T

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

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

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

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

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

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

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

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

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

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

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

TABES DORSALIS. In medical jurisprudence. This is another name for *locomotor ataxia*. *Tabetic dementia* is a form of mental derangement or insanity complicated with *tabes dorsalis*, which generally precedes, or sometimes follows, the mental attack.

TABLE. A synopsis or condensed statement, bringing together numerous items or details so as to be comprehended in a single view; as genealogical tables, exhibiting the names and relationships of all the persons composing a family; life and annuity tables, used by actuaries; interest tables, etc.

—Table de Marbre. Fr. In old French law. Table of Marble; a principal seat of the admiralty, so called. These Tables de Marbre are frequently mentioned in the Ordonnance of the Marine. Burrill.—**Table of cases.** An alphabetical list of the adjudged cases cited, referred to, or digested in a legal text-book, volume of reports, or digest, with references to the sections, pages, or paragraphs where they are respectively cited, etc., which is commonly either prefixed or appended to the volume.—**Table rents.** In English law. Payments which used to be made to bishops, etc., reserved and appropriated to their table or housekeeping. Wharton.

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

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

TABULA IN NAUFRAGIO. Lat. A plank in a shipwreck. This phrase is used metaphorically to designate the power subsisting in a third mortgagee, who took without notice of the second mortgage, to acquire the first incumbrance, attach it to his own, and thus squeeze out and get satisfaction, before the second is admitted to the fund. 1 Story, Eq. Jur. § 414; 2 Ves. Ch. 573.

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

—Tabulæ nuptiales. In the civil law. A written record of a marriage; or the agreement as to the *dos*.

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

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

—Tac free. In old records. Free from the common duty or imposition of *tac*. Cowell.

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

—Tacit acceptance. In the civil law, a tacit acceptance of an inheritance takes place when some act is done by the heir which necessarily supposes his intention to accept and which

he would have no right to do but in his capacity as heir. Civ. Code La. 1900, art. 988.—**Tacit hypothecation.** In the civil law, a species of lien or mortgage which is created by operation of law without any express agreement of the parties. Mackeld. Rom. Law, § 343. In admiralty law, this term is sometimes applied to a maritime lien, which is not, strictly speaking, an hypothecation in the Roman sense of the term, though it resembles it. See The Nestor, 1 Sumn. 73, 18 Fed. Cas. 9.—**Tacit law.** A law which derives its authority from the common consent of the people without any legislative enactment. 1 Bouv. Inst. no. 120.—**Tacit mortgage.** In the law of Louisiana. The law alone in certain cases gives to the creditor a mortgage on the property of his debtor, without it being requisite that the parties should stipulate it. This is called "legal mortgage." It is called also "tacit mortgage," because it is established by the law without the aid of any agreement. Civ. Code La. art. 3311.—**Tacit relocation.** In Scotch law. The tacit or implied renewal of a lease, inferred when the landlord, instead of warning a tenant to remove at the stipulated expiration of the lease, has allowed him to continue without making a new agreement. Bell, "Relocation."—**Tacit tack.** In Scotch law. An implied tack or lease; inferred from a tacksman's possessing peaceably after his tack is expired. 1 Forb. Inst. pt. 2. p. 153.

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

TACITE. Lat. Silently; impliedly; tacitly.

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

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

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

—**Tack duty.** Rent reserved upon a lease.

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

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

The term is also applied to the process of making out title to land by adverse possession, when the present occupant and claimant has not been in possession for the full statutory period, but adds or "tacks" to his own possession that of previous occupants under whom he claims. See J. B. Streeter Co. v. Fredrickson, 11 N. D. 300, 91 N. W. 692.

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

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

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

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

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

An estate tail is a freehold of inheritance, limited to a person and the heirs of his body, general or special, male or female, and is the creature of the statute *de Donis*. The estate, provided the entail be not barred, reverts to the donor or reversioner, if the donee die without leaving descendants answering to the condition annexed to the estate upon its creation, unless there be a limitation over to a third person on default of such descendants, when it vests in such third person or remainder-man. Wharton.

—**Several tail.** An entail severally to two; as if land is given to two men and their wives, and to the heirs of their bodies begotten; here the donees have a joint estate for their two lives, and yet they have a several inheritance, because the issue of the one shall have his moiety, and the issue of the other the other moiety. Cowell.—**Tail after possibility of issue extinct.** A species of estate tail which arises where one is tenant in special tail, and a person from whose body the issue was to spring dies without issue, or, having left issue, that issue becomes extinct. In either of these cases the surviving tenant in special tail becomes "tenant in tail after possibility of issue extinct." 2 Bl. Comm. 124.—**Tail female.** When lands are given to a person and the *female* heirs of his or her body, this is called an "estate tail female," and the male heirs are not capable of inheriting it.—**Tail general.** An estate in tail granted to one "and the heirs of his body begotten," which is called "tail general" because, how often soever such donee in tail be married, his issue in general by all and every such marriage is, in successive order, capable of inheriting the estate tail *per formam doni*. 2 Bl. Comm. 113. This is where an estate is limited to a man and the heirs of his body, without any restriction at all, or, according to some authorities, with no other restriction than that in relation to sex. Thus, tail male general is the same thing as tail male;

N the word "general," in such case, implying that there is no other restriction upon the descent of the estate than that it must go in the male line. So an estate in tail female general is an estate in tail female. The word "general," in the phrase, expresses a purely negative idea, and may denote the absence of any restriction, or the absence of some given restriction which is tacitly understood. Mozley & Whitley.—**Tail male.** When lands are given to a person and the *male* heirs of his or her body, this is called an "estate tail male," and the female heirs are not capable of inheriting it.—**Tail special.** An estate in tail where the succession is restricted to certain heirs of the donee's body, and does not go to all of them in general; *e. g.*, where lands and tenements are given to a man and "the heirs of his body on Mary, his now wife, to be begotten;" here no issue can inherit but such special issue as is engendered between those two, not such as the husband may have by another wife, and therefore it is called "special tail." 2 Bl. Comm. 113. It is defined by Cowell as the limitation of lands and tenements to a man and his wife and the heirs of their two bodies. But the phrase need not be thus restricted. Tail special, in its largest sense, is where the gift is restrained to certain heirs of the donor's body, and does not go to all of them in general. Mozley & Whitley.

TAILAGE. A piece cut out of the whole; a share of one's substance paid by way of tribute; a toll or tax. Cowell.

TAILLE. Fr. **In old French law.** A tax or assessment levied by the king, or by any great lord, upon his subjects, usually taking the form of an imposition upon the owners of real estate. Brande.

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

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

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

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

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

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

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

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

—**Take up.** A party to a negotiable instrument, particularly an indorser or acceptor, is said to "take up" the paper, or to "retire" it, when he pays its amount, or substitutes other security for it, and receives it again into his own hands. See Hartzell v. McClurg, 54 Neb. 316, 74 N. W. 626.

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

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

TALE. In old pleading. The plaintiff's count, declaration, or narrative of his case. 3 Bl. Comm. 293.

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

TALES. Lat. Such; such men. When, by means of challenges or any other cause, a sufficient number of unexceptionable jurors does not appear at the trial, either party may pray a "tales," as it is termed; that is, a supply of *such* men as are summoned on the first panel in order to make up the deficiency. Brown. See State v. McCrystol, 43 La. Ann. 907, 9 South. 922; Railroad Co. v. Mask, 64 Miss. 738, 2 South. 360.

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

TALESMAN. A person summoned to act as a juror from among the by-standers in the court. Linehan v. State, 113 Ala. 70, 21 South. 497; Shields v. Niagara County Sav. Bank, 5 Thomp. & C. (N. Y.) 587.

TALIO. Lat. In the civil law. Like for like; punishment in the same kind; the pun-

ishment of an injury by an act of the same kind, as an eye for an eye, a limb for a limb, etc. Calvin.

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

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

Talis res, vel tale rectum, quæ vel quod non est in homine adtunc superstite sed tantummodo est et consistit in consideratione et intelligentia legis, et quod alii dixerunt talem rem vel tale rectum fore in nubibus. Such a thing or such a right as is not vested in a person then living, but merely exists in the consideration and contemplation of law [is said to be in abeyance,] and others have said that such a thing or such a right is in the clouds. Co. Litt. 342.

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

TALLAGE. A word used metaphorically for a share of a man's substance paid by way of tribute, toll, or tax, being derived from the French "*tailler*," which signifies to cut a piece out of the whole. Cowell. See State v. Switzler, 143 Mo. 287, 45 S. W. 245, 40 L. R. A. 280, 65 Am. St. Rep. 653; Lake Shore, etc., R. Co. v. Grand Rapids, 102 Mich. 374, 60 N. W. 767, 29 L. R. A. 195.

TALLAGERS. Tax or toll gatherers; mentioned by Chaucer.

TALLAGIUM. L. Lat. A term including all taxes. 2 Inst. 532; People v. Brooklyn, 9 Barb. (N. Y.) 551; Bernards Tp. v. Allen, 61 N. J. Law, 228, 39 Atl. 716.

—Tallagium facere. To give up accounts in the exchequer, where the method of accounting was by tallies.

TALLATIO. A keeping account by tallies. Cowell.

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

—Tallies of loan. A term originally used in England to describe exchequer bills, which were issued by the officers of the exchequer when a temporary loan was necessary to meet the exigencies of the government, and charged on the credit of the exchequer in general, and made assignable from one person to another. Briscoe v. Bank of Kentucky, 11 Pet. 328, 9 L. Ed. 709.—**Tally trade.** A system of dealing by which dealers furnish certain articles on credit, upon an agreement for the payment of the stipulated price by certain weekly or monthly installments. McCul. Dict.

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

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

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

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

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

TAMEN. Lat. Notwithstanding; nevertheless; yet.

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

TANISTRY. In old Irish law. A species of tenure, founded on ancient usage, which allotted the inheritance of lands, castles, etc., to the "oldest and worthiest man of the deceased's name and blood." It was abolished in the reign of James I. Jacob; Wharton.

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

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

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

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

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

TARE. A deficiency in the weight or quantity of merchandise by reason of the weight of the box, cask, bag, or other receptacle which contains it and is weighed with it. Also an allowance or abatement of a certain weight or quantity which the seller makes to the buyer, on account of the weight of such box, cask, etc. Napier v. Barney, 5 Blatchf. 191, 17 Fed. Cas. 1149. See TRET.

TARIFF. A cartel of commerce, a book of rates, a table or catalogue, drawn usually in alphabetical order, containing the names of several kinds of merchandise, with the duties or customs to be paid for the same, as settled by authority, or agreed on between the several princes and states that hold commerce together. Enc. Lond.; Railway Co. v. Cushman, 92 Tex. 623, 50 S. W. 1009.

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

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

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

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

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

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

The word "tavern," in a charter provision authorizing municipal authorities to "license and regulate taverns," includes hotels. "Tavern," "hotel," and "public house" are, in this country, used synonymously; and while they entertain the traveling public, and keep guests, and receive compensation therefor, they do not lose their character, though they may not have the privilege of selling liquors. St. Louis v. Siegrist, 46 Mo. 595. And see State v. Heise, 7 Rich. Law (S. C.) 520; Bonner v. Welborn, 7 Ga. 306; Rafferty v. Insurance Co., 18 N. J. Law, 484, 38 Am. Dec. 525; In re Brewster, 39 Misc. Rep. 689, 80 N. Y. Supp. 666; Braswell v. Comm., 5 Bush (Ky.) 544; Kelly v. New York, 54 How. Prac. (N. Y.) 331.

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

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

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

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

TAX, *n.* Taxes are a ratable portion of the produce of the property and labor of the individual citizens, taken by the nation, in the exercise of its sovereign rights, for the support of government, for the administration of the laws, and as the means for continuing in operation the various legitimate functions of the state. Black, Tax Titles, § 2; New London v. Miller, 60 Conn. 112, 22 Atl. 499; Graham v. St. Joseph Tp., 67 Mich. 652, 35 N. W. 808; Gibbons v. Ogden, 9 Wheat. 1, 6 L. Ed. 23.

Taxes are the enforced proportional contribution of persons and property, levied by the authority of the state for the support of the government, and for all public needs; portions of the property of the citizen, demanded and received by the government, to be disposed of to enable it to discharge its functions. Opinion of Justices, 58 Me. 590; Moog v. Randolph, 77 Ala. 597; Palmer v. Way, 6 Colo. 106; Wagner v. Rock Island, 146 Ill. 139, 34 N. E. 545, 21 L. R. A. 519; In re Hun, 144 N. Y. 472, 39 N. E. 376;

Taylor v. Boyd, 63 Tex. 533; Morgan's Co. v. State Board of Health, 118 U. S. 455, 6 Sup. Ct. 1114, 30 L. Ed. 237; Dranga v. Rowe, 127 Cal. 506, 59 Pac. 944; McClelland v. State, 138 Ind. 321, 37 N. E. 1089; Hanson v. Vernon, 27 Iowa, 28, 1 Am. Rep. 215; Bonaparte v. State, 63 Md. 465; Pittsburgh, etc., R. Co. v. State, 49 Ohio St. 189, 30 N. E. 435, 16 L. R. A. 380; Illinois Cent. R. Co. v. Decatur, 147 U. S. 190, 13 Sup. Ct. 293, 37 L. Ed. 132.

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

Synonyms. In a broad sense, *taxes* undoubtedly include *assessments*, and the right to impose assessments has its foundation in the taxing power of the government; and yet, in practice and as generally understood, there is a broad distinction between the two terms. "Taxes," as the term is generally used, are public burdens imposed generally upon the inhabitants of the whole state, or upon some civil division thereof, for governmental purposes, without reference to peculiar benefits to particular individuals or property. "Assessments" have reference to impositions for improvements which are specially beneficial to particular individuals or property, and which are imposed in proportion to the particular benefits supposed to be conferred. They are justified only because the improvements confer special benefits, and are just only when they are divided in proportion to such benefits. Roosevelt Hospital v. New York, 84 N. Y. 112. As distinguished from other kinds of taxation, "assessments" are those special and local impositions upon property in the immediate vicinity of municipal improvements which are necessary to pay for the improvement, and are laid with reference to the special benefit which the property is supposed to have derived therefrom. Hale v. Kenosha, 29 Wis. 599; Ridenour v. Saffin, 1 Handy (Ohio) 464; King v. Portland, 2 Or. 146; Williams v. Corcoran, 46 Cal. 553.

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

The words "tax" and "excise," although often used as synonymous, are to be considered as having entirely distinct and separate significations. The former is a charge apportioned either among the whole people of the state, or those residing within certain districts, municipalities, or sections. It is required to be imposed, as we shall more fully explain hereafter, so that, if levied for the public charges of government, it shall be shared according to the estate, real and personal, which each person may possess; or, if raised to defray the cost of some local government of a public nature, it shall be borne by those who will receive some special and peculiar benefit or advantage which an expenditure of money for a public object may cause to those on whom the tax is assessed. An excise, on the other hand, is of a different character. It is based on no rule of apportionment or equality whatever. It is a fixed, absolute, and direct charge laid on merchandise, products, or commodities, without any regard to the amount of property belonging to those on whom it may fall, or to any supposed relation between money expended for a public object and a special benefit occasioned to those by whom the charge is to be paid. Oliver v. Washington Mills, 11 Allen (Mass.) 274.

—Ad valorem tax. See AD VALOREM.**—Capitation tax.** See that title.**—Collateral inheritance tax.** See COLLATERAL INHERITANCE.**—Direct tax.** A direct tax is one which is demanded from the very persons who, it is intended or desired, should pay it. Indirect taxes are those which are demanded from one person, in the expectation and intention that he shall indemnify himself at the expense of another. Mill, Pol. Econ. Taxes are divided into "direct," under which designation would be included those which are assessed upon the property, person, business, income, etc., of those who are to pay them, and "indirect," or those which are levied on commodities before they reach the consumer, and are paid by those upon whom they ultimately fall, not as taxes, but as part of the market price of the commodity. Cooley, Tax'n, 6. Historical evidence shows that personal property, contracts, occupations, and the like, have never been regarded as the subjects of direct tax. The phrase is understood to be limited to taxes on land and its appurtenances, and on polls. Veazie Bank v. Fenno, 8 Wall. 533, 19 L. Ed. 482. See Hylton v. U. S., 3 Dall. 171, 1 L. Ed. 556; Pacific Ins. Co. v. Soule, 7 Wall. 445, 19 L. Ed. 95; Scholey v. Rew, 90 U. S. 347, 23 L. Ed. 99; Springer v. U. S., 102 U. S. 602, 26 L. Ed. 253; Veazie Bank v. Fenno, 8 Wall. 533, 19 L. Ed. 482; Pollock v. Farmers' L. & T. Co., 157 U. S. 429, 15 Sup. Ct. 673, 39 L. Ed. 759; Railroad Co. v. Morrow, 87 Tenn. 406, 11 S. W. 348, 2 L. R. A. 853; People v. Knight, 174 N. Y. 475, 67 N. E. 65, 63 L. R. A. 87.**—Franchise tax.** See FRANCHISE.**—Income tax.** See INCOME.**—Indirect taxes** are those demanded in the first instance from one person in the expectation and intention that he shall indemnify himself at the expense of another. "Ordinarily all taxes paid primarily by persons who can shift the burden upon some one else, or who are under no legal compulsion to pay them, are considered indirect taxes." Pollock v. Farmers' L. & T. Co., 157 U. S. 429, 15 Sup. Ct. 673, 39 L. Ed. 759; Springer v. U. S., 102 U. S. 602, 26 L. Ed. 253; Thomasson v. State, 15 Ind. 451.**—Inheritance tax.** See INHERITANCE.**—License tax.** See LICENSE.**—Local taxes.** Those assessments which are limited to certain districts, as poor-rates, parochial taxes, county rates, municipal taxes, etc.**—Occupation tax.** See OCCUPATION.**—Parliamentary taxes.** Such taxes as are imposed directly by act of parliament, *i. e.*, by the legislature itself, as distinguished from those which are imposed by private individuals or bodies under the authority of an act of parliament. Thus, a sewers rate, not being imposed directly by act of parliament,

but by certain persons termed "commissioners of sewers," is not a parliamentary tax; whereas the income tax, which is directly imposed, and the amount also fixed, by act of parliament, is a parliamentary tax. Brown.—**Personal tax.** This term may mean either a tax imposed on the person without reference to property, as, a capitation or poll tax, or a tax imposed on personal property, as distinguished from one laid on real property. See Jack v. Walker (C. C.) 79 Fed. 141; Potter v. Ross, 23 N. J. Law, 517; Bates' Ann. St. Ohio, 1904, § 2860.—**Poll tax.** See that title.—**Public tax.** A tax levied for some general public purpose or for the purposes of the general public revenue, as distinguished from local municipal taxes and assessments. Morgan v. Cree, 46 Vt. 783, 14 Am. Rep. 640; Buffalo City Cemetery v. Buffalo, 46 N. Y. 509.—**Specific tax.** A tax imposed as a fixed sum on each article or item of property of a given class or kind, without regard to its value; opposed to *ad valorem* tax.—**Succession tax.** See SUCCESSION.—**Tax certificate.** A certificate of the purchase of land at a tax sale thereof, given by the officer making the sale, and which is evidence of the holder's right to receive a deed of the land if it is not redeemed within the time limited by law. See Eaton v. Manitowoc County, 44 Wis. 492; Nelson v. Central Land Co., 35 Minn. 408, 29 N. W. 121.—**Tax-deed.** The conveyance given upon a sale of lands made for non-payment of taxes; the deed whereby the officer of the law undertakes to convey the title of the proprietor to the purchaser at the tax-sale.—**Tax lease.** The instrument (or estate) given to the purchaser of land at a tax sale, where the law does not permit the sale of the estate in fee for non-payment of taxes, but instead thereof directs the sale of an estate for years.—**Tax levy.** The total sum to be raised by a tax. Also the bill, enactment, or measure of legislation by which an annual or general tax is imposed.—**Tax-lien.** A statutory lien, existing in favor of the state or municipality, upon the lands of a person charged with taxes, binding the same either for the taxes assessed upon the specific tract of land or (in some jurisdictions) for all the taxes due from the individual, and which may be foreclosed for non-payment, by judgment of a court or sale of the land.—**Tax-payer.** A person chargeable with a tax; one from whom government demands a pecuniary contribution towards its support.—**Tax-payers' lists.** Written exhibits required to be made out by the tax-payers resident in a district, enumerating all the property owned by them and subject to taxation, to be handed to the assessors, at a specified date or at regular periods, as a basis for assessment and valuation.—**Tax purchaser.** A person who buys land at a tax-sale; the person to whom land, at a tax-sale thereof, is struck down.—**Tax roll.** See ROLL.—**Tax sale.** See SALE.—**Tax-title.** The title by which one holds land which he purchased at a tax-sale. That species of title which is inaugurated by a successful bid for land at a collector's sale of the same for non-payment of taxes, completed by the failure of those entitled to redeem within the specified time, and evidenced by the deed executed to the tax purchaser, or his assignee, by the proper officer.—**Taxing district.** The district throughout which a particular tax or assessment is ratably apportioned and levied upon the inhabitants; it may comprise the whole state, one county, a city, a ward, or part of a street.—**Tonnage tax.** See TONNAGE DUTY.—**Wheel tax.** A tax on wheeled vehicles of some or all kinds and bicycles.—**Window tax.** See WINDOW.

TAXA. L. Lat. A tax. Spelman.

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

TAXABLE. Subject to taxation; liable to be assessed, along with others, for a share in a tax. Persons subject to taxation are sometimes called "taxables;" so property which may be assessed for taxation is said to be taxable.

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

TAXARE. Lat. To rate or value. Calvin.

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

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

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

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

TAXATIO ECCLESIASTICA. The valuation of ecclesiastical benefices made through every diocese in England, on occasion of Pope Innocent IV. granting to King Henry III. the tenth of all spirituals for three years. This taxation was first made by Walter, bishop of Norwich, delegated by the pope to this office in 38 Hen. III., and hence called "*Taxatio Norwicencis.*" It is also called "Pope Innocent's Valor." Wharton.

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

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

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

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

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

The differences between taxation and taking property in right of eminent domain are that taxation exacts money or services from individuals, as and for their respective shares of contribution to any public burden; while private property taken for public use, by right of eminent domain, is taken, not as the owner's share of contribution to a public burden, but as so much beyond his share, and for which compensation must be made. Moreover, taxation operates upon a community, or upon a class of persons in a community, and by some rule of apportionment; while eminent domain operates upon an individual, and without reference to the amount or value exacted from any other individual, or class of individuals. People v. Brooklyn, 4 N. Y. 419, 55 Am. Dec. 266.

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

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

TAXING MASTER. See MASTER.

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

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

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

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

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

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

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

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

—Technical mortgage. A true and formal mortgage, as distinguished from other instruments which, in some respects, have the character of equitable mortgages. Harrison v. Annapolis & E. R. R. Co., 50 Md. 514.

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

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

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

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

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

TEIND MASTERS. Those entitled to tithes.

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

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

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

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

TELEGRAPHIÆ. A word occasionally used in old English law to describe ancient documents or written evidence of things past. Blount.

TELEPHONE. In a general sense, the name "telephone" applies to any instrument or apparatus which transmits sound beyond the limits of ordinary audibility. But, since the recent discoveries in telephony, the name is technically and primarily restricted to an instrument or device which transmits sound by means of electricity and wires similar to telegraphic wires. In a secondary sense, however, being the sense in which it is most commonly understood, the word "telephone" constitutes a generic term, having reference generally to the art of telephony as an institution, but more particularly to the apparatus, as an entirety, ordinarily used in the transmission, as well as in the reception, of telephonic messages. Hockett v. State, 105 Ind. 261, 5 N. E. 178, 55 Am. Rep. 201.

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

The teller is a considerable officer in the exchequer, of which officers there are four, whose office is to receive all money due to the king, and to give the clerk of the pells a bill to charge him therewith. They also pay to all persons any money payable by the king, and make weekly and yearly books of their receipts and payments, which they deliver to the lord treasurer. Cowell; Jacob.

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

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

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

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

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

TEMPEST. A violent or furious storm; a current of wind rushing with extreme violence, and usually accompanied with rain or snow. See Stover v. Insurance Co., 3 Phila. (Pa.) 39; Thistle v. Union Forwarding Co., 29 U. C. C. P. 84.

TEMPLARS. A religious order of knighthood, instituted about the year 1119, and so called because the members dwelt in a part of the temple of Jerusalem, and not far from the sepulcher of our Lord. They entertained Christian strangers and pilgrims charitably, and their profession was at first to defend travelers from highwaymen and robbers. The order was suppressed A. D. 1307, and their substance given partly to the knights of St. John of Jerusalem, and partly to other religious orders. Brown.

TEMPLE. Two English inns of court, thus called because anciently the dwelling place of the Knights Templar. On the suppression of the order, they were purchased by some professors of the common law, and converted into *hospitia* or inns of court. They are called the "Inner" and "Middle Temple," in relation to Essex House, which was also a part of the house of the Templars, and called the "Outer Temple," because situated without Temple Bar. Enc. Lond.

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

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

—Temporalis actio. An action which could only be brought within a certain period. **—Temporalis exceptio.** A temporary exception which barred an action for a time only.

TEMPORALITIES. In English law. The lay fees of bishops, with which their churches are endowed or permitted to be endowed by the liberality of the sovereign, and in virtue of which they become barons and lords of parliament. Spelman. In a wider sense, the money revenues of a church, derived from pew rents, subscriptions, donations, collections, cemetery charges, and other sources. See Barabasz v. Kabat, 86 Md. 23, 37 Atl. 720.

TEMPORALITY. The laity; secular people.

TEMPORARY. That which is to last for a limited time only, as distinguished from that which is perpetual, or indefinite, in its duration. Thus, temporary alimony is granted for the support of the wife pending the action for divorce. Dayton v. Drake, 64 Iowa, 714, 21 N. W. 158. A temporary injunction restrains action or any change in the situation of affairs until a hearing on

the merits can be had. Jesse French Piano Co. v. Porter, 134 Ala. 302, 32 South. 678, 92 Am. St. Rep. 31; Calvert v. State, 34 Neb. 616, 52 N. W. 687. A temporary receiver is one appointed to take charge of property until a hearing is had and an adjudication made. Boonville Nat. Bank v. Blakey, 107 Fed. 895, 47 C. C. A. 43. A temporary statute is one limited in respect to its duration. People v. Wright, 70 Ill. 399. As to temporary insanity, see INSANITY.

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

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

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

—Tempus continuum. In the civil law. A continuous or absolute period of time. A term which begins to run from a certain event, even though he for whom it runs has no knowledge of the event, and in which, when it has once begun to run, all the days are reckoned as they follow one another in the calendar. Dig. 3, 2, 8; Mackeld. Rom. Law, § 195.**—Tempus semestre.** In old English law. The period of six months or half a year, consisting of one hundred and eighty-two days. Cro. Jac. 166. **—Tempus utile.** In the civil law. A profitable or advantageous period of time. A term which begins to run from a certain event, only when he for whom it runs has obtained a knowledge of the event, and in which, when it has once begun to run, those days are not reckoned on which one has no *experiundi potestas; i. e.*, on which one cannot prosecute his rights before a court. Dig. 3, 6, 6; Mackeld. Rom. Law, § 195.

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

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

—General tenancy. A tenancy which is not fixed and made certain in point of duration by the agreement of the parties. Brown v. Bragg, 22 Ind. 122.**—Joint tenancy.** An estate in joint tenancy is an estate in fee-simple, fee-tail, for life, for years, or at will, arising by purchase or grant to two or more persons. Joint tenants have one and the same interest, accruing by one and the same conveyance, commencing at one and the same time, and held by one and the same undivided possession. The grand incident of joint tenancy is survivorship, by which the entire tenancy on the decease of any joint tenant remains to the survivors, and at length to the last survivor. Pub. St. Mass. 1882, p. 1292; Simons v. McLain, 51 Kan. 153, 32 Pac. 919; Thornburg v. Wiggins, 135 Ind. 178, 34 N. E. 999, 22 L. R. A. 42, 41 Am. St. Rep. 422; Appeal of Lewis, 85 Mich. 340, 48 N. W. 580, 24 Am. St. Rep. 94; Redemptorist Fathers v. Lawler, 205 Pa. 24, 54 Atl. 487. A joint interest is one owned by several persons in equal shares, by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy, or when granted or devised to executors or trustees as joint tenants. Civ. Code Cal. § 683.**—Several tenancy.** A tenancy which is separate, and not held jointly with another person.**—Tenancy at sufferance.** This is the least and lowest estate which can subsist in realty. It is in strictness not an estate, but a mere possession only. It arises when a person, after his right to the occupation, under a lawful title, is at an end, continues (having no title at all) in possession of the land, without the agreement or disagreement of the person in whom the right of possession resides. 2 Bl. Comm. 150.

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

In a more restricted sense, one who holds lands of another; one who has the temporary use and occupation of real property owned by another person, (called the "landlord,") the duration and terms of his tenancy being usually fixed by an instrument called a "lease." See Becker v. Becker, 13 App. Div. 342, 43 N. Y. Supp. 17; Bowe v. Hunking, 135 Mass. 383, 46 Am. Rep. 471; Clift v. White, 12 N. Y. 527; Lightbody v. Truelsen, 39 Minn. 310, 40 N. W. 67; Woolsey v. State, 30 Tex. App. 347, 17 S. W. 546.

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

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

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

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

—Joint tenants. Two or more persons to whom are granted lands or tenements to hold in

fee-simple, fee-tail, for life, for years, or at will. 2 Bl. Comm. 179. Persons who own lands by a joint title created expressly by one and the same deed or will. 4 Kent, Comm. 357. Joint tenants have one and the same interest, accruing by one and the same conveyance, commencing at one and the same time, and held by one and the same undivided possession. 2 Bl. Comm. 180.—**Quasi tenant at sufferance.** An under-tenant, who is in possession at the determination of an original lease, and is permitted by the reversioner to hold over.—**Sole tenant.** He that holds lands by his own right only, without any other person being joined with him. Cowell.—**Tenant a volunte.** L. Fr. A tenant at will.—**Tenant at sufferance.** One that comes into the possession of land by lawful title, but holds over by wrong, after the determination of his interest. 4 Kent, Comm. 116; 2 Bl. Comm. 150; Fielder v. Childs, 73 Ala. 577; Pleasants v. Claghorn, 2 Miles (Pa.) 304; Bright v. McOuat, 40 Ind. 525; Garner v. Hannah, 6 Duer (N. Y.) 270; Wright v. Graves, 80 Ala. 418.—**Tenant at will** "is where lands or tenements are let by one man to another, to have and to hold to him at the will of the lessor, by force of which lease the lessee is in possession. In this case the lessee is called 'tenant at will,' because he hath no certain nor sure estate, for the lessor may put him out at what time it pleaseth him." Litt. § 68; Sweet. Post v. Post, 14 Barb. (N. Y.) 258; Spalding v. Hall, 6 D. C. 125; Cunningham v. Holton, 55 Me. 36; Willis v. Harrell, 118 Ga. 906, 45 S. E. 794.—**Tenant by copy of court roll** (shortly, "tenant by copy") is the old-fashioned name for a copyholder. Litt. § 73.—**Tenant by the curtesy.** One who, on the death of his wife seised of an estate of inheritance, after having by her issue born alive and capable of inheriting her estate, holds the lands and tenements for the term of his life. Co. Litt. 30*a*; 2 Bl. Comm. 126.—**Tenant by the manner.** One who has a less estate than a fee in land which remains in the reversioner. He is so called because in avowries and other pleadings it is specially shown in what manner he is tenant of the land, in contradistinction to the *veray tenant*, who is called simply "tenant." Ham. N. P. 393.—**Tenant for life.** One who holds lands or tenements for the term of his own life, or for that of any other person, (in which case he is called "*pur auter vie*,") or for more lives than one. 2 Bl. Comm. 120; In re Hyde, 41 Hun (N. Y.) 75.—**Tenant for years.** One who has the temporary use and possession of lands or tenements not his own, by virtue of a lease or demise granted to him by the owner, for a determinate period of time, as for a year or a fixed number of years. 2 Bl. Comm. 140. —**Tenant from year to year.** One who holds lands or tenements under the demise of another, where no certain term has been mentioned, but an annual rent has been reserved. See 1 Steph. Comm. 271; 4 Kent, Comm. 111, 114. One who holds over, by consent given either expressly or constructively, after the determination of a lease for years. 4 Kent, Comm. 112. See Shore v. Porter, 3 Term, 16; Rothschild v. Williamson, 83 Ind. 388; Hunter v. Frost, 47 Minn. 1, 49 N. W. 327; Arbenz v. Exley, 52 W. Va. 476, 44 S. E. 149, 61 L. R. A. 957.—**Tenant in capite.** In feudal and old English law. Tenant in chief; one who held immediately under the king, in right of his crown and dignity. 2 Bl. Comm. 60.—**Tenant in common.** Tenants in common are generally defined to be such as hold the same land together by several and distinct titles, but by unity of possession, because none knows his own severalty, and therefore they all occupy promiscuously. 2 Bl. Comm. 191. A tenancy in common is where two or more hold the same land, with interests accruing under different titles, or accruing under the same title, but at different periods, or conferred by words of limitation importing that the grantees are to take in distinct shares. 1 Steph. Comm. 323. See Coster v. Lorillard, 14 Wend. (N. Y.) 336; Taylor v. Millard, 118 N. Y. 244, 23 N. E. 376, 6 L. R. A. 667; Silloway v. Brown, 12 Allen (Mass.) 36; Gage v. Gage, 66 N. H. 282, 29 Atl. 543, 28 L. R. A. 829; Hunter v. State, 60 Ark. 312, 30 S. W. 42.—**Tenant in dower.** This is where the husband of a woman is seised of an estate of inheritance and dies; in this case the wife shall have the third part of all the lands and tenements whereof he was seised at any time during the coverture, to hold to herself for life, as her dower. Co. Litt. 30; 2 Bl. Comm. 129; Combs v. Young, 4 Yerg. (Tenn.) 225, 26 Am. Dec. 225.—**Tenant in fee-simple, (or tenant in fee.)** He who has lands, tenements, or hereditaments, to hold to him and his heirs forever, generally, absolutely, and simply; without mentioning *what* heirs, but referring that to his own pleasure, or to the disposition of the law. 2 Bl. Comm. 104; Litt. § 1.—**Tenant in severalty** is he who holds lands and tenements in his own right only, without any other person being joined or connected with him in point of interest during his estate therein. 2 Bl. Comm. 179.—**Tenant in tail.** One who holds an estate in fee-tail, that is, an estate which, by the instrument creating it, is limited to some particular heirs, exclusive of others; as to the heirs of *his body* or to the heirs, *male* or *female*, of his body.—**Tenant in tail ex provisione viri.** Where an owner of lands, upon or previously to marrying a wife, settled lands upon himself and his wife, and the heirs of their two bodies begotten, and then died, the wife, as survivor, became tenant in tail of the husband's lands, in consequence of the husband's provision, (*ex provisione viri.*) Originally, she could bar the estate-tail like any other tenant in tail; but the husband's intention having been merely to provide for her during her widowhood, and not to enable her to bar his children of their inheritance, she was very early restrained from so doing, by the statute 32 Hen. VII. c. 36. Brown.—**Tenant of the demesne.** One who is tenant of a mesne lord; as, where A. is tenant of B., and C. of A., B. is the lord, A. the mesne lord, and C. tenant of the demesne. Ham. N. P. 392, 393.—**Tenant paravaile.** The under-tenant of land; that is, the tenant of a tenant; one who held of a mesne lord.—**Tenant to the præcipe.** Before the English fines and recoveries act, if land was conveyed to a person for life with remainder to another in tail, the tenant in tail in remainder was unable to bar the entail without the concurrence of the tenant for life, because a common recovery could only be suffered by the person seised of the land. In such a case, if the tenant for life wished to concur in barring the entail, he usually conveyed his life-estate to some other person, in order that the *præcipe* in the recovery might be issued against the latter, who was therefore called the "tenant to the *præcipe*." Williams, Seis. 169; Sweet.—**Tenants by the verge** "are in the same nature as tenants by copy of court roll, [*i. e.*, copyholders.] But the reason why they be called 'tenants by the verge' is for that, when they will surrender their tenements into the hands of their lord to the use of another, they shall have a little rod (by the custome) in their hand, the which they shall deliver to the steward or to the bailife, * * * and the steward or bailife, according to the custome, shall deliver to him that taketh the land the same rod, or another rod, in the name of seisin; and for this cause they are called 'tenants by the verge,' but they have no other evidence [title-deed] but by copy of court roll." Litt. § 78; Co. Litt. 61*a*.

TENANT-RIGHT. 1. A kind of customary estate in the north of England, falling under the general class of copyhold, but

distinguished from copyhold by many of its incidents.

2. The so-called tenant-right of renewal is the expectation of a lessee that his lease will be renewed, in cases where it is an established practice to renew leases from time to time, as in the case of leases from the crown, from ecclesiastical corporations, or other collegiate bodies. Strictly speaking, there can be no right of renewal against the lessor without an express compact by him to that effect, though the existence of the custom often influences the price in sales.

3. The Ulster tenant-right may be described as a right on the tenant's part to sell his holding to the highest bidder, subject to the existing or a reasonable increase of rent from time to time, as circumstances may require, with a reasonable veto reserved to the landlord in respect of the incoming tenant's character and solvency. Mozley & Whitley.

TENANT'S FIXTURES. This phrase signifies things which are fixed to the freehold of the demised premises, but which the tenant may detach and take away, provided he does so in season. Wall v. Hinds, 4 Gray (Mass.) 256, 270, 64 Am. Dec. 64.

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

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

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

TENDER. An offer of money; the act by which one produces and offers to a person holding a claim or demand against him the amount of money which he considers and admits to be due, in satisfaction of such claim or demand, without any stipulation or condition. Salinas v. Ellis, 26 S. C. 337, 2 S. E. 121; Tompkins v. Batie, 11 Neb. 147, 7 N. W. 747, 38 Am. Rep. 361; Holmes v. Holmes, 12 Barb. (N. Y.) 144; Smith v. Lewis, 26 Conn. 119; Noyes v. Wyckoff, 114 N. Y. 204, 21 N. E. 158.

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

—Legal tender. That kind of coin, money, or circulating medium which the law compels a creditor to accept in payment of his debt, when tendered by the debtor in the right amount.—**Tender of amends.** An offer by a person who has been guilty of any wrong or breach of contract to pay a sum of money by way of amends. If a defendant in an action make tender of amends, and the plaintiff decline to accept it, the defendant may pay the money into court, and plead the payment into court as a satisfaction of the plaintiff's claim. Mozley & Whitley.—**Tender of issue.** A form of words in a pleading, by which a party offers to refer the question raised upon it to the appropriate mode of decision. The common tender of an issue of fact by a defendant is expressed by the words, "and of this he puts himself upon the country." Steph. Pl. 54, 230.

TENEMENT. This term, in its vulgar acceptation, is only applied to houses and other buildings, but in its original, proper, and legal sense it signifies everything that may be *holden*, provided it be of a permanent nature, whether it be of a substantial and sensible, or of an unsubstantial, ideal, kind. Thus, *liberum tenementum*, frank tenement, or freehold, is applicable not only to lands and other solid objects, but also to offices, rents, commons, advowsons, franchises, peerages, etc. 2 Bl. Comm. 16; Mitchell v. Warner, 5 Conn. 517; Oskaloosa Water Co. v. Board of Equalization, 84 Iowa, 407, 51 N. W. 18, 15 L. R. A. 296; Field v. Higgins, 35 Me. 341; Sacket v. Wheaton, 17 Pick. (Mass.) 105; Lenfers v. Henke, 73 Ill. 408, 24 Am. Rep. 263.

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

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

—Dominant tenement. One for the benefit or advantage of which an easement exists or is enjoyed.—**Servient tenement.** One which is subject to the burden of an easement existing for or enjoyed by another tenement. See EASEMENT.

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

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

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

TENENDUM. Lat. To hold; to be holden. The name of that formal part of a deed which is characterized by the words "to hold." It was formerly used to express the tenure by which the estate granted was to be held; but, since all freehold tenures have been converted into socage, the *tenendum* is

of no further use, and is therefore joined in the *habendum*,—"to have and to hold." 2 Bl. Comm. 298; 4 Cruise, Dig. 26.

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

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

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

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

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

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

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

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

TENNE. A term of heraldry, meaning orange color. In engravings it should be represented by lines in bend sinister crossed by others bar-ways. Heralds who blazon by the names of the heavenly bodies, call it "dragon's head," and those who employ jewels, "jacinth." It is one of the colors called "stainand." Wharton.

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

By the tenor of a deed, or other instrument in writing, is signified the matter contained therein, according to the true intent and meaning thereof. Cowell.

"Tenor," in pleading a written instrument, imports that the very words are set out. "Purport" does not import this, but is equivalent only to "substance." Com. v. Wright, 1 Cush. (Mass.) 65; Dana v. State, 2 Ohio St. 93; State v. Bonney, 34 Me. 384; State v. Atkins, 5 Blackf. (Ind.) 458; State v. Chinn, 142 Mo. 507, 44 S. W. 245.

The action of proving the tenor, in Scotland, is an action for proving the contents and purport of a deed which has been lost. Bell.

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

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

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

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

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

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

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

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

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

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

TENURA. In old English law. Tenure.

Tenura est pactio contra communem feudi naturam ac rationem, in contractu interposita. Wright, Ten. 21. Tenure is

a compact contrary to the common nature and reason of the fee, put into a contract.

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

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

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

LAY TENURES.

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

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

SPIRITUAL TENURES.

I. Frankalmoigne, or free alms.
II. Tenure by divine service.

Tenure, in its general sense, is a mode of holding or occupying. Thus, we speak of the tenure of an office, meaning the manner in which it is held, especially with regard to time, (tenure for life, tenure during good behavior,) and of tenure of land in the sense of occupation or tenancy, especially with reference to cultivation and questions of political economy; *e. g.*, tenure by peasant proprietors, cottiers, etc. Sweet. See Bard v. Grundy, 2 Ky. 169; People v. Waite, 9 Wend. (N. Y.) 58; Richman v. Lippincott, 29 N. J. Law, 59.

—Tenure by divine service is where an ecclesiastical corporation, sole or aggregate, holds land by a certain divine service; as, to say prayers on a certain day in every year, "or to distribute in almes to an hundred poore men an hundred pence at such a day." Litt. § 137.

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

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

TERCERONE. A term applied in the West Indies to a person one of whose parents was white and the other a mulatto. See Daniel v. Guy, 19 Ark. 131.

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

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

In estates. "Term" signifies the bounds, limitation, or extent of time for which an estate is granted; as when a man holds an estate for any limited or specific number of years, which is called his "term," and he himself is called, with reference to the term he so holds, the "termor," or "tenant of the term." See Gay Mfg. Co. v. Hobbs, 128 N. C. 46, 38 S. E. 26, 83 Am. St. Rep. 661; Sanderson v. Scranton, 105 Pa. 472; Hurd v. Whitsett, 4 Colo. 84; Taylor v. Terry, 71 Cal. 46, 11 Pac. 813.

Of court. The word "term," when used with reference to a court, signifies the space of time during which the court holds a session. A *session* signifies the time during the term when the court sits for the transaction of business, and the session commences when the court convenes for the term, and continues until final adjournment, either before or at the expiration of the term. The *term* of the court is the time prescribed by law during which it may be in *session*. The *session* of the court is the time of its actual sitting. Lipari v. State, 19 Tex. App. 431. And see Horton v. Miller, 38 Pa. 271; Dees v. State, 78 Miss. 250, 28 South. 849; Conkling v. Ridgely, 112 Ill. 36, 1 N. E. 261, 54 Am. Rep. 204; Brown v. Hume, 16 Grat. (Va.) 462; Brown v. Leet, 136 Ill. 203, 26 N. E. 639.

—General term. A phrase used in some jurisdictions to denote the ordinary session of a court, for the trial and determination of causes, as distinguished from a *special* term, for the hearing of motions or arguments or the despatch of various kinds of formal business, or the trial of a special list or class of cases. Or it may denote a sitting of the court *in banc*. State v. Eggers, 152 Mo. 485, 54 S. W. 498.**—Regular term.** A regular term of court is a term begun at the time appointed by law, and continued, in the discretion of the court, to such time as it may appoint, consistent with the law. Wightman v. Karsner, 20 Ala. 451.**—Special term.** In New York practice, that branch of the court which is held by a single judge for hearing and deciding in the first instance motions and causes of equitable nature is called the "special term," as opposed to the "general term," held by three judges (usually) to hear appeals. Abbott; Gracie v. Freeland, 1 N. Y. 232.**—Term attendant on the inheritance.** See ATTENDANT TERMS.**—Term fee.** In English practice. A certain sum which a solicitor is entitled to charge to his client, and the client to recover, if successful, from the unsuccessful party; payable for every term in which any proceedings subsequent to the summons shall take place. Wharton.**—Term for deliberating.** By "term for deliberating" is understood the time given to the beneficiary heir, to examine

if it be for his interest to accept or reject the succession which has fallen to him. Civ. Code La. art. 1033.—**Term for years.** An *estate for years* and the *time* during which such estate is to be held are each called a "term;" hence the term may expire before the time, as by a surrender. Co. Litt. 45.—**Term in gross.** A term of years is said to be either in gross (outstanding) or attendant upon the inheritance. It is outstanding, or in gross, when it is unattached or disconnected from the estate or inheritance, as where it is in the hands of some third party having no interest in the inheritance; it is attendant, when vested in some trustee in trust for the owner of the inheritance. Brown. —**Term of lease.** The word "term," when used in connection with a lease, means the period which is granted for the lessee to occupy the premises, and does not include the time between the making of the lease and the tenant's entry. Young v. Dake, 5 N. Y. 463, 55 Am. Dec. 356.—**Term probatory.** The period of time allowed to the promoter of an ecclesiastical suit to produce his witnesses, and prove the facts on which he rests his case. Coote, Ecc. Pr. 240, 241.—**Term to conclude.** In English ecclesiastical practice. An appointment by the judge of a time at which both parties are understood to renounce all further exhibits and allegations.—**Term to propound all things.** In English ecclesiastical practice. An appointment by the judge of a time at which both parties are to exhibit all the acts and instruments which make for their respective causes.

In the law of contracts and in court practice. The word is generally used in the plural, and "terms" are conditions; propositions stated or promises made which, when assented to or accepted by another, settle the contract and bind the parties. Webster. See Hutchinson v. Lord, 1 Wis. 313, 60 Am. Dec. 381; State v. Fawcett, 58 Neb. 371, 78 N. W. 636; Rokes v. Amazon Ins. Co., 51 Md. 512, 34 Am. Rep. 323.

—**Special terms.** Peculiar or unusual conditions imposed on a party before granting some application to the favor of the court.—**Under terms.** A party is said to be *under terms* when an indulgence is granted to him by the court in its discretion, on certain conditions. Thus, when an injunction is granted *ex parte*, the party obtaining it is put *under terms* to abide by such order as to damages as the court may make at the hearing. Mozley & Whitley.

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

TERMINABLE PROPERTY. This name is sometimes given to property of such a nature that its duration is not perpetual or indefinite, but is limited or liable to terminate upon the happening of an event or the expiration of a fixed term; *e. g.*, a leasehold, a life-annuity, etc.

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

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

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

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

TERMINUM. A day given to a defendant. Spelman.

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

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

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

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

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

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

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

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

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

—**Terra affirmata.** Land let to farm.—**Terra boscalis.** Woody land.—**Terra culta.** Cultivated land.—**Terra debilis.** Weak or

barren land.—**Terra dominica, or indominicata.** The demesne land of a manor. Cowell.—**Terra excultabilis.** Land which may be plowed. Mon. Ang. i. 426.—**Terra extendenda.** A writ addressed to an escheator, etc., that he inquire and find out the true yearly value of any land, etc., by the oath of twelve men, and to certify the extent into the chancery. Reg. Writs, 293.—**Terra frusca, or frisca.** Fresh land, not lately plowed. Cowell.—**Terra hydata.** Land subject to the payment of hydage. Selden.—**Terra lucrabilis.** Land gained from the sea or inclosed out of a waste. Cowell.—**Terra Normanorum.** Land held by a Norman. Paroch. Antiq. 197.—**Terra nova.** Land newly converted from wood ground or arable. Cowell.—**Terra putura.** Land in forests, held by the tenure of furnishing food to the keepers therein. 4 Inst. 307.—**Terra sabulosa.** Gravelly or sandy ground.—**Terra Salica.** In Salic law. The land of the house; the land within that inclosure which belonged to a German house. No portion of the inheritance of Salic land passes to a woman, but this the male sex acquires; that is, the sons succeed in that inheritance. Lex Salic. tit. 62, § 6.—**Terra testamentalis.** Gavel-kind land, being disposable by will. Spelman.—**Terra vestita.** Land sown with corn. Cowell.—**Terra wainabilis.** Tillable land. Cowell.—**Terra warrenata.** Land that has the liberty of free-warren.—**Terræ dominicales regis.** The demesne lands of the crown.

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

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

TERRAGES. An exemption from all uncertain services. Cowell.

TERRARIUS. In old English law. A landholder.

TERRE-TENANT. He who is literally in the occupation or possession of the land, as distinguished from the owner out of possession. But, in a more technical sense, the person who is seised of the land, though not in actual occupancy of it, and locally, in Pennsylvania, one who purchases and takes land subject to the existing lien of a mortgage or judgment against a former owner. See Dengler v. Kiehner, 13 Pa. 38, 53 Am. Dec. 441; Hulett v. Insurance Co., 114 Pa. 142, 6 Atl. 554.

TERRIER. In English law. A landroll or survey of lands, containing the quantity of acres, tenants' names, and such like; and in the exchequer there is a terrier of all the glebe lands in England, made about 1338. In general, an ecclesiastical terrier contains a detail of the temporal possessions of the church in every parish. Cowell; Tomlins; Mozley & Whitley.

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

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

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

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

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

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

In American law. A portion of the United States, not within the limits of any state, which has not yet been admitted as a state of the Union, but is organized, with a separate legislature, and with executive and judicial officers appointed by the president. See Ex parte Morgan (D. C.) 20 Fed. 304; People v. Daniels, 6 Utah, 288, 22 Pac. 159, 5 L. R. A. 444; Snow v. U. S., 18 Wall. 317, 21 L. Ed. 784.

—**Territory of a judge.** The territorial jurisdiction of a judge; the bounds, or district, within which he may lawfully exercise his judicial authority. Phillips v. Thralls, 26 Kan. 781.

TERROR. Alarm; fright; dread; the state of mind induced by the apprehension of hurt from some hostile or threatening event or manifestation; fear caused by the appearance of danger. In an indictment for riot, it must be charged that the acts done were

"to the *terror* of the people." See Arto v. State, 19 Tex. App. 136.

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

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

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

Something by which to ascertain the truth respecting another thing; a criterion, gauge, standard, or norm.

In public law, an inquiry or examination addressed to a person appointed or elected to a public office, to ascertain his qualifications therefor, but particularly a scrutiny of his political, religious, or social views, or his attitude of past and present loyalty or disloyalty to the government under which he is to act. See Attorney General v. Detroit Common Council, 58 Mich. 213, 24 N. W. 887, 55 Am. Rep. 675; People v. Hoffman, 116 Ill. 587, 5 N. E. 596, 56 Am. Rep. 793; Rogers v. Buffalo, 51 Hun, 637, 3 N. Y. Supp. 674.

—Test act. The statute 25 Car. II. c. 2, which directed all civil and military officers to take the oaths of allegiance and supremacy, and make the declaration against transubstantiation, within six months after their admission, and also within the same time receive the sacrament according to the usage of the Church of England, under penalty of £500 and disability to hold the office. 4 Bl. Comm. 58, 59. This was abolished by St. 9 Geo. IV. c. 17, so far as concerns receiving the sacrament, and a new form of declaration was substituted. **—Test action.** An action selected out of a considerable number of suits, concurrently depending in the same court, brought by several plaintiffs against the same defendant, or by one plaintiff against different defendants, all similar in their circumstances, and embracing the same questions, and to be supported by the same evidence, the selected action to go first to trial, (under an order of court equivalent to consolidation,) and its decision to serve as a *test* of the right of recovery in the others, all parties agreeing to be bound by the result of the test action. **—Test oath.** An oath required to be taken as a criterion of the fitness of the person to fill a public or political office; but particularly an oath of fidelity and allegiance (past or present) to the established government. **—Test-paper.** In practice. A paper or instrument shown to a jury as evidence. A term used in the Pennsylvania courts. Depue v. Clare, 7 Pa. 428.

TESTA DE NEVIL. An ancient and authentic record in two volumes, in the custody of the king's remembrancer in the exchequer, said to be compiled by John de Nevil, a justice itinerant, in the eighteenth and twenty-fourth years of Henry III. Cowell. These volumes were printed in 1807, under the authority of the commissioners of the public records, and contain an account of fees held either immediately of the king or of others who held of the king *in capite;* fees holden in frankalmoigne; serjeanties holden of the king; widows and heiresses of tenants *in capite*, whose marriages were in the gift of the king; churches in the gift of the king; escheats, and sums paid for scutages and aids, especially within the county of Hereford. Cowell; Wharton.

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

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

TESTAMENT. A disposition of personal property to take place after the owner's decease, according to his desire and direction. Pluche v. Jones, 54 Fed. 865, 4 C. C. A. 622; Aubert's Appeal, 109 Pa. 447, 1 Atl. 336; Conklin v. Egerton, 21 Wend. (N. Y.) 436; Ragsdale v. Booker, 2 Strob. Eq. (S. C.) 348.

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

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

Testament is the true declaration of a man's last will as to that which he would have to be done after his death. It is compounded, according to Justinian, from *testatio mentis;* but the better opinion is that it is a simple word formed from the Latin *testor*, and not a compound word. Mozley & Whitley.

—Military testament. In English law. A nuncupative will, that is, one made by word of mouth, by which a soldier may dispose of his goods, pay, and other personal chattels, without the forms and solemnities which the law requires in other cases. St. 1 Vict. c. 26, § 11. **—Mutual testaments.** Wills made by two persons who leave their effects reciprocally to the survivor. **—Mystic testament.** In the law of Louisiana. A sealed testament. The mystic or secret testament, otherwise called the "closed testament," is made in the following manner: The testator must sign his dispositions, whether he has written them himself or has caused them to be written by another person. The paper containing those dispositions, or the paper serving as their envelope, must be closed and sealed. The testator shall present it thus closed and sealed to the notary and to seven witnesses, or he shall cause it to be closed and sealed in their presence. Then he shall declare to the notary, in presence of the witnesses, that that paper contains his testament written by himself, or by another by his direction, and signed by him, the testator. The notary shall then draw up the act of superscription, which shall be written on that paper, or on the sheet that serves as its envelope, and that act shall be signed by the testator, and by the notary and the witnesses. Civ. Code La. art. 1584.

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

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

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

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

—Letters testamentary. The formal instrument of authority and appointment given to an executor by the proper court, upon the admission of the will to probate, empowering him to enter upon the discharge of his office as executor.—**Testamentary capacity.** That measure of mental ability which is recognized in law as sufficient for the making a will. See Nicewander v. Nicewander, 151 Ill. 156, 37 N. E. 698; Delafield v. Parish, 25 N. Y. 29; Yardley v. Cuthbertson, 108 Pa. 395, 1 Atl. 765, 56 Am. Rep. 218; Leech v. Leech, 21 Pa. 67; Duffield v. Robeson, 2 Har. (Del.) 379; Lowe v. Williamson, 2 N. J. Eq. 85.—**Testamentary causes.** In English law. Causes or matters relating to the probate of wills, the granting of administrations, and the suing for legacies, of which the ecclesiastical courts have jurisdiction. 3 Bl. Comm. 95, 98. Testamentary causes are causes relating to the validity and execution of wills. The phrase is generally confined to those causes which were formerly matters of ecclesiastical jurisdiction, and are now dealt with by the court of probate. Mozley & Whitley.—**Testamentary disposition.** A disposition of property by way of gift, which is not to take effect unless the grantor dies or until that event. Diefendorf v. Diefendorf, 56 Hun, 639, 8 N. Y. Supp. 617; Chestnut St. Nat. Bank v. Fidelity Ins., etc., Co., 186 Pa. 333, 40 Atl. 486, 65 Am. St. Rep. 860.—**Testamentary guardian.** A guardian appointed by the last will of a father for the person and real and personal estate of his child until the latter arrives of full age. 1 Bl. Comm. 462; 2 Kent, Comm. 224.—**Testamentary paper.** An instrument in the nature of a will; an unprobated will; a paper writing which is of the character of a will, though not formally such, and which, if allowed as a testament, will have the effect of a will upon the devolution and distribution of property.—**Testamentary succession.** In Louisiana, that which results from the institution of an heir contained in a testament executed in the form prescribed by law. Civ. Code La. 1900, art. 876.—**Testamentary trustee.** See TRUSTEE.

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

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

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

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

—Testamentum inofficiosum. Lat. In the civil law. An inofficious testament, (*q. v.*)

Testamentum est voluntatis nostræ justa sententia, de eo quod quis post mortem suam fieri velit. A testament is the just expression of our will concerning that which any one wishes done after his death, [or, as Blackstone translates, "the legal declaration of a man's intentions which he wills to be performed after his death."] Dig. 28, 1, 1; 2 Bl. Comm. 499.

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

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

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

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

TESTATION. Witness; evidence.

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

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

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

TESTATUM. In practice. When a writ of execution has been directed to the sheriff of a county, and he returns that the defendant is not found in his bailiwick, or that he has no goods there, as the case may be, then a second writ, reciting this former

writ and the sheriff's answer to the same, may be directed to the sheriff of some other county wherein the defendant is supposed to be, or to have goods, commanding him to execute the writ as it may require; and this second writ is called a "*testatum*" writ, from the words with which it concludes, viz.: "Whereupon, on behalf of the said plaintiff, *it is testified* in our said court that the said defendant is [or has goods, etc.] within your bailiwick."

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

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

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

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

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

"Teste" is a word commonly used in the last part of every writ, wherein the date is contained, beginning with the words, "*Teste meipso*," meaning the sovereign, if the writ be an original writ, or be issued in the name of the sovereign; but, if the writ be a judicial writ, then the word "Teste" is followed by the name of the chief judge of the court in which the action is brought, or, in case of a vacancy of such office, in the name of the senior puisne judge. Mozley & Whitley.

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

TESTES. Lat. Witnesses.

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

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

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

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

TESTIFY. To bear witness; to give evidence as a witness; to make a solemn declaration, under oath or affirmation, in a judicial inquiry, for the purpose of establishing or proving some fact. See State v. Robertson, 26 S. C. 117, 1 S. E. 443; Gannon v. Stevens, 13 Kan. 459; Nash v. Hoxie, 59 Wis. 384, 18 N. W. 408; O'Brien v. State, 125 Ind. 38, 25 N. E. 137, 9 L. R. A. 323; Mudge v. Gilbert, 43 How. Prac. (N. Y.) 221.

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

TESTIMONIAL. Besides its ordinary meaning of a written recommendation to character, "testimonial" has a special meaning, under St. 39 Eliz. c. 17, § 3, passed in 1597, under which it signified a certificate under the hand of a justice of the peace, testifying the place and time when and where a soldier or mariner landed, and the place of his dwelling or birth, unto which he was to pass, and a convenient time limited for his passage. Every idle and wandering soldier or mariner not having such a testimonial, or willfully exceeding for above fourteen days the time limited thereby, or forging or counterfeiting such testimonial, was to suffer death as a felon, without benefit of clergy. This act was repealed, in 1812, by St. 52 Geo. III. c. 31. Mozley & Whitley.

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

TESTIMONIO. In Spanish law. An authentic copy of a deed or other instrument, made by a notary and given to an interested party as evidence of his title, the original remaining in the public archives. Guilbeau v. Mays, 15 Tex. 414.

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

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

Testimony is not synonymous with *evidence*. It is but a species, a class, or kind of

evidence. Testimony is the evidence given by witnesses. Evidence is whatever may be given to the jury as tending to prove a case. It includes the testimony of witnesses, documents, admissions of parties, etc. Mann v. Higgins, 83 Cal. 66, 23 Pac. 206; Carroll v. Bancker, 43 La. Ann. 1078, 10 South. 192; Columbia Nat. Bank v. German Nat. Bank, 56 Neb. 803, 77 N. W. 346; Harris v. Tomlinson, 130 Ind. 426, 30 N. E. 214. See EVIDENCE.

—**Negative testimony.** Testimony not bearing directly upon the immediate fact or occurrence under consideration, but evidencing facts from which it may be inferred that the act or fact in question could not possibly have happened. See Barclay v. Hartman, 2 Marv. (Del.) 351, 43 Atl. 174.

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

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

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

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

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

TESTMOIGNE. An old law French term, denoting evidence or testimony or a witness.

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

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

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

THALWEG. Germ. A term used in topography to designate a line representing the deepest part of a continuous depression in the surface, such as a watercourse; hence the middle of the deepest part of the channel of a river or other stream. See Iowa v. Illinois, 147 U. S. 1, 13 Sup. Ct. 239, 37 L. Ed. 55; Keokuk & H. Bridge Co. v. People, 145 Ill. 596, 34 N. E. 482.

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

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

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

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

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

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

THE. An article which particularizes the subject spoken of. "Grammatical niceties should not be resorted to without necessity; but it would be extending liberality to an unwarrantable length to confound the articles 'a' and 'the.' The most unlettered persons understand that 'a' is indefinite, but 'the' refers to a certain object." Per Tilghman, C. J., Sharff v. Com., 2 Bin. (Pa.) 516.

The fund which has received the benefit should make the satisfaction. 4 Bouv. Inst. note 3730.

THEATER. Any edifice used for the purpose of dramatic or operatic or other representations, plays, or performances, for admission to which entrance-money is received, not including halls rented or used occasionally for concerts or theatrical representations. Act Cong. July 13, 1866, § 9 (14 St. at Large, 126). And see Bell v. Mahn, 121 Pa. 225, 15 Atl. 523, 1 L. R. A. 364, 6 Am. St. Rep. 786; Lee v. State, 56 Ga. 478; Jacko v. State, 22 Ala. 74.

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

Theft is the fraudulent taking of corporeal personal property belonging to another, from his possession, or from the possession of some person holding the same for him, without his consent, with intent to deprive the owner of the value of the same, and to appropriate it to the use or benefit of the person taking. Quitzow v. State, 1 Tex. App. 65, 28 Am. Rep. 396; Mullins v. State, 37 Tex. 338; U. S. v. Thomas (D. C.) 69 Fed. 590; People v. Donohue, 84 N. Y. 442.

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

THEFT-BOTE. The offense committed by a party who, having been robbed and knowing the felon, takes back his goods again, or receives other amends, upon an agreement not to prosecute. See Forshner v. Whitcomb, 44 N. H. 16.

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

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

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

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

THELUSSON ACT. The statute 39 & 40 Geo. III. c. 98, which restricted accumulations to a term of twenty-one years from the testator's death. It was passed in consequence of litigation over the will of one Thelusson.

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

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

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

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

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

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

THEODOSIAN CODE. See CODEX THEODOSIANUS.

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

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

THEREUPON. At once; without interruption; without delay or lapse of time. Putnam v. Langley, 133 Mass. 205.

THESAURER. Treasurer. 8 State Tr. 691.

THESAURUS, THESAURIUM. The treasury; a treasure.

—**Thesaurus absconditus.** In old English law. Treasure hidden or buried. Spelman. —**Thesaurus inventus.** In old English law. Treasure found; treasure-trove. Bract. fols. 119*b*, 122.

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

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

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

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

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

THETHINGA. A tithing.

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

THIEF. One who has been guilty of larceny or theft. The term covers both compound and simple larceny. America Ins. Co. v. Bryan, 1 Hill (N. Y.) 25.

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

The word "estate" in general is applicable to anything of which riches or fortune may consist. The word is likewise relative to the word "things," which is the second object of jurisprudence, the rules of which are applicable to

persons, things, and actions. Civ. Code La. art. 448.

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

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

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

—Things in action. A thing in action is a right to recover money or other personal property by a judicial proceeding. Civ. Code Cal. § 953. See CHOSE IN ACTION.**—Things personal.** Goods, money, and all other movables, which may attend the owner's person wherever he thinks proper to go. 2 Bl. Comm. 16. Things personal consist of goods, money, and all other movables, and of such rights and profits as relate to movables. 1 Steph. Comm. 156. See People v. Holbrook, 13 Johns. (N. Y.) 90; U. S. v. Moulton, 27 Fed. Cas. 11; People v. Brooklyn, 9 Barb. (N. Y.) 546.**—Things real.** Such things as are permanent, fixed, and immovable, which cannot be carried out of their place; as lands and tenements. 2 Bl. Comm. 16. This definition has been objected to as not embracing incorporeal rights. Mr. Stephen defines *things real* to "consist of things substantial and immovable, and of the rights and profits annexed to or issuing out of these." 1 Steph. Comm. 156. *Things real* are otherwise described to consist of lands, tenements, and hereditaments. See Bates v. Sparrell, 10 Mass. 324; People v. Brooklyn, 9 Barb. (N. Y.) 546.

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

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

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

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

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

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

Things incident pass by the grant of the principal. Seymour v. Canandaigua & N. F. R. Co., 25 Barb. (N. Y.) 284, 310.

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

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

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

THIRD-NIGHT-AWN-HINDE. By the laws of St. Edward the Confessor, if any man lay a third night in an inn, he was called a "third-night-awn-hinde," and his host was answerable for him if he committed any offense. The first night, forman-night, or uncouth, (unknown,) he was reckoned a stranger; the second night, twa-night, a guest; and the third night, an awn-hinde, a domestic. Bract. l. 3.

THIRD. Following next after the second; also, with reference to any legal instrument or transaction or judicial proceeding, any outsider or person not a party to the affair nor immediately concerned in it.

—Third opposition. In Louisiana, when an execution is levied on property which does not belong to the defendant, but to an outsider, the remedy of the owner is by an intervention called a "third opposition," in which, on his giving security, an injunction or prohibition may be granted to stop the sale. See New Orleans v. Louisiana Const. Co., 129 U. S. 45, 9 Sup. Ct. 223, 32 L. Ed. 607.**—Third parties.** See PARTY.**—Third penny.** A portion (one-third) of the amount of all fines and other profits of the county court, which was reserved for the earl, in the early days when the jurisdiction of those courts was extensive, the remainder going to the king.**—Third possessor.** In Louisiana, a person who buys mortgaged property, but without assuming the payment of the mortgage. Thompson v. Levy, 50 La. Ann., 751, 23 South. 913.

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

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

THIRDS. The designation, in colloquial language, of that portion of a decedent's personal estate (one-third) which goes to the widow where there is also a child or children. See Yeomans v. Stevens, 2 Allen (Mass.) 350; O'Hara v. Dever, 46 Barb. (N. Y.) 614.

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

THIRTY-NINE ARTICLES. See ARTICLES OF RELIGION.

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

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

THISTLE-TAKE. It was a custom within the manor of Halton, in Chester, that if, in driving beasts over a common, the driver permitted them to graze or take but a thistle, he should pay a halfpenny a-piece to the lord of the fee. And at Fiskerton, in Nottinghamshire, by ancient custom, if a native or a cottager killed a swine above a year old, he paid to the lord a penny, which purchase of leave to kill a hog was also called "thistle-take." Cowell.

THOROUGHFARE. The term means, according to its derivation, a street or passage *through* which one can *fare*, (travel;) that is, a street or highway affording an unobstructed exit at each end into another street or public passage. If the passage is closed at one end, admitting no exit there, it is called a "*cul de sac*." See Cemetery Ass'n v. Meninger, 14 Kan. 315; Mankato v. Warren, 20 Minn. 150 (Gil. 128); Wiggins v. Tallmadge, 11 Barb. (N. Y.) 462.

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

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

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

A threat has been defined to be any menace of such a nature and extent as to unsettle the mind of the person on whom it operates, and to take away from his acts that free, voluntary action which alone constitutes consent. Abbott. See State v. Cushing, 17 Wash. 544, 50 Pac. 512; State v. Brownlee, 84 Iowa, 473, 51 N. W. 25; Cote v. Murphy, 159 Pa. 420, 28 Atl. 190, 23 L. R. A. 135, 39 Am. St. Rep. 686.

THREATENING LETTERS. Sending threatening letters is the name of the offense of sending letters containing threats of the kinds recognized by the statute as criminal. See People v. Griffin, 2 Barb. (N. Y.) 429.

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

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

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

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

THROUGH. This word is sometimes equivalent to "over;" as in a statute in reference to laying out a road "through" certain grounds. Hyde Park v. Oakwoods Cemetery Ass'n, 119 Ill. 147, 7 N. E. 627.

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

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

THRYMSA. A Saxon coin worth fourpence. Du Fresne.

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

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

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

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

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

lottery tickets, etc. See Allaire v. Howell Works Co., 14 N. J. Law, 24.

In election law. A ticket is a paper upon which is written or printed the names of the persons for whom the elector intends to vote, with a designation of the office to which each person so named is intended by him to be chosen. Pol. Code Cal. § 1185. See In re Gerberich's Nomination, 24 Pa. Co. Ct. R. 255.

—Ticket of leave. In English law. A license or permit given to a convict, as a reward for good conduct, particularly in the penal settlements, which allows him to go at large, and labor for himself, before the expiration of his sentence, subject to certain specific conditions and revocable upon subsequent misconduct.— **Ticket-of-leave man.** A convict who has obtained a ticket of leave.

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

TIDE. The ebb and flow of the sea. See Baird v. Campbell, 67 App. Div. 104, 73 N. Y. Supp. 617.

—Tide lands. See LAND.—**Tide-water.** Water which falls and rises with the ebb and flow of the tide. The term is not usually applied to the open sea, but to coves, bays, rivers, etc.

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

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

TIE, *n.* When, at an election, neither candidate receives a majority of the votes cast, but each has the same number, there is said to be a "tie." So when the number of votes cast in favor of any measure, in a legislative or deliberative body, is equal to the number cast against it. See Wooster v. Mullins, 64 Conn. 340, 30 Atl. 144, 25 L. R. A. 694.

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

TIEMPO INHABIL. Span. A time of inability; a time when the person is not able to pay his debts, (when, for instance, he may not alienate property to the prejudice of his creditors.) The term is used in Louisiana. Brown v. Kenner, 3 Mart. O. S. (La.) 270; Thorn v. Morgan, 4 Mart. N. S. (La.) 292, 16 Am. Dec. 173.

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

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

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

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

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

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

TIHLER. In old Saxon law. An accusation.

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

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

The term "timber," as used in commerce, refers generally only to large sticks of wood, squared or capable of being squared for building houses or vessels; and certain trees only having been formerly used for such purposes, namely, the oak, the ash, and the elm, they alone were recognized as timber trees. But the numerous uses to which wood has come to be applied, and the general employment of all kinds of trees for some valuable purpose, has wrought a change in the general acceptation of terms in connection therewith, and we find that Webster defines "timber" to be "that sort of wood which is proper for buildings or for tools, utensils, furniture, carriages, fences, ships, and the like." This would include all sorts of wood from which any useful articles may be made, or which may be used to advantage in any class of manufacture or construction. U. S. v. Stores (C. C.) 14 Fed. 824. And see Donworth v. Sawyer, 94 Me. 243, 47 Atl. 523; Wilson v. State, 17 Tex. App. 393; U. S. v. Soto, 7 Ariz. 230, 64 Pac. 420.

—Timber culture entry. See ENTRY.— **Timber-trees.** Oak, ash, elm, in all places, and, by local custom, such other trees as are used in building. 2 Bl. Comm. 281.

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

TIME. The measure of duration.

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

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

—Cooling time. See that title.—**Reasonable time.** Such length of time as may fairly, properly, and reasonably be allowed or required, having regard to the nature of the act or duty, or of the subject-matter, and to the attending circumstances. It is a maxim of English law that "how long a 'reasonable time' ought to be is not defined in law, but is left to the discretion of the judges." Co. Litt. 50. See Hoggins v. Becraft, 1 Dana (Ky.) 28; Hill v. Hobart, 16 Me. 168; Twin Lick Oil Co. v. Marbury, 91 U. S. 591, 23 L. Ed. 328; Campbell v. Whoriskey, 170 Mass. 63, 48 N. E. 1070.—**Time-bargain.** In the language of the stock exchange, a time-bargain is an agreement to buy or sell stock at a future time, or within a fixed time, at a certain price. It is in reality nothing more than a bargain to pay differences.—**Time check.** A certificate signed by a master mechanic or other person in charge of laborers, reciting the amount due to the laborer for labor for a specified time. Burlington Voluntary Relief Dept. v. White, 41 Neb. 547, 59 N. W. 747, 43 Am. St. Rep. 701.—**Time immemorial.** Time whereof the memory of a man is not to the contrary.—**Time of memory.** In English law. Time commencing from the beginning of the reign of Richard I. 2 Bl. Comm. 31. Lord Coke defines *time of memory* to be "when no man alive hath had any proof to the contrary, nor hath any conusance to the contrary." Co. Litt. 86*a*, 86*b*.—**Time out of memory.** Time beyond memory; time out of mind; time to which memory does not extend. —**Time-policy.** A policy of marine insurance in which the risk is limited, not to a given voyage, but to a certain fixed term or period of time.—**Time the essence of the contract.** A case in which "time is of the essence of the contract" is one where the parties evidently contemplated a punctual performance, at the precise time named, as vital to the agreement, and one of its essential elements. Time is *not* of the essence of the contract in any case where a moderate delay in performance would not be regarded as an absolute violation of the contract.

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

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

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

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

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

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

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

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

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

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

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

TIPPLING HOUSE. A place where intoxicating drinks are sold in drams or small quantities to be drunk on the premises, and where men resort for drinking purposes. See Leesburg v. Putnam, 103 Ga. 110, 29 S. E. 602; Morrison v. Com., 7 Dana (Ky.) 219; Patten v. Centralia, 47 Ill. 370; Hussey v. State, 69 Ga. 58; Emporia v. Volmer, 12 Kan. 629.

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

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

TITHER. One who gathers tithes.

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

—**Great tithes.** In English ecclesiastical law. Tithes of corn, pease and beans, hay and wood. 2 Chit. Bl. Comm. 24, note; 3 Steph. Comm. 127. —**Mixed tithes.** Those which arise not immediately from the ground, but from those things which are nourished by the ground, *e. g.*, colts, chickens, calves, milk, eggs, etc. 3 Burn, Ecc. Law, 380; 2 Bl. Comm. 24.—**Minute tithes.** Small tithes, such as usually belong to a vicar, as of wool, lambs, pigs, butter, cheese, herbs, seeds, eggs, honey, wax, etc.—**Personal tithes** are tithes paid of such profits as come by the labor of a man's person; as by buying and selling, gains of merchandise, and handicrafts, etc. Tomlins.—**Predial tithes.** Such as arise immediately from the ground; as, grain of all sorts, hay, wood, fruits, and herbs.—**Tithe-free.** Exempted from the payment of tithes.—**Tithe rent-charge.** A rent-charge established in lieu of tithes, under the tithes commutation act, 1836, (St. 6 & 7 Wm. IV. c. 71.) As between landlord and tenant, the tenant paying the tithe rent-charge is entitled, in the absence of express agreement, to deduct it from his rent, under section 70 of the above act. And a tithe rent-charge unpaid is recoverable by distress as rent in arrear. Mozley & Whitley.

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

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

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

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

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

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

TITLE. The radical meaning of this word appears to be that of a mark, style, or designation; a distinctive appellation; the name by which anything is known. Thus, in the law of persons, a title is an appellation of dignity or distinction, a name denoting the social rank of the person bearing it; as "duke" or "count." So, in legislation, the title of a statute is the heading or preliminary part, furnishing the name by which the act is individually known. It is usually prefixed to the statute in the form of a brief summary of its contents; as "An act for the prevention of gaming." Again, the title of a patent is the short description of the invention, which is copied in the letters patent from the inventor's petition; *e. g.*, "a new and improved method of drying and preparing malt." Johns. Pat. Man. 90.

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

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

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

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

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

Title may be defined generally to be the evidence of right which a person has to the possession of property. The word "title" certainly does not merely signify the right which a person has to the possession of property; because there are many instances in which a person may have the right to the possession of property, and at the same time have no title to the same. In its ordinary legal acceptation, however, it generally seems to imply a right of possession also. It therefore appears, on the whole, to signify the outward evidence of the right, rather than the mere right itself. Thus, when it is said that the "most imperfect degree of title consists in the mere naked possession or actual occupation of an estate," it means that the mere cir-

N cumstance of occupying the estate is the weakest species of evidence of the occupier's right to such possession. The word is defined by Sir Edward Coke thus: *Titulus est justa causa possidendi id quod nostrum est*, (1 Inst. 34;) that is to say, the ground, whether purchase, gift, or other such ground of acquiring; "*titulus*" being distinguished in this respect from "*modus acquirendi*," which is the *traditio, i. e.*, delivery or conveyance of the thing. Brown.

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

See also Donovan v. Pitcher, 53 Ala. 411, 25 Am. Rep. 634; Kamphouse v. Gaffner, 73 Ill. 458; Pannill v. Coles, 81 Va. 383; Hunt v. Eaton, 55 Mich. 362, 21 N. W. 429; Loventhal Q v. Home Ins. Co., 112 Ala. 108, 20 South. 419, 33 L. R. A. 258, 57 Am. St. Rep. 17; Irving v. Brownell, 11 Ill. 414; Roberts v. Wentworth, 5 Cush. (Mass.) 193; Campfield v. Johnson, 21 N. J. Law, 85; Pratt v. Fountain, 73 Ga. 262.

R A *title* is a lawful cause or ground of possessing that which is ours. An *interest*, though primarily it includes the terms "estate," "right," and "title," has latterly come often to mean less, and to be the same as "concern," "share," and the like. Merrill v. Agricultural Ins. Co., 73 N. Y. 456, 29 Am. Rep. 184.

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

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

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

—Absolute title. As applied to title to land, an "absolute" title means an exclusive title, or at least a title which excludes all others not compatible with it; an absolute title to land cannot exist at the same time in different persons or in different governments. Johnson v. McIntosh, 8 Wheat. 543, 588, 5 L. Ed. 681.—**Abstract of title.** See that title.—**Adverse title.** A title set up in opposition to or defeasance of another title, or one acquired or claimed by adverse possession.—**Bond for title.** See BOND.—**Chain of title.** See that title.—**Color of title.** See that title.—**Covenants for title.** Covenants usually inserted in a conveyance of land, on the part of the grantor, and binding him for the completeness, security, and continuance of the title transferred to the grantee. They comprise "covenants for seisin, for right to convey, against incumbrances, for quiet enjoyment, sometimes for further assurance, and almost always of warranty." Rawle, Cov. § 21.—**Doubtful title.** See that title.—**Equitable title.** An equitable title is a right in the party to whom it belongs to have the legal title transferred to him; or the beneficial interest of one person whom equity regards as the real owner, although the legal title is vested in another. Thygerson v. Whitbeck, 5 Utah, 406, 16 Pac. 403; Beringer v. Lutz, 188 Pa. 364, 41 Atl. 643.—**Imperfect title.** One which requires a further exercise of the granting power to pass the fee in land, or which does not convey full and absolute dominion. Paschal v. Perez, 7 Tex. 367; Paschal v. Dangerfield, 37 Tex. 300.—**Legal title.** One cognizable or enforceable in a court of law, or one which is complete and perfect so far as regards the apparent right of ownership and possession, but which carries no beneficial interest in the property, another person being equitably entitled thereto; in either case, the antithesis of "equitable title."—**Lucrative title.** In the civil law, title acquired without the giving of anything in exchange for it; the title by which a person acquires anything which comes to him as a clear gain, as, for instance, by gift, descent, or devise. Opposed to "onerous title," as to which see *infra*.—**Marketable title.** See that title.—**Onerous title.** In the civil law, title to property acquired by the giving of a valuable consideration for it, such as the payment of money, the rendition of services, the performance of conditions, the assumption of obligations, or the discharge of liens on the property; opposed to "lucrative" title, or one acquired by gift or otherwise without the giving of an equivalent. See Scott v. Ward, 13 Cal. 471; Kircher v. Murray (C. C.) 54 Fed. 624; Yates v. Houston, 3 Tex. 453; Rev. Civ. Code La. 1900, art. 3556, subd. 22.—**Paper title.** A title to land evidenced by a conveyance or chain of conveyances; the term generally implying that such title, while it has color or plausibility, is without substantial validity.—**Passive title.** In Scotch law. A title incurred by an heir in heritage who does not enter as heir in the regular way, and therefore incurs liability for all the debts of the decedent, irrespective of the amount of assets. Paterson.—**Perfect title.** Various meanings have been attached to this term: (1) One which shows the absolute right of possession and of property in a particular person. Henderson v. Beatty, 124 Iowa, 163, 99 N. W. 716; Converse v. Kellogg, 7 Barb. (N. Y.) 590; Wilcox Lumber Co. v. Bullock, 109 Ga. 532, 35 S. E. 52; Donovan v. Pitcher, 53 Ala. 411, 25 Am. Rep. 634. (2) A grant of land which requires no further act from the legal authority to constitute an absolute title to the land taking effect at once. Hancock v. McKinney, 7 Tex. 457. (3) A title which does not disclose a patent defect suggesting the possibility of a lawsuit to defend it; a title such as a well-informed and prudent man paying full value for the property would be willing to take. Birge v. Bock, 44 Mo. App. 77. (4) A title which is good both at law and in equity. Warner v. Middlesex Mut. Assur. Co., 21 Conn. 449. (5) One which is good and valid beyond all reasonable doubt. Sheehy v. Miles, 93 Cal. 288, 28 Pac. 1046; Reynolds v. Borel, 86 Cal. 538, 25 Pac. 67. (6) A marketable or merchantable title. Ross v. Smiley, 18 Colo. App. 204, 70 Pac. 766; McCleary v. Chipman, 32 Ind. App. 489, 68 N. E. 320.—**Presumptive title.** A barely presumptive title, which is of the very lowest order, arises out of the mere occupation or simple possession of property, (*jus possessionis*,) without any apparent right, or any pretense of right, to hold and continue such possession.—**Record title.** See RECORD.—**Singular title.** The title by which a party acquires property as a singular successor.—**Tax title.** See TAX.—**Title-deeds.** Deeds which constitute or are the evidence of

title to lands.—**Title insurance.** See INSURANCE.—**Title of a cause.** The distinctive appellation by which any cause in court, or other juridical proceeding, is known and discriminated from others.—**Title of an act.** The heading, or introductory clause, of a statute, wherein is briefly recited its purpose or nature, or the subject to which it relates.—**Title of clergymen,** (to orders.) Some certain place where they may exercise their functions; also an assurance of being preferred to some ecclesiastical benefice. 2 Steph. Comm. 661.—**Title of declaration.** That preliminary clause of a declaration which states the name of the court and the term to which the process is returnable.—**Title of entry.** The right to enter upon lands. Cowell.—**Title to orders.** In English ecclesiastical law, a title to orders is a certificate of preferment or provision required by the thirty-third canon, in order that a person may be admitted into holy orders, unless he be a fellow or chaplain in Oxford or Cambridge, or master of arts of five years' standing in either of the universities, and living there at his sole charges; or unless the bishop himself intends shortly to admit him to some benefice or curacy. 2 Steph. Comm. 661.

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

TITULARS OF ERECTION. Persons who in Scotland, after the Reformation, obtained grants from the crown of the monasteries and priories then erected into temporal lordships. Thus the titles formerly held by the religious houses, as well as the property of the lands, were conferred on these grantees, who were also called "lords of erection" and "titulars of the teinds." Bell.

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

In old ecclesiastical law. A temple or church; the material edifice. So called because the priest in charge of it derived therefrom his name and *title*. Spelman.

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

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

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

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

TOALIA. In feudal law. A towel. There is a tenure of lands by the service of waiting with a towel at the king's coronation. Cowell.

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

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

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

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

TOKEN. A sign or mark; a material evidence of the existence of a fact. Thus, cheating by "false tokens" implies the use of fabricated or deceitfully contrived material objects to assist the person's own fraud and falsehood in accomplishing the cheat. See State v. Green, 18 N. J. Law, 181; State v. Middleton, Dud. (S. C.) 285; Jones v. State, 50 Ind. 476.

—**Token-money.** A conventional medium of exchange consisting of pieces of metal, fashioned in the shape and size of coins, and circulating among private persons, by consent, at a certain value. No longer permitted or recognized as money. 2 Chit. Com. Law, 182.

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

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

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

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

A Saxon word, signifying, properly, a payment in towns, markets, and fairs for goods and cattle

bought and sold. It is a reasonable sum of money due to the owner of the fair or market, upon sale of things tollable within the same. The word is used for a liberty as well to take as to be free from toll. Jacob.

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

In contracts. A sum of money for the use of something, generally applied to the consideration which is paid for the use of a road, bridge, or the like, of a public nature. See Sands v. Manistee River Imp. Co., 123 U. S. 288, 8 Sup. Ct. 113, 31 L. Ed. 149; Wadsworth v. Smith, 11 Me. 283, 26 Am. Dec. 525; Pennsylvania Coal Co. v. Delaware & H. Canal Co., 3 Abb. Dec. (N. Y.) 477; St. Louis v. Green, 7 Mo. App. 476; McNeal Pipe & Foundry Co. v. Howland, 111 N. C. 615, 16 S. E. 857, 20 L. R. A. 743; Boyle v. Philadelphia & R. R. Co., 54 Pa. 314.

—Toll and team. Words constantly associated with Saxon and old English grants of liberties to the lords of manors. Bract. fols. 56, 104*b*, 124*b*, 154*b*. They appear to have imported the privileges of having a market, and jurisdiction of villeins. See TEAM.**—Toll-gatherer.** The officer who takes or collects toll. **—Toll-thorough.** In English law. A toll for passing through a highway, or over a ferry or bridge. Cowell. A toll paid to a town for such a number of beasts, or for every beast that goes through the town, or over a bridge or ferry belonging to it. Com. Dig. "Toll," C. A toll claimed by an individual where he is bound to repair some particular highway. 3 Steph. Comm. 257. And see King v. Nicholson, 12 East, 340; Charles River Bridge v. Warren Bridge, 11 Pet. 582, 9 L. Ed. 773.**—Toll-traverse.** In English law. A toll for passing over a private man's ground. Cowell. A toll for passing over the private soil of another, or for driving beasts across his ground. Cro. Eliz. 710.**—Toll-turn.** In English law. A toll on beasts returning from a market. 1 Crabb, Real Prop. p. 101, § 102. A toll paid at the return of beasts from fair or market, though they were not sold. Cowell.

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

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

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

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

TOLLER. One who collects tribute or taxes.

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

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

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

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

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

TOLTA. In old English law. Wrong; rapine; extortion. Cowell.

TON. A measure of weight; differently fixed, by different statutes, at two thousand pounds avoirdupois, (1 Rev. St. N. Y. 609, § 35,) or at twenty hundred-weights, each hundred-weight being one hundred and twelve pounds avoirdupois, (Rev. St. U. S. § 2951 [U. S. Comp. St. 1901, p. 1945].)

TONNAGE. The capacity of a vessel for carrying freight or other loads, calculated in tons. But the way of estimating the tonnage varies in different countries. In England, tonnage denotes the actual weight in tons which the vessel can safely carry; in America, her carrying capacity estimated from the cubic dimensions of the hold. See Roberts v. Opdyke, 40 N. Y. 259.

The "tonnage" of a vessel is her capacity to carry cargo, and a charter of "the whole tonnage" of a ship transfers to the charterer only the space necessary for that purpose. Thwing v. Insurance Co., 103 Mass. 405, 4 Am. Rep. 567.

The tonnage of a vessel is her internal cubical capacity, in tons. Inman S. S. Co. v. Tinker, 94 U. S. 238, 24 L. Ed. 118.

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

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

A tonnage duty is a duty imposed on vessels in proportion to their capacity. The vital principle of a tonnage duty is that it is imposed, whatever the subject, solely according to the rule of weight, either as to the capacity to carry or the actual weight of the thing itself. Inman S. S. Co. v. Tinker, 94 U. S. 238, 24 L. Ed. 118.

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

Southern S. S. Co. v. New Orleans, 6 Wall. 31, 18 L. Ed. 749.

A tonnage tax is defined to be a duty levied on a vessel according to the tonnage or capacity. It is a tax upon the boat as an instrument of navigation, and not a tax upon the property of a citizen of the state. The North Cape, 6 Biss. 505. Fed. Cas. No. 10,316.

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

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

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

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

TONSURA. Lat. In old English law. A shaving, or polling; the having the crown of the head shaven; tonsure. One of the peculiar badges of a clerk or clergyman.

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

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

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

TOOL. The usual meaning of the word "tool" is "an instrument of manual operation;" that is, an instrument to be used and managed by the hand instead of being moved and controlled by machinery. Lovewell v. Westchester F. Ins. Co., 124 Mass. 420, 26 Am. Rep. 671.

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

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

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

A tort is a legal wrong committed upon the person or property independent of contract. It may be either (1) a direct invasion of some legal right of the individual; (2) the infraction of some public duty by which special damage accrues to the individual; (3) the violation of some private obligation by which like damage accrues to the individual. In the former case, no special damage is necessary to entitle the party to recover. In the two latter cases, such damage is necessary. Code Ga. 1882, § 2951. And see Hayes v. Insurance Co., 125 Ill. 626, 18 N. E. 322, 1 L. R. A. 303; Railway Co. v. Hennegan, 33 Tex. Civ. App. 314, 76 S. W. 453; Mumford v. Wright, 12 Colo. App. 214, 55 Pac. 744; Tomlin v. Hildreth, 65 N. J. Law, 438, 47 Atl. 649; Merrill v. St. Louis, 83 Mo. 255, 53 Am. Rep. 576; Denning v. State, 123 Cal. 316, 55 Pac. 1000; Shirk v. Mitchell, 137 Ind. 185, 36 N. E. 850; Western Union Tel. Co. v. Taylor, 84 Ga. 408, 11 S. E. 396, 8 L. R. A. 189; Rich v. Railroad Co., 87 N. Y. 390.

—Maritime tort. See MARITIME.—**Personal tort.** One involving or consisting in an injury to the person or to the reputation or feelings, as distinguished from an injury or damage to real or personal property, called a "property tort." See Mumford v. Wright, 12 Colo. App. 214, 55 Pac. 744.—**Quasi tort,** though not a recognized term of English law, may be conveniently used in those cases where a man who has not committed a tort is liable as if he had. Thus, a master is liable for wrongful acts done by his servant in the course of his employment. Broom, Com. Law, 690; Underh. Torts, 29.

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

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

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

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

a means of extorting a confession of guilt, or of compelling him to disclose his accomplices.

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

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

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

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

TOTAL LOSS. In marine insurance, a total loss is the entire destruction or loss, to the insured, of the subject-matter of the policy, by the risks insured against. As to the distinction between "actual" and "constructive" total loss, see *infra*.

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

—Actual total loss. In marine insurance. The total loss of the vessel covered by a policy of insurance, by its real and substantive destruction, by injuries which leave it no longer existing *in specie*, by its being reduced to a wreck irretrievably beyond repair, or by its being placed beyond the control of the insured and beyond his power of recovery. Distinguished from a *constructive* total loss, which occurs where the vessel, though injured by the perils insured against, remains *in specie* and capable of repair or recovery, but at such an expense, or under such other conditions, that the insured may claim the whole amount of the policy upon abandoning the vessel to the underwriters. "An *actual* total loss is where the vessel ceases to exist *in specie*,—becomes a 'mere congeries of planks,' incapable of being repaired; or where, by the peril insured against, it is placed beyond the control of the insured and beyond his power of recovery. A *constructive* total loss is where the vessel remains *in specie*, and is susceptible of repairs or recovery, but at an expense, according to the rule of the English common law, exceeding its value when restored, or, according to the terms of this policy, where 'the injury is equivalent to fifty per cent. of the agreed value in the policy,' and where the insured abandons the vessel to the underwriter. In such cases the insured is entitled to indemnity as for a total loss. An exception to the rule requiring abandonment is found in cases where the loss occurs in foreign ports or seas, where it is impracticable to repair. In such cases the master may sell the vessel for the benefit of all concerned, and the insured may claim as for a total loss by accounting to the insurer for the amount realized on the sale. There are other exceptions to the rule, but it is sufficient now to say that we have found no case in which the doctrine of constructive total loss without abandonment has been admitted, where the injured vessel remained *in specie* and was brought to its home port by the insured. A well marked distinction between an actual and a constructive total loss is therefore found in this: that in the former no abandonment is necessary, while in the latter it is essential, unless the case be brought within some exception to the rule requiring it. A *partial* loss is where an injury results to the vessel from a peril insured against, but where the loss is neither actually nor constructively total." Globe Ins. Co. v. Sherlock, 25 Ohio St. 50, 64; Burt v. Insurance Co., 9 Hun (N. Y.) 383; Carr v. Insurance Co., 109 N. Y. 504, 17 N. E. 369; Monroe v. Insurance Co., 52 Fed. 777, 3 C. C. A. 280; Murray v. Hatch, 6 Mass. 465; Livermore v. Insurance Co., 1 Mass. 264; Delaware, etc., Ins. Co. v. Gossler, 96 U. S. 645, 24 L. Ed. 863; Wallerstein v. Insurance Co., 3 Rob. (N. Y.) 528.**—Constructive total loss.** In marine insurance. This occurs where the loss or injury to the vessel insured does not amount to its total disappearance or destruction, but where, although the vessel still remains, the cost of repairing or recovering it would amount to more than its value when so repaired, and consequently the insured abandons it to the underwriters. See Insurance Co. v. Sugar Refining Co., 87 Fed. 491, 31 C. C. A. 65.

TOTIDEM VERBIS. Lat. In so many words.

TOTIES QUOTIES. Lat. As often as occasion shall arise.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Towage is the drawing a ship or barge along the water by another ship or boat, fastened to her, or by men or horses, etc., on land. It is also money, which is given by bargemen to the owner of ground next a river, where they tow a barge or other vessel. Jacob. And see Ryan v. Hook, 34 Hun (N. Y.) 191; The Kingaloch, 26 Eng. Law & Eq. 597; The Egypt (D. C.) 17 Fed. 370.—**Towage service.** In admiralty law. A service rendered to a vessel, by towing, for the mere purpose of expediting her voyage, without reference to any circumstances of danger. It is confined to vessels that have received no injury or damage. The Reward, 1 W. Rob. 177; The Athenian (D. C.) 3 Fed. 249; McConnochin v. Kerr (D. C.) 9 Fed. 53; The Plymouth Rock (D. C.) 9 Fed. 416.

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

TOWN. In English law. Originally, a vill or tithing; but now a generic term, which comprehends under it the several species of cities, boroughs, and common towns. 1 Bl. Comm. 114.

In American law. A civil and political division of a state, varying in extent and importance, but usually one of the divisions of a county. In the New England states, the town is the political unit, and is a municipal corporation. In some other states, where the county is the unit, the town is merely one of its subdivisions, but possesses some powers of local self-government. In still other states, such subdivisions of a county are called "townships," and "town" is the name of a village, borough, or smaller city. See Herrman v. Guttenberg, 62 N. J. Law, 605, 43 Atl. 703; Van Riper v. Parsons, 40 N. J. Law, 1; State v. Denny, 118 Ind. 449, 21 N. E. 274, 4 L. R. A. 65; Sessions v. State, 115 Ga. 18, 41 S. E. 259; Milford v. Godfrey, 1 Pick. (Mass.) 97; Enfield v. Jordan, 119 U. S. 680, 7 Sup. Ct. 358, 30 L. Ed. 523; Rogers v. Galloway Female College, 64 Ark. 627, 44 S. W. 454, 39 L. R. A. 636; Railway Co. v. Oconto, 50 Wis. 189, 6 N. W. 607, 36 Am. Rep. 840; Lovejoy v. Foxcroft, 91 Me. 367, 40 Atl. 141; Bloomfield v. Charter Oak Bank, 121 U. S. 121, 7 Sup. Ct. 865, 30 L. Ed. 923; Lynch v. Rutland, 66 Vt. 570, 29 Atl. 1015.

—**Town agent.** Under the prohibitory liquor laws in force in some of the New England states a town agent is a person appointed in each town to purchase intoxicating liquors for the town and having the exclusive right to sell the same for the permitted purposes, medical, mechanical, scientific, etc. He either receives a fixed salary or is permitted to make a small profit on his sales. The stock of liquors belongs to the town, and is bought with its money. See Black, Intox. Liq. §§ 204, 205.—**Town cause.** In English practice. A cause tried at the sittings for London and Middlesex. 3 Steph. Comm. 517.—**Town-clerk.** In those states where the *town* is the unit for local self-government, the town-clerk is a principal officer who keeps the records, issues calls for town-meetings, and performs generally the duties of a secretary to the political organization. See Seamons v. Fitts, 21 R. I. 236, 42 Atl. 863.—**Town collector.** One of the officers of a town charged with collecting the taxes assessed for town purposes. —**Town commissioner.** In some of the states where the town is the political unit the town commissioners constitute a board of administrative officers charged with the general management of the town's business.—**Town-crier.** An officer in a town whose business it is to make proclamations.—**Town-hall.** The building maintained by a town for town-meetings and the offices of the municipal authorities.—**Town-meeting.** Under the municipal organization of the New England states, the town-meeting is a legal assembly of the qualified voters of a town, held at stated intervals or on call, for the purpose of electing town officers, and of discussing and deciding on questions relating to the public business, property, and expenses of the town. See In re Foley, 8 Misc. Rep. 57, 28 N. Y. Supp. 608; Railroad Co. v. Mallory, 101 Ill. 588; Comstock v. Lincoln School Committee, 17 R. I. 827, 24 Atl. 145.—**Town order or warrant.** An official direction in writing by the auditing officers of a town, directing the treasurer to pay a sum of money.—**Town pound.** A place of confinement maintained by a town for estrays.—**Town purpose.** When it is said that taxation by a town, or the expenditure of the town's money, must be for town purposes, it is meant that the purposes must be public with respect to the town; *i. e.*, concern the welfare and advantage of the town as a whole.—**Town-reeve.** The reeve or chief officer of a town.—**Town tax.** Such tax as a town may levy for its peculiar expenses; as distinguished from a county or state tax.—**Town treasurer.** The treasurer of a town which is an organized municipal corporation.

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

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

—Township trustee. One of a board of officers to whom, in some states, affairs of a township are intrusted.

TOXIC. (Lat. *toxicum;* Gr. *toxikon.*) In medical jurisprudence. Poisonous; having the character or producing the effects of a poison; referable to a poison; produced by or resulting from a poison.

—Toxic convulsions. Such as are caused by the action of a poison on the nervous system. **—Toxic dementia.** Weakness of mind or feeble cerebral activity, approaching imbecility, resulting from continued use or administration of slow poisons or of the more active poisons in repeated small doses, as in cases of lead poisoning and in some cases of addiction to such drugs as opium or alcohol.—**Toxanemia.** A condition of *anemia* (impoverishment or deficiency of blood) resulting from the action of certain toxic substances or agents.—**Toxemia** or **toxicemia.** Blood-poisoning; the condition of the system caused by the presence of toxic agents in the circulation; including both *septicemia* and *pyæmia.*—**Toxicosis.** A diseased state of the system due to the presence and action of any poison.

TOXICAL. Poisonous; containing poison.

TOXICANT. A poison; a toxic agent; any substance capable of producing toxication or poisoning.

TOXICATE. To poison. Not used to describe the act of one who administers a poison, but the action of the drug or poison itself.

—Intoxication. The state of being poisoned; the condition produced by the administration or introduction into the human system of a poison. This term is popularly used as equivalent to "drunkenness," which, however, is more accurately described as "alcoholic intoxication."—**Auto-intoxication.** Self-empoisonment from the absorption of the toxic products of internal metabolism, *e. g.,* ptomaine poisoning.

TOXICOLOGY. The science of poisons; that department of medical science which treats of poisons, their effect, their recognition, their antidotes, and generally of the diagnosis and therapeutics of poisoning.

TOXIN. In its widest sense, this term may denote any poison or toxicant; but as used in pathology and medical jurisprudence it signifies, in general, any diffusible alkaloidal substance (as, the ptomaines, abrin, brucin, or serpent venoms), and in particular the poisonous products of pathogenic (disease-producing) bacteria.

—Anti-toxin. A product of pathogenic bacteria which, in sufficient quantities, will neutralize the toxin or poisonous product of the same bacteria. In therapeutics, a preventive remedy (administered by inoculation) against the effect of certain kinds of toxins, venoms, and disease-germs, obtained from the blood of an animal which has previously been treated with repeated minute injections of the particular poison or germ to be neutralized.—**Toxicomania.** An excessive addiction to the use of toxic or poisonous drugs or other substances; a form of mania or affective insanity characterized by an irresistible impulse to indulgence in opium, cocaine, chloral, alcohol, etc.—**Toxiphobia.** Morbid dread of being poisoned; a form of insanity manifesting itself by an excessive and unfounded apprehension of death by poison.

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

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

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

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

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

TRADAS IN BALLIUM. You deliver to bail. In old English practice. The name of a writ which might be issued in behalf of a party who, upon the writ *de odio et atia,* had been found to have been maliciously accused of a crime, commanding the sheriff that, if the prisoner found twelve good and lawful men of the county who would be mainpernors for him, he should *deliver* him *in bail* to those twelve, until the next assize, Bract. fol. 123; 1 Reeve, Eng. Law, 252.

TRADE. The act or business of exchanging commodities by barter; or the business of buying and selling for money; traffic; barter. Webster; May v. Sloan, 101 U. S. 237, 25 L. Ed. 797; U. S. v. Cassidy (D. C.) 67 Fed. 841; Queen Ins. Co. v. State, 86 Tex. 250, 24 S. W. 397, 22 L. R. A. 483.

The business which a person has learned and which he carries on for procuring subsistence, or for profit; occupation, particularly mechanical employment; distinguished from the liberal arts and learned professions, and from agriculture. Webster; Woodfield v. Colzey, 47 Ga. 124; People v. Warden of City Prison, 144 N. Y. 529, 39 N. E. 686, 27 L. R. A. 718; In re Stone Cutters' Ass'n, 23 Pa. Co. Ct. R. 520.

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

—Trade dollar. A silver coin of the United States, of the weight of four hundred and twen-

ty grains, troy. Rev. St. U. S. § 3513 (U. S. Comp. St. 1901, p. 2345).—**Trade fixtures.** See FIXTURES.—**Trade usage.** The usage or customs commonly observed by persons conversant in, or connected with, a particular trade.

TRADE-MARK. A distinctive mark, motto, device, or emblem, which a manufacturer stamps, prints, or otherwise affixes to the goods he produces, so that they may be identified in the market, and their origin be vouched for. See Trade-Mark Cases, 100 U. S. 87, 25 L. Ed. 550; Moorman v. Hoge, 17 Fed. Cas. 715; Solis Cigar Co. v. Pozo, 16 Colo. 388, 26 Pac. 556, 25 Am. St. Rep. 279; State v. Bishop, 128 Mo. 373, 31 S. W. 9, 29 L. R. A. 200, 49 Am. St. Rep. 569; Royal Baking Powder Co. v. Raymond (C. C.) 70 Fed. 380; Hegeman & Co. v. Hegeman, 8 Daly (N. Y.) 1.

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

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

TRADE UNION. A combination or association of men employed in the same trade, (usually a manual or mechanical trade,) united for the purpose of regulating the customs and standards of their trade, fixing prices or hours of labor, influencing the relations of employer and employed, enlarging or maintaining their rights and privileges, and other similar objects.

—**Trade-union act.** The statute 34 & 35 Vict. c. 31, passed in 1871, for the purpose of giving legal recognition to trade unions, is known as the "trade-union act," or "trade-union funds protection act." It provides that the members of a trade union shall not be prosecuted for conspiracy merely by reason that the rules of such union are in restraint of trade; and that the agreements of trade unions shall not on that account be void or voidable. Provisions are also made with reference to the registration and registered offices of trade unions, and other purposes connected therewith. Mozley & Whitley.

TRADER. A person engaged in trade; one whose business is to buy and sell merchandise, or any class of goods, deriving a profit from his dealings. 2 Kent, Comm. 389; State v. Chabourn, 80 N. C. 481, 30 Am. Rep. 94; In re New York & W. Water Co. (D. C.) 98 Fed. 711; Morris v. Clifton Forge Grocery Co., 46 W. Va. 197, 32 S. E. 997.

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

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

"Primarily the words 'trader' and 'tradesman' mean one who trades, and they have been treated by the courts in many instances as synonymous. But, in their general application and usage, I think they describe different vocations. By 'tradesman' is usually meant a shop-keeper. Such is the definition given the word in Burrill's Law Dictionary. It is used in this sense by Adam Smith. He says, (Wealth of Nations:) 'A tradesman in London is obliged to hire a whole house in that part of the town where his customers live. His shop is on the ground floor,' etc. Dr. Johnson gives it the same meaning, and quotes Prior and Goldsmith as authorities." In re Ragsdale, 7 Biss. 155, Fed. Cas. No. 11,530.

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

TRADING. Engaging in trade, (*q. v.*;) pursuing the business or occupation of trade or of a trader.

—**Trading corporation.** See CORPORATION.—**Trading partnership.** Whenever the business of a firm, according to the usual modes of conducting it, imports, in its nature, the necessity of buying and selling, the firm is properly regarded as a "trading partnership" and is invested with the powers and subject to the obligations incident to that relation. Dowling v. National Exch. Bank, 145 U. S. 512, 12 Sup. Ct. 928, 36 L. Ed. 795.—**Trading voyage.** One which contemplates the touching and stopping of the vessel at various ports for the purpose of traffic or sale and purchase or exchange of commodities on account of the owners and shippers, rather than the transportation of cargo between terminal points, which is called a "freighting voyage." See Brown v. Jones, 4 Fed. Cas. 406.

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

—**Quasi traditio.** A supposed or implied delivery of property from one to another. Thus, if the purchaser of an article was already in possession of it before the sale, his continuing in possession is considered as equivalent to a fresh delivery of it, delivery being one of the necessary elements of a sale; in other words, a *quasi traditio* is predicated.—**Traditio brevi manu.** A species of constructive or implied delivery. When he who already holds possession of a thing in another's name agrees with that other that thenceforth he shall possess it in his own name, in this case a delivery and redelivery are not necessary. And this species of delivery is termed "*traditio brevi manu.*" Mackeld. Rom. Law, § 284.—**Traditio clavium.** Delivery of keys; a symbolical kind of delivery, by which the ownership of merchandise in a warehouse might be transferred to a buyer. Inst. 2, 1, 44.—**Traditio longa manu.** A species of delivery which takes place where

the transferor places the article in the hands of the transferee, or, on his order, delivers it at his house. Mackeld. Rom. Law, § 284.—**Traditio rei.** Delivery of the thing. See 5 Maule & S. 82.

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

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

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

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

In the rule respecting the admission of tradition or general reputation to prove boundaries, questions of pedigree, etc., this word means knowledge or belief derived from the statements or declarations of contemporary witnesses and handed down orally through a considerable period of time. See Westfelt v. Adams, 131 N. C. 379, 42 S. E. 823; In re Hurlburt's Estate, 68 Vt. 366, 35 Atl. 77, 35 L. R. A. 794.

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

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

TRAFFIC. Commerce; trade; dealings in merchandise, bills, money, and the like. See In re Insurance Co. (D. C.) 96 Fed. 757; Levine v. State, 35 Tex. Cr. R. 647, 34 S. W. 969; People v. Hamilton, 17 Misc. Rep. 11, 39 N. Y. Supp. 531; Merriam v. Langdon, 10 Conn. 471.

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

TRAIL-BASTON. Justices of trail-baston were justices appointed by King Edward I., during his absence in the Scotch and French wars, about the year 1305. They were so styled, says Hollingshed, for trailing or drawing the staff of justice. Their office was to make inquisition, throughout the kingdom, of all officers and others, touching extortion, bribery, and such like grievances, of intruders into other men's lands, barrators, robbers, breakers of the peace, and divers other offenders. Cowell; Tomlins.

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

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

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

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

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

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

TRAMP. A strolling beggar; a vagrant or vagabond. See State v. Hogan, 63 Ohio St. 202, 58 N. E. 572, 52 L. R. A. 863, 81 Am. St. Rep. 626; Miller v. State, 73 Ind. 92; Railway Co. v. Boyle, 115 Ga. 836, 42 S. E. 242, 59 L. R. A. 104.

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

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

TRANSACTION. In the civil law. A transaction or compromise is an agreement between two or more persons, who, for preventing or putting an end to a lawsuit, adjust their differences by mutual consent, in the manner which they agree on, and which every one of them prefers to the hope of gaining, balanced by the danger of losing. This contract must be reduced into writing. Civ. Code La. art. 3071.

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

"Transaction" is a broader term than "contract." A contract is a transaction, but a transaction is not necessarily a contract. See Ter Kuile v. Marsland, 81 Hun, 420, 31 N. Y. Supp. 5; Xenia Branch Bank v. Lee, 7 Abb. Prac. (N. Y.) 372; Roberts v. Donovan, 70 Cal. 113, 11 Pac. 599.

TRANSCRIPT. An official copy of certain proceedings in a court. Thus, any person interested in a judgment or other record of a court can obtain a transcript of it. U. S. v. Gaussen, 19 Wall. 212, 22 L. Ed. 41; State v. Board of Equalization, 7 Nev. 95; Hastings School Dist. v. Caldwell, 16 Neb. 68, 19 N. W. 634; Dearborn v. Patton, 4 Or. 61.

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

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

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

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

Transfer is an act of the parties, or of the law, by which the title to property is conveyed from one living person to another. Civ. Code Cal. § 1039. And see Pearre v. Hawkins, 62 Tex. 437; Innerarity v. Mims, 1 Ala. 669; Sands v. Hill, 55 N. Y. 18; Pirie v. Chicago Title & Trust Co., 182 U. S. 438, 21 Sup. Ct. 906, 45 L. Ed. 1171.

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

—Transfer of a cause. The removal of a cause from the jurisdiction of one court or judge to another by lawful authority.—**Transfer tax.** A tax upon transfers of property by will or inheritance; a tax upon the passing of the title to property or a valuable interest therein out of or from the estate of a decedent, by inheritance, devise, or bequest. See In re Hoffman's Estate, 143 N. Y. 327, 38 N. E. 311; In re Gould's Estate, 156 N. Y. 423, 51 N. E. 287; In re Brez's Estate, 172 N. Y. 609, 64 N. E. 958. Sometimes also applied to a tax on the transfer of property, particularly of an incorporeal nature, such as bonds or shares of stock, between living persons.

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

TRANSFEREE. He to whom a transfer is made.

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

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

TRANSFERROR. One who makes a transfer.

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

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

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

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

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

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

TRANSGRESSIVE TRUST. See TRUST.

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

TRANSIENT. In poor-laws. A "transient person" is not exactly a person on a journey from one known place to another, but rather a wanderer ever on the tramp. Middlebury v. Waltham, 6 Vt. 203; Londonderry v. Landgrove, 66 Vt. 264, 29 Atl. 256.

In Spanish law. A "transient foreigner" is one who visits the country, without the

intention of remaining. Yates v. Iams, 10 Tex. 170.

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

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

Transit in rem judicatam. It passes into a matter adjudged; it becomes converted into a *res judicata* or judgment. A contract upon which a judgment is obtained is said to pass *in rem judicatam.* United States v. Cushman, 2 Sumn. 436, Fed. Cas. No. 14,908; 3 East, 251; Robertson v. Smith, 18 Johns. (N. Y.) 480, 9 Am. Dec. 227.

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

TRANSITIVE COVENANT. See COVENANT.

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

—Transitory action. Actions are said to be either local or transitory. An action is "local," when the principal facts on which it is founded pertain to a particular place. An action is termed "transitory," when the principal fact on which it is founded is of a transitory kind, and might be supposed to have happened anywhere; and therefore all actions founded on debts, contracts and such like matters relating to the person or personal property, come under this latter denomination. Steph. Pl. 316, 317. And see Mason v. Warner, 31 Mo. 510; Livingston v. Jefferson, 15 Fed. Cas. 664; Ackerson v. Erie R. Co., 31 N. J. Law, 312; McLeod v. Connecticut & P. R. Co., 58 Vt. 727, 6 Atl. 648.

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

TRANSLADO. Span. A transcript.

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

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

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

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

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

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

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

TRANSPORTATION. The removal of goods or persons from one place to another, by a carrier. See Railroad Co. v. Pratt, 22 Wall. 133, 22 L. Ed. 827; Interstate Commerce Com'n v. Brimson, 154 U. S. 447, 14 Sup. Ct. 1125, 38 L. Ed. 1047; Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196, 5 Sup. Ct. 826, 29 L. Ed. 158.

In criminal law. A species of punishment consisting in removing the criminal from his own country to another, (usually a penal colony,) there to remain in exile for a prescribed period. Fong Yue Ting v. U. S., 149 U. S. 698, 13 Sup. Ct. 1016, 37 L. Ed. 905.

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

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

A copy of a document taken by the notary from the original, or a subsequent copy taken from the protocol, and not a copy taken directly from the matrix or protocol. Downing v. Diaz, 80 Tex. 436, 16 S. W. 54.

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

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

TRAUMA. In medical jurisprudence. A wound; any injury to the body caused by external violence.

—Traumatic. Caused by or resulting from a wound or any external injury; as, traumatic insanity, produced by an injury to or fracture of the skull with consequent pressure on the

brain.—Traumatism. A diseased condition of the body or any part of it caused by a wound or external injury.

TRAVAIL. The act of child-bearing. A woman is said to be in her travail from the time the pains of child-bearing commence until her delivery. Scott v. Donovan, 153 Mass. 378, 26 N. E. 871.

TRAVEL. To go from one place to another at a distance; to journey; spoken of voluntary change of place. See White v. Beazley, 1 Barn. & Ald. 171; Hancock v. Rand, 94 N. Y. 1, 46 Am. Rep. 112; Gholson v. State, 53 Ala. 521, 25 Am. Rep. 652; Campbell v. State, 28 Tex. App. 44, 11 S. W. 832; State v. Smith, 157 Ind. 241, 61 N. E. 566, 87 Am. St. Rep. 205.

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

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

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

—Common traverse. A simple and direct denial of the material allegations of the opposite pleading, concluding to the country, and without inducement or *absque hoc*.—**General traverse.** One preceded by a general inducement, and denying in general terms all that is last before alleged on the opposite side, instead of pursuing the words of the allegations which it denies. Gould, Pl. vii. 5.—**Special traverse.** A peculiar form of traverse or denial, the design of which, as distinguished from a *common* traverse, is to explain or qualify the denial, instead of putting it in the direct and absolute form. It consists of an affirmative and a negative part, the first setting forth the new affirmative matter tending to explain or qualify the denial, and technically called the "inducement," and the latter constituting the direct denial itself, and technically called the "*absque hoc*." Steph. Pl. 169–180; Allen v. Stevens, 29 N. J. Law, 513; Chambers v. Hunt, 18 N. J. Law, 352; People v. Pullman's Car Co., 175 Ill. 125, 51 N. E. 664, 64 L. R. A. 366.—**Traverse jury.** A petit jury; a trial jury; a jury impaneled to try an action or prosecution, as distinguished from a grand jury.—**Traverse of indictment or presentment.** The taking issue upon and contradicting or denying some chief point of it. Jacob.—**Traverse of office.** The proving that an inquisition made of lands or goods by the escheator is defective and untruly made. Tomlins. It is the challenging, by a subject, of an inquest of office, as being defective and untruly made. Mozley & Whitley.—**Traverse upon a traverse.** One growing out of the same point or subject-matter as is embraced in a preceding traverse on the other side.

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

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

TREACHER, TRECHETOUR, or TREACHOUR. A traitor.

TREAD-MILL, or TREAD-WHEEL, is an instrument of prison discipline, being a wheel or cylinder with an horizontal axis, having steps attached to it, up which the prisoners walk, and thus put the axis in motion. The men hold on by a fixed rail, and, as their weight presses down the step upon which they tread, they ascend the next step, and thus drive the wheel. Enc. Brit.

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

In England, treason is an offense particularly directed against the person of the sovereign, and consists (1) in compassing or imagining the death of the king or queen, or their eldest son and heir; (2) in violating the king's companion, or the king's eldest daughter unmarried, or the wife of the king's eldest son and heir; (3) in levying war against the king in his realm; (4) in adhering to the king's enemies in his realm, giving to them aid and comfort in the realm or elsewhere, and (5) slaying the chancellor, treasurer, or the king's justices of the one bench or the other, justices in eyre, or justices of assize, and all other justices assigned to hear and determine, being in their places doing their offices. 4 Steph. Comm. 185–193; 4 Bl. Comm. 76–84.

"Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort." U. S. Const. art. 3, § 3, cl. 1. See Young v. U. S., 97 U. S. 62, 24 L. Ed. 992; U. S. v. Bollman, 1 Cranch, C. C. 373, Fed. Cas. No. 14,622; U. S. v. Greathouse, 4 Sawy. 457, 2 Abb. U. S. 364, Fed. Cas. No. 15,254; U. S. v. Hanway, 2 Wall. Jr. 139, Fed. Cas. No. 15,299; U. S. v. Hoxie, 1 Paine, 265, Fed. Cas. No. 15,407; U. S. v. Pryor, 3 Wash. C. C. 234, Fed. Cas. No. 16.096.

—Constructive treason. Treason imputed to a person by law from his conduct or course

of actions, though his deeds taken severally do not amount to actual treason. This doctrine is not known in the United States.—**High treason.** In English law. Treason against the king or sovereign, as distinguished from petit or petty treason, which might formerly be committed against a subject. 4 Bl. Comm. 74, 75; 4 Steph. Comm. 183, 184, note.—**Misprision of treason.** See MISPRISION.—**Petit treason.** In English law. The crime committed by a wife in killing her husband, or a servant his lord or master, or an ecclesiastic his lord or ordinary. 4 Bl. Comm. 75.—**Treason-felony,** under the English statute 11 & 12 Vict. c. 12, passed in 1848, is the offense of compassing, devising, etc., to depose her majesty from the crown; or to levy war in order to intimidate either house of parliament, etc., or to stir up foreigners by any printing or writing to invade the kingdom. This offense is punishable with penal servitude for life, or for any term not less than five years, etc., under statutes 11 & 12 Vict. c. 12, § 3; 20 & 21 Vict. c. 3, § 2; 27 & 28 Vict. c. 47, § 2. By the statute first above mentioned, the government is enabled to treat as felony many offenses which must formerly have been treated as high treason. Mozley & Whitley.

TREASONABLE. Having the nature or guilt of treason.

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

TREASURE-TROVE. Literally, treasure found. Money or coin, gold, silver, plate or bullion *found* hidden in the earth or other private place, the owner thereof being unknown. 1 Bl. Comm. 295. Called in Latin "*thesaurus inventus;*" and in Saxon "*fynderinga.*" See Huthmacher v Harris, 38 Pa. 499, 80 Am. Dec. 502; Livermore v. White, 74 Me. 456, 43 Am. Rep. 600; Sovern v. Yoran, 16 Or. 269, 20 Pac. 100, 8 Am. St. Rep. 293.

TREASURER. An officer of a public or private corporation, company, or government, charged with the receipt, custody, and disbursement of its moneys or funds. See State v. Eames, 39 La. Ann. 986, 3 South. 93; Mutual L. Ins. Co. v. Martien, 27 Mont. 437, 71 Pac. 470; Weld v. May, 9 Cush. (Mass.) 189; In re Millward-Cliff Cracker Co.'s Estate, 161 Pa. 167, 28 Atl. 1072.

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

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

TREASURY. A place or building in which stores of wealth are reposited; particularly, a place where the public revenues are deposited and kept, and where money is disbursed to defray the expenses of government. Webster.

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

—**Treasury bench.** In the English house of commons, the first row of seats on the right hand of the speaker is so called, because occupied by the first lord of the treasury or principal minister of the crown. Brown.—**Treasury chest fund.** A fund, in England, originating in the unusual balances of certain grants of public money, and which is used for banking and loan purposes by the commissioners of the treasury. Its amount was limited by St. 24 & 25 Vict. c. 127, and has been further reduced to one million pounds, the residue being transferred to the consolidated fund, by St. 36 & 37 Vict. c. 56. Wharton.—**Treasury note.** A note or bill issued by the treasury department by the authority of the United States government, and circulating as money. See Brown v. State, 120 Ala. 342, 25 South. 182.

TREATY. In international law. An agreement between two or more independent states. Brande. An agreement, league, or contract between two or more nations or sovereigns, formally signed by commissioners properly authorized, and solemnly ratified by the several sovereigns or the supreme power of each state. Webster; Cherokee Nation v. Georgia, 5 Pet. 60, 8 L. Ed. 25; Edye v. Robertson, 112 U. S. 580, 5 Sup. Ct. 247, 28 L. Ed. 798; Holmes v. Jennison, 14 Pet. 571, 10 L. Ed. 579; U. S. v. Rauscher, 119 U. S. 407, 7 Sup. Ct. 234, 30 L. Ed. 425; Ex parte Ortiz (C. C.) 100 Fed. 962.

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

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

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

TREBLE COSTS. See COSTS.

TREBLE DAMAGES. In practice. Damages given by statute in certain cases, consisting of the single damages found by the

jury, actually tripled in amount. The usual practice has been for the jury to find the single amount of the damages, and for the court, on motion, to order that amount to be trebled. 2 Tidd, Pr. 893, 894.

TREBUCKET. A tumbrel, castigatory, or cucking-stool. See James v. Comm., 12 Serg. & R. (Pa.) 227.

TREET. In old English law. Fine wheat.

TREMAGIUM, TREMESIUM. In old records. The season or time of sowing summer corn, being about March, the third month, to which the word may allude. Cowell.

Tres faciunt collegium. Three make a corporation; three members are requisite to constitute a corporation. Dig. 50, 16, 8; 1 Bl. Comm. 469.

TRESAEL. L. Fr. A great-great-grandfather. Britt. c. 119. Otherwise written *"tresaiel,"* and *"tresayle."* 3 Bl. Comm. 186; Litt. § 20.

TRESAYLE. An abolished writ sued on ouster by abatement, on the death of the grandfather's grandfather.

TRESPASS. Any misfeasance or act of one man whereby another is injuriously treated or damnified. 3 Bl. Comm. 208.

An injury or misfeasance to the person, property, or rights of another person, done with force and violence, either actual or implied in law. See Grunson v. State, 89 Ind. 536, 46 Am. Rep. 178; Southern Ry. Co. v. Harden, 101 Ga. 263, 28 S. E. 847; Blood v. Kemp, 4 Pick. (Mass.) 173; Toledo, etc., R. Co. v. McLaughlin, 63 Ill. 391; Agnew v. Jones, 74 Miss. 347, 23 South. 25; Hill v. Kimball, 76 Tex. 210, 13 S. W. 59, 7 L. R. A. 618.

In the strictest sense, an entry on another's ground, without a lawful authority, and doing some damage, however inconsiderable, to his real property. 3 Bl. Comm. 209.

Trespass, in its most comprehensive sense, signifies any transgression or offense against the law of nature, of society, or of the country in which we live; and this, whether it relates to a man's person or to his property. In its more limited and ordinary sense, it signifies an injury committed with violence, and this violence may be either actual or implied; and the law will imply violence though none is actually used, when the injury is of a direct and immediate kind, and committed on the person or tangible and corporeal property of the plaintiff. Of actual violence, an assault and battery is an instance; of implied, a peaceable but wrongful entry upon a person's land. Brown.

In practice. A form of action, at the common law, which lies for redress in the shape of money damages for any unlawful injury done to the plaintiff, in respect either to his person, property, or rights, by the immediate force and violence of the defendant.

—Continuing trespass. One which does not consist of a single isolated act but is in its nature a permanent invasion of the rights of another; as, where a person builds on his own land so that a part of the building overhangs his neighbor's land.**—Permanent trespass.** One which consists of a series of acts, done on successive days, which are of the same nature, and are renewed or continued from day to day, so that, in the aggregate, they make up one indivisible wrong. 3 Bl. Comm. 212.**—Trespass de bonis asportatis.** (Trespass for goods carried away.) In practice. The technical name of that species of action of trespass for injuries to personal property which lies where the injury consists in *carrying away* the goods or property. See 3 Bl. Comm. 150, 151.**—Trespass for mesne profits.** A form of action supplemental to an action of ejectment, brought against the tenant in possession to recover the profits which he has wrongfully received during the time of his occupation. 3 Bl. Comm. 205.**—Trespass on the case.** The form of action, at common law, adapted to the recovery of damages for some injury resulting to a party from the wrongful act of another, unaccompanied by direct or, immediate force, or which is the indirect or secondary consequence of such act. Commonly called, by abbreviation, "Case." See Munal v. Brown (C. C.) 70 Fed. 968; Nolan v. Railroad Co., 70 Conn. 159, 39 Atl. 115, 43 L. R. A. 305; Christian v. Mills, 2 Walk. (Pa.) 131.**—Trespass quare clausum fregit.** "Trespass wherefore he broke the close." The common-law action for damages for an unlawful entry or trespass upon the plaintiff's land. In the Latin form of the writ, the defendant was called upon to show why he broke the plaintiff's close; *i. e.*, the real or imaginary structure inclosing the land, whence the name. It is commonly abbreviated to *"trespass qu. cl. fr."* See Kimball v. Hilton, 92 Me. 214, 42 Atl. 394. **—Trespass to try title.** The name of the action used in several of the states for the recovery of the possession of real property, with damages for any trespass committed upon the same by the defendant.**—Trespass vi et armis.** Trespass with force and arms. The common-law action for damages for any injury committed by the defendant with direct and immediate force or violence against the plaintiff or his property.

TRESPASSER. One who has committed trespass; one who unlawfully enters or intrudes upon another's land, or unlawfully and forcibly takes another's personal property.

—Joint trespassers. Two or more who unite in committing a trespass. Kansas City v. File, 60 Kan. 157, 55 Pac. 877; Bonte v. Postel, 109 Ky. 64, 58 S. W. 536, 51 L. R. A. 187.**—Trespasser ab initio.** Trespasser from the beginning. A term applied to a tort-feasor whose acts relate back so as to make a previous act, at the time innocent, unlawful; as, if he enter peaceably, and subsequently commit a breach of the peace, his entry is considered a trespass. Stim. Gloss. See Wright v. Marvin, 59 Vt. 437, 9 Atl. 601.

TRESTORNARE. In old English law. To turn aside; to divert a stream from its course. Bract. fols. 115, 234*b*. To turn or alter the course of a road. Cowell.

TRESVIRI. Lat. In Roman law. Officers who had the charge of prisons, and the execution of condemned criminals. Calvin

TRET. An allowance made for the water or dust that may be mixed with any commodity. It differs from *tare*, (*q. v.*)

TRETHINGA. In old English law. A trithing; the court of a trithing.

TREYT. Withdrawn, as a juror. Written also *treat*. Cowell.

TRIA CAPITA, in Roman law, were *civitas, libertas,* and *familia; i. e.,* citizenship, freedom, and family rights.

TRIAL. The examination before a competent tribunal, according to the law of the land, of the facts or law put in issue in a cause, for the purpose of determining such issue.

A trial is the judicial examination of the issues between the parties, whether they be issues of law or of fact. Code N. Y. § 252; Code N. C. § 397.

The examination of a cause, civil or criminal, before a judge who has jurisdiction over it, according to the laws of the land. See Finn v. Spagnoli, 67 Cal. 330, 7 Pac. 746; In re Chauncey, 32 Hun (N. Y.) 431; Bullard v. Kuhl, 54 Wis. 545, 11 N. W. 801; Spencer v. Thistle, 13 Neb. 229, 13 N. W. 214; State v. Brown, 63 Mo. 444; State v. Clifton, 57 Kan. 449, 46 Pac. 715; State v. Bergman, 37 Minn. 407, 34 N. W. 737; Home L. Ins. Co. v. Dunn, 19 Wall. 224, 22 L. Ed. 68; Crane v. Reeder, 28 Mich. 535, 15 Am. Rep. 223.

—Mistrial. See that title.**—New trial.** A new trial is a re-examination of an issue of fact in the same court after a trial and decision by a jury or court or by referees. Code Civ. Proc. Cal. § 656. A new trial is a re-examination of the issue in the same court, before another jury, after a verdict has been given. Pen. Code Cal. § 1179. A new trial is a re-examination in the same court of an issue of fact, or some part or portions thereof, after the verdict by a jury, report of a referee, or a decision by the court. Rev. Code Iowa 1880, § 2837.**—New trial paper.** In English practice. A paper containing a list of causes in which rules *nisi* have been obtained for a new trial, or for entering a verdict in place of a nonsuit, or for entering judgment *non obstante veredicto,* or for otherwise varying or setting aside proceedings which have taken place at *nisi prius.* These are called on for argument in the order in which they stand in the paper, on days appointed by the judges for the purpose. Brown.**—Public trial.** A trial held in public, in the presence of the public, or in a place accessible and open to the attendance of the public at large, or of persons who may properly be admitted. "By this [public trial] is not meant that every person who sees fit shall in all cases be permitted to attend criminal trials, because there are many cases where, from the character of the charge and the nature of the evidence by which it is to be supported, the motives to attend the trial, on the part of portions of the community, would be of the worst character, and where a regard to public morals and public decency would require that at least the young be excluded from hearing and witnessing the evidences of human depravity which the trial must necessarily bring to light. The requirement of a public trial is for the benefit of the accused; that the public may see he is fairly dealt with and not unjustly condemned, and that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility and to the importance of their functions; and the requirement is fairly observed if, without partiality or favoritism, a reasonable proportion of the public is suffered to attend, notwithstanding that those persons whose presence could be of no service to the accused, and who would only be drawn thither by a prurient curiosity, are excluded altogether." Cooley, Const. Lim. *312. And see People v. Hall, 51 App. Div. 57, 64 N. Y. Supp. 433; People v. Swafford, 65 Cal. 223, 3 Pac. 809. **—Speedy trial.** See that title.**—Separate trial.** See SEPARATE.**—State trial.** See STATE.**—Trial at bar.** A species of trial now seldom resorted to, excepting in cases where the matter in dispute is one of great importance and difficulty. It is a trial which takes place before all the judges at the bar of the court in which the action is brought. Brown. See 2 Tidd, Pr. 747; Steph. Pl. 84.**—Trial at nisi prius.** In practice. The ordinary kind of trial which takes place at the sittings, assizes, or circuit, before a single judge. 2 Tidd, Pr. 751, 819.**—Trial by certificate.** A form of trial allowed in cases where the evidence of the person certifying was the only proper criterion of the point in dispute. Under such circumstances, the issue might be determined by the certificate alone, because, if sent to a jury, it would be conclusive upon them, and therefore their intervention was unnecessary. Tomlins.**—Trial by grand assize** is a peculiar mode of trial allowed in writs of right. See ASSIZE; GRAND ASSIZE.**—Trial by inspection or examination** is a form of trial in which the judges of the court, upon the testimony of their own senses, decide the point in dispute.**—Trial by jury.** A trial in which the issues of fact are to be determined by the verdict of a jury of twelve men, duly selected, impaneled, and sworn. The terms "jury" and "trial by jury" are, and for ages have been, well known in the language of the law. They were used at the adoption of the constitution, and always, it is believed, before that time, and almost always since, in a single sense. A jury for the trial of a cause was a body of twelve men, described as upright, well-qualified, and lawful men, disinterested and impartial, not of kin nor personal dependents of either of the parties, having their homes within the jurisdictional limits of the court, drawn and selected by officers free from all bias in favor of or against either party, duly impaneled under the direction of a competent court, sworn to render a true verdict according to the law and the evidence given them, who, after hearing the parties and their evidence, and receiving the instructions of the court relative to the law involved in the trial, and deliberating, when necessary, apart from all extraneous influences, must return their unanimous verdict upon the issue submitted to them. All the books of the law describe a trial jury substantially as we have stated it; and a "trial by jury" is a trial by such a body so constituted and conducted. State v. McClear, 11 Nev. 60. And see Gunn v. Union R. Co., 23 R. I. 289, 49 Atl. 999; State v. Hamey, 168 Mo. 167, 67 S. W. 620, 57 L. R. A. 846; Capital Traction Co. v. Hof, 174 U. S. 1, 19 Sup. Ct. 580, 43 L. Ed. 873; Lommen v. Minneapolis Gaslight Co., 65 Minn. 196, 68 N. W. 53, 33 L. R. A. 437, 60 Am. St. Rep. 450; People v. Dutcher, 83 N. Y. 242; Vaughn v Scade, 30 Mo. 600; Ward v. Farwell, 97 Ill. 612.**—Trial by proviso.** A proceeding allowed where the plaintiff in an action desists from prosecuting his suit, and does not bring it to trial in convenient time. The defendant, in such case, may take out the *venire facias* to the sheriff, containing these words, "*proviso quod,*" etc., *i. e.,* provided that. If plaintiff take out any writ to that purpose, the sheriff shall summon but one jury on them both. This is called "going to trial by proviso." Jacob, tit. "Proviso."**—Trial by the record.** A form of trial resorted to

where issue is taken upon a plea of *nul tiel record*, in which case the party asserting the existence of a record as pleaded is bound to produce it in court on a day assigned. If the record is forthcoming, the issue is tried by inspection and examination of it. If the record is not produced, judgment is given for his adversary. 3 Bl. Comm. 330.—**Trial by wager of battel.** This was a species of trial introduced into England, among other Norman customs, by William the Conqueror, in which the person accused fought with his accuser, under the apprehension that Heaven would give the victory to him who was in the right. 3 Bl. Comm. 337–341.—**Trial by wager of law.** In old English law. A method of trial, where the defendant, coming into court, made oath that he did not owe the claim demanded of him, and eleven of his neighbors, as compurgators, swore that they believed him to speak the truth. 3 Bl. Comm. 343. See WAGER OF LAW.—**Trial by witnesses.** The name "trial *per testes*" has been used for a trial without the intervention of a jury, is the only method of trial known to the civil law, and is adopted by depositions in chancery. The judge is thus left to form, in his own breast, his sentence upon the credit of the witnesses examined. But it is very rarely used at common law. Tomlins.—**Trial de novo.** A new trial or retrial had in an appellate court in which the whole case is gone into as if no trial whatever had been had in the court below. See Karcher v. Green, 8 Houst. (Del.) 163, 32 Atl. 225; Ex parte Morales (Tex. Cr. App.) 53 S. W. 108; Shultz v. Lempert, 55 Tex. 277.—**Trial jury.** The jury participating in the trial of a given case; or a jury summoned and impaneled for the trial of a case, and in this sense a petit jury as distinguished from a grand jury.—**Trial list.** A list of cases marked down for trial for any one term.—**Trial with assessors.** Admiralty actions involving nautical questions, *e. g.*, actions of collision, are generally tried in England before a judge, with Trinity Masters sitting as assessors. Rosc. Adm. 179.

Triatio ibi semper debet fieri, ubi juratores meliorem possunt habere notitiam. Trial ought always to be had where the jurors can have the best information. 7 Coke, 1.

TRIBUERE. Lat. In the civil law. To give; to distribute.

TRIBUNAL. The seat of a judge; the place where he administers justice; a judicial court; the bench of judges. See Foster v. Worcester, 16 Pick. (Mass.) 81.

In Roman law. An elevated seat occupied by the prætor, when he judged, or heard causes in form. Originally a kind of stage made of wood in the form of a square, and movable, but afterwards built of stone in the form of a semi-circle. Adams, Rom. Ant. 132, 133.

TRIBUNAUX DE COMMERCE. In French law. Certain courts composed of a president, judges, and substitutes, which take cognizance of all cases between merchants, and of disagreements among partners. Appeals lie from them to the courts of justice. Brown.

TRIBUTE. A contribution which is raised by a prince or sovereign from his subjects to sustain the expenses of the state.

A sum of money paid by an inferior sovereign or state to a superior potentate, to secure the friendship or protection of the latter. Brande.

TRICESIMA. An ancient custom in a borough in the county of Hereford, so called because thirty burgesses paid 1d. rent for their houses to the bishop, who was lord of the manor. Wharton.

TRIDING-MOTE. The court held for a triding or trithing. Cowell.

TRIDUUM. In old English law. The space of three days. Fleta, lib. 1, c. 31, § 7.

TRIENNIAL ACT. An English statute limiting the duration of every parliament to three years, unless sooner dissolved. It was passed by the long parliament in 1640, and afterwards repealed, and the term was fixed at seven years by the septennial act, (St. 1 Geo. I. St. 2, c. 38.)

TRIENS. Lat. **In Roman law.** A subdivision of the *as*, containing four *unciæ;* the proportion of four-twelfths or one-third. 2 Bl. Comm. 462, note *m*. A copper coin of the value of one-third of the *as*. Brande.

In feudal law. Dower or third. 2 Bl. Comm. 129.

TRIGAMUS. In old English law. One who has been thrice married; one who, at different times and successively, has had three wives; a trigamist. 3 Inst. 88.

TRIGILD. In Saxon law. A triple gild, geld, or payment; three times the value of a thing, paid as a composition or satisfaction. Spelman.

TRINEPOS. Lat. In the civil law. A great-grandson's or great-granddaughter's great-grandson. A male descendant in the sixth degree. Inst. 3, 6, 4.

TRINEPTIS. Lat. In the civil law. A great-grandson's or great-granddaughter's great-granddaughter. A female descendant in the sixth degree. Inst. 3, 6, 4.

TRINITY HOUSE. In English law. A society at Deptford Strond, incorporated by Hen. VIII. in 1515, for the promotion of commerce and navigation by licensing and regulating pilots, and ordering and erecting beacons, light-houses, buoys, etc. Wharton.

TRINITY MASTERS are elder brethren of the Trinity House. If a question arising in an admiralty action depends upon technical skill and experience in navigation,

the judge or court is usually assisted at the hearing by two Trinity Masters, who sit as assessors, and advise the court on questions of a nautical character. Williams & B. Adm. Jur. 271; Sweet.

TRINITY SITTINGS. Sittings of the English court of appeal and of the high court of justice in London and Middlesex, commencing on the Tuesday after Whitsun week, and terminating on the 8th of August.

TRINITY TERM. One of the four terms of the English courts of common law, beginning on the 22d day of May, and ending on the 12th of June. 3 Steph. Comm. 562.

TRINIUMGELDUM. In old European law. An extraordinary kind of composition for an offense, consisting of *three times nine*, or twenty-seven times the single geld or payment. Spelman.

TRINODA NECESSITAS. Lat. In Saxon law. A threefold necessity or burden. A term used to denote the three things from contributing to the performance of which no lands were exempted, viz., *pontis reparatio*, (the repair of bridges,) *arcis constructio*, (the building of castles,) *et expeditio contra hostem*, (military service against an enemy.) 1 Bl. Comm. 263, 357.

TRIORS. In practice. Persons who are appointed to try challenges to jurors, *i. e.*, to hear and determine whether a juror challenged for favor is or is not qualified to serve.

The lords chosen to try a peer, when indicted for felony, in the court of the lord high steward, are also called "triors." Mozley & Whitley.

TRIPARTITE. In conveyancing. Of three parts; a term applied to an indenture to which there are three several parties, (of the first, second, and third parts,) and which is executed in triplicate.

TRIPLICACION. L. Fr. In old pleading. A rejoinder in pleading; the defendant's answer to the plaintiff's replication. Britt. c. 77.

TRIPLICATIO. Lat. In the civil law. The reply of the plaintiff to the rejoinder of the defendant. It corresponds to the surrejoinder of common law. Inst. 4, 14; Bract. l. 5, t. 5, c. 1.

TRISTRIS. In old forest law. A freedom from the duty of attending the lord of a forest when engaged in the chase. Spelman.

TRITAVIA. Lat. In the civil law. A great-grandmother's great-grandmother; the female ascendant in the sixth degree.

TRITAVUS. Lat. In the civil law. A great-grandfather's great-grandfather; the male ascendant in the sixth degree.

TRITHING. In Saxon law. One of the territorial divisions of England, being the *third* part of a county, and comprising three or more hundreds. Within the trithing there was a court held (called "trithing-mote") which resembled the court-leet, but was inferior to the county court.

—Trithing-mote. The court held for a trithing or riding.—**Trithing-reeve.** The officer who superintended a trithing or riding.

TRIUMVIR. Lat. In old English law. A trithing man or constable of three hundred. Cowell.

TRIUMVIRI CAPITALES. Lat. In Roman law. Officers who had charge of the prison, through whose intervention punishments were inflicted. They had eight lictors to execute their orders. Vicat, Voc. Jur.

TRIVERBIAL DAYS. In the civil law. Juridical days; days allowed to the prætor for deciding causes; days on which the prætor might speak the *three* characteristic *words* of his office, viz., *do, dico, addico*. Calvin. Otherwise called "*dies fasti*." 3 Bl. Comm. 424, and note *u*.

TRIVIAL. Trifling; inconsiderable; of small worth or importance. In equity, a demurrer will lie to a bill on the ground of the *triviality* of the matter in dispute, as being below the dignity of the court. 4 Bouv. Inst. no. 4237.

TRONAGE. In English law. A customary duty or toll for weighing wool; so called because it was weighed by a common *trona*, or beam. Fleta, lib. 2, c. 12.

TRONATOR. A weigher of wool. Cowell.

TROPHY MONEY. Money formerly collected and raised in London, and the several counties of England, towards providing harness and maintenance for the militia, etc.

TROVER. In common-law practice, the action of trover (or trover and conversion) is a species of action on the case, and originally lay for the recovery of damages against a person who had *found* another's goods and wrongfully converted them to his own use. Subsequently the allegation of the loss of the goods by the plaintiff and the finding of them by the defendant was merely fictitious, and the action became the remedy for any wrongful interference with or detention of the goods of another. 3 Steph. Comm. 425. Sweet. See Burnham v. Pidcock, 33 Misc. Rep. 65, 66 N. Y. Supp. 806; Larson v Daw-

son, 24 R. I. 317, 53 Atl. 93, 96 Am. St. Rep. 716; Waring v. Pennsylvania R. Co., 76 Pa. 496; Metropolis Mfg. Co. v. Lynch, 68 Conn. 459, 36 Atl. 832; Spellman v. Richmond & D. R. Co., 35 S. C. 475, 14 S. E. 947, 28 Am. St. Rep. 858.

TROY WEIGHT. A weight of twelve ounces to the pound, having its name from Troyes, a city in Aube, France.

TRUCE. In international law. A suspension or temporary cessation of hostilities by agreement between belligerent powers; an armistice. Wheat. Int. Law, 442.

—Truce of God. In medieval law. A truce or suspension of arms promulgated by the church, putting a stop to private hostilities at certain periods or during certain sacred seasons.

TRUCK ACT. In English law. This name is given to the statute 1 & 2 Wm. IV. c. 37, passed to abolish what is commonly called the "truck system," under which employers were in the practice of paying the wages of their work people in goods, or of requiring them to purchase goods at certain shops. This led to laborers being compelled to take goods of inferior quality at a high price. The act applies to all artificers, workmen, and laborers, except those engaged in certain trades, especially iron and metal works, quarries, cloth, silk, and glass manufactories. It does not apply to domestic or agricultural servants. Sweet.

TRUE. Conformable to fact; correct; exact; actual; genuine; honest.

"In one sense, that only is *true* which is conformable to the actual state of things. In that sense, a statement is untrue which does not express things exactly as they are. But in another and broader sense, the word 'true' is often used as a synonym of 'honest,' 'sincere,' 'not fraudulent.'" Moulor v. American L. Ins. Co., 111 U. S. 345, 4 Sup. Ct. 466, 28 L. Ed. 447.

—True bill. In criminal practice. The indorsement made by a grand jury upon a bill of indictment, when they find it sustained by the evidence laid before them, and are satisfied of the truth of the accusation. 4 Bl. Comm. 306.**—True, public, and notorious.** These three qualities used to be formally predicated in the libel in the ecclesiastical courts, of the charges which it contained, at the end of each article severally. Wharton.

TRUST. **1.** An equitable or beneficial right or title to land or other property, held for the beneficiary by another person, in whom resides the legal title or ownership, recognized and enforced by courts of chancery. See Goodwin v. McMinn, 193 Pa. 646, 44 Atl. 1094, 74 Am. St. Rep. 703; Beers v. Lyon, 21 Conn. 613; Seymour v. Freer, 8 Wall. 202, 19 L. Ed. 306.

An obligation arising out of a confidence reposed in the trustee or representative, who has the legal title to property conveyed to him, that he will faithfully apply the property according to the confidence reposed, or, in other words, according to the wishes of the grantor of the trust. 4 Kent, Comm. 304; Willis, Trustees, 2; Beers v. Lyon, 21 Conn. 613; Thornburg v. Buck, 13 Ind. App. 446, 41 N. E. 85.

An equitable obligation, either express or implied, resting upon a person by reason of a confidence reposed in him, to apply or deal with the property for the benefit of some other person, or for the benefit of himself and another or others, according to such confidence. McCreary v. Gewinner, 103 Ga. 528, 29 S. E. 960.

A holding of property subject to a duty of employing it or applying its proceeds according to directions given by the person from whom it was derived. Munroe v. Crouse, 59 Hun, 248, 12 N. Y. Supp. 815.

—Accessory trust. In Scotch law, this is the term equivalent to "active" or "special" trust. See *infra*.**—Active trust.** One which imposes upon the trustee the duty of taking active measures in the execution of the trust, as, where property is conveyed to trustees with directions to sell and distribute the proceeds among creditors of the grantor; distinguished from a "passive" or "dry" trust.**—Cestui que trust.** The person for whose benefit a trust is created or who is to enjoy the income or the avails of it.**—Constructive trust.** A trust raised by construction of law, or arising by operation of law, as distinguished from an express trust. Wherever the circumstances of a transaction are such that the person who takes the legal estate in property cannot also enjoy the beneficial interest without necessarily violating some established principle of equity, the court will immediately raise a *constructive trust*, and fasten it upon the conscience of the legal owner, so as to convert him into a trustee for the parties who in equity are entitled to the beneficial enjoyment. Hill, Trustees, 116; 1 Spence, Eq. Jur. 511. Nester v. Gross, 66 Minn. 371, 69 N. W. 39; Jewelry Co. v. Volfer, 106 Ala. 205, 17 South. 525, 28 L. R. A. 707, 54 Am. St. Rep. 31.**—Contingent trust.** An express trust may depend for its operation upon a future event, and is then a "contingent" trust. Civ. Code Ga. 1895, § 3154.**—Direct trust.** A direct trust is an express trust, as distinguished from a constructive or implied trust. Currence v. Ward, 43 W. Va. 367, 27 S. E. 329.**—Directory trust.** One which is subject to be moulded or applied according to subsequent directions of the grantor; one which is not completely and finally settled by the instrument creating it, but only defined in its general purpose and to be carried into detail according to later specific directions.**—Dry trust.** One which merely vests the legal title in the trustee, and does not require the performance of any active duty on his part to carry out the trust.**—Executed trust.** A trust of which the scheme has in the outset been completely declared. Adams, Eq. 151. A trust in which the estates and interest in the subject-matter of the trust are completely limited and defined by the instrument creating the trust, and require no further instruments to complete them. Bisp. Eq. 20; Pillot v. Landon, 46 N. J. Eq. 310, 19 Atl. 25; Dennison v. Goehring, 7 Pa. 177, 47 Am. Dec. 505; In re Fair's Estate, 132 Cal. 523, 60 Pac. 442, 84 Am. St. Rep. 70; Cushing v. Blake, 29 N. J. Eq. 403; Egerton v. Brownlow, 4 H. L. Cas. 210. As all trusts are executory in this sense, that the trustee is bound to dispose of the estate according to the tenure of his trust, whether

active or passive, it would be more accurate and precise to substitute the terms, "perfect" and "imperfect" for "executed" and "executory" trusts. 1 Hayes, Conv. 85.—**Executory trust.** One which requires the execution of some further instrument, or the doing of some further act, on the part of the creator of the trust or of the trustee, towards its complete creation or full effect. An *executed* trust is one fully created and of immediate effect. These terms do not relate to the execution of the trust as regards the beneficiary. Martling v. Martling, 55 N. J. Eq. 771, 39 Atl. 203; Carradine v. Carradine, 33 Miss. 729; Cornwell v. Wulff, 148 Mo. 542, 50 S. W. 439, 45 L. R. A. 53; In re Fair's Estate, 132 Cal. 523, 60 Pac. 442, 84 Am. St. Rep. 70; Pillot v. Landon, 46 N. J. Eq. 310, 19 Atl. 25.—**Express trust.** A trust created or declared in express terms, and usually in writing, as distinguished from one inferred by the law from the conduct or dealings of the parties. State v. Campbell, 59 Kan. 246, 52 Pac. 454; Kaphan v. Toney (Tenn. Ch.) 58 S. W. 913; McMonagle v. McGlinn (C. C.) 85 Fed. 91; Ransdel v. Moore, 153 Ind. 393, 53 N. E. 767, 53 L. R. A. 753. Express trusts are those which are created in express terms in the deed, writing, or will, while implied trusts are those which, without being expressed, are deducible from the nature of the transaction, as matters of intent, or which are superinduced upon the transactions by operation of law, as matters of equity, independently of the particular intention of the parties. Brown v. Cherry, 56 Barb. (N. Y.) 635.—**Imperfect trust.** An executory trust, (which see;) and see EXECUTED TRUST.—**Implied trust.** A trust raised or created by implication of law; a trust implied or presumed from circumstances. Wilson v. Welles, 79 Minn. 53, 81 N. W. 549; In re Morgan, 34 Hun (N. Y.) 220; Kaphan v. Toney (Tenn. Ch.) 58 S. W. 913; Cone v. Dunham, 59 Conn. 145, 20 Atl. 311, 8 L. R. A. 647; Russell v. Peyton, 4 Ill. App. 478.—**Involuntary trust.** "Involuntary" or "constructive" trusts embrace all those instances in which a trust is raised by the doctrines of equity, for the purpose of working out justice in the most efficient manner, when there is no intention of the parties to create a trust relation and contrary to the intention of the one holding the legal title. This class of trusts may usually be referred to fraud, either actual or constructive, as an essential element. Bank v. Kimball Milling Co., 1 S. D. 388, 47 N. W. 402, 36 Am. St. Rep. 739.—**Ministerial trusts.** (Also called "instrumental trusts.") Those which demand no further exercise of reason or understanding than every intelligent agent must necessarily employ; as to convey an estate. They are a species of special trusts, distinguished from discretionary trusts, which necessarily require much exercise of the understanding. 2 Bouv. Inst. no. 1896.—**Naked trust.** A dry or passive trust; one which requires no action on the part of the trustee, beyond turning over money or property to the *cestui que trust*.—**Passive trust.** A trust as to which the trustee has no active duty to perform. Goodrich v. Milwaukee, 24 Wis. 429; Perkins v. Brinkley, 133 N. C. 154, 45 S. E. 542; Holmes v. Walter, 118 Wis. 409, 95 N. W. 380, 62 L. R. A. 986.—**Precatory trust.** Where words employed in a will or other instrument do not amount to a positive command or to a distinct testamentary disposition, but are terms of entreaty, request, recommendation, or expectation, they are termed "precatory words," and from such words the law will raise a trust, called a "precatory trust," to carry out the wishes of the testator or grantor. See Bohon v. Barrett, 79 Ky. 378; Hunt v. Hunt, 18 Wash. 14, 50 Pac. 578; Aldrich v. Aldrich, 172 Mass. 101, 51 N. E. 449.—**Private trust.** One established or created for the benefit of a certain designated individual or individuals, or a known person or class of persons, clearly identified or capable of identification by the terms of the instrument creating the trust, as distinguished from trusts for public institutions or char table uses. See Pennoyer v. Wadhams, 20 Or. 274, 25 Pac. 720, 11 L. R. A. 210; Doyle v. Whalen, 87 Me. 414, 32 Atl. 1022, 31 L. R. A. 118; Brooks v. Belfast, 90 Me. 318, 38 Atl. 222.—**Proprietary trust.** In Scotch law, a naked, dry, or passive trust. See *supra*.—**Public trust.** One constituted for the benefit either of the public at large or of some considerable portion of it answering a particular description; to this class belong all trusts for charitable purposes, and indeed public trusts and charitable trusts may be considered in general as synonymous expressions. Lewin, Trusts, 20.—**Resulting trust.** One that arises by implication of law, or by the operation and construction of equity, and which is established as consonant to the presumed intention of the parties as gathered from the nature of the transaction; as, for example, where one person becomes invested with the title to real property under circumstances which in equity obligate him to hold the title and exercise his ownership for the benefit of another, a familiar instance being the case where a man buys land with his own money but has the title put in the name of another. See Sanders v. Steele, 124 Ala. 415, 26 South. 882; Dorman v. Dorman, 187 Ill. 154, 58 N. E. 235, 79 Am. St. Rep. 210; Aborn v. Searles, 18 R. I. 357, 27 Atl. 796; Fulton v. Jansen, 99 Cal. 587, 34 Pac. 331; Western Union Tel. Co. v. Shepard, 169 N. Y. 170, 62 N. E. 154, 58 L. R. A. 115.—**Secret trusts.** Where a testator gives property to a person, on a verbal promise by the legatee or devisee that he will hold it in trust for another person, this is called a "secret trust." Sweet.—**Shifting trust.** An express trust which is so settled that it may operate in favor of beneficiaries additional to, or substituted for, those first named, upon specified contingencies. Civ. Code Ga. 1895, § 3154.—**Simple trust.** A simple trust corresponds with the ancient use, and is where property is simply vested in one person for the use of another, and the nature of the trust, not being qualified by the settler, is left to the construction of law. It differs from a *special trust*. Perkins v. Brinkley, 133 N. C. 154, 45 S. E. 541; Cone v. Dunham, 59 Conn. 145, 20 Atl. 311, 8 L. R. A. 647; Dodson v. Ball, 60 Pa. 500, 100 Am. Dec. 586.—**Special trust.** Where the machinery of a trust is introduced for the execution of some purpose particularly pointed out, and the trustee is not a mere passive depositary of the estate, but is called upon to exert himself actively in the execution of the settlor's intention; as, where a conveyance is to trustees upon trust to sell for payment of debts. Special trusts have been divided into (1) ministerial (or instrumental) and (2) discretionary. The former, such as demand no further exercise of reason or understanding than every intelligent agent must necessarily employ; the latter, such as cannot be duly administered without the application of a certain degree of prudence and judgment. 2 Bouv. Inst. no. 1896; Perkins v. Brinkley, 133 N. C. 154, 45 S. E. 541; Flagg v. Ely, 1 Edm. Sel. Cas. (N. Y.) 209; Freer v. Lake, 115 Ill. 662, 4 N. E. 512; Dodson v. Ball, 60 Pa. 496, 100 Am. Dec. 586.—**Spendthrift trust.** See SPENDTHRIFT.—**Transgressive trust.** A name sometimes applied to a trust which transgresses or violates the rule against perpetuities. See Pulitzer v. Livingston, 89 Me. 359, 36 Atl. 635.—**Trust company.** A corporation formed for the purpose of taking, accepting, and executing all such trusts as may be lawfully committed to it, and acting as testamentary trustee, trustee under deeds of settlement or for married women, executor, guardian, etc. To these functions are sometimes (but not necessarily) added the business of acting as fiscal agent for corporations,

attending to the registration and transfer of their stock and bonds, serving as trustee for their bond or mortgage creditors, and transacting a general banking and loan business. See Venner v. Farmers' L. & T. Co., 54 App. Div. 271, 66 N. Y. Supp. 773; Jenkins v. Neff, 163 N. Y. 320, 57 N. E. 408; Mercantile Nat. Bank v. New York, 121 U. S. 138, 7 Sup. Ct. 826, 30 L. Ed. 895.—**Trust-deed.** (1) A species of mortgage given to a trustee for the purpose of securing a numerous class of creditors, as the bondholders of a railroad corporation, with power to foreclose and sell on failure of the payment of their bonds, notes, or other claims. (2) In some of the states, and in the District of Columbia, a trust-deed is a security resembling a mortgage, being a conveyance of lands to trustees to secure the payment of a debt, with a power of sale upon default, and upon a trust to apply the net proceeds to paying the debt and to turn over the surplus to the grantor.—**Trust estate.** This term may mean either the estate of the trustee,—that is, the legal title,—or the estate of the beneficiary, or the corpus of the property which is the subject of the trust. See Cooper v. Cooper, 5 N. J. Eq. 9; Farmers' L. & T. Co. v. Carroll, 5 Barb. (N. Y.) 643.—**Trust ex maleficio.** A species of constructive trust arising out of some fraud, misconduct, or breach of faith on the part of the person to be charged as trustee, which renders it an equitable necessity that a trust should be implied. See Rogers v. Richards, 67 Kan. 706, 74 Pac. 255; Kent v. Dean, 128 Ala. 600, 30 South. 543; Barry v. Hill, 166 Pa. 344, 31 Atl. 126.—**Trust fund.** A fund held by a trustee for the specific purposes of the trust; in a more general sense, a fund which, legally or equitably, is subject to be devoted to a particular purpose and cannot or should not be diverted therefrom. In this sense it is often said that the capital and other property of a corporation is a "trust fund" for the payment of its debts. See Henderson v. Indiana Trust Co., 143 Ind. 561, 40 N. E. 516; In re Beard's Estate, 7 Wyo. 104, 50 Pac. 226, 38 L. R. A. 860, 75 Am. St. Rep. 882.—**Trust in invitum.** A constructive trust imposed by equity, contrary to the trustee's intention and will, upon property in his hands. Sanford v. Hamner, 115 Ala. 406, 22 South. 117.—**Voluntary trust.** An obligation arising out of a personal confidence reposed in, and voluntarily accepted by, one for the benefit of another, as distinguished from an "involuntary" trust, which is created by operation of law. Civ. Code Cal. §§ 2216, 2217. According to another use of the term, "voluntary" trusts are such as are made in favor of a volunteer, that is, a person who gives nothing in exchange for the trust, but receives it as a pure gift; and in this use the term is distinguished from "trusts for value," the latter being such as are in favor of purchasers, mortgagees, etc.

2. In constitutional and statutory law. An association or organization of persons or corporations having the intention and power, or the tendency, to create a monopoly, control production, interfere with the free course of trade or transportation, or to fix and regulate the supply and the price of commodities. In the history of economic development, the "trust" was originally a device by which several corporations engaged in the same general line of business might combine for their mutual advantage, in the direction of eliminating destructive competition, controlling the output of their commodity, and regulating and maintaining its price, but at the same time preserving their separate individual existence, and without any consolidation or merger. This device was the erection of a central committee or board, composed, perhaps, of the presidents or general managers of the different corporations, and the transfer to them of a majority of the stock in each of the corporations, to be held "in trust" for the several stockholders so assigning their holdings. These stockholders received in return "trust certificates" showing that they were entitled to receive the dividends on their assigned stock, though the voting power of it had passed to the trustees. This last feature enabled the trustees or committee to elect all the directors of all the corporations, and through them the officers, and thereby to exercise an absolutely controlling influence over the policy and operations of each constituent company, to the ends and with the purposes above mentioned. Though the "trust," in this sense, is now seldom if ever resorted to as a form of corporate organization, having given place to the "holding corporation" and other devices, the word has become current in statute laws as well as popular speech, to designate almost any form of combination of a monopolistic character or tendency See Black, Const. Law (3d Ed.) p. 428; Northern Securities Co. v. U. S., 193 U. S. 197, 24 Sup. Ct. 436, 48 L. Ed. 679; MacGinniss v. Mining Co., 29 Mont. 428, 75 Pac. 89; State v. Continental Tobacco Co., 177 Mo. 1, 75 S. W. 737; Queen Ins. Co. v. State, 86 Tex. 250, 24 S. W. 397, 22 L. R. A. 483; State v. Insurance Co., 152 Mo. 1, 52 S. W. 595, 45 L. R. A. 363; Gen. St. Kan. 1901, § 7864; Code Miss. 1892, § 4437; Cobbey's Ann. St. Neb. 1903, § 11500; Bates' Ann. St. Ohio, 1904, § 4427; Code Tex. 1895, art. 976.

TRUSTEE. The person appointed, or required by law, to execute a trust; one in whom an estate, interest, or power is vested, under an express or implied agreement to administer or exercise it for the benefit or to the use of another.

"Trustee" is also used in a wide and perhaps inaccurate sense, to denote that a person has the duty of carrying out a transaction, in which he and another person are interested, in such manner as will be most for the benefit of the latter, and not in such a way that he himself might be tempted, for the sake of his personal advantage, to neglect the interests of the other. In this sense, directors of companies are said to be "trustees for the shareholders." Sweet.

—**Conventional trustee.** A "conventional" trustee is one appointed by a decree of court to execute a trust, as distinguished from one appointed by the instrument creating the trust. Gilbert v. Kolb, 85 Md. 627, 37 Atl. 423.—**Joint trustees.** Two or more persons who are intrusted with property for the benefit of one or more others.—**Quasi trustee.** A person who reaps a benefit from a breach of trust, and so becomes answerable as a trustee. Lewin, Trusts (4th Ed.) 592, 638.—**Testamentary trustee.** A trustee appointed by or acting un-

der a will; one appointed to carry out a trust created by a will. The term does not ordinarily include an executor or an administrator with the will annexed, or a guardian, though all of these are in a sense trustees, except when they act in the execution of a trust created by the will and which is separable from their functions as executors, etc. See In re Hazard, 51 Hun, 201, 4 N. Y. Supp. 701; In re Valentine's Estate, 1 Misc. Rep. 491, 23 N. Y. Supp. 289; In re Hawley, 104 N. Y. 250, 10 N. E. 352.—**Trustee acts.** The statutes 13 & 14 Vict. c. 60, passed in 1850, and 15 & 16 Vict. c. 55, passed in 1852, enabling the court of chancery, without bill filed, to appoint new trustees in lieu of any who, on account of death, lunacy, absence, or otherwise, are unable or unwilling to act as such; and also to make vesting orders by which legal estates and rights may be transferred from the old trustee or trustees to the new trustee or trustees so appointed. Mozley & Whitley.—**Trustee ex maleficio.** A person who, being guilty of wrongful or fraudulent conduct, is held by equity to the duty and liability of a trustee, in relation to the subject-matter, to prevent him from profiting by his own wrong.—**Trustee in bankruptcy.** A trustee in bankruptcy is a person in whom the property of a bankrupt is vested in trust for the creditors.—**Trustee process.** The name given, in the New England states, to the process of garnishment or foreign attachment.—**Trustee relief acts.** The statute 10 & 11 Vict. c. 96, passed in 1847, and statute 12 & 13 Vict. c. 74, passed in 1849, by which a trustee is enabled to pay money into court, in cases where a difficulty arises respecting the title to the trust fund. Mozley & Whitley.

TRUSTER. In Scotch law. The maker or creator of a trust.

TRUSTIS. In old European law. Trust; faith; confidence; fidelity.

TRUSTOR. A word occasionally, though rarely, used as a designation of the creator, donor, or founder of a trust.

TRY. To examine judicially; to examine and investigate a controversy, by the legal method called "trial," for the purpose of determining the issues it involves.

TUAS RES TIBI HABETO. Lat. Have or take your things to yourself. The form of words by which, according to the old Roman law, a man divorced his wife. Calvin.

TUB. In mercantile law. A measure containing sixty pounds of tea, and from fifty-six to eighty-six pounds of camphor. Jacob.

TUB-MAN. In English law. A barrister who has a preaudience in the exchequer, and also one who has a particular place in court, is so called. Brown.

TUCHAS. In Spanish law. Objections or exceptions to witnesses. White, New Recop. b. 3, tit. 7, c. 10.

TUERTO. In Spanish law. Tort. Las Partidas, pt. 7, tit. 6, l. 5.

TUG. A steam vessel built for towing; synonymous with "tow-boat."

TULLIANUM. Lat. In Roman law. That part of a prison which was under ground. Supposed to be so called from Servius Tullius, who built that part of the first prison in Rome. Adams, Rom. Ant. 290.

TUMBREL. A castigatory, trebucket, or ducking-stool, anciently used as a punishment for common scolds.

TUMULTUOUS PETITIONING. Under St. 13 Car. II. St. 1, c. 5, this was a misdemeanor, and consisted in more than twenty persons signing any petition to the crown or either house of parliament for the alteration of matters established by law in church or state, unless the contents thereof had been approved by three justices, or the majority of the grand jury at assizes or quarter sessions. No petition could be delivered by more than ten persons. 4 Bl. Comm. 147; Mozley & Whitley.

TUN. A measure of wine or oil, containing four hogsheads.

TUNGREVE. A town-reeve or bailiff. Cowell.

TURBA. Lat. In the civil law. A multitude; a crowd or mob; a tumultuous assembly of persons. Said to consist of ten or fifteen, at the least. Calvin.

TURBARY. Turbary, or common of turbary, is the right or liberty of digging turf upon another man's ground. Brown.

TURN, or TOURN. The great court-leet of the county, as the old county court was the court-baron. Of this the sheriff is judge, and the court is incident to his office; wherefore it is called the "sheriff's tourn;" and it had its name originally from the sheriff making a turn of circuit about his shire, and holding this court in each respective hundred. Wharton.

TURNED TO A RIGHT. This phrase means that a person whose estate is divested by usurpation cannot expel the possessor by mere entry, but must have recourse to an action, either possessory or droitural. Mozley & Whitley.

TURNKEY. A person, under the superintendence of a jailer, who has the charge of the keys of the prison, for the purpose of opening and fastening the doors.

TURNPIKE. A gate set across a road, to stop travelers and carriages until toll is paid for the privilege of passage thereon. —**Turnpike roads.** These are roads on which parties have by law a right to erect gates and

bars, for the purpose of taking toll, and of refusing the permission to pass along them to all persons who refuse to pay. Northam Bridge Co. v. London Ry. Co., 6 Mees. & W. 428. A turnpike road is a public highway, established by public authority for public use, and is to be regarded as a public easement, and not as private property. The only difference between this and a common highway is that, instead of being made at the public expense in the first instance, it is authorized and laid out by public authority, and made at the expense of individuals in the first instance; and the cost of construction and maintenance is reimbursed by a toll, levied by public authority for the purpose. Com. v. Wilkinson, 16 Pick. (Mass.) 175, 26 Am. Dec. 654.

TURPIS. Lat. In the civil law. Base; mean; vile; disgraceful; infamous; unlawful. Applied both to things and persons. Calvin.

—Turpis causa. A base cause; a vile or immoral consideration; a consideration which, on account of its immorality, is not allowed by law to be sufficient either to support a contract or found an action; *e. g.*, future illicit intercourse. **—Turpis contractus.** An immoral or iniquitous contract

Turpis est pars quæ non convenit cum suo toto. The part which does not agree with its whole is of mean account, [entitled to small or no consideration.] Plowd. 101; Shep. Touch. 87.

TURPITUDE. Everything done contrary to justice, honesty, modesty, or good morals is said to be done with turpitude.

TURPITUDO. Lat. Baseness; infamy; immorality; turpitude.

Tuta est custodia quæ sibimet creditur. Hob. 340. That guardianship is secure which is intrusted to itself alone.

TUTELA. Lat. In the civil law. Tutelage; that species of guardianship which continued to the age of puberty; the guardian being called "*tutor*," and the ward, "*pupillus*." 1 Dom. Civil Law, b. 2, tit. 1, p. 260.

—Tutela legitima. Legal tutelage; tutelage created by act of law, as where none had been created by testament. Inst. 1, 15, pr. **—Tutela testamentaria.** Testamentary tutelage or guardianship; that kind of tutelage which was created by will. Calvin.

TUTELÆ ACTIO. Lat. In the civil law. An action of tutelage; an action which lay for a ward or pupil, on the termination of tutelage, against the *tutor* or guardian, to compel an account. Calvin.

TUTELAGE. Guardianship; state of being under a guardian.

TUTELAM REDDERE. Lat. In the civil law. To render an account of tutelage. Calvin. *Tutelam reposcere*, to demand an account of tutelage.

TUTEUR. In French law. A kind of guardian.

—Tuteur officieux. A person over fifty years of age may be appointed a tutor of this sort to a child over fifteen years of age, with the consent of the parents of such child, or, in their default, the *conseil de famille*. The duties which such a tutor becomes subject to are analogous to those in English law of a person who puts himself *in loco parentis* to any one. Brown. **—Tuteur subrogé.** The title of a second guardian appointed for an infant under guardianship. His functions are exercised in case the interests of the infant and his principal guardian conflict. Code Nap. 420; Brown.

Tutius erratur ex parte mitiore. 3 Inst. 220. It is safer to err on the gentler side.

Tutius semper est errare acquietando, quam in puniendo, ex parte misericordiæ quam ex parte justitiæ. It is always safer to err in acquitting than punishing, on the side of mercy than on the side of justice. Branch, Princ.; 2 Hale, P. C. 290; Broom, Max. 326; Com. v. York, 9 Metc. (Mass.) 116, 43 Am. Dec. 373.

TUTOR. In the civil law. This term corresponds nearly to "guardian," (*i. e.*, a person appointed to have the care of the person of a minor and the administration of his estate,) except that the guardian of a minor who has passed a certain age is called "curator," and has powers and duties differing somewhat from those of a tutor.

By the laws of Louisiana, minors under the age of fourteen years, if males, and under the age of twelve years, if females, are, both as to their persons and their estates, placed under the authority of a tutor. Above that age, and until their majority or emancipation, they are placed under the authority of a curator. Civ. Code La. 1838, art. 263.

—Tutor alienus. In English law. The name given to a stranger who enters upon the lands of an infant within the age of fourteen, and takes the profits. Co. Litt. 89*b*, 90*a*. **—Tutor proprius.** The name given to one who is rightly a guardian in socage, in contradistinction to a *tutor alienus*.

TUTORSHIP. The office and power of a tutor.

—Tutorship by nature. After the dissolution of marriage by the death of either husband or wife, the tutorship of minor children belongs of right to the surviving mother or father. This is what is called "tutorship by nature." Civ. Code La. art. 250. **—Tutorship by will.** The right of appointing a tutor, whether a relation or a stranger, belongs exclusively to the father or mother dying last. This is called "tutorship by will," because generally it is given by testament; but it may likewise be given by any declaration by the surviving father or mother, executed before a notary and two witnesses. Civ. Code La. art. 257.

TUTRIX. A female tutor.

TWA NIGHT GEST. In Saxon law. A guest on the second night. By the laws of

N Edward the Confessor it was provided that a man who lodged at an inn, or at the house of another, should be considered, on the first night of his being there, a stranger, (*uncuth;*) on the second night, a guest; on the third night, a member of the family. This had O reference to the responsibility of the host or entertainer for offenses committed by the guest.

P **TWELFHINDI.** The highest rank of men in the Saxon government, who were valued at 1200s. If any injury were done to such persons, satisfaction was to be made according to their worth. Cowell.

Q **TWELVE TABLES.** The earliest statute or code of Roman law, framed by a commission of ten men, B. C. 450, upon the return of a commission of three who had been sent abroad to study foreign laws and institutions. The Twelve Tables consisted partly R of laws transcribed from the institutions of other nations, partly of such as were altered and accommodated to the manners of the Romans, partly of new provisions, and mainly, perhaps, of laws and usages under their ancient kings. They formed the source and S foundation for the whole later development of Roman jurisprudence. They exist now only in fragmentary form. See 1 Kent, Comm. 520.

T **TWELVE-DAY WRIT.** A writ issued under the St. 18 & 19 Vict. c. 67, for summary procedure on bills of exchange and promissory notes, abolished by rule of court in 1880. Wharton.

TWELVE-MONTH, in the singular number, includes all the year; but *twelve months* are to be computed according to twenty-eight days for every month. 6 Coke, 62.

TWICE IN JEOPARDY. See JEOPARDY; ONCE IN JEOPARDY.

TWYHINDI. The lower order of Saxons, valued at 200s. in the scale of pecuniary mulcts inflicted for crimes. Cowell.

TYBURN TICKET. A certificate which was given to the prosecutor of a felon to conviction.

TYHTLAN. In Saxon law. An accusation, impeachment, or charge of any offense.

TYLWITH. Brit. A tribe or family branching or issuing out of another. Cowell.

TYMBRELLA. In old English law, a tumbrel, castigatory, or ducking stool, anciently used as an instrument of punishment for common scolds.

TYRANNY. Arbitrary or despotic government; the severe and autocratic exercise of sovereign power, either vested constitutionally in one ruler, or usurped by him by breaking down the division and distribution of governmental powers.

TYRANT. A despot; a sovereign or ruler, legitimate or otherwise, who uses his power unjustly and arbitrarily, to the oppression of his subjects.

TYROTOXICON. In medical jurisprudence. A poisonous ptomaine produced in milk, cheese, cream, or ice-cream by decomposition of albuminous constituents.

TYRRA, or TOIRA. A mount or hill. Cowell.

TYTHE. Tithe, or tenth part.

TYTHING. A company of ten; a district; a tenth part. See TITHING.

TZAR, TZARINA. The emperor and empress of Russia. See CZAR.