451; Sturtevant v. Com., 158 Mass. 598, 33 N. E. 648; Pen. Code N. Y. 1903, § 92.

—**Prison bounds.** The limits of the territory surrounding a prison, within which an impris-

oned debtor, who is out on bonds, may go at will. See GAOL.—**Prison-breaking.** The common-law offense of one who, being lawfully in custody, escapes from the place where he is confined, by the employment of force and violence. This offense is to be distinguished from "rescue," (*q. v.*,) which is a deliverance of a prisoner from lawful custody by a third person. 2 Bish. Crim. Law, § 1065.

PRISONAM FRANGENTIBUS, STATUTE DE. The English statute 1 Edw. II. St. 2, (in Rev. St. 23 Edw. I.,) a still unrepealed statute, whereby it is felony for a felon to break prison, but misdemeanor only for a misdemeanant to do so. 1 Hale, P. C. 612.

PRISONER. One who is deprived of his liberty; one who is against his will kept in confinement or custody.

A person restrained of his liberty upon any action, civil or criminal, or upon commandment. Cowell.

A person on trial for crime. "The *prisoner* at the bar." The jurors are told to "look upon the *prisoner*." The court, after passing sentence, gives orders to "remove the *prisoner*." See Hairston v. Com., 97 Va. 754, 32 S. E. 797; Royce v. Salt Lake City, 15 Utah, 401, 49 Pac. 290.

—Prisoner at the bar. An accused person, while on trial before the court, is so called.—**Prisoner of war.** One who has been captured in war while fighting in the army of the public enemy.

PRIST. L. Fr. Ready. In the old forms of oral pleading, this term expressed a tender or joinder of issue.

Prius vitiis laboravimus, nunc legibus. 4 Inst. 76. We labored first with vices, now with laws.

PRIVATE. Affecting or belonging to private individuals, as distinct from the public generally. Not official.

—Private person. An individual who is not the incumbent of an office.

As to private "Act," "Agent," "Bill," "Boundary," "Bridge," "Carrier," "Chapel," "Corporation," "Easement," "Examination," "Ferry," "Nuisance," "Property," "Prosecutor," "Rights," "Road," "Sale," "School," "Seal," "Statute," "Stream," "Trust," "War," "Way," and "Wrongs," see those titles.

PRIVATE LAW. As used in contradistinction to public law, the term means all that part of the law which is administered between citizen and citizen, or which is concerned with the definition, regulation, and enforcement of rights in cases where both the person in whom the right inheres and the person upon whom the obligation is incident are private individuals. See PUBLIC LAW.

PRIVATEER. A vessel owned, equipped, and armed by one or more private individuals, and duly commissioned by a belligerent power to go on cruises and make war upon the enemy, usually by preying on his commerce.

Privatio præsupponit habitum. 2 Rolle, 419. A deprivation presupposes a possession.

PRIVATION. A taking away or withdrawing. Co. Litt. 239.

Privatis pactionibus non dubium est non lædi jus cæterorum. There is no doubt that the rights of others [third parties] cannot be prejudiced by private agreements. Dig. 2, 15, 3, pr.; Broom, Max. 697.

Privatorum conventio juri publico non derogat. The agreement of private individuals does not derogate from the public right, [law.] Dig. 50, 17, 45, 1; 9 Coke, 141; Broom, Max. 695.

PRIVATUM. Lat. Private. *Privatum jus*, private law. Inst. 1, 1, 4.

Privatum commodum publico cedit. Private good yields to public. Jenk. Cent. p. 223, case 80. The interest of an individual should give place to the public good. Id.

Privatum incommodum publico bono pensatur. Private inconvenience is made up for by public benefit. Jenk. Cent. p. 85, case 65; Broom, Max. 7.

PRIVEMENT ENCEINTE. Fr. Pregnant privately. The term is applied to a woman who is pregnant, but not yet quick with child.

PRIVIES. Persons connected together, or having a mutual interest in the same action or thing, by some relation other than that of actual contract between them; persons whose interest in an estate is derived from the contract or conveyance of others.

Those who are partakers or have an interest in any action or thing, or any relation to another. They are of six kinds:

(1) Privies of blood; such as the heir to his ancestor.

(2) Privies in representation; as executors or administrators to their deceased testator or intestate.

(3) Privies in estate; as grantor and grantee, lessor and lessee, assignor and assignee, etc.

(4) Privities, in respect of contract, are personal privities, and extend only to the persons of the lessor and lessee.

(5) Privies in respect of estate and contract; as where the lessee assigns his interest, but the contract between lessor and lessee continues, the lessor not having accepted of the assignee.

(6) Privies in law; as the lord by escheat, a tenant by the curtesy, or in dower, the incumbent of a benefice, a husband suing or defending in right of his wife, etc. Wharton.

PRIVIGNA. Lat. In the civil law. A step-daughter.

PRIVIGNUS. Lat. In the civil law. A son of a husband or wife by a former marriage; a step-son. Calvin.

PRIVILEGE. A particular and peculiar benefit or advantage enjoyed by a person, company, or class, beyond the common advantages of other citizens. An exceptional or extraordinary power or exemption. A right, power, franchise, or immunity held by a person or class, against or beyond the course of the law.

Privilege is an exemption from some burden or attendance, with which certain persons are indulged, from a supposition of law that the stations they fill, or the offices they are engaged in, are such as require all their time and care, and that, therefore, without this indulgence, it would be impracticable to execute such offices to that advantage which the public good requires. See Lawyers' Tax Cases, 8 Heisk. (Tenn.) 649; U. S. v. Patrick (C. C.) 54 Fed. 348; Dike v. State, 38 Minn. 366, 38 N. W. 95; International Trust Co. v. American L. & T. Co., 62 Minn. 501, 65 N. W. 78; Com. v. Henderson, 172 Pa. 135, 33 Atl. 368; Tennessee v. Whitworth (C. C.) 22 Fed. 83; Morgan v. Louisiana, 93 U. S. 217, 23 L. Ed. 860; Corfield v. Coryell, 6 Fed. Cas. 551; State v. Gilman, 33 W. Va. 146, 10 S. E. 283, 6 L. R. A. 847.

In the civil law. A right which the nature of a debt gives to a creditor, and which entitles him to be preferred before other creditors. Civil Code La. art. 3186.

In maritime law. An allowance to the master of a ship of the same general nature with primage, being compensation, or rather a gratuity, customary in certain trades, and which the law assumes to be a fair and equitable allowance, because the contract on both sides is made under the knowledge of such usage by the parties. 3 Chit. Commer. Law, 431.

In the law of libel and slander. An exemption from liability for the speaking or publishing of defamatory words concerning another, based on the fact that the statement was made in the performance of a duty, political, judicial, social, or personal. Privilege is either *absolute* or *conditional*. The former protects the speaker or publisher without reference to his motives or the truth or falsity of the statement. This may be claimed in respect, for instance, to statements made in legislative debates, in reports of officers to their superiors in the line of their duty, and statements made by judges, witnesses, and jurors in trials in court. Conditional privilege will protect the speaker or publisher unless actual malice and knowledge of the falsity of the statement is shown. This may be claimed where the communication related to a matter of public interest, or where it was necessary to protect one's private interest and was made to a person having an interest in the same matter. Ramsey v. Cheek, 109 N. C. 270, 13 S. E. 775; Nichols v. Eaton, 110 Iowa, 509, 81 N. W. 792, 47 L. R. A. 483, 80 Am. St. Rep. 319; Knapp & Co. v. Campbell, 14 Tex. Civ. App. 199, 36 S. W. 765; Hill v. Drainage Co., 79 Hun, 335, 29 N. Y. Supp. 427; Cooley v. Galyon, 109 Tenn. 1, 70 S. W. 607, 60 L. R. A. 139, 97 Am. St. Rep. 823; Ruohs v. Backer, 6 Heisk. (Tenn.) 405, 19 Am. Rep. 598; Cranfill v. Hayden, 97 Tex. 544, 80 S. W. 613.

In parliamentary law. The right of a particular question, motion, or statement to take precedence over all other business before the house and to be considered immediately, notwithstanding any consequent interference with or setting aside the rules of procedure adopted by the house. The matter may be one of "personal privilege," where it concerns one member of the house in his capacity as a legislator, or of the "privilege of the house," where it concerns the rights, immunities, or dignity of the entire body, or of "constitutional privilege," where it relates to some action to be taken or some order of proceeding expressly enjoined by the constitution.

—Privilege from arrest. A privilege extended to certain classes of persons, either by the rules of international law, the policy of the law, or the necessities of justice or of the administration of government, whereby they are exempted from arrest on civil process, and, in some cases, on criminal charges, either permanently, as in the case of a foreign minister and his suite, or temporarily, as in the case of members of the legislature, parties and witnesses engaged in a particular suit, etc.—**Privilege tax.** A tax on the privilege of carrying on a business for which a license or franchise is required. Adams v. Colonial Mortgage Co., 82 Miss. 263, 34 South. 482, 100 Am. St. Rep. 633; Gulf & Ship Island R. Co. v. Hewes, 183 U. S. 66, 22 Sup. Ct. 26, 46 L. Ed. 86; St. Louis v. Western Union Tel. Co., 148 U. S. 92, 13 Sup. Ct. 485, 37 L. Ed. 380.—**Real privilege.** In English law. A privilege granted to, or concerning, a particular place or locality. —**Special privilege.** In constitutional law. A right, power, franchise, immunity, or privilege granted to, or vested in, a person or class of persons, to the exclusion of others, and in derogation of common right. See City of Elk Point v. Vaughn, 1 Dak. 118, 46 N. W. 577; Ex parte Douglass, 1 Utah, 111.—**Writ of privilege.** A process to enforce or maintain a privilege; particularly to secure the release of a person arrested in a civil suit contrary to his privilege.

PRIVILEGED. Possessing or enjoying a privilege; exempt from burdens; entitled to priority or precedence.

—Privileged communications. See COMMUNICATION.—**Privileged copyholds.** See COPYHOLD.—**Privileged debts.** Those which an executor or administrator may pay in preference to others; such as funeral expenses, servants' wages, and doctors' bills during last sickness, etc.—**Privileged deed.** In Scotch law. An instrument, for example, a testament, in the execution of which certain statutory formalities usually required are dispensed with, either from necessity or expediency. Ersk. Inst. 3, 2, 22; Bell.—**Privileged villenage.** In old English law. A species of villenage in which the tenants held by certain and determinate services; otherwise called "villein-soc-

age." Bract. fol. 209. Now called "privileged copyhold," including the tenure in ancient demesne. 2 Bl. Comm. 99, 100.

Privilegia quæ re vera sunt in præjudicium reipublicæ, magis tamen habent speciosa frontispicia, et boni publici prætextum, quam bonæ et legales concessiones; sed prætextu liciti non debet admitti illictum. 11 Coke, 88. Privileges which are truly in prejudice of public good have, however, a more specious front and pretext of public good than good and legal grants; but, under pretext of legality, that which is illegal ought not to be admitted.

PRIVILEGIUM. **In Roman law.** A special constitution by which the Roman emperor conferred on some single person some anomalous or irregular right, or imposed upon some single person some anomalous or irregular obligation, or inflicted on some single person some anomalous or irregular punishment. When such *privilegia* conferred anomalous rights, they were styled "favorable." When they imposed anomalous obligations, or inflicted anomalous punishments, they were styled "odious." Aust. Jur. § 748.

In modern civil law, "*privilegium*" is said to denote, in its general sense, every peculiar right or favor granted by the law, contrary to the common rule. Mackeld. Rom. Law, § 197.

A species of lien or claim upon an article of property, not dependent upon possession, but continuing until either satisfied or released. Such is the lien, recognized by modern maritime law, of seamen upon the ship for their wages. 2 Pars. Mar. Law, 561.

PRIVILEGIUM CLERICALE. The benefit of clergy, (*q. v.*)

Privilegium est beneficium personale, et extinguitur cum persona. 3 Bulst. 8. A privilege is a personal benefit, and dies with the person.

Privilegium est quasi privata lex. 2 Bulst. 189. Privilege is, as it were, a private law.

Privilegium non valet contra rempublicam. Privilege is of no force against the commonwealth. Even necessity does not excuse, where the act to be done is against the commonwealth. Bac. Max. p. 32, in reg. 5.

PRIVILEGIUM, PROPERTY PROPTER. A qualified property in animals *feræ naturæ; i. e.*, a privilege of hunting, taking, and killing them, in exclusion of others. 2 Bl. Comm. 394; 2 Steph. Comm. 9.

PRIVITY. The term "privity" means mutual or successive relationship to the same rights of property. The executor is in privity with the testator, the heir with the ancestor, the assignee with the assignor, the donee with the donor, and the lessee with the lessor. Union Nat. Bank v. International Bank, 123 Ill. 510, 14 N. E. 859; Hunt v. Haven, 52 N. H. 169; Mygatt v. Coe, 124 N. Y. 212, 26 N. E. 611, 11 L. R. A. 646; Strayer v. Johnson, 110 Pa. 21, 1 Atl. 222; Litchfield v. Crane, 123 U. S. 549, 8 Sup. Ct. 210, 31 L. Ed. 199.

Privity of *contract* is that connection or relationship which exists between two or more contracting parties. It is essential to the maintenance of an action on any contract that there should subsist a privity between the plaintiff and defendant in respect of the matter sued on. Brown.

Privity of *estate* is that which exists between lessor and lessee, tenant for life and remainder-man or reversioner, etc., and their respective assignees, and between joint tenants and coparceners. Privity of estate is required for a release by enlargement. Sweet.

Privity of *blood* exists between an heir and his ancestor, (privity in blood inheritable,) and between coparceners. This privity was formerly of importance in the law of descent cast. Co. Litt. 271*a*, 242*a*; 2 Inst. 516; 8 Coke, 42*b*.

PRIVY. A person who is in privity with another. See PRIVIES; PRIVITY.

As an adjective, the word has practically the same meaning as "private."

—Privy council. In English law. The principal council of the sovereign, composed of the cabinet ministers, and other persons chosen by the king or queen as privy councillors. 2 Steph. Comm. 479, 480. The judicial committee of the privy council acts as a court of ultimate appeal in various cases.—**Privy councillor.** A member of the privy council.—**Privy purse.** In English law. The income set apart for the sovereign's personal use.—**Privy seal.** In English law. A seal used in making out grants or letters patent, preparatory to their passing under the great seal. 2 Bl. Comm. 347.—**Privy signet.** In English law. The signet or seal which is first used in making out grants and letters patent, and which is always in the custody of the principal secretary of state. 2 Bl. Comm. 347.—**Privy token.** A false mark or sign, forged object, counterfeited letter, key, ring, etc., used to deceive persons, and thereby fraudulently get possession of property. St. 33 Hen. VIII. c. 1. A false privy token is a false private document or sign, not such as is calculated to deceive men generally, but designed to defraud one or more individuals. Cheating by such false token was not indictable at common law. Pub. St. Mass. 1882, p. 1294.—**Privy verdict.** In practice. A verdict given privily to the judge out of court, but which was of no force unless afterwards affirmed by a public verdict given openly in court. 3 Bl. Comm. 377. Kramer v. Kister, 187 Pa. 227, 40 Atl. 1008, 44 L. R. A. 432; Barrett v. State, 1 Wis. 175; Young v. Seymour, 4 Neb. 89; Com. v. Heller, 5 Phila. (Pa.) 123. Now generally superseded by the "sealed verdict," *i. e.*, one written out, sealed up, and delivered to the judge or the clerk of the court.

PRIZE. **In admiralty law.** A vessel or cargo, belonging to one of two belligerent powers, apprehended or forcibly captured at sea by a war-vessel or privateer of the other

belligerent, and claimed as enemy's property, and therefore liable to appropriation and condemnation under the laws of war. See 1 C. Rob. Adm. 228.

Captured property regularly condemned by the sentence of a competent prize court. 1 Kent, Comm. 102.

In contracts. Anything offered as a reward of contest; a reward offered to the person who, among several persons or among the public at large, shall first (or best) perform a certain undertaking or accomplish certain conditions.

—Prize courts. Courts having jurisdiction to adjudicate upon captures made at sea in time of war, and to condemn the captured property as prize if lawfully subject to that sentence. In England, the admiralty courts have jurisdiction as prize courts, distinct from the jurisdiction on the instance side. In America, the federal district courts have jurisdiction in cases of prize. 1 Kent, Comm. 101–103, 353–360. See Penhallow v. Doane, 3 Dall. 91, 1 L. Ed. 507; Maley v. Shattuck, 3 Cranch, 488, 2 L. Ed. 498; Cushing v. Laird, 107 U. S. 69, 2 Sup. Ct. 196, 27 L. Ed. 391.**—Prize goods.** Goods which are taken on the high seas, *jure belli*, out of the hands of the enemy. The Adeline, 9 Cranch, 244, 284, 3 L. Ed. 719. **—Prize law.** The system of laws and rules applicable to the capture of prize at sea; its condemnation, rights of the captors, distribution of the proceeds, etc. The Buena Ventura (D. C.) 87 Fed. 929.**—Prize money.** A dividend from the proceeds of a captured vessel, etc., paid to the captors. U. S. v. Steever, 113 U. S. 747, 5 Sup. Ct. 765, 28 L. Ed. 1133.

PRO. For; in respect of; on account of; in behalf of. The introductory word of many Latin phrases.

PRO AND CON. For and against. A phrase descriptive of the presentation of arguments or evidence on both sides of a disputed question.

PRO BONO ET MALO. For good and ill; for advantage and detriment.

PRO BONO PUBLICO. For the public good; for the welfare of the whole.

PRO CONFESSO. For confessed; as confessed. A term applied to a bill in equity, and the decree founded upon it, where no answer is made to it by the defendant. 1 Barb. Ch. Pr. 96.

PRO CONSILIO. For counsel given. An annuity *pro consilio* amounts to a condition, but in a feoffment or lease for life, etc., it is the consideration, and does not amount to a condition; for the state of the land by the feoffment is executed, and the grant of the annuity is executory. Plowd. 412.

PRO CORPORE REGNI. In behalf of the body of the realm. Hale, Com. Law, 32.

PRO DEFECTU EMPTORUM. For want (failure) of purchasers.

PRO DEFECTU EXITUS. For, or in case of, default of issue. 2 Salk. 620.

PRO DEFECTU HÆREDIS. For want of an heir.

PRO DEFECTU JUSTITIÆ. For defect or want of justice. Fleta, lib. 2, c. 62, § 2.

PRO DEFENDENTE. For the defendant. Commonly abbreviated "*pro def.*"

PRO DERELICTO. As derelict or abandoned. A species of usucaption in the civil law. Dig. 41, 7.

PRO DIGNITATE REGALI. In consideration of the royal dignity. 1 Bl. Comm. 223.

PRO DIVISO. As divided; *i. e.*, in severalty.

PRO DOMINO. As master or owner; in the character of master. Calvin.

PRO DONATO. As a gift; as in case of gift; by title of gift. A species of usucaption in the civil law. Dig. 41, 6. See Id. 5, 3, 13, 1.

PRO DOTE. As a dowry; by title of dowry. A species of usucaption. Dig. 41, 9. See Id. 5, 3, 13, 1.

PRO EMTORE. As a purchaser; by the title of a purchaser. A species of usucaption. Dig. 41, 4. See Id. 5, 3, 13, 1.

PRO EO QUOD. In pleading. For this that. This is a phrase of affirmation, and is sufficiently direct and positive for introducing a material averment. 1 Saund. 117, no. 4; 2 Chit. Pl. 369–393.

PRO FACTI. For the fact; as a fact; considered or held as a fact.

PRO FALSO CLAMORE SUO. A nominal amercement of a plaintiff for *his false claim*, which used to be inserted in a judgment for the defendant. Obsolete.

PRO FORMA. As a matter of form. 3 East, 232; 2 Kent, Comm. 245.

PRO HAC VICE. For this turn; for this one particular occasion.

PRO ILLA VICE. For that turn. 8 Wils. 233, arg.

PRO INDEFENSO. As undefended; as making no defense. A phrase in old practice. Fleta, lib. 1, c. 41, § 7.

PRO INDIVISO. As undivided; in common. The joint occupation or possession of

lands. Thus, lands held by coparceners are held *pro indiviso;* that is, they are held undividedly, neither party being entitled to any specific portions of the land so held, but both or all having a joint interest in the undivided whole. Cowell.

PRO INTERESSE SUO. According to his interest; to the extent of his interest. Thus, a third party may be allowed to intervene in a suit *pro interesse suo.*

PRO LÆSIONE FIDEI. For breach or faith. 3 Bl. Comm. 52.

PRO LEGATO. As a legacy; by the title of a legacy. A species of usucaption. Dig. 41, 8.

PRO MAJORI CAUTELA. For greater caution; by way of additional security. Usually applied to some act done, or some clause inserted in an instrument, which may not be really necessary, but which will serve to put the matter beyond any question.

PRO NON SCRIPTO. As not written; as though it had not been written; as never written. Ambl. 139.

PRO OPERE ET LABORE. For work and labor. 1 Comyns, 18.

PRO PARTIBUS LIBERANDIS. An ancient writ for partition of lands between co-heirs. Reg. Orig. 316.

PRO POSSE SUO. To the extent of his power or ability. Bract. fol. 109.

PRO POSSESSORE. As a possessor; by title of a possessor. Dig. 41, 5. See Id. 5, 3, 13.

Pro possessore habetur qui dolo injuriave desiit possidere. He is esteemed a possessor whose possession has been disturbed by fraud or injury. Off. Exec. 166.

PRO QUERENTE. For the plaintiff.

PRO RATA. Proportionately; according to a certain rate, percentage, or proportion. Thus, the creditors (of the same class) of an insolvent estate are to be paid *pro rata;* that is, each is to receive a dividend bearing the same ratio to the whole amount of his claim that the aggregate of assets bears to the aggregate of debts.

PRO RE NATA. For the affair immediately in hand; adapted to meet the particular occasion. Thus, a course of judicial action adopted under pressure of the exigencies of the affair in hand, rather than in conformity to established precedents, is said to be taken *pro re nata.*

PRO SALUTE ANIMÆ. For the good of his soul. All prosecutions in the ecclesiastical courts are *pro salute animæ;* hence it will not be a temporal damage founding an action for slander that the words spoken put any one in danger of such a suit. 3 Steph. Comm. (7th. Ed.) 309*n*, 437; 4 Steph. Comm. 207.

PRO SE. For himself; in his own behalf; in person.

PRO SOCIO. For a partner; the name of an action in behalf of a partner. A title of the civil law. Dig. 17, 2; Cod. 4, 37.

PRO SOLIDO. For the whole; as one; jointly; without division. Dig. 50, 17, 141, 1.

PRO TANTO. For so much; for as much as may be; as far as it goes.

PRO TEMPORE. For the time being; temporarily; provisionally.

PROAMITA. Lat. In the civil law. A great paternal aunt; the sister of one's grandfather.

PROAMITA MAGNA. Lat. In the civil law. A great-great-aunt.

PROAVIA. Lat. In the civil law. A great-grandmother. Inst. 3, 6, 3; Dig. 38, 10, 1, 5.

PROAVUNCULUS. Lat. In the civil law. A great-grandfather's brother. Inst. 3, 6, 3; Bract. fol. 68*b*.

PROAVUS. Lat. In the civil law. A great-grandfather. Inst. 3, 6, 1; Bract. fols. 67, 68.

PROBABILITY. Likelihood; appearance of truth; verisimilitude. The likelihood of a proposition or hypothesis being true, from its conformity to reason or experience, or from superior evidence or arguments adduced in its favor. People v. O'Brien, 130 Cal. 1, 62 Pac. 297; Shaw v. State, 125 Ala. 80, 28 South. 390; State v. Jones, 64 Iowa, 349, 17 N. W. 911, 20 N. W. 470.

PROBABLE. Having the appearance of truth; having the character of probability; appearing to be founded in reason or experience. Bain v. State, 74 Ala. 39; State v. Thiele, 119 Iowa, 659, 94 N. W. 256.

—Probable cause. "Probable cause" may be defined to be an apparent state of facts found to exist upon reasonable inquiry, (that is, such inquiry as the given case renders convenient and proper,) which would induce a reasonably intelligent and prudent man to believe, in a criminal case, that the accused person had committed the crime charged, or, in a civil case, that a cause of action existed. Alsop v. Lidden, 130 Ala. 548, 30 South. 401; Brand v. Hinchman, 68 Mich. 590, 36 N. W. 664, 13 Am. St. Rep. 362; Mitchell v. Wall, 111 Mass. 497; Driggs v. Burton, 44 Vt. 146; Wanser v. Wyckoff, 9 Hun (N. Y.) 179; Lacy v. Mitchell, 23 Ind. 67; Hutchinson v. Wenzel, 155 Ind. 49, 56 N. E. 845. "Probable cause," in malicious prosecution, means the existence of

such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. Wheeler v. Nesbitt, 24 How. 544, 16 L. Ed. 765.—**Probable evidence.** See EVIDENCE.—**Probable reasoning.** In the law of evidence. Reasoning founded on the probability of the fact or proposition sought to be proved or shown; reasoning in which the mind exercises a discretion in deducing a conclusion from premises. Burrill.

Probandi necessitas incumbit illi qui agit. The necessity of proving lies with him who sues. Inst. 2, 20, 4. In other words, the burden of proof of a proposition is upon him who advances it affirmatively.

PROBARE. In Saxon law. To claim a thing as one's own. Jacob.

In modern law language. To make proof, as in the term "*onus probandi*," the burden or duty of making proof.

PROBATE. The act or process of proving a will. The proof before an ordinary, surrogate, register, or other duly authorized person that a document produced before him for official recognition and registration, and alleged to be the last will and testament of a certain deceased person, is such in reality.

The copy of the will, made out in parchment or due form, under the seal of the ordinary or court of probate, and usually delivered to the executor or administrator of the deceased, together with a certificate of the will's having been proved, is also commonly called the "probate."

In the canon law, "probate" consisted of *probatio*, the proof of the will by the executor, and *approbatio*, the approbation given by the ecclesiastical judge to the proof. 4 Reeve, Eng. Law, 77. And see In re Spiegelhalter's Will, 1 Pennewill (Del.) 5, 39 Atl. 465; McCay v. Clayton, 119 Pa. 133, 12 Atl. 860; Pettit v. Black, 13 Neb. 142, 12 N. W. 841; Reno v. McCully, 65 Iowa, 629, 22 N. W. 902; Appeal of Dawley, 16 R. I. 694, 19 Atl. 248.

—Common and solemn form of probate. In English law, there are two kinds of probate, namely, probate in common form, and probate in solemn form. Probate in common form is granted in the registry, without any formal procedure in court, upon an *ex parte* application made by the executor. Probate in solemn form is in the nature of a final decree pronounced in open court, all parties interested having been duly cited. The difference between the effect of probate in common form and probate in solemn form is that probate in common form is revocable, whereas probate in solemn form is irrevocable, as against all persons who have been cited to see the proceedings, or who can be proved to have been privy to those proceedings, except in the case where a will of subsequent date is discovered, in which case probate of an earlier will, though granted in solemn form, would be revoked. Coote, **Prob. Pr. (5th Ed.) 237–239**; Mozley & Whitley. And see Luther v. Luther, 122 Ill. 558, 13 N. E. 166.

The term is used, particularly in Pennsylvania, but not in a strictly technical sense, to designate the proof of his claim made by a non-resident plaintiff (when the same is on book-account, promissory note, etc.) who swears to the correctness and justness of the same, and that it is due, before a notary or other officer in his own state; also of the copy or statement of such claim filed in court, with the jurat of such notary attached.

—Probate bond. One required by law to be given to the probate court or judge, as incidental to proceedings in such courts, such as the bonds of executors, administrators, and guardians. See Thomas v. White, 12 Mass. 367.—**Probate code.** The body or system of law relating to all matters of which probate courts have jurisdiction. Johnson v. Harrison, 47 Minn. 575, 50 N. W. 923, 28 Am. St. Rep. 382.—**Probate court.** See COURT OF PROBATE.—**Probate, divorce, and admiralty division.** That division of the English high court of justice which exercises jurisdiction in matters formerly within the exclusive cognizance of the court of probate, the court for divorce and matrimonial causes, and the high court of admiralty. (Judicature Act 1873, § 34.) It consists of two judges, one of whom is called the "President." The existing judges are the judge of the old probate and divorce courts, who is president of the division, and the judge of the old admiralty court, and of a number of registrars. Sweet.—**Probate duty.** A tax laid by government on every will admitted to probate, and payable out of the decedent's estate.—**Probate homestead.** See HOMESTEAD.—**Probate judge.** The judge of a court of probate.

PROBATIO. Lat. Proof; more particularly direct, as distinguished from indirect or circumstantial evidence.

—Probatio mortua. Dead proof; that is proof by inanimate objects, such as deeds or other written evidence.—**Probatio plena.** In the civil law. Full proof; proof by two witnesses, or a public instrument. Hallifax, Civil Law, b. 3, c. 9, no. 25; 3 Bl. Comm. 370.—**Probatio semi-plena.** In the civil law. Half-full proof; half-proof. Proof by one witness, or a private instrument. Hallifax, Civil Law, b. 3, c. 9, no. 25; 3 Bl. Comm. 370.—**Probatio viva.** Living proof; that is, proof by the mouth of living witnesses.

PROBATION. The act of proving; evidence; proof. Also trial; test; the time of novitiate. Used in the latter sense in the monastic orders.

In modern criminal administration, allowing a person convicted of some minor offense (particularly juvenile offenders) to go at large, under a suspension of sentence, during good behavior, and generally under the supervision or guardianship of a "probation officer."

PROBATIONER. One who is upon trial. A convicted offender who is allowed to go at large, under suspension of sentence, during good behavior.

Probationes debent esse evidentes, scil. perspicuæ et faciles intelligi. Co. Litt. 283. Proofs ought to be evident, to-wit, perspicuous and easily understood.

Probatis extremis, præsumuntur media. The extremes being proved, the inter-

mediate proceedings are presumed. 1 Greenl. Ev. § 20.

PROBATIVE. In the law of evidence. Having the effect of proof; tending to prove, or actually proving.

—Probative fact. In the law of evidence. A fact which actually has the effect of proving a fact sought; an evidentiary fact. 1 Benth. Ev. 18.

PROBATOR. In old English law. Strictly, an accomplice in felony who to save himself confessed the fact, and charged or accused any other as principal or accessory, against whom he was bound to make good his charge. It also signified an approver, or one who undertakes to prove a crime charged upon another. Jacob. See State v. Graham, 41 N. J. Law, 16, 32 Am. Rep. 174.

PROBATORY TERM. This name is given, in the practice of the English admiralty courts, to the space of time allowed for the taking of testimony in an action, after issue formed.

PROBATUM EST. Lat. It is tried or proved.

PROBUS ET LEGALIS HOMO. Lat. A good and lawful man. A phrase particularly applied to a juror or witness who was free from all exception. 3 Bl. Comm. 102.

PROCEDENDO. In practice. A writ by which a cause which has been removed from an inferior to a superior court by *certiorari* or otherwise is sent down again to the same court, *to be proceeded in* there, where it appears to the superior court that it was removed on insufficient grounds. Cowell; 1 Tidd, Pr. 408, 410; Yates v. People, 6 Johns. (N. Y.) 446.

A writ which issued out of the common-law jurisdiction of the court of chancery, when judges of any subordinate court delayed the parties, for that they would not give judgment either on the one side or on the other, when they ought so to do. In such a case, a writ of *procedendo ad judicium* was awarded, commanding the inferior court in the sovereign's name to proceed to give judgment, but without specifying any particular judgment. Wharton.

A writ by which the commission of a justice of the peace is revived, after having been suspended. 1 Bl. Comm. 353.

—Procedendo on aid prayer. If one pray in aid of the crown in real action, and aid be granted, it shall be awarded that he sue to the sovereign in chancery, and the justices in the common pleas shall stay until this writ of *procedendo de loquela* come to them. So, also, on a personal action. New Nat. Brev. 154.

PROCEDURE. This word is commonly opposed to the sum of legal principles constituting the substance of the law, and denotes the body of rules, whether of practice or of pleading, whereby rights are effectuated through the successful application of the proper remedies. It is also generally distinguished from the law of evidence. Brown. See Kring v. Missouri, 107 U. S. 221, 2 Sup. Ct. 443, 27 L. Ed. 506; Cochran v. Ward, 5 Ind. App. 89, 29 N. E. 795, 31 N. E. 581, 51 Am. St. Rep. 229.

The law of procedure is what is now commonly termed by jurists "adjective law," (*q. v.*)

PROCEED. A stipulation not to proceed against a party is an agreement not to sue. To sue a man is to proceed against him. Planters' Bank v. Houser, 57 Ga. 140; Iliff v. Weymouth, 40 Ohio St. 101.

PROCEEDING. In a general sense, the form and manner of conducting juridical business before a court or judicial officer; regular and orderly progress in form of law; including all possible steps in an action from its commencement to the execution of judgment. In a more particular sense, any application to a court of justice, however made, for aid in the enforcement of rights, for relief, for redress of injuries, for damages, or for any remedial object. Erwin v. U. S. (D. C.) 37 Fed. 488, 2 L. R. A. 229; People v. Raymond, 186 Ill. 407, 57 N. E. 1066; Morewood v. Hollister, 6 N. Y. 309; Uhe v. Railway Co., 3 S. D. 563, 54 N. W. 601; State v. Gordon, 8 Wash. 488, 36 Pac. 498.

—Collateral proceeding. One in which the particular question may arise or be involved incidentally, but which is not instituted for the very purpose of deciding such question; as in the rule that a judgment cannot be attacked, or a corporation's right to exist be questioned, in any collateral proceeding. Peyton v. Peyton, 28 Wash. 278, 68 Pac. 757; Peoria & P. U. R. Co. v. Peoria & F. R. Co., 105 Ill. 116.**—Executory proceeding.** In the law of Louisiana, a proceeding which is resorted to in the following cases: When the creditor's right arises from an act importing a confession of judgment, and which contains a privilege or mortgage in his favor; or when the creditor demands the execution of a judgment which has been rendered by a tribunal different from that within whose jurisdiction the execution is sought. Code Prac. La. art. 732.**—Legal proceedings.** This term includes all proceedings authorized or sanctioned by law, and brought or instituted in a court of justice or legal tribunal, for the acquiring of a right or the enforcement of a remedy. Griem v. Fidelity & Casualty Co., 99 Wis. 530, 75 N. W. 67; In re Emslie (D. C.) 98 Fed. 720; Id., 102 Fed. 293, 42 C. C. A. 350; Mack v. Campau, 69 Vt. 558, 38 Atl. 149, 69 Am. St. Rep. 948. **—Special proceeding.** This phrase has been used in the New York and other codes of procedure as a generic term for all civil remedies which are not ordinary actions. Code Proc. N. Y. § 3.**—Summary proceeding.** Any proceeding by which a controversy is settled, case disposed of, or trial conducted, in a prompt and simple manner, without the aid of a jury, without presentment or indictment, or in other respects out of the regular course of the common law. In procedure, proceedings are said to be summary when they are short and simple in comparison with regular proceedings; *i. e.*, in comparison with the proceedings which

alone would have been applicable, either in the same or analogous cases, if summary proceedings had not been available. Sweet. And see Phillips v. Phillips, 8 N. J. Law, 122; Govan v. Jackson, 32 Ark. 557; Western & A. R. Co. v. Atlanta, 113 Ga. 537, 38 S. E. 996, 54 L. R. A. 802.—**Supplementary proceeding.** A separate proceeding in an original action, in which the court where the action is pending is called upon to exercise its jurisdiction in aid of the judgment in the action. Bryant v. Bank of California (Cal.) 7 Pac. 130. In a more particular sense, a proceeding in aid of execution, authorized by statute in some states in cases where no leviable property of the judgment debtor is found. It is a statutory equivalent in actions at law of the creditor's bill in equity, and in states where law and equity are blended, is provided as a substitute therefor. In this proceeding the judgment debtor is summoned to appear before the court (or a referee or examiner) and submit to an oral examination touching all his property and effects, and if property subject to execution and in his possession or control is thus discovered, he is ordered to deliver it up, or a receiver may be appointed. See In re Burrows, 33 Kan. 675, 7 Pac. 148; Eikerberry v. Edwards, 67 Iowa, 619, 25 N. W. 832, 56 Am. Rep. 360.

PROCEEDINGS. In practice. The steps or measures taken in the course of an action, including *all* that are taken. The proceedings of a suit embrace *all* matters that occur in its progress judicially. Morewood v. Hollister, 6 N. Y. 320.

PROCEEDS. Issues; produce; money obtained by the sale of property; the sum, amount, or value of property sold or converted into money or into other property. See Hunt v. Williams, 126 Ind. 493, 26 N. E. 177; Andrews v. Johns, 59 Ohio St. 65, 51 N. E. 880; Belmont v. Ponvert, 35 N. Y. Super. Ct. 212.

PROCERES. Nobles; lords. The house of lords in England is called, in Latin, "*Domus Procerum.*"

PROCÈS VERBAL. In French law. A written report, which is signed, setting forth a statement of facts. This term is applied to the report proving the meeting and the resolutions passed at a meeting of shareholders, or to the report of a commission to take testimony. It can also be applied to the statement drawn up by a *huissier* in relation to any facts which one of the parties to a suit can be interested in proving; for instance the sale of a counterfeited object. Statements, drawn up by other competent authorities, of misdemeanors or other criminal acts, are also called by this name. Arg. Fr. Merc. Law, 570.

A true relation in writing in due form of law of what has been done and said verbally in the presence of a public officer and of what he himself does on the occasion. Hall v. Hall, 11 Tex. 526, 539.

PROCESS. In practice. This word is generally defined to be the means of compelling the defendant in an action to appear in court. And when actions were commenced by original writ, instead of, as at present, by writ of summons, the method of compelling the defendant to appear was by what was termed "original process," being founded on the original writ, and so called also to distinguish it from "mesne" or "intermediate" process, which was some writ or process which issued during the progress of the suit. The word "process," however, as now commonly understood, signifies those formal instruments called "writs." The word "process" is in common-law practice frequently applied to the writ of summons, which is the instrument now in use for commencing personal actions. But in its more comprehensive signification it includes not only the writ of summons, but all other writs which may be issued during the progress of an action. Those writs which are used to carry the judgments of the courts into effect, and which are termed "writs of execution" are also commonly denominated "final process," because they usually issue at the end of a suit. See Carey v. German American Ins. Co., 84 Wis. 80, 54 N. W. 18, 20 L. R. A. 267, 36 Am. St. Rep. 907; Savage v. Oliver, 110 Ga. 636, 36 S. E. 54; Perry v. Lorillard Fire Ins. Co., 6 Lans. (N. Y.) 204; Davenport v. Bird, 34 Iowa, 527; Philadelphia v. Campbell, 11 Phila. (Pa.) 164; Phillips v. Spotts, 14 Neb. 139, 15 N. W. 332.

In the practice of the English privy council in ecclesiastical appeals, "process" means an official copy of the whole proceedings and proofs of the court below, which is transmitted to the registry of the court of appeal by the registrar of the court below in obedience to an order or requisition requiring him so to do, called a "monition for process," issued by the court of appeal. Macph. Jud. Com. 173.

—**Abuse of process.** See ABUSE.—**Compulsory process.** See COMPULSORY.—**Executory process.** In the law of Louisiana, a summary process in the nature of an order of seizure and sale, which is available when the right of the creditor arises from an act or instrument which includes or imports a confession of judgment and a privilege or lien in his favor, and also to enforce the execution of a judgment rendered in another jurisdiction. See Rev. Code Prac. 1894, art. 732.—**Final process.** The last process in a suit; that is, writs of execution. Thus distinguished from *mesne* process, which includes all writs issued during the progress of a cause and before final judgment. Amis v. Smith, 16 Pet. 313, 10 L. Ed. 973.—**Irregular process.** Sometimes the term "irregular process" has been defined to mean process absolutely void, and not merely erroneous and voidable; but usually it has been applied to all process not issued in strict conformity with the law, whether the defect appears upon the face of the process, or by reference to extrinsic facts, and whether such defects render the process absolutely void or only voidable. Cooper v. Harter, 2 Ind. 253. And see Bryan v. Congdon, 86 Fed. 221, 29 C. C. A. 670; Paine v. Ely, N. Chip. (Vt.) 24.—**Judicial process.** In a wide sense, this term may include all the acts of a court from the beginning to the end of its proceedings in a given cause; but more specifically it means the writ, summons, mandate, or other process which is used to inform the defendant of the institu-

tion of proceedings against him and to compel his appearance, in either civil or criminal cases. See State v. Guilbert, 56 Ohio St. 575, 47 N. E. 551, 38 L. R. A. 519, 60 Am. St. Rep. 756; In re Smith (D. C.) 132 Fed. 303. —**Legal process.** This term is sometimes used as equivalent to "lawful process." Cooley v. Davis, 34 Iowa, 130. But properly it means a writ, warrant, mandate, or other process issuing from a court of justice, such as an attachment, execution, injunction, etc. See In re Bininger, 3 Fed. Cas. 416; Loy v. Home Ins. Co., 24 Minn. 319, 31 Am. Rep. 346; Perry v. Lorillard F. Ins. Co., 6 Lans. (N. Y.) 204; Com. v. Brower, 7 Pa. Dist. R. 255.—**Mesne process.** As distinguished from *final* process, this signifies any writ or process issued between the commencement of the action and the suing out of execution. It includes the writ of summons, (although that is now the usual commencement of actions,) because anciently that was preceded by the original writ. The writ of *capias ad respondendum* was called "mesne" to distinguish it, on the one hand, from the original process by which a suit was formerly commenced; and, on the other, from the final process of execution. Birmingham Dry Goods Co. v. Bledsoe, 113 Ala. 418, 21 South. 403; Hirshiser v. Tinsley, 9 Mo. App. 342; Pennington v. Lowinstein, 19 Fed. Cas. 168. —**Original process.** That by which a judicial proceeding is instituted; process to compel the appearance of the defendant. Distinguished from "mesne" process, which issues, during the progress of a suit, for some subordinate or collateral purpose; and from "final" process, which is process of execution. Appeal of Hotchkiss, 32 Conn. 353.—**Process of interpleader.** A means of determining the right to property claimed by each of two or more persons, which is in the possession of a third.—**Process of law.** See DUE PROCESS OF LAW.—**Process roll.** In practice. A roll used for the entry of process to save the statute of limitations. 1 Tidd, Pr. 161, 162.—**Regular process.** Such as is issued according to rule and the prescribed practice, or which emanates, lawfully and in a proper case, from a court or magistrate possessing jurisdiction.—**Summary process.** Such as is immediate or instantaneous, in distinction from the ordinary course, by emanating and taking effect without intermediate applications or delays. Gaines v. Travis, 8 N. Y. Leg. Obs. 49.—**Trustee process.** The name given in some states (particularly in New England) to the process of garnishment or foreign attachment.—**Void process.** Such as was issued without power in the court to award it, or which the court had not acquired jurisdiction to issue in the particular case, or which fails in some material respect to comply with the requisite form of legal process. Bryan v. Congdon, 86 Fed. 223, 29 C. C. A. 670.

In patent law. A means or method employed to produce a certain result or effect, or a mode of treatment of given materials to produce a desired result, either by chemical action, by the operation or application of some element or power of nature, or of one substance to another, irrespective of any machine or mechanical device; in this sense a "process" is patentable, though, strictly speaking, it is the art and not the process which is the subject of patent. See Cochrane v. Deener, 94 U. S. 780, 24 L. Ed. 139; Corning v. Burden, 15 How. 268, 14 L. Ed. 683; Westinghouse v. Boyden Power-Brake Co., 170 U. S. 537, 18 Sup. Ct. 707, 42 L. Ed. 1136; New Process Fermentation Co. v. Maus (C. C.) 20 Fed. 728; Piper v. Brown, 19 Fed. Cas. 718; In re Weston, 17 App. D. C. 436; Appleton Mfg. Co. v. Star Mfg. Co., 60 Fed. 411, 9 C. C. A. 42.

—**Mechanical process.** A process involving solely the application of mechanism or mechanical principles; an aggregation of functions; not patentable considered apart from the mechanism employed or the finished product of manufacture. See Risdon Iron, etc., Works v. Medart, 158 U. S. 68, 15 Sup. Ct. 745, 39 L. Ed. 899; American Fibre Chamois Co. v. Buckskin Fibre Co., 72 Fed. 514, 18 C. C. A. 662; Cochrane v. Deener, 94 U. S. 780, 24 L. Ed. 139.

PROCESSIONING. A proceeding to determine boundaries, in use in some of the United States, similar in all respects to the English perambulation, (*q. v.*)

PROCESSUM CONTINUANDO. In English practice. A writ for the continuance of process after the death of the chief justice or other justices in the commission of *oyer* and *terminer*. Reg. Orig. 128.

Processus legis est gravis vexatio; executio legis coronat opus. The process of the law is a grievous vexation; the execution of the law crowns the work. Co. Litt. 289*b*. The proceedings in an action while in progress are burdensome and vexatious; the execution, being the end and object of the action, crowns the labor, or rewards it with success.

PROCHEIN. L. Fr. Next. A term somewhat used in modern law, and more frequently in the old law; as *prochein ami, prochein cousin.* Co. Litt. 10.

—**Prochein ami.** Next friend. As an infant cannot legally sue in his own name, the action must be brought by his *prochein ami;* that is, some friend (not being his guardian) who will appear as plaintiff in his name.—**Prochein avoidance.** Next vacancy. A power to appoint a minister to a church when it shall next become void.

PROCHRONISM. An error in chronology; dating a thing before it happened.

PROCINCTUS. Lat. In the Roman law. A girding or preparing for battle. *Testamentum in procinctu,* a will made by a soldier, while girding himself, or preparing to engage in battle. Adams, Rom. Ant. 62; Calvin.

PROCLAIM. To promulgate; to announce; to publish, by governmental authority, intelligence of public acts or transactions or other matters important to be known by the people.

PROCLAMATION. The act of causing some state matters to be published or made generally known. A written or printed document in which are contained such matters, issued by proper authority. 3 Inst. 162; 1 Bl. Comm. 170.

The word "proclamation" is also used to express the public nomination made of any

None to a high office; as, such a prince was *proclaimed* emperor.

In practice. The declaration made by the crier, by authority of the court, that something is about to be done.

In equity practice. Proclamation made by a sheriff upon a writ of attachment, summoning a defendant who has failed to appear personally to appear and answer the plaintiff's bill. 3 Bl. Comm. 444.

—Proclamation by lord of manor. A proclamation made by the lord of a manor (thrice repeated) requiring the heir or devisee of a deceased copyholder to present himself, pay the fine, and be admitted to the estate; failing which appearance, the lord might seize the lands *quousque* (provisionally.)—**Proclamation of exigents.** In old English law. When an *exigent* was awarded, a writ of proclamation issued, at the same time, commanding the sheriff of the county wherein the defendant dwelt to make three proclamations thereof in places the most notorious, and most likely to come to his knowledge, a month before the outlawry should take place. 3 Bl. Comm. 284.—**Proclamation of a fine.** The notice or proclamation which was made after the engrossment of a fine of lands, and which consisted in its being openly read in court sixteen times, viz., four times in the term in which it was made, and four times in each of the three succeeding terms, which, however, was afterwards reduced to one reading in each term. Cowell. See 2 Bl. Comm. 352.—**Proclamation of rebellion.** In old English law. A proclamation to be made by the sheriff commanding the attendance of a person who had neglected to obey a subpœna or attachment in chancery. If he did not surrender himself after this proclamation, a commission of rebellion issued. 3 Bl. Comm. 444.—**Proclamation of recusants.** A proclamation whereby recusants were formerly convicted, on non-appearance at the assizes. Jacob.

PROCLAMATOR. An officer of the English court of common pleas.

PRO-CONSUL. Lat. In the Roman law. Originally a consul whose command was prolonged after his office had expired. An officer with consular authority, but without the title of "consul." The governor of a province. Calvin.

PROCREATION. The generation of children. One of the principal ends of marriage is the procreation of children. Inst. tit. 2, in pr.

PROCTOR. A procurator, proxy, or attorney. More particularly, an officer of the admiralty and ecclesiastical courts whose duties and business correspond exactly to those of an attorney at law or solicitor in chancery.

An ecclesiastical person sent to the lower house of convocation as the representative of a cathedral, a collegiate church, or the clergy of a diocese. Also certain administrative or magisterial officers in the universities.

—Proctors of the clergy. They who are chosen and appointed to appear for cathedral or other collegiate churches; as also for the common clergy of every diocese, to sit in the convocation house in the time of parliament. Wharton.

PROCURACY. The writing or instrument which authorizes a procurator to act. Cowell; Termes de la Ley.

PROCURADOR DEL COMUN. Sp. In Spanish law, an officer appointed to make inquiry, put a petitioner in possession of land prayed for, and execute the orders of the executive in that behalf. See Lecompte v. U. S., 11 How. 115, 126, 13 L. Ed. 627.

PROCURARE. Lat. To take care of another's affairs for him, or in his behalf; to manage; to take care of or superintend.

PROCURATIO. Lat. Management of another's affairs by his direction and in his behalf; procuration; agency.

Procuratio est exhibitio sumptuum necessariorum facta prælatis, qui diœceses peragrando, ecclesias subjectas visitant. Dav. Ir. K. B. 1. Procuration is the providing necessaries for the bishops, who, in traveling through their dioceses, visit the churches subject to them.

PROCURATION. Agency; proxy; the act of constituting another one's attorney in fact; action under a power of attorney or other constitution of agency. Indorsing a bill or note "by procuration" (or *per proc.*) is doing it as proxy for another or by his authority.

—Procuration fee, (or money.) In English law. Brokerage or commission allowed to scriveners and solicitors for obtaining loans of money. 4 Bl. Comm. 157.

Procurationem adversus nulla est præscriptio. Dav. Ir. K. B. 6. There is no prescription against procuration.

PROCURATIONS. In ecclesiastical law. Certain sums of money which parish priests pay yearly to the bishops or archdeacons *ratione visitationis*. Dig. 3, 39, 25; Ayl. Par. 429.

PROCURATOR. In the civil law. A proctor; a person who acts for another by virtue of a procuration. Dig. 3, 3, 1.

In old English law. An agent or attorney; a bailiff or servant. A proxy of a lord in parliament.

In ecclesiastical law. One who collected the fruits of a benefice for another. An advocate of a religious house, who was to solicit the interest and plead the causes of the society. A proxy or representative of a parish church.

—Procurator fiscal. In Scotch law, this is the title of the public prosecutor for each district, who institutes the preliminary inquiry into crime within his district. The office is analogous, in some respect, to that of "prosecuting attorney," "district attorney," or "state's attorney" in America.—**Procurator in rem suam.** Proctor (attorney) in his own affair, or with reference to his own property. This term

is used in Scotch law to denote that a person is acting under a procuration (power of attorney) with reference to a thing which has become his own property. See Ersk. Inst. 3, 5, 2.—**Procurator litis.** In the civil law. One who by command of another institutes and carries on for him a suit. Vicat, Voc. Jur.—**Procurator negotiorum.** In the civil law. An attorney in fact; a manager of business affairs for another person.—**Procurator provinciæ.** In Roman law. A provincial officer who managed the affairs of the revenue, and had a judicial power in matters that concerned the revenue. Adams, Rom. Ant. 178.

PROCURATORES ECCLESIÆ PAROCHIALIS. The old name for church-wardens. Paroch. Antiq. 562.

PROCURATORIUM. In old English law. The procuratory or instrument by which any person or community constituted or delegated their *procurator* or proctors to represent them in any judicial court or cause. Cowell.

PROCURATORY OF RESIGNATION. In Scotch law. A form of proceeding by which a vassal authorizes the feu to be returned to his superior. Bell. It is analogous to the surrender of copyholds in England.

PROCURATRIX. In old English law. A female agent or attorney in fact. Fleta, lib. 3, c. 4, § 4.

PROCURE. In criminal law, and in analogous uses elsewhere, to "procure" is to initiate a proceeding to cause a thing to be done; to instigate; to contrive, bring about, effect, or cause. See U. S. v. Wilson, 28 Fed. Cas. 710; Gore v. Lloyd, 12 Mees. & W. 480; Marcus v. Bernstein, 117 N. C. 31, 23 S. E. 38; Rosenbarger v. State, 154 Ind. 425, 56 N. E. 914; Long v. State, 23 Neb. 33, 36 N. W. 310.

PROCURER. A pimp; one that procures the seduction or prostitution of girls. They are punishable by statute in England and America.

PROCUREUR. In French law. An attorney; one who has received a commission from another to act on his behalf. There were in France two classes of *procureurs: Procureurs ad negotia*, appointed by an individual to act for him in the administration of his affairs; persons invested with a power of attorney; corresponding to "attorneys in fact." *Procureurs ad lites* were persons appointed and authorized to act for a party in a court of justice. These corresponded to attorneys at law, (now called, in England, "solicitors of the supreme court.") The order of *procureurs* was abolished in 1791, and that of *avoués* established in their place. Mozley & Whitley.

PROCUREUR DU ROI, in French law, is a public prosecutor, with whom rests the initiation of all criminal proceedings. In the exercise of his office (which appears to include the apprehension of offenders) he is entitled to call to his assistance the public force, (*posse comitatus;*) and the officers of police are auxiliary to him.

PROCUREUR GENERAL, or IMPERIAL. In French law. An officer of the imperial court, who either personally or by his deputy prosecutes every one who is accused of a crime according to the forms of French law. His functions appear to be confined to preparing the case for trial at the assizes, assisting in that trial, demanding the sentence in case of a conviction, and being present at the delivery of the sentence. He has a general superintendence over the officers of police and of the *juges d'instruction*, and he requires from the *procureur du roi* a general report once in every three months. Brown.

PRODES HOMINES. A term said by Tomlins to be frequently applied in the ancient books to the barons of the realm, particularly as constituting a council or administration or government. It is probably a corruption of "probi homines."

PRODIGUS. Lat. In Roman law. A prodigal; a spendthrift; a person whose extravagant habits manifested an inability to administer his own affairs, and for whom a guardian might therefore be appointed.

PRODITION. Treason; treachery.

PRODITOR. A traitor.

PRODITORIE. Treasonably. This is a technical word formerly used in indictments for treason, when they were written in Latin. Tomlins.

PRODUCE. To bring forward; to show or exhibit; to bring into view or notice; as, to produce books or writings at a trial in obedience to a *subpœna duces tecum.*

PRODUCE BROKER. A person whose occupation it is to buy or sell agricultural or farm products. 14 U. S. St. at Large, 117; U. S. v. Simons, 1 Abb. (U. S.) 470, Fed. Cas. No. 16,291.

PRODUCENT. The party calling a witness under the old system of the English ecclesiastical courts.

PRODUCTIO SECTÆ. In old English law. Production of suit; the production by a plaintiff of his *secta* or witnesses to prove the allegations of his count. See 3 Bl. Comm. 295.

PRODUCTION. In political economy. The creation of objects which constitute wealth. The requisites of production are

N labor, capital, and the materials and motive forces afforded by nature. Of these, labor and the raw material of the globe are primary and indispensable. Natural motive powers may be called in to the assistance of labor, and are a help, but not an essential, of
O production. The remaining requisite, capital, is itself the product of labor. Its instrumentality in production is therefore, in reality, that of labor in an indirect shape. Mill, Pol. Econ.; Wharton.

P **PRODUCTION OF SUIT.** In pleading. The formula, "and therefore he brings his suit," etc., with which declarations always conclude. Steph. Pl. 428, 429.

PROFANE. That which has not been consecrated. By a profane place is understood one which is neither sacred nor sanctified nor religious. Dig. 11, 7, 2, 4.

PROFANELY. In a profane manner. A technical word in indictments for the statutory offense of profanity. See Updegraph v. Com., 11 Serg. & R. (Pa.) 394.

PROFANITY. Irreverence towards sacred things; particularly, an irreverent or blasphemous use of the name of God; punishable by statute in some jurisdictions.

PROFECTITIUS. Lat. In the civil law. That which descends to us from our ascendants. Dig. 23, 3, 5.

PROFER. In old English law. An offer or proffer; an offer or endeavor to proceed in an action, by any man concerned to do so. Cowell.

A return made by a sheriff of his accounts into the exchequer; a payment made on such return. Id.

PROFERT IN CURIA. L. Lat. He produces in court. In old practice, these words were inserted in a declaration, as an allegation that the plaintiff was ready to produce, or did actually produce, in court, the deed or other written instrument on which his suit was founded, in order that the court might inspect the same and the defendant hear it read. The same formula was used where the defendant pleaded a written instrument.

In modern practice. An allegation formally made in a pleading, where a party alleges a deed, that he shows it in court, it being in fact retained in his own custody. Steph. Pl. 67.

PROFESSION. A public declaration respecting something. Cod. 10, 41, 6.

In ecclesiastical law. The act of entering into a religious order. See 17 Vin. Abr. 545.

Also a calling, vocation, known employment; divinity, medicine, and law are called the "learned professions."

PROFICUA. L. Lat. In old English law. Profits; especially the "issues and profits" of an estate in land. See Co. Litt. 142.

PROFILE. In civil engineering, a drawing representing the elevation of the various points on the plan of a road, or the like, above some fixed elevation. Pub. St. Mass. 1882, p. 1294.

PROFITS. **1.** The advance in the price of goods sold beyond the cost of purchase. The gain made by the sale of produce or manufactures, after deducting the value of the labor, materials, rents, and all expenses, together with the interest of the capital employed. Webster. See Providence Rubber Co. v. Goodyear, 9 Wall. 805, 19 L. Ed. 828; Mundy v. Van Hoose, 104 Ga. 292, 30 S. E. 783; Hinckley v. Pittsburgh Bessemer Steel Co., 121 U. S. 264, 7 Sup. Ct. 875, 30 L. Ed. 967; Prince v. Lamb, 128 Cal. 120, 60 Pac. 689; Maryland Ice Co. v. Arctic Ice Mach. Mfg. Co., 79 Md. 103, 29 Atl. 69.

2. The benefit, advantage, or pecuniary gain accruing to the owner or occupant of land from its actual use; as in the familiar phrase "rents, issues, and profits," or in the expression "mesne profits."

3. A division sometimes made of incorporeal hereditaments; as distinguished from "easements," which tend rather to the convenience than the profit of the claimant. 2 Steph. Comm. 2.

—Mesne profits. Intermediate profits; that is, profits which have been accruing between two given periods. Thus, after a party has recovered the land itself in an action of ejectment, he frequently brings another action for the purpose of recovering the profits which have been accruing or arising out of the land between the time when his title to the possession accrued or was raised and the time of his recovery in the action of ejectment, and such an action is thence termed an "action for mesne profits." Brown.—**Mesne profits, action of.** An action of trespass brought to recover profits derived from land, while the possession of it has been improperly withheld; that is, the yearly value of the premises. Worthington v. Hiss, 70 Md. 172, 16 Atl. 534; Woodhull v. Rosenthal, 61 N. Y. 394; Thompson v. Bower, 60 Barb. (N. Y.) 477.—**Net profits.** Theoretically all profits are "net." But as the expression "gross profits" is sometimes used to describe the mere excess of present value over former value, or of returns from sales over prime cost, the phrase "net profits" is appropriate to describe the gain which remains after the further deduction of all expenses, charges, costs, allowance for depreciation, etc.—**Profit and loss.** The gain or loss arising from goods bought or sold, or from carrying on any other business, the former of which, in book-keeping, is placed on the creditor's side; the latter on the debtor's side.—**Profits à prendre.** These, which are also called "rights of common," are rights exercised by one man in the soil of another, accompanied with participation in the profits of the soil thereof; as rights of pasture, or of digging sand. Profits à prendre differ from easements, in that the former are rights of profit, and the latter are mere rights of convenience without profit. Gale, Easem. 1; Hall, Profits à Prendre, 1. See Payne v. Sheets, 75 Vt. 335, 55 Atl. 656; Black v. Elkhorn

Min. Co. (C. C.) 49 Fed. 549; Bingham v. Salene, 15 Or. 208, 14 Pac. 523, 3 Am. St. Rep. 152; Pierce v. Keator, 70 N. Y. 422, 26 Am. Rep. 612.

PROGENER. Lat. In the civil law. A grandson-in-law. Dig. 38, 10, 4, 6.

PROGRESSION. That state of a business which is neither the commencement nor the end. Some act done after the matter has commenced, and before it is completed. Plowd. 343.

Prohibetur ne quis faciat in suo quod nocere possit alieno. It is forbidden for any one to do or make on his own [land] what may injure another's. 9 Coke, 59*a*.

PROHIBITED DEGREES. Those degrees of relationship by consanguinity which are so close that marriage between persons related to each other in any of such degrees is forbidden by law. See State v. Guiton, 51 La. Ann. 155, 24 South. 784.

PROHIBITIO DE VASTO, DIRECTA PARTI. A judicial writ which used to be addressed to a tenant, prohibiting him from waste, pending suit. Reg. Jud. 21; Moore, 917.

PROHIBITION. In practice. The name of a writ issued by a superior court, directed to the judge and parties of a suit in an inferior court, commanding them to cease from the prosecution of the same, upon a suggestion that the cause originally, or some collateral matter arising therein, does not belong to that jurisdiction, but to the cognizance of some other court. 3 Bl. Comm. 112.

The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, board, or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person. Code Civ. Proc. Cal. § 1102. And see Mayo v. James, 12 Grat. (Va.) 23; People v. Judge of Superior Court (Mich.) 2 N. W. 919; State v. Ward, 70 Minn. 58, 72 N. W. 825; Johnston v. Hunter, 50 W. Va. 52, 40 S. E. 448; Appo v. People, 20 N. Y. 531; Hovey v. Elliott, 167 U. S. 409, 17 Sup. Ct. 841, 42 L. Ed. 215; State v. Evans, 88 Wis. 255, 60 N. W. 433.

PROHIBITIVE IMPEDIMENTS. Those impediments to a marriage which are only followed by a punishment, but do not render the marriage null. Bowyer, Mod. Civil Law, 44.

PROJECTIO. Lat. In old English law. A throwing up of earth by the sea.

PROJET. Fr. In international law. The draft of a proposed treaty or convention.

Prolem ante matrimonium natam, ita ut post legitimam, lex civilis succedere facit in hæreditate parentum; sed prolem, quam matrimonium non parit, succedere non sinit lex Anglorum. Fortesc. c. 39. The civil law permits the offspring born before marriage [provided such offspring be afterwards legitimized] to be the heirs of their parents; but the law of the English does not suffer the offspring not produced by the marriage to succeed.

PROLES. Lat. Offspring; progeny; the issue of a lawful marriage.

Proles sequitur sortem paternam. The offspring follows the condition of the father. Lynch v. Clarke, 1 Sandf. Ch. (N. Y.) 583, 660.

PROLETARIATE. The class of *proletarii;* the lowest stratum of the people of a country, consisting mainly of the waste of other classes, or of those fractions of the population who, by their isolation and their poverty, have no place in the established order of society.

PROLETARIUS. Lat. In Roman law. A person of poor or mean condition; those among the common people whose fortunes were below a certain valuation; those who were so poor that they could not serve the state with money, but only with their children, (*proles.*) Calvin.; Vicat.

PROLICIDE. In medical jurisprudence. A word used to designate the destruction of the human offspring. Jurists divide the subject into *fœticide*, or the destruction of the *fœtus in utero*, and *infanticide*, or the destruction of the new-born infant. Ry. Med. Jur. 280.

PROLIXITY. The unnecessary and superfluous statement of facts in pleading or in evidence. This will be rejected as impertinent. 7 Price, 278, note.

PROLOCUTOR. In ecclesiastical law. The president or chairman of a convocation.

PROLONGATION. Time added to the duration of something; an extension of the time limited for the performance of an agreement. A prolongation of time accorded to the principal debtor will discharge the surety.

PROLYTÆ. In Roman law. A name given to students of law in the fifth year of their course; as being in advance of the Lytæ, or students of the fourth year. Calvin.

PROMATERTERA. Lat. In the civil law. A great maternal aunt; the sister of one's grandmother.

—Promatertera magna. Lat. In the civil law. A great-great-aunt.

PROMISE. A declaration, verbal or written, made by one person to another for a good or valuable consideration in the nature of a covenant by which the promisor binds himself to do or forbear some act, and gives to the promisee a legal right to demand and enforce a fulfillment. See Taylor v. Miller, 113 N. C. 340, 18 S. E. 504; Newcomb v. Clark, 1 Denio (N. Y.) 228; Foute v. Bacon, 2 Cush. (Miss.) 164; U. S. v. Baltic Mills Co., 124 Fed. 41, 59 C. C. A. 558.

"Promise" is to be distinguished, on the one hand, from a mere declaration of intention involving no engagement or assurance as to the future; and, on the other, from "agreement," which is an obligation arising upon reciprocal promises, or upon a promise founded on a consideration. Abbott.

"Fictitious promises," sometimes called "implied promises," or "promises implied in law," occur in the case of those contracts which were invented to enable persons in certain cases to take advantage of the old rules of pleading peculiar to contracts, and which are not now of practical importance. Sweet.

—Mutual promises. Promises simultaneously made by and between two parties; each being the consideration for the other.—**Naked promise.** One given without any consideration, equivalent, or reciprocal obligation, and for that reason not enforceable at law. See Arend v. Smith, 151 N. Y. 502, 45 N. E. 872. **—New promise.** An undertaking or promise, based upon and having relation to a former promise which, for some reason, can no longer be enforced, whereby the promisor recognizes and revives such former promise and engages to fulfill it.—**Parol promise.** A simple contract; a verbal promise. 2 Steph. Comm. 109.—**Promise of marriage.** A contract mutually entered into by a man and a woman that they will marry each other.

PROMISEE. One to whom a promise has been made.

PROMISOR. One who makes a promise.

PROMISSOR. Lat. In the civil law. A promiser; properly the party who undertook to do a thing in answer to the interrogation of the other party, who was called the "stipulator."

PROMISSORY. Containing or consisting of a promise; in the nature of a promise; stipulating or engaging for a future act or course of conduct.

—Promissory note. A promise or engagement, in writing, to pay a specified sum at a time therein limited, or on demand, or at sight, to a person therein named, or to his order, or bearer. Byles, Bills, 1, 4; Hall v. Farmer, 5 Denio (N. Y.) 484. A promissory note is a written promise made by one or more to pay another, or order, or bearer, at a specified time, a specific amount of money, or other articles of value. Code Ga. 1882, § 2774. A promissory note is an instrument negotiable in form, whereby the signer promises to pay a specified sum of money. Civ. Code Cal. § 3244. An unconditional written promise, signed by the maker, to pay absolutely and at all events a sum certain in money, either to the bearer or to a person therein designated or his order. Benj. Chalm. Bills & N. art. 271.

As to promissory "Oath," "Representation," and "Warranty," see those titles.

PROMOTERS. In the law relating to corporations, those persons are called the "promoters" of a company who first associate themselves together for the purpose of organizing the company, issuing its prospectus, procuring subscriptions to the stock, securing a charter, etc. See Dickerman v. Northern Trust Co., 176 U. S. 181, 20 Sup. Ct. 311, 44 L. Ed. 423; Bosher v. Richmond & H. Land Co., 89 Va. 455, 16 S. E. 360, 37 Am. St. Rep. 879; Yale Gas Stove Co. v. Wilcox, 64 Conn. 101, 29 Atl. 303, 25 L. R. A. 90, 42 Am. St. Rep. 159; Densmore Oil Co. v. Densmore, 64 Pa. 49.

In English practice. Those persons who, in popular and penal actions, prosecute offenders in their own names and that of the king, and are thereby entitled to part of the fines and penalties for their pains, are called "promoters." Brown.

The term is also applied to a party who puts in motion an ecclesiastical tribunal, for the purpose of correcting the manners of any person who has violated the laws ecclesiastical; and one who takes such a course is said to "promote the office of the judge." See Mozley & Whitley.

PROMOVENT. A plaintiff in a suit of *duplex querela*, (*q. v.*) 2 Prob. Div. 192.

PROMULGARE. Lat. In Roman law. To make public; to make publicly known; to promulgate. To publish or make known a law, after its enactment.

PROMULGATE. To publish; to announce officially; to make public as important or obligatory. See Wooden v. Western New York & P. R. Co. (Super. Ct.) 18 N. Y. Supp. 769.

PROMULGATION. The order given to cause a law to be executed, and to make it public; it differs from publication. 1 Bl. Comm. 45.

PROMUTUUM. Lat. In the civil law. A *quasi* contract, by which he who receives a certain sum of money, or a certain quantity of fungible things, which have been paid to him through mistake, contracts towards the payer the obligation of returning him as much. Poth. de l'Usure, pt. 3, s. 1, a. 1.

PRONEPOS. Lat. In the civil law. A great-grandson. Inst. 3, 6, 1; Bract. fol. 67.

PRONEPTIS. Lat. In the civil law. A great-granddaughter. Inst. 3, 6, 1; Bract. fol. 67.

PRONOTARY. First notary. See PROTHONOTARY.

PRONOUNCE. To utter formally, officially, and solemnly; to declare aloud and in a formal manner. In this sense a court is said to "pronounce" judgment or a sentence. See Ex parte Crawford, 36 Tex. Cr. R. 180, 36 S. W. 92.

PRONUNCIATION. L. Fr. A sentence or decree. Kelham.

PRONURUS. Lat. In the civil law. The wife of a grandson or great-grandson. Dig. 38, 10, 4, 6.

PROOF. Proof, in civil process, is a sufficient reason for the truth of a juridical proposition by which a party seeks either to maintain his own claim or to defeat the claim of another. Whart. Ev. § 1.

Proof is the effect of evidence; the establishment of a fact by evidence. Code Civ. Proc. Cal. § 1824. And see Nevling v. Com., 98 Pa. 328; Tift v. Jones, 77 Ga. 181, 3 S. E. 399; Powell v. State, 101 Ga. 9, 29 S. E. 309, 65 Am. St. Rep. 277; Jastrzembski v. Marxhausen, 120 Mich. 677, 79 N. W. 935.

Ayliffe defines "judicial proof" to be a clear and evident declaration or demonstration of a matter which was before doubtful, conveyed in a judicial manner by fit and proper arguments, and likewise by all other legal methods—*First*, by fit and proper arguments, such as conjectures, presumptions, *indicia*, and other adminicular ways and means; *secondly*, by legal methods, or methods according to law, such as witnesses, public instruments, and the like. Ayl. Par. 442.

For the distinction between "proof," "evidence," "belief," and "testimony," see EVIDENCE.

—Burden of proof. See that title.**—Full proof.** See FULL.**—Half proof.** See HALF.**—Preliminary proof.** See PRELIMINARY.**—Positive proof.** Direct or affirmative proof; that which directly establishes the fact in question; as opposed to *negative* proof, which establishes the fact by showing that its opposite is not or cannot be true. Niles v. Rhodes, 7 Mich. 378; Falkner v. Behr, 75 Ga. 674; Schrack v. McKnight, 84 Pa. 30.**—Proof of debt.** The formal establishment by a creditor of his debt or claim, in some prescribed manner, (as, by his affidavit or otherwise,) as a preliminary to its allowance, along with others, against an estate or property to be divided, such as the estate of a bankrupt or insolvent, a deceased person, or a firm or company in liquidation.**—Proof of will.** A term having the same meaning as "probate," (*q. v.*,) and used interchangeably with it.

PROPATRUUS. Lat. In the civil law. A great-grandfather's brother. Inst. 3, 6, 3; Bract. fol. 68*b*.

—Propatruus magnus. In the civil law. A great-great-uncle.

PROPER. That which is fit, suitable, adapted, and correct. See Knox v. Lee, 12 Wall. 457, 20 L. Ed. 287; Griswold v. Hepburn, 2 Duv. (Ky.) 20; Westfield v. Warren, 8 N. J. Law, 251.

Peculiar; naturally or essentially belonging to a person or thing; not common; appropriate; one's own.

—Proper feuds. In feudal law, the original and genuine feuds held by purely military service.**—Proper parties.** A proper party, as distinguished from a necessary party, is one who has an interest in the subject-matter of the litigation, which may be conveniently settled therein; one without whom a substantial decree may be made, but not a decree which shall completely settle all the questions which may be involved in the controversy and conclude the rights of all the persons who have any interest in the subject of the litigation. See Kelley v. Boettcher, 85 Fed. 55, 29 C. C. A. 14; Tatum v. Roberts, 59 Minn. 52, 60 N. W. 843.

PROPERTY. Rightful dominion over external objects; ownership; the unrestricted and exclusive right to a thing; the right to dispose of the substance of a thing in every legal way, to possess it, to use it, and to exclude every one else from interfering with it. Mackeld. Rom. Law, § 265.

Property is the highest right a man can have to anything; being used for that right which one has to lands or tenements, goods or chattels, which noway depends on another man's courtesy. Jackson ex dem. Pearson v. Housel, 17 Johns. 281, 283.

A right imparting to the owner a power of indefinite user, capable of being transmitted to universal successors by way of descent, and imparting to the owner the power of disposition, from himself and his successors *per universitatem*, and from all other persons who have a *spes successionis* under any existing concession or disposition, in favor of such person or series of persons as he may choose, with the like capacities and powers as he had himself, and under such conditions as the municipal or particular law allows to be annexed to the dispositions of private persons. Aust. Jur. (Campbell's Ed.) § 1103.

The right of property is that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe. It consists in the free use, enjoyment, and disposal of all a person's acquisitions, without any control or diminution save only by the laws of the land. 1 Bl. Comm. 138; 2 Bl. Comm. 2, 15.

The word is also commonly used to denote any external object over which the right of property is exercised. In this sense it is a very wide term, and includes every class of acquisitions which a man can own or have an interest in. See Scranton v. Wheeler, 179 U. S. 141, 21 Sup. Ct. 48, 45 L. Ed. 126; Lawrence v. Hennessey, 165 Mo. 659, 65 S. W. 717; Boston & L. R. Corp. v. Salem & L. R. Co., 2 Gray (Mass.), 35; National Tel. News Co. v. Western Union Tel. Co., 119 Fed. 294, 56 C. C. A. 198, 60 L. R. A. 805; Hamilton v. Rathbone, 175 U. S. 414, 20 Sup. Ct. 155, 44 L. Ed. 219; Stanton v. Lewis, 26 Conn. 449; Wilson v. Ward Lumber Co. (C. C.) 67 Fed. 674.

—Absolute property. In respect to chattels personal property is said to be "absolute" where a man has, solely and exclusively, the right and also the occupation of any movable chattels, so

that they cannot be transferred from him, or cease to be his, without his own act or default. 2 Bl. Comm. 389. In the law of wills, a bequest or devise "to be the absolute property" of the beneficiary, may pass a title in fee simple. Myers v. Anderson, 1 Strob. Eq. (S. C.) 344, 47 Am. Dec. 537; Fackler v. Berry, 93 Va. 565, 25 S. E. 887, 57 Am. St. Rep. 819. Or it may mean that the property is to be held free from any limitation or condition or free from any control or disposition on the part of others. Wilson v. White, 133 Ind. 614, 33 N. E. 361, 19 L. R. A. 581; Williams v. Vancleave, 7 T. B. Mon. (Ky.) 388, 393.—**Common property.** A term sometimes applied to lands owned by a municipal corporation and held in trust for the common use of the inhabitants. Comp. Laws N. Mex. 1897, § 2184. Also property owned jointly by husband and wife under the community system. See COMMUNITY.—**Community property.** See COMMUNITY.—**Ganancial property.** See that title.—**General property.** The right and property in a thing enjoyed by the *general owner*. See OWNER.—**Literary property.** See LITERARY.—**Mixed property.** Property which is personal in its essential nature, but is invested by the law with certain of the characteristics and features of real property. Heirlooms, tombstones, monuments in a church, and title-deeds to an estate are of this nature. 2 Bl. Comm. 428; 3 Barn. & Adol. 174; 4 Bing. 106; Miller v. Worrall, 62 N. J. Eq. 776, 48 Atl. 586, 90 Am. St. Rep. 480; Minot v. Thompson, 106 Mass. 585.—**Personal property.** Property of a personal or movable nature, as opposed to property of a local or immovable character, (such as land or houses,) the latter being called "real property." This term is also applied to the right or interest less than a freehold which a man has in realty. Boyd v. Selma, 96 Ala. 144, 11 South. 393, 16 L. R. A. 729; Adams v. Hackett, 7 Cal. 203; Stief v. Hart, 1 N. Y. 24; Bellows v. Allen, 22 Vt. 108; In re Bruckman's Estate, 195 Pa. 363, 45 Atl. 1078; Atlanta v. Chattanooga Foundry & Pipe Co., (C. C.) 101 Fed. 907. That kind of property which usually consists of things temporary and movable, but includes all subjects of property not of a freehold nature, nor descendible to the heirs at law. 2 Kent, Comm. 340. Personal property is divisible into (1) corporeal personal property, which includes movable and tangible things, such as animals, ships, furniture, merchandise, etc.; and (2) incorporeal personal property, which consists of such rights as personal annuities, stocks, shares, patents, and copyrights. Sweet.—**Private property,** as protected from being taken for public uses, is such property as belongs absolutely to an individual, and of which he has the exclusive right of disposition; property of a specific, fixed and tangible nature, capable of being had in possession and transmitted to another, such as houses, lands, and chattels. Homochitto River Com'rs v. Withers, 29 Miss. 21, 64 Am. Dec. 126; Scranton v. Wheeler, 179 U. S. 141, 21 Sup. Ct. 48, 45 L. Ed. 126.—**Property tax.** In English law, this is understood to be an income tax payable in respect to landed property. In America, it is a tax imposed on property, whether real or personal, as distinguished from poll taxes, and taxes on successions, transfers, and occupations, and from license taxes. See Garrett v. St. Louis, 25 Mo. 510, 69 Am. Dec. 475; In re Swift's Estate, 137 N. Y. 77, 32 N. E. 1096, 18 L. R. A. 709; Rohr v. Gray, 80 Md. 274, 30 Atl. 632.—**Public property.** This term is commonly used as a designation of those things which are *publici juris*, (*q. v.*,) and therefore considered as being owned by "the public," the entire state or community, and not restricted to the dominion of a private person. It may also apply to any subject of property owned by a state, nation, or municipal corporation as such.—**Qualified property.** Property in chattels which is not in its nature permanent, but may at some times subsist and not at other times; such for example, as the property a man may have in wild animals which he has caught and keeps, and which are his only so long as he retains possession of them. 2 Bl. Comm. 389.—**Real property.** A general term for lands, tenements, and hereditaments; property which, on the death of the owner intestate, passes to his heir. Real property is either corporeal or incorporeal. See Code N. Y. § 462.—**Separate property.** The separate property of a married woman is that which she owns in her own right, which is liable only for her own debts, and which she can incumber and dispose of at her own will.—**Special property.** Property of a qualified, temporary, or limited nature; as distinguished from absolute, general, or unconditional property. Such is the property of a bailee in the article bailed, of a sheriff in goods temporarily in his hands under a levy, of the finder of lost goods while looking for the owner, of a person in wild animals which he has caught. Stief v. Hart, 1 N. Y. 24; Moulton v. Witherell, 52 Me. 242; Eisendrath v. Knauer, 64 Ill. 402; Phelps v. People, 72 N. Y. 357.

PROPINQUI ET CONSANGUINEI. Lat. The nearest of kin to a deceased person.

Propinquior excludit propinquum; propinquus remotum; et remotus remotiorem. Co. Litt. 10. He who is nearer excludes him who is near; he who is near, him who is remote; he who is remote, him who is remoter.

PROPINQUITY. Kindred; parentage.

PROPIOR SOBRINO, PROPIOR SOBRINA. Lat. In the civil law. The son or daughter of a great-uncle or great-aunt, paternal or maternal. Inst. 3, 6, 3.

PROPIOS, PROPRIOS. In Spanish law. Certain portions of ground laid off and reserved when a town was founded in Spanish America as the unalienable property of the town, for the purpose of erecting public buildings, markets, etc., or to be used in any other way, under the direction of the municipality, for the advancement of the revenues or the prosperity of the place. 12 Pet. 442, note.

Thus, there are *solares*, or house lots of a small size, upon which dwellings, shops, stores, etc., are to be built. There are *suertes*, or sowing grounds of a larger size, for cultivating or planting; as gardens, vineyards, orchards, etc. There are *ejidos*, which are quite well described by our word "commons," and are lands used in common by the inhabitants of the place for pasture, wood, threshing ground, etc.; and particular names are assigned to each, according to its particular use. Sometimes additional *ejidos* were allowed to be taken outside of the town limits. There are also *propios* or municipal lands, from which revenues are derived to defray the expenses of the municipal administration. Hart v. Burnett, 15 Cal. 554.

PROPONE. **In Scotch law.** To state. To *propone* a defense is to state or move it. 1 Kames, Eq. pref.

In ecclesiastical and probate law. To bring forward for adjudication; to exhibit as basis of a claim; to proffer for judicial action.

PROPONENT. The propounder of a thing. Thus, the proponent of a will is the party who offers it for probate, (*q. v.*)

PROPORTUM. In old records. Purport; intention or meaning. Cowell.

PROPOSAL. An offer; something proffered. An offer, by one person to another, of terms and conditions with reference to some work or undertaking, or for the transfer of property, the acceptance whereof will make a contract between them. Eppes v. Mississippi, G. & T. R. Co., 35 Ala. 33.

In English practice. A statement in writing of some special matter submitted to the consideration of a chief clerk in the court of chancery, pursuant to an order made upon an application *ex parte*, or a decretal order of the court. It is either for maintenance of an infant, appointment of a guardian, placing a ward of the court at the university or in the army, or apprentice to a trade; for the appointment of a receiver, the establishment of a charity, etc. Wharton.

Propositio indefinita æquipollet universali. An indefinite proposition is equivalent to a general one.

PROPOSITION. A single logical sentence; also an offer to do a thing. See Perry v. Dwelling House Ins. Co., 67 N. H. 291, 33 Atl. 731, 68 Am. St. Rep. 668; Hubbard v. Woodsum, 87 Me. 88, 32 Atl. 802.

PROPOSITUS. Lat. The person proposed; the person from whom a descent is traced.

PROPOUND. An executor or other person is said to propound a will or other testamentary paper when he takes proceedings for obtaining probate in solemn form. The term is also technically used, in England, to denote the allegations in the statement of claim, in an action for probate, by which the plaintiff alleges that the testator executed the will with proper formalities, and that he was of sound mind at the time. Sweet.

PROPRES. In French law. The term "*propres*" or "*biens propres*" (as distinguished from "*acquets*") denotes all property inherited by a person, whether by devise or *ab intestato*, from his direct or collateral relatives, whether in the ascending or descending line; that is, in terms of the common law, property acquired by "descent" as distinguished from that acquired by "purchase."

PROPRIA PERSONA. See IN PROPRIA PERSONA.

PROPRIEDAD. In Spanish law. Property. White, New Recop. b. 1, tit. 7, c. 5, § 2.

PROPRIETARY, *n.* A proprietor or owner; one who has the exclusive title to a thing; one who possesses or holds the title to a thing in his own right. The grantees of Pennsylvania and Maryland and their heirs were called the proprietaries of those provinces. Webster.

PROPRIETARY, *adj.* Relating or pertaining to ownership, belonging or pertaining to a single individual owner.

—Proprietary articles. Goods manufactured under some exclusive individual right to make and sell them. The term is chiefly used in the internal revenue laws of the United States. See Ferguson v. Arthur, 117 U. S. 482, 6 Sup. Ct. 861, 29 L. Ed. 979; In re Gourd (C. C.) 49 Fed. 729.—**Proprietary chapel.** See CHAPEL.—**Proprietary governments.** This expression is used by Blackstone to denote governments granted out by the crown to individuals, in the nature of feudatory principalities, with inferior regalities and subordinate powers of legislation such as formerly belonged to the owners of counties palatine. 1 Bl. Comm. 108.—**Proprietary rights.** Those rights which an owner of property has by virtue of his ownership. When proprietary rights are opposed to acquired rights, such as easements, franchises, etc., they are more often called "natural rights." Sweet.

PROPRIETAS. Lat. In the civil and old English law. Property; that which is one's own; ownership.

Proprietas plena, full property, including not only the title, but the usufruct, or exclusive right to the use. Calvin.

Proprietas nuda, naked or mere property or ownership; the mere title, separate from the usufruct.

Proprietas totius navis carinæ causam sequitur. The property of the whole ship follows the condition of the keel. Dig. 6, 1, 61. If a man builds a vessel from the very keel with the materials of another, the vessel belongs to the owner of the materials. 2 Kent, Comm. 362.

Proprietas verborum est salus propietatum. Jenk. Cent. 16. Propriety of words is the salvation of property.

PROPRIETATE PROBANDA, DE. A writ addressed to a sheriff to try by an inquest in whom certain property, previous to distress, subsisted. Finch, Law, 316.

Proprietates verborum servandæ sunt. The proprieties of words [proper meanings of words] are to be preserved or adhered to. Jenk. Cent. p. 136, case 78.

PROPRIÉTÉ. The French law term corresponding to our "property," or the right of enjoying and of disposing of things in the most absolute manner, subject only to the laws. Brown.

PROPRIETOR. This term is almost synonymous with "owner," (*q. v.*,) as in the phrase "riparian proprietor." A person entitled to a trade-mark or a design under the acts for the registration or patenting of trade-marks and designs (*q. v.*) is called "proprietor" of the trade-mark or design. Sweet. See Latham v. Roach, 72 Ill. 181; Yuengling v. Schile (C. C.) 12 Fed. 105; Hunt v. Curry, 37 Ark. 105; Werckmeister v. Springer Lithographing Co. (C. C.) 63 Fed. 811.

PROPRIETY. In Massachusetts colonial ordinance of 1741 is nearly, if not precisely, equivalent to property. Com. v. Alger, 7 Cush. (Mass.) 53, 70.

In old English law. Property. "Propriety in action; propriety in possession; mixed propriety." Hale, Anal. § 26.

PROPRIO VIGORE. Lat. By its own force; by its intrinsic meaning.

PROPRIOS. In Spanish and Mexican law. Productive lands, the usufruct of which had been set apart to the several municipalities for the purpose of defraying the charges of their respective governments. Sheldon v. Milmo, 90 Tex. 1, 36 S. W. 413; Hart v. Burnett, 15 Cal. 554.

PROPTER. For; on account of. The initial word of several Latin phrases.

—Propter affectum. For or on account of some affection or prejudice. The name of a species of *challenge*, (*q. v.*)—**Propter defectum.** On account of or for some defect. The name of a species of *challenge*, (*q. v.*)—**Propter defectum sanguinis.** On account of failure of blood.—**Propter delictum.** For or on account of crime. The name of a species of *challenge*, (*q. v.*)—**Propter honoris respectum.** On account of respect of honor or rank. See CHALLENGE.—**Propter impotentiam.** On account of helplessness. The term describes one of the grounds of a qualified property in wild animals, consisting in the fact of their inability to escape; as is the case with the young of such animals before they can fly or run. 2 Bl. Comm. 394.—**Propter privilegium.** On account of privilege. The term describes one of the grounds of a qualified property in wild animals, consisting in the special privilege of hunting, taking and killing them, in a given park or preserve, to the exclusion of other persons. 2 Bl. Comm. 394.

PRORATE. To divide, share, or distribute proportionally; to assess or apportion pro rata. Formed from the Latin phrase "pro rata," and said to be a recognized English word. Rosenberg v. Frank, 58 Cal. 405.

PROROGATED JURISDICTION. In Scotch law. A power conferred by consent of the parties upon a judge who would not otherwise be competent.

PROROGATION. Prolonging or putting off to another day. In English law, a prorogation is the continuance of the parliament from one session to another, as an adjournment is a continuation of the session from day to day. Wharton.

In the civil law. The giving time to do a thing beyond the term previously fixed. Dig. 2, 14, 27, 1.

PROROGUE. To direct suspension of proceedings of parliament; to terminate a session.

PROSCRIBED. In the civil law. Among the Romans, a man was said to be "proscribed" when a reward was offered for his head; but the term was more usually applied to those who were sentenced to some punishment which carried with it the consequences of civil death. Cod. 9, 49.

PROSECUTE. To follow up; to carry on an action or other judicial proceeding; to proceed against a person criminally.

PROSECUTING ATTORNEY. The name of the public officer (in several states) who is appointed in each judicial district, circuit, or county, to conduct criminal prosecutions on behalf of the state or people. See People v. May, 3 Mich. 605; Holder v. State, 58 Ark. 473, 25 S. W. 279.

PROSECUTING WITNESS. This name is given to the private person upon whose complaint or information a criminal accusation is founded and whose testimony is mainly relied on to secure a conviction at the trial; in a more particular sense, the person who was chiefly injured, in person or property, by the act constituting the alleged crime, (as in cases of robbery, assault, criminal negligence, bastardy, and the like,) and who instigates the prosecution and gives evidence.

PROSECUTION. In criminal law. A criminal action; a proceeding instituted and carried on by due course of law, before a competent tribunal, for the purpose of determining the guilt or innocence of a person charged with crime. See U. S. v. Reisinger, 128 U. S. 398, 9 Sup. Ct. 99, 32 L. Ed. 480; Tennessee v. Davis, 100 U. S. 257, 25 L. Ed. 648; Schulte v. Keokuk County, 74 Iowa, 292, 37 N. W. 376; Sigsbee v. State, 43 Fla. 524, 30 South. 816.

By an easy extension of its meaning "prosecution" is sometimes used to designate the state as the party proceeding in a criminal action, or the prosecutor, or counsel; as when we speak of "the evidence adduced by the prosecution."

—Malicious prosecution. See MALICIOUS.

PROSECUTOR. In practice. He who prosecutes another for a crime in the name of the government.

—Private prosecutor. One who sets in motion the machinery of criminal justice against a person whom he suspects or believes to be guilty of a crime, by laying an accusation before the proper authorities, and who is not himself an officer of justice. See Heacock v. State, 13 Tex. App. 129; State v. Millain, 3 Nev. 425.**—Prosecutor of the pleas.** This name is given, in New Jersey, to the county officer who is charged with the prosecution of criminal actions, corresponding to the "district attorney" or "county attorney" in other states.**—Public prosecutor.** An officer of government (such as a state's attorney or district attorney) whose function is the prosecution of criminal actions, or suits partaking of the nature of criminal actions.

PROSECUTRIX. In criminal law. A female prosecutor.

PROSEQUI. Lat. To follow up or pursue; to sue or prosecute. See NOLLE PROSEQUI.

PROSEQUITUR. Lat. He follows up or pursues; he prosecutes. See NON PROS.

PROSOCER. Lat. In the civil law. A father-in-law's father; grandfather of wife.

PROSOCERUS. Lat. In the civil law. A wife's grandmother.

PROSPECTIVE. Looking forward; contemplating the future. A law is said to be prospective (as opposed to retrospective) when it is applicable only to cases which shall arise after its enactment.

—Prospective damages. See DAMAGES.

PROSPECTUS. A document published by a company or corporation, or by persons acting as its agents or assignees, setting forth the nature and objects of an issue of shares, debentures, or other securities created by the company or corporation, and inviting the public to subscribe to the issue. A prospectus is also usually published on the issue, in England, of bonds or other securities by a foreign state or corporation. Sweet.

In the civil law. Prospect; the view of external objects. Dig. 8, 2, 3, 15.

PROSTITUTE. A woman who indiscriminately consorts with men for hire. Carpenter v. People, 8 Barb. (N. Y.) 611; State v. Stoyell, 54 Me. 24, 89 Am. Dec. 716.

PROSTITUTION. Common lewdness; whoredom; the act or practice of a woman who permits any man who will pay her price to have sexual intercourse with her. See Com. v. Cook, 12 Metc. (Mass.) 97.

Protectio trahit subjectionem, et subjectio protectionem. Protection draws with it subjection, and subjection protection. 7 Coke, 5*a*. The protection of an individual by government is on condition of his submission to the laws, and such submission on the other hand entitles the individual to the protection of the government. Broom, Max. 78.

PROTECTION. In English law. A writ by which the king might, by a special prerogative, privilege a defendant from all personal and many real suits for one year at a time, and no longer, in respect of his being engaged in his service out of the realm. 3 Bl. Comm. 289.

In former times the name "protection" was also given to a certificate given to a sailor to show that he was exempt from impressment into the royal navy.

In mercantile law. The name of a document generally given by notaries public to sailors and other persons going abroad, in which it is certified that the bearer therein named is a citizen of the United States.

In public commercial law. A system by which a government imposes customs duties upon commodities of foreign origin or manufacture when imported into the country, with the purpose and effect of stimulating and developing the home production of the same or equivalent articles, by discouraging the importation of foreign goods, or by raising the price of foreign commodities to a point at which the home producers can successfully compete with them.

PROTECTION OF INVENTIONS ACT. The statute 33 & 34 Vict. c. 27. By this act it is provided that the exhibition of new inventions shall not prejudice patent rights, and that the exhibition of designs shall not prejudice the right to registration of such designs.

PROTECTION ORDER. In English practice. An order for the protection of the wife's property, when the husband has willfully deserted her, issuable by the divorce court under statutes on that subject.

PROTECTIONIBUS DE. The English statute 33 Edw. I. St. 1, allowing a challenge to be entered against a protection, etc.

PROTECTIVE TARIFF. A law imposing duties on imports, with the purpose and the effect of discouraging the use of products of foreign origin, and consequently of stimulating the home production of the same or equivalent articles. R. E. Thompson, in Enc. Brit.

PROTECTOR OF SETTLEMENT. In English law. By the statute 3 & 4 Wm. IV. c. 74, § 32, power is given to any settlor to appoint any person or persons, not exceeding three, the "protector of the settlement." The object of such appointment is to prevent the tenant in tail from barring any subse-

quent estate, the consent of the protector being made necessary for that purpose.

PROTECTORATE. (1) The period during which Oliver Cromwell ruled in England. (2) Also the office of protector. (3) The relation of the English sovereign, till the year 1864, to the Ionian Islands. Wharton.

PROTEST. **1.** A formal declaration made by a person interested or concerned in some act about to be done, or already performed, and in relation thereto, whereby he expresses his dissent or disapproval, or affirms the act to be done against his will or convictions, the object being generally to save some right which would be lost to him if his implied assent could be made out, or to exonerate himself from some responsibility which would attach to him unless he expressly negatived his assent to or voluntary participation in the act.

2. A notarial act, being a formal statement in writing made by a notary under his seal of office, at the request of the holder of a bill or note, in which such bill or note is described, and it is declared that the same was on a certain day presented for payment, (or acceptance, as the case may be,) and that such payment or acceptance was refused, and stating the reasons, if any, given for such refusal, whereupon the notary *protests* against all parties to such instrument, and declares that they will be held responsible for all loss or damage arising from its dishonor. See Annville Nat. Bank v. Kettering, 106 Pa. 531, 51 Am. Rep. 536; Ayrault v. Pacific Bank, 47 N. Y. 575, 7 Am. Rep. 489.

A formal notarial certificate attesting the dishonor of a bill of exchange or promissory note. Benj. Chalm. Bills & N. art. 176.

A solemn declaration written by the notary, under a fair copy of the bill, stating that the payment or acceptance has been demanded and refused, the reason, if any, assigned, and that the bill is therefore protested. Dennistoun v. Stewart, 17 How. 607, 15 L. Ed. 228.

"Protest," in a technical sense, means only the formal declaration drawn up and signed by the notary; yet, as used by commercial men, the word includes all the steps necessary to charge an indorser. Townsend v. Lorain Bank, 2 Ohio St. 345.

3. A formal declaration made by a minority (or by certain individuals) in a legislative body that they dissent from some act or resolution of the body, usually adding the grounds of their dissent. The term, in this sense, seems to be particularly appropriate to such a proceeding in the English house of lords. See Auditor General v. Board of Sup'rs, 89 Mich. 552, 51 N. W. 483.

4. The name "protest" is also given to the formal statement, usually in writing, made by a person who is called upon by public authority to pay a sum of money, in which he declares that he does not concede the legality or justice of the claim or his duty to pay it, or that he disputes the amount demanded; the object being to save his right to recover or reclaim the amount, which right would be lost by his acquiescence. Thus, taxes may be paid under "protest." See Meyer v. Clark, 2 Daly (N. Y.) 509.

5. "Protest" is also the name of a paper served on a collector of customs by an importer of merchandise, stating that he believes the sum charged as duty to be excessive, and that, although he pays such sum for the purpose of getting his goods out of the custom-house, he reserves the right to bring an action against the collector to recover the excess.

6. In maritime law, a protest is a written statement by the master of a vessel, attested by a proper judicial officer or a notary, to the effect that damage suffered by the ship on her voyage was caused by storms or other perils of the sea, without any negligence or misconduct on his own part. Marsh. Ins. 715. And see Cudworth v. South Carolina Ins. Co., 4 Rich. Law (S. C.) 416, 55 Am. Dec. 692.

—Notice of protest. A notice given by the holder of a bill or note to the drawer or indorser that the bill has been protested for refusal of payment or acceptance. Cook v. Litchfield, 10 N. Y. Leg. Obs. 338; First Nat. Bank v. Hatch, 78 Mo. 23; Roberts v. State Bank, 9 Port. (Ala.) 315.**—Supra protest.** In mercantile law. A term applied to an acceptance of a bill by a third person, after protest for nonacceptance by the drawee. 3 Kent, Comm. 87.**—Waiver of protest.** As applied to a note or bill, a waiver of protest implies not only dispensing with the formal act known as "protest," but also with that which ordinarily must precede it, viz., demand and notice of non-payment. See Baker v. Scott, 29 Kan. 136, 44 Am. Rep. 628; First Nat. Bank v. Hartman, 110 Pa. 196, 2 Atl. 271; Coddington v. Davis, 1 N. Y. 186.

PROTESTANDO. L. Lat. Protesting. The emphatic word formerly used in pleading by way of protestation. 3 Bl. Comm. 311. See PROTESTATION.

PROTESTANTS. Those who adhered to the doctrine of Luther; so called because, in 1529, they protested against a decree of the emperor Charles V. and of the diet of Spires, and declared that they appealed to a general council. The name is now applied indiscriminately to all the sects, of whatever denomination, who have seceded from the Church of Rome. Enc. Lond. See Hale v. Everett, 53 N. H. 9, 16 Am. Rep. 82; Appeal of Tappan, 52 Conn. 413.

PROTESTATION. In pleading. The indirect affirmation or denial of the truth of some matter which cannot with propriety or safety be positively affirmed, denied, or entirely passed over. See 3 Bl. Comm. 311.

The exclusion of a conclusion. Co. Litt. 124.

In practice. An asseveration made by taking God to witness. A protestation is a

form of asseveration which approaches very nearly to an oath. Wolff. Inst. Nat. § 375.

PROTHONOTARY. The title given to an officer who officiates as principal clerk of some courts. Vin. Abr. See Trebilcox v. McAlpine, 46 Hun (N. Y.) 469; Whitney v. Hopkins, 135 Pa. 246, 19 Atl. 1075.

PROTOCOL. The first draft or rough minutes of an instrument or transaction; the original copy of a dispatch, treaty, or other document. Brande.

A document serving as the preliminary to, or opening of, any diplomatic transaction.

In old Scotch practice. A book, marked by the clerk-register, and delivered to a notary on his admission, in which he was directed to insert all the instruments he had occasion to execute; to be preserved as a record. Bell.

In France, the minutes of notarial acts were formerely transcribed on registers, which were called "protocols." Toullier, Droit Civil Fr. liv. 3, t. 3, c. 6, s. 1, no. 413.

PROTOCOLO. In Spanish law. The original draft or writing of an instrument which remains in the possession of the *escribano*, or notary. White, New Recop. lib. 8, tit. 7, c. 5, § 2.

The term "*protocolo*," when applied to a single paper, means the first draft of an instrument duly executed before a notary,—the matrix,—because it is the source from which must be taken copies to be delivered to interested parties as their evidence of right; and it also means a bound book in which the notary places and keeps in their order instruments executed before him, from which copies are taken for the use of parties interested. Downing v. Diaz, 80 Tex. 436, 16 S. W. 53.

PROTUTOR. Lat. In the civil law. He who, not being the tutor of a minor, has administered his property or affairs as if he had been, whether he thought himself legally invested with the authority of a tutor or not. Mackeld. Rom. Law, § 630.

PROUT PATET PER RECORDUM. As appears by the record. In the Latin phraseology of pleading, this was the proper formula for making reference to a record.

PROVABLE. L. Fr. Provable; justifiable; manifest. Kelham.

PROVE. To establish a fact or hypothesis as true by satisfactory and sufficient evidence.

To present a claim or demand against a bankrupt or insolvent estate, and establish by evidence or affidavit that the same is correct and due, for the purpose of receiving a dividend on it. Tibbetts v. Trafton, 80 Me. 264, 14 Atl. 71; In re California Pac. R. Co., 4 Fed. Cas. 1060; In re Bigelow, 3 Fed. Cas. 343.

To establish the genuineness and due execution of a paper, propounded to the proper court or officer, as the last will and testament of a deceased person. See PROBATE.

PROVER. In old English law. A person who, on being indicted of treason or felony, and arraigned for the same, confessed the fact before plea pleaded, and appealed or accused others, his accomplices, in the same crime, in order to obtain his pardon. 4 Bl. Comm. 329, 330.

PROVIDED. The word used in introducing a proviso (which see.) Ordinarily it signifies or expresses a condition; but this is not invariable, for, according to the context, it may import a covenant, or a limitation or qualification, or a restraint, modification, or exception to something which precedes. See Stanley v. Colt, 5 Wall. 166, 18 L. Ed. 502; Stoel v. Flanders, 68 Wis. 256, 32 N. W. 114; Robertson v. Caw, 3 Barb. (N. Y.) 418; Paschall v. Passmore, 15 Pa. 308; Carroll v. State, 58 Ala. 396; Colt v. Hubbard, 33 Conn. 281; Woodruff v. Woodruff, 44 N. J. Eq. 349, 16 Atl. 4, 1 L. R. A. 380.

PROVINCE. Sometimes this signifies the district into which a country has been divided; as, the province of Canterbury, in England; the province of Languedoc, in France. Sometimes it means a dependency or colony; as, the province of New Brunswick. It is sometimes used figuratively to signify power or authority; as, it is the province of the court to judge of the law; that of the jury to decide on the facts. 1 Bl. Comm. 111; Tomlins.

PROVINCIAL CONSTITUTIONS. The decrees of provincial synods held under divers archbishops of Canterbury, from Stephen Langton, in the reign of Henry III., to Henry Chichele, in the reign of Henry V., and adopted also by the province of York in the reign of Henry VI. Wharton.

PROVINCIAL COURTS. In English law. The several archi-episcopal courts in the two ecclesiastical provinces of England.

PROVINCIALE. A work on ecclesiastical law, by William Lyndwode, official principal to Archbishop Chichele in the reign of Edward IV. 4 Reeve, Eng. Law, c. 25, p. 117.

PROVINCIALIS. Lat. In the civil law. One who has his domicile in a province. Dig. 50, 16, 190.

PROVING OF THE TENOR. In Scotch practice. An action for proving the tenor of a lost deed. Bell.

PROVISION. **In commercial law.** Funds remitted by the drawer of a bill of

N exchange to the drawee in order to meet the bill, or property remaining in the drawee's hands or due from him to the drawer, and appropriated to that purpose.

O **In ecclesiastical law.** A provision was a nomination by the pope to an English benefice before it became void, though the term was afterwards indiscriminately applied to any right of patronage exerted or usurped by the pope.

P **In French law.** Provision is an allowance or alimony granted by a judge to one of the parties in a cause for his or her maintenance until a definite judgment is rendered. Dalloz.

In English history. A name given to certain statutes or acts of parliament, particularly those intended to curb the arbitrary or usurped power of the sovereign, and also to certain other ordinances or declarations having the force of law. See *infra.*

—Provisions of Merton. Another name for the statute of Merton. See MERTON, STATUTE OF.—**Provisions of Oxford.** Certain provisions made in the Parliament of Oxford, 1258, for the purpose of securing the execution of the provisions of *Magna Charta*, against the invasions thereof by Henry III. The government of the country was in effect committed by these provisions to a standing committee of twenty-four, whose chief merit consisted in their representative character, and their real desire to effect an improvement in the king's government. Brown.—**Provisions of Westminster.** A name given to certain ordinances or declarations promulgated by the barons in A. D. 1259, for the reform of various abuses.

PROVISIONAL. Temporary; preliminary; tentative; taken or done by way of precaution or *ad interim.*

—Provisional assignees. In the former practice in bankruptcy in England. Assignees to whom the property of a bankrupt was assigned until the regular or permanent assignees were appointed by the creditors.—**Provisional committee.** A committee appointed for a temporary occasion.—**Provisional government.** One temporarily established in anticipation of and to exist and continue until another (more regular or more permanent) shall be organized and instituted in its stead. Chambers v. Fisk, 22 Tex. 535.—**Provisional order.** In English law. Under various acts of parliament, certain public bodies and departments of the government are authorized to inquire into matters which, in the ordinary course, could only be dealt with by a private act of parliament, and to make orders for their regulation. These orders have no effect unless they are confirmed by an act of parliament, and are hence called "provisional orders." Several orders may be confirmed by one act. The object of this mode of proceeding is to save the trouble and expense of promoting a number of private bills. Sweet. —**Provisional remedy.** A remedy provided for present need or for the immediate occasion; one adapted to meet a particular exigency. Particularly, a temporary process available to a plaintiff in a civil action, which secures him against loss, irreparable injury, dissipation of the property, etc., while the action is pending. Such are the remedies by injunction, appointment of a receiver, attachment, or arrest. The term is chiefly used in the codes of practice. See McCarthy v. McCarthy, 54 How. Prac. (N. Y.) 100; Witter v. Lyon, 34 Wis. 574; Snavely v. Abbott Buggy Co., 36 Kan. 106, 12 Pac. 522.

—Provisional seizure. A remedy known under the law of Louisiana, and substantially the same in general nature as attachment of property in other states. Code Proc. La. 284, *et seq.*

PROVISIONES. Lat. In English history. Those acts of parliament which were passed to curb the arbitrary power of the crown. See PROVISION.

PROVISIONS. Food; victuals; articles of food for human consumption. See Botelor v. Washington, 3 Fed. Cas. 962; In re Lentz (D. C.) 97 Fed. 487; Nash v. Farrington, 4 Allen (Mass.) 157; State v. Angelo, 71 N. H. 224, 51 Atl. 905.

PROVISO. A condition or provision which is inserted in a deed, lease, mortgage, or contract, and on the performance or nonperformance of which the validity of the deed, etc., frequently depends; it usually begins with the word "provided."

A proviso in deeds or laws is a limitation or exception to a grant made or authority conferred, the effect of which is to declare that the one shall not operate, or the other be exercised, unless in the case provided. Voorhees v. Bank of United States, 10 Pet. 449, 9 L. Ed. 490.

The word "proviso" is generally taken for a condition, but it differs from it in several respects; for a condition is usually created by the grantor or lessor, but a proviso by the grantee or lessee. Jacob.

A proviso differs from an exception. 1 Barn. & Ald. 99. An exception *exempts*, absolutely, from the operation of an engagement or an enactment; a proviso defeats their operation, *conditionally*. An exception takes out of an engagement or enactment something which would otherwise be part of the subject-matter of it; a proviso avoids them by way of defeasance or excuse. 8 Am. Jur. 242.

A clause or part of a clause in a statute, the office of which is either to except something from the enacting clause, or to qualify or restrain its generality, or to exclude some possible ground of misinterpretation of its extent. Minis v. U. S., 15 Pet. 445, 10 L. Ed. 791; In re Matthews (D. C.) 109 Fed. 614; Carroll v. State, 58 Ala. 396; Waffle v. Goble, 53 Barb. (N. Y.) 522.

Proviso est providere præsentia et futura, non præterita. Coke, 72. A proviso is to provide for the present or future, not the past.

PROVISO, TRIAL BY. In English practice. A trial brought on by the defendant, in cases where the plaintiff, after issue joined, neglects to proceed to trial; so called from a clause in the writ to the sheriff, which directs him, in case two writs come to his hands, to execute but one of them. 3 Bl. Comm. 357.

PROVISOR. In old English law. A provider, or purveyor. Spelman. Also a person nominated to be the next incumbent of a benefice (not yet vacant) by the pope.

PROVOCATION. The act of inciting another to do a particular deed. Such conduct

or actions on the part of one person towards another as tend to arouse rage, resentment, or fury in the latter against the former, and thereby cause him to do some illegal act against or in relation to the person offering the provocation. See State v. Byrd, 52 S. C. 480, 30 S. E. 482; Ruble v. People, 67 Ill. App. 438.

PROVOST. The principal magistrate of a royal burgh in Scotland; also a governing officer of a university or college.

PROVOST-MARSHAL. In English law. An officer of the royal navy who had the charge of prisoners taken at sea, and sometimes also on land. In military law, the officer acting as the head of the military police of any post, camp, city or other place in military occupation, or district under the reign of martial law.

PROXENETA. Lat. In the civil law. A broker; one who negotiated or arranged the terms of a contract between two parties, as between buyer and seller; one who negotiated a marriage; a match-maker. Calvin.

PROXIMATE. Immediate; nearest; next in order.

—Proximate cause. The proximate cause is the efficient cause, the one that necessarily sets the other causes in operation. The causes that are merely incidental or instruments of a superior or controlling agency are not the proximate causes and the responsible ones, though they may be nearer in time to the result. It is only when the causes are independent of each other that the nearest is, of course, to be charged with the disaster. See Blythe v. Railway Co., 15 Colo. 333, 25 Pac. 702, 11 L. R. A. 615, 22 Am. St. Rep. 403; Pielke v. Railroad Co., 5 Dak. 444, 41 N. W. 669; Railroad Co. v. Kelly, 91 Tenn. 699, 20 S. W. 312, 17 L. R. A. 691, 30 Am. St. Rep. 902; Gunter v. Graniteville Mfg. Co., 15 S. C. 443; Bosqui v. Railroad Co., 131 Cal. 390, 63 Pac. 682; Ætna Ins. Co. v. Boon, 95 U. S. 117, 24 L. Ed. 395; Wills v. Railway Co., 108 Wis. 255, 84 N. W. 998; Davis v. Standish, 26 Hun (N. Y.) 615. See, also, IMMEDIATE (CAUSE.)—**Proximate damages.** See DAMAGES.

PROXIMITY. Kindred between two persons. Dig. 38, 16, 8.

Proximus est cui nemo antecedit, supremus est quem nemo sequitur. He is next whom no one precedes; he is last whom no one follows. Dig. 50, 16, 92.

PROXY. A person who is substituted or deputed by another to represent him and act for him, particularly in some meeting or public body. Also the instrument containing the appointment of such person. The word is said to be contracted from "procuracy," (*q. v.*)

One who is appointed or deputed by another to vote for him. Members of the house of lords in England have the privilege of voting by proxy. 1 Bl. Comm. 168.

In ecclesiastical law. A person who is appointed to manage another man's affairs in the ecclesiastical courts; a proctor.

Also an annual payment made by the parochial clergy to the bishop, on visitations. Tomlins.

PRUDENCE. Carefulness, precaution, attentiveness, and good judgment, as applied to action or conduct. That degree of care required by the exigencies or circumstances under which it is to be exercised. Cronk v. Railway Co., 3 S. D. 93, 52 N. W. 420. This term, in the language of the law, is commonly associated with "care" and "diligence" and contrasted with "negligence." See those titles.

Prudenter agit qui præcepto legis obtemperat. 5 Coke, 49. He acts prudently who obeys the command of the law.

PRYK. A kind of service of tenure. Blount says it signifies an old-fashioned spur with one point only, which the tenant, holding land by this tenure, was to find for the king. Wharton.

PSEUDOCYESIS. In medical jurisprudence. A frequent manifestation of hysteria in women, in which the abdomen is inflated, simulating pregnancy; the patient aiding in the deception.

PSYCHO-DIAGNOSIS. In medical jurisprudence. A method of investigating the origin and cause of any given disease or morbid condition by examination of the mental condition of the patient, the application of various psychological tests, and an inquiry into the past history of the patient, with a view to its bearing on his present psychic state.

PSYCHOLOGICAL FACT. In the law of evidence. A fact which can only be perceived mentally; such as the motive by which a person is actuated. Burrill, Circ. Ev. 130, 131.

PSYCHOTHERAPY. A method or system of alleviating or curing certain forms of disease, particularly diseases of the nervous system or such as are traceable to nervous disorders, by suggestion, persuasion, encouragement, the inspiration of hope or confidence, the discouragement of morbid memories, associations, or beliefs, and other similar means addressed to the mental state of the patient, without (or sometimes in conjunction with) the administration of drugs or other physical remedies.

PTOMAINES. In medical jurisprudence. Alkaloidal products of the decomposition or putrefaction of albuminous substances, as, in animal and vegetable tissues. These are sometimes poisonous, but not invariably. Examples of poisonous ptomaines are those oc-

curring in putrefying fish and the tyrotoxicons of decomposing milk and milk products.

PUBERTY. The age of fourteen in males and twelve in females, when they are held fit for, and capable of contracting, marriage. Otherwise called the "age of consent to marriage." 1 Bl. Comm. 436; 2 Kent, Comm. 78. See State v. Pierson, 44 Ark. 265.

PUBLIC. Pertaining to a state, nation, or whole community; proceeding from, relating to, or affecting the whole body of people or an entire community. Open to all; notorious. Common to all or many; general; open to common use. Morgan v. Cree, 46 Vt. 786, 14 Am. Rep. 640; Crane v. Waters (C. C.) 10 Fed. 621; Austin v. Soule, 36 Vt. 650; Appeal of Eliot, 74 Conn. 586, 51 Atl. 558; O'Hara v. Miller, 1 Kulp (Pa.) 295.

A distinction has been made between the terms "public" and "general." They are sometimes used as synonymous. The former term is applied strictly to that which concerns all the citizens and every member of the state; while the latter includes a lesser, though still a large, portion of the community. 1 Greenl. Ev. § 128.

As a noun, the word "public" denotes the whole body politic, or the aggregate of the citizens of a state, district, or municipality. Knight v. Thomas, 93 Me. 494, 45 Atl. 499; State v. Luce, 9 Houst. (Del.) 396, 32 Atl. 1076; Wyatt v. Irrigation Co., 1 Colo. App. 480, 29 Pac. 906.

—Public appointments. Public offices or stations which are to be filled by the appointment of individuals, under authority of law, instead of by election.**—Public building.** One of which the possession and use, as well as the property in it, are in the public. Pancoast v. Troth, 34 N. J. Law, 383.**—Public law.** That branch or department of law which is concerned with the state in its political or sovereign capacity, including constitutional and administrative law, and with the definition, regulation, and enforcement of rights in cases where the state is regarded as the subject of the right or object of the duty,—including criminal law and criminal procedure,—and the law of the state, considered in its *quasi* private personality, *i. e.*, as capable of holding or exercising rights, or acquiring and dealing with property, in the character of an individual. See Holl. Jur. 106, 300. That portion of law which is concerned with political conditions; that is to say, with the powers, rights, duties, capacities, and incapacities which are peculiar to political superiors, supreme and subordinate. Aust. Jur. "Public law," in one sense, is a designation given to "international law," as distinguished from the laws of a particular nation or state. In another sense, a law or statute that applies to the people generally of the nation or state adopting or enacting it, is denominated a public law, as contradistinguished from a private law, affecting only an individual or a small number of persons. Morgan v. Cree, 46 Vt. 773, 14 Am. Rep. 640.**—Public offense.** A public offense is an act or omission forbidden by law, and punishable as by law provided. Code Ala. 1886, § 3699. Ford v. State, 7 Ind. App. 567, 35 N. E. 34; State v. Cantieny, 34 Minn. 1, 24 N. W. 458. **—Public passage.** A right, subsisting in the public, to pass over a body of water, whether the land under it be public or owned by a private person.**—Public place.** A place to which the general public has a right to resort; not necessarily a place devoted solely to the uses of the public, but a place which is in point of fact public rather than private, a place visited by many persons and usually accessible to the public. See State v. Welch, 88 Ind. 310; Gompreeht v. State, 36 Tex. Cr. R. 434, 37 S. W. 734; Russell v. Dyer, 40 N. H. 187; Roach v. Eugene, 23 Or. 376, 31 Pac. 825; Taylor v. State, 22 Ala. 15.**—Public purpose.** In the law of taxation, eminent domain, etc., this is a term of classification to distinguish the objects for which, according to settled usage, the government is to provide, from those which, by the like usage, are left to private interest, inclination, or liberality. People v. Salem Tp. Board, 20 Mich. 485, 4 Am. Rep. 400. See Black, Const. Law (3d Ed.) p. 454, *et seq.*—**Public service.** A term applied in modern usage to the objects and enterprises of certain kinds of corporations, which specially 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.**—Public, true, and notorious.** The old form by which charges in the *allegations* in the ecclesiastical courts were described at the end of each particular.**—Public use,** in constitutional provisions restricting the exercise of the right to take private property in virtue of eminent domain, means a use concerning the whole community as distinguished from particular individuals. But each and every member of society need not be equally interested in such use, or be personally and directly affected by it; if the object is to satisfy a great public want or exigency, that is sufficient. Gilmer v. Lime Point, 18 Cal. 229; Budd v. New York, 143 U. S. 517, 12 Sup. Ct. 468, 36 L. Ed. 247.**—Public ways.** Highways, (*q. v.*)**—Public welfare.** The prosperity, well-being, or convenience of the public at large, or of a whole community, as distinguished from the advantage of an individual or limited class. See Shaver v. Starrett, 4 Ohio St. 499.

As to public "Accounts," "Act," "Administrator," "Agent," "Attorney," "Auction," "Blockade," "Boundary," "Bridge," "Carrier," "Chapel," "Charity," "Company," "Corporation," "Debt," "Document," "Domain," "Easement," "Enemy," "Ferry," "Funds," "Grant," "Health," "Holiday," "House," "Indecency," "Lands," "Market," "Minister," "Money," "Notice," "Nuisance," "Officer," "Peace," "Policy," "Pond," "Printing," "Property," "Prosecutor," "Record," "Revenue," "River," "Road," "Sale," "School," "Seal," "Stock," "Store," "Tax," "Trial," "Verdict," "Vessel," "War," "Works," "Worship," and "Wrongs," see those titles.

PUBLICAN. In the civil law. A farmer of the public revenue; one who held a lease of some property from the public treasury. Dig. 39, 4, 1, 1; Id. 39, 4, 12, 3; Id. 39, 4, 13.

In English law. Persons authorized by license to keep a public house, and retail therein, for consumption on or off the premises where sold, all intoxicating liquors; also termed "licensed victuallers." Wharton.

PUBLICANUS. Lat. In Roman law. A farmer of the customs; a publican. Calvin.

PUBLICATION. 1. The act of publishing anything or making it public; offering it

to public notice, or rendering it accessible to public scrutiny.

2. As descriptive of the publishing of laws and ordinances, "publication" means printing or otherwise reproducing copies of them and distributing them in such a manner as to make their contents easily accessible to the public; it forms no part of the enactment of the law. "Promulgation," on the other hand, seems to denote the proclamation or announcement of the edict or statute as a preliminary to its acquiring the force and operation of law. But the two terms are often used interchangeably. Chicago v. McCoy, 136 Ill. 344, 26 N. E. 363, 11 L. R. A. 413; Sholes v. State, 2 Pin. (Wis.) 499.

3. The formal declaration made by a testator at the time of signing his will that it is his last will and testament. 4 Kent, Comm. 515, and note. In re Simpson, 56 How. Prac. (N. Y.) 134; Compton v. Mitton, 12 N. J. Law, 70; Lewis v. Lewis, 13 Barb. (N. Y.) 23.

4. In the law of libel, publication denotes the act of making the defamatory matter known publicly, of disseminating it, or communicating it to one or more persons. Wilcox v. Moon, 63 Vt. 481, 22 Atl. 80; Sproul v. Pillsbury, 72 Me. 20; Gambrill v. Schooley, 93 Md. 48, 48 Atl. 730, 52 L. R. A. 87, 86 Am. St. Rep. 414.

5. In the practice of the states adopting the reformed procedure, and in some others, publication of a summons is the process of giving it currency as an advertisement in a newspaper, under the conditions prescribed by law, as a means of giving notice of the suit to a defendant upon whom personal service cannot be made.

6. In equity practice. The making public the depositions taken in a suit, which have previously been kept private in the office of the examiner. *Publication* is said *to pass* when the depositions are so made public, or openly shown, and copies of them given out, in order to the hearing of the cause. 3 Bl. Comm. 450.

7. In copyright law. The act of making public a book, writing, chart, map, etc.; that is, offering or communicating it to the public by the sale or distribution of copies. Keene v. Wheatley, 14 Fed. Cas. 180; Jewelers' Mercantile Agency v. Jewelers' Weekly Pub. Co., 155 N. Y. 241, 49 N. E. 872, 41 L. R. A. 846, 63 Am. St. Rep. 666.

PUBLICI JURIS. Lat. Of public right. This term, as applied to a thing or right, means that it is open to or exercisable by all persons.

When a thing is common property, so that any one can make use of it who likes, it is said to be "*publici juris;*" as in the case of light, air, and public water. Sweet.

Or it designates things which are owned by "the public;" that is, the entire state or community, and not by any private person.

PUBLICIANA. In the civil law. The name of an action introduced by the prætor Publicius, the object of which was to recover a thing which had been lost. Its effects were similar to those of our action of trover. Mackeld. Rom. Law, § 298. See Inst. 4, 6, 4; Dig. 6, 2, 1, 16.

PUBLICIST. One versed in, or writing upon, public law, the science and principles of government, or international law.

PUBLICUM JUS. Lat. In the civil law. Public law; that law which regards the state of the commonwealth. Inst. 1, 1, 4.

PUBLISHER. One whose business is the manufacture, promulgation, and sale of books, pamphlets, magazines, newspapers, or other literary productions.

PUDICITY. Chastity; purity; continence.

PUDZELD. In old English law. Supposed to be a corruption of the Saxon "*wudgeld,*" (woodgeld,) a freedom from payment of money for taking *wood* in any forest. Co. Litt. 233*a*.

PUEBLO. In Spanish law. People; all the inhabitants of any country or place, without distinction. A town, township, or municipality. White, New Recop. b. 2, tit. 1, c. 6, § 4.

This term "*pueblo,*" in its original signification, means "people" or "population," but is used in the sense of the English word "town." It has the indefiniteness of that term, and, like it, is sometimes applied to a mere collection of individuals residing at a particular place, a settlement or village, as well as to a regularly organized municipality. Trenouth v. San Francisco, 100 U. S. 251, 25 L. Ed. 626.

PUER. Lat. In the civil law. A child; one of the age from seven to fourteen, including, in this sense, a girl. But it also meant a "boy," as distinguished from a "girl;" or a servant.

Pueri sunt de sanguine parentum, sed pater et mater non sunt de sanguine puerorum. 3 Coke, 40. Children are of the blood of their parents, but the father and mother are not of the blood of the children.

PUERILITY. In the civil law. A condition intermediate between infancy and puberty, continuing in boys from the seventh to the fourteenth year of their age, and in girls from seven to twelve.

PUERITIA. Lat. In the civil law. Childhood; the age from seven to fourteen. 4 Bl. Comm. 22.

PUFFER. A person employed by the owner of property which is sold at auction to attend the sale and run up the price by making spurious bids. See Peck v. List, 23 W.

Va. 375, 48 Am. Rep. 398; McMillan v. Harris, 110 Ga. 72, 35 S. E. 334, 48 L. R. A. 345, 78 Am. St. Rep. 93.

PUIS. In law French. Afterwards; since.

—**Puis darrein continuance.** Since the last continuance. The name of a plea which a defendant is allowed to put in, after having already pleaded, where some *new* matter of defense arises after issue joined; such as payment, a release by the plaintiff, the discharge of the defendant under an insolvent or bankrupt law, and the like. 3 Bl. Comm. 316; 2 Tidd, Pr. 847; Chattanooga v. Neely, 97 Tenn. 527, 37 S. W. 281; Waterbury v. McMillan, 46 Miss. 640; Woods v. White, 97 Pa. 227.

PUISNE. L. Fr. Younger; subordinate; associate.

The title by which the justices and barons of the several common-law courts at Westminster are distinguished from the *chief* justice and *chief* baron.

PUISSANCE PATERNELLE. Fr. Paternal power. In the French law, the male parent has the following rights over the person of his child: (1) If child is under sixteen years of age, he may procure him to be imprisoned for one month or under. (2) If child is over sixteen and under twenty-one he may procure an imprisonment for six months or under, with power in each case to procure a second period of imprisonment. The female parent, being a widow, may, with the approval of the two nearest relations on the father's side, do the like. The parent enjoys also the following rights over the property of his child, viz., a right to take the income until the child attains the age of eighteen years, subject to maintaining the child and educating him in a suitable manner. Brown.

PULSARE. Lat. In the civil law. To beat; to accuse or charge; to proceed against at law. Calvin.

PULSATOR. The plaintiff, or actor.

PUNCTUATION. The division of a written or printed document into sentences by means of periods; and of sentences into smaller divisions by means of commas, semicolons, colons, etc.

PUNCTUM TEMPORIS. Lat. A point of time; an indivisible period of time; the shortest space of time; an instant. Calvin.

PUNCTURED WOUND. In medical jurisprudence. A wound made by the insertion into the body of any instrument having a sharp point. The term is practically synonymous with "stab."

PUNDBRECH. In old English law. Pound-breach; the offense of breaking a pound. The illegal taking of cattle out of a pound by any means whatsoever. Cowell.

PUNDIT. An interpreter of the Hindu law; a learned Brahmin.

PUNISHABLE. Liable to punishment, whether absolutely or in the exercise of a judicial discretion.

PUNISHMENT. In criminal law. Any pain, penalty, suffering, or confinement inflicted upon a person by the authority of the law and the judgment and sentence of a court, for some crime or offense committed by him, or for his omission of a duty enjoined by law. See Cummings v. Missouri, 4 Wall. 320, 18 L. Ed. 356; Featherstone v. People, 194 Ill. 325, 62 N. E. 684; Ex parte Howe, 26 Or. 181, 37 Pac. 536; State v. Grant, 79 Mo. 129, 49 Am. Rep. 218.

—**Cruel and unusual punishment.** Such punishment as would amount to torture or barbarity, and any cruel and degrading punishment not known to the common law, and also any punishment so disproportionate to the offense as to shock the moral sense of the community. In re Bayard, 25 Hun (N. Y.) 546; State v. Driver, 78 N. C. 423; In re Kemmler, 136 U. S. 436, 10 Sup. Ct. 930, 34 L. Ed. 519; Wilkerson v. Utah, 99 U. S. 130, 25 L. Ed. 345; State v. Williams, 77 Mo. 310; McDonald v. Com., 173 Mass. 322, 53 N. E. 874, 73 Am. St. Rep. 293; People v. Morris, 80 Mich. 638, 45 N. W. 591, 8 L. R. A. 685.

PUNITIVE. Relating to punishment; having the character of punishment or penalty; inflicting punishment or a penalty.

—**Punitive damages.** See DAMAGES.—**Punitive power.** The power and authority of a state, or organized jural society, to inflict punishments upon those persons who have committed actions inherently evil and injurious to the public, or actions declared by the laws of that state to be sanctioned with punishments.

PUPIL. In the civil law. One who is in his or her minority. Particularly, one who is in ward or guardianship.

PUPILLARIS SUBSTITUTIO. Lat. In the civil law. Pupillar substitution; the substitution of an heir to a pupil or infant under puberty. The substitution by a father of an heir to his children under his power, disposing of his own estate and theirs, in case the child refused to accept the inheritance, or died before the age of puberty. Halifax, Civil Law, b. 2, c. 6, no. 64.

PUPILLARITY. In Scotch law. That period of minority from the birth to the age of fourteen in males, and twelve in females. Bell.

PUPILLUS. Lat. In the civil law. A ward or infant under the age of puberty; a person under the authority of a *tutor*, (*q. v.*)

Pupillus pati posse non intelligitur. A pupil or infant is not supposed to be able to suffer, *i. e.*, to do an act to his own prejudice. Dig. 50, 17, 110, 2.

PUR. L. Fr. By or for. Used both as a separable particle, and in the composition of such words as "purparty," "purlieu."

—**Pur autre vie.** For (or during) the life of another. An estate *pur autre vie* is an estate which endures only for the life of some particular person other than the grantee.—**Pur cause de vicinage.** By reason of neighborhood. See COMMON.—**Pur tant que.** Forasmuch as; because; to the intent that. Kelham.

PURCHASE. The word "purchase" is used in law in contradistinction to "descent," and means any other mode of acquiring real property than by the common course of inheritance. But it is also much used in its more restricted vernacular sense, (that of buying for a sum of money,) especially in modern law literature; and this is universally its application to the case of chattels. See Stamm v. Bostwick, 122 N. Y. 48, 25 N. E. 233, 9 L. R. A. 597; Hall v. Hall, 81 N. Y. 134; Berger v. United States Steel Corp., 63 N. J. Eq. 809, 53 Atl. 68; Falley v. Gribling, 128 Ind. 110, 26 N. E. 794; Chambers v. St. Louis, 29 Mo. 574.

—**Purchase money.** The consideration in money paid or agreed to be paid by the buyer to the seller of property, particularly of land. Purchase money means money stipulated to be paid by a purchaser to his vendor, and does not include money the purchaser may have borrowed to complete his purchase. Purchase money, as between vendor and vendee only, is contemplated; as between purchaser and lender, the money is "borrowed money." Heuisler v. Nickum, 38 Md. 270. But see Houlehan v. Rassler, 73 Wis. 557, 41 N. W. 720.—**Purchase-money mortgage.** See MORTGAGE.—**Quasi purchase.** In the civil law. A purchase of property not founded on the actual agreement of the parties, but on conduct of the owner which is inconsistent with any other hypothesis than that he intended a sale.—**Words of purchase.** Words of purchase are words which denote the person who is to take the estate. Thus, if I grant land to A. for twenty-one years, and after the determination of that term to A.'s heirs, the word "heirs" does not denote the duration of A.'s estate, but the person who is to take the remainder on the expiration of the term, and is therefore called a "word of purchase." Williams, Real Prop.; Fearne, Rem. 76, *et seq.*

PURCHASER. One who acquires real property in any other mode than by descent. One who acquires either real or personal property by buying it for a price in money; a buyer; vendee.

In the construction of registry acts, the term "purchaser" is usually taken in its technical legal sense. It means a complete purchaser, or, in other words, one clothed with the legal title. Steele v. Spencer, 1 Pet. 552, 559, 7 L. Ed. 259.

—**Bona fide purchaser.** See BONA FIDE.—**First purchaser.** In the law of descent, this term signifies the ancestor who first acquired (in any other manner than by inheritance) the estate which still remains in his family or descendants.—**Innocent purchaser.** See INNOCENT.—**Purchaser of a note or bill.** The person who buys a promissory note or bill of exchange from the holder without his indorsement.

Purchaser without notice is not obliged to discover to his own hurt. See 4 Bouv. Inst. note 4336.

PURE. Absolute; complete; simple; unmixed; unqualified; free from conditions or restrictions; as in the phrases pure charity, pure debt, pure obligation, pure plea, pure villenage, as to which see the nouns.

PURGATION. The act of cleansing or exonerating one's self of a crime, accusation, or suspicion of guilt, by denying the charge on oath or by ordeal.

Canonical purgation was made by the party's taking his own oath that he was innocent of the charge, which was supported by the oath of twelve compurgators, who swore they believed he spoke the truth. To this succeeded the mode of purgation by the single oath of the party himself, called the "oath *ex officio*," of which the modern defendant's oath in chancery is a modification. 3 Bl. Comm. 447; 4 Bl. Comm. 368.

Vulgar purgation consisted in ordeals or trials by hot and cold water, by fire, by hot irons, by battel, by corsned, etc.

PURGE. To cleanse; to clear; to clear or exonerate from some charge or imputation of guilt, or from a contempt.

—**Purged of partial counsel.** In Scotch practice. Cleared of having been partially advised. A term applied to the preliminary examination of a witness, in which he is sworn and examined whether he has received any bribe or promise of reward, or has been told what to say, or whether he bears malice or ill will to any of the parties. Bell.—**Purging a tort** is like the ratification of a wrongful act by a person who has power of himself to lawfully do the act. But, unlike ratification, the purging of the tort may take place even after commencement of the action. 1 Brod. & B. 282.—**Purging contempt.** Atoning for, or clearing one's self from, contempt of court, (*q. v.*) It is generally done by apologizing and paying fees, and is generally admitted after a moderate time in proportion to the magnitude of the offense.

PURGE DES HYPOTHÈQUES. Fr. In French law. An expression used to describe the act of freeing an estate from the mortgages and privileges with which it is charged, observing the formalities prescribed by law. Duverger.

PURLIEU. In English law. A space of land near a royal forest, which, being severed from it, was made *purlieu;* that is, pure or free from the forest laws.

—**Purlieu-men.** Those who have ground within the purlieu to the yearly value of 40s. a year freehold are licensed to hunt in their own purlieus. Manw. c. 20, § 8.

PURLOIN. To steal; to commit larceny or theft. McCann v. U. S., 2 Wyo. 298.

PURPART. A share; a part in a division; that part of an estate, formerly held in common, which is by partition allotted to any one of the parties. The word was anciently applied to the shares falling separately to coparceners upon a division or partition of the estate, and was generally spelled "pur-

party;" but it is now used in relation to any kind of partition proceedings. See Seiders v. Giles, 141 Pa. 93, 21 Atl. 514.

PURPORT. Meaning; import; substantial meaning; substance. The "purport" of an instrument means the substance of it as it appears on the face of the instrument, and is distinguished from "tenor," which means an exact copy. See Dana v. State, 2 Ohio St. 93; State v. Sherwood, 90 Iowa, 550, 58 N. W. 911, 48 Am. St. Rep. 461; State v. Pullens, 81 Mo. 392; Com. v. Wright, 1 Cush. (Mass.) 65; State v. Page, 19 Mo. 213.

PURPRESTURE. A purpresture may be defined as an inclosure by a private party of a part of that which belongs to and ought to be open and free to the enjoyment of the public at large. It is not necessarily a public nuisance. A public nuisance must be something which subjects the public to some degree of inconvenience or annoyance; but a purpresture may exist without putting the public to any inconvenience whatever. Attorney General v. Evart Booming Co., 34 Mich. 462. And see Cobb v. Lincoln Park Com'rs, 202 Ill. 427, 67 N. E. 5, 63 L. R. A. 264, 95 Am. St. Rep. 258; Columbus v. Jaques, 30 Ga. 506; Sullivan v. Moreno, 19 Fla. 228; U. S. v. Debs (C. C.) 64 Fed. 740; Drake v. Hudson River R. Co., 7 Barb. (N. Y.) 548.

PURPRISE. L. Fr. A close or inclosure; as also the whole compass of a manor.

PURPURE, or PORPRIN. A term used in heraldry; the color commonly called "purple," expressed in engravings by lines in bend sinister. In the arms of princes it was formerly called "mercury," and in those of peers "amethyst."

PURSE. A purse, prize, or premium is ordinarily some valuable thing, offered by a person for the doing of something by others, into strife for which he does not enter. He has not a chance of gaining the thing offered; and, if he abide by his offer, that he must lose it and give it over to some of those contending for it is reasonably certain. Harris v. White, 81 N. Y. 539.

PURSER. The person appointed by the master of a ship or vessel, whose duty it is to take care of the ship's books, in which every thing on board is inserted, as well the names of mariners as the articles of merchandise shipped. Roccus, Ins. note.

PURSUE. To follow a matter judicially, as a complaining party.

To pursue a warrant or authority, in the old books, is to execute it or carry it out. Co. Litt. 52a.

PURSUER. The name by which the complainant or plaintiff is known in the ecclesiastical courts, and in the Scotch law.

PURSUIT OF HAPPINESS. As used in constitutional law, this right includes personal freedom, freedom of contract, exemption from oppression or invidious discrimination, the right to follow one's individual preference in the choice of an occupation and the application of his energies, liberty of conscience, and the right to enjoy the domestic relations and the privileges of the family and the home. Black, Const. Law (3d Ed.) p. 544. See Ruhstrat v. People, 185 Ill. 133, 57 N. E. 41, 49 L. R. A. 181, 76 Am. St. Rep. 30; Hooper v. California, 155 U. S. 648, 15 S. Ct. 207, 39 L. Ed. 297; Butchers' Union, etc., Co. v. Crescent City Live Stock, etc., Co., 111 U. S. 746, 4 Sup. Ct. 652, 28 L. Ed. 585.

PURUS IDIOTA. Lat. A congenital idiot.

PURVEYANCE. In old English law. A providing of necessaries for the king's house. Cowell.

PURVEYOR. In old English law. An officer who procured or purchased articles needed for the king's use at an arbitrary price. In the statute 36 Edw. III. c. 2, this is called a "*heignous nome*," (heinous or hateful name,) and changed to that of "*achator*." Barring. Ob. St. 289.

PURVIEW. That part of a statute commencing with the words "Be it enacted," and continuing as far as the repealing clause; and hence, the design, contemplation, purpose, or scope of the act. See Smith v. Hickman, Cooke (Tenn.) 337; Payne v. Conner, 3 Bibb (Ky.) 181; Hirth v. Indianapolis, 18 Ind. App. 673, 48 N. E. 876.

PUT. In pleading. To confide to; to rely upon; to submit to. As in the phrase, "the said defendant puts himself upon the country;" that is, he trusts his case to the arbitrament of a jury.

PUT IN. In practice. To place in due form before a court; to place among the records of a court.

PUT OUT. To open. To put out lights; to open or cut windows. 11 East, 372.

Putagium hæreditatem non adimit. 1 Reeve, Eng. Law, c. 3, p. 117. Incontinence does not take away an inheritance.

PUTATIVE. Reputed; supposed; commonly esteemed. Applied in Scotch law to creditors and proprietors. 2 Kames, Eq. 105, 107, 109.

—Putative father. The alleged or reputed father of an illegitimate child. State v. Nestaval, 72 Minn. 415, 75 N. W. 725.—**Putative marriage.** A marriage contracted in good faith and in ignorance (on one or both sides) that impediments exist which render it unlawful. See Mackeld. Rom. Law, § 556. See In re Hall, 61 App. Div. 266, 70 N. Y. Supp. 410; Smith v. Smith, 1 Tex. 628, 46 Am. Dec. 121.

PUTS AND CALLS. A "put" in the language of the grain or stock market is a privilege of delivering or not delivering the subject-matter of the sale; and a "call" is a privilege of calling or not calling for it. Pixley v. Boynton, 79 Ill. 351.

PUTS AND REFUSALS. In English law. Time-bargains, or contracts for the sale of supposed stock on a future day.

PUTTING IN FEAR. These words are used in the definition of a robbery from the person. The offense must have been committed by *putting in fear* the person robbed. 3 Inst. 68; 4 Bl. Comm. 243.

PUTTING IN SUIT, as applied to a bond, or any other legal instrument, signifies bringing an action upon it, or making it the subject of an action.

PUTURE. In old English law. A custom claimed by keepers in forests, and sometimes by bailiffs of hundreds, to take man's meat, horse's meat, and dog's meat of the tenants and inhabitants within the perambulation of the forest, hundred, etc. The land subject to this custom was called "*terra putura.*" Others, who call it "*pulture,*" explain it as a demand in general; and derive it from the monks, who, before they were admitted, *pulsabant*, knocked at the gates for several days together. 4 Inst. 307; Cowell.

PYKE, PAIK. In Hindu law. A foot-passenger; a person employed as a night-watch in a village, and as a runner or messenger on the business of the revenue. Wharton.

PYKERIE. In old Scotch law. Petty theft. 2 Pitc. Crim. Tr. 43.

PYROMANIA. See INSANITY.