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F. In old English criminal law, this letter was branded upon felons upon their being admitted to clergy; as also upon those convicted of fights or frays, or falsity. Jacob; Cowell; 2 Reeve, Eng. Law, 392; 4 Reeve, Eng. Law, 485.

F. O. B. In mercantile contracts, this abbreviation means "free on board," and imports that the seller or consignor of goods will deliver them on the car, vessel, or other conveyance by which they are to be transported without expense to the buyer or consignee, that is, without charge for packing, crating, drayage, etc., until delivered to the carrier. Vogt v. Shienbeck, 122 Wis. 491, 100 N. W. 820, 67 L. R. A. 756, 106 Am. St. Rep. 989; Silberman v. Clark, 96 N. Y. 523; Sheffield Furnace Co. v. Hull Coal & Coke Co., 101 Ala. 446, 14 South. 672.

FABRIC LANDS. In English law. Lands given towards the maintenance, rebuilding, or repairing of cathedral and other churches. Cowell; Blount.

FABRICA. In old English law. The making or coining of money.

FABRICARE. Lat. To make. Used in old English law of a lawful coining, and also of an unlawful making or counterfeiting of coin. See 1 Salk. 342.

FABRICATE. To fabricate evidence is to arrange or manufacture circumstances or *indicia*, after the fact committed, with the purpose of using them as evidence, and of deceitfully making them appear as if accidental or undesigned; to devise falsely or contrive by artifice with the intention to deceive. Such evidence may be wholly forged and artificial, or it may consist in so warping and distorting real facts as to create an erroneous impression in the minds of those who observe them and then presenting such impression as true and genuine.

—**Fabricated evidence.** Evidence manufactured or arranged after the fact, and either wholly false or else warped and discolored by artifice and contrivance with a deceitful intent. See *supra*.—**Fabricated fact.** In the law of evidence. A fact existing only in statement, without any foundation in truth. An actual or genuine fact to which a false appearance has been designedly given; a physical object placed in a false connection with another, or with a person on whom it is designed to cast suspicion.

FABULA. In old European law. A contract or formal agreement; but particularly used in the Lombardic and Visigothic laws to denote a marriage contract or a will.

FAC SIMILE. An exact copy, preserving all the marks of the original.

FAC SIMILE PROBATE. In England, where the construction of a will may be affected by the appearance of the original paper, the court will order the probate to pass in *fac simile*, as it may possibly help to show the meaning of the testator. 1 Williams, Ex'rs, (7th Ed.) 331, 386, 566.

FACE. The face of an instrument is that which is shown by the mere language employed, without any explanation, modification, or addition from extrinsic facts or evidence. Thus, if the express terms of the paper disclose a fatal legal defect, it is said to be "void on its face."

Regarded as an evidence of debt, the face of an instrument is the principal sum which it expresses to be due or payable, without any additions in the way of interest or costs. Thus, the expression "the face of a judgment" means the sum for which the judgment was rendered, excluding the interest accrued thereon. Osgood v. Bringolf, 32 Iowa, 265.

FACERE. Lat. To do; to make. Thus, *facere defaultam*, to make default; *facere duellum*, to make the duel, or make or do battle; *facere finem*, to make or pay a fine; *facere legem*, to make one's law; *facere sacramentum*, to make oath.

FACIAS. That you cause. Occurring in the phrases "*scire facias*," (that you cause to know,) "*feri facias*," (that you cause to be made,) etc.

FACIENDO. In doing or paying; in some activity.

FACIES. Lat. The face or countenance; the exterior appearance or view; hence, contemplation or study of a thing on its external or apparent side. Thus, *prima facie* means at the first inspection, on a preliminary or exterior scrutiny. When we speak of a "*prima facie* case," we mean one which, on its own showing, on a first examination, or without investigating any alleged defenses, is apparently good and maintainable.

FACILE. In Scotch law. Easily persuaded; easily imposed upon. Bell.

FACILITIES. This name was formerly given to certain notes of some of the banks in the state of Connecticut, which were made payable in two years after the close of the war of 1812. Springfield Bank v. Merrick, 14 Mass. 322.

FACILITY. In Scotch law. Pliancy of disposition. Bell.

Facinus quos inquinat æquat. Guilt makes equal those whom it stains.

FACIO UT DES. (Lat. I do that you may give.) A species of contract in the civil law (being one of the *innominate* contracts) which occurs when a man agrees to perform anything for a price either specifically mentioned or left to the determination of the law to set a value on it; as when a servant hires himself to his master for certain wages or an agreed sum of money. 2 Bl. Comm. 445.

FACIO UT FACIAS. (Lat. I do that you may do.) A species of contract in the civil law (being one of the *innominate* contracts) which occurs when I agree with a man to do his work for him if he will do mine for me; or if two persons agree to marry together, or to do any other positive acts on both sides; or it may be to forbear on one side in consideration of something done on the other. 2 Bl. Comm. 444.

FACT. A thing done; an action performed or an incident transpiring; an event or circumstance; an actual occurrence.

In the earlier days of the law "fact" was used almost exclusively in the sense of "action" or "deed;" but, although this usage survives, in some such phrases as "accessary before the fact," it has now acquired the broader meaning given above.

A fact is either a state of things, that is, an existence, or a motion, that is, an event. 1 Benth. Jud. Ev. 48.

In the law of evidence. A circumstance, event or occurrence as it actually takes or took place; a physical object or appearance, as it actually exists or existed. An actual and absolute reality, as distinguished from mere supposition or opinion; a truth, as distinguished from fiction or error. Burrill, Circ. Ev. 218.

"Fact" is very frequently used in opposition or contrast to "law." Thus, questions of *fact* are for the jury; questions of *law* for the court. So an attorney *at law* is an officer of the courts of justice; an attorney *in fact* is appointed by the written authorization of a principal to manage business affairs usually not professional. Fraud *in fact* consists in an actual intention to defraud, carried into effect; while fraud imputed by *law* arises from the man's conduct in its necessary relations and consequences.

The word is much used in phrases which contrast it with law. Law is a principle; fact is an event. Law is conceived; fact is actual. Law is a rule of duty; fact is that which has been according to or in contravention of the rule. The distinction is well illustrated in the rule that the existence of foreign laws is matter of fact. Within the territory of its jurisdiction, law operates as an obligatory rule which judges must recognize and enforce; but, in a tribunal outside that jurisdiction, it loses its obligatory force and its claim to judicial notice. The fact that it exists, if important to the rights of parties, must be alleged and proved the same as the actual existence of any other institution. Abbott.

The terms "fact" and "truth" are often used in common parlance as synonymous, but, as employed in reference to pleading, they are widely different. A fact in pleading is a circumstance, act, event, or incident; a truth is the legal principle which declares or governs the facts and their operative effect. Admitting the facts stated in a complaint, the truth may be that the plaintiff is not entitled, upon the face of his complaint, to what he claims. The mode in which a defendant sets up that truth for his protection is a demurrer. *Drake v. Cockcroft*, 4 E. D. Smith (N. Y.) 37.

—Collateral facts. Such as are outside the controversy or are not directly connected with the principal matter or issue in dispute. *Summerour v. Felker*, 102 Ga. 254, 29 S. E. 448; *Garner v. State*, 76 Miss. 515, 25 South. 363.—**Dispositive facts.** See that title.—**Evidentiary facts.** Those which have a legitimate bearing on the matter or question in issue and which are directly (not inferentially) established by the evidence in the case. *Woodfill v. Patton*, 76 Ind. 579, 40 Am. Rep. 269.—**Facts in issue.** Those matters of fact on which the plaintiff proceeds by his action and which the defendant controverts in his pleadings. *Glenn v. Savage*, 14 Or. 567, 13 Pac. 442; *King v. Chase*, 15 N. H. 9, 41 Am. Dec. 675; *Caper-ton v. Schmidt*, 26 Cal. 494, 85 Am. Dec. 187.

—Inferential facts. Such as are established not directly by testimony or other evidence, but by inferences or conclusions drawn from the evidence. *Railway Co. v. Miller*, 141 Ind. 533, 37 N. E. 343.—**Jurisdictional facts.** Those matters of fact which must exist before the court can properly take jurisdiction of the particular case, as, that the defendant has been properly served with process, that the amount in controversy exceeds a certain sum, that the parties are citizens of different states, etc. *Noble v. Railroad Co.*, 147 U. S. 165, 13 Sup. Ct. 271, 37 L. Ed. 123.—**Material fact.** (In contracts.) One which constitutes substantially the consideration of the contract, or without which it would not have been made. *Lyons v. Stephens*, 45 Ga. 143. (In pleading and practice.) One which is essential to the case, defense, application, etc., and without which it could not be supported. *Adams v. Way*, 32 Conn. 168; *Sandheger v. Hosey*, 26 W. Va. 223; *Davidson v. Hackett*, 49 Wis. 186, 5 N. W. 459. (In insurance.) A fact which increases the risk, or which, if disclosed, would have been a fair reason for demanding a higher premium; any fact the knowledge or ignorance of which would naturally influence the insurer in making or refusing the contract, or in estimating the degree and character of the risk, or in fixing the rate. *Boggs v. Insurance Co.*, 30 Mo. 68; *Clark v. Insurance Co.*, 40 N. H. 338, 77 Am. Dec. 721; *Murphy v. Insurance Co.*, 205 Pa. 444, 55 Atl. 19; *Penn Mut. L. Ins. Co. v. Mechanics' Sav. Bank*, 72 Fed. 413, 19 C. C. A. 286, 38 L. R. A. 33.—**Principal fact.** In the law of evidence. A fact sought and proposed to be proved by evidence of other facts (termed "evidentiary facts") from which it is to be deduced by inference. A fact which is the principal and ultimate object of an inquiry, and respecting the existence of which a definite belief is required to be formed. 3 Benth. Jud. Ev. 3; Burrill, Circ. Ev. 3, 119.

—Ultimate fact. The final or resulting fact reached by processes of logical reasoning from the detached or successive facts in evidence, and which is fundamental and determinative of the whole case. *Levins v. Rovegno*, 71 Cal. 273, 12 Pac. 161; *Kahn v. Central Smelting Co.*, 2 Utah. 371; *Caywood v. Farrell*, 175 Ill. 480, 51 N. E. 775.

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FACTA. In old English law. Deeds. *Facta-armorum*, deeds or feats of arms; that is, jousts or tournaments. Cowell.

Facts. *Facta et casus*, facts and cases. Bract fol. 1b.

Facta sunt potentiora verbis. Deeds are more powerful than words.

Facta tenent multa quæ fieri prohibentur. 12 Coke, 124. Deeds contain many things which are prohibited to be done.

FACTIO TESTAMENTI. In the civil law. The right, power, or capacity of making a will; called "*factio activa*." Inst. 2, 10, 6.

The right or capacity of taking by will; called "*factio passiva*." Inst. 2, 10, 6.

FACTO. In fact; by an act; by the act or fact. *Ipsa facto*, by the act itself; by the mere effect of a fact, without anything superadded, or any proceeding upon it to give it effect. 3 Kent, Comm. 55, 58.

FACTOR. 1. A commercial agent, employed by a principal to sell merchandise consigned to him for that purpose, for and in behalf of the principal, but usually in his own name, being intrusted with the possession and control of the goods, and being remunerated by a commission, commonly called "factorage." Howland v. Woodruff, 60 N. Y. 80; In re Rabenau (D. C.) 118 Fed. 474; Lawrence v. Stonington Bank, 6 Conn. 527; Graham v. Duckwall, 8 Bush (Ky.) 17.

A factor is an agent who, in the pursuit of an independent calling, is employed by another to sell property for him, and is vested by the latter with the possession or control of the property, or authorized to receive payment therefor from the purchaser. Civ. Code Cal. § 2026; Civ. Code Dak. § 1168.

Classification. Factors are called "domestic" or "foreign" according as they reside and do business in the same state or country with the principal or in a different state or country. A domestic factor is sometimes called a "home" factor. Ruffner v. Hewitt, 7 W. Va. 585.

Synonyms. A factor differs from a "broker" in that he is intrusted with the possession, management, and control of the goods, (which gives him a special property in them,) while a broker acts as a mere intermediary without control or possession of the property; and further, a factor is authorized to buy and sell in his own name, as well as in that of the principal, which a broker is not. Edwards v. Hoeffinghoff (C. C.) 38 Fed. 641; Delafield v. Smith, 101 Wis. 664, 78 N. W. 170, 70 Am. St. Rep. 938; Graham v. Duckwall, 8 Bush (Ky.) 12; Slack v. Tucker, 23 Wall. 330, 23 L. Ed. 143. Factors are also frequently called "commission merchants;" and it is said that there is no difference in the meaning of these terms, the latter being perhaps more commonly used in America. Thompson v. Woodruff, 7 Cold. 410; Duguid v. Edwards, 50 Barb. (N. Y.) 288; Lyon v. Alford, 18 Conn. 80., Where an owner of goods to be shipped by sea consigns them to the care of an agent, who sails on the same vessel, has charge of the cargo on board, sells it abroad, and buys a return cargo out of the proceeds, such agent is strictly and properly a "factor,"

though in maritime law and usage he is commonly called a "supercargo." Beaw. Lex Merc. 44, 47; Liverm. Ag. 69, 70.

—**Factorage.** The allowance or commission paid to a factor by his principal. Winne v. Hammond, 37 Ill. 103; State v. Thompson, 129 Mo. 12, 25 S. W. 346.—**Factors' acts.** The name given to several English statutes (6 Geo. IV. c. 94; 5 & 6 Vict. c. 39; 40 & 41 Vict. c. 39) by which a factor is enabled to make a valid pledge of the goods, or of any part thereof, to one who believes him to be the *bona fide* owner of the goods.

2. The term is used in some of the states to denote the person who is elsewhere called "garnishee" or "trustee." See FACTORIZING PROCESS.

3. In Scotch law, a person appointed to transact business or manage affairs for another, but more particularly an estate-agent or one intrusted with the management of a landed estate, who finds tenants, makes leases, collects the rents, etc.

—**Judicial factor.** In Scotch law. A factor appointed by the courts in certain cases where it becomes necessary to intrust the management of property to another than the owner, as, where the latter is insane or imbecile or the infant heir of a decedent.

FACTORIZING PROCESS. In American law. A process by which the effects of a debtor are attached in the hands of a third person. A term peculiar to the practice in Vermont and Connecticut. Otherwise termed "trustee process" and "garnishment." Cross v. Brown, 19 R. I. 220, 33 Atl. 147.

FACTORY. In English law. The term includes all buildings and premises wherein, or within the close or curtilage of which, steam, water, or any mechanical power is used to move or work any machinery employed in preparing, manufacturing, or finishing cotton, wool, hair, silk, flax, hemp, jute, or tow. So defined by the statute 7 Vict. c. 15, § 73. By later acts this definition has been extended to various other manufacturing places. Mozley & Whitley.

Also a place where a considerable number of factors reside, in order to negotiate for their masters or employers. Enc. Brit.

In American law. The word "factory" does not necessarily mean a single building or edifice, but may apply to several, where they are used in connection with each other, for a common purpose, and stand together in the same inclosure. Liebenstein v. Insurance Co., 45 Ill. 303. And see Insurance Co. v. Brock, 57 Pa. 82; HERNISCHEL v. Texas Drug Co., 28 Tex. Civ. App. 1, 61 S. W. 419; Schott v. Harvey, 105 Pa. 227, 51 Am. Rep. 201.

In Scotch law. This name is given to a species of contract or employment which falls under the general designation of "agency," but which partakes both of the nature of a mandate and of a bailment of the kind called "*locatio ad operandum*." 1 Bell, Comm. 259.

—**Factory prices.** The prices at which goods may be bought at the factories, as distinguish-

ed from the prices of goods bought in the market after they have passed into the hands of third persons or shop-keepers. *Whipple v. Levett*, 2 Mason, 90, Fed. Cas. No. 17,518.

Facts cannot lie. 18 How. State Tr. 1187; 17 How. State Tr. 1430.

FACTUM. Lat. In old English law. A deed; a person's act and deed; anything stated or made certain; a sealed instrument; a deed of conveyance.

A fact; a circumstance; particularly a fact in evidence. Bract. fol. 16.

In testamentary law. The execution or due execution of a will. The *factum* of an instrument means not barely the signing of it, and the formal publication or delivery, but proof that the party well knew and understood the contents thereof, and did give, will, dispose, and do, in all things, as in the said will is contained. *Weatherhead v. Baskerville*, 11 How. 354, 13 L. Ed. 717.

In the civil law. Fact; a fact; a matter of fact, as distinguished from a matter of law. Dig. 41, 2, 1, 3.

In French law. A memoir which contains concisely set down the fact on which a contest has happened, the means on which a party founds his pretensions, with the refutation of the means of the adverse party. Vicat.

In old European law. A portion or allotment of land. Spelman.

—**Factum juridicum.** A juridical fact. Denotes one of the factors or elements constituting an obligation.—**Factum probandum.** Lat. In the law of evidence. The fact to be proved; a fact which is in issue, and to which evidence is to be directed. 1 Greenl. Ev. § 13.—**Factum probans.** A probative or evidentiary fact; a subsidiary or connected fact tending to prove the principal fact in issue; a piece of circumstantial evidence.

Factum a iudice quod ad ejus officium non spectat non ratum est. An action of a judge which relates not to his office is of no force. Dig. 50, 17, 170; 10 Coke, 76.

Factum cuique suum non adversario, nocere debet. Dig. 50, 17, 155. A party's own act should prejudice himself, not his adversary.

Factum infectum fieri nequit. A thing done cannot be undone. 1 Kames, Eq. 96, 259.

Factum negantis nulla probatio sit. Cod. 4, 19, 23. There is no proof incumbent upon him who denies a fact.

“**Factum**” non dicitur quod non perseverat. 5 Coke, 96. That is not called a “deed” which does not continue operative.

Factum unius alteri noceri non debet. Co. Litt. 152. The deed of one should not hurt another.

Facultas probationum non est angustanda. The power of proofs [right of offering or giving testimony] is not to be narrowed. 4 Inst. 279.

FACULTIES. In the law of divorce. The capability of the husband to render a support to the wife in the form of alimony, whether temporary or permanent, including not only his tangible property, but also his income and his ability to earn money. 2 Bish. Mar. & Div. § 446; *Lovett v. Lovett*, 11 Ala. 763; *Wright v. Wright*, 3 Tex. 168.

FACULTIES, COURT OF. In English ecclesiastical law. A jurisdiction or tribunal belonging to the archbishop. It does not hold pleas in any suits, but creates rights to pews, monuments, and particular places, and modes of burial. It has also various powers under 25 Hen. VIII. c. 21, in granting licenses of different descriptions, as a license to marry, a faculty to erect an organ in a parish church, to level a church-yard, to remove bodies previously buried. 4 Inst. 337.

FACULTY. In ecclesiastical law. A license or authority; a privilege granted by the ordinary to a man by favor and indulgence to do that which by law he may not do; e. g., to marry without banns, to erect a monument in a church, etc. *Termes de la Ley*.

In Scotch law. A power founded on consent, as distinguished from a power founded on property. 2 Kames, Eq. 265. G

FACULTY OF A COLLEGE. The corps of professors, instructors, tutors, and lecturers. To be distinguished from the board of trustees, who constitute the corporation. H

FACULTY OF ADVOCATES. The college or society of advocates in Scotland.

FADERFIUM. In old English law. A marriage gift coming from the father or brother of the bride.

FÆDER-FEOH. In old English law. The portion brought by a wife to her husband, and which reverted to a widow, in case the heir of her deceased husband refused his consent to her second marriage; i. e., “it reverted to her family in case she returned to them. Wharton. J

FÆSTING-MEN. Approved men who were strong-armed; *habentes homines* or rich men, men of substance; pledges or bondsmen, who, by Saxon custom, were bound to answer for each other's good behavior. Cowell; Du Cange. K

FAGGOT. A badge worn in popish times by persons who had recanted and abjured what was then adjudged to be heresy, as an emblem of what they had merited. Cowell. L

FAGGOT VOTES. A faggot vote is where a man is formally possessed of a right to vote for members of parliament, without possessing the substance which the vote should represent; as if he is enabled to buy a property, and at the same moment mortgage it to its full value for the mere sake of the vote. Such a vote is called a "faggot vote." See 7 & 8 Wm. III. c. 25, § 7. Wharton.

FAIDA. In Saxon law. Malice; open and deadly hostility; deadly feud. The word designated the enmity between the family of a murdered man and that of his murderer, which was recognized, among the Teutonic peoples, as justification for vengeance taken by any one of the former upon any one of the latter.

FAIL. 1. The difference between "fail" and "refuse" is that the latter involves an act of the will, while the former may be an act of inevitable necessity. Taylor v. Mason, 9 Wheat. 344, 6 L. Ed. 101. See Stallings v. Thomas, 55 Ark. 326, 18 S. W. 184; Telegraph Co. v. Irvin, 27 Ind. App. 62, 59 N. E. 327; Persons v. Hight, 4 Ga. 497.

2. A person is said to "fail" when he becomes insolvent and unable to meet his obligations as they mature. Davis v. Campbell, 3 Stew. (Ala.) 321; Mayer v. Hermann, 16 Fed. Cas. 1,242.

—**Failing circumstances.** A person (or a corporation or institution) is said to be in failing circumstances when he is about to fail, that is, when he is actually insolvent and is acting in contemplation of giving up his business because he is unable to carry it on. Appeal of Millard, 62 Conn. 184, 25 Atl. 658; Utley v. Smith, 24 Conn. 310, 63 Am. Dec. 163; Dodge v. Mastin (C. C.) 17 Fed. 663.—**Failing of record.** When an action is brought against a person who alleges in his plea matter of record in bar of the action, and avers to prove it by the record, but the plaintiff saith *nul tiel record*, viz., denies there is any such record, upon which the defendant has a day given him by the court to bring it in, if he fail to do it, then he is said to fail of his record, and the plaintiff is entitled to sign judgment. *Termes de la Ley*.

FAILLITE. In French law. Bankruptcy; failure; the situation of a debtor who finds himself unable to fulfill his engagements. Code de Com. arts. 442, 580; Civil Code La. art. 3522.

FAILURE. In a general sense, deficiency, want, or lack; ineffectualness; inefficiency as measured by some legal standard; an unsuccessful attempt. White v. Pettijohn, 23 N. C. 55; State v. Butler, 81 Minn. 103, 83 N. W. 483; Andrews v. Keep, 38 Ala. 317.

In commercial law, the suspension or abandonment of business by a merchant, manufacturer, bank, etc., in consequence of insolvency. American Credit Indemnity Co. v. Carrolton Furniture Mfg. Co., 95 Fed. 115, 86 O. C. A. 671; Terry v. Calman, 13 S. C.

220; State v. Lewis, 42 La. Ann. 847, 8 South. 602.

—**Failure of consideration.** As applied to notes, contracts, conveyances, etc., this term does not mean a want of consideration, but implies that a consideration, originally existing and good, has since become worthless or has ceased to exist or been extinguished, partially or entirely. Shirk v. Neible, 156 Ind. 66, 59 N. E. 281, 83 Am. St. Rep. 150; Crouch v. Davis, 23 Grat. (Va.) 75; Williamson v. Cline, 40 W. Va. 194, 20 S. E. 920.—**Failure of evidence.** Judicially speaking, a total "failure of evidence" means not only the utter absence of all evidence, but it also means a failure to offer proof, either positive or inferential, to establish one or more of the many facts, the establishment of all of which is indispensable to the finding of the issue for the plaintiff. Cole v. Hebb, 7 Gill & J. (Md.) 23.—**Failure of issue.** The failure at a fixed time, or the total extinction, of issue to take an estate limited over by an executory devise. A definite failure of issue is when a precise time is fixed by the will for the failure of issue, as in the case where there is a devise to one, but if he dies without issue or lawful issue living at the time of his death, etc. An indefinite failure of issue is the period when the issue or descendants of the first taker shall become extinct, and when there is no longer any issue of the issue of the grantee, without reference to any particular time or any particular event. Huxford v. Milligan, 50 Ind. 546; Vaughan v. Dickes, 20 Pa. 514; Parkhurst v. Harrower, 142 Pa. 432, 21 Atl. 826, 24 Am. St. Rep. 507; Hackney v. Tracy, 137 Pa. 53, 20 Atl. 560; Woodlief v. Duckwall, 19 Ohio Cir. Ct. R. 564.—**Failure of justice.** The defeat of a particular right, or the failure of reparation for a particular wrong, from the lack of a legal remedy for the enforcement of the one or the redress of the other.—**Failure of record.** Failure of the defendant to produce a record which he has alleged and relied on in his plea.—**Failure of title.** The inability or failure of a vendor to make good title to the whole or a part of the property which he has contracted to sell.—**Failure of trust.** The lapsing or non-efficiency of a proposed trust, by reason of the defect or insufficiency of the deed or instrument creating it, or on account of illegality, indefiniteness, or other legal impediment.

FAINT (or FEIGNED) ACTION. In old English practice. An action was so called where the party bringing it had no title to recover, although the words of the writ were true; a *false* action was properly where the words of the writ were false. Litt. § 689; Co. Litt. 361.

FAINT PLEADER. A fraudulent, false, or collusive manner of pleading to the deception of a third person.

FAIR, n. In English law. A greater species of market; a privileged market. It is an incorporeal hereditament, granted by royal patent, or established by prescription presupposing a grant from the crown.

In the earlier English law, the franchise to hold a fair conferred certain important privileges; and fairs, as legally recognized institutions, possessed distinctive legal characteristics. Most of these privileges and characteristics, however, are now obsolete. In America, fairs, in the ancient technical sense, are unknown, and, in the modern and popular sense, they are entirely voluntary and non-legal, and

transactions arising in or in connection with them are subject to the ordinary rules governing sales, etc.

FAIR, *adj.* Just; equitable; even-handed; equal, as between conflicting interests.

—**Fair abridgment.** In copyright law. An abridgment consisting not merely in the arrangement of excerpts, but one involving real and substantial condensation of the materials by the exercise of intellectual labor and judgment. *Folsom v. Marsh*, 9 Fed. Cas. 345.—**Fair consideration.** In bankruptcy law. One which is honest or free from suspicion, or one actually valuable, but not necessarily adequate or a full equivalent. *Myers v. Fultz*, 124 Iowa, 437, 100 N. W. 351.—**Fair-play men.** A local irregular tribunal which existed in Pennsylvania about the year 1769, as to which see *Serg. Land Laws Pa. 77*; 2 *Smith, Laws Pa. 195*.—**Fair pleader.** See **BEAU-PLÉADER**.—**Fair preponderance.** In the law of evidence. Such a superiority of the evidence on one side that the fact of its outweighing the evidence on the other side can be perceived if the whole evidence is fairly considered. *Bryan v. Railroad Co.*, 63 Iowa, 464, 19 N. W. 295; *State v. Grear*, 29 Minn. 225, 13 N. W. 140.—**Fair sale.** In foreclosure and other judicial proceedings, this means a sale conducted with fairness and impartiality as respects the rights and interests of the parties affected. *Lalor v. McCarthy*, 24 Minn. 419.—**Fair trial.** One conducted according to due course of law; a trial before a competent and impartial jury. *Railroad Co. v. Cook*, 37 Neb. 435, 55 N. W. 943; *Railroad Co. v. Gardner*, 19 Minn. 136 (Gil. 99), 18 Am. Rep. 334.

FAIRLY. Justly; rightly; equitably. With substantial correctness.

"Fairly" is not synonymous with "truly," and "truly" should not be substituted for it in a commissioner's oath to take testimony fairly. Language may be truly, yet unfairly, reported; that is, an answer may be truly written down, yet in a manner conveying a different meaning from that intended and conveyed. And language may be fairly reported, yet not in accordance with strict truth. *Lawrence v. Finch*, 17 N. J. Eq. 234.

FAIT. L. Fr. Anything done. A deed; act; fact.

A deed lawfully executed. Com. Dig.
Feme de fait. A wife *de facto*.

FAIT ENROLLE. A deed enrolled, as a bargain and sale of freeholds. 1 Keb. 563.

FAIT JURIDIQUE. In French law. A juridical fact. One of the factors or elements constitutive of an obligation.

FAITH. 1. Confidence; credit; reliance. Thus, an act may be said to be done "on the faith" of certain representations.

2. Belief; credence; trust. Thus, the constitution provides that "full faith and credit" shall be given to the judgments of each state in the courts of the others.

3. Purpose; intent; sincerity; state of knowledge or design. This is the meaning of the word in the phrases "good faith" and "bad faith."

In **Scotch law.** A solemn pledge; an oath. "To make faith" is to swear, with the

right hand uplifted, that one will declare the truth. 1 Forb. Inst. pt. 4, p. 235.

FAITHFULLY. As used in bonds of public and private officers, this term imports not only honesty, but also a punctilious discharge of all the duties of the office, requiring competence, diligence, and attention, without any malfeasance or nonfeasance, aside from mere mistakes. *State v. Chadwick*, 10 Or. 468; *Hoboken v. Evans*, 31 N. J. Law, 343; *Harris v. Hanson*, 11 Me. 245; *American Bank v. Adams*, 12 Pick. (Mass.) 306; *Union Bank v. Clossey*, 10 Johns. (N. Y.) 273; *Perry v. Thompson*, 16 N. J. Law, 73.

FAKIR. A street peddler who disposes of worthless wares, or of any goods above their value, by means of any false representation, trick, device, lottery, or game of chance. *Mills' Ann. St. Colo.* § 1400.

FAITOURS. Idle persons; idle livers; vagabonds. *Cowell*; *Blount*.

FALANG. In old English law. A jacket or close coat. *Blount*.

FALCARE. In old English law. To mow. *Falcare prata*, to mow or cut grass in meadows laid in for hay. A customary service to the lord by his inferior tenants.

Jus falcandi, the right of cutting wood. *Bract. fol. 231*.

Falcata, grass fresh mown, and laid in swaths.

Falcatio, a mowing. *Bract. fols. 35b, 230*.

Falcator, a mower; a servile tenant who performed the labor of mowing.

Falcatura, a day's mowing.

FALCIDIA. In Spanish law. The Falcidian portion; the portion of an inheritance which could not be legally bequeathed away from the heir, viz., one-fourth.

FALCIDIAN LAW. In Roman law. A law on the subject of testamentary disposition, enacted by the people in the year of Rome 714, on the proposition of the tribune Falcidius. By this law, the testator's right to burden his estate with legacies was subjected to an important restriction. It prescribed that no one could bequeath more than three-fourths of his property in legacies, and that the heir should have at least one-fourth of the estate, and that, should the testator violate this prescript, the heir may have the right to make a proportional deduction from each legatee, so far as necessary. *Mackeld. Rom. Law, § 771; Inst. 2, 22*.

FALCIDIAN PORTION. That portion of a testator's estate which, by the Falcidian law, was required to be left to the heir, amounting to at least one-fourth.

FALD, or FALDA. A sheep-fold. *Cowell*.

FALDA. Span. In Spanish law. The slope or skirt of a hill. *Fossat v. United States*, 2 Wall. 673, 17 L. Ed. 739.

FALDÆ CURSUS. In old English law. A fold-course; the course (going or taking about) of a fold. *Spelman*.

A sheep walk, or feed for sheep. 2 Vent. 139.

FALDAGE. The privilege which anciently several lords reserved to themselves of setting up folds for sheep in any fields within their manors, the better to manure them, and this not only with their own but their tenants' sheep. Called, variously, "*secta faldare*," "fold-course," "free-fold," "*faldagii*." *Cowell*; *Spelman*.

FALDATA. In old English law. A flock or fold of sheep. *Cowell*.

FALDFEY. Sax. A fee or rent paid by a tenant to his lord for leave to fold his sheep on his own ground. *Blount*.

FALDISDORY. In ecclesiastical law. The bishop's seat or throne within the chancel.

FALDSOCA. Sax. The liberty or privilege of foldage.

FALDSTOOL. A place at the south side of the altar at which the sovereign kneels at his coronation. *Wharton*.

FALDWORTH. In Saxon law. A person of age that he may be reckoned of some decennary. *Du Fresne*.

FALERÆ. In old English law. The tackle and furniture of a cart or wain. *Blount*.

FALESIA. In old English law. A hill or down by the sea-side. *Co. Litt.* 5b; *Domesday*.

FALK-LAND. See FOLo-LAND.

FALL. In Scotch law. To lose. To fall from a right is to lose or forfeit it. 1 *Kames*, Eq. 228.

FALL OF LAND. In English law. A quantity of land six ells square superficial measure.

FALLO. In Spanish law. The final decree or judgment given in a controversy at law.

FALLOW-LAND. Land plowed, but not sown, and left uncultivated for a time after successive crops.

FALLUM. In old English law. An unexplained term for some particular kind of land. *Cowell*.

FALSA DEMONSTRATIO. In the civil law. False designation; erroneous descrip-

tion of a person or thing in a written instrument. *Inst.* 2, 20, 30.

Falsa demonstratio non nocet, cum de corpore (persona) constat. False description does not injure or vitiate, provided the thing or person intended has once been sufficiently described. Mere false description does not make an instrument inoperative. *Broom*, Max. 629; 6 *Term*, 676; 11 *Mees.* & *W.* 189; *Cleveland v. Smith*, 2 *Story*, 291, *Fed. Cas. No.* 2,874.

Falsa demonstratione legatum non perimi. A bequest is not rendered void by an erroneous description. *Inst.* 2, 20, 30; *Broom*, Max. 645.

Falsa grammatica non vitiat concessionem. False or bad grammar does not vitiate a grant. *Shep. Touch.* 55; 9 *Coke*, 48a. Neither false Latin nor false English will make a deed void when the intent of the parties doth plainly appear. *Shep. Touch.* 87.

FALSA MONETA. In the civil law. False or counterfeit money. *Cod.* 9, 24.

Falsa orthographia non vitiat chartam, concessionem. False spelling does not vitiate a deed. *Shep. Touch.* 55, 87; 9 *Coke*, 48a; *Wing*. Max. 19.

FALSARE. In old English law. To counterfeit. *Quia falsavit sigillum*, because he counterfeited the seal. *Bract.* fol. 276b.

FALSARIUS. A counterfeiter. *Townsh.* Pl. 260.

FALSE. Untrue; erroneous; deceitful; contrived or calculated to deceive and injure. Unlawful. In law, this word means something more than untrue; it means something designedly untrue and deceitful, and implies an intention to perpetrate some treachery or fraud. *Hatcher v. Dunn*, 102 *Iowa*, 411, 71 *N. W.* 343, 36 *L. R. A.* 689; *Mason v. Association*, 18 *U. C. C. P.* 19; *Ratterman v. Ingalls*, 48 *Ohio St.* 463, 23 *N. E.* 163.

—False action. See FEIGNED ACTION.—**False answer.** In pleading. A sham answer; one which is false in the sense of being a mere pretense set up in bad faith and without color of fact. *Howe v. Elwell*, 57 *App. Div.* 357, 67 *N. Y. Supp.* 1108; *Farnsworth v. Halstead* (Sup.) 10 *N. Y. Supp.* 763.—**False character.** Personating the master or mistress of a servant, or any representative of such master or mistress, and giving a false character to the servant is an offense punishable in England with a fine of £20. *St. 32 Geo. III. c. 55*.—**False claim.** In the forest law, was where a man claimed more than his due, and was amerced and punished for the same. *Manw. c. 25*; *Tomlins*.—**False entry.** In banking law. An entry in the books of a bank which is intentionally made to represent what is not true or does not exist, with intent either to deceive its officers or a bank examiner or to defraud the bank. *Agnew v. U. S.*, 165 *U. S.* 36, 17 *Sup. Ct.* 235, 41 *L. Ed.* 624; *U. S. v. Peters* (C. C.) 87 *Fed.* 984.—**False fact.** In the law of evidence. A

feigned, simulated, or fabricated fact; a fact not founded in truth, but existing only in assertion; the deceitful semblance of a fact.—False imprisonment. See IMPRISONMENT.—**False instrument.** A counterfeit; one made in the similitude of a genuine instrument and purporting on its face to be such. U. S. v. Howell, 11 Wall. 435, 20 L. Ed. 195; U. S. v. Owens (C. C.) 37 Fed. 115; State v. Willson, 28 Minn. 52, 9 N. W. 28.—**False judgment.** In old English law. A writ which lay when a false judgment had been pronounced in a court not of record, as a county court, court baron, etc. Fitzh. Nat. Brev. 17, 18. In old French law. The defeated party in a suit had the privilege of accusing the judges of pronouncing a false or corrupt judgment, whereupon the issue was determined by his challenging them to the combat or *duellum*; This was called the "appeal of false judgment." Montesq. Esprit des Loix, liv. 28, c. 27.—**False Latin.** When law proceedings were written in Latin, if a word were significant though not good Latin, yet an indictment, declaration, or fine should not be made void by it; but if the word were not Latin, nor allowed by the law, and it were in a material point, it made the whole vicious. (5 Coke, 121; 2 Nels. 830). Wharton.—**False lights and signals.** Lights and signals falsely and maliciously displayed for the purpose of bringing a vessel into danger.—**False news.** Spreading false news, whereby discord may grow between the queen of England and her people, or the great men of the realm, or which may produce other mischiefs, still seems to be a misdemeanor, under St. 3 Edw. I. c. 34. Steph. Cr. Dig. § 95.—**False oath.** See PERJURY.—**False personation.** The criminal offense of falsely representing some other person and acting in the character thus unlawfully assumed, in order to deceive others, and thereby gain some profit or advantage, or enjoy some right or privilege belonging to the one so personated, or subject him to some expense, charge, or liability. See 4 Steph. Comm. 181, 290.—**False plea.** See SHAM PLEA.—**False pretenses.** In criminal law. False representations and statements, made with a fraudulent design to obtain money, goods, wares, or merchandise, with intent to cheat. 2 Bouv. Inst. no. 2308. A representation of some fact or circumstance, calculated to mislead, which is not true. Com. v. Drew, 19 Pick. (Mass.) 184; State v. Grant, 86 Iowa, 216, 53 N. W. 120. False statements or representations made with intent to defraud, for the purpose of obtaining money or property. A pretense is the holding out or offering to others something false and feigned. This may be done either by words or actions, which amount to false representations. In fact, false representations are inseparable from the idea of a pretense. Without a representation which is false there can be no pretense. State v. Joaquin, 43 Iowa, 132.—**False representation.** See FRAUD; DECEIT.—**False return.** See RETURN.—**False swearing.** The misdemeanor committed in English law by a person who swears falsely before any person authorized to administer an oath upon a matter of public concern, under such circumstances that the false swearing would have amounted to perjury if committed in a judicial proceeding; as where a person makes a false affidavit under the bills of sale acts. Steph. Cr. Dig. p. 84. And see O'Bryan v. State, 27 Tex. App. 339, 11 S. W. 443.—**False token.** In criminal law. A false document or sign of the existence of a fact, used with intent to defraud, for the purpose of obtaining money or property. State v. Renick, 33 Or. 584, 56 Pac. 275, 44 L. R. A. 266, 72 Am. St. Rep. 758; People v. Stone, 9 Wend. (N. Y.) 188.—**False verdict.** See VERDICT.—**False weights.** False weights and measures are such as do not comply with the standard prescribed by the state or government, or with the custom prevailing in the

place and business in which they are used. Pen. Code Cal. 1903, § 552; Pen. Code Idaho, 1901, § 5003.

FALSEDAD. In Spanish law. Falsity; an alteration of the truth. Las Partidas, pt. 3, tit. 26, l. 1.

Deception; fraud. Id. pt. 3, tit. 32, l. 21.

FALSEHOOD. A statement or assertion known to be untrue, and intended to deceive. A willful act or declaration contrary to the truth. Putnam v. Osgood, 51 N. H. 207.

In Scotch law. A fraudulent imitation or suppression of truth, to the prejudice of another. Bell. "Something used and published falsely." An old Scottish *nomen juris*. "Falsehood is undoubtedly a nominate crime, so much so that Sir George Mackenzie and our older lawyers used no other term for the falsification of writs, and the name 'forgery' has been of modern introduction." "If there is any distinction to be made between 'forgery' and 'falsehood,' I would consider the latter to be more comprehensive than the former." 2 Broun, 77, 78.

FALSI CRIMEN. Fraudulent subornation or concealment, with design to darken or hide the truth, and make things appear otherwise than they are. It is committed (1) by words, as when a witness swears falsely; (2) by writing, as when a person antedates a contract; (3) by deed, as selling by false weights and measures. Wharton. See CRIMEN FALSI.

FALSIFICATION. In equity practice. The showing an item in the debit of an account to be either wholly false or in some part erroneous. 1 Story, Eq. Jur. § 525. And see Phillips v. Belden, 2 Edw. Ch. 23; Pit v. Cholmondeley, 2 Ves. Sr. 565; Kennedy v. Adickes, 37 S. C. 174, 15 S. E. 922; Tate v. Gairdner, 119 Ga. 133, 46 S. E. 73.

FALSIFY. To disprove; to prove to be false or erroneous; to avoid or defeat; spoken of verdicts, appeals, etc.

To counterfeit or forge; to make something false; to give a false appearance to anything.

In equity practice. To show, in accounting before a master in chancery, that a charge has been inserted which is wrong; that is, either wholly false or in some part erroneous. Pull. Accts. 162; 1 Story, Eq. Jur. § 525. See FALSIFICATION.

FALSIFYING A RECORD. A high offense against public justice, punishable in England by 24 & 25 Vict. c. 98, §§ 27, 28, and in the United States, generally, by statute.

FALSING. In Scotch law. False making; forgery. "Falsing of *evidentis*." 1 Pitt. Crim. Tr. pt. 1, p. 85.

Making or proving false.

—**Falsing of dooms.** In Scotch law. The proving the injustice, *falsity*, or error of the *doom* or sentence of a court. Tomlins; Jacob. The reversal of a sentence or judgment. Skene. An appeal. Bell.

FALSO RETORNO BREVIUM. A writ which formerly lay against the sheriff who had execution of process for false returning of writs. Reg. Jud. 43b.

FALSONARIUS. A forger; a counterfeit. Hov. 424.

FALSUM. Lat. In the civil law. A false or forged thing; a fraudulent simulation; a fraudulent counterfeit or imitation, such as a forged signature or instrument. Also falsification, which may be either by falsehood, concealment of the truth, or fraudulent alteration, as by cutting out or erasing part of a writing.

FALSUS. Lat. False; fraudulent; erroneous. Deceitful; mistaken.

Falsus in uno, falsus in omnibus. False in one thing, false in everything. Where a party is clearly shown to have embezzled one article of property, it is a ground of presumption that he may have embezzled others also. The Boston, 1 Sumn. 328, 356, Fed. Cas. No. 1,673; The Santissima Trinidad, 7 Wheat. 339, 5 L. Ed. 454. This maxim is particularly applied to the testimony of a witness, who, if he is shown to have sworn falsely in one detail, may be considered unworthy of belief as to all the rest of his evidence. Grimes v. State, 63 Ala. 168; Wilson v. Coulter, 29 App. Div. 85, 51 N. Y. Supp. 804; White v. Disher, 67 Cal. 402, 7 Pac. 826.

FAMA. Lat. Fame; character; reputation; report of common opinion.

Fama, fides et oculus non patiuntur ludum. 3 Bulst. 226. Fame, faith, and eyesight do not suffer a cheat.

Fama quæ suspicionem inducit, oriri debet apud bonos et graves, non quidem malevolos et maledicos, sed providas et fide dignas personas, non semel sed sæpius, quia clamor minuit et defamatio manifestat. 2 Inst. 52. Report, which induces suspicion, ought to arise from good and grave men; not, indeed, from malevolent and malicious men, but from cautious and credible persons; not only once, but frequently; for clamor diminishes, and defamatio manifests.

FAMACIDE. A killer of reputation; a slanderer.

FAMILIA. In Roman law. A household; a family. On the composition of the Roman family, see *AGNATI*; *COGNATI*; and see Mackeld. Rom. Law, § 144.

Family right; the right or *status* of being the head of a family, or of exercising the *patria potestas* over others. This could belong only to a Roman citizen who was a "man in his own right," (*homo sui juris*.) Mackeld. Rom. Law, §§ 133, 144.

In old English law. A household; the body of household servants; a quantity of land, otherwise called "*mansa*," sufficient to maintain one family.

In Spanish law. A family, which might consist of domestics or servants. It seems that a single person owning negroes was the "head of a family," within the meaning of the colonization laws of Coahuila and Texas. State v. Sullivan, 9 Tex. 156.

FAMILIÆ EMPTOR. In Roman law. An intermediate person who purchased the aggregate inheritance when sold *per æs et libram*, in the process of making a will under the Twelve Tables. This purchaser was merely a man of straw, transmitting the inheritance to the *hæres* proper. Brown.

FAMILIÆ ERCISCUNDÆ. In Roman law. An action for the partition of the aggregate succession of a *familia*, where that devolved upon *co-hæredes*. It was also applicable to enforce a contribution towards the necessary expenses incurred on the *familia*. See Mackeld. Rom. Law, § 499.

FAMILIARES REGIS. Persons of the king's household. The ancient title of the "six clerks" of chancery in England. Crabb, Com. Law, 184; 2 Reeve, Eng. Law, 249, 251.

FAMILY. A collective body of persons who live in one house and under one head or management. Jarboe v. Jarboe, 106 Mo. App. 459, 79 S. W. 1162; Dodge v. Boston & P. R. Corp., 154 Mass. 299, 28 N. E. 243, 13 L. R. A. 318; Tyson v. Reynolds, 52 Iowa, 431, 3 N. W. 469.

A family comprises a father, mother, and children. In a wider sense, it may include domestic servants; all who live in one house under one head. In a still broader sense, a group of blood-relatives; all the relations who descend from a common ancestor, or who spring from a common root. See Civil Code La. art. 3522, no. 16; 9 Ves. 323.

A husband and wife living together may constitute a "family," within the meaning of that word as used in a homestead law. Miller v. Finegan, 26 Fla. 29, 7 South. 140, 6 L. R. A. 813.

"Family," in its origin, meant "servants;" but, in its more modern and comprehensive meaning, it signifies a collective body of persons living together in one house, or within the cur-

tilage, in legal phrase. *Wilson v. Cochran*, 31 Tex. 677, 98 Am. Dec. 553.

"Family" may mean children, wife and children, blood-relatives, or the members of the domestic circle, according to the connection in which the word is used. *Spencer v. Spencer*, 11 Paige (N. Y.) 159.

"Family," in popular acceptance, includes parents, children, and servants,—all whose domicile or home is ordinarily in the same house and under the same management and head. In a statute providing that to gain a settlement in a town one must have "supported himself and his family therein" for six years, it includes the individuals whom it was the right of the head to control, and his duty to support. The wife is a member of the family, within such an enactment. *Cheshire v. Burlington*, 31 Conn. 326.

—**Family arrangement.** A term denoting an agreement between a father and his children, or between the heirs of a deceased father, to dispose of property, or to partition it in a different manner than that which would result if the law alone directed it, or to divide up property without administration. In these cases, frequently, the mere relation of the parties will give effect to bargains otherwise without adequate consideration. 1 Chit. Pr. 67; 1 Turn. & R. 13.—**Family Bible.** A Bible containing a record of the births, marriages, and deaths of the members of a family.—**Family meeting.** An institution of the laws of Louisiana, being a council of the relatives (or, if there are no relatives, of the friends) of a minor, for the purpose of advising as to his affairs and the administration of his property. The family meeting is called by order of a judge, and presided over by a justice or notary, and must consist of at least five persons, who are put under oath. In re Bothick, 44 La. Ann. 1037; 11 South. 712; Civ. Code La. art. 305. It corresponds to the "conseil de famille" of French law, *q. v.*—**Family settlement.** A term of practically the same signification as "family arrangement," *q. v. supra.* See *Willey v. Hodge*, 104 Wis. 81, 80 N. W. 75, 76 Am. St. Rep. 852.

FAMOSUS. In the civil and old English law. Relating to or affecting character or reputation; defamatory; slanderous.

—**Famosus libellus.** A libelous writing. A term of the civil law denoting that species of *injuria* which corresponds nearly to libel or slander.

FANAL. Fr. In French marine law. A large lantern, fixed upon the highest part of a vessel's stern.

FANATICS. Persons pretending to be inspired, and being a general name for Quakers, Anabaptists, and all other sectaries, and factious dissenters from the Church of England. (St. 13 Car. II. c. 6.) Jacob.

FANEGA. In Spanish law. A measure of land varying in different provinces, but in the Spanish settlements in America consisting of 6,400 square varas or yards.

FAQUEER, or FAKIR. A Hindu term for a poor man, mendicant; a religious beggar.

FARANDMAN. In Scotch law. A traveller or merchant stranger. Skene.

FARDEL OF LAND. In old English law. The fourth part of a yard-land. Noy says an eighth only, because, according to him, two fardels make a nook, and four nooks a yard-land. Wharton.

FARDELLA. In old English law. A bundle or pack; a fardel. *Meta*, lib. 1, c. 22, § 10.

FARDING-DEAL. The fourth part of an acre of land. Spelman.

FARE. A voyage or passage by water; also the money paid for a passage either by land or by water. Cowell.

The price of passage, or the sum paid or to be paid for carrying a passenger. *Chase v. New York Cent. R. Co.*, 26 N. Y. 526.

FARINAGIUM. A mill; a toll of meal or flour. Jacob; Spelman.

FARLEU. Money paid by tenants in lieu of a heriot. It was often applied to the best chattel, as distinguished from *heriot*, the best beast. Cowell.

FARLINGARIL. Whoremongers and adulterers.

FARM, n. A certain amount of provision reserved as the rent of a messuage. Spelman.

Rent generally which is reserved on a lease; when it was to be paid in money, it was called "*blanche ferme*." Spelman; 2 Bl. Comm. 42. G

A term, a lease of lands; a leasehold interest. 2 Bl. Comm. 17; 1 Reeve, Eng. Law, 301, note. The land itself, let to farm or rent. 2 Bl. Comm. 368. H

A portion of land used for agricultural purposes, either wholly or in part.

The original meaning of the word was "rent," and by a natural transition it came to mean the land out of which the rent issued. I

In old English law. A lease of other things than land, as of imposts. There were several of these, such as "the sugar farm," "the silk farm," and farms of wines and currents, called "petty farms." See 2 How. State Tr. 1197-1206. J

In American law. "Farm" denotes a tract of land devoted in part, at least, to cultivation, for agricultural purposes, without reference to its extent, or to the tenure by which it is held. In re Drake (D. C.) 114 Fed. 231; *People ex rel. Rogers v. Caldwell*, 142 Ill. 434, 32 N. E. 691; *Kendall v. Miller*, 47 How. Prac. (N. Y.) 443; *Com. v. Carmalt*, 2 Bin. (Pa.) 238. K

FARM, v. To lease or let; to demise or grant for a limited term and at a stated rental. L

—**Farm let.** Operative words in a lease, which strictly mean to let upon payment of a M

certain rent in farm; *i. e.*, in agricultural produce.—**Farm out.** To let for a term at a stated rental. Among the Romans the collection of revenue was farmed out, and in England taxes and tolls sometimes are.

FARMER. 1. The lessee of a farm. It is said that every lessee for life or years, although it be but of a small house and land, is called "farmer." This word implies no mystery, except it be that of husbandman. Cunningham; Cowell.

2. A husbandman or agriculturist; one who cultivates a farm, whether the land be his own or another's.

3. One who assumes the collection of the public revenues, taxes, excise, etc., for a certain commission or percentage; as a *farmer* of the revenues.

FARO. An unlawful game of cards, in which all the other players play against the banker or dealer, staking their money upon the order in which the cards will lie and be dealt from the pack. Webster; Ward v. State, 22 Ala. 19; U. S. v. Smith, 27 Fed. Cas. 1149; Patterson v. State, 12 Tex. App. 224.

FARRAGO LIBELLI. Lat. An ill-composed book containing a collection of miscellaneous subjects not properly associated nor scientifically arranged. Wharton.

FARTHING. The fourth part of an English penny.

—**Farthing of gold.** An ancient English coin, containing in value the fourth part of a noble.

FARYNDON INN. The ancient appellation of Serjeants' Inn, Chancery lane.

FAS. Lat. Right; justice; the divine law. 3 Bl. Comm. 2; Calvin.

FASIUS. In old English law. A faggot of wood.

FAST. In Georgia, a "fast" bill of exceptions is one which may be taken in injunction suits and similar cases, at such time and in such manner as to bring the case up for review with great expedition. It must be certified within twenty days from the rendering of the decision. Sewell v. Edmonston, 66 Ga. 353.

FAST-DAY. A day of fasting and penitence, or of mortification by religious abstinence. See 1 Chit. Archb. Pr. (12th Ed.) 160, et seq.

FAST ESTATE. See ESTATE.

FASTERMANS, or FASTING-MEN. Men in repute and substance; pledges, sureties, or bondsmen, who, according to the Saxon polity, were *fast* bound to answer for each other's peaceable behavior. Enc. Lond.

FASTI. In Roman law. Lawful. *Dies fasti*, lawful days; days on which justice could lawfully be administered by the prætor. See DIES FASTI.

Fatetur facinus qui judicium fugit. 3 Inst. 14. He who flees judgment confesses his guilt.

FATHER. The male parent. He by whom a child is begotten. As used in law, this term may (according to the context and the nature of the instrument) include a putative as well as a legal father, also a stepfather, an adoptive father, or a grandfather, but is not as wide as the word "parent," and cannot be so construed as to include a female. Lind v. Burke, 56 Neb. 785, 77 N. W. 444; Crook v. Webb, 125 Ala. 457, 28 South. 384; Cotheal v. Cotheal, 40 N. Y. 410; Lantznesster v. State, 19 Tex. App. 321; Thornburg v. American Strawboard Co., 141 Ind. 443, 40 N. E. 1062, 50 Am. St. Rep. 334.

—**Father-in-law.** The father of one's wife or husband.—**Putative father.** The alleged or reputed father of an illegitimate child. State v. Nestaval, 72 Minn. 415, 75 N. W. 725.

FATHOM. A nautical measure of six feet in length. Occasionally used as a superficial measure of land and in mining, and in that case it means a square fathom or thirty-six square feet. Nahaolelua v. Kaaahu, 9 Hawaii, 601.

FATUA MULIER. A whore. Du Fresne.

FATUITAS. In old English law. Fatuity; idiocy. Reg. Orig. 266.

FATUM. Lat. Fate; a superhuman power; an event or cause of loss, beyond human foresight or means of prevention.

FATUOUS PERSON. One entirely destitute of reason; *is qui omnino desipit*. Ersk. Inst. 1, 7, 48.

FATUUS. An idiot or fool. Bract. fol. 420b.

Foolish; absurd; indiscreet; or ill considered. *Fatum judicium*, a foolish judgment or verdict. Applied to the verdict of a jury which, though false, was not criminally so, or did not amount to perjury. Bract. fol. 289.

Fatuus, apud jurisconsultos nostros, accipitur pro non compos mentis; et fatuus dicitur, qui omnino desipit. 4 Coke, 128. Fatuous, among our jurisconsults, is understood for a man not of right mind; and he is called "*fatuus*" who is altogether foolish.

Fatuus præsumitur qui in proprio nomine errat. A man is presumed to be simple who makes a mistake in his own name. Code, 6, 24, 14; Van Alst v. Hunter, 5 Johns. Ch. (N. Y.) 148, 161.

FAUBOURG. In French law, and in Louisiana. A district or part of a town adjoining the principal city; a suburb. See *City Council of Lafayette v. Holland*, 18 La. 286.

FAUCES TERRÆ. (Jaws of the land.) Narrow headlands and promontories, inclosing a portion or arm of the sea within them. 1 Kent, Comm. 367, and note; Hale, *De Jure Mar.* 10; The *Harriet*, 1 Story, 251, 259, Fed. Cas. No. 6,099.

FAULT. In the civil law. Negligence; want of care. An improper act or omission, injurious to another, and conspiring through negligence, rashness, or ignorance.

There are in law three degrees of faults,—the gross, the slight, and the very slight fault. The *gross* fault is that which proceeds from inexcusable negligence or ignorance; it is considered as nearly equal to fraud. The *slight* fault is that want of care which a prudent man usually takes of his business. The *very slight* fault is that which is excusable, and for which no responsibility is incurred. Civil Code La. art. 3556, par. 13.

In American law. Negligence; an error or defect of judgment or of conduct; any deviation from prudence, duty, or rectitude; any shortcoming or neglect of care or performance resulting from inattention, incapacity, or perversity; a wrong tendency, course, or act. *Railroad Co. v. Berry*, 2 Ind. App. 427, 28 N. E. 714; *Railway Co. v. Austin*, 104 Ga. 614, 30 S. E. 770; *School Dist. v. Boston, H. & E. R. Co.*, 102 Mass. 553, 3 Am. Rep. 502; *Dorr v. Harkness*, 49 N. J. Law, 571, 10 Atl. 400, 60 Am. Rep. 656.

In commercial law. Defect; imperfection; blemish. See WITH ALL FAULTS.

In mining law. A dislocation of strata; particularly, a severance of the continuity of a vein or lode by the dislocation of a portion of it.

FAUTOR. In old English law. A favorer or supporter of others; an abettor. Cowell; Jacob. A partisan. One who encouraged resistance to the execution of process.

In Spanish law. Accomplice; the person who aids or assists another in the commission of a crime.

FAUX. In old English law. False; counterfeit. *Faux action*, a false action. Litt. § 688. *Faux money*, counterfeit money. St. Westm. 1, c. 15. *Faux peys*, false weights. Britt. c. 20. *Faux serement*, a false oath. St. Westm. 1, c. 38.

In French law. A falsification or fraudulent alteration or suppression of a thing by words, by writings, or by acts without either. Biret.

"*Faux* may be understood in three ways. In its most extended sense it is the alteration of

truth, with or without intention; it is nearly synonymous with 'lying.' In a less extended sense, it is the alteration of truth, accompanied with fraud, *mutatio veritatis cum dolo facta*. And lastly, in a narrow, or rather the legal, sense of the word, when it is a question to know if the *faux* be a crime, it is the fraudulent alteration of the truth in those cases ascertained and punished by the law." Toullier, t. 9, n. 188.

In the civil law. The fraudulent alteration of the truth. The same with the Latin *falsum* or *crimen falsi*.

FAVOR. Bias; partiality; lenity; prejudice. See CHALLENGE.

Favorabilia in lege sunt fiscus, dos, vita, libertas. Jenk. Cent. 94. Things favorably considered in law are the treasury, dower, life, liberty.

Favorabiliores rei, potius quam actores, habentur. The condition of the defendant must be favored, rather than that of the plaintiff. In other words, *mellior est conditio defendentis.* Dig. 50, 17, 125; Broom, Max. 715.

Favorabiliores sunt executiones aliis processibus quibuscunque. Co. Litt. 289. Executions are preferred to all other processes whatever.

Favores ampliandi sunt; odia restringenda. Jenk. Cent. 186. Favors are to be enlarged; things hateful restrained. G

FEAL. Faithful. Tenants by knight service swore to their lords to be *feal* and *leal*; *i. e.*, faithful and loyal.

FEAL AND DIVOT. A right in Scotland, similar to the right of turbary in England, for fuel, etc. H

FEALTY. In feudal law. Fidelity; allegiance to the feudal lord of the manor; the feudal obligation resting upon the tenant or vassal by which he was bound to be faithful and true to his lord, and render him obedience and service. See *De Peyster v. Michael*, 6 N. Y. 497, 57 Am. Dec. 470. I

Fealty signifies fidelity, the phrase "feal and leal" meaning simply "faithful and loyal." Tenants by knights' service and also tenants in socage were required to take an oath of fealty to the king or others, their immediate lords; and fealty was one of the conditions of their tenure, the breach of which operated a forfeiture of their estates. Brown. J

Although foreign jurists consider fealty and homage as convertible terms, because in some continental countries they are blended so as to form one engagement, yet they are not to be confounded in our country, for they do not imply the same thing, *homage* being the acknowledgment of tenure, and *fealty*, the vassal oath of fidelity, being the essential feudal bond, and the animating principle of a feud, without which it could not subsist. Wharton. K

FEAR. Apprehension of harm.

Apprehension of harm or punishment, as exhibited by outward and visible marks of L M

emotion. An evidence of guilt in certain cases. See *Burrill*, Circ. Ev. 476.

FEASANCE. A doing; the doing of an act. See *MALFEASANCE*; *MISFEASANCE*; *NONFEASANCE*.

A making; the making of an indenture, release, or obligation. Litt. § 371; *Dyer*, (Fr. Ed.) 56b. The making of a statute. *Keilw.* 1b.

FEASANT. Doing, or making, as, in the term "damage feasant," (doing damage or injury,) spoken of cattle straying upon another's land.

FEASOR. Doer; maker. *Feasors del estatute*, makers of the statute. *Dyer*, 3b. Also used in the compound term, "tort-feasor," one who commits or is guilty of a tort.

FEASTS. Certain established festivals or holidays in the ecclesiastical calendar. These days were anciently used as the dates of legal instruments, and in England the quarter-days, for paying rent, are four feast-days. The terms of the courts, in England, before 1875, were fixed to begin on certain days determined with reference to the occurrence of four of the chief feasts.

FEICIAL LAW. The nearest approach to a system of international law known to the ancient world. It was a branch of Roman jurisprudence, concerned with embassies, declarations of war, and treaties of peace. It received this name from the *fectales*, (*q. v.*), who were charged with its administration.

FEICIALES. Among the ancient Romans, that order of priests who discharged the duties of ambassadors. Subsequently their duties appear to have related more particularly to the declaring war and peace. *Calvin.*; 1 *Kent*, Comm. 6.

FEDERAL. In constitutional law. A term commonly used to express a league or compact between two or more states.

In American law. Belonging to the general government or union of the states. Founded on or organized under the constitution or laws of the United States.

The United States has been generally styled, in American political and judicial writings, a "federal government." The term has not been imposed by any specific constitutional authority, but only expresses the general sense and opinion upon the nature of the form of government. In recent years, there is observable a disposition to employ the term "national" in speaking of the government of the Union. Neither word settles anything as to the nature or powers of the government. "Federal" is somewhat more appropriate if the government is considered a union of the states; "national" is preferable if the view is adopted that the state governments and the Union are two distinct systems, each established by the people directly, one for local and the other for nation-

al purposes. See *United States v. Cruikshank*, 92 U. S. 542, 23 L. Ed. 588; *Abbott*.

—**Federal courts.** The courts of the United States. See *COURTS OF THE UNITED STATES*.

—**Federal government.** The system of government administered in a state formed by the union or confederation of several independent or quasi independent states; also the composite state so formed. In strict usage, there is a distinction between a confederation and a federal government. The former term denotes a league or permanent alliance between several states, each of which is fully sovereign and independent, and each of which retains its full dignity, organization, and sovereignty, though yielding to the central authority a controlling power for a few limited purposes, such as external and diplomatic relations. In this case, the component states are the units, with respect to the confederation, and the central government acts upon them, not upon the individual citizens. In a federal government, on the other hand, the allied states form a union,—not, indeed, to such an extent as to destroy their separate organization or deprive them of quasi sovereignty with respect to the administration of their purely local concerns, but so that the central power is erected into a true state or nation, possessing sovereignty both external and internal,—while the administration of national affairs is directed, and its effects felt, not by the separate states deliberating as units, but by the people of all, in their collective capacity, as citizens of the nation. The distinction is expressed, by the German writers, by the use of the two words "*Staatenbund*" and "*Bundesstaat*," the former denoting a league or confederation of states, and the latter a federal government, or state formed by means of a league or confederation.—**Federal question.** Cases arising under the constitution of the United States, acts of congress, or treaties, and involving their interpretation or application, and of which jurisdiction is given to the federal courts, are commonly described by the legal profession as cases involving a "federal question." In *re Sievers* (D. C.) 91 Fed. 372; *U. S. v. Douglas*, 113 N. C. 190, 18 S. E. 202; *Williams v. Bruffy*, 102 U. S. 248, 26 L. Ed. 135.

FEE. 1. A freehold estate in lands, held of a superior lord, as a reward for services, and on condition of rendering some service in return for it. The true meaning of the word "fee" is the same as that of "feud" or "fief," and in its original sense it is taken in contradistinction to "allodium," which latter is defined as a man's own land, which he possesses merely in his own right, without owing any rent or service to any superior. 2 *Bl. Comm.* 105. See *Wendell v. Crandall*, 1 N. Y. 491.

In modern English tenures, "fee" signifies an estate of inheritance, being the highest and most extensive interest which a man can have in a feud; and when the term is used simply, without any adjunct, or in the form "fee-simple," it imports an absolute inheritance clear of any condition, limitation, or restriction to particular heirs, but descendible to the heirs general, male or female, lineal or collateral. 2 *Bl. Comm.* 106.

—**Base fee.** A determinable or qualified fee; an estate having the nature of a fee, but not a fee simple absolute.—**Conditional fee.** An estate restrained to some particular heirs, exclusive of others, as to the heirs of a man's body, by which only his lineal descendants were

admitted, in exclusion of collateral; or to the heirs male of his body, in exclusion of heirs female, whether lineal or collateral. It was called a "conditional fee," by reason of the condition expressed or implied in the donation of it that, if the donee died without such particular heirs, the land should revert to the donor. 2 Bl. Comm. 110; Kirk v. Furgerson, 6 Cold. (Tenn.) 483; Simmons v. Augustin, 3 Port. (Ala.) 69; Paterson v. Ellis, 11 Wend. (N. Y.) 277; Moody v. Walker, 3 Ark. 190; Halbert v. Halbert, 21 Mo. 281.—**Determinable fee.** (Also called a "qualified" or "base" fee.) One which has a qualification subjoined to it, and which must be determined whenever the qualification annexed to it is at an end. 2 Bl. Comm. 109. An estate in fee which is liable to be determined by some act or event expressed on its limitation to circumscribe its continuance, or inferred by law as bounding its extent. 1 Washb. Real Prop. 62; McLane v. Bovee, 35 Wis. 36.—**Fee damages.** See DAMAGES.—**Fee expectant.** An estate where lands are given to a man and his wife, and the heirs of their bodies.—**Fee simple.** See that title.—**Fee tail.** See that title.—**Great fee.** In feudal law, this was the designation of a fee held directly from the crown.—**Knight's fee.** The determinate quantity of land, (held by an estate of inheritance,) or of annual income therefrom, which was sufficient to maintain a knight. Every man holding such a fee was obliged to be knighted, and attend the king in his wars for the space of forty days in the year, or pay a fine (called "escuage") for his non-compliance. The estate was estimated at £20 a year, or according to Coke, 680 acres. See 1 Bl. Comm. 404, 410; 2 Bl. Comm. 62; Co. Litt. 69a.—**Limited fee.** An estate of inheritance in lands, which is clogged or confined with some sort of condition or qualification. Such estates are base or qualified fees, conditional fees, and fees-tail. The term is opposed to "fee-simple." 2 Bl. Comm. 109; Lott v. Wyckoff, 1 Barb. (N. Y.) 575; Paterson v. Ellis, 11 Wend. (N. Y.) 259.—**Plowman's fee.** In old English law, this was a species of tenure peculiar to peasants or small farmers, somewhat like gavelkind, by which the lands descended in equal shares to all the sons of the tenant.—**Qualified fee.** In English law. A fee having a qualification subjoined thereto, and which must be determined whenever the qualification annexed to it is at an end; otherwise termed a "base fee." 2 Bl. Comm. 109; 1 Steph. Comm. 225. An interest which may continue forever, but is liable to be determined, without the aid of a conveyance, by some act or event, circumscribing its continuance or extent. 4 Kent, Comm. 9; Moody v. Walker, 3 Ark. 190; U. S. v. Reese, 27 Fed. Cas. 744; Bryan v. Spires, 3 Brewst. (Pa.) 583.—**Quasi fee.** An estate gained by wrong; for wrong is unlimited and uncontained within rules. Wharton.

2. The word "fee" is also frequently used to denote the land which is held in fee.

3. The compass or circuit of a manor or lordship. Cowell.

4. **In American law.** A fee is an estate of inheritance without condition, belonging to the owner, and alienable by him, or transmissible to his heirs absolutely and simply. It is an absolute estate in perpetuity, and the largest possible estate a man can have, being, in fact, allodial in its nature. Earnest v. Little River Land, etc., Co., 109 Tenn. 427, 75 S. W. 1122; Phoenix v. Emigration Com'rs, 12 How. Prac. (N. Y.) 10; United States Pipe-Line Co. v. Delaware, L. & W. R. Co.,

62 N. J. Law, 254, 41 Atl. 759, 42 L. R. A. 572.

5. A reward, compensation, or wage given to one for the performance of official duties (clerk of court, sheriff, etc.) or for professional services, as in the case of an attorney at law or a physician.

—**Contingent fee.** A fee stipulated to be paid to an attorney for his services in conducting a suit or other forensic proceeding only in case he wins it; it may be a percentage of the amount recovered.—**Docket fee.** See DOCKET.—**Fee-bill.** A schedule of the fees to be charged by clerks of courts, sheriffs, or other officers, for each particular service in the line of their duties.

FEE-FARM. This is a species of tenure, where land is held of another in perpetuity at a yearly rent, without fealty, homage, or other services than such as are specially comprised in the feoffment. It corresponds very nearly to the "emphyteusis" of the Roman law.

Fee-farm is where an estate in fee is granted subject to a rent in fee of at least one-fourth of the value of the lands at the time of its reservation. Such rent appears to be called "fee-farm" because a grant of lands reserving so considerable a rent is indeed only letting lands to farm in fee-simple, instead of the usual method of life or years. 2 Bl. Comm. 43; 1 Steph. Comm. 676.

Fee-farms are lands held in fee to render for them annually the true value, or more or less; so called because a farm rent is reserved upon a grant in fee. Such estates are estates of inheritance. They are classed among estates in fee-simple. No reversionary interest remains in the lessor, and they are therefore subject to the operation of the legal principles which forbid restraints upon alienation in all cases where no feudal relation exists between grantor and grantee. De Peyster v. Michael, 6 N. Y. 497, 57 Am. Dec. 470.

—**Fee-farm rent.** The rent reserved on granting a fee-farm. It might be one-fourth the value of the land, according to Cowell; one-third, according to other authors. Spelman; Termes de la Ley; 2 Bl. Comm. 43. Fee-farm rent is a rent-charge issuing out of an estate in fee; a perpetual rent reserved on a conveyance in fee-simple. De Peyster v. Michael, 6 N. Y. 467, 495, 57 Am. Dec. 470.

FEE-SIMPLE. **In English law.** A freehold estate of inheritance, absolute and unqualified. It stands at the head of estates as the highest in dignity and the most ample in extent; since every other kind of estate is derivable thereout, and mergeable therein. It may be enjoyed not only in land, but also in advowsons, commons, estovers, and other hereditaments, as well as in personality, as an annuity or dignity, and also in an upper chamber, though the lower buildings and soil belong to another. Wharton.

In American law. An absolute or fee-simple estate is one in which the owner is entitled to the entire property, with unconditional power of disposition during his life, and descending to his heirs and legal representatives upon his death intestate. Code Ga. 1882, § 2246. And see Friedman v. Steiner, 107 Ill. 131; Woodberry v. Matherson, 19

Fla. 785; Lyle v. Richards, 9 Serg. & R. (Pa.) 374; Loventhal v. Home Ins. Co., 112 Ala. 108, 20 South. 419, 33 L. R. A. 258, 57 Am. St. Rep. 17; Dumont v. Dufore, 27 Ind. 267.

Fee-simple signifies a pure fee; an absolute estate of inheritance; that which a person holds inheritable to him and his heirs general forever. It is called "fee-simple," that is, "pure," because clear of any condition or restriction to particular heirs, being descendible to the heirs general, whether male or female, lineal or collateral. It is the largest estate and most extensive interest that can be enjoyed in land, being the entire property therein, and it confers an unlimited power of alienation. Haynes v. Bourn, 42 Vt. 686.

A fee-simple is the largest estate known to the law, and where no words of qualification or limitation are added, it means an estate in possession, and owned in severalty. It is undoubtedly true that a person may own a remainder or reversion in fee. But such an estate is not a fee-simple; it is a fee qualified or limited. So, when a person owns in common with another, he does not own the entire fee,—a fee-simple; it is a fee divided or shared with another. Brackett v. Ridlon, 54 Me. 426.

Absolute and conditional. A fee simple absolute is an estate which is limited absolutely to a man and his heirs and assigns forever, without any limitation or condition. Frisby v. Ballance, 7 Ill. 144. At the common law, an estate in fee simple conditional was a fee limited or restrained to some particular heirs, exclusive of others. But the statute "De Donis" converted all such estates into estates tail. 2 Bl. Comm. 110.

FEE-TAIL. An estate tail; an estate of inheritance given to a man and the heirs of his body, or limited to certain classes of particular heirs. It corresponds to the *feudum talliatum* of the feudal law, and the idea is believed to have been borrowed from the Roman law, where, by way of *fidei commissa*, lands might be entailed upon children and freedmen and their descendants, with restrictions as to alienation. 1 Washb. Real Prop. *66. For the varieties and special characteristics of this kind of estate, see TAIL.

FEED. To lend additional support; to strengthen *ex post facto*. "The interest when it accrues feeds the stoppel." Christman v. Oliver, 5 Mood. & R. 202.

FE GANGI. In old English law. A thief caught while escaping with the stolen goods in his possession. Spelman.

FEHMGERICHTE. The name given to certain secret tribunals which flourished in Germany from the end of the twelfth century to the middle of the sixteenth, usurping many of the functions of the governments which were too weak to maintain law and order, and inspiring dread in all who came within their jurisdiction. Enc. Brit. Such a court existed in Westphalia (though with greatly diminished powers) until finally suppressed in 1811.

FEIGNED. Fictitious; pretended; supposititious; simulated.

—Feigned accomplice. One who pretends to consult and act with others in the planning

or commission of a crime, but only for the purpose of discovering their plans and confederates and securing evidence against them. See People v. Bolanger, 71 Cal. 17, 11 Pac. 800.—**Feigned action.** In practice. An action brought on a pretended right, when the plaintiff has no true cause of action, for some illegal purpose. In a feigned action the words of the writ are true. It differs from *false action*, in which case the words of the writ are false. Co. Litt. 361.—**Feigned diseases.** Simulated maladies. Diseases are generally feigned from one of three causes,—fear, shame, or the hope of gain.—**Feigned issue.** An issue made up by the direction of a court of equity, (or by consent of parties,) and sent to a common-law court, for the purpose of obtaining the verdict of a jury on some disputed matter of fact which the court has not jurisdiction, or is unwilling, to decide. It rests upon a supposititious wager between the parties. See 3 Bl. Comm. 452.

FELAGUS. In Saxon law. One bound for another by oath; a sworn brother. A friend bound in the decennary for the good behavior of another. One who took the place of the deceased. Thus, if a person was murdered, the recompense due from the murderer went to the *felagus* of the slain, in default of parents or lord. Cunningham.

FELD. A field; in composition, wild. Blount.

FELE, FEAL. L. Fr. Faithful. See FEAL.

FELLATION. See SODOMY.

FELLOW. A companion; one with whom we consort; one joined with another in some legal status or relation; a member of a college or corporate body.

FELLOW-HEIR. A co-heir; partner of the same inheritance.

FELLOW-SERVANTS. "The decided weight of authority is to the effect that all who serve the same master, work under the same control, derive authority and compensation from the same common source, and are engaged in the same general business, though it may be in different grades or departments of it, are fellow-servants, who take the risk of each other's negligence." 2 Thomp. Neg. p. 1026, § 31. And see McAndrews v. Burns, 39 N. J. Law, 119; Justice v. Pennsylvania Co., 130 Ind. 321, 30 N. E. 303; Wright v. New York Cent. R. Co., 25 N. Y. 565; Glover v. Kansas City Bolt Co., 153 Mo. 327, 55 S. W. 88; Brunell v. Southern Pac. Co., 34 Or. 256, 56 Pac. 129; Doughty v. Penobscot Log Driving Co., 76 Me. 146; McMaster v. Illinois Cent. R. Co., 65 Miss. 264, 4 South. 59, 7 Am. St. Rep. 653; Daniels v. Union Pac. Ry. Co., 6 Utah, 357, 23 Pac. 762; Weeks v. Scharer, 129 Fed. 335, 64 C. C. A. 11.

FELO DE SE. A felon of himself; a suicide or murderer of himself. One who deliberately and intentionally puts an end to

his own life, or who commits some unlawful or malicious act which results in his own death. Hale, P. C. 411; 4 Bl. Comm. 189; Life Ass'n v. Waller, 57 Ga. 536.

FELON. One who has committed felony; one convicted of felony.

FELONIA. Felony. The act or offense by which a vassal forfeited his fee. Spelman; Calvin. *Per feloniam*, with a criminal intention. Co. Litt. 391.

Felonia, ex vi termini significat quodlibet capitale crimen felleo animo perpetratum. Co. Litt. 391. Felony, by force of the term, signifies any capital crime perpetrated with a malignant mind.

Felonia implicatur in qualibet proditione. 3 Inst. 15. Felony is implied in every treason.

FELONICE. Feloniously. Anciently an indispensable word in indictments for felony, and classed by Lord Coke among those *voces artis* (words of art) which cannot be expressed by any periphrasis or circumlocution. 4 Coke, 39; Co. Litt. 391a; 4 Bl. Comm. 307.

FELONIOUS. Malignant; malicious; done with intent to commit a crime; having the grade or quality of a felony. People v. Moore, 37 Hun (N. Y.) 93; Aikman v. Com., 18 S. W. 938, 13 Ky. Law Rep. 894; State v. Bush, 47 Kan. 201, 27 Pac. 834, 13 L. R. A. 607; Com. v. Barlow, 4 Mass. 440.

—**Felonious assault.** Such an assault upon the person as, if consummated, would subject the party making it, upon conviction, to the punishment of a felony, that is, to imprisonment in the penitentiary. Hinkle v. State, 94 Ga. 595, 21 S. E. 595.—**Felonious homicide.** In criminal law. The offense of killing a human creature, of any age or sex, without justification or excuse. There are two degrees of this offense, manslaughter and murder. 4 Bl. Comm. 188, 190; 4 Steph. Comm. 108, 111; State v. Symmes, 40 S. C. 383, 19 S. E. 16; Connor v. Com., 76 Ky. 718; State v. Miller, 9 Houst. (Del.) 564, 32 Atl. 137.

FELONIOUSLY. With a felonious intent; with the intention of committing a crime. An indispensable word in modern indictments for felony, as *felonice* was in the Latin forms. 4 Bl. Comm. 307; State v. Jesse, 19 N. C. 300; State v. Smith, 31 Wash. 245, 71 Pac. 767; State v. Halpin, 16 S. D. 170, 91 N. W. 605; People v. Willett, 102 N. Y. 251, 6 N. E. 301; State v. Watson, 41 La. Ann. 598, 7 South. 125; State v. Bryan, 112 N. C. 848, 16 S. E. 909.

FELONY. In English law. This term meant originally the state of having forfeited lands and goods to the crown upon conviction for certain offenses, and then, by transition, any offense upon conviction for which such forfeiture followed, in addition to any other punishment prescribed by law; as dis-

tinguished from a "misdemeanor," upon conviction for which no forfeiture followed. All indictable offenses are either felonies or misdemeanors, but a material part of the distinction is taken away by St. 33 & 34 Vict. c. 23, which abolishes forfeiture for felony. Wharton.

In American law. The term has no very definite or precise meaning, except in some cases where it is defined by statute. For the most part, the state laws, in describing any particular offense, declare whether or not it shall be considered a felony. Apart from this, the word seems merely to imply a crime of a graver or more atrocious nature than those designated as "misdemeanors." U. S. v. Coppersmith (C. C.) 4 Fed. 205; Bannon v. U. S., 156 U. S. 464, 15 Sup. Ct. 467, 39 L. Ed. 494; Mitchell v. State, 42 Ohio St. 386; State v. Lincoln, 49 N. H. 469.

The statutes or codes of several of the states define felony as any public offense on conviction of which the offender is liable to be sentenced to death or to imprisonment in a penitentiary or state prison. Pub. St. Mass. 1882, p. 1290; Code Ala. 1886, § 3701; Code Ga. 188, § 3404; 34 Ohio St. 301; 1 Wis. 188; 2 Rev. St. N. Y. p. 587, § 30; People v. Van Steenburgh, 1 Parker, Cr. R. (N. Y.) 39.

In feudal law. An act or offense on the part of the vassal, which cost him his fee, or in consequence of which his fee fell into the hands of his lord; that is, became forfeited. (See FELONIA.) Perfidy, ingratitude, or disloyalty to a lord.

—**Felony act.** The statute 33 & 34 Vict. c. 23, abolishing forfeitures for felony, and sanctioning the appointment of *interim* curators and administrators of the property of felons. Mozley & Whitley; 4 Steph. Comm. 10, 459.—**Felony, compounding of.** See COMPOUNDING FELONY.—**Misprision of felony.** See MISPRISION.

FEMALE. The sex which conceives and gives birth to young. Also a member of such sex. The term is generic, but may have the specific meaning of "woman," if so indicated by the context. State v. Hemm, 82 Iowa, 609, 48 N. W. 971.

FEME. L. Fr. A woman. In the phrase "*baron et feme*" (*q. v.*) the word has the sense of "wife."

—**Feme covert.** A married woman. Generally used in reference to the legal disabilities of a married woman, as compared with the condition of a *feme sole*. Hoker v. Boggs, 63 Ill. 161.—**Feme sole.** A single woman, including those who have been married, but whose marriage has been dissolved by death or divorce, and, for most purposes, those women who are judicially separated from their husbands. Mozley & Whitley; 2 Steph. Comm. 250. Kirkley v. Lacey, 7 Houst. (Del.) 213, 30 Atl. 994.—**Feme sole trader.** In English law. A married woman, who, by the custom of London, trades on her own account, independently of her husband; so called because, with respect to her trading, she is the same as a *feme sole*. Jacob; Cro. Car. 68. The term is applied al-

to women deserted by their husbands, who do business as *femes sole*. *Rhea v. Rhenner*, 1 Pet. 105, 7 L. Ed. 72.

FEMICIDE. The killing of a woman. Wharton.

FENATIO. In forest law. The fawning of deer; the fawning season. Spelman.

FENCE, v. In old Scotch law. To defend or protect by formalities. To "fence a court" was to open it in due form, and interdict all manner of persons from disturbing their proceedings. This was called "fencing;" *q. d.*, defending or protecting the court.

FENCE, n. A hedge, structure, or partition, erected for the purpose of inclosing a piece of land, or to divide a piece of land into distinct portions, or to separate two contiguous estates. See *Kimball v. Carter*, 95 Va. 77, 27 S. E. 823, 38 L. R. A. 570; *Estes v. Railroad Co.*, 63 Me. 309; *Allen v. Tobias*, 77 Ill. 171.

FENCE-MONTH, or DEFENSE-MONTH. In old English law. A period of time, occurring in the middle of summer, during which it was unlawful to hunt deer in the forest, that being their fawning season. Probably so called because the deer were then *defended* from pursuit or hunting. Manwood; Cowell.

FENERATION. Usury; the gain of interest; the practice of increasing money by lending.

FENGELD. In Saxon law. A tax or imposition, exacted for the repelling of enemies.

FENIAN. A champion, hero, giant. This word, in the plural, is generally used to signify invaders or foreign spoilers. The modern meaning of "fenian" is a member of an organization of persons of Irish birth, resident in the United States, Canada, and elsewhere, having for its aim the overthrow of English rule in Ireland. Webster, (Supp.)

FEOD. The same as *feud* or *fief*.

FEODAL. Belonging to a fee or feud; feudal. More commonly used by the old writers than *feudal*.

FEODAL SYSTEM. See **FEUDAL SYSTEM**.

FEODALITY. Fidelity or fealty. Cowell. See **FEALTY**.

FEODARUM CONSUETUDINES. The customs of feuds. The name of a compilation of feudal laws and customs made at Milan in the twelfth century. It is the most ancient work on the subject, and was always regard-

ed, on the continent of Europe, as possessing the highest authority.

FEODARY. An officer of the court of wards, appointed by the master of that court, under 32 Hen. VIII. c. 26, whose business it was to be present with the escheator in every county at the finding of offices of lands, and to give evidence for the king, as well concerning the value as the tenure; and his office was also to survey the land of the ward, after the office found, and to rate it. He also assigned the king's widows their dower; and received all the rents, etc. Abolished by 12 Car. II. c. 24. Wharton.

FEODATORY. In feudal law. The grantee of a *feod*, *feud*, or fee; the vassal or tenant who held his estate by feudal service. *Termes de la Ley*. Blackstone uses "*feudatory*." 2 Bl. Comm. 46.

FEODI FIRMA. In old English law. Fee-farm, (*q. v.*)

FEODI FIRMARIUS. The lessee of a fee-farm.

FEODUM. This word (meaning a feud or fee) is the one most commonly used by the older English law-writers, though its equivalent, "*feudum*," is used generally by the more modern writers and by the *feudal* law-writers. Litt. § 1; Spelman. There were various classes of *feoda*, among which may be enumerated the following: *Feodum laicum*, a lay fee. *Feodum militare*, a knight's fee. *Feodum improprium*, an improper or derivative fee. *Feodum proprium*, a proper and original fee, regulated by the strict rules of feudal succession and tenure. *Feodum simplex*, a simple or pure fee; fee-simple. *Feodum talliatum*, a fee-tail. See 2 Bl. Comm. 58, 62; Litt. §§ 1, 13; Bract. fol. 175; Glan. 13, 23.

In old English law. A seigniorship or jurisdiction. Fleta, lib. 2, c. 63, § 4.

A fee; a perquisite or compensation for a service. Fleta, lib. 2, c. 7.

—**Feodum antiquum.** A feud which devolved upon a vassal from his intestate ancestor.

—**Feodum nobile.** A fief for which the tenant did guard and owed homage. Spelman.—**Feodum novum.** A feud acquired by a vassal himself.

Feodum est quod quis tenet ex quacunque causa sive sit tenementum sive redditus. Co. Litt. 1. A fee is that which any one holds from whatever cause, whether tenement or rent.

Feodum simplex quia feodum idem est quod hæreditas, et simplex idem est quod legitimum vel purum; et sic feodum simplex idem est quod hæreditas legitima vel hæreditas pura. Litt. § 1. A fee-simple, so called because fee is the same as inheritance, and simple is the same as lawful or

pure; and thus fee-simple is the same as a lawful inheritance, or pure inheritance.

Feodum talliatum, i. e., hæreditas in quendam certitudinem limitata. Litt. § 13. Fee-tall, *i. e.*, an inheritance limited in a definite descent.

FEOFFAMENTUM. A feoffment. 2 Bl. Comm. 310.

FEOFFARE. To enfeoff; to bestow a fee. The bestower was called "*feoffator*," and the grantee or feoffee, "*feoffatus*."

FEOFFATOR. In old English law. A feoffer; one who gives or bestows a fee; one who makes a feoffment. Bract. fols. 12b, 81.

FEOFFATUS. In old English law. A feoffee; one to whom a fee is given, or a feoffment made. Bract. fols. 17b, 44b.

FEOFFEE. He to whom a fee is conveyed. Litt. § 1; 2 Bl. Comm. 20.

—**Feoffee to uses.** A person to whom land was conveyed for the use of a third party. The latter was called "*cestui que use*."

FEOFFMENT. The gift of any corporeal hereditament to another, (2 Bl. Comm. 310), operating by transmutation of possession, and requiring, as essential to its completion, that the seisin be passed, (Watk. Conv. 183), which might be accomplished either by investiture or by livery of seisin. 1 Washb. Real Prop. 33. See *Thatcher v. Omans*, 3 Pick. (Mass.) 532; *French v. French*, 3 N. H. 260; *Perry v. Price*, 1 Mo. 554; *Orndöf v. Turman*, 2 Leigh (Va.) 233, 21 Am. Dec. 608.

Also the deed or conveyance by which such corporeal hereditament is passed.

A feoffment originally meant the grant of a *feud* or *fee*; that is, a barony or knight's fee, for which certain services were due from the feoffee to the feoffor. This was the proper sense of the word; but by custom it came afterwards to signify also a grant (with livery of seisin) of a free inheritance to a man and his heirs, referring rather to the perpetuity of the estate than to the feudal tenure. 1 Reeve, Eng. Law, 90, 91. It was for ages the only method (in ordinary use) for conveying the freehold of land in possession, but has now fallen in great measure into disuse, even in England, having been almost entirely supplanted by some of that class of conveyances founded on the statute law of the realm. 1 Steph. Comm. 467, 468.

—**Feoffment to uses.** A feoffment of lands to one person to the use of another.

FEOFFOR. The person making a feoffment, or enfeoffing another in fee. 2 Bl. Comm. 310; Litt. §§ 1, 57.

FEOH. This Saxon word meant originally cattle, and thence property or money, and, by a second transition, wages, reward, or fee. It was probably the original form from which the words "feod," "feudum," "fief," "feu," and "fee" (all meaning a feudal grant of land) have been derived.

FEONATIO. In forest law. The fawning season of deer.

FEORME. A certain portion of the produce of the land due by the grantee to the lord according to the terms of the charter. Spel. Feuds, c. 7.

FERÆ BESTIÆ. Wild beasts.

FERÆ NATURÆ. Lat. Of a wild nature or disposition. Animals which are by nature wild are so designated, by way of distinction from such as are naturally tame, the latter being called "*domitæ naturæ*." *Fleet v. Hegeman*, 14 Wend. (N. Y.) 43; *State v. Taylor*, 27 N. J. Law, 119, 72 Am. Dec. 347; *Gillet v. Mason*, 7 Johns. (N. Y.) 17.

FERCOSTA. Ital. A kind of small vessel or boat. Mentioned in old Scotch law, and called "*fercost*." Skene.

FERDELLA TERRÆ. A fardel-land; ten acres; or perhaps a yard-land. Cowell.

FERDFARE. Sax. A summons to serve in the army. An acquittance from going into the army. *Fleta*, lib. 1, c. 47, § 23.

FERDINGUS. A term denoting, apparently, a freeman of the lowest class, being named after the *cotseti*.

FERDWITE. In Saxon law. An acquittance of manslaughter committed in the army; also a fine imposed on persons for not going forth on a military expedition. Cowell.

FERIA. In old English law. A weekday; a holiday; a day on which process could not be served; a fair; a ferry. Cowell; *Du Cange*; *Spelman*.

FERIÆ. In Roman law. Holidays; generally speaking, days or seasons during which free-born Romans suspended their political transactions and their lawsuits, and during which slaves enjoyed a cessation from labor. all *feriæ* were thus *dies nefasti*. All *feriæ* were divided into two classes,—"*feriæ publicæ*" and "*feriæ privatae*." The latter were only observed by single families or individuals, in commemoration of some particular event which had been of importance to them or their ancestors. *Smith*, *Dict. Antiq.*

FERIAL DAYS. Holidays; also weekdays, as distinguished from Sunday. Cowell.

FERITA. In old European law. A wound; a stroke. *Spelman*.

FERLING. In old records. The fourth part of a penny; also the quarter of a ward in a borough.

FERLINGATA. A fourth part of a yard-land.

FERLINGUS. A furlong. Co. Litt. 5b.

FERM, or FEARM. A house or land, or both, let by lease. Cowell.

FERME. A farm; a rent; a lease; a house or land, or both, taken by indenture or lease. Plowd. 195; Vicat. See **FARM**.

FERMENTED LIQUORS. Beverages produced by, or which have undergone, a process of alcoholic fermentation, to which they owe their intoxicating properties, including beer, wine, hard cider, and the like, but not spirituous or distilled liquors. State v. Lemp, 16 Mo. 391; State v. Biddle, 54 N. H. 383; People v. Foster, 64 Mich. 715, 31 N. W. 596; State v. Gill, 89 Minn. 502, 95 N. W. 449; State v. Adams, 51 N. H. 568.

FERMER, FERMOR. A lessee; a farmer. One who holds a term, whether of lands or an incorporeal right, such as customs or revenue.

FERMIER. In French law. One who farms any public revenue.

FERMISONA. In old English law. The winter season for killing deer.

FERMORY. In old records. A place in monasteries, where they received the poor, (*hospicio excipiebant*) and gave them provisions, (*ferm, firma*.) Spelman. Hence the modern *infirmary*, used in the sense of a hospital.

FERNIGO. In old English law. A waste ground, or place where fern grows. Cowell.

FERRI. In the civil law. To be borne; that is on or about the person. This was distinguished from *portari*, (to be carried,) which signified to be carried on an animal. Dig. 50, 16, 235.

FERRIAGE. The toll or fare paid for the transportation of persons and property across a ferry.

Literally speaking, it is the price or fare fixed by law for the transportation of the traveling public, with such goods and chattels as they may have with them, across a river, bay, or lake. People v. San Francisco & A. R. Co., 35 Cal. 606.

FERRIFODINA. In old pleading. An iron mine. Townsh. Pl. 273.

FERRUM. Iron. In old English law. A horse-shoe. *Ferrura*, shoeing of horses.

FERRY. A liberty to have a boat upon a river for the transportation of men, horses, and carriages with their contents, for a reasonable toll. The term is also used to designate the place where such liberty is exercised. See New York v. Starin, 8 N. Y. St. Rep. 655; Broadnax v. Baker, 94 N. C. 631, 55 Am. Rep. 633; Einstman v. Black, 14 Ill.

App. 381; Chapelle v. Wells, 4 Mart. (La. N. S.) 426.

"Ferry" properly means a place of transit across a river or arm of the sea; but in law it is treated as a franchise, and defined as the exclusive right to carry passengers across a river, or arm of the sea, from one vill to another, or to connect a continuous line of road leading from one township or vill to another. It is not a servitude or easement. It is wholly unconnected with the ownership or occupation of land, so much so that the owner of the ferry need not have any property in the soil adjacent on either side. (12 C. B., N. S., 32.) Brown.

—**Public and private.** A public ferry is one to which all the public have the right to resort, for which a regular fare is established, and the ferryman is a common carrier, bound to take over all who apply, and bound to keep his ferry in operation and good repair. Hudspeth v. Hall, 111 Ga. 610, 36 S. E. 770; Broadnax v. Baker, 94 N. C. 631, 55 Am. Rep. 633. A private ferry is one mainly for the use of the owner, and though he may take pay for ferriage, he does not follow it as a business. His ferry is not open to the public at its demand, and he may or may not keep it in operation. Hudspeth v. Hall, supra.—**Ferry franchise.** The public grant of a right to maintain a ferry at a particular place; a right conferred to land at a particular point and secure toll for the transportation of persons and property from that point across the stream. Mills v. St. Clair County, 7 Ill. 203.—**Ferryman.** One employed in taking persons across a river or other stream, in boats or other contrivances, at a ferry. State v. Clarke, 2 McCord (S. C.) 48, 13 Am. Dec. 701.

FESTA IN CAPPIS. In old English law. Grand holidays, on which choirs wore caps. Jacob.

Festinatio justitiæ est noverca infortunii. Hob. 97. Hasty justice is the step-mother of misfortune.

FESTING-MAN. In old English law. A frank-pledge, or one who was surety for the good behavior of another. Monasteries enjoyed the privilege of being "free from festing-men," which means that they were "not bound for any man's forthcoming who should transgress the law." Cowell. See **FRANK-PLEDGE**.

FESTING-PENNY. Earnest given to servants when hired or retained. The same as *arles-penny*. Cowell.

FESTINUM REMEDIUM. Lat. A speedy remedy. The writ of assise was thus characterized (in comparison with the less expeditious remedies previously available) by the statute of Westminster 2, (13 Edw. I. c. 24.)

FESTUM. A feast or festival. *Festum stultorum*, the feast of fools.

FETTERS. Chains or shackles for the feet; irons used to secure the legs of convicts, unruly prisoners, etc. Similar chains securing the wrists are called "handcuffs."

FEU. In Scotch law. A holding or tenure where the vassal, in place of military serv-

ice, makes his return in grain or money. Distinguished from "wardholding," which is the military tenure of the country. Bell.

—**Feu annuals.** The *reddendo*, or annual return from the vassal to a superior in a feu holding.—**Feu holding.** A holding by tenure of rendering grain or money in place of military service. Bell.—**Feuar.** The tenant of a feu; a feu-vassal. Bell.

FEU ET LIEU. Fr. In old French and Canadian law. Hearth and home. A term importing actual settlement upon land by a tenant.

FEUD. In feudal law. An estate in land held of a superior on condition of rendering him services. 2 Bl. Comm. 105.

An inheritable right to the use and occupation of lands, held on condition of rendering services to the lord or proprietor, who himself retains the property in the lands. See Spel. Feuds, c. 1.

In this sense the word is the same as "feod," "feodum," "feodum," "fief," or "fee."

In Saxon and old German law. An enmity, or species of private war, existing between the family of a murdered man and the family of his slayer; a combination of the former to take vengeance upon the latter. See DEADLY FEUD; FAIDA.

—**Military feuds.** The genuine or original feuds which were in the hands of military men, who performed military duty for their tenures.

FEUDA. Feuds or fees.

FEUDAL. Pertaining to feuds or fees; relating to or growing out of the feudal system or feudal law; having the quality of a feud, as distinguished from "allodial."

—**Feudal actions.** An ancient name for real actions, or such as concern real property only. 3 Bl. Comm. 117.—**Feudal law.** The body of jurisprudence relating to feuds; the real-property law of the feudal system; the law anciently regulating the property relations of lord and vassal, and the creation, incidents, and transmission of feudal estates. The body of laws and usages constituting the "feudal law" was originally customary and unwritten, but a compilation was made in the twelfth century, called "Feodarum Consuetudines," which has formed the basis of later digests. The feudal law prevailed over Europe from the twelfth to the fourteenth century, and was introduced into England at the Norman Conquest, where it formed the entire basis of the law of real property until comparatively modern times. Survivals of the feudal law, to the present day, so affect and color that branch of jurisprudence as to require a certain knowledge of the feudal law in order to the perfect comprehension of modern tenures and rules of real-property law.—**Feudal possession.** The equivalent of "seisin" under the feudal system.—**Feudal system.** The system of feuds. A political and social system which prevailed throughout Europe during the eleventh, twelfth, and thirteenth centuries, and is supposed to have grown out of the peculiar usages and policy of the Teutonic nations who overran the continent after the fall of the Western Roman Empire, as developed by the exigencies of their military domination, and possibly furthered by notions taken from the Roman jurisprudence. It was introduced into England,

in its completeness, by William I., A. D. 1066, though it may have existed in a rudimentary form among the Saxons before the Conquest. It formed the entire basis of the real-property law of England in medieval times; and survivals of the system, in modern days, so modify and color that branch of jurisprudence, both in England and America, that many of its principles require for their complete understanding a knowledge of the feudal system. The feudal system originated in the relations of a military chieftain and his followers, or king and nobles, or lord and vassals, and especially their relations as determined by the bond established by a grant of land from the former to the latter. From this it grew into a complete and intricate complex of rules for the tenure and transmission of real estate, and of correlated duties and services; while, by tying men to the land and to those holding above and below them, it created a close-knit hierarchy of persons, and developed an aggregate of social and political institutions. For an account of the feudal system in its juristic relations, see 2 Bl. Comm. 44; 1 Steph. Comm. 160; 3 Kent, Comm. 487; Spel. Feuds; Litt. Ten.; Sull. Lect.; Spence, Eq. Jur.; 1 Washb. Real Prop. 15; Dalr. Feu. Prop. For its political and social relations, see Hall. Middle Ages; Maine, Anc. Law; Rob. Car. V.; Montesq. Esprit des Lois, bk. 30; Guizot, Hist. Civilization.—**Feudal tenures.** The tenures of real estate under the feudal system, such as knight-service, socage, villenage, etc.

FEUDALISM. The feudal system; the aggregate of feudal principles and usages.

FEUDALIZE. To reduce to a feudal tenure; to conform to feudalism. Webster.

FEUDARY. A tenant who holds by feudal tenure, (also spelled "feodatory" and "feudatory.") Held by feudal service. Relating to feuds or feudal tenures. G

FEUDBOTE. A recompense for engaging in a feud, and the damages consequent, it having been the custom in ancient times for all the kindred to engage in their kinsman's quarrel. Jacob. H

FEUDE. An occasional early form of "feud" in the sense of private war or vengeance. Termes de la Ley. See FEUD. I

FEUDIST. A writer on feuds, as Cujacius, Spelman, etc. J

FEUDO. In Spanish law. Feud or fee. White, New Recop. b. 2, tit. 2, c. 2. J

FEUDUM. L. Lat. A feud, fief, or fee. A right of using and enjoying forever the lands of another, which the lord grants on condition that the tenant shall render fealty, military duty, and other services. Spelman. K

—**Feudum antiquum.** An ancient feud or fief; a fief descended to the vassal from his ancestors. 2 Bl. Comm. 212, 221. A fief which ancestors had possessed for more than four generations. Spelman; Priest v. Cummings, 20 Wend. (N. Y.) 349.—**Feudum apertum.** An open feud or fief; a fief resulting back to the lord, where the blood of the person last seised was utterly extinct and gone. 2 Bl. Comm. 245.—**Feudum francum.** A free feud. One which was noble and free from tallage and oth- L

er subsidies to which the *plebeia feuda* (vulgar feuds) were subject. Spelman.—**Feudum hauberticum.** A fee held on the military service of appearing fully armed at the *ban* and *arriere ban*. Spelman.—**Feudum improprium.** An improper or derivative feud or fief. 2 Bl. Comm. 58.—**Feudum individuum.** An indivisible or impartible feud or fief; descendible to the eldest son alone. 2 Bl. Comm. 215.—**Feudum ligium.** A liege feud or fief; a fief held immediately of the sovereign; one for which the vassal owed fealty to his lord against all persons. 1 Bl. Comm. 367; Spelman.—**Feudum maternum.** A maternal fief; a fief descended to the feudatory from his mother. 2 Bl. Comm. 212.—**Feudum nobile.** A fee for which the tenant did guard and owed fealty and homage. Spelman.—**Feudum novum.** A new feud or fief; a fief which began in the person of the feudatory, and did not come to him by succession. Spelman; 2 Bl. Comm. 212; Priest v. Cummings, 20 Wend. (N. Y.) 349.—**Feudum novum ut antiquum.** A new fee held with the qualities and incidents of an ancient one. 2 Bl. Comm. 212.—**Feudum paternum.** A fee which the paternal ancestors had held for four generations. Calvin. One descendible to heirs on the paternal side only. 2 Bl. Comm. 223. One which might be held by males only. Du Cange.—**Feudum proprium.** A proper, genuine, and original feud or fief; being of a purely military character, and held by military service. 2 Bl. Comm. 57, 58.—**Feudum talliatum.** A restricted fee. One limited to descend to certain classes of heirs. 2 Bl. Comm. 112, note; 1 Washb. Real Prop. 66.

FEW. An indefinite expression for a small or limited number. In cases where exact description is required, the use of this word will not answer. *Butts v. Stowe*, 53 Vt. 603; *Allen v. Kirwan*, 159 Pa. 612, 28 Atl. 495; *Wheelock v. Noonan*, 108 N. Y. 179, 15 N. E. 67, 2 Am. St. Rep. 405.

FF. A Latin abbreviation for "Fragments," designating the Digest or Pandects in the *Corpus Juris Civilis* of Justinian; so called because that work is made up of fragments or extracts from the writings of numerous jurists. Mackeld. Rom. Law, § 74.

FL. FA. An abbreviation for *feri facias*, (which see.)

FIANCER. L. Fr. To pledge one's faith. Kelham.

FIANZA. Sp. In Spanish law, trust, confidence, and correlatively a legal duty or obligation arising therefrom. The term is sufficiently broad in meaning to include both a general obligation and a restricted liability under a single instrument. *Martinez v. Runkle*, 57 N. J. Law, 111, 30 Atl. 593. But in a special sense, it designates a surety or guarantor, or the contract or engagement of suretyship.

FIAR. In Scotch law. He that has the fee or *feu*. The proprietor is termed "fiar," in contradistinction to the life-renter. 1 Kames, Eq. Pref. One whose property is charged with a life-rent.

FIARS PRICES. The value of grain in the different counties of Scotland, fixed year-

ly by the respective sheriffs, in the month of February, with the assistance of juries. These regulate the prices of grain stipulated to be sold at the fair prices, or when no price has been stipulated. *Ersk. 1, 4, 6.*

FIAT. (Lat. "Let it be done.") In English practice. A short order or warrant of a judge or magistrate directing some act to be done; an authority issuing from some competent source for the doing of some legal act.

One of the proceedings in the English bankrupt practice, being a power, signed by the lord chancellor, addressed to the court of bankruptcy, authorizing the petitioning creditor to prosecute his complaint before it. 2 Steph. Comm. 199. By the statute 12 & 13 Vict. c. 116, fiats were abolished.

—**Fiat justitia.** Let justice be done. On a petition to the king for his warrant to bring a writ of error in parliament, he writes on the top of the petition, "*Fiat justitia*," and then the writ of error is made out, etc. Jacob.—**Fiat ut petitur.** Let it be done as it is asked. A form of granting a petition.—**Joint fiat.** In English law. A fiat in bankruptcy, issued against two or more trading partners.

Fiat justitia, ruat cælum. Let right be done, though the heavens should fall.

Fiat prout fieri consuevit, (nil temere novandum.) Let it be done as it hath used to be done, (nothing must be rashly innovated.) *Jenk. Cent. 116, case 39; Branch, Princ.*

FICTION. In Roman law. A fiction; an assumption or supposition of the law.

"*Fictio*" in the old Roman law was properly a term of pleading, and signified a false averment on the part of the plaintiff which the defendant was not allowed to traverse; as that the plaintiff was a Roman citizen, when in truth he was a foreigner. The object of the fiction was to give the court jurisdiction. *Maine, Anc. Law, 25.*

Fictio cedit veritati. Fictio juris non est ubi veritas. Fiction yields to truth. Where there is truth, fiction of law exists not.

Fictio est contra veritatem, sed pro veritate habetur. Fiction is against the truth, but it is to be esteemed truth.

Fictio juris non est ubi veritas. Where truth is, fiction of law does not exist.

Fictio legis inique operatur alicui damnum vel injuriam. A legal fiction does not properly work loss or injury. 3 *Coke, 36; Broom, Max. 129.*

Fictio legis neminem lædit. A fiction of law injures no one. 2 *Rolle, 502; 3 Bl. Comm. 43; Low v. Little, 17 Johns. (N. Y.) 348.*

FICTION. An assumption or supposition of law that something which is or may be false is true, or that a state of facts exists

which has never really taken place. *New Hampshire Strafford Bank v. Cornell*, 2 N. H. 324; *Hibberd v. Smith*, 67 Cal. 547, 4 Pac. 473, 56 Am. Rep. 726.

A fiction is a rule of law which assumes as true, and will not allow to be disproved, something which is false, but not impossible. Best, Ev. 419.

These assumptions are of an innocent or even beneficial character, and are made for the advancement of the ends of justice. They secure this end chiefly by the extension of procedure from cases to which it is applicable to other cases to which it is not strictly applicable, the ground of inapplicability being some difference of an immaterial character. Brown.

Fictions are to be distinguished from presumptions of law. By the former, something known to be false or unreal is assumed as true; by the latter, an inference is set up, which may be and probably is true, but which, at any rate, the law will not permit to be controverted.

Mr. Best distinguishes legal fictions from presumptions *juris et de jure*, and divides them into three kinds,—affirmative or positive fictions, negative fictions, and fictions by relation. Best, Pres. p. 27, § 24.

FICTITIOUS. Founded on a fiction; having the character of a fiction; false, feigned, or pretended.

—**Fictitious action.** An action brought for the sole purpose of obtaining the opinion of the court on a point of law, not for the settlement of any actual controversy between the parties. *Smith v. Junction Ry. Co.*, 29 Ind. 551.—**Fictitious name.** A counterfeit, feigned, or pretended name taken by a person, differing in some essential particular from his true name, (consisting of Christian name and patronymic,) with the implication that it is meant to deceive or mislead. But a fictitious name may be used so long or under such circumstances as to become an "assumed" name, in which case it may become a proper designation of the individual for ordinary business and legal purposes. See *Pollard v. Fidelity F. Ins. Co.*, 1 S. D. 570, 47 N. W. 1060; *Carlock v. Cagnacci*, 88 Cal. 600, 26 Pac. 597.—**Fictitious plaintiff.** A person appearing in the writ or record as the plaintiff in a suit, but who in reality does not exist, or who is ignorant of the suit and of the use of his name in it. It is a contempt of court to sue in the name of a fictitious party. See 4 Bl. Comm. 134.

FIDE-COMMISSARY. A term derived from the Latin "*fidei-commissarius*," and occasionally used by writers on equity jurisprudence as a substitute for the law French term "*cestui que trust*," as being more elegant and euphonious. See *Brown v. Brown*, 83 Hun, 160, 31 N. Y. Supp. 650.

FIDEI-COMMISSARIUS. In the civil law this term corresponds nearly to our "*cestui que trust*." It designates a person who has the real or beneficial interest in an estate or fund, the title or administration of which is temporarily confided to another. See *Story*, Eq. Jur. § 966.

FIDEI-COMMISSUM. In the civil law. A species of trust; being a gift of property

(usually by will) to a person, accompanied by a request or direction of the donor that the recipient will transfer the property to another, the latter being a person not capable of taking directly under the will or gift. See *Succession of Meunier*, 52 La. Ann. 79, 26 South. 776, 48 L. R. ▲ 77; *Gortario v. Cantu*, 7 Tex. 44.

FIDE-JUBERE. In the civil law. To order a thing upon one's faith; to pledge one's self; to become surety for another. *Fide-jubes? Fide-jubeo*: Do you pledge yourself? I do pledge myself. Inst. 3, 16, 1. One of the forms of stipulation.

FIDE-JUSSOR. In Roman law. A guarantor; one who becomes responsible for the payment of another's debt, by a stipulation which binds him to discharge it if the principal debtor fails to do so. *Mackeld. Rom. Law*, § 452; 3 Bl. Comm. 108.

The sureties taken on the arrest of a defendant, in the court of admiralty, were formerly denominated "*fide jussors*." 3 Bl. Comm. 108.

FIDE-PROMISSOR. See FIDE-JUSSOR.

FIDELITAS. Lat. Fealty, (*q. v.*)

Fidelitas. De nullo tenemento, quod tenetur ad terminum, fit homagii; fit tamen inde fidelitatis sacramentum. Co. Litt. 676. Fealty. For no tenement which is held for a term is there the oath of homage, but there is the oath of fealty.

FIDELITY INSURANCE. See INSURANCE.

FIDEM MENTIRI. Lat. To betray faith or fealty. A term used in feudal and old English law of a feudatory or feudal tenant who does not keep that fealty which he has sworn to the lord. *Leg. Hen. I. c. 53.*

FIDES. Lat. Faith; honesty; confidence; trust; veracity; honor. Occurring in the phrases "*bona fides*," (good faith), "*mala fides*," (bad faith), and "*uberrima fides*," (the utmost or most abundant good faith.)

Fides est obligatio conscientie alicujus ad intentionem alterius. Bacon. A trust is an obligation of conscience of one to the will of another.

Fides servanda est. Faith must be observed. An agent must not violate the confidence reposed in him. *Story*, Ag. § 192.

Fides servanda est; simplicitas juris gentium praevalcat. Faith must be kept; the simplicity of the law of nations must prevail. A rule applied to bills of exchange as a sort of sacred instruments. 3 Burrows, 1672; *Story*, Bills, § 15.

FIDUCIA. In Roman law. An early form of mortgage or pledge, in which both the title and possession of the property were passed to the creditor by a formal act of sale, (properly with the solemnities of the transaction known as *mancipatio*.) there being at the same time an express or implied agreement on the part of the creditor to reconvey the property by a similar act of sale provided the debt was duly paid; but on default of payment, the property became absolutely vested in the creditor without foreclosure and without any right of redemption. In course of time, this form of security gave place to that known as *hypotheca*, while the contemporary contract of *pignus* or pawn underwent a corresponding development. See Mackeld. Rom. Law, § 334; Tomk. & J. Mod. Rom. Law, 182; Hadley, Rom. Law, 201-203; Pothier, Pand. tit. "*Fiducia*."

FIDUCIAL. An adjective having the same meaning as "fiduciary;" as, in the phrase "public or fiducial office." Ky. St. § 3752; Moss v. Rowlett, 112 Ky. 121, 65 S. W. 153.

FIDUCIARIUS TUTOR. In Roman law. The elder brother of an emancipated *pupillus*, whose father had died leaving him still under fourteen years of age.

FIDUCIARY. The term is derived from the Roman law, and means (as a noun) a person holding the character of a trustee, or a character analogous to that of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires. Thus, a person is a fiduciary who is invested with rights and powers to be exercised for the benefit of another person. *Svanoe v. Jurgens*, 144 Ill. 507, 33 N. E. 955; *Stoll v. King*, 8 How. Prac. (N. Y.) 299.

As an adjective it means of the nature of a trust; having the characteristics of a trust; analogous to a trust; relating to or founded upon a trust or confidence.

—**Fiduciary capacity.** One is said to act in a "fiduciary capacity" or to receive money or contract a debt in a "fiduciary capacity," when the business which he transacts, or the money or property which he handles, is not his own or for his own benefit, but for the benefit of another person, as to whom he stands in a relation implying and necessitating great confidence and trust on the one part and a high degree of good faith on the other part. The term is not restricted to technical or express trusts, but includes also such offices or relations as those of an attorney at law, a guardian, executor, or broker, a director of a corporation, and a public officer. See *Schudder v. Shiells*, 17 How. Prac. (N. Y.) 420; *Roberts v. Prosser*, 53 N. Y. 260; *Heffren v. Jayne*, 39 Ind. 465, 13 Am. Rep. 281; *Flanagan v. Pearson*, 42 Tex. 1, 19 Am. Rep. 40; *Clark v. Pinckney*, 50 Barb. (N. Y.) 226; *Chapman v. Forsyth*, 2 How. 202, 11 L. Ed. 236; *Forker v. Brown*, 10 Misc. Rep. 161, 30 N. Y. Supp. 827; *Madison Tp. v. Dunkle*, 114 Ind. 262, 16 N. E. 593.—**Fiduciary contract.** An agreement by which a person delivers a thing to another on the condition

that he will restore it to him.—**Fiduciary relation.** A relation subsisting between two persons in regard to a business, contract, or piece of property, or in regard to the general business or estate of one of them, of such a character that each must repose trust and confidence in the other and must exercise a corresponding degree of fairness and good faith. Out of such a relation, the law raises the rule that neither party may exert influence or pressure upon the other, take selfish advantage of his trust, or deal with the subject-matter of the trust in such a way as to benefit himself or prejudice the other except in the exercise of the utmost good faith and with the full knowledge and consent of that other, business shrewdness, hard bargaining, and astuteness to take advantage of the forgetfulness or negligence of another being totally prohibited as between persons standing in such a relation to each other. Examples of fiduciary relations are those existing between attorney and client, guardian and ward, principal and agent, executor and heir, trustee and *cestui que trust*, landlord and tenant, etc. See *Robins v. Hope*, 57 Cal. 497; *Thomas v. Whitney*, 186 Ill. 225, 57 N. E. 808; *Central Nat. Bank v. Connecticut Mut. L. Ins. Co.*, 104 U. S. 68, 26 L. Ed. 693; *Meyer v. Reimer*, 65 Kan. 822, 70 Pac. 869; *Studybaker v. Cofield*, 159 Mo. 596, 61 S. W. 246.

FIEF. A fee, feod, or feud.

FIEF D'HAUBERT. Fr. In Norman feudal law. A fief or fee held by the tenure of knight-service; a knight's fee. 2 Bl. Comm. 62.

FIEF-TENANT. In old English law. The holder of a fief or fee; a feeholder or freeholder.

FIEL. In Spanish law. A sequestrator; a person in whose hands a thing in dispute is judicially deposited; a receiver. *Las Partidas*, pt. 3, tit. 9, l. 1.

FIELD. This term might well be considered as definite and certain a description as "close," and might be used in law; but it is not a usual description in legal proceedings. 1 Chit. Gen. Pr. 160.

FIELD-ALE. An ancient custom in England, by which officers of the forest and bailiffs of hundreds had the right to compel the hundred to furnish them with ale. *Tomlins*.

FIELD REEVE. An officer elected, in England, by the owners of a regulated pasture to keep in order the fences, ditches, etc., on the land, to regulate the times during which animals are to be admitted to the pasture, and generally to maintain and manage the pasture subject to the instructions of the owners. (General Inclosure Act, 1845, § 118.) Sweet.

FIELDAD. In Spanish law. Sequestration. This is allowed in six cases by the Spanish law where the title to property is in dispute. *Las Partidas*, pt. 3, tit. 3, l. 1.

FIERDING COURTS. Ancient Gothic courts of an inferior jurisdiction, so called

because four were instituted within every inferior district or hundred. 3 Bl. Comm. 34.

FIERI. Lat. To be made; to be done. See IN FIERI.

FIERI FACIAS. (That you cause to be made.) In practice. A writ of execution commanding the sheriff to levy and make the amount of a judgment from the goods and chattels of the judgment debtor.

—**Fieri facias de bonis ecclesiasticis.** When a sheriff to a common *fi. fa.* returns *nulla bona*, and that the defendant is a beneficed clerk, not having any lay fee, a plaintiff may issue a *fi. fa. de bonis ecclesiasticis*, addressed to the bishop of the diocese or to the archbishop, (during the vacancy of the bishop's see,) commanding him to make of the ecclesiastical goods and chattels belonging to the defendant within his diocese the sum therein mentioned. 2 Chit. Archb. Pr. (12th Ed.) 1062.—**Fieri facias de bonis testatoris.** The writ issued on an ordinary judgment against an executor when sued for a debt due by his testator. If the sheriff returns to this writ *nulla bona*, and a *devastavit*, (*q. v.*), the plaintiff may sue out a *fieri facias de bonis propriis*, under which the goods of the executor himself are seized. Sweet.

FIERI FECL. (I have caused to be made.) In practice. The name given to the return made by a sheriff or other officer to a writ of *fieri facias*, where he has collected the whole, or a part, of the sum directed to be levied. 2 Tidd, Pr. 1018. The return, as actually made, is expressed by the word "Satisfied" indorsed on the writ.

Fieri non debet, (debut,) sed factum valet. It ought not to be done, but [if] done, it is valid. Shep. Touch. 6; 5 Coke, 39; T. Raym. 58; 1 Strange, 526. A maxim frequently applied in practice. Nichols v. Ketcham, 19 Johns. (N. Y.) 84, 92.

FIFTEENTHS. In English law. This was originally a tax or tribute, levied at intervals by act of parliament, consisting of one-fifteenth of all the movable property of the subject or personalty in every city, township, and borough. Under Edward III., the taxable property was assessed, and the value of its fifteenth part (then about £29,000) was recorded in the exchequer, whence the tax, levied on that valuation, continued to be called a "fifteenth," although, as the wealth of the kingdom increased, the name ceased to be an accurate designation of the proportion of the tax to the value taxed. See 1 Bl. Comm. 309.

FIGHT. An encounter, with blows or other personal violence, between two persons. See State v. Gladden, 73 N. C. 155; Carpenter v. People, 31 Colo. 284, 72 Pac. 1072; Coles v. New York Casualty Co., 87 App. Div. 41, 83 N. Y. Supp. 1063.

FIGHTWITE. Sax. A mulct or fine for making a quarrel to the disturbance of the peace. Called also by Cowell "*forisfactura*

pugna." The amount was one hundred and twenty shillings. Cowell.

FILAGER. An officer of the superior courts at Westminster, whose duty it was to file the writs on which he made process. There were fourteen filagers, and it was their duty to make out all original process. Cowell; Blount. The office was abolished in 1837.

FILARE. In old English practice. To file. Townsh. Pl. 67.

FILE, n. A thread, string, or wire upon which writs and other exhibits in courts and offices are fastened or filed for the more safe-keeping and ready turning to the same. Spelman; Cowell; Tomlins. Papers put together and tied in bundles. A paper is said also to be filed when it is delivered to the proper officer, and by him received to be kept on file. 13 Vin. Abr. 211; 1 Litt. 113; 1 Hawk. P. C. 7, 207; Phillips v. Beene, 38 Ala. 251; Holman v. Chevallier, 14 Tex. 338; Beebe v. Morrell, 76 Mich. 114, 42 N. W. 1119, 15 Am. St. Rep. 288. But, in general, "file," or "the files," is used loosely to denote the official custody of the court or the place in the offices of a court where the records and papers are kept.

FILE, v. In practice. To put upon the files, or deposit in the custody or among the records of a court.

"Filing a bill" in equity is an equivalent expression to "commencing a suit." **G**

"To file" a paper, on the part of a party, is to place it in the official custody of the clerk. "To file," on the part of the clerk, is to indorse upon the paper the date of its reception, and retain it in his office, subject to inspection by whomsoever it may concern. Holman v. Chevallier, 14 Tex. 339. **H**

The expressions "filing" and "entering of record" are not synonymous. They are nowhere so used, but always convey distinct ideas. "Filing" originally signified placing papers in order on a thread or wire for safe-keeping. In this country and at this day it means, agreeably to our practice, depositing them in due order in the proper office. Entering of record uniformly implies writing. Naylor v. Moody, 2 Blackf. (Ind.) 247. **I**

FILEINJAID. Brit. A name given to villeins in the laws of Hoel Dda. Barring. Obs. St. 302.

FILIATE. To fix a bastard child on some one, as its father. To declare whose child it is. 2 W. Bl. 1017. **K**

Filiatio non potest probari. Co. Litt. 126. Filiation cannot be proved.

FILIATION. The relation of a child to its parent; correlative to "paternity." **L**

The judicial assignment of an illegitimate child to a designated man as its father.

In the civil law. The descent of son or daughter, with regard to his or her father, mother, and their ancestors. **M**

FILICETUM. In old English law. A ferny or bracky ground; a place where fern grows. Co. Litt. 4b; Shep. Touch. 95.

FILIOLUS. In old records. A godson. Spelman.

FILIUS. Lat. A son; a child.

A distinction was sometimes made, in the civil law, between "*fili*" and "*liberi*;" the latter word including grandchildren, (*nepotes*;) the former not. Inst. 1, 14, 5. But, according to Paulus and Julianus, they were of equally extensive import. Dig. 50, 16, 84; Id. 50, 16, 201.

—**Filius familias.** In the civil law. The son of a family; an unemancipated son. Inst. 2, 12, pr.; Id. 4, 5, 2; Story, Conf. Laws, § 61.

—**Filius mulieratus.** In old English law. The eldest legitimate son of a woman, who previously had an illegitimate son by his father. Glanv. lib. 7, c. 1. Otherwise called "*mulier*." 2 Bl. Comm. 248.—**Filius nullius.** The son of nobody; i. e., a bastard.—**Filius populi.** A son of the people; a natural child.

Filius est nomen naturæ, sed hæres nomen juris. 1 Sid. 193. Son is a name of nature, but heir is a name of law.

Filius in utero matris est pars viscerum matris. 7 Coke, 8. A son in the mother's womb is part of the mother's vitals.

FILL. To make full; to complete; to satisfy or fulfill; to possess and perform the duties of.

The election of a person to an office constitutes the essence of his appointment; but the office cannot be considered as actually *filled* until his acceptance, either express or implied. Johnston v. Wilson, 2 N. H. 202, 9 Am. Dec. 50.

Where one subscribes for shares in a corporation, agreeing to "take and *fill*" a certain number of shares, *assumpsit* will lie against him to recover an assessment on his shares; the word "*fill*," in this connection, amounting to a promise to pay assessments. Bangor Bridge Co. v. McMahon, 10 Me. 478.

To *fill* a prescription is to furnish, prepare, and combine the requisite materials in due proportion as prescribed. Ray v. Burbank, 61 Ga. 505, 34 Am. Rep. 103.

FILLY. A young mare; a female colt. An indictment charging the theft of a "*filly*" is not sustained by proof of the larceny of a "*mare*." Lunsford v. State, 1 Tex. App. 448, 28 Am. Rep. 414.

FILUM. Lat. In old practice. A file; i. e., a thread or wire on which papers were strung, that being the ancient method of filing.

An imaginary thread or line passing through the middle of a stream or road, as in the following phrases:

—**Filum aquæ.** A thread of water; a line of water; the middle line of a stream of water, supposed to divide it into two equal parts, and constituting in many cases the boundary between the riparian proprietors on each side. Ingraham v. Wilkinson, 4 Pick. (Mass.) 273, 16 Am. Dec. 342.—**Filum forestæ.** The border of the forest. 2 Bl. Comm. 419; 4 Inst. 303.—**Filum viæ.** The thread or middle line of a

road. An imaginary line drawn through the middle of a road, and constituting the boundary between the owners of the land on each side. 2 Smith, Lead. Cas. (Am. Ed.) 93, note.

FIN. Fr. An end, or limit; a limitation, or period of limitation.

FIN DE NON RECEVOIR. In French law. An exception or plea founded on law, which, without entering into the merits of the action, shows that the plaintiff has no right to bring it, either because the time during which it ought to have been brought has elapsed, which is called "*prescription*," or that there has been a compromise, accord and satisfaction, or any other cause which has destroyed the right of action which once subsisted. Poth. Proc. Civile, pt. 1, c. 2, § 2, art. 2.

FINAL. Definitive; terminating; completed; last. In its use in jurisprudence, this word is generally contrasted with "*interlocutory*." Johnson v. New York, 48 Hun, 620, 1 N. Y. Supp. 254; Garrison v. Dougherty, 18 S. C. 488; Rondeau v. Beaumette, 4 Minn. 224 (Gil. 163); Blanding v. Sayles, 23 R. I. 226, 49 Atl. 992.

—**Final decision.** One from which no appeal or writ of error can be taken. Railway Co. v. Gillespie, 158 Ind. 454, 63 N. E. 845; Blanding v. Sayles, 23 R. I. 226, 49 Atl. 992.—**Final disposition.** When it is said to be essential to the validity of an award that it should make a "*final disposition*" of the matters embraced in the submission, this term means such a disposition that nothing further remains to fix the rights and obligations of the parties, and no further controversy or litigation is required or can arise on the matter. It is such an award that the party against whom it is made can perform or pay it without any further ascertainment of rights or duties. Colcord v. Fletcher, 50 Me. 401.—**Final hearing.** This term designates the trial of an equity case upon the merits, as distinguished from the hearing of any preliminary questions arising in the cause, which are termed "*interlocutory*." Smith v. W. U. Tel. Co. (C. C.) 81 Fed. 243; Akerly v. Vilas, 24 Wis. 171, 1 Am. Rep. 166; Galpin v. Critchlow, 112 Mass. 343, 17 Am. Rep. 176.—**Final passage.** In parliamentary law. The final passage of a bill is the vote on its passage in either house of the legislature, after it has received the prescribed number of readings on as many different days in that house. State v. Buckley, 54 Ala. 613.

As to final "*Costs*," "*Decree*," "*Judgment*," "*Injunction*," "*Order*," "*Process*," "*Recovery*," "*Sentence*," and "*Settlement*," see those titles.

FINALIS CONCORDIA. A final or conclusive agreement. In the process of "*levying a fine*," this was a final agreement entered by the litigating parties upon the record, by permission of court, settling the title to the land, and which was binding upon them like any judgment of the court. 1 Washb. Real Prop. *70.

FINANCES. The public wealth of a state or government, considered either statically

(as the property or money which a state now owns) or dynamically, (as its income, revenue, or public resources.) Also the revenue or wealth of an individual.

FINANCIER. A person employed in the economical management and application of public money; one skilled in the management of financial affairs.

FIND. To discover; to determine; to ascertain and declare. To announce a conclusion, as the result of judicial investigation, upon a disputed fact or state of facts; as a jury are said to "find a will." To determine a controversy in favor of one of the parties; as a jury "find for the plaintiff." *State v. Bulkeley*, 61 Conn. 287, 23 Atl. 186, 14 L. R. A. 657; *Weeks v. Trask*, 81 Me. 127, 16 Atl. 413, 2 L. R. A. 532; *Southern Bell Tel., etc., Co. v. Watts*, 66 Fed. 460, 13 C. C. A. 579.

FINDER. One who discovers and takes possession of another's personal property, which was then lost. *Kincaid v. Eaton*, 98 Mass. 139, 93 Am. Dec. 142.

A searcher employed to discover goods imported or exported without paying custom. Jacob.

FINDING. A decision upon a question of fact reached as the result of a judicial examination or investigation by a court, jury, referee, coroner, etc. *Williams v. Giblin*, 86 Wis. 648, 57 N. W. 1111; *Rhodes v. United States Bank*, 66 Fed. 514, 13 C. C. A. 612, 34 L. R. A. 742.

-Finding of fact. A determination of a fact by the court, such fact being averred by one party and denied by the other, and the determination being based on the evidence in the case; also the answer of the jury to a specific interrogatory propounded to them as to the existence or non-existence of a fact in issue. *Miles v. McCallan*, 1 Ariz. 491, 3 Pac. 610; *Murphy v. Bennett*, 68 Cal. 528, 9 Pac. 738; *Morby v. Railway Co.*, 116 Iowa, 84, 89 N. W. 105.—**General and special findings.** Where issues of fact in a case are submitted to the court by consent of parties to be tried without a jury, the "finding" is the decision of the court as to the disputed facts, and it may be either general or special, the former being a general statement that the facts are in favor of such a party or entitle him to judgment, the latter being a specific setting forth of the ultimate facts established by the evidence and which are determinative of the judgment which must be given. See *Rhodes v. United States Nat. Bank*, 66 Fed. 514, 13 C. C. A. 612, 34 L. R. A. 742; *Searcy County v. Thompson*, 66 Fed. 94, 13 C. C. A. 349; *Humphreys v. Third Nat. Bank*, 75 Fed. 856, 21 C. C. A. 538.

FINE, v. To impose a pecuniary punishment or mulct. To sentence a person convicted of an offense to pay a penalty in money. *Goodman v. Durant B. & L. Ass'n*, 71 Miss. 310, 14 South. 146; *State v. Belle*, 92 Iowa, 258, 60 N. W. 525.

FINE, n. In conveyancing. An amicable composition or agreement of a suit, either actual or fictitious, by leave of the court, by

which the lands in question become, or are acknowledged to be, the right of one of the parties. 2 Bl. Comm. 349; *Christy v. Burch*, 25 Fla. 942, 2 South. 258; *First Nat. Bank v. Roberts*, 9 Mont. 323, 23 Pac. 718; *Hitz v. Jenks*, 123 U. S. 297, 8 Sup. Ct. 143, 31 L. Ed. 156; *McGregor v. Comstock*, 17 N. Y. 166. Fines were abolished in England by St. 3 & 4 Wm. IV. c. 74, substituting a disentailing deed, (q. v.)

The party who parted with the land, by acknowledging the right of the other, was said to *levy* the fine, and was called the "cognizor" or "conusor," while the party who recovered or received the estate was termed the "cognizee" or "conusee," and the fine was said to be levied to him.

In the law of tenure. A fine is a money payment made by a feudal tenant to his lord. The most usual fine is that payable on the admittance of a new tenant, but there are also due in some manors fines upon alienation, on a license to demise the lands, or on the death of the lord, or other events. *Elton*, Copyh. 159; *De Peyster v. Michael*, 6 N. Y. 495, 57 Am. Dec. 470.

-Executed fine, see EXECUTED.—**Fine and recovery act.** The English statutes 3 & 4 Wm. IV. c. 74, for abolishing fines and recoveries. 1 Steph. Comm. 514, et seq.—**Fine for alienation.** A fine anciently payable upon the alienation of a feudal estate and substitution of a new tenant. It was payable to the lord by all tenants holding by knight's service or tenants *in capite* by socage tenure. Abolished by 12 Car. II. c. 24. See 2 Bl. Comm. 71, 89.—**Fine for endowment.** A fine anciently payable to the lord by the widow of a tenant, without which she could not be endowed of her husband's lands. Abolished under Henry I., and by *Magna Charta*. 2 Bl. Comm. 135; *Mozley & Whitley*.—**Fine sur cognizance de droit come ceo que il ad de son done.** A fine upon acknowledgment of the right of the cognizee as that which he hath of the gift of the cognizor. By this the deforciant acknowledged in court a former feoffment or gift in possession to have been made by him to the plaintiff. 2 Bl. Comm. 352.—**Fine sur cognizance de droit tantum.** A fine upon acknowledgment of the right merely, and not with the circumstance of a *preceding gift* from the cognizor. This was commonly used to pass a *reversionary* interest which was in the cognizor, of which there could be no feoffment supposed. 2 Bl. Comm. 353; 1 Steph. Comm. 519.—**Fine sur concessit.** A fine upon *concessit*, (he hath granted.) A species of fine, where the cognizor, in order to make an end of disputes, though he acknowledged no precedent right, yet *granted* to the cognizee an estate *de novo*, usually for life or years, by way of supposed composition. 2 Bl. Comm. 353; 1 Steph. Comm. 519.—**Fine sur done grant et render.** A double fine, comprehending the fine *sur cognizance de droit come ceo* and the fine *sur concessit*. It might be used to convey particular limitations of estates, whereas the fine *sur cognizance de droit come ceo*, etc., conveyed nothing but an absolute estate, either of inheritance, or at least freehold. In this last species of fines, the cognizee, after the right was acknowledged to be in him, granted back again or rendered to the cognizor, or perhaps to a stranger, some other estate in the premises. 2 Bl. Comm. 353.

In criminal law. Pecuniary punishment imposed by a lawful tribunal upon a person

convicted of crime or misdemeanor. *Lancaster v. Richardson*, 4 Lans. (N. Y.) 140; *State v. Belle*, 92 Iowa, 258, 60 N. W. 525; *State v. Ostwalt*, 118 N. C. 1208, 24 S. E. 660, 32 L. R. A. 396.

It means, among other things, "a sum of money paid at the end, to make an end of a transaction, suit, or prosecution; mulct; penalty." In ordinary legal language, however, it means a sum of money imposed by a court according to law, as a punishment for the breach of some penal statute. *Railroad Co. v. State*, 22 Kan. 15.

It is not confined to a pecuniary punishment of an offense, inflicted by a court in the exercise of criminal jurisdiction. It has other meanings, and may include a forfeiture, or a penalty recoverable by civil action. *Hanscomb v. Russell*, 11 Gray (Mass.) 373.

—**Joint fine.** In old English law. "If a whole vill is to be fined, a joint fine may be laid, and it will be good for the necessity of it; but, in other cases, fines for offenses are to be severally imposed on each particular offender, and not jointly upon all of them." Jacob.

FINE ANULLANDO LEVATO DE TENEMENTO QUOD FUIT DE ANTIQ-UO DOMINICO. An abolished writ for disannulling a fine levied of lands in ancient demesne to the prejudice of the lord. Reg. Orig. 15.

FINE CAPIENDO PRO TERRIS. An obsolete writ which lay for a person who, upon conviction by jury, had his lands and goods taken, and his body imprisoned, to be remitted his imprisonment, and have his lands and goods redelivered to him, on obtaining favor of a sum of money, etc. Reg. Orig. 142.

FINE NON CAPIENDO PRO PULCHRE PLACITANDO. An obsolete writ to inhibit officers of courts to take fines for fair pleading.

FINE PRO REDISSEISINÂ CAPIENDO. An old writ that lay for the release of one imprisoned for a redisseisin, on payment of a reasonable fine. Reg. Orig. 222.

FINE-FORCE. An absolute necessity or inevitable constraint. Plowd. 94; 6 Coke, 11; Cowell.

FINEM FACERE. To make or pay a fine. Bract. 106.

FINES LE ROY. In old English law. The king's fines. Fines formerly payable to the king for any contempt or offense, as where one committed any trespass, or falsely denied his own deed, or did anything in contempt of law. *Termes de la Ley*.

FINIRE. In old English law. To fine, or pay a fine. Cowell. To end or finish a matter.

FINIS. Lat. An end; a fine; a boundary or terminus; a limit. Also in L. Lat., a fine (*q. v.*)

Finis est amicabile compositio et finalis concordia ex concensu et concordia domini regis vel justiciarum. Glan. lib. 8, c. 1. A fine is an amicable settlement and decisive agreement by consent and agreement of our lord, the king, or his justices.

Finis finem litibus imponit. A fine puts an end to litigation. 3 Inst. 78.

Finis rei attendendus est. 3 Inst. 51. The end of a thing is to be attended to.

Finis unius diei est principium alterius. 2 Bulst. 305. The end of one day is the beginning of another.

FINITIO. An ending; death, as the end of life. Blount; Cowell.

FINIUM REGUNDORUM ACTIO. In the civil law. Action for regulating boundaries. The name of an action which lay between those who had lands bordering on each other, to settle disputed boundaries. Mackeld. Rom. Law, § 499.

FINORS. Those that purify gold and silver, and part them by fire and water from coarser metals; and therefore, in the statute of 4 Hen. VII. c. 2, they are also called "parters." *Termes de la Ley*.

FIRDFARE. Sax. In old English law. A summoning forth to a military expedition, (*indictio ad projectionem militarem.*) Spelman.

FIRDIRINGA. Sax. A preparation to go into the army. Leg. Hen. I.

FIRDSOCNE. Sax. In old English law. Exemption from military service. Spelman.

FIRDWITE. In old English law. A fine for refusing military service, (*multa detrectantis militiam.*) Spelman.

A fine imposed for murder committed in the army; an acquittance of such fine. Fleta, lib. 1, c. 47.

FIRE. The effect of combustion. The juridical meaning of the word does not differ from the vernacular. 1 Pars. Mar. Law, 231, et seq.

—**Fire and sword, letters of.** In old Scotch law. Letters issued from the privy council in Scotland, addressed to the sheriff of the county, authorizing him to call for the assistance of the county to dispossess a tenant retaining possession, contrary to the order of a judge or the sentence of a court. Wharton.—**Fire-arms.** This word comprises all sorts of guns, fowling-pieces, blunderbusses, pistols, etc. *Harris v. Cameron*, 81 Wis. 239, 51 N. W. 437, 29 Am. St. Rep. 891; *Atwood v. State*, 53 Ala. 509; *Whitney Arms Co. v. Barlow*, 38 N. Y. Super. Ct. 563.—**Firebare.** A beacon or high tower by the seaside, wherein are continual lights, either to direct sailors in the night, or to give warning of the approach of an enemy. Cowell.—**Fire-bote.** An allowance of wood or *estovers* to maintain competent firing for the tenant. A sufficient allowance of wood to burn

in a house. 1 Washb. Real Prop. 99.—**Fire district.** One of the districts into which a city may be (and commonly is) divided for the purpose of more efficient service by the fire department in the extinction of fires. *Des Moines v. Gilchrist*, 67 Iowa, 210, 25 N. W. 136.—**Fire insurance.** See **INSURANCE**.—**Fire ordeal.** See **ORDEAL**.—**Fire policy.** A policy of fire insurance. See **INSURANCE**.—**Fire-proof.** To say of any article that it is "fire-proof" conveys no other idea than that the material out of which it is formed is incombustible. To say of a building that it is fire-proof excludes the idea that it is of wood, and necessarily implies that it is of some substance fitted for the erection of fire-proof buildings. To say of a certain portion of a building that it is fire-proof suggests a comparison between that portion and other parts of the building not so characterized, and warrants the conclusion that it is of a different material. *Hickey v. Morrell*, 102 N. Y. 459, 7 N. E. 321, 55 Am. Rep. 824.—**Fire-wood.** Wood suitable for fuel, not including standing or felled timber which is suitable and valuable for other purposes. *Hogan v. Hogan*, 102 Mich. 641, 61 N. W. 73.

FIRLOT. A Scotch measure of capacity, containing two gallons and a pint. Spelman.

FIRM. A partnership; the group of persons constituting a partnership. The name or title under which the members of a partnership transact business.—*People v. Strauss*, 97 Ill. App. 55; *Boyd v. Thompson*, 153 Pa. 82, 25 Atl. 769, 34 Am. St. Rep. 685; *McCosker v. Banks*, 84 Md. 292, 35 Atl. 935.

FIRMA. In old English law. The contract of lease or letting; also the rent (or farm) reserved upon a lease of lands, which was frequently payable in provisions, but sometimes in money, in which latter case it was called "*alba firma*," white rent. A message, with the house and garden belonging thereto. Also provision for the table; a banquet; a tribute towards the entertainment of the king for one night.

—**Firma feodi.** In old English law. A farm or lease of a fee; a fee-farm.

FIRMAN. A Turkish word denoting a decree or grant of privileges, or passport to a traveler.

FIRMARATIO. The right of a tenant to his lands and tenements. Cowell.

FIRMARIUM. In old records. A place in monasteries, and elsewhere, where the poor were received and supplied with food. Spelman. Hence the word "infirmarium."

FIRMARIUS. L. Lat. A fermor. A lessee of a term. *Firmarii* comprehend all such as hold by lease for life or lives or for year, by deed or without deed. 2 Inst. 144, 145; 1 Washb. Real Prop. 107.

FIRMATIO. The doe season. Also a supplying with food. Cowell.

FIRME. In old records. A farm.

Firmior et potentior est operatio legis quam dispositio hominis. The operation of the law is firmer and more powerful [or efficacious] than the disposition of man. Co. Litt. 102a.

FIRMITAS. In old English law. An assurance of some privilege, by deed or charter.

FIRMLY. A statement that an affiant "firmly believes" the contents of the affidavit imports a strong or high degree of belief, and is equivalent to saying that he "verily" believes it. *Bradley v. Eccles*, 1 Browne (Pa.) 258; *Thompson v. White*, 4 Serg. & R. (Pa.) 137. The operative words in a bond or recognizance, that the obligor is held and "firmly bound," are equivalent to an acknowledgment of indebtedness and promise to pay. *Shattuck v. People*, 5 Ill. 477.

FIRMURA. In old English law. Liberty to scour and repair a mill-dam, and carry away the soil, etc. Blount.

FIRST. Initial; leading; chief; preceding all others of the same kind or class in sequence, (numerical or chronological;) entitled to priority or preference above others. *Redman v. Railroad Co.*, 33 N. J. Eq. 165; *Thompson v. Grand Gulf R. & B. Co.*, 3 How. (Miss.) 247, 34 Am. Dec. 81; *Haggood v. Brown*, 102 Mass. 452.

—**First devisee.** The person to whom the estate is first given by the will, the term "next devisee" referring to the person to whom the remainder is given. *Young v. Robinson*, 5 N. J. Law, 689; *Wilcox v. Heywood*, 12 R. I. 198.

—**First fruits.** In English ecclesiastical law. The first year's whole profits of every benefice or spiritual living, anciently paid by the incumbent to the pope, but afterwards transferred to the fund called "Queen Anne's Bounty," for increasing the revenue from poor livings. In feudal law. One year's profits of land which belonged to the king on the death of a tenant *in capite*; otherwise called "*primer seisin*." One of the incidents to the old feudal tenures. 2 Bl. Comm. 66, 67.—**First heir.** The person who will be first entitled to succeed to the title to an estate after the termination of a life estate or estate for years. *Winter v. Perratt*, 5 Barn. & C. 48.—**First impression.** A case is said to be "of the first impression" when it presents an entirely novel question of law for the decision of the court, and cannot be governed by any existing precedent.—**First purchaser.** In the law of descent, this term signifies the ancestor who first acquired (in any other manner than by inheritance) the estate which still remains in his family or descendants. *Blair v. Adams* (C. C.) 59 Fed. 247.—**First of exchange.** Where a set of bills of exchange is drawn in duplicate or triplicate, for greater safety in their transmission, all being of the same tenor, and the intention being that the acceptance and payment of any one of them (the first to arrive safely) shall cancel the others of the set, they are called individually the "first of exchange," "second of exchange," etc. See *Bank of Pittsburgh v. Neal*, 22 How. 96, 110, 16 L. Ed. 323.

As to first "Consin," "Distress," "Lien," and "Mortgage," see those titles.

FIRST-CLASS. Of the most superior or excellent grade or kind; belonging to the head or chief or numerically precedent of several classes into which the general subject is divided.

—**First-class mail-matter.** In the postal laws. All mailable matter containing writing and all else that is sealed against inspection.

—**First-class misdemeanant.** In English law. Under the prisons act (28 & 29 Vict. c. 126, § 67) prisoners in the county, city, and borough prisons convicted of misdemeanor, and not sentenced to hard labor, are divided into two classes, one of which is called the "first division;" and it is in the discretion of the court to order that such a prisoner be treated as a misdemeanant of the first division, usually called "first-class misdemeanant," and as such not to be deemed a criminal prisoner, *i. e.*, a prisoner convicted of a crime. Bouvier.—**First-class title.** A marketable title, shown by a clean record, or at least not depending on presumptions that must be overcome or facts that are uncertain. *Vought v. Williams*, 120 N. Y. 253, 24 N. E. 195, 8 L. R. A. 591, 17 Am. St. Rep. 634.

FISC. An Anglicized form of the Latin "*fiscus*," (which see.)

FISCAL. Belonging to the fisc, or public treasury. Relating to accounts or the management of revenue.

—**Fiscal agent.** This term does not necessarily mean depositary of the public funds, so as, by the simple use of it in a statute, without any directions in this respect, to make it the duty of the state treasurer to deposit with him any moneys in the treasury. *State v. Dubuclet*, 27 La. Ann. 29.—**Fiscal officers.** Those charged with the collection and distribution of public money, as, the money of a state, county, or municipal corporation. Rev. St. Mo. 1899, § 5333 (Ann. St. 1906, p. 2776).—**Fiscal judge.** A public officer named in the laws of the Ripuarians and some other Germanic peoples, apparently the same as the "*Graf*," "*reeve*," "*comes*," or "*count*," and so called because charged with the collection of public revenues, either directly or by the imposition of fines. See Spelman, voc. "*Grafio*."—**Fiscal year.** In the administration of a state or government or of a corporation, the fiscal year is a period of twelve months (not necessarily concurrent with the calendar year) with reference to which its appropriations are made and expenditures authorized, and at the end of which its accounts are made up and the books balanced. See *Moose v. State*, 49 Ark. 499, 5 S. W. 885.

FISCUS. In Roman law. The treasury of the prince or emperor, as distinguished from "*ararium*," which was the treasury of the state. Spelman.

The treasury or property of the state, as distinguished from the private property of the sovereign.

In English law. The king's treasury, as the repository of forfeited property.

The treasury of a noble, or of any private person. Spelman.

FISH. An animal which inhabits the water, breathes by means of gills, swims by the aid of fins, and is oviparous.

—**Fish commissioner.** A public officer of the United States, created by act of congress of

February 9, 1871, whose duties principally concern the preservation and increase throughout the country of fish suitable for food. Rev. St. § 4395 (U. S. Comp. St. 1901, p. 3001).—**Fish royal.** These were the whale and the sturgeon, which, when thrown ashore or caught near the coast of England, became the property of the king by virtue of his prerogative and in recompense for his protecting the shore from pirates and robbers. *Brown*; 1 Bl. Comm. 290. *Arnold v. Mundy*, 6 N. J. Law, 86, 10 Am. Dec. 356.

FISHERY. A place prepared for catching fish with nets or hooks. This is commonly applied to the place of drawing a seine or net. *Hart v. Hill*, 1 Whart. (Pa.) 131, 132.

A right or liberty of taking fish; a species of incorporeal hereditament, anciently termed "piscary," of which there are several kinds. 2 Bl. Comm. 34, 39; 3 Kent, Comm. 409-418; *Arnold v. Mundy*, 6 N. J. Law, 22, 10 Am. Dec. 356; *Gould v. James*, 6 Cow. (N. Y.) 376; *Hart v. Hill*, 1 Whart. (Pa.) 124.

—**Common fishery.** A fishing ground where all persons have a right to take fish. *Bennett v. Costar*, 8 Taunt. 183; *Albright v. Park Com'n*, 68 N. J. Law, 523, 53 Atl. 612. Not to be confounded with "common of fishery," as to which see COMMON, *n.*—**Fishery laws.** A series of statutes passed in England for the regulation of fishing, especially to prevent the destruction of fish during the breeding season, and of small fish, spawn, etc., and the employment of improper modes of taking fish. 3 Steph. Comm. 165.—**Free fishery.** A franchise in the hands of a subject, existing by grant or prescription, distinct from an ownership in the soil. It is an exclusive right, and applies to a public navigable river, without any right in the soil. 3 Kent, Comm. 410. *Arnold v. Mundy*, 6 N. J. Law, 87, 10 Am. Dec. 356. See *Albright v. Sussex County Lake & Park Com'n*, 68 N. J. Law, 523, 53 Atl. 612; *Brookhaven v. Strong*, 60 N. Y. 64.—**Right of fishery.** The general and common right of the citizens to take fish from public waters, such as the sea, great lakes, etc. *Shively v. Bowlby*, 152 U. S. 1, 14 Sup. Ct. 548, 38 L. Ed. 331.—**Several fishery.** A fishery of which the owner is also the owner of the soil, or derives his right from the owner of the soil. 2 Bl. Comm. 39, 40; 1 Steph. Comm. 671, note. And see *Freary v. Cooke*, 14 Mass. 489; *Brookhaven v. Strong*, 60 N. Y. 64; *Holford v. Bailey*, 8 Q. B. 1018.

FISHGARTH. A dam or wear in a river for taking fish. Cowell.

FISHING BILL. A term descriptive of a bill in equity which seeks a discovery upon general, loose, and vague allegations. *Story*, Eq. Pl. § 325; In re *Pacific Ry. Com'n* (C. C.) 32 Fed. 263; *Hurricane Tel. Co. v. Mohler*, 51 W. Va. 1, 41 S. E. 421; *Carroll v. Carroll*, 11 Barb. (N. Y.) 298.

FISK. In Scotch law. The *fiscus* or fisc. The revenue of the crown. Generally used of the personal estate of a rebel which has been forfeited to the crown. Bell.

FISSURE VEIN. In mining law. A vein or lode of mineralized matter filling a pre-existing fissure or crack in the earth's crust extending across the *strata* and gen-

erally extending indefinitely downward. See *Crocker v. Manley*, 164 Ill. 282, 45 N. E. 577, 56 Am. St. Rep. 196.

FISTUCA, or FESTUCA. In old English law. The rod or wand, by the delivery of which the property in land was formerly transferred in making a feoffment. Called, also, "*vaculum*," "*virga*," and "*fustis*." Spelman.

FISTULA. In the civil law. A pipe for conveying water. Dig. 8, 2, 18.

FIT. In medical jurisprudence. An attack or spasm of muscular convulsions, generally attended with loss of self-control and of consciousness; particularly, such attacks occurring in epilepsy. In a more general sense, the period of an acute attack of any disease, physical or mental, as, a fit of insanity. See *Gunter v. State*, 83 Ala. 96, 3 South. 600.

FITZ. A Norman word, meaning "son." It is used in law and genealogy; as *Fitzherbert*, the son of Herbert; *Fitzjames*, the son of James; *Fitzroy*, the son of the king. It was originally applied to illegitimate children.

FIVE-MILE ACT. An act of parliament, passed in 1665, against non-conformists, whereby ministers of that body were prohibited from coming within five miles of any corporate town, or place where they had preached or lectured. Brown.

FIX. To liquidate or render certain. To fasten a liability upon one. To transform a possible or contingent liability into a present and definite liability. *Zimmerman v. Canfield*, 42 Ohio St. 468; *Polk v. Minnehaha County*, 5 Dak. 129, 37 N. W. 93; *Logansport & W. V. Gas. Co. v. Peru (C. C.)* 89 Fed. 187.

—**Fixed belief or opinion.** As ground for rejecting a juror, this phrase means a settled belief or opinion which would so strongly influence the mind of the juror and his decision in the case that he could not exclude it from his mind and render a verdict solely in accordance with the law and the evidence. *Bales v. State*, 63 Ala. 30; *Curley v. Com.*, 84 Pa. 156; *Staup v. Com.*, 74 Pa. 461.—**Fixed salary.** One which is definitely ascertained and prescribed as to amount and time of payment, and does not depend upon the receipt of fees or other contingent emoluments; not necessarily a salary which cannot be changed by competent authority. *Sharpe v. Robertson*, 5 Grat. (Va.) 518; *Hedrick v. U. S.*, 16 Ct. Cl. 101.—**Fixing bail.** In practice. Rendering absolute the liability of special bail.

FIXTURE. 1. A fixture is a personal chattel substantially affixed to the land, but which may afterwards be lawfully removed therefrom by the party affixing it, or his representative, without the consent of the owner of the freehold. *Cook v. Whiting*, 16 Ill. 480; *Teaff v. Hewitt*, 1 Ohio St. 511, 59

Am. Dec. 634; *Baker v. Davis*, 19 N. H. 333; *Capen v. Peckham*, 35 Conn. 88; *Wolford v. Baxter*, 33 Minn. 12, 21 N. W. 744, 53 Am. Rep. 1; *Merritt v. Judd*, 14 Cal. 64; *Adams v. Lee*, 31 Mich. 440; *Prescott v. Wells, Fargo & Co.*, 3 Nev. 82.

Personal chattels which have been annexed to land, and which may be afterwards severed and removed by the party who has annexed them, or his personal representative, against the will of the owner of the freehold. *Ferard, Fixt. 2*; *Bouvier*.

The word "fixtures" has acquired the peculiar meaning of chattels which have been annexed to the freehold, but which are removable at the will of the person who annexed them. *Hallen v. Runder*, 1 Cromp., M. & R. 266.

"Fixtures" does not necessarily import things affixed to the freehold. The word is a modern one, and is generally understood to comprehend any article which a tenant has the power to remove. *Sheen v. Rickie*, 5 Mees. & W. 174; *Rogers v. Gilinger*, 30 Pa. 185, 189, 72 Am. Dec. 694.

2. Chattels which, by being physically annexed or affixed to real estate, become a part of and accessory to the freehold, and the property of the owner of the land. Hill.

Things fixed or affixed to other things. The rule of law regarding them is that which is expressed in the maxim, "*accessio cedit principali*," "the accessory goes with, and as part of, the principal subject-matter." Brown.

A thing is deemed to be affixed to land when it is attached to it by roots, as in the case of trees, vines, or shrubs; or imbedded in it, as in the case of walls; or permanently resting upon it, as in the case of buildings; or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts, or screws. Civ. Code Cal. § 660. G

3. That which is fixed or attached to something permanently as an appendage, and not removable. Webster.

That which is fixed; a piece of furniture fixed to a house, as distinguished from movable; something fixed or immovable. Worcester. H

The general result seems to be that three views have been taken. One is that "fixture" means something which has been affixed to the realty, so as to become a part of it; it is fixed, irremovable. An opposite view is that "fixture" means something which appears to be a part of the realty, but is not fully so; it is only a chattel fixed to it, but removable. An intermediate view is that "fixture" means a chattel annexed, affixed, to the realty, but imports nothing as to whether it is removable; that is to be determined by considering its circumstances and the relation of the parties. Abbott. I

—**Domestic fixtures.** All such articles as a tenant attaches to a dwelling house in order to render his occupation more comfortable or convenient, and which may be separated from it without doing substantial injury, such as furnaces, stoves, cupboards, shelves, bells, gas fixtures, or things merely ornamental, as painted wainscots, pier and chimney glasses, although attached to the walls with screws, marble chimney pieces, grates, beds nailed to the walls, window blinds and curtains. *Wright v. Du Bignon*, 114 Ga. 765, 40 S. E. 747, 57 L. R. A. 669.—**Trade fixtures.** Articles placed in or attached to rented buildings by the tenant, to prosecute the trade or business for which he occupies the premises, or to be used in connection with such business, or promote convenience and efficiency in conducting it. *Herkimer County L. & P. Co. v. Johnson*, 37 App. Div. 257, 55 N. Y. Supp. 924; *Brown v. Reno Electric* M

L. & P. Co. (C. C.) 55 Fed. 231; *Security L. & T. Co. v. Willamette, etc., Mfg. Co.*, 99 Cal. 636, 34 Pac. 321.

FLACO. A place covered with standing water.

FLAG. A national standard on which are certain emblems; an ensign; a banner. It is carried by soldiers, ships, etc., and commonly displayed at forts and many other suitable places.

—**Flag, duty of the.** This was an ancient ceremony in acknowledgment of British sovereignty over the British seas, by which a foreign vessel struck her flag and lowered her top-sail on meeting the British flag.—**Flag of the United States.** By the act entitled "An act to establish the flag of the United States," (Rev. St. §§ 1791, 1792 [U. S. Comp. St. 1901, p. 1225],) it is provided "that, from and after the fourth day of July next, the flag of the United States be thirteen horizontal stripes, alternate red and white; that the union be twenty stars, white in a blue field; that, on the admission of every new state into the Union, one star be added to the union of the flag; and that such addition shall take effect on the fourth day of July then next succeeding such admission."—**Law of the flag.** See **LAW**.

FLAGELLAT. Whipped; scourged. An entry on old Scotch records. 1 Pitt. Crim. Tr. pt. 1, p. 7.

FLAGRANS. Lat. Burning; raging; in actual perpetration.

—**Flagrans bellum.** A war actually going on.—**Flagrans crimen.** In Roman law. A fresh or recent crime. This term designated a crime in the very act of its commission, or while it was of recent occurrence.—**Flagrante bello.** During an actual state of war.—**Flagrante delicto.** In the very act of committing the crime. 4 Bl. Comm. 307.

FLAGRANT DÉLIT. In French law. A crime which is in actual process of perpetration or which has just been committed. Code d'Instr. Crim. art. 41.

FLAGRANT NECESSITY. A case of urgency rendering lawful an otherwise illegal act, as an assault to remove a man from impending danger.

FLASH CHECK. A check drawn upon a banker by a person who has no funds at the banker's and knows that such is the case.

FLAT. A place covered with water too shallow for navigation with vessels ordinarily used for commercial purposes. The space between high and low water mark along the edge of an arm of the sea, bay, tidal river, etc. *Thomas v. Hatch*, 23 Fed. Cas. 946; *Church v. Meeker*, 34 Conn. 424; *Jones v. Janney*, 8 Watts & S. (Pa.) 443, 42 Am. Dec. 309.

FLAVIANUM JUS. In Roman law. The title of a book containing the forms of actions, published by Cneius Flavius, A. U. C. 449. *Mackeld. Rom. Law*, § 39. **Calvin.**

FLECTA. A feathered or fleet arrow. **Cowell.**

FLEDWITE. A discharge or freedom from ameracements where one, having been an outlawed fugitive, cometh to the place of our lord of his own accord. *Termes de la Ley.*

The liberty to hold court and take up the ameracements for beating and striking. **Cowell.**

The fine set on a fugitive as the price of obtaining the king's freedom. **Spelman.**

FLEE FROM JUSTICE. To leave one's home, residence, or known place of abode, or to conceal one's self therein, with intent, in either case, to avoid detection or punishment for some public offense. *Streep v. U. S.*, 160 U. S. 128, 16 Sup. Ct. 244, 40 L. Ed. 365; *Lay v. State*, 42 Ark. 110; *U. S. v. O'Brian*, 3 Dill. 381, Fed. Cas. No. 15,908; *United States v. Smith*, 4 Day (Conn.) 125, Fed. Cas. No. 16,332; *State v. Washburn*, 48 Mo. 241.

FLEE TO THE WALL. A metaphorical expression, used in connection with homicide done in self-defense, signifying the exhaustion of every possible means of escape, or of averting the assault, before killing the assailant.

FLEET. A place where the tide flows; a creek, or inlet of water; a company of ships or navy; a prison in London, (so called from a river or ditch formerly in its vicinity,) now abolished by 5 & 6 Vict. c. 22.

FLEM. In Saxon and old English law. A fugitive bondman or villein. **Spelman.**
The privilege of having the goods and fines of fugitives.

FLEMENE FRIT, FLEMENES FRINTHE—FLYMENA FRYNTHE. The reception or relief of a fugitive or outlaw. **Jacob.**

FLEMESWITE. The possession of the goods of fugitives. *Fleta*, lib. 1, c. 147.

FLET. In Saxon law. Land; a house; home.

FLETA. The name given to an ancient treatise on the laws of England, founded mainly upon the writings of Bracton and Glanville, and supposed to have been written in the time of Edw. I. The author is unknown, but it is surmised that he was a judge or learned lawyer who was at that time confined in the Fleet prison, whence the name of the book.

FLICHWITE. In Saxon law. A fine on account of brawls and quarrels. **Spelman.**

FLIGHT. In criminal law. The act of one under accusation, who evades the law by voluntarily withdrawing himself. It is presumptive evidence of guilt. *U. S. v. Candler* (D. C.) 65 Fed. 312.

FLOAT. In American land law, especially in the western states. A certificate authorizing the entry, by the holder, of a certain quantity of land not yet specifically selected or located. *U. S. v. Central Pac. R. Co.* (C. C.) 26 Fed. 480; *Hays v. Steiger*, 76 Cal. 555, 18 Pac. 670; *Wisconsin Cent. R. Co. v. Price County*, 133 U. S. 496, 10 Sup. Ct. 341, 33 L. Ed. 687.

FLOATABLE. Used for floating. A floatable stream is a stream used for floating logs, rafts, etc. *Gerrish v. Brown*, 51 Me. 260, 81 Am. Dec. 569; *Gaston v. Mace*, 33 W. Va. 14, 10 S. E. 60, 5 L. R. A. 392, 25 Am. St. Rep. 848; *Parker v. Hastings*, 123 N. C. 671, 31 S. E. 833.

FLOATING CAPITAL, (or circulating capital.) The capital which is consumed at each operation of production and reappears transformed into new products. At each sale of these products the capital is represented in cash, and it is from its transformations that profit is derived. Floating capital includes raw materials destined for fabrication, such as wool and flax, products in the warehouses of manufacturers or merchants, such as cloth and linen, and money for wages, and stores. *De Laveleye*, Pol. Ec. Capital retained for the purpose of meeting current expenditure.

FLOATING DEBT. By this term is meant that mass of lawful and valid claims against the corporation for the payment of which there is no money in the corporate treasury specifically designed, nor any taxation nor other means of providing money to pay particularly provided. *People v. Wood*, 71 N. Y. 374; *City of Huron v. Second Ward Sav. Bank*, 86 Fed. 276, 30 C. C. A. 38, 49 L. R. A. 534.

Debt not in the form of bonds or stocks bearing regular interest. *Pub. St. Mass.* 1882, p. 1290. *State v. Faran*, 24 Ohio St. 541; *People v. Carpenter*, 31 App. Div. 603, 52 N. Y. Supp. 781.

FLODE-MARK. Flood-mark, high-water mark. The mark which the sea, at flowing water and highest tide, makes on the shore. *Blount*.

FLOOR. A section of a building between horizontal planes. *Lowell v. Strahan*, 145 Mass. 1, 12 N. E. 401, 1 Am. St. Rep. 422.

A term used metaphorically, in parliamentary practice, to denote the exclusive right to address the body in session. A member who has been recognized by the chairman, and who is in order, is said to "have the floor," until his remarks are con-

cluded. Similarly, the "floor of the house" means the main part of the hall where the members sit, as distinguished from the galleries, or from the corridors or lobbies.

In England, the floor of a court is that part between the judge's bench and the front row of counsel. Litigants appearing in person, in the high court or court of appeal, are supposed to address the court from the floor.

FLORENTINE PANDECTS. A copy of the Pandects discovered accidentally about the year 1137, at Amalphi, a town in Italy, near Salerno. From Amalphi, the copy found its way to Pisa, and, Pisa having submitted to the Florentines in 1406, the copy was removed in great triumph to Florence. By direction of the magistrates of the town, it was immediately bound in a superb manner, and deposited in a costly chest. Formerly, these Pandects were shown only by torch-light, in the presence of two magistrates, and two Cistercian monks, with their heads uncovered. They have been successively collated by Politian, Bolognini, and Antonius Augustinus. An exact copy of them was published in 1553 by Franciscus Taurellus. For its accuracy and beauty, this edition ranks high among the ornaments of the press. *Brenchman*, who collated the manuscript about 1710, refers it to the sixth century. *Butl. Hor. Jur.* 90, 91.

FLORIN. A coin originally made at Florence, now of the value of about two English shillings. **G**

FLOTAGES. 1. Such things as by accident swim on the top of great rivers or the sea. *Cowell*.

2. A commission paid to water bailiffs. *Cun. Dict.* **H**

FLOTSAM, FLOTSAN. A name for the goods which float upon the sea when cast overboard for the safety of the ship, or when a ship is sunk. Distinguished from "jetsam" and "ligan." *Bract. lib. 2, c. 5; 5 Coke*, 106; 1 Bl. Comm. 292. **I**

FLOOD-MARKE. In old English law. High-water mark; flood-mark. 1 And. 88, 89. **J**

FLOWING LANDS. This term has acquired a definite and specific meaning in law. It commonly imports raising and setting back water on another's land, by a dam placed across a stream or water-course which is the natural drain and outlet for surplus water on such land. *Call v. Middlesex County Com'rs*, 2 Gray (Mass.) 235. **K**

FLUCTUS. Flood; flood-tide. *Bract. fol. 255.* **L**

FLUMEN. In Roman law. A servitude which consists in the right to conduct the rain-water, collected from the roof and carried off by the gutters, onto the house or **M**

ground of one's neighbor. Mackeld. Rom. Law, § 317; Ersk. Inst. 2, 9, 9. Also a river or stream.

In old English law. Flood; flood-tide.

Flumina et portus publica sunt, ideoque jus piscandi omnibus commune est. Rivers and ports are public. Therefore the right of fishing there is common to all. Day. Ir. K. B. 55; Branch, Princ.

FLUMINÆ VOLUCRES. Wild fowl; water-fowl. 11 East, 571, note.

FLUVIUS. Lat. A river; a public river; flood; flood-tide.

FLUXUS. In old English law. Flow. *Per fluxum et refluxum maris*, by the flow and reflow of the sea. Dal. pl. 10.

FLY FOR IT. On a criminal trial in former times, it was usual after a verdict of not guilty to inquire also, "Did he fly for it?" This practice was abolished by the 7 & 8 Geo. IV., c. 28, § 5. Wharton.

FLYING SWITCH. In railroading, a flying switch is made by uncoupling the cars from the engine while in motion, and throwing the cars onto the side track, by turning the switch, after the engine has passed it upon the main track. *Greenleaf v. Illinois Cent. R. Co.*, 29 Iowa, 39, 4 Am. Rep. 181; *Baker v. Railroad Co.*, 122 Mo. 533, 26 S. W. 20.

FLYMA. In old English law. A runaway; fugitive; one escaped from justice, or who has no "hlaford."

FLYMAN-FRYMTH. In old English law. The offense of harboring a fugitive, the penalty attached to which was one of the rights of the crown.

FOCAGE. House-bote; fire-bote. Cowell.

FOCALE. In old English law. Fire-wood. The right of taking wood for the fire. Fire-bote. Cunningham.

FODDER. Food for horses or cattle. In feudal law, the term also denoted a prerogative of the prince to be provided with corn, etc., for his horses by his subjects in his wars.

FODERTORIUM. Provisions to be paid by custom to the royal purveyors. Cowell.

FODERUM. See FODDER.

FODINA. A mine. Co. Litt. 6a.

FŒDUS. In international law. A treaty; a league; a compact.

FEMINA VIRO CO-OPERTA. A married woman; a *feme covert*.

Fœminæ ab omnibus officiis civilibus vel publicis remotæ sunt. Women are excluded from all civil and public charges or offices. Dig. 50, 17, 2; 1 Exch. 645; 6 Mees. & W. 216.

Fœminæ non sunt capaces de publicis officiis. Jenk. Cent. 237. Women are not admissible to public offices.

FENERATION. Lending money at interest; the act of putting out money to usury.

FENUS. Lat. In the civil law. Interest on money; the lending of money on interest.

—**Fœnus nauticum.** Nautical or maritime interest. An extraordinary rate of interest agreed to be paid for the loan of money on the hazard of a voyage; sometimes called "*usura maritima*." Dig. 22, 2; Code, 4, 33; 2 Bl. Comm. 458. The extraordinary rate of interest, proportioned to the risk, demanded by a person lending money on a ship, or on "bottomry," as it is termed. The agreement for such a rate of interest is also called "*fœnus nauticum*." (2 Bl. Comm. 458; 2 Steph. Comm. 93.) Mozley & Whitley.—**Fœnus unciarium.** Interest of one-twelfth, that is, interest amounting annually to one-twelfth of the principal, hence at the rate of eight and one-third per cent. per annum. This was the highest legal rate of interest in the early times of the Roman republic. See Mackeld. Rom. Law, § 382.

FESA. In old records. Grass; herbage. 2 Mon. Angl. 906b; Cowell.

FETICIDE. In medical jurisprudence. Destruction of the *fœtus*; the act by which criminal abortion is produced. 1 Beck, Med. Jur. 288; Guy, Med. Jur. 133.

FETURA. In the civil law. The produce of animals, and the fruit of other property, which are acquired to the owner of such animals and property by virtue of his right. Bowyer, Mod. Civil Law, c. 14, p. 81.

FETUS. In medical jurisprudence. An unborn child. An infant *in ventre sa mère*.

FOG. In maritime law. Any atmospheric condition (including not only fog properly so called, but also mist or falling snow) which thickens the air, obstructs the view, and so increases the perils of navigation. *Flint & P. M. R. Co. v. Marine Ins. Co. (C. C.)* 71 Fed. 210; *Dolner v. The Monticello*, 7 Fed. Cas. 859.

FOGAGIUM. In old English law. Fog-gage or fog; a kind of rank grass of late growth, and not eaten in summer. Spelman; Cowell.

FOL. In French feudal law. Faith; fealty. Guyot, Inst. Feod. c. 2.

FOINESUN. In old English law. The fawning of deer. Spelman.

FOIRFAULT. In old Scotch law. To forfeit. 1 How. State Tr. 927.

FOIRTHOCHT. In old Scotch law. Forethought; premeditated. 1 Pitt. Crim. Tr. pt. 1, p. 90.

FOITERERS. Vagabonds. Blount.

FOLC-GEMOTE. In Saxon law. A general assembly of the people in a town or shire. It appears to have had judicial functions of a limited nature, and also to have discharged political offices, such as deliberating upon the affairs of the commonwealth or complaining of misgovernment, and probably possessed considerable powers of local self-government. The name was also given to any sort of a popular assembly. See Spelman; Manwood; Cunningham.

FOLC-LAND. In Saxon law. Land of the folk or people. Land belonging to the people or the public.

Folc-land was the property of the community. It might be occupied in common, or possessed in severalty; and, in the latter case, it was probably parceled out to individuals in the folc-gemote or court of the district, and the grant sanctioned by the freemen who were there present. But, while it continued to be folc-land, it could not be alienated in perpetuity; and therefore, on the expiration of the term for which it had been granted, it reverted to the community, and was again distributed by the same authority. It was subject to many burdens and exactions from which boc-land was exempt. Wharton.

FOLC-MOTE. A general assembly of the people, under the Saxons. See **FOLC-GEMOTE**.

FOLC-RIGHT. The common right of all the people. 1 Bl. Comm. 65, 67.

The *ius commune*, or common law, mentioned in the laws of King Edward the Elder, declaring the same equal right, law, or justice to be due to persons of all degrees. Wharton.

FOLD-COURSE. In English law. Land to which the sole right of folding the cattle of others is appurtenant. Sometimes it means merely such right of folding. The right of folding on another's land, which is called "common foldage." Co. Litt. 6a, note 1.

FOLDAGE. A privilege possessed in some places by the lord of a manor, which consists in the right of having his tenant's sheep to feed on his fields, so as to manure the land. The name of foldage is also given in parts of Norfolk to the customary fee paid to the lord for exemption at certain times from this duty. Elton, Com. 45, 46.

FOLGARIL. Menial servants; followers. Bract.

FOLGERE. In old English law. A free-man, who has no house or dwelling of his own, but is the follower or retainer of another, (*heorthfæst*), for whom he performs certain predial services.

FOLIO. 1. A leaf. In the ancient law-books it was the custom to number the leaves, instead of the pages; hence a folio would include both sides of the leaf, or two pages. The references to these books are made by the number of the folio, the letters "a" and "b" being added to show which of the two pages is intended; thus "Bracton, fol. 100a."

2. A large size of book, the page being obtained by folding the sheet of paper once only in the binding. Many of the ancient law-books are folios.

3. In computing the length of written legal documents, the term "folio" denotes a certain number of words, fixed by statute in some states at one hundred.

The term "folio," when used as a measure for computing fees or compensation, or in any legal proceedings, means one hundred words, counting every figure necessarily used as a word; and any portion of a folio, when in the whole draft or figure there is not a complete folio, and when there is any excess over the last folio, shall be computed as a folio. Gen. St. Minn. 1878, c. 4, § 1, par. 4.

FOLK-LAND; FOLK-MOTE. See **FOLC-LAND; FOLC-GEMOTE**.

FOLLOW. To conform to, comply with, or be fixed or determined by; as in the expressions "costs follow the event of the suit," "the *situs* of personal property follows that of the owner," "the offspring follows the mother," (*partus sequitur ventrem*).

FONDS ET BIENS. Fr. In French law. Goods and effects. *Adams v. Akerlund*, 168 Ill. 632, 48 N. E. 454.

FONDS PERDUS. In French law. A capital is said to be invested *à fonds perdu* when it is stipulated that in consideration of the payment of an amount as interest, higher than the normal rate, the lender shall be repaid his capital in this manner. The borrower, after having paid the interest during the period determined, is free as regards the capital itself. Arg. Fr. Merc. Law, 560.

FONSADERA. In Spanish law. Any tribute or loan granted to the king for the purpose of enabling him to defray the expenses of a war.

FONTANA. A fountain or spring. Bract. fol. 233.

FOOT. 1. A measure of length containing twelve inches or one-third of a yard.

2. The base, bottom, or foundation of anything; and, by metonymy, the end or termination; as the foot of a fine.

FOOT OF THE FINE. The fifth part of the conclusion of a fine. It includes the whole matter, reciting the names of the parties, day, year, and place, and before whom it was acknowledged or levied. 2 Bl. Comm. 351.

FOOTGELD. In the forest law. An amerement for not cutting out the ball or cutting off the claws of a dog's feet, (expediting him.) To be quit of *footgeld* is to have the privilege of keeping dogs in the forest *unlaced* without punishment or control. Manwood.

FOOT-PRINTS. In the law of evidence. Impressions made upon earth, snow, or other surface by the feet of persons, or by the shoes, boots, or other covering of the feet. Burrill, Circ. Ev. 264.

FOR. Fr. In French law. A tribunal. *Le for interieur*, the interior forum; the tribunal of conscience. Poth. Obl. pt. 1, c. 1, § 1, art. 3, § 4.

FOR. Instead of; on behalf of; in place of; as, where one signs a note or legal instrument "for" another, this formula importing agency or authority. *Emerson v. Hat Mfg. Co.*, 12 Mass. 240, 7 Am. Dec. 66; *Donovan v. Welch*, 11 N. D. 113, 90 N. W. 262; *Wilks v. Black*, 2 East, 142.

During; throughout; for the period of; as, where a notice is required to be published "for" a certain number of weeks or months. *Wilson v. Northwestern Mut. L. Ins. Co.*, 65 Fed. 39, 12 C. C. A. 505; *Northrop v. Cooper*, 23 Kan. 432.

In consideration for; as an equivalent for; in exchange for; as where property is agreed to be given "for" other property or "for" services. *Norton v. Woodruff*, 2 N. Y. 153; *Duncan v. Franklin Tp.*, 43 N. J. Eq. 143, 10 Atl. 546.

Belonging to, exercising authority or functions within; as, where one describes himself as "a notary public in and for the said county."

—**For account of.** This formula, used in an indorsement of a note or draft, introduces the name of the person entitled to receive the proceeds. *Freiberg v. Stoddard*, 161 Pa. 269, 23 Atl. 1111; *White v. Miners' Nat. Bank*, 102 U. S. 658, 26 L. Ed. 250.—**For cause.** With reference to the power of removal from office, this term means some cause other than the will or pleasure of the removing authority, that is, some cause relating to the conduct, ability, fitness, or competence of the officer. *Hagerstown Street Com'rs v. Williams*, 96 Md. 232, 53 Atl. 923; *In re Nichols*, 57 How Prac. (N. Y.) 404.—**For collection.** A form of indorsement on a note or check where it is not intended to transfer title to it or to give it credit or currency, but merely to authorize the transferee to collect the amount of it. *Central R. Co. v. Bank*, 73 Ga. 383; *Sweeney v. Easter*, 1 Wall. 166, 17 L. Ed. 681; *Freiberg v. Stoddard*, 161 Pa. 259, 23 Atl. 1111.—**For that.** In pleading. Words used to introduce the allegations of a declaration. "For that" is a positive allegation; "For that whereas" is a recital. *Ham. N. P. 9.*—**For that whereas.** In pleading. Formal words introducing the statement of the plaintiff's case, by way of recital, in his declaration, in all actions except trespass. 1 Instr. Cler. 170; 1 Burrill, Pr. 127. In trespass, where there was no recital, the expression used was, "For that" *Id.*; 1 Instr. Cler. 202.—**For use.** (1) For the benefit or advantage of another. Thus,

where an assignee is obliged to sue in the name of his assignor, the suit is entitled "A. for use of B. v. C." (2) For enjoyment or employment without destruction. A loan "for use" is one in which the bailee has the right to use and enjoy the article, but without consuming or destroying it, in which respect it differs from a loan "for consumption."—**For value.** See HOLDER.—**For value received.** See VALUE RECEIVED.—**For whom it may concern.** In a policy of marine or fire insurance, this phrase indicates that the insurance is taken for the benefit of all persons (besides those named) who may have an insurable interest in the subject.

FORAGE. Hay and straw for horses, particularly in the army. Jacob.

FORAGIUM. Straw when the corn is threshed out. Cowell.

FORANEUS. One from without; a foreigner; a stranger. Calvin.

FORATHE. In forest law. One who could make oath, & e., bear witness for another. Cowell; Spelman.

FORBALCA. In old records. A forebalk; a balk (that is, an unplowed piece of land) lying forward or next the highway. Cowell.

FORBANNITUS. A pirate; an outlaw; one banished.

FORBARRER. L. Fr. To bar out; to preclude; hence, to estop.

FORBATUDUS. In old English law. The aggressor slain in combat. Jacob.

FORBEARANCE. The act of abstaining from proceeding against a delinquent debtor; delay in exacting the enforcement of a right; indulgence granted to a debtor. *Reynolds v. Ward*, 5 Wend. (N. Y.) 504; *Diercks v. Kennedy*, 16 N. J. Eq. 211; *Dry Dock Bank v. American Life Ins., etc., Co.*, 3 N. Y. 354.

Refraining from action. The term is used in this sense in general jurisprudence, in contradistinction to "act."

FORCE. Power dynamically considered, that is, in motion or in action; constraining power, compulsion; strength directed to an end. Usually the word occurs in such connections as to show that unlawful or wrongful action is meant. *Watson v. Railway Co.*, 7 Misc. Rep. 562, 28 N. Y. Supp. 84; *Plank Road Co. v. Robbins*, 22 Barb. (N. Y.) 667.

Unlawful violence. It is either *simple*, as entering upon another's possession, without doing any other unlawful act; *compound*, when some other violence is committed, which of itself alone is criminal; or *implied*, as in every trespass, rescous, or disseisin.

Power statically considered; that is at rest, or latent, but capable of being called into activity upon occasion for its exercise. Efficacy; legal validity. This is the meaning

when we say that a statute or a contract is "in force."

In old English law. A technical term applied to a species of accessory before the fact.

In Scotch law. Coercion; duress. Bell.

—Force and arms. A phrase used in declarations of trespass and in indictments, but now unnecessary in declarations, to denote that the act complained of was done with violence. 2 Chit. Pl. 846, 850.—**Force and fear**, called also "*vi metuque*," means that any contract or act extorted under the pressure of force (*vis*) or under the influence of fear (*metus*) is voidable on that ground, provided, of course, that the force or the fear was such as influenced the party. Brown.—**Forces.** The military and naval power of the country.

FORCE MAJEURE. Fr. In the law of insurance. Superior or irresistible force. Emerig. Tr. des Ass. c. 12.

FORCED HEIRS. In Louisiana. Those persons whom the testator or donor cannot deprive of the portion of his estate reserved for them by law, except in cases where he has a just cause to disinherit them. Civil Code La. art. 1495. And see Crain v. Crain, 17 Tex. 90; Hagerty v. Hagerty, 12 Tex. 456; Miller v. Miller, 105 La. 257, 29 South. 802.

FORCED SALE. In practice. A sale made at the time and in the manner prescribed by law, in virtue of execution issued on a judgment, already rendered by a court of competent jurisdiction; a sale made under the process of the court, and in the mode prescribed by law. Sampson v. Williamson, 6 Tex. 110, 55 Am. Dec. 762.

A forced sale is a sale against the consent of the owner. The term should not be deemed to embrace a sale under a power in a mortgage. Patterson v. Taylor, 15 Fla. 336.

FORCHEAPUM. Pre-emption; forestalling the market. Jacob.

FORCIBLE DETAINER. The offense of violently keeping possession of lands and tenements, with menaces, force, and arms, and without the authority of law. 4 Bl. Comm. 148; 4 Steph. Comm. 280.

Forcible detainer may ensue upon a peaceable entry, as well as upon a forcible entry; but it is most commonly spoken of in the phrase "forcible entry and detainer." See *infra*.

FORCIBLE ENTRY. An offense against the public peace, or private wrong, committed by violently taking possession of lands and tenements with menaces, force, and arms, against the will of those entitled to the possession, and without the authority of law. 4 Bl. Comm. 148; 4 Steph. Comm. 280; Code Ga. 1882, § 4524.

Every person is, guilty of forcible entry who either (1) by breaking open doors, windows, or other parts of a house, or by any kind of violence or circumstance of terror,

enters upon or into any real property; or (2) who, after entering peaceably upon real property, turns out by force, threats, or menacing conduct the party in possession. Code Civil Proc. Cal. § 1159.

At common law, a forcible entry was necessarily one effected by means of force, violence, menaces, display of weapons, or otherwise with the strong hand; but this rule has been relaxed, either by statute or the course of judicial decisions, in many of the states, so that an entry effected without the consent of the rightful owner, or against his remonstrance, or under circumstances which amount to no more than a mere trespass, is now technically considered "forcible," while a detainer of the property consisting merely in the refusal to surrender possession after a lawful demand, is treated as a "forcible" detainer; the reason in both cases being that the action of "forcible entry and detainer" (see next title) has been found an extremely convenient method of proceeding to regain possession of property as against a trespasser or against a tenant refusing to quit, the "force" required at common law being now supplied by a mere fiction. See Rev. St. Tex. 1895, art. 2521; Goldsberry v. Bishop, 2 Duv. (Ky.) 144; Wells v. Darby, 13 Mont. 504, 34 Pac. 1092; Willard v. Warren, 17 Wend. (N. Y.) 261; Franklin v. Geho, 30 W. Va. 27, 3 S. E. 168; Phelps v. Randolph, 147 Ill. 335, 35 N. E. 243; Brawley v. Risdon Iron Works, 38 Cal. 678; Ouyler v. Estis, 64 S. W. 673, 23 Ky. Law Rep. 1063; Herkimer v. Keeler, 109 Iowa, 680, 81 N. W. 178; Young v. Young, 109 Ky. 123, 58 S. W. 592.

FORCIBLE ENTRY AND DETAINER.

The action of forcible entry and detainer is a summary proceeding to recover possession of premises forcibly or unlawfully detained. The inquiry in such cases does not involve title, but is confined to the actual and peaceable possession of the plaintiff and the unlawful or forcible ouster or detention by defendant; the object of the law being to prevent the disturbance of the public peace by the forcible assertion of a private right. Gore v. Altice, 33 Wash. 335, 74 Pac. 556; Eveleth v. Gill, 97 Me. 315, 54 Atl. 757.

FORCIBLE TRESPASS. In North Carolina, this is an invasion of the rights of another with respect to his personal property, of the same character, or under the same circumstances, which would constitute a "forcible entry and detainer" of real property at common law. It consists in taking or seizing the personal property of another by force, violence, or intimidation. State v. Lawson, 123 N. C. 740, 31 S. E. 667, 68 Am. St. Rep. 844; State v. Barefoot, 89 N. C. 567; State v. Ray, 32 N. C. 40; State v. Sows, 61 N. C. 151; State v. Laney, 87 N. C. 535.

FORDA. In old records. A ford or shallow, made by damming or penning up the water. Cowell.

FORDAL. A butt or headland, jutting out upon other land. Cowell.

FORDANNO. In old European law. He who first assaulted another. Spelman.

FORDIKA. In old records. Grass or herbage growing on the edge or bank of dykes or ditches. Cowell.

FORE. Sax. Before. Fr. Out. Kelham.

FORECLOSE. To shut out; to bar. Used of the process of destroying an equity of redemption existing in a mortgagor.

FORECLOSURE. A process in chancery by which all further right existing in a mortgagor to redeem the estate is defeated and lost to him, and the estate becomes the absolute property of the mortgagee; being applicable when the mortgagor has forfeited his estate by non-payment of the money due on the mortgage at the time appointed, but still retains the equity of redemption. 2 Washb. Real Prop. 237. Goodman v. White, 26 Conn. 322; Arrington v. Liscom, 34 Cal. 376, 94 Am. Dec. 722; Appeal of Ansonia Nat. Bank, 58 Conn. 257, 18 Atl. 1030; Williams v. Wilson, 42 Or. 299, 70 Pac. 1031, 95 Am. St. Rep. 745.

The term is also loosely applied to any of the various methods, statutory or otherwise, known in different jurisdictions, of enforcing payment of the debt secured by a mortgage, by taking and selling the mortgaged estate.

Foreclosure is also applied to proceedings founded upon some other liens; thus there are proceedings to foreclose a mechanic's lien.

—Foreclosure decree. Properly speaking, a decree ordering the strict foreclosure (see *infra*) of a mortgage; but the term is also loosely and conventionally applied to a decree ordering the sale of the mortgaged premises and the satisfaction of the mortgage out of the proceeds. Hanover F. Ins. Co. v. Brown, 77 Md. 64, 25 Atl. 989, 39 Am. St. Rep. 386.—**Foreclosure sale.** A sale of mortgaged property to obtain satisfaction of the mortgage out of the proceeds, whether authorized by a decree of the court or by a power of sale contained in the mortgage. See Johnson v. Cook, 96 Mo. App. 442, 70 S. W. 526.—**Statutory foreclosure.** The term is sometimes applied to foreclosure by execution of a power of sale contained in the mortgage, without recourse to the courts, as it must conform to the provisions of the statute regulating such sales. See Mowry v. Sanborn, 11 Hun (N. Y.) 548.—**Strict foreclosure.** A decree of strict foreclosure of a mortgage finds the amount due under the mortgage, orders its payment within a certain limited time, and provides that, in default of such payment, the debtor's right and equity of redemption shall be forever barred and foreclosed; its effect is to vest the title of the property absolutely in the mortgagee, on default in payment, without any sale of the property. Champion v. Hinkle, 45 N. J. Eq. 162, 16 Atl. 701; Lightcap v. Bradley, 136 Ill. 510, 58 N. E. 221; Warner Bros. Co. v. Freud, 138 Cal. 651, 72 Pac. 345.

FOREFAULT. In Scotch law. To forfeit; to lose.

FOREGIFT. A premium for a lease.

FOREGOERS. Royal purveyors. 26 Edw. III. c. 5.

FOREHAND RENT. In English law. Rent payable in advance; or, more properly, a species of premium or bonus paid by the tenant on the making of the lease, and particularly on the renewal of leases by ecclesiastical corporations.

FOREIGN. Belonging to another nation or country; belonging or attached to another jurisdiction; made, done, or rendered in another state or jurisdiction; subject to another jurisdiction; operating or solvable in another territory; extrinsic; outside; extraordinary.

—Foreign answer. In old English practice. An answer which was not triable in the county where it was made. (St. 15 Hen. VI. c. 5.) Blount.—**Foreign apposer.** An officer in the exchequer who examines the sheriff's *estreats*, comparing them with the records, and apposeth (interrogates) the sheriff what he says to each particular sum therein. 4 Inst. 107; Blount; Cowell.—**Foreign bought and sold.** A custom in London which, being found prejudicial to sellers of cattle in Smithfield, was abolished. Wharton.—**Foreign coins.** Coins issued as money under the authority of a foreign government. As to their valuation in the United States, see Rev. St. U. S. §§ 3564, 3565 (U. S. Comp. St. 1901, pp. 2375, 2376).—**Foreign courts.** The courts of a foreign state or nation. In the United States, this term is frequently applied to the courts of one of the states when their judgments or records are introduced in the courts of another.—**Foreign Dominion.** In English law this means a country which at one time formed part of the dominions of a foreign state or potentate, but which by conquest or cession has become a part of the dominions of the British crown. 5 Best & S. 290.—**Foreign enlistment act.** The statute 59 Geo. III. c. 69, prohibiting the enlistment, as a soldier or sailor, in any foreign service. 4 Steph. Comm. 226. A later and more stringent act is that of 33 & 34 Vict. c. 90.—**Foreign exchange.** Drafts drawn on a foreign state or country.—**Foreign-going ship.** By the English merchant shipping act, 1854, (17 & 18 Vict. c. 104.) § 2, any ship employed in trading, going between some place or places in the United Kingdom and some place or places situate beyond the following limits, that is to say: The coasts of the United Kingdom, the islands of Guernsey, Jersey, Sark, Alderney, and Man, and the continent of Europe, between the river Elbe and Brest, inclusive. Home-trade ship includes every ship employed in trading and going between places within the last-mentioned limits.—**Foreign matter.** In old practice. Matter triable or done in another county. Cowell.—**Foreign office.** The department of state through which the English sovereign communicates with foreign powers. A secretary of state is at its head. Till the middle of the last century, the functions of a secretary of state as to foreign and home questions were not disunited.—**Foreign service,** in feudal law, was that whereby a mesne lord held of another, without the compass of his own fee, or that which the tenant performed either to his own lord or to the lord paramount out of the fee. (Kitch. 299.) Foreign service seems also to be used for knight's service, or escuage uncertain. (Perk. 650.) Jacob.

As to foreign "Administrator," "Assignment," "Attachment," "Bill of Exchange," "Charity," "Commerce," "Corporation," "County," "Creditor," "Divorce," "Document," "Domicile," "Factor," "Judgment,"

"Jurisdiction," "Jury," "Minister," "Plea," "Port," "State," "Vessel," and "Voyage," see those titles.

FOREIGNER. In old English law, this term, when used with reference to a particular city, designated any person who was not an inhabitant of that city. According to later usage, it denotes a person who is not a citizen or subject of the state or country of which mention is made, or any one owing allegiance to a foreign state or sovereign.

For the distinctions, in Spanish law, between "domiciliated" and "transient" foreigners, see *Yates v. Iams*, 10 Tex. 168.

FOREIN. An old form of *foreign*, (*q. v.*) Blount.

FOREJUDGE. In old English law and practice. To expel from court for some offense or misconduct. When an officer or attorney of a court was expelled for any offense, or for not appearing to an action by bill filed against him, he was said to be *forejudged the court*. Cowell.

To deprive or put out of a thing by the judgment of a court. To condemn to lose a thing.

To expel or banish.

—**Forejudger.** In English practice. A judgment by which a man is deprived or *put out* of a thing; a judgment of expulsion or banishment.

FOREMAN. The presiding member of a grand or petit jury, who speaks or answers for the jury.

FORENSIC. Belonging to courts of justice.

FORENSIC MEDICINE, or medical jurisprudence, as it is also called, is "that science which teaches the application of every branch of medical knowledge to the purposes of the law; hence its limits are, on the one hand, the requirements of the law, and, on the other, the whole range of medicine. Anatomy, physiology, medicine, surgery, chemistry, physics, and botany lend their aid as necessity arises; and in some cases all these branches of science are required to enable a court of law to arrive at a proper conclusion on a contested question affecting life or property." *Tayl. Med. Jur.* 1.

FORENSIS. In the civil law. Belonging to or connected with a court; forensic. *Forensis homo*, an advocate; a pleader of causes; one who practices in court. Calvin.

In old Scotch law. A strange man or stranger; an out-dwelling man; an "unfree-man," who dwells not within burgh.

FORESAID is used in Scotch law as *aforsaid* is in English, and sometimes, in a plural form, *foresaid*s. 2 How. State Tr. 715. *Forsaidis* occurs in old Scotch records. "The

Loirdis assesouris forsaidis." 1 Pitt. Crim. Tr. pt. 1, p. 107.

FORESCHOKE. Foresaken; disavowed. 10 Edw. II. c. 1.

FORESHORE. That part of the land adjacent to the sea which is alternately covered and left dry by the ordinary flow of the tides; *i. e.*, by the medium line between the greatest and least range of tide, (spring tides and neap tides.) Sweet.

FOREST. In old English law. A certain territory of wooded ground and fruitful pastures, privileged for wild beasts and fowls of forest, chase, and warren, to rest and abide in the safe protection of the prince for his princely delight and pleasure, having a peculiar court and officers. *Manw. For. Laws*, c. 1, no. 1; *Termes de la Ley*; 1 Bl. Comm. 289.

A royal hunting-ground which lost its peculiar character with the extinction of its courts, or when the franchise passed into the hands of a subject. Spelman; Cowell.

The word is also used to signify a franchise or right, being the right of keeping, for the purpose of hunting, the wild beasts and fowls of forest, chase, park, and warren, in a territory or precinct of woody ground or pasture set apart for the purpose. 1 Steph. Comm. 665.

—**Forest courts.** In English law. Courts instituted for the government of the king's forest in different parts of the kingdom, and for the punishment of all injuries done to the king's deer or *venison*, to the *vert* or greensward, and to the *covert* in which such deer were lodged. They consisted of the courts of attachments, of regard, of sweinmote, and of justice-seat; but in later times these courts are no longer held. 3 Bl. Comm. 71.—**Forest law.** The system or body of old law relating to the royal forests.—**Forestage.** A duty or tribute payable to the king's foresters. Cowell.—**Forester.** A sworn officer of the *forest*, appointed by the king's letters patent to walk the forest, watching both the *vert* and the *venison*, attaching and presenting all trespassers against them within their own bailiwick or walk. These letters patent were generally granted during good behavior; but sometimes they held the office in fee. Blount.

FORESTAGIUM. A duty or tribute payable to the king's foresters. Cowell.

FORESTALL. To intercept or obstruct a passenger on the king's highway. Cowell. To beset the way of a tenant so as to prevent his coming on the premises. 3 Bl. Comm. 170. To intercept a deer on his way to the forest before he can regain it. Cowell.

—**Forestaller.** In old English law. Obstruction; hindrance; the offense of stopping the highway; the hindering a tenant from coming to his land; intercepting a deer before it can regain the forest. Also one who forestalls; one who commits the offense of forestalling. 3 Bl. Comm. 170; Cowell.—**Forestalling.** Obstructing the highway. Intercepting a person on the highway.

FORESTALLING THE MARKET. The act of the buying or contracting for any mer-

chandise or provision on its way to the market, with the intention of selling it again at a higher price; or the dissuading persons from bringing their goods or provisions there; or persuading them to enhance the price when there. 4 Bl. Comm. 158. *Barton v. Morris*, 10 Phila. (Pa.) 361. This was formerly an indictable offense in England, but is now abolished by St. 7 & 8 Vict. c. 24. 4 Steph. Comm. 291, note.

Forestalling differs from "engrossing," in that the latter consists in buying up large quantities of merchandise already on the market, with a view to effecting a monopoly or acquiring so large a quantity as to be able to dictate prices. Both forestalling and engrossing may enter into the manipulation of what is now called a "corner."

FORESTARIUS. In English law. A forester. An officer who takes care of the woods and forests. *De forestario apponendo*, a writ which lay to appoint a forester to prevent further commission of waste when a tenant in dower had committed waste. Bract. 316; Du Cange.

In Scotch law. A forester or keeper of woods, to whom, by reason of his office, pertains the bark and the hewn branches. And, when he rides through the forest, he may take a tree as high as his own head. Skene de Verb. Sign.

FORETHOUGHT FELONY. In Scotch law. Murder committed in consequence of a previous design. Ersk. Inst. 4, 4, 50; Bell.

FORFANG. In old English law. The taking of provisions from any person in fairs or markets before the royal purveyors were served with necessaries for the sovereign. Cowell. Also the seizing and rescuing of stolen or strayed cattle from the hands of a thief, or of those having illegal possession of them; also the reward fixed for such rescue.

FORFEIT. To lose an estate, a franchise, or other property belonging to one, by the act of the law, and as a consequence of some misfeasance, negligence, or omission. *Cassell v. Crothers*, 193 Pa. 359, 44 Atl. 446; *State v. De Gress*, 72 Tex. 242, 11 S. W. 1029; *State v. Walbridge*, 119 Mo. 383, 24 S. W. 457, 41 Am. St. Rep. 663; *State v. Baltimore & O. R. Co.*, 12 Gill & J. (Md.) 432, 38 Am. Dec. 319. The further ideas connoted by this term are that it is a deprivation, (that is, against the will of the losing party,) and that the property is either transferred to another or resumed by the original grantor.

To incur a penalty; to become liable to the payment of a sum of money, as the consequence of a certain act.

FORFEITABLE. Liable to be forfeited; subject to forfeiture for non-user, neglect, crime, etc.

FORFEITURE. 1. A punishment annexed by law to some illegal act or negligence

in the owner of lands, tenements, or hereditaments, whereby he loses all his interest therein, and they go to the party injured as a recompense for the wrong which he alone, or the public together with himself, hath sustained. 2 Bl. Comm. 267. *Wiseman v. McNulty*, 25 Cal. 237.

2. The loss of land by a tenant to his lord, as the consequence of some breach of fidelity. 1 Steph. Comm. 166.

3. The loss of lands and goods to the state, as the consequence of crime. 4 Bl. Comm. 381, 387; 4 Steph. Comm. 447, 452; 2 Kent, Comm. 385; 4 Kent, Comm. 426. *Avery v. Everett*, 110 N. Y. 317, 18 N. E. 148, 1 L. R. A. 264, 6 Am. St. Rep. 368.

4. The loss of goods or chattels, as a punishment for some crime or misdemeanor in the party forfeiting, and as a compensation for the offense and injury committed against him to whom they are forfeited. 2 Bl. Comm. 420.

It should be noted that "forfeiture" is not an identical or convertible term with "confiscation." The latter is the consequence of the former. Forfeiture is the result which the law attaches as an immediate and necessary consequence to the illegal acts of the individual; but confiscation implies the action of the state; and property, although it may be forfeited, cannot be said to be confiscated until the government has formally claimed or taken possession of it.

5. The loss of office by abuser, non-user, or refusal to exercise it.

6. The loss of a corporate franchise or charter in consequence of some illegal act, or of malfeasance or non-feasance.

7. The loss of the right to life, as the consequence of the commission of some crime to which the law has affixed a capital penalty.

8. The incurring a liability to pay a definite sum of money as the consequence of violating the provisions of some statute, or refusal to comply with some requirement of law. *State v. Marion County Com'rs*, 85 Ind. 493.

9. A thing or sum of money forfeited. Something imposed as a punishment for an offense or delinquency. The word in this sense is frequently associated with the word "penalty." *Van Buren v. Digges*, 11 How. 477, 13 L. Ed. 771.

10. In mining law, the loss of a mining claim held by location on the public domain (unpatented) in consequence of the failure of the holder to make the required annual expenditure upon it within the time allowed. *McKay v. McDougall*, 25 Mont. 258, 64 Pac. 669, 87 Am. St. Rep. 395; *St. John v. Kidd*, 26 Cal. 271.

—**Forfeiture of a bond.** A failure to perform the condition on which the obligor was to be excused from the penalty in the bond.—**Forfeiture of marriage.** A penalty incurred by a ward in chivalry who married without the consent or against the will of the guardian. See *DUPLEX VALOR MARITAGII*.—**Forfeiture of alk,** supposed to lie in the docks, used, in

times when its importation was prohibited, to be proclaimed each term in the exchequer.—**Forfeitures abolition act.** Another name for the felony act of 1870, abolishing forfeitures for felony in England.

FORGABULUM, or FORGAVEL. A quit-rent; a small reserved rent in money. Jacob.

FORGE. To fabricate, construct, or prepare one thing in imitation of another thing, with the intention of substituting the false for the genuine, or otherwise deceiving and defrauding by the use of the spurious article. To counterfeit or make falsely. Especially, to make a spurious written instrument with the intention of fraudulently substituting it for another, or of passing it off as genuine; or to fraudulently alter a genuine instrument to another's prejudice; or to sign another person's name to a document, with a deceitful and fraudulent intent. See *In re Cross* (D. C.) 43 Fed. 520; *U. S. v. Watkins*, 28 Fed. Cas. 445; *Johnson v. State*, 9 Tex. App. 251; *Longwell v. Day*, 1 Mich. N. P. 290; *People v. Compton*, 123 Cal. 403, 56 Pac. 44; *People v. Graham*, 1 Sheld. (N. Y.) 155; *Rohr v. State*, 60 N. J. Law, 576, 38 Atl. 673; *Haynes v. State*, 15 Ohio St. 455; *Garner v. State*, 5 Lea, 213; *State v. Greenwood*, 76 Minn. 211, 78 N. W. 1042, 77 Am. St. Rep. 632; *State v. Young*, 46 N. H. 266, 88 Am. Dec. 212.

To forge (a metaphorical expression, borrowed from the occupation of the smith) means, properly speaking, no more than to *make or form*, but in our law it is always taken in an evil sense. 2 East, P. C. p. 852, c. 19, § 1.

To forge is to make in the likeness of something else; to counterfeit is to make in imitation of something else, with a view to defraud by passing the false copy for genuine or original. Both words, "forged" and "counterfeited," convey the idea of similitude. *State v. McKenzie*, 42 Me. 392.

In common usage, however, *forgery* is almost always predicated of some private instrument or writing, as a deed, note, will, or a signature; and *counterfeiting* denotes the fraudulent imitation of coined or paper money or some substitute therefor.

FORGERY. In criminal law. The falsely making or materially altering, with intent to defraud, any writing which, if genuine, might apparently be of legal efficacy or the foundation of a legal liability. 2 Bish. Crim. Law, § 523. See FORGE.

The thing itself, so falsely made, imitated, or forged; especially a forged writing. A forged signature is frequently said to be "a *forgery*."

In the law of evidence. The fabrication or counterfeiting of evidence. The artful and fraudulent manipulation of physical objects, or the deceitful arrangement of genuine facts or things, in such a manner as to create an erroneous impression or a false inference in the minds of those who may observe them. See *Burrill*, Circ. Ev. 131, 420.

—**Forgery act, 1870.** The statute 33 & 34 Vict. c. 58, was passed for the punishment of

forgers of stock certificates, and for extending to Scotland certain provisions of the forgery act of 1861. Mozley & Whitley.

FORHERDA. In old records. A herdland, headland, or foreland. Cowell.

FORI DISPUTATIONES. In the civil law. Discussions or arguments before a court. 1 Kent, Comm. 530.

FORINSECUS. Lat. Foreign; exterior; outside; extraordinary. *Servitium forinsecum*, the payment of aid, scutage, and other extraordinary military services. *Forinsecum manerium*, the manor, or that part of it which lies outside the bars or town, and is not included within the liberties of it. Cowell; Blount; Jacob; 1 Reeve, Eng. Law, 273.

FORINSIC. In old English law. Exterior; foreign; extraordinary. In feudal law, the term "forinsic services" comprehended the payment of extraordinary aids or the rendition of extraordinary military services, and in this sense was opposed to "intrinsic services." 1 Reeve, Eng. Law, 273.

FORIS. Lat. Abroad; out of doors; on the outside of a place; without; extrinsic.

FORISBANITUS. In old English law. Banished.

FORISFACERE. Lat. To forfeit; to lose an estate or other property on account of some criminal or illegal act. To confiscate.

To act beyond the law, *i. e.*, to transgress or infringe the law; to commit an offense or wrong; to do any act against or beyond the law. See *Co. Litt. 59a*; *Du Cange*; *Spelman*.

Forisfacere, i. e., extra legem seu consuetudinem facere. *Co. Litt. 59. Forisfacere, i. e.*, to do something beyond law or custom.

FORISFACTUM. Forfeited. *Bona forisfacta*, forfeited goods. 1 Bl. Comm. 299. A crime. *Du Cange*; *Spelman*.

FORISFACTURA. A crime or offense through which property is forfeited.

A fine or punishment in money.

Forfeiture. The loss of property or life in consequence of crime.

—**Forisfactura plena.** A forfeiture of all a man's property. Things which were forfeited. *Du Cange. Spelman*.

FORISFACTUS. A criminal. One who has forfeited his life by commission of a capital offense. *Spelman*.

—**Forisfactus servus.** A slave who has been a free man, but has forfeited his freedom by crime. *Du Cange*.

FORISFAMILIARE. In old English and Scotch law. Literally, to put out of a family, (*fortis familiam ponere*.) To portion off a son, so that he could have no further claim upon his father. Glanv. lib. 7, c. 3.

To emancipate, or free from paternal authority.

FORISFAMILIATED. In old English law. Portioned off. A son was said to be forisfamiated (*forisfamiliari*) if his father assigned him part of his land, and gave him seisin thereof, and did this at the request or with the free consent of the son himself, who expressed himself satisfied with such portion. 1 Reeve, Eng. Law, 42, 110.

FORISFAMILIATUS. In old English law. Put out of a family; portioned off; emancipated; forisfamiated. Bract. fol. 64.

FORISJUDICATIO. In old English law. Forejudger. A forejudgment. A judgment of court whereby a man is put out of possession of a thing. Co. Litt. 100b.

FORISJUDICATUS. Forejudged; sent from court; banished. Deprived of a thing by judgment of court. Bract. fol. 250b; Co. Litt. 100b; Du Cange.

FORISJURARE. To forswear; to abjure; to abandon.

—**Forisjurare parentilam.** To remove oneself from parental authority. The person who did this lost his rights as heir. Du Cange.—**Provinciam forisjurare.** To forswear the country. Spelman.

FORJUDGE. See FOREJUDGE.

FORJURER. L. Fr. In old English law. to forswear; to abjure.

—**Forjurer royalme.** To abjure the realm. Britt. cc. 1, 16.

FORLER-LAND. Land in the diocese of Hereford, which had a peculiar custom attached to it, but which has been long since disused, although the name is retained. But. Surv. 56.

FORM. 1. A model or skeleton of an instrument to be used in a judicial proceeding, containing the principal necessary matters, the proper technical terms or phrases, and whatever else is necessary to make it formally correct, arranged in proper and methodical order, and capable of being adapted to the circumstances of the specific case.

2. As distinguished from "substance," "form" means the legal or technical manner or order to be observed in legal instruments or juridical proceedings, or in the construction of legal documents or processes.

The distinction between "form" and "substance" is often important in reference to the validity or amendment of pleadings. If the matter of the plea is bad or insufficient, irrespective of the manner of setting it forth, the

defect is one of substance. If the matter of the plea is good and sufficient, but is inartificially or defectively pleaded, the defect is one of form. Pierson v. Insurance Co., 7 Houst. (Del.) 307, 31 Atl. 966.

—**Common form, Solemn form.** See PROBATE.—**Form of the statute.** The words, language, or frame of a statute, and hence the inhibition or command which it may contain; used in the phrase (in criminal pleading) "against the form of the statute in that case made and provided."—**Forms of action.** The general designation of the various species or kinds of personal actions known to the common law, such as trover, trespass, debt, *assumpsit*, etc. These differ in their pleadings and evidence, as well as in the circumstances to which they are respectively applicable. *Truax v. Parvis*, 7 Houst. (Del.) 330, 32 Atl. 227.—**Matter of form.** In pleadings, indictments, conveyances, etc., matter of form (as distinguished from matter of substance) is all that relates to the mode, form, or style of expressing the facts involved, the choice or arrangement of words, and other such particulars, without affecting the substantial validity or sufficiency of the instrument, or without going to the merits. *Railway Co. v. Kurtz*, 10 Ind. App. 60, 37 N. E. 308; *Meath v. Mississippi Levee Com'rs*, 109 U. S. 268, 3 Sup. Ct. 284, 27 L. Ed. 930; *State v. Amidon*, 58 Vt. 524, 2 Atl. 154.

FORMA. Lat. Form; the prescribed form of judicial proceedings.

—**Forma et figura judicii.** The form and shape of judgment or judicial action. 3 Bl. Comm. 271.—**Forma pauperis.** See IN FORMA PAUPERIS.

Forma dat esse. Form gives being. Called "the old physical maxim." Lord Henley, Ch., 2 Eden, 99.

Forma legalis forma essentialis. Legal form is essential form. 10 Coke, 100.

Forma non observata, infertur annullatio actus. Where form is not observed, a nullity of the act is inferred. 12 Coke, 7. Where the law prescribes a form, the non-observance of it is fatal to the proceeding, and the whole becomes a nullity. Best, Ev. Introd. § 59.

FORMAL. Relating to matters of form; as, "formal defects;" inserted, added, or joined *pro forma*. See PARTIES.

FORMALITIES. In England, robes worn by the magistrates of a city or corporation, etc., on solemn occasions. Enc. Lond.

FORMALITY. The conditions, in regard to method, order, arrangement, use of technical expressions, performance of specific acts, etc., which are required by the law in the making of contracts or conveyances, or in the taking of legal proceedings, to insure their validity and regularity. *Succession of Seymour*, 48 La. Ann. 993, 20 South. 217.

FORMATA. In canon law. Canonical letters. Spelman.

FORMATA BREVIA. Formed writs; writs of form. See BREVIA FORMATA.

FORMED ACTION. An action for which a set form of words is prescribed, which must be strictly adhered to. 10 Mod. 140, 141.

FORMED DESIGN. In criminal law, and particularly with reference to homicide, this term means a deliberate and fixed intention to kill, whether directed against a particular person or not. *Mitchell v. State*, 60 Ala. 33; *Wilson v. State*, 128 Ala. 17, 29 South. 569; *Ake v. State*, 30 Tex. 473.

FORMEDON. An ancient writ in English law which was available for one who had a right to lands or tenements by virtue of a gift in tail. It was in the nature of a writ of right, and was the highest action that a tenant in tail could have; for he could not have an absolute writ of right, that being confined to such as claimed in fee-simple, and for that reason this writ of formedon was granted to him by the statute *de donis*, (Westm. 2, 13 Edw. I. c. 1.), and was emphatically called "his" writ of right. The writ was distinguished into three species, viz.: Formedon in the descender, in the remainder, and in the reverter. It was abolished in England by St. 3 & 4 Wm. IV. c. 27. See 3 Bl. Comm. 191; Co. Litt. 316; Fitzh. Nat. Brev. 255.

—**Formedon in the descender.** A writ of formedon which lay where a gift was made in tail, and the tenant in tail aliened the lands or was disseised of them and died, for the heir in tail to recover them, against the actual tenant of the freehold. 3 Bl. Comm. 192.—**Formedon in the remainder.** A writ of formedon which lay where a man gave lands to another for life or in tail, with remainder to a third person in tail or in fee, and he who had the particular estate died without issue inheritable, and a stranger intruded upon him in remainder, and kept him out of possession. In this case he in remainder, or his heir, was entitled to this writ. 3 Bl. Comm. 192.—**Formedon in the reverter.** A writ of formedon which lay where there was a gift in tail, and afterwards, by the death of the donee or his heirs without issue of his body, the reversion fell in upon the donor, his heirs or assigns. In such case, the *reversioner* had this writ to recover the lands. 3 Bl. Comm. 192.

FORMELLA. A certain weight of above 70 lbs., mentioned in 51 Hen. III. Cowell.

FORMER ADJUDICATION, or FORMER RECOVERY. An adjudication or recovery in a former action. See RES JUDICATA.

FORMIDO PERICULI. Lat. Fear of danger. 1 Kent, Comm. 23.

FORMULA. In common-law practice, a set form of words used in judicial proceedings. In the civil law, an action. Calvin.

FORMULÆ. In Roman law. When the *legis actiones* were proved to be inconven-

ient, a mode of procedure called "*per formulas*," (i. e., by means of *formulæ*), was gradually introduced, and eventually the *legis actiones* were abolished by the *Lex Æbutia*, B. C. 164, excepting in a very few exceptional matters. The *formulæ* were four in number, namely: (1) The *Demonstratio*, wherein the plaintiff stated, i. e., showed, the facts out of which his claim arose; (2) the *Intentio*, where he made his claim against the defendant; (3) the *Adjudicatio*, wherein the *judex* was directed to assign or adjudicate the property or any portion or portions thereof according to the rights of the parties; and (4) the *Condemnatio*, in which the *judex* was authorized and directed to condemn or to acquit according as the facts were or were not proved. These *formulæ* were obtained from the magistrate, (*in jure*), and were thereafter proceeded with before the *judex*, (*in judicio*.) Brown. See Mackeld. Rom. Law, § 204.

FORMULARIES. Collections of *formulæ*, or forms of forensic proceedings and instruments used among the Franks, and other early continental nations of Europe. Among these the formulary of Marculphus may be mentioned as of considerable interest. Butl. Co. Litt. note 77, lib. 3.

FORNAGIUM. The fee taken by a lord of his tenant, who was bound to bake in the lord's common oven, (*in furno domini*), or for a commission to use his own.

FORNICATION. Unlawful sexual intercourse between two unmarried persons. Further, if one of the persons be married and the other not, it is fornication on the part of the latter, though adultery for the former. In some jurisdictions, however, by statute, it is adultery on the part of both persons if the woman is married, whether the man is married or not. *Banks v. State*, 96 Ala. 78, 11 South. 404; *Hood v. State*, 56 Ind. 263, 26 Am. Rep. 21; *Com. v. Lafferty*, 6 Grat. (Va.) 673; *People v. Rouse*, 2 Mich. N. P. 209; *State v. Shear*, 51 Wis. 460, 8 N. W. 287; *Buchanan v. State*, 55 Ala. 154.

FORNIX. Lat. A brothel; fornication.

FORNO. In Spanish law. An oven. *Las Partidas*, pt. 3, tit. 32, l. 18.

FORO. In Spanish law. The place where tribunals hear and determine causes,—*exercendarum litium locus*.

FOROS. In Spanish law. Emphyteutic rents. *Schm. Civil Law*, 309.

FORPRISE. An exception; reservation; excepted; reserved. Anciently, a term of frequent use in leases and conveyances. Cowell; Blount.

In another sense, the word is taken for any exaction.

FORSCHER. A strip of land lying next to the highway.

FORSES. Waterfalls. Camden, Brit.

FORSPEAKER. An attorney or advocate in a cause. Blount; Whishaw.

FORSPECA. In old English law. Prolocutor; paranympus.

FORSTAL. See FORESTALL.

Forstellarius est pauperum depressor et totius communitatis et patriæ publicus inimicus. 3 Inst. 196. A forestaller is an oppressor of the poor, and a public enemy of the whole community and country.

FORSWEAR. In criminal law. To make oath to that which the deponent knows to be untrue.

This term is wider in its scope than "perjury," for the latter, as a technical term, includes the idea of the oath being taken before a competent court or officer, and relating to a material issue, which is not implied by the word "forswear." Fowle v. Robbins, 12 Mass. 501; Tomlinson v. Brittlebank, 4 Barn. & A. 632; Railway Co. v. McCurdy, 114 Pa. 554, 8 Atl. 230, 60 Am. Rep. 363.

FORT. This term means "something more than a mere military camp, post, or station. The term implies a fortification, or a place protected from attack by some such means as a moat, wall, or parapet." U. S. v. Tichenor (C. C.) 12 Fed. 424.

FORTALICE. A fortress or place of strength, which anciently did not pass without a special grant. 11 Hen. VII. c. 18.

FORTALITIUM. In old Scotch law. A fortalice; a castle. Properly a house or tower which has a battlement or a ditch or moat about it.

FORTHCOMING. In Scotch law. The action by which an arrestment (garnishment) is made effectual. It is a decree or process by which the creditor is given the right to demand that the sum arrested be applied for payment of his claim. 2 Kames, Eq. 288, 289; Bell.

FORTHCOMING BOND. A bond given to a sheriff who has levied on property, conditioned that the property shall be forthcoming, *i. e.*, produced, when required. On the giving of such bond, the goods are allowed to remain in the possession of the debtor. Hill v. Manser, 11 Grat. (Va.) 522; Nichols v. Chittenden, 14 Colo. App. 49, 59 Pac. 954.

The sheriff or other officer levying a writ of *feri facias*, or distress warrant, may take from the debtor a bond, with sufficient surety, payable to the creditor, exciting the service of such

writ or warrant, and the amount due thereon, (including his fee for taking the bond, commissions, and other lawful charges, if any,) with condition that the property shall be forthcoming at the day and place of sale; whereupon such property may be permitted to remain in the possession and at the risk of the debtor. Code Va. 1887, § 3617.

FORTHWITH. As soon as, by reasonable exertion, confined to the object, a thing may be done. Thus, when a defendant is ordered to plead forthwith, he must plead within twenty-four hours. When a statute enacts that an act is to be done "forthwith," it means that the act is to be done within a reasonable time. 1 Chit. Archb. Pr. (12th Ed.) 164; Dickerman v. Northern Trust Co., 176 U. S. 181, 20 Sup. Ct. 311, 44 L. Ed. 423; Faivre v. Manderscheid, 117 Iowa, 724, 90 N. W. 76; Martin v. Pifer, 96 Ind. 248.

FORTIA. Force. In old English law. Force used by an accessory, to enable the principal to commit a crime, as by binding or holding a person while another killed him, or by aiding or counseling in any way, or commanding the act to be done. Bract. fols. 138, 138b. According to Lord Coke, *fortia* was a word of art, and properly signified the furnishing of a weapon of force to do the fact, and by force whereof the fact was committed, and he that furnished it was not present when the fact was done. 2 Inst. 182.

—**Fortia frisca.** Fresh force, (*q. v.*)

FORTILITY. In old English law. A fortified place; a castle; a bulwark. Cowell; 11 Hen. VII. c. 18.

FORTIOR. Lat. Stronger. A term applied, in the law of evidence, to that species of presumption, arising from facts shown in evidence, which is strong enough to shift the burden of proof to the opposite party. Burrell, Circ. Ev. 64, 66.

Fortior est custodia legis quam hominis. 2 Rolle, 325. The custody of the law is stronger than that of man.

Fortior et potentior est dispositio legis quam hominis. The disposition of the law is of greater force and effect than that of man. Co. Litt. 234a; Shep. Touch. 302; 15 East, 178. The law in some cases overrides the will of the individual, and renders ineffective or futile his expressed intention or contract. Broom, Max. 697.

FORTIORI. See A FORTIORI.

FORTIS. Lat. Strong. *Fortis et sana*, strong and sound; staunch and strong; as a vessel. Townsh. Pl. 227.

FORTLETT. A place or port of some strength; a little fort. Old Nat. Brev. 45.

FORTUIT. In French law. Accidental; fortuitous. *Cas fortuit*, a fortuitous event. *Fortuitement*, accidentally; by chance.

FORTUITOUS. Accidental; undesigned; adventitious. Resulting from unavoidable physical causes.

—**Fortuitous collision.** In maritime law. The accidental running foul of vessels. *Peters v. Warren Ins. Co.*, 14 Pet. 112, 10 L. Ed. 371.

—**Fortuitous event.** In the civil law. That which happens by a cause which cannot be resisted. An unforeseen occurrence, not caused by either of the parties, nor such as they could prevent. In French it is called "*cas fortuit*." Civ. Code La. art. 3556, no. 15. There is a difference between a fortuitous event, or inevitable accident, and irresistible force. By the former, commonly called the "act of God," is meant any accident produced by physical causes which are irresistible; such as a loss by lightning or storms, by the perils of the seas, by inundations and earthquakes, or by sudden death or illness. By the latter is meant such an interposition of human agency as is, from its nature and power, absolutely uncontrollable. Of this nature are losses occasioned by the inroads of a hostile army, or by public enemies. Story, Bailm. § 25.

FORTUNA. Lat. Fortune; also treasure-trove. Jacob.

Fortunam faciunt iudicem. They make fortune the judge. Co. Litt. 167. Spoken of the process of making partition among coparceners by drawing lots for the several purparts.

FORTUNE-TELLERS. In English law. Persons pretending or professing to tell fortunes, and punishable as rogues and vagabonds or disorderly persons. 4 Bl. Comm. 62.

FORTUNIUM. In old English law. A tournament or fighting with spears, and an appeal to fortune therein.

FORTY. In land laws and conveyancing, in those regions where grants, transfers, and deeds are made with reference to the subdivisions of the government survey, this term means forty acres of land in the form of a square, being the tract obtained by quartering a section of land (640 acres) and again quartering one of the quarters. *Lente v. Clarke*, 22 Fla. 515, 1 South. 149.

FORTY-DAYS COURT. In old English forest law. The court of attachment in forests, or wood-mote court.

FORUM. Lat. A court of justice, or judicial tribunal; a place of jurisdiction; a place where a remedy is sought; a place of litigation. 3 Story, 347.

In Roman law. The market place, or public paved court, in the city of Rome, where such public business was transacted as the assemblies of the people and the judicial trial of causes, and where also elections, markets, and the public exchange were held.

—**Forum actus.** The forum of the act. The forum of the place where the act was done which is now called in question.—**Forum conscientie.** The forum or tribunal of conscience.—**Forum contentiosum.** A contenti-

ous forum or court; a place of litigation; the ordinary court of justice, as distinguished from the tribunal of conscience. 3 Bl. Comm. 211.

—**Forum contractus.** The forum of the contract; the court of the place where a contract is made; the place where a contract is made, considered as a place of jurisdiction. 2 Kent, Comm. 463.—**Forum domesticum.** A domestic forum or tribunal. The visitatorial power is called a "*forum domesticum*," calculated to determine, *sine strepitu*, all disputes that arise within themselves. 1 W. Bl. 82.—**Forum domicilii.** The forum or court of the domicile; the domicile of a defendant, considered as a place of jurisdiction. 2 Kent, Comm. 463.—**Forum ecclesiasticum.** An ecclesiastical court. The spiritual jurisdiction, as distinguished from the secular.—**Forum ligeantie rei.** The forum of defendant's allegiance. The court or jurisdiction of the country to which he owes allegiance.—**Forum originis.** The court of one's nativity. The place of a person's birth, considered as a place of jurisdiction.—**Forum regium.** The king's court. St. Westm. 2, c. 43.—**Forum rei.** This term may mean either (1) the forum of the defendant, that is, of his residence or domicile; or (2) the forum of the *res* or thing in controversy, that is, of the place where the property is situated. The ambiguity springs from the fact that *rei* may be the genitive of either *reus* or *res*.—**Forum rei gestae.** The forum or court of a *res gesta*, (thing done;) the place where an act is done, considered as a place of jurisdiction and remedy. 2 Kent, Comm. 463.—**Forum rei sitae.** The court where the thing in controversy is situated. The place where the subject-matter in controversy is situated, considered as a place of jurisdiction. 2 Kent, Comm. 463.—**Forum seculare.** A secular, as distinguished from an ecclesiastical or spiritual, court.

FORURTH. In old records. A long slip of ground. Cowell. **G**

FORWARDING MERCHANT, or FORWARDER. One who receives and forwards goods, taking upon himself the expenses of transportation, for which he receives a compensation from the owners, having no concern in the vessels or wagons by which they are transported, and no interest in the freight, and not being deemed a common carrier, but a mere warehouseman and agent. Story, Bailm. §§ 502, 509. *Schloss v. Wood*, 11 Colo. 287, 17 Pac. 910; *Ackley v. Kellogg*, 8 Cow. (N. Y.) 224; *Place v. Union Exp. Co.*, 2 Hill. (N. Y.) 19; *Bush v. Miller*, 13 Barb. (N. Y.) 488. **H**

FOSSA. In the civil law. A ditch; a receptacle of water, made by hand. Dig. 43, 14, 1, 5.

In old English law. A ditch. A pit full of water, in which women committing felony were drowned. A grave or sepulcher. Spelman. **K**

FOSSAGIUM. In old English law. The duty levied on the inhabitants for repairing the moat or ditch round a fortified town. **L**

FOSSATORUM OPERATIO. In old English law. Fosse-work; or the service of laboring, done by inhabitants and adjoining tenants, for the repair and maintenance of **M**

the ditches round a city or town, for which some paid a contribution, called "*fossagium*." Cowell.

FOSSATUM. A dyke, ditch, or trench; a place inclosed by a ditch; a moat; a canal.

FOSE-WAY, or FOSSE. One of the four ancient Roman ways through England. Spelman.

FOSELLUM. A small ditch. Cowell.

FOSTERING. An ancient custom in Ireland, in which persons put away their children to fosterers. Fostering was held to be a stronger alliance than blood, and the foster children participated in the fortunes of their foster fathers. Mozley & Whitley.

FOSTERLAND. Land given, assigned, or allotted to the finding of food or victuals for any person or persons; as in monasteries for the monks, etc. Cowell; Blount.

FOSTERLEAN. The remuneration fixed for the rearing of a foster child; also the jointure of a wife. Jacob.

FOUJDAR. In Hindu law. Under the Mogul government a magistrate of the police over a large district, who took cognizance of all criminal matters within his jurisdiction, and sometimes was employed as receiver general of the revenues. Wharton.

—Foujdarry court. In Hindu law. A tribunal for administering criminal law.

FOUNDATION. The founding or building of a college or hospital. The incorporation or endowment of a college or hospital is the foundation; and he who endows it with land or other property is the founder. *Dartmouth College v. Woodward*, 4 Wheat. 667, 4 L. Ed. 629; *Seagrave's Appeal*, 125 Pa. 362, 17 Atl. 412; *Union Baptist Ass'n v. Hunn*, 7 Tex. Civ. App. 249, 26 S. W. 755.

FOUNDED. Based upon; arising from, growing out of, or resting upon; as in the expressions "founded in fraud," "founded on a consideration," "founded on contract," and the like. See *In re Grant Shoe Co.*, 130 Fed. 881, 66 C. C. A. 78; *State v. Morgan*, 40 Conn. 46; *Palmer v. Preston*, 45 Vt. 158, 12 Am. Rep. 191; *Steele v. Hoe*, 14 Adol. & El. 431; *In re Morales* (D. C.) 105 Fed. 761.

FOUNDER. The person who endows an eleemosynary corporation or institution, or supplies the funds for its establishment. See **FOUNDATION**.

FOUNDEROSA. Founderous; out of repair, as a road. *Cro. Car.* 366.

FOUNDLING. A deserted or exposed infant; a child found without a parent or

guardian, its relatives being unknown. It has a settlement in the district where found.

—Foundling hospitals. Charitable institutions which exist in most countries for taking care of infants forsaken by their parents, such being generally the offspring of illegal connections. The foundling hospital act in England is the 13 Geo. II. c. 29.

FOUR. Fr. In old French law. An oven or bake-house. *Four banal*, an oven, owned by the seignior of the estate, to which the tenants were obliged to bring their bread for baking. Also the proprietary right to maintain such an oven.

FOUR CORNERS. The face of a written instrument. That which is contained on the face of a deed (without any aid from the knowledge of the circumstances under which it is made) is said to be within its four corners, because every deed is still supposed to be written on one entire skin, and so to have but four corners.

To look at the *four corners* of an instrument is to examine the whole of it, so as to construe it as a whole, without reference to any one part more than another. 2 Smith, *Lead. Cas.* 295.

FOUR SEAS. The seas surrounding England. These were divided into the Western, including the Scotch and Irish; the Northern, or North sea; the Eastern, being the German ocean; the Southern, being the British channel.

FOURCHER. Fr. To fork. This was a method of delaying an action anciently resorted to by defendants when two of them were joined in the suit. Instead of appearing together, each would appear in turn and cast an *essoin* for the other, thus postponing the trial.

FOURIERISM. A form of socialism. See 1 Mill, *Pol. Ec.* 260.

FOWLS OF WARREN. Such fowls as are preserved under the game laws in warrens. According to Manwood, these are partridges and pheasants. According to Coke, they are partridges, rails, quails, woodcocks, pheasants, mallards, and herons. *Co. Litt.* 233.

FOX'S LIBEL ACT. In English law. This was the statute 52 Geo. III. c. 60, which secured to juries, upon the trial of indictments for libel, the right of pronouncing a general verdict of guilty or not guilty upon the whole matter in issue, and no longer bound them to find a verdict of guilty on proof of the publication of the paper charged to be a libel, and of the sense ascribed to it in the indictment. Wharton.

FOY. L. Fr. Faith; allegiance; fidelity.

FR. A Latin abbreviation for "fragmentum," a fragment; used in citations to the

Digest or Pandects in the *Corpus Juris Civilis* of Justinian, the several extracts from juristic writings of which it is composed being so called.

FRACTIO. Lat. A breaking; division; fraction; a portion of a thing less than the whole.

FRACTION. A breaking, or breaking up; a fragment or broken part; a portion of a thing, less than the whole. *Jory v. Palace Dry Goods Co.*, 30 Or. 196, 46 Pac. 786.

—**Fraction of a day.** A portion of a day. The dividing a day. Generally, the law does not allow the fraction of a day. 2 Bl. Comm. 141.

FRACTIONAL. As applied to tracts of land, particularly townships, sections, quarter sections, and other divisions according to the government survey, and also mining claims, this term means that the exterior boundary lines are laid down to include the whole of such a division or such a claim, but that the tract in question does not measure up to the full extent or include the whole acreage, because a portion of it is cut off by an overlapping survey, a river or lake, or some other external interference. See *Tolleston Club v. State*, 141 Ind. 197, 38 N. E. 214; *Parke v. Meyer*, 28 Ark. 287; *Goltermann v. Schiermeyer*, 111 Mo. 404, 19 S. W. 487.

Fractionem diei non recipit lex. Lofft, 572. The law does not take notice of a portion of a day.

FRACTITIUM. Arable land. Mon. Angl.

FRACTURA NAVIUM. Lat. The breaking or wreck of ships; the same as *navisfragium*, (*q. v.*)

FRAGMENTA. Lat. Fragments. A name sometimes applied (especially in citations) to the Digest or Pandects in the *Corpus Juris Civilis* of Justinian, as being made up of numerous extracts or "fragments" from the writings of various jurists. Mackeld. Rom. Law, § 74.

FRAIS. Fr. Expense; charges; costs. *Frais d'un procès*, costs of a suit.

—**Frais de justice.** In French and Canadian law. Costs incurred incidentally to the action.

—**Frais jusqu'a bord.** Fr. In French commercial law. Expenses to the board; expenses incurred on a shipment of goods, in packing, cartage, commissions, etc., up to the point where they are actually put on board the vessel. *Barrels v. Redfield* (C. C.) 16 Fed. 336.

FRANC. A French coin of the value of a little over eighteen cents.

FRANC ALEU. In French feudal law. An allod; a free inheritance; or an estate held free of any services except such as were due to the sovereign.

FRANCHILANUS. A freeman. Chart. Hen. IV. A free tenant. Spelman.

FRANCHISE. A special privilege conferred by government upon an individual or corporation, and which does not belong to the citizens of the country generally, of common right. It is essential to the character of a franchise that it should be a grant from the sovereign authority, and in this country no franchise can be held which is not derived from a law of the state. In England, a franchise is defined to be a royal privilege in the hands of a subject. In this country, it is a privilege of a public nature, which cannot be exercised without a legislative grant. See *Bank of Augusta v. Earle*, 13 Pet. 595, 10 L. Ed. 274; *Dike v. State*, 38 Minn. 366, 38 N. W. 95; *Chicago Board of Trade v. People*, 91 Ill. 82; *Lasher v. People*, 133 Ill. 226, 55 N. E. 663, 47 L. R. A. 802, 75 Am. St. Rep. 103; *Southampton v. Jessup*, 162 N. Y. 122, 56 N. E. 538; *Thompson v. People*, 23 Wend. (N. Y.) 578; *Black River Imp. Co. v. Holway*, 87 Wis. 584, 59 N. W. 126; *Central Pac. R. Co. v. California*, 162 U. S. 91, 16 Sup. Ct. 766, 40 L. Ed. 903; *Chicago & W. I. R. Co. v. Dunbar*, 95 Ill. 575; *State v. Weatherby*, 45 Mo. 20; *Morgan v. Louisiana*, 93 U. S. 223, 23 L. Ed. 860.

A franchise is a privilege or immunity of a public nature, which cannot be legally exercised without legislative grant. To be a corporation is a franchise. The various powers conferred on corporations are franchises. The execution of a policy of insurance by an insurance company, and the issuing a bank-note by an incorporated bank, are franchises. *People v. Utica Ins. Co.*, 15 Johns. (N. Y.) 387, 8 Am. Dec. 243.

The word "franchise" has various significations, both in a legal and popular sense. A corporation is itself a franchise belonging to the members of the corporation, and the corporation, itself a franchise, may hold other franchises. So, also, the different powers of a corporation, such as the right to hold and dispose of property, are its franchises. In a popular sense, the political rights of subjects and citizens are franchises, such as the right of suffrage, etc. *Pierce v. Emery*, 32 N. H. 484.

The term "franchise" has several significations, and there is some confusion in its use. When used with reference to corporations, the better opinion, deduced from the authorities, seems to be that it consists of the entire privileges embraced in and constituting the grant. It does not embrace the property acquired by the exercise of the franchise. *Bridgeport v. New York & N. H. R. Co.*, 36 Conn. 255, 4 Am. Rep. 63.

—**General and special.** The charter of a corporation is its "general" franchise, while a "special" franchise consists in any rights granted by the public to use property for a public use but with private profit. *Lord v. Equitable Life Assur. Soc.*, 194 N. Y. 212, 87 N. E. 443, 22 L. R. A. (N. S.) 420.—**Elective franchise.**

The right of suffrage; the right or privilege of voting in public elections.—**Franchise tax.** A tax on the franchise of a corporation, that is, on the right and privilege of carrying on business in the character of a corporation, for the purposes for which it was created, and in the conditions which surround it. Though the value of the franchise, for purposes of taxation, may be measured by the amount of business done, or the amount of earnings or dividends, or by the total value of the capital or stock of the cor-

poration in excess of its tangible assets, a franchise tax is not a tax on either property, capital, stock, earnings, or dividends. See *Home Ins. Co. v. New York*, 134 U. S. 594, 10 S. Ct. 593, 33 L. Ed. 1025; *Worth v. Petersburg R. Co.*, 89 N. C. 305; *Tremont & Suffolk Mills v. Lowell*, 178 Mass. 469, 59 N. E. 1007; *Chicago & E. L. R. Co. v. State*, 153 Ind. 134, 51 N. E. 924; *Marsden Co. v. State Board of Assessors*, 61 N. J. Law, 461, 39 Atl. 638; *People v. Knight*, 174 N. Y. 475, 67 N. E. 65, 63 L. R. A. 87.—**Personal franchise.** A franchise of corporate existence, or one which authorizes the formation and existence of a corporation, is sometimes called a "personal" franchise, as distinguished from a "property" franchise, which authorizes a corporation so formed to apply its property to some particular enterprise or exercise some special privilege in its employment, as, for example, to construct and operate a railroad. See *Sandham v. Nye*, 9 Misc. Rep. 541, 30 N. Y. Supp. 552.—**Secondary franchises.** The franchise of corporate existence being sometimes called the "primary" franchise of a corporation, its "secondary" franchises are the special and peculiar rights, privileges, or grants which it may receive under its charter or from a municipal corporation, such as the right to use the public streets, exact tolls, collect fares, etc. See *State v. Topeka Water Co.*, 61 Kan. 547, 60 Pac. 337; *Virginia Canon Toll Road Co. v. People*, 22 Colo. 429, 45 Pac. 398, 37 L. R. A. 711.

FRANCIA. France. Bract. fol. 427b.

FRANCIGENA. A man born in France. A designation formerly given to aliens in England.

FRANCUS. L. Lat. Free; a freeman; a Frank. Spelman.

—**Francus bancus.** Free bench, (*q. v.*)—**Francus homo.** In old European law. A free man. Domesday.—**Francus plegius.** In old English law. A frank pledge, or free pledge. See **FRANK-PLEDGE**.—**Francus tenens.** A freeholder. See **FRANK-TENEMENT**.

FRANK, v. To send matter through the public mails free of postage, by a personal or official privilege.

FRANK, adj. In old English law. Free. Occurring in several compounds.

—**Frank-almoigne.** In English law. Free alms. A spiritual tenure whereby religious corporations, aggregate or sole, held lands of the donor to them and their successors forever. They were discharged of all other except religious services, and the *trinoda necessitas*. It differs from tenure by divine service, in that the latter required the performance of certain divine services, whereas the former, as its name imports, is free. This tenure is expressly excepted in the 12 Car. II. c. 24, § 7, and therefore still subsists in some few instances. 2 Broom & H. Comm. 203.—**Frank bank.** In old English law. Free bench. Litt. § 166; Co. Litt. 110b. See **FREE-BENCH**.—**Frank-chase.** A liberty of free chase enjoyed by any one, whereby all other persons having ground within that compass are forbidden to cut down wood, etc., even in their own demesnes, to the prejudice of the owner of the liberty. Cowell. See **CHASE**.—**Frank-fee.** Freehold lands exempted from all services, but not from homage; lands held otherwise than in ancient demesne. That which a man holds to himself and his heirs, and not by such service as is required in ancient demesne, according to the custom of the manor. Cowell.—**Frank-ferm.** In English

law. A species of estate held in socage, said by Britton to be "lands and tenements whereof the nature of the fee is changed by feoffment out of chivalry for certain yearly services, and in respect whereof neither homage, ward, marriage, nor relief can be demanded." Britt. c. 66; 2 Bl. Comm. 80.—**Frank-fold.** In old English law. Free-fold; a privilege for the lord to have all the sheep of his tenants and the inhabitants within his seignory, in his fold, in his demesnes, to manure his land. Keilw. 198.—**Frank-law.** An obsolete expression signifying the rights and privileges of a citizen, or the liberties and civic rights of a freeman.—**Frank-marriage.** A species of entailed estates, in English law, now grown out of use, but still capable of subsisting. When tenements are given by one to another, together with a wife, who is a daughter or cousin of the donor, to hold in frank-marriage, the donees shall have the tenements to them and the heirs of their two bodies begotten, *i. e.*, in special tail. For the word "frank-marriage," *ex vi termini*, both creates and limits an inheritance, not only supplying words of descent, but also terms of procreation. The donees are liable to no service except fealty, and a reserved rent would be void, until the fourth degree of consanguinity be passed between the issues of the donor and donee, when they were capable by the law of the church of intermarrying. Litt. § 19; 2 Bl. Comm. 115.—**Frank-pledge.** In old English law. A pledge or surety for freemen; that is, the pledge, or corporate responsibility, of all the inhabitants of a tithing for the general good behavior of each free-born citizen above the age of fourteen, and for his being forthcoming to answer any infraction of the law. *Termes de la Ley*; Cowell.—**Frank-tenant.** A freeholder. Litt. § 91.—**Frank-tenement.** In English law. A free tenement, freeholding, or freehold. 2 Bl. Comm. 61, 62, 104; 1 Steph. Comm. 217; Bract. fol. 207. Used to denote both the tenure and the estate.

FRANKING PRIVILEGE. The privilege of sending certain matter through the public mails without payment of postage, in pursuance of a personal or official privilege.

FRANKLEYN, (spelled, also, "Francling" and "Franklin.") A freeman; a freeholder; a gentleman. Blount; Cowell.

FRASSETUM. In old English law. A wood or wood-ground where ash-trees grow. Co. Litt. 4b.

FRATER. In the civil law. A brother. *Frater consanguineus*, a brother having the same father, but born of a different mother. *Frater uterinus*, a brother born of the same mother, but by a different father. *Frater nutricius*, a bastard brother.

Frater fratri uterino non succedet in hæreditate paterna. A brother shall not succeed a uterine brother in the paternal inheritance. 2 Bl. Comm. 223; Fortes. de Laud. c. 5. A maxim of the common law of England, now superseded by the statute 3 & 4 Wm. IV. c. 106, § 9. See Broom, Max. 530.

FRATERIA. In old records. A fraternity, brotherhood, or society of religious persons, who were mutually bound to pray for the good health and life, etc. of their living

brethren, and the souls of those that were dead. Cowell.

FRATERNAL. Brotherly; relating or belonging to a fraternity or an association of persons formed for mutual aid and benefit, but not for profit.

—**Fraternal benefit association.** A society or voluntary association organized and carried on for the mutual aid and benefit of its members, not for profit; which ordinarily has a lodge system, a ritualistic form of work, and a representative government, makes provision for the payment of death benefits, and (sometimes) for benefits in case of accident, sickness, or old age, the funds therefor being derived from dues paid or assessments levied on the members. *National Union v. Marlow*, 74 Fed. 778, 21 C. C. A. 89; *Walker v. Giddings*, 103 Mich. 344, 61 N. W. 512.—**Fraternal insurance.** The form of life (or accident) insurance furnished by a fraternal beneficial association, consisting in the payment to a member, or his heirs in case of death, of a stipulated sum of money, out of funds raised for that purpose by the payment of dues or assessments by all the members of the association.

FRATERNIA. A fraternity or brotherhood.

FRATERNITY. In old English law. "A corporation is an investing of the people of a place with the local government thereof, and therefore their laws shall bind strangers; but a fraternity is some people of a place united together in respect to a mystery or business into a company, and their laws and ordinances cannot bind strangers." *Cuddon v. Eastwick*, 1 Salk. 192.

FRATRES CONJURATI. Sworn brothers or companions for the defense of their sovereign, or for other purposes. *Hoved*, 445.

FRATRES PYES. In old English law. Certain friars who wore white and black garments. *Walsingham*, 124.

FRATRIAGE. A younger brother's inheritance.

FRATRICIDE. One who has killed a brother or sister; also the killing of a brother or sister.

FRAUD. Fraud consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury. As distinguished from negligence, it is always positive, intentional. *Maher v. Hibernia Ins. Co.*, 67 N. Y. 292; *Alexander v. Church*, 53 Conn. 561, 4 Atl. 103; *Studer v. Bleistein*, 115 N. Y. 316, 22 N. E. 243, 7 L. R. A. 702; *Moore v. Crawford*, 130 U. S. 122, 9 Sup. Ct. 447, 32 L. Ed. 878; *Fechheimer v. Baum* (C. C.) 37 Fed. 167; *U. S. v. Beach* (D. C.) 71 Fed. 160; *Gardner v. Heartt*, 3 Denio (N. Y.) 232; *Mon-*

roe Mercantile Co. v. Arnold, 108 Ga. 449, 34 S. E. 176.

Fraud, as applied to contracts, is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other. *Civil Code La. art. 1847.*

Fraud, in the sense of a court of equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another. 1 Story, *Eq. Jur.* § 187.

Synonyms. The term "fraud" is sometimes used as synonymous with "covein," "collusion," or "deceit." But distinctions are properly taken in the meanings of these words, for which reference may be had to the titles *COVIN*; *COLLUSION*; *DECEIT*.

Classification. Fraud is either *actual* or *constructive*. Actual fraud consists in deceit, artifice, trick, design, some direct and active operation of the mind; it includes cases of the intentional and successful employment of any cunning, deception, or artifice used to circumvent or cheat another; it is something said, done, or omitted by a person with the design of perpetrating what he knows to be a cheat or deception. Constructive fraud consists in any act of commission or omission contrary to legal or equitable duty, trust, or confidence justly reposed, which is contrary to good conscience and operates to the injury of another. Or, as otherwise defined, it is an act, statement or omission which operates as a virtual fraud on an individual, or which, if generally permitted, would be prejudicial to the public welfare, and yet may have been unconnected with any selfish or evil design. Or, according to Story, constructive frauds are such acts or contracts as, though not originating in any actual evil design or contrivance to perpetrate a positive fraud or injury upon other persons, are yet, by their tendency to deceive or mislead other persons, or to violate private or public confidence, or to impair or injure the public interests, deemed equally reprehensible with actual fraud. 1 Story, *Eq. Jur.* § 258. And see, generally, *Code Ga.* 1882, § 3173; *People v. Kelly*, 35 Barb. (N. Y.) 457; *Jackson v. Jackson*, 47 Ga. 99; *Hatch v. Barrett*, 34 Kan. 223, 8 Pac. 129; *Forker v. Brown*, 10 Misc. Rep. 161, 30 N. Y. Supp. 827; *Massachusetts Ben. L. Ass'n v. Robinson*, 104 Ga. 256, 30 S. E. 918, 42 L. R. A. 261; *Haas v. Sternbach*, 156 Ill. 44, 41 N. E. 51; *Newell v. Wagness*, 1 N. D. 62, 44 N. W. 1014; *Carty v. Connolly*, 91 Cal. 15, 27 Pac. 599.

Fraud is also classified as *fraud in fact* and *fraud in law*. The former is actual, positive, intentional fraud. Fraud disclosed by matters of fact, as distinguished from constructive fraud or fraud in law. *McKibbin v. Martin*, 64 Pa. 356, 3 Am. Rep. 588; *Cook v. Burnham*, 3 Kan. App. 27, 44 Pac. 447. Fraud in law is fraud in contemplation of law; fraud implied or inferred by law; fraud made out by construction of law, as distinguished from fraud found by a jury from matter of fact; constructive fraud (*q. v.*) See 2 Kent, *Comm.* 512-532; *Delaney v. Valentine*, 154 N. Y. 692, 49 N. E. 65; *Burr v. Clement*, 9 Colo. 1, 9 Pac. 633.

Fraud is also said to be *legal* or *positive*. The former is fraud made out by legal construction or inference, or the same thing as constructive fraud. *Newell v. Wagness*, 1 N. D. 62, 44

N. W. 1014. Positive fraud is the same thing as actual fraud. See *Douthitt v. Applegate*, 33 Kan. 395, 6 Pac. 575, 52 Am. Rep. 533.

-Actionable fraud. See ACTIONABLE.—**Frauds, statute of.** This is the common designation of a very celebrated English statute, (29 Car. II. c. 3.) passed in 1677, and which has been adopted, in a more or less modified form, in nearly all of the United States. Its chief characteristic is the provision that no suit or action shall be maintained on certain classes of contracts or engagements unless there shall be a note or memorandum thereof in writing signed by the party to be charged or by his authorized agent. Its object was to close the door to the numerous frauds which were believed to be perpetrated, and the perjuries which were believed to be committed, when such obligations could be enforced upon no other evidence than the mere recollection of witnesses. It is more fully named as the "statute of frauds and perjuries."—**Pious fraud.** A subterfuge or evasion considered morally justifiable on account of the ends sought to be promoted; particularly applied to an evasion or disregard of the laws in the interests of religion or religious institutions, such as circumventing the statutes of mortmain.

FRAUDARE. Lat. In the civil law. To deceive, cheat, or impose upon; to defraud.

FRAUDULENT. Based on fraud; proceeding from or characterized by fraud; tainted by fraud; done, made, or effected with a purpose or design to carry out a fraud.

-Fraudulent alienation. In a general sense, the transfer of property with an intent to defraud creditors, lienors, or others. In a particular sense, the act of an administrator who wastes the assets of the estate by giving them away or selling at a gross undervalue. *Rhame v. Lewis*, 13 Rich. Eq. (S. C.) 269.—**Fraudulent alienee.** One who knowingly receives from an administrator assets of the estate under circumstances which make it a fraudulent alienation on the part of the administrator. *Id.*—**Fraudulent concealment.** The hiding or suppression of a material fact or circumstance which the party is legally or morally bound to disclose. *Magee v. Insurance Co.*, 92 U. S. 93, 23 L. Ed. 699; *Page v. Parker*, 43 N. H. 367, 80 Am. Dec. 172; *Jordan v. Pickett*, 78 Ala. 339; *Small v. Graves*, 7 Barb. (N. Y.) 578.—**Fraudulent conveyance.** A conveyance or transfer of property, the object of which is to defraud a creditor, or hinder or delay him, or to put such property beyond his reach. *Seymour v. Wilson*, 14 N. Y. 569; *Lockyer v. De Hart*, 6 N. J. Law, 458; *Land v. Jeffries*, 5 Rand. (Va.) 601; *Blodgett v. Webster*, 24 N. H. 103. Every transfer of property or charge thereon made, every obligation incurred, and every judicial proceeding taken with intent to delay or defraud any creditor or other person of his demands, is void against all creditors of the debtor, and their successors in interest, and against any person upon whom the estate of the debtor devolves in trust for the benefit of others than the debtor. Civ. Code Cal. § 3439.—**Fraudulent conveyances, statutes of, or against.** The name given to two celebrated English statutes,—the statute 13 Eliz. c. 6, made perpetual by 29 Eliz. c. 5; and the statute 27 Eliz. c. 4, made perpetual by 29 Eliz. c. 18.—**Fraudulent preferences.** In English law. Every conveyance or transfer of property or charge thereon made, every judgment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own moneys, in favor of any creditor, with a view of giving such creditor a preference over

other creditors, shall be deemed fraudulent and void if the debtor become bankrupt within three months. 32 & 33 Vict. c. 71, § 92.—**Fraudulent representation.** A false statement, made with knowledge of its falsity, with the intention to persuade another or influence his action, and on which that other relies and by which he is deceived to his prejudice. See *Wakefield Rattan Co. v. Tappan*, 70 Hun, 405, 24 N. Y. Supp. 430; *Montgomery St. Ry. Co. v. Matthews*, 77 Ala. 364, 54 Am. Rep. 60; *Righter v. Roller*, 31 Ark. 174; *Page v. Parker*, 43 N. H. 363, 80 Am. Dec. 172.

FRAUNC, FRAUNCHE, FRAUNKE.
See FRANK.

FRAUNCHISE. L. Fr. A franchise.

FRAUS. Lat. Fraud. More commonly called, in the civil law, "*dolus*," and "*dolus malus*," (q. v.) A distinction, however, was sometimes made between "*fraus*" and "*dolus*," the former being held to be of the most extensive import. Calvin.

-Fraus dans locum contractui. A misrepresentation or concealment of some fact that is material to the contract, and had the truth regarding which been known the contract would not have been made as made, is called a "*fraud dans locum contractui*," i. e., a fraud occasioning the contract, or giving place or occasion for the contract.—**Fraus legis.** Lat. In the civil law. Fraud of law; fraud upon law. See IN FRAUDEM LEGIS.

Fraus est celare fraudem. It is a fraud to conceal a fraud. 1 Vern. 240; 1 Story, Eq. Jur. §§ 339, 390.

Fraus est odiosa et non præsumenda. Fraud is odious, and not to be presumed. Cro. Car. 550.

Fraus et dolus nemini patrocinari debent. Fraud and deceit should defend or excuse no man. 3 Coke, 78; *Fleta*, lib. 1, c. 13, § 15; *Id.* lib. 6, c. 6, § 5.

Fraus et jus nunquam cohabitant. Wing. 630. Fraud and justice never dwell together.

Fraus latet in generalibus. Fraud lies hid in general expressions.

Fraus meretur fraudem. Plowd. 100. Fraud merits fraud.

FRAXINETUM. In old English law. A wood of ashes; a place where ashes grow. Co. Litt. 4b; *Shep. Touch.* 95.

FRAY. See AFFRAY.

FRECTUM. In old English law. Freight. *Quoad frectum navium suarum*, as to the freight of his vessels. Blount.

FREDNITE. In old English law. A liberty to hold courts and take up the fines for beating and wounding. To be free from fines. Cowell.

FREDSTOLE. Sanctuaries; seats of peace.

FREDUM. A fine paid for obtaining pardon when the peace had been broken. Spelman; Blount. A sum paid the magistrate for protection against the right of revenge.

FREE. 1. Unconstrained; having power to follow the dictates of his own will. Not subject to the dominion of another. Not compelled to involuntary servitude. Used in this sense as opposed to "slave."

2. Not bound to service for a fixed term of years; in distinction to being bound as an apprentice.

3. Enjoying full civic rights.

4. Available to all citizens alike without charge; as a free school.

5. Available for public use without charge or toll; as a free bridge.

6. Not despotic; assuring liberty; defending individual rights against encroachment by any person or class; instituted by a free people; said of governments, institutions, etc. Webster.

7. Certain, and also consistent with an honorable degree in life; as free services, in the feudal law.

8. Confined to the person possessing, instead of being shared with others; as a free fishery.

9. Not engaged in a war as belligerent or ally; neutral; as in the maxim, "Free ships make free goods."

—**Free alms.** The name of a species of tenure. See **FRANK-ALMOIGNE**.—**Free and clear.** The title to property is said to be "free and clear" when it is not incumbered by any liens; but it is said that an agreement to convey land "free and clear" is satisfied by a conveyance passing a good title. *Meyer v. Madrepierla*, 68 N. J. Law, 253, 53 Atl. 477, 96 Am. St. Rep. 536.—**Free-bench.** A widow's dower out of copyholds to which she is entitled by the custom of some manors. It is regarded as an accrescence growing out of the husband's interest, and is indeed a continuance of his estate. Wharton.—**Free-bord.** In old records. An allowance of land over and above a certain limit or boundary, as so much beyond or without a fence. Cowell; Blount. The right of claiming that quantity. *Termes de la Ley*.—**Free borough men.** Such great men as did not engage, like the frank-pledge men, for their decennier. Jacob.—**Free chapel.** In English ecclesiastical law. A place of worship, so called because not liable to the visitation of the ordinary. It is always of royal foundation, or founded at least by private persons to whom the crown has granted the privilege. 1 Burn, *Ecc. Law*, 298.—**Free course.** In admiralty law. A vessel having the wind from a favorable quarter is said to sail on a "free course," or said to be "going free" when she has a fair (following) wind and her yards braced in. The *Queen Elizabeth* (D. C.) 100 Fed. 876.—**Free entry, egress, and regress.** An expression used to denote that a person has the right to go on land again and again as often as may be reasonably necessary. Thus, in the case of a tenant entitled to emblements.—**Free fishery.** See **FISHERY**.—**Free law.** A term formerly used in England to designate the free-

dom of civil rights enjoyed by freemen. It was liable to forfeiture on conviction of treason or an infamous crime. *McCafferty v. Guyer*, 69 Pa. 116.—**Free services.** In feudal and old English law. Such feudal services as were not unbecoming the character of a soldier or a free-man to perform; as to serve under his lord in the wars, to pay a sum of money, and the like. 2 Bl. Comm. 60, 61.—**Free shareholders.** The free shareholders of a building and loan association are subscribers to its capital stock who are not borrowers from the association. *Steinberger v. Independent B. & S. Ass'n*, 84 Md. 625, 36 Atl. 439.—**Free ships.** In international law. Ships of a neutral nation. The phrase "free ships shall make free goods" is often inserted in treaties, meaning that goods, even though belonging to an enemy, shall not be seized or confiscated, if found in neutral ships. *Wheat. Int. Law*, 507, et seq.—**Free socage.** See **SOCAGE**.—**Free tenure.** Tenure by free services; freehold tenure.—**Free warren.** See **WARREN**.

FREE ON BOARD. A sale of goods "free on board" imports that they are to be delivered on board the cars, vessels, etc., without expense to the buyer for packing, cartage, or other such charges.

In a contract for sale and delivery of goods "free on board" vessel, the seller is under no obligation to act until the buyer names the ship to which the delivery is to be made. *Dwight v. Eckert*, 117 Pa. 508, 12 Atl. 32.

FREEDMAN. In Roman law. One who was set free from a state of bondage; an emancipated slave. The word is used in the same sense in the United States, respecting negroes who were formerly slaves. *Fairfield v. Lawson*, 50 Conn. 513, 47 Am. Rep. 669; *Davenport v. Caldwell*, 10 S. C. 333. G

FREEDOM. The state of being free; liberty; self-determination; absence of restraint; the opposite of slavery. H

The power of acting, in the character of a moral personality, according to the dictates of the will, without other check, hindrance, or prohibition than such as may be imposed by just and necessary laws and the duties of social life. I

The prevalence, in the government and constitution of a country, of such a system of laws and institutions as secure civil liberty to the individual citizen.

—**Freedom of speech and of the press.** J See **LIBERTY**.

FREEHOLD. An estate in land or other real property, of uncertain duration; that is, either of inheritance or which may possibly last for the life of the tenant at the least, (as distinguished from a leasehold;) and held by a free tenure, (as distinguished from copyhold or villeinage.) *Nevitt v. Woodburn*, 175 Ill. 376, 51 N. E. 593; *Railroad Co. v. Hemphill*, 35 Miss. 22; *Nellis v. Munson*, 108 N. Y. 453, 15 N. E. 739; *Jones v. Jones*, 20 Ga. 700. L

Such an interest in lands of frank-tenement as may endure not only during the owner's life, but which is cast after his death upon the persons who successively represent him, according to certain rules elsewhere explained. M

Such persons are called "heirs," and he whom they thus represent, the "ancestor." When the interest extends beyond the ancestor's life, it is called a "freehold of inheritance," and, when it only endures for the ancestor's life, it is a freehold not of inheritance.

An estate to be a freehold must possess these two qualities: (1) Immobility, that is, the property must be either land or some interest issuing out of or annexed to land; and (2) indeterminate duration, for, if the utmost period of time to which an estate can endure be fixed and determined, it cannot be a freehold. Wharton.

—Determinable freeholds. Estates for life, which may determine upon future contingencies before the life for which they are created expires. As if an estate be granted to a woman during her widowhood, or to a man until he be promoted to a benefice; in these and similar cases, whenever the contingency happens,—when the widow marries, or when the grantee obtains the benefice,—the respective estates are absolutely determined and gone. Yet, while they subsist, they are reckoned estates for life; because they may by possibility last for life, if the contingencies upon which they are to determine do not sooner happen. 2 Bl. Comm. 121.—**Freehold in law.** A freehold which has descended to a man, upon which he may enter at pleasure, but which he has not entered on. *Termes de la Ley.*—**Freehold land societies.** Societies in England designed for the purpose of enabling mechanics, artisans, and other working-men to purchase at the least possible price a piece of freehold land of a sufficient yearly value to entitle the owner to the elective franchise for the county in which the land is situated. Wharton.—**Freeholder.** A person who possesses a freehold estate. *Shively v. Lankford*, 174 Mo. 535, 74 S. W. 835; *Wheldon v. Cornett*, 4 Neb. (Unof.) 421, 94 N. W. 626; *People v. Scott*, 8 Hun (N. Y.) 567.

FREEMAN. This word has had various meanings at different stages of history. In the Roman law, it denoted one who was either born free or emancipated, and was the opposite of "slave." In feudal law, it designated an allodial proprietor, as distinguished from a vassal or feudal tenant. (And so in Pennsylvania colonial law. *Fry's Election Case*, 71 Pa. 308, 10 Am. Rep. 698.) In old English law, the word described a freeholder or tenant by free services; one who was not a villein. In modern legal phraseology, it is the appellation of a member of a city or borough having the right of suffrage, or a member of any municipal corporation invested with full civic rights.

A person in the possession and enjoyment of all the civil and political rights accorded to the people under a free government.

—Freeman's roll. A list of persons admitted as burghesses or freemen for the purposes of the rights reserved by the municipal corporation act, (5 & 6 Wm. IV. c. 76.) Distinguished from the Burgess Roll. 3 Steph. Comm. 197. The term was used, in early colonial history, in some of the American colonies.

FREIGHT. Freight is properly the price or compensation paid for the transportation of goods by a carrier, at sea, from port to port. But the term is also used to denote the hire paid for the carriage of goods on land from place to place, (usually by a railroad company, not an express company,) or

on inland streams or lakes. The name is also applied to the goods or merchandise transported by any of the above means. *Brittan v. Barnaby*, 21 How. 533, 16 L. Ed. 177; *Huth v. Insurance Co.*, 8 Bosw. (N. Y.) 552; *Christie v. Davis Coal Co.* (D. C.) 95 Fed. 838; *Hagar v. Donaldson*, 154 Pa. 242, 25 Atl. 824; *Paradise v. Sun Mut. Ins. Co.*, 6 La. Ann. 596.

Property carried is called "freight;" the reward, if any, to be paid for its carriage is called "freightage;" the person who delivers the freight to the carrier is called the "consignor;" and the person to whom it is to be delivered is called the "consignee." Civil Code Cal. § 2110; Civil Code Dak. § 1220.

The term "freight" has several different meanings, as the price to be paid for the carriage of goods, or for the hire of a vessel under a charter-party or otherwise; and sometimes it designates goods carried, as "a freight of lime," or the like. But, as a subject of insurance, it is used in one of the two former senses. *Lord v. Neptune Ins. Co.*, 10 Gray (Mass.) 109.

The sum agreed on for the hire of a ship, entirely or in part, for the carriage of goods from one port to another. 13 East, 300. All rewards or compensation paid for the use of ships. *Giles v. Cynthia*, 1 Pet. Adm. 206, Fed. Cas. No. 5,424.

Freight is a compensation received for the transportation of goods and merchandise from port to port; and is never claimable by the owner of the vessel until the voyage has been performed and terminated. *Patapsco Ins. Co. v. Biscoe*, 7 Gill & J. (Md.) 300, 28 Am. Dec. 319.

"Dead freight" is money payable by a person who has chartered a ship and only partly loaded her, in respect of the loss of freight caused to the ship-owner by the deficiency of cargo. L. R. 2 H. L. Sc. 128.

Freight is the mother of wages. 2 Show. 283; 3 Kent, Comm. 196. Where a voyage is broken up by *vis major*, and no freight earned, no wages, *eo nomine*, are due.

FREIGHTER. In maritime law. The party by whom a vessel is engaged or chartered; otherwise called the "charterer." 2 Steph. Comm. 143. In French law, the owner of a vessel is called the "freighter," (*freteur*;) the merchant who hires it is called the "affreighter," (*affreteur*.) *Emerig. Tr. des Ass.* ch. 11, § 3.

FRENCHMAN. In early times, in English law, this term was applied to every stranger or "outlandish" man. *Bract. lib. 3, tr. 2, c. 15.*

FRENDELSMAN. Sax. An outlaw. So called because on his outlawry he was denied all help of friends after certain days. *Cowell; Blount.*

FRIENDWITE. In old English law. A mulct or fine exacted from him who harbored an outlawed friend. *Cowell; Tomlina.*

FRENETICUS. In old English law. A madman, or person in a frenzy. *Fleta*, lib. 1, c. 36.

FREOBORGH. A free-surety, or free-pledge. *Spelman*. See **FRANK-PLEDGE**.

FREQUENT, v. To visit often; to resort to often or habitually. *Green v. State*, 109 Ind. 175, 9 N. E. 781; *State v. Ah Sam*, 14 Or. 347, 13 Pac. 303.

Frequentia actus multum operatur. The frequency of an act effects much. 4 *Coke*, 78; *Wing. Max.* p. 719, max. 192. A continual usage is of great effect to establish a right.

FRERE. Fr. A brother. *Frere eyne*, elder brother. *Frere puisne*, younger brother. *Britt.* c. 75.

FRESCA. In old records. Fresh water, or rain and land flood.

FRESH. Immediate; recent; following without any material interval.

—**Fresh disseisin.** By the ancient common law, where a man had been disseised, he was allowed to right himself by force, by ejecting the disseisor from the premises, without resort to law, provided this was done forthwith, while the disseisin was *fresh*, (*flagrante disseisina*.) *Bract. fol.* 162b. No particular time was limited for doing this, but *Bracton* suggested it should be fifteen days. *Id. fol.* 163. See *Britt. cc.* 32, 43, 44, 65.—**Fresh fine.** In old English law. A fine that had been levied within a year past. *St. Westm.* 2, c. 45; *Cowell*.—**Fresh force.** Force done within forty days. *Fitzh. Nat. Brev.* 7; *Old Nat. Brev.* 4. The heir or reversioner in a case of disseisin by *fresh force* was allowed a remedy in chancery by bill before the mayor. *Cowell*.—**Fresh pursuit.** A pursuit instituted immediately, and with intent to reclaim or recapture, after an animal escaped, a thief flying with stolen goods, etc. *People v. Pool*, 27 Cal. 578; *White v. State*, 70 Miss. 253, 11 South. 632.—**Fresh suit.** In old English law. Immediate and unremitting pursuit of an escaping thief. "Such a present and earnest following of a robber as never ceases from the time of the robbery until apprehension. The party pursuing then had back again his goods, which otherwise were forfeited to the crown." *Staundef. P. C. lib.* 3, cc. 10, 12; 1 *Bl. Comm.* 297.

FRESHET. A flood, or overflowing of a river, by means of rains or melted snow; an inundation. *Stover v. Insurance Co.*, 3 *Phila. (Pa.)* 42; *Harris v. Social Mfg. Co.*, 9 R. I. 99, 11 *Am. Rep.* 224.

FRET. Fr. In French marine law. Freight. *Ord. Mar. liv.* 3, tit. 3.

FRETER. Fr. In French marine law. To freight a ship; to let it. *Emerig. Tr. des Ass. c.* 11, § 2.

FRITEUR. Fr. In French marine law. Freighter. The owner of a ship, who lets it to the merchant. *Emerig. Tr. des Ass. c.* 11, § 3.

FRETUM, FRECTUM. In old English law. The freight of a ship; freight money. *Cowell*.

FRETUM. Lat. A strait.

—**Fretum Britannicum.** The strait between Dover and Calais.

FRIARS. An order of religious persons, of whom there were four principal branches, viz.: (1) Minors, Grey Friars, or Franciscans; (2) Augustines; (3) Dominicans, or Black Friars; (4) White Friars, or Carmelites, from whom the rest descend. *Wharton*.

FRIBUSCULUM. In the civil law. A temporary separation between husband and wife, caused by a quarrel or estrangement, but not amounting to a divorce, because not accompanied with an intention to dissolve the marriage.

FRIDBORG, FRITHBORG. Frank-pledge. *Cowell*. Security for the peace. *Spelman*.

FRIDHBURGUS. In old English law. A kind of frank-pledge, by which the lords or principal men were made responsible for their dependents or servants. *Bract. fol.* 124b.

FRIEND OF THE COURT. See **AMICUS CURIAE**.

FRIENDLESS MAN. In old English law. An outlaw; so called because he was denied all help of friends. *Bract. lib.* 3, tr. 2, c. 12.

FRIENDLY SOCIETIES. In English law. Associations supported by subscription, for the relief and maintenance of the members, or their wives, children, relatives, and nominees, in sickness, infancy, advanced age, widowhood, etc. The statutes regulating these societies were consolidated and amended by *St. 38 & 39 Vict. c.* 60. *Wharton*.

FRIENDLY SUIT. A suit brought by a creditor in chancery against an executor or administrator, being really a suit by the executor or administrator, in the name of a creditor, against himself, in order to compel the creditors to take an equal distribution of the assets. 2 *Williams, Ex'rs*, 1915.

Also any suit instituted by agreement between the parties to obtain the opinion of the court upon some doubtful question in which they are interested.

FRIGIDITY. Impotence. *Johnson*.

FRILINGI. Persons of free descent, or freemen born; the middle class of persons among the Saxons. *Spelman*.

FRISCUS. Fresh uncultivated ground. *Mon. Angl. t.* 2, p. 56. Fresh; not salt. *Reg. Orig.* 97. Recent or new. See **FRESH**, and sub-titles thereunder.

FRITH. Sax. Peace, security, or protection. This word occurs in many compound terms used in Anglo-Saxon law.

—**Frithborg.** Frank-pledge. Cowell.—**Frithbote.** A satisfaction or fine for a breach of the peace.—**Frithbreach.** The breaking of the peace.—**Frithgar.** The year of jubilee, or of meeting for peace and friendship.—**Frithgilda.** Guildhall; a company or fraternity for the maintenance of peace and security; also a fine for breach of the peace. Jacob.—**Frithman.** A member of a company or fraternity.—**Frithsocne.** Surety of defense. Jurisdiction of the peace. The franchise of preserving the peace. Also spelled "*frithsoken*."—**Frithsplot.** A spot or plot of land, encircling some stone, tree, or well, considered sacred, and therefore affording sanctuary to criminals.—**Frithstool.** The stool of peace. A stool or chair placed in a church or cathedral, and which was the symbol and place of sanctuary to those who fled to it and reached it.

FRIVOLOUS. An answer or plea is called "frivolous" when it is clearly insufficient on its face, and does not controvert the material points of the opposite pleading, and is presumably interposed for mere purposes of delay or to embarrass the plaintiff. *Erwin v. Lowery*, 64 N. C. 321; *Strong v. Sproul*, 53 N. Y. 499; *Gray v. Gidiere*, 4 Strob. (S. C.) 442; *Peacock v. Williams* (C. C.) 110 Fed. 916.

A frivolous demurrer has been defined to be one which is so clearly untenable, or its insufficiency so manifest upon a bare inspection of the pleadings, that its character may be determined without argument or research. *Cottrill v. Cramer*, 40 Wis. 558.

Synonyms. The terms "frivolous" and "sham," as applied to pleadings, do not mean the same thing. A sham plea is good on its face, but false in fact; it may, to all appearances, constitute a perfect defense, but is a pretence because false and because not pleaded in good faith. A frivolous plea may be perfectly true in its allegations, but yet is liable to be stricken out because totally insufficient in substance. *Andree v. Bandler* (Sup.) 56 N. Y. Supp. 614; *Brown v. Jenison*, 1 Code R. N. S. (N. Y.) 157.

FRODMORTEL, or FREOMORTEL.

An immunity for committing manslaughter. *Mon. Angl. t. 1, p. 173.*

FRONTAGE—FRONTAGER. In English law a frontager is a person owning or occupying land which abuts on a highway, river, sea-shore, or the like. The term is generally used with reference to the liability of frontagers on streets to contribute towards the expense of paving, draining, or other works on the highway carried out by a local authority, in proportion to the frontage of their respective tenements. Sweet.

The term is also in a similar sense in American law, the expense of local improvements made by municipal corporations (such as paving, curbing, and sewerage) being generally assessed on abutting property owners in proportion to the "frontage" of their lots on the street or highway, and an assessment so levied being called a "frontage as-

essment." *Neenan v. Smith*, 50 Mo. 531; *Lyon v. Tonawanda* (C. C.) 98 Fed. 366.

FRONTIER. In international law. That portion of the territory of any country which lies close along the border line of another country, and so "fronts" or faces it. The term means something more than the boundary line itself, and includes a tract or strip of country, of indefinite extent, contiguous to the line. *Stoughton v. Mott*, 15 Vt. 169.

FRUCTUARIUS. Lat. In the civil law. One who had the usufruct of a thing; *i. e.*, the use of the fruits, profits, or increase, as of land or animals. *Inst. 2, 1, 36, 38.* Bracton applies it to a lessee, fermor, or farmer of land, or one who held lands *ad firmam*, for a farm or term. *Bract. fol. 261.*

FRUCTUS. Lat. In the civil law. Fruit, fruits; produce; profit or increase; the organic productions of a thing.

The right to the fruits of a thing belonging to another.

The compensation which a man receives from another for the use or enjoyment of a thing, such as interest or rent. See *Mackeld. Rom. Law, § 167; Inst. 2, 1, 35, 37; Dig. 7, 1, 33; Id. 5, 3, 29; Id. 22, 1, 34.*

—**Fructus civiles.** All revenues and recompenses which, though not *fruits*, properly speaking, are recognized as such by the law. The term includes such things as the rents and income of real property, interest on money loaned, and annuities. *Civ. Code La. 1900, art. 545.*—**Fructus fundi.** The fruits (produce or yield) of land.—**Fructus industriales.** Industrial fruits, or fruits of industry. Those fruits of a thing, as of land, which are produced by the labor and industry of the occupant, as crops of grain; as distinguished from such as are produced solely by the powers of nature. Emblements are so called in the common law. 2 *Steph. Comm. 258; 1 Chit. Gen. Pr. 92.* *Sparrow v. Pond*, 49 *Minn.* 412, 52 *N. W.* 36, 16 *L. R. A.* 103, 32 *Am. St. Rep.* 571; *Purner v. Piercy*, 40 *Md.* 223, 17 *Am. Rep.* 591; *Smock v. Smock*, 37 *Mo. App.* 64.—

Fructus naturales. Those products which are produced by the powers of nature alone; as wool, metals, milk, the young of animals. *Sparrow v. Pond*, 49 *Minn.* 412, 52 *N. W.* 36, 16 *L. R. A.* 103, 32 *Am. St. Rep.* 571.—**Fructus pecudum.** The produce or increase of flocks or herds.—**Fructus pendentes.** Hanging fruits; those not severed. The fruits united with the thing which produces them. These form a part of the principal thing.—**Fructus rei alienae.** The fruits of another's property; fruits taken from another's estate.—**Fructus separati.** Separate fruits; the fruits of a thing when they are separated from it. *Dig. 7, 4, 13.*—**Fructus stantes.** Standing fruits; those not yet severed from the stalk or stem.

Fructus augent hæreditatem. The yearly increase goes to enhance the inheritance. *Dig. 5, 3, 20, 3.*

Fructus pendentes pars fundi videntur. Hanging fruits make part of the land. *Dig. 6, 1, 44; 2 Bouv. Inst. no. 1578.*

Fructus perceptos villæ non esse constat. Gathered fruits do not make a part of the farm. Dig. 19, 1, 17, 1; 2 Bouv. Inst. no. 1578.

FRUGES. In the civil law. Anything produced from vines, underwood, chalk-pits, stone-quarries. Dig. 50, 16, 77.

Grains and leguminous vegetables. In a more restricted sense, any esculent growing in pods. Vicat, Voc. Jur.; Calvin.

FRUIT. The produce of a tree or plant which contains the seed or is used for food.

This term, in legal acceptance, is not confined to the produce of those trees which in popular language are called "fruit trees," but applies also to the produce of oak, elm, and walnut trees. Bullen v. Denning, 5 Barn. & C. 847.

—**Civil fruits**, in the civil law (*fructus civiles*) are such things as the rents and income of real property, the interest on money loaned, and annuities. Civ. Code La. 1900, art. 545.—**Fruit fallen.** The produce of any possession detached therefrom, and capable of being enjoyed by itself. Thus, a next presentation, when a vacancy has occurred, is a fruit fallen from the advowson. Wharton.—**Fruits of crime.** In the law of evidence. Material objects acquired by means and in consequence of the commission of crime, and sometimes constituting the subject-matter of the crime. Burrill, Circ. Ev. 445; 3 Benth. Jud. Ev. 31.—**Natural fruits.** The produce of the soil, or of fruit-trees, bushes, vines, etc., which are edible or otherwise useful or serve for the reproduction of their species. The term is used in contradistinction to "artificial fruits" i. e., such as by metaphor or analogy are likened to the fruits of the earth. Of the latter, interest on money is an example. See Civ. Code La. 1900, art. 545.

Frumenta quæ sata sunt solo cedere intelliguntur. Grain which is sown is understood to form a part of the soil. Inst. 2, 1, 32.

FRUMENTUM. In the civil law. Grain. That which grows in an ear. Dig. 50, 16, 77.

FRUMGYLD. Sax. The first payment made to the kindred of a slain person in recompense for his murder. Blount.

FRUMSTOLL. Sax. In Saxon law. A chief seat, or mansion house. Cowell.

FRUSCA TERRA. In old records. Uncultivated and desert ground. 2 Mon. Angl. 327; Cowell.

FRUSSURA. A breaking; plowing. Cowell.

Frustra agit qui iudicium prosequi nequit cum effectu. He sues to no purpose who cannot prosecute his judgment with effect, [who cannot have the fruits of his judgment.] Fleta, lib. 6, c. 37, § 9.

Frustra [vana] est potentia quæ nunquam venit in actum. That power is to

no purpose which never comes into act, or which is never exercised. 2 Coke, 51.

Frustra expectatur eventus cujus effectus nullus sequitur. An event is vainly expected from which no effect follows.

Frustra feruntur leges nisi subditis et obedientibus. Laws are made to no purpose, except for those that are subject and obedient. Branch, Princ.

Frustra fit per plura, quod fieri potest per pauciora. That is done to no purpose by many things which can be done by fewer. Jenk. Cent. p. 68, case 28. The employment of more means or instruments for effecting a thing than are necessary is to no purpose.

Frustra legis auxilium invocat [querit] qui in legem committit. He vainly invokes the aid of the law who transgresses the law. Fleta, lib. 4, c. 2, § 3; 2 Hale, P. C. 386; Broom, Max. 279, 297.

Frustra petis quod mox es restiturus. In vain you ask that which you will have immediately to restore. 2 Kames, Eq. 104; 5 Man. & G. 757.

Frustra petis quod statim alteri reddere cogaris. Jenk. Cent. 256. You ask in vain that which you might immediately be compelled to restore to another.

Frustra probatur quod probatum non relevat. That is proved to no purpose which, when proved, does not help. Halk. Lat. Max. 50.

FRUSTRUM TERRÆ. A piece or parcel of land lying by itself. Co. Litt. 5b.

FRUTECTUM. In old records. A place overgrown with shrubs and bushes. Spelman; Blount.

FRUTOS. In Spanish law. Fruits; products; produce; grains; profits. White, New Recop. b. 1, tit. 7, c. 5, § 2.

FRYMITH. In old English law. The affording harbor and entertainment to any one.

FRYTHER. Sax. In old English law. A plain between woods. Co. Litt. 5b.

An arm of the sea, or a strait between two lands. Cowell.

FUAGE, FOCAGE. Hearth money. A tax laid upon each fire-place or hearth. An imposition of a shilling for every hearth, levied by Edward III. in the dukedom of Aquitaine. Spelman; 1 Bl. Comm. 324.

FUER. In old English law. Flight. It is of two kinds: (1) *Fuer in fait*, or *in facto*, where a person does apparently and corporally flee; (2) *fuer in ley*, or *in lege*,

when, being called in the county court, he does not appear, which legal interpretation makes flight. Wharton.

FUERO. In Spanish law. A law; a code.

A general usage or custom of a province, having the force of law. *Strother v. Lucas*, 12 Pet. 446, 9 L. Ed. 1137. *Ir contra fuero*, to violate a received custom.

A grant of privileges and immunities. *Conceder fueros*, to grant exemptions.

A charter granted to a city or town. Also designated as "*cartas pueblas*."

An act of donation made to an individual, a church, or convent, on certain conditions.

A declaration of a magistrate, in relation to taxation, fines, etc.

A charter granted by the sovereign, or those having authority from him, establishing the franchises of towns, cities, etc.

A place where justice is administered.

A peculiar *forum*, before which a party is amenable.

The jurisdiction of a tribunal, which is entitled to take cognizance of a cause; as *fuero ecclesiastico*, *fuero militar*. See Schm. Civil Law, Introd. 64.

—**Fuero de Castilla.** The body of laws and customs which formerly governed the Castilians.

—**Fuero de correos y caminos.** A special tribunal taking cognizance of all matters relating to the post-office and roads.

—**Fuero de guerra.** A special tribunal taking cognizance of all matters in relation to persons serving in the army.

—**Fuero de marina.** A special tribunal taking cognizance of all matters relating to the navy and to the persons employed therein.

—**Fuero Juzgo.** The *Forum Judicium*; a code of laws established in the seventh century for the Visigothic kingdom in Spain.

Some of its principles and rules are found surviving in the modern jurisprudence of that country. Schm. Civil Law, Introd. 28.

—**Fuero municipal.** The body of laws granted to a city or town for its government and the administration of justice.

—**Fuero Real.** The title of a code of Spanish law promulgated by Alphonso the Learned, (*el Sabio*.) A. D. 1255.

It was the precursor of the *Partidas*. Schm. Civil Law, Introd. 67.

—**Fuero Viejo.** The title of a compilation of Spanish law, published about A. D. 992. Schm. Civil Law, Introd. 65.

FUGA CATALLORUM. In old English law. A drove of cattle. Blount.

FUGACIA. A chase. Blount.

FUGAM FECIT. Lat. He has made flight; he fled. A clause inserted in an inquisition, in old English law, meaning that a person indicted for treason or felony had fled. The effect of this is to make the party forfeit his goods absolutely, and the profits of his lands until he has been pardoned or acquitted.

FUGATOR. In old English law. A privilege to hunt. Blount.

A driver. *Fugatores carrucarum*, drivers of wagons. *Eteta*, lib. 2, c. 78.

FUGITATE. In Scotch practice. To outlaw, by the sentence of a court; to outlaw for non-appearance in a criminal case. 2 Alis. Crim. Pr. 350.

—**Fugitation.** When a criminal does not obey the citation to answer, the court pronounces sentence of fugitation against him, which induces a forfeiture of goods and chattels to the crown.

FUGITIVE. One who flees; always used in law with the implication of a flight, evasion, or escape from some duty or penalty or from the consequences of a misdeed.

—**Fugitive from justice.** A person who, having committed a crime, flies from the state or country where it transpired, in order to evade arrest and escape justice. *Roberts v. Reilly*, 116 U. S. 80, 6 Sup. Ct. 291, 29 L. Ed. 541; *State v. Hall*, 115 N. C. 811, 20 S. E. 729, 28 L. R. A. 289, 44 Am. St. Rep. 501; *In re Voorhees*, 32 N. J. Law, 150; *State v. Clough*, 71 N. H. 594, 53 Atl. 1086, 67 L. R. A. 946; *People v. Hyatt*, 172 N. Y. 176, 64 N. E. 823, 60 L. R. A. 774, 92 Am. St. Rep. 706.

—**Fugitive offenders.** In English law. Where a person accused of any offense punishable by imprisonment, with hard labor for twelve months or more, has left that part of his majesty's dominions where the offense is alleged to have been committed, he is liable, if found in any other part of his majesty's dominions, to be apprehended and returned in manner provided by the fugitive offenders' act, 1881, to the part from which he is a fugitive.

Wharton.—**Fugitive slave.** One who, held in bondage, flees from his master's power.

—**Fugitive slave law.** An act of congress passed in 1793 (and also one enacted in 1850) providing for the surrender and deportation of slaves who escaped from their masters and fled into the territory of another state, generally a "free" state.

FUGITIVUS. In the civil law. A fugitive; a runaway slave. Dig. 11, 4; Cod. 6, 1. See the various definitions of this word in Dig. 21, 1, 17.

FUGUES. Fr. In medical jurisprudence. Ambulatory automatism. See AUTOMATISM.

FULL. Ample; complete; perfect; mature; not wanting in any essential quality. *Mobile School Com'r's v. Putnam*, 44 Ala. 537; *Reed v. Hazleton*, 37 Kan. 321, 15 Pac. 177; *Quinn v. Donovan*, 85 Ill. 195.

—**Full age.** The age of legal majority, twenty-one years at common law, twenty-five in the civil law. 1 Bl. Comm. 463; Inst. 1, 23, pr.

—**Full answer.** In pleading. A complete and meritorious answer; one not wanting in any essential requisite. *Bentley v. Cleaveland*, 22 Ala. 817; *Durham v. Moore*, 48 Kan. 135, 29 Pac. 472.

—**Full blood.** A term of relation, denoting descent from the same couple. Brothers and sisters of full blood are those who are born of the same father and mother, or, as Justinian calls them, "*ex utroque parente conjuncti*."

Nov. 118, cc. 2, 3; Mackeld. Rom. Law, § 145. The more usual term in modern law is "whole blood," (*q. v.*)

—**Full copy.** In equity practice. A complete and unabbreviated transcript of a bill or other pleading, with all indorsements, and including a copy of all exhibits.

Finley v. Hunter, 2 Strob. Eq. (S. C.) 210, note.

—**Full court.** In practice. A court *in banc*. A court duly organized with all the judges pres-

ent.—Full covenants. See COVENANT.—**Full defense.** In pleading. The formula of defense in a plea, stated at length and without abbreviation, thus: "And the said C. D., by B. F., his attorney, comes and defends the force (or wrong) and injury when and where it shall behoove him, and the damages, and whatsoever else he ought to defend, and says," etc. Steph. Pl. p. 481.—**Full faith and credit.** In the constitutional provision that full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state, this phrase means that a judgment or record shall have the same faith, credit, conclusive effect, and obligatory force in other states as it has by law or usage in the state from whence taken. *Christmas v. Russell*, 5 Wall. 302, 18 L. Ed. 475; *McElmoyle v. Cohen*, 13 Pet. 326, 10 L. Ed. 177; *Gibbons v. Livingston*, 6 N. J. Law, 275; *Brengle v. McClellan*, 7 Gill & J. (Md.) 438.—**Full indorsement.** See INDORSEMENT.—**Full jurisdiction.** Complete jurisdiction over a given subject-matter or class of actions (as, in equity) without any exceptions or reservations. *Bank of Mississippi v. Duncan*, 52 Miss. 740.—**Full life.** Life in fact and in law. See IN FULL LIFE.—**Full proof.** In the civil law. Proof by two witnesses, or a public instrument. *Hallifax*, Civil Law, b. 3, c. 9, nn. 25, 30; 3 Bl. Comm. 370. Evidence which satisfies the minds of the jury of the truth of the fact in dispute, to the entire exclusion of every reasonable doubt. *Kane v. Hibernia Mut. F. Ins. Co.*, 38 N. J. Law, 450, 20 Am. Rep. 409.—**Full right.** The union of a good title with actual possession.

FULLUM AQUÆ. A fleam, or stream of water. Blount.

FULLY ADMINISTERED. The English equivalent of the Latin phrase "*plene administravit*," being a plea by an executor or administrator that he has completely and legally disposed of all the assets of the estate, and has nothing left out of which a new claim could be satisfied. See *Ryans v. Boogher*, 169 Mo. 673, 69 S. W. 1048.

FUMAGE. In old English law. The same as *fuage*, or smoke farthings. 1 Bl. Comm. 324. See FUAGE.

FUNCTION. Office; duty; fulfillment of a definite end or set of ends by the correct adjustment of means. The occupation of an office. By the performance of its duties, the officer is said to fill his function. Dig. 32, 65, 1. See *State v. Hyde*, 121 Ind. 20, 22 N. E. 644.

FUNCTIONAL DISEASE. In medical jurisprudence. One which prevents, obstructs, or interferes with the due performance of its special functions by any organ of the body, without anatomical defect or abnormality in the organ itself. See *Higbee v. Guardian Mut. L. Ins. Co.*, 66 Barb. (N. Y.) 472. Distinguished from "organic" disease, which is due to some injury to, or lesion or malformation in, the organ in question.

FUNCTIONARY. A public officer or employé. An officer of a private corporation is also sometimes so called.

FUNCTUS OFFICIO. Lat. Having fulfilled the function, discharged the office, or accomplished the purpose, and therefore of no further force or authority. Applied to an officer whose term has expired, and who has consequently no further official authority; and also to an instrument, power, agency, etc., which has fulfilled the purpose of its creation, and is therefore of no further virtue or effect.

FUND, v. To capitalize with a view to the production of interest. *Stephen v. Milnor*, 24 N. J. Eq. 376. Also, to put into the form of bonds, stocks, or other securities, bearing regular interest, and to provide or appropriate a fund or permanent revenue for the payment thereof. *Merrill v. Monticello* (C. C.) 22 Fed. 596.

—**Funded debt.** To fund a debt is to pledge a specific fund to keep down the interest and reduce the principal. The term "fund" was originally applied to a portion of the national revenue set apart or pledged to the payment of a particular debt. Hence, as applied to the pecuniary obligations of states or municipal corporations, a funded debt is one for the payment of which (interest and principal) some fund is appropriated, either specifically, or by provision made for future taxation and the *quasi* pledging in advance of the public revenue. *Ketchum v. Buffalo*, 14 N. Y. 356; *People v. Carpenter*, 31 App. Div. 603, 52 N. Y. Supp. 781. As applied to the financial management of corporations (and sometimes of estates in course of administration or properties under receivership) funding means the borrowing of a sufficient sum of money to discharge a variety of floating or unsecured debts, or debts evidenced by notes or secured by bonds but maturing within a short time, and creating a new debt in lieu thereof, secured by a general mortgage, a series of bonds, or an issue of stock, generally maturing at a more remote period, and often at a lower rate of interest. The new debt thus substituted for the pre-existing debts is called the "funded debt." See *Ketchum v. Buffalo*, 14 N. Y. 356; *People v. Carpenter*, 31 App. Div. 603, 52 N. Y. Supp. 781; *Lawrey v. Sterling*, 41 Or. 518, 69 Pac. 460. This term is very seldom applied to the debts of a private individual; but when so used it must be understood as referring to a debt embodied in securities of a permanent character and to the payment of which certain property has been applied or pledged. *Wells v. Wells* (Super. N. Y.) 24 N. Y. Supp. 874.—**Funding system.** The practice of borrowing money to defray the expenses of government, and creating a "sinking fund," designed to keep down interest, and to effect the gradual reduction of the principal debt. *Merrill v. Monticello* (C. C.) 22 Fed. 596.

FUND, n. A sum of money set apart for a specific purpose, or available for the payment of debts or claims.

In its narrower and more usual sense, "fund" signifies "capital," as opposed to "interest" or "income;" as where we speak of a corporation funding the arrears of interest due on its bonds, or the like, meaning that the interest is capitalized and made to bear interest in its turn until it is repaid. Sweet.

In the plural, this word has a variety of slightly different meanings, as follows:

1. Money in hand; cash; money available for the payment of a debt, legacy, etc. Ga-

lena Ins. Co. v. Kupfer, 28 Ill. 335, 81 Am. Dec. 284.

2. The proceeds of sales of real and personal estate, or the proceeds of any other assets converted into money. Doane v. Insurance Co., 43 N. J. Eq. 533, 11 Atl. 739.

3. Corporate stocks or government securities; in this sense usually spoken of as the "funds."

4. Assets, securities, bonds, or revenue of a state or government appropriated for the discharge of its debts.

—**No funds.** This term denotes a lack of assets or money for a specific use. It is the return made by a bank to a check drawn upon it by a person who has no deposit to his credit there; also by an executor, trustee, etc., who has no assets for the specific purpose.—**Public funds.** An untechnical name for (1) the revenue or money of a government, state, or municipal corporation; (2) the bonds, stocks, or other securities of a national or state government.—**Sinking fund.** The aggregate of sums of money (as those arising from particular taxes or sources of revenue) set apart and invested, usually at fixed intervals, for the extinguishment of the debt of a government or corporation, by the accumulation of interest. Elser v. Ft. Worth (Tex. Civ. App.) 27 S. W. 740; Union Pac. R. Co. v. Buffalo County Com'rs, 9 Neb. 449, 4 N. W. 53; Brooke v. Philadelphia, 162 Pa. 123, 29 Atl. 387, 24 L. R. A. 781.—**General fund.** This phrase, in New York, is a collective designation of all the assets of the state which furnish the means for the support of government and for defraying the discretionary appropriations of the legislature. People v. Orange County Sup'rs, 27 Barb. (N. Y.) 575, 588.

FUNDAMENTAL ERROR. See ERROR.

FUNDAMENTAL LAW. The law which determines the constitution of government in a state, and prescribes and regulates the manner of its exercise; the organic law of a state; the constitution.

FUNDAMUS. We found. One of the words by which a corporation may be created in England. 1 Bl. Comm. 473; 3 Steph. Comm. 173.

FUNDATIO. Lat. A founding or foundation. Particularly applied to the creation and endowment of corporations. As applied to eleemosynary corporations such as colleges and hospitals, it is said that "*fundatio incipiens*" is the incorporation or grant of corporate powers, while "*fundatio perficiens*" is the endowment or grant or gift of funds or revenues. Dartmouth College v. Woodward, 4 Wheat. 667, 4 L. Ed. 629.

FUNDATOR. A founder, (*q. v.*)

FUNDI PATRIMONIALES. Lands of inheritance.

FUNDITORES. Pioneers. Jacob.

FUNDUS. In the civil and old English law. Land; land or ground generally; land,

without considering its specific use; land, including buildings generally; a farm.

FUNERAL EXPENSES. Money expended in procuring the interment of a corpse.

FUNGIBLE THINGS. Movable goods which may be estimated and replaced according to weight, measure, and number. Things belonging to a class, which do not have to be dealt with *in specie*.

Those things one specimen of which is as good as another, as is the case with half-crowns, or pounds of rice of the same quality. Horses, slaves, and so forth, are non-fungible things, because they differ individually in value, and cannot be exchanged indifferently one for another. Holl. Jur. 88.

Where a thing which is the subject of an obligation (which one man is bound to deliver to another) must be delivered *in specie*, the thing is not fungible; that very individual thing, and not another thing of the same or another class, in lieu of it, must be delivered. Where the subject of the obligation is a thing of a given class, the thing is said to be fungible; *i. e.*, the delivery of any object which answers to the generic description will satisfy the terms of the obligation. Aust. Jur. 483, 484.

FUNGIBILES RES. Lat. In the civil law. Fungible things. See that title.

FUR. Lat. A thief. One who stole secretly or without force or weapons, as opposed to robber.

—**Fur manifestus.** In the civil law. A manifest thief. A thief who is taken in the very act of stealing.

FURANDI ANIMUS. Lat. An intention of stealing.

FURCA. In old English law. A fork. A gallows or gibbet. Bract. fol. 56.

—**Furca et flagellum.** Gallows and whip. *Tenure ad furcam et flagellum*, tenure by gallows and whip. The meanest of servile tenures, where the bondman was at the disposal of his lord for life and limb. Cowell.—**Furca et fossa.** Gallows and pit, or pit and gallows. A term used in ancient charters to signify a jurisdiction of punishing thieves, viz., men by hanging, women by drowning. Spelman; Cowell.

FURIGELDUM. A fine or mulct paid for theft.

Furiosi nulla voluntas est. A madman has no will. Dig. 50, 17, 40; Broom, Max. 314.

FURIOSITY. In Scotch law. Madness, as distinguished from fatuity or idiocy.

FURIOSUS. Lat. An insane man; a madman; a lunatic.

Furiosus absentis loco est. A madman is the same with an absent person, [that is, his presence is of no effect.] Dig. 50, 17, 24, 1.

Furiosus nullum negotium contrahere potest. A madman can contract nothing, [can make no contract.] Dig. 50, 17, 5.

Furiosus solo furore punitur. A madman is punished by his madness alone; that is, he is not answerable or punishable for his actions. Co. Litt. 247b; 4 Bl. Comm. 24, 396; Broom, Max. 15.

Furiosus stipulare non potest nec aliquid negotium agere, qui non intelligit quid agit. 4 Coke, 126. A madman who knows not what he does cannot make a bargain, nor transact any business.

FURLINGUS. A furlong, or a furrow one-eighth part of a mile long. Co. Litt. 5b.

FURLONG. A measure of length, being forty poles, or one-eighth of a mile.

FURLOUGH. Leave of absence; especially, leave given to a military or naval officer, or soldier or seaman, to be absent from service for a certain time. Also the document granting leave of absence.

FURNAGE. See FORNAGIUM; FOUR.

FURNISH. To supply; provide; provide for use. Delp v. Brewing Co., 123 Pa. 42, 15 Atl. 871; Wyatt v. Larimer & W. Irr. Co., 1 Colo. App. 480, 29 Pac. 906. As used in the liquor laws, "furnish" means to provide in any way, and includes giving as well as selling. State v. Freeman, 27 Vt. 520; State v. Tague, 76 Vt. 118, 56 Atl. 535.

FURNITURE. This term includes that which furnishes, or with which anything is furnished or supplied; whatever must be supplied to a house, a room, or the like, to make it habitable, convenient, or agreeable; goods, vessels, utensils, and other appendages necessary or convenient for housekeeping; whatever is added to the interior of a house or apartment, for use or convenience. Bell v. Golding, 27 Ind. 173.

The term "furniture" embraces everything about the house that has been usually enjoyed therewith, including plate, linen, china, and pictures. Endicott v. Endicott, 41 N. J. Eq. 96, 3 Atl. 157.

The word "furniture" made use of in the disposition of the law, or in the conventions or acts of persons, comprehends only such furniture as is intended for use and ornament of apartments, but not libraries which happen to be there, nor plate. Civ. Code La. art. 477.

—Furniture of a ship. This term includes everything with which a ship requires to be furnished or equipped to make her seaworthy; it comprehends all articles furnished by shipchandlers, which are almost innumerable. Weaver v. The S. G. Owens, 1 Wall. Jr. 369, Fed. Cas. No. 17,310.—**Household furniture.** This term, in a will, includes all personal chattels that may contribute to the use or convenience of the householder, or the ornament of the house; as plate, linen, china, both useful and ornamental, and pictures. But goods in trade, books, and wines will not pass by a bequest of household furniture. 1 Rep. Leg. 203.

FURNIVAL'S INN. Formerly an inn of chancery. See INNS OF CHANCERY.

Furor contrahi matrimonium non sinit, quia consensu opus est. Insanity

prevents marriage from being contracted, because consent is needed. Dig. 23, 2, 16, 2; 1 Ves. & B. 140; 1 Bl. Comm. 439; Wightman v. Wightman, 4 Johns. Ch. (N. Y.) 343, 345.

FURST AND FONDUNG. In old English law. Time to advise or take counsel, Jacob.

FURTHER. In most of its uses in law, this term means additional, though occasionally it may mean any, future, or other. See London & S. F. Bank v. Parrott, 125 Cal. 472, 58 Pac. 164, 73 Am. St. Rep. 64; Hitchings v. Van Brunt, 38 N. Y. 338; Fifty Associates v. Howland, 5 Cush. (Mass.) 218; O'Fallon v. Nicholson, 56 Mo. 233; Pennsylvania Co. v. Loughlin, 139 Pa. 612, 21 Atl. 163.

—Further advance. A second or subsequent loan of money to a mortgagor by a mortgagee, either upon the same security as the original loan was advanced upon, or an additional security. Equity considers the arrears of interest on a mortgage security converted into principal, by agreement between the parties, as a further advance. Wharton.—**Further assurance, covenant for.** See COVENANT.—**Further consideration.** In English practice, upon a motion for judgment or application for a new trial, the court may, if it shall be of opinion that it has not sufficient materials before it to enable it to give judgment, direct the motion to stand over for *further consideration*, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made, as it may think fit. Rules Sup. Ct. xl, 10.—**Further directions.** When a master ordinary in chancery made a report in pursuance of a decree or decretal order, the cause was again set down before the judge who made the decree or order, to be proceeded with. Where a master made a separate report, or one not in pursuance of a decree or decretal order, a petition for consequential directions had to be presented, since the cause could not be set down for further directions under such circumstances. See 2 Daniell, Ch. Pr. (5th Ed.) 1233, note.—**Further hearing.** In practice. Hearing at another time.—**Further maintenance of action, plea to.** A plea grounded upon some fact or facts which have arisen since the commencement of the suit, and which the defendant puts forward for the purpose of showing that the plaintiff should not further maintain his action. Brown.

FURTHERANCE. In criminal law, furthering, helping forward, promotion, or advancement of a criminal project or conspiracy. Powers v. Comm., 114 Ky. 237, 70 S. W. 652.

FURTIVE. In old English law. Stealthily; by stealth. Fleta, lib. 1, c. 38, § 3.

FURTUM. Lat. Theft. The fraudulent appropriation to one's self of the property of another, with an intention to commit theft without the consent of the owner. Fleta, l. 1, c. 36; Bract. fol. 150; 3 Inst. 107.

The thing which has been stolen. Bract. fol. 151.

—Furtum conceptum. In Roman law. The theft which was disclosed where, upon search-

ing any one in the presence of witnesses in due form, the thing stolen was discovered in his possession.—**Furtum grave.** In Scotch law. An aggravated degree of theft, anciently punished with death. It still remains an open point what amount of value raises the theft to this serious denomination. 1 Broun, 352, note. See 1 Swint, 467.—**Furtum manifestum.** Open theft. Theft where a thief is caught with the property in his possession. Bract. fol. 150b.—**Furtum oblatum.** In the civil law. Offered theft. *Oblatum furtum dicitur cum res fur-tiva ab aliquo tibi oblata sit, eaque apud te concepta sit.* Theft is called "oblatum" when a thing stolen is offered to you by any one, and found upon you. Inst. 4, 1, 4.

Furtum est contrectatio rei alienæ fraudulentæ, cum animo furandi, invito illo domino cujus res illa fuerat. 3 Inst. 107. Theft is the fraudulent handling of another's property, with an intention of stealing, against the will of the proprietor, whose property it was.

Furtum non est ubi initium habet detentionis per dominium rei. 3 Inst. 107. There is no theft where the foundation of the detention is based upon ownership of the thing.

FUSTIGATIO. In old English law. A beating with sticks or clubs; one of the ancient kinds of punishment of malefactors. Bract. fol. 104b, lib. 3, tr. 1, c. 6.

FUSTIS. In old English law. A staff, used in making livery of seisin. Bract. fol. 40.

A baton, club, or cudgel.

FUTURE DEBT. In Scotch law. A debt which is created, but which will not become due till a future day. 1 Bell, Comm. 315.

FUTURE ESTATE. See **ESTATE.**

FUTURES. This term has grown out of those purely speculative transactions, in which there is a nominal contract of sale for

future delivery, but where in fact none is ever intended or executed. The nominal seller does not have or expect to have the stock or merchandise he purports to sell, nor does the nominal buyer expect to receive it or to pay the price. Instead of that, a percentage or margin is paid, which is increased or diminished as the market rates go up or down, and accounted for to the buyer. King v. Quidnick Co., 14 R. I. 138; Lemonius v. Mayer, 71 Miss. 514, 14 South. 33; Plank v. Jackson, 129 Ind. 424, 26 N. E. 568.

FUTURI. Lat. Those who are to be. Part of the commencement of old deeds. "*Sciunt præsentis et futuri, quod ego talis, dedi et concessi,*" etc., (Let all men now living and to come know that I, A. B., have, etc.) Bract. fol. 34b.

FUZ, or FUST. A Celtic word, meaning a wood or forest.

FYHTWITE. One of the fines incurred for homicide.

FYKE. A bow-net for catching fish. Pub. St. Mass. 1882, p. 1291.

FYLE. In old Scotch law. To defile; to declare foul or defiled. Hence, to find a prisoner guilty.

FYLIT. In old Scotch practice. Fyled; found guilty. See **FYLE.**

FYRD. Sax. In Anglo-Saxon law. The military array or land force of the whole country. Contribution to the fyrd was one of the imposts forming the *trinoda necessitas*. (Also spelled "ferd" and "fird.")

—**Fyrdfare.** A summoning forth to join a military expedition; a summons to join the *fyrd* or army.—**Fyrdsoene,** (or *fyrdsoeken*.) Exemption from military duty; exemption from service in the *fyrd*.—**Fyrdwite.** A fine imposed for neglecting to join the *fyrd* when summoned. Also a fine imposed for murder committed in the army; also an acquittance of such fine.