

N

W.

O **W.** As an abbreviation, this letter frequently stands for "William," (king of England,) "Westminster," "west," or "western."

P **W. D.** An abbreviation for "Western District."

WACREOUR. L. Fr. A vagabond, or vagrant. Britt. c. 29.

Q **WADSET.** In Scotch law. The old term for a mortgage. A right by which lands or other heritable subjects are impignorated by the proprietor to his creditor in security of his debt. Wadsets are usually drawn in the form of mutual contracts, in which one party sells the land, and the other grants the right of reversion. Ersk. Inst. 2, 8, 3.

S **WADSETTER.** In Scotch law. A creditor to whom a wadset is made, corresponding to a mortgagee.

WAFORS. Conductors of vessels at sea. Cowell.

T **WAGA.** In old English law. A weigh; a measure of cheese, salt, wool, etc., containing two hundred and fifty-six pounds avoirdupois. Cowell; Spelman.

U **WAGE.** In old English practice. To give security for the performance of a thing. Cowell.

V **WAGER.** A wager is a contract by which two or more parties agree that a certain sum of money or other thing shall be paid or delivered to one of them on the happening of an uncertain event. 75 Ill. 554; 44 How. Pr. 207; 18 Ind. 18.

W **WAGER OF BATTEL.** The trial by wager of battel was a species of trial introduced into England, among other Norman customs, by William the Conqueror, in which the person accused fought with his accuser, under the apprehension that Heaven would give the victory to him who was in the right. 3 Bl. Comm. 337. It was abolished by St. 59 Geo. III. c. 46.

WAGER OF LAW. In old practice. The giving of *gage* or sureties by a defendant in an action of debt that at a certain day assigned he would *make his law*; that is, would take an oath in open court that he did not owe the debt, and at the same time bring with him eleven neighbors, (called "com-

purgators,") who should avow upon their oaths that they believed in their consciences that he said the truth. Glanv. lib. 1, c. 9, 12; Bract. fol. 156b; Britt. c. 27; 2 Bl. Comm. 343; Cro. Eliz. 818.

WAGER POLICY. In the law of insurance. An insurance upon a subject-matter in which the party assured has no real, valuable, or insurable interest.

A mere wager policy is that in which the party assured has no interest in the thing assured, and could sustain no possible loss by the event insured against, if he had not made such wager. 2 Mass. 1.

WAGERING CONTRACT. One in which the parties stipulate that they shall gain or lose, upon the happening of an uncertain event, in which they have no interest except that arising from the possibility of such gain or loss. 89 Pa. St. 89.

WAGES. The compensation agreed upon by a master to be paid to a servant, or any other person hired to do work or business for him.

In maritime law. The compensation allowed to seamen for their services on board a vessel during a voyage.

In political economy. The reward paid, whether in money or goods, to human exertion, considered as a factor in the production of wealth, for its co-operation in the process.

"Three factors contribute to the production of commodities,—nature, labor, and capital. Each must have a share of the product as its reward, and this share, if it is just, must be proportionate to the several contributions. The share of the natural agents is rent; the share of labor, *wages*; the share of capital, interest. The clerk receives a salary; the lawyer and doctor, fees; the manufacturer, profits. Salary, fees, and profits are so many forms of wages for services rendered." De Laveleye, Pol. Econ.

WAGONAGE. Money paid for carriage in a wagon.

WAGON. A common vehicle for the transportation of goods, wares, and merchandise of all descriptions. The term does not include a hackney-coach. 5 Cal. 418.

WAIF. Waifs are goods found, but claimed by nobody; that of which every one waives the claim. Also, goods stolen and waived, or thrown away by the thief in his

flight, for fear of being apprehended. Wharton.

Waifs are to be distinguished from *bona fugitiva*, which are the goods of the felon himself, which he abandons in his flight from justice. Brown.

WAIN-BOTE. Timber for wagons or carts.

WAINABLE. In old records. That may be plowed or manured; tillable. Cowell; Blount.

WAINAGE. In old English law. The team and instruments of husbandry belonging to a countryman, and especially to a villein who was required to perform agricultural services.

WAINAGIUM. What is necessary to the farmer for the cultivation of his land. Barring. Ob. St. 12.

WAITING CLERKS. Officers whose duty it formerly was to wait in attendance upon the court of chancery. The office was abolished in 1842 by St. 5 & 6 Vict. c. 103. Mozley & Whitley.

WAIVE, v. To abandon or throw away; as when a thief, in his flight, throws aside the stolen goods, in order to facilitate his escape, he is technically said to *waive* them.

In modern law, to renounce, repudiate, or surrender a claim, a privilege, a right, or the opportunity to take advantage of some defect, irregularity, or wrong.

A person is said to waive a benefit when he renounces or disclaims it, and he is said to waive a tort or injury when he abandons the remedy which the law gives him for it. Sweet.

WAIVE, n. A woman outlawed. The term is, as it were, the feminine of "outlaw," the latter being always applied to a man; "waive," to a woman. Cowell.

WAIVER. The renunciation, repudiation, abandonment, or surrender of some claim, right, privilege, or of the opportunity to take advantage of some defect, irregularity, or wrong.

The passing by of an occasion to enforce a legal right, whereby the right to enforce the same is lost; a common instance of this is where a landlord waives a forfeiture of a lease by receiving rent, or distraining for rent, which has accrued due after the breach of covenant causing the forfeiture became known to him. Wharton.

This word is commonly used to denote the declining to take advantage of an irregularity

in legal proceedings, or of a forfeiture incurred through breach of covenants in a lease. A gift of goods may be *waived* by a disagreement to accept; so a plaintiff may commonly sue in contract *waiving* the tort. Brown.

WAIVER OF TORT. The election, by an injured party, for purposes of redress, to treat the facts as establishing an implied contract, which he may enforce, instead of an injury by fraud or wrong, for the committing of which he may demand damages, compensatory or exemplary. 1 Hun, 630.

WAKEMAN. The chief magistrate of Ripon, in Yorkshire.

WAKENING. In Scotch law. The revival of an action. A process by which an action that has lain over and not been insisted in for a year and a day, and thus technically said to have "fallen asleep," is awakened, or put in motion again. 1 Forb. Inst. pt. 4, p. 170; Ersk. Prin. 4, 1, 33.

WALAPAUZ. In old Lombardic law. The disguising the head or face, with the intent of committing a theft.

WALENSIS. In old English law. A Welshman.

WALESCHERY. The being a Welshman. Spelman.

WALISCUS. In Saxon law. A servant, or any ministerial officer. Cowell.

WALKERS. Foresters who have the care of a certain space of ground assigned to them. Cowell.

WALL. An erection of stone, brick, or other material, raised to some height, and intended for purposes of security or inclosure. In law, this term occurs in such compounds as "ancient wall," "party-wall," "division-wall," etc.

WALLIA. In old English law. A wall; a sea-wall; a mound, bank, or wall erected in marshy districts as a protection against the sea. Spelman.

WAMPUM. Beads made of shells, used as money by the North American Indians, and which continued current in New York as late as 1693.

WAND OF PEACE. In Scotch law. A wand or staff carried by the messenger of a court, and which, when deforced, (that is, hindered from executing process,) he breaks,

N as a symbol of the deforcement, and protest for remedy of law. 2 Forb. Inst. 207.

D WANLASS. An ancient customary tenure of lands; *i. e.*, to drive deer to a stand that the lord may have a shot. Blount, Ten. 140.

P WANTAGE. In marine insurance. Ullage; deficiency in the contents of a cask or vessel caused by leaking. 107 Mass. 140.

P WANTON. Regardless of another's rights.

Q WANTONNESS. Reckless sport; willfully unrestrained action, running immoderately into excess. 75 Pa. St. 330.

R A licentious act by one man towards the person of another, without regard to his rights; as, for example, if a man should attempt to pull off another's hat against his will, in order to expose him to ridicule, the offense would be an assault, and if he touched him it would amount to a *battery*. Bouvier.

S WAPENTAKE. In English law. A local division of the country; the name is in use north of the Trent to denote a hundred. The derivation of the name is said to be from "weapon" and "take," and indicates that the division was originally of a military character. Cowell; Brown.

Also a hundred court.

U WAR. A state of forcible contention; an armed contest between nations; a state of hostility between two or more nations or states. Gro. de Jur. B. lib. 1, c. 1.

V Every connection by force between two nations, in external matters, under the authority of their respective governments, is a public war. If war is declared in form, it is called "solemn," and is of the perfect kind; because the whole nation is at war with another whole nation. When the hostilities are limited as respects places, persons, and things, the war is properly termed "imperfect war." 4 Dall. 37, 40.

W A *civil* war is one which takes place between a state, as such, and a party, class, or section of its own citizens. It is public on the part of the established government, and private on the part of the people resisting its authority, but both the parties are entitled to all the rights of war as against each other, and even as respects neutral nations. Dana's Wheat. Int. Law, § 296.

WAR, ARTICLES OF. See ARTICLES OF WAR.

WAR-OFFICE. In England. A department of state from which the sovereign issues orders to his forces. Wharton.

WARD. 1. Guarding; care; charge; as, the ward of a castle; so in the phrase "watch and ward."

2. A division in the city of London committed to the special ward (guardianship) of an alderman.

3. A territorial division is adopted in most American cities, by which the municipality is separated into a number of precincts or districts called "wards" for purposes of police, sanitary regulations, prevention of fires, elections, etc.

4. A corridor, room, or other division of a prison, hospital, or asylum.

5. An infant placed by authority of law under the care of a guardian.

The person over whom or over whose property a guardian is appointed is called his "ward." Civil Code Cal. § 237.

WARD-CORN. In old English law. The duty of keeping watch and *ward*, with a *horn* to blow upon any occasion of surprise. 1 Mon. Ang. 976.

WARD-FEGH. Sax. In old records. Ward-fee; the value of a ward, or the money paid to the lord for his redemption from wardship. Blount.

WARD-HOLDING. In old Scotch law. Tenure by military service; the proper feudal tenure of Scotland. Abolished by St. 20 Geo. II. c. 50. Ersk. Prin. 2, 4, 1.

WARD IN CHANCERY. An infant who is under the superintendence of the chancellor.

WARD-MOTE. In English law. A court kept in every ward in London, commonly called the "ward-mote court," or "inquest." Cowell.

WARD-PENNY. In old English law. Money paid to the sheriff or castellains, for the duty of watching and warding a castle. Spelman.

WARD-STAFF. In old records. A constable's or watchman's staff. Cowell.

WARD-WIT. In old English law. Immunity or exemption from the duty or service of ward, or from contributing to such service. Spelman. Exemption from amercement for not finding a man to do ward. Fleta, lib. 1, c. 47, § 16.

WARDA. L. Lat. In old English law. Ward; guard; protection; keeping; custody. Spelman.

A ward; an infant under wardship. *Id.* In old Scotch law. An award; the judgment of a court.

WARDAGE. Money paid and contributed to watch and ward. Domesday.

WARDEN. A guardian; a keeper. This is the name given to various officers.

WARDEN OF THE CINQUE PORTS. In English law. The title of the governor or presiding officer of the Cinque Ports, (*q. v.*)

WARDS AND LIVERIES. In English law. The title of a court of record, established in the reign of Henry VIII. See COURT OF WARDS AND LIVERIES.

WARDS OF ADMIRALTY. Seamen are sometimes thus designated, because, in view of their general improvidence and rashness, the admiralty courts are accustomed to scrutinize with great care their bargains and engagements, when brought before them, with a view to protecting them against imposition and overreaching.

WARDSHIP. In military tenures, the right of the lord to have custody, as guardian, of the body and lands of the infant heir, without any account of profits, until he was twenty-one, or she sixteen. In socage the guardian was accountable for profits; and he was not the lord, but the nearest relative to whom the inheritance could not descend, and the wardship ceased at fourteen. In copyholds, the lord was the guardian, but was perhaps accountable for profits. *Stim. Gloss.* See 2 Bl. Comm. 67.

WARDSHIP IN CHIVALRY. An incident to the tenure of knight-service.

WARDSHIP IN COPYHOLDS. The lord is guardian of his infant tenant by special custom.

WARECTARE. L. Lat. In old English law. To fallow ground; or plow up land (designed for wheat) in the spring, in order to let it lie fallow for the better improvement. *Fleta*, lib. 2, c. 33; *Cowell*.

WAREHOUSE. A place adapted to the reception and storage of goods and merchandise. 23 Me. 47.

WAREHOUSE BOOK. A book used by merchants to contain an account of the

quantities of goods received, shipped, and remaining in stock.

WAREHOUSE RECEIPT. A receipt given by a warehouseman for goods received by him on storage in his warehouse.

WAREHOUSE SYSTEM. A system of public stores or warehouses, established or authorized by law, in which an importer may deposit goods imported, in the custody of the revenue officers, paying storage, but not being required to pay the customs duties until the goods are finally removed for consumption in the home market, and with the privilege of withdrawing the goods from store for the purpose of re-exportation without paying any duties.

WAREHOUSEMAN. The owner of a warehouse; one who, as a business, and for hire, keeps and stores the goods of others.

WARNING, under the old practice of the English court of probate, was a notice given by a registrar of the principal registry to a person who had entered a *caveat*, warning him, within six days after service, to enter an appearance to the *caveat* in the principal registry, and to set forth his interest, concluding with a notice that in default of his doing so the court would proceed to do all such acts, matters, and things as should be necessary. By the rules under the judiciary acts, a writ of summons has been substituted for a warning. *Sweet*.

WARNISTURA. In old records. Garniture; furniture; provision. *Cowell*.

WARNOTH. In old English law. An ancient custom, whereby, if any tenant holding of the Castle of Dover failed in paying his rent at the day, he should forfeit double, and, for the second failure, treble, etc. *Cowell*.

WARP. A rope attached to some fixed point, used for moving a ship. *Pub. St. Mass.* 1882, p. 1297.

WARRANTICE. In Scotch law. Warranty; a clause in a charter or deed by which the grantor obliges himself that the right conveyed shall be effectual to the receiver. *Ersk. Prin.* 2, 3, 11. A clause whereby the granter of a charter obliges himself to warrant or make good the thing granted to the receiver. 1 *Forb. Inst.* pt. 2, p. 113.

WARRANT, v. In conveyancing. To assure the title to property sold, by an express covenant to that effect in the deed of conveyance. To stipulate by an express covenant

N that the title of a grantee shall be good, and his possession undisturbed.

O In contracts. To engage or promise that a certain fact or state of facts, in relation to the subject-matter, is, or shall be, as it is represented to be.

P **WARRANT, n.** 1. A writ or precept from a competent authority in pursuance of law, directing the doing of an act, and addressed to an officer or person competent to do the act, and affording him protection from damage, if he does it. 71 N. Y. 376.

Q 2. Particularly, a writ or precept issued by a magistrate, justice, or other competent authority, addressed to a sheriff, constable, or other officer, requiring him to arrest the body of a person therein named, and bring him before the magistrate or court, to answer, or to be examined, touching some offense which he is charged with having committed. See, also, **BENCH-WARRANT**; **SEARCH-WARRANT**.

R 3. A warrant is an order by which the drawer authorizes one person to pay a particular sum of money. 2 Kan. 130.

S 4. An authority issued to a collector of taxes, empowering him to collect the taxes extended on the assessment roll, and to make distress and sale of goods or land in default of payment.

T 5. An order issued by the proper authorities of a municipal corporation, authorizing the payee or holder to receive a certain sum out of the municipal treasury.

U 6. A *land-warrant* is a warrant issued at the local land-offices of the United States to purchasers of public lands, on the surrender of which, at the general land-office at Washington, they receive a conveyance from the general government.

V **WARRANT IN BANKRUPTCY.** A warrant issued, upon an adjudication in bankruptcy, directing the marshal to take possession of the bankrupt's property, notify creditors, etc.

W **WARRANT OF ATTORNEY.** In practice. A written authority, directed to any attorney or attorneys of any court of record, to appear for the party executing it, and receive a declaration for him in an action at the suit of a person named, and thereupon to confess the same, or to suffer judgment to pass by default; and it also usually contains a release of errors. 2 Burrill, Pr. 239.

WARRANT OF COMMITMENT. A warrant of commitment is a written authority committing a person to custody.

WARRANT OFFICERS. In the United States navy, these are a class of inferior officers who hold their rank by virtue of a written warrant instead of a commission, including boatswains, gunners, carpenters, etc.

WARRANT TO SUE AND DEFEND. In old practice. A special warrant from the crown, authorizing a party to appoint an attorney to sue or defend for him. 3 Bl. Comm. 25.

A special authority given by a party to his attorney, to commence a suit, or to appear and defend a suit, in his behalf. These warrants are now disused, though formal entries of them upon the record were long retained in practice. 1 Burrill, Pr. 39.

WARRANTEE. A person to whom a warranty is made.

WARRANTIA CHARTÆ. In old practice. Warranty of charter. A writ which lay for one who, being enfeoffed of lands or tenements, with a clause of warranty, was afterwards impleaded in an assize or other action in which he could not vouch to warranty. In such case, it might be brought against the warrantor, to compel him to assist the tenant with a good plea or defense, or else to render damages and the value of the land, if recovered against the tenant. Cowell; 3 Bl. Comm. 300.

WARRANTIA CUSTODIÆ. An old English writ, which lay for him who was challenged to be a ward to another, in respect to land said to be holden by knight-service; which land, when it was bought by the ancestors of the ward, was warranted free from such thralldom. The writ lay against the warrantor and his heirs. Cowell.

WARRANTIA DIEI. A writ which lay for a man who, having had a day assigned him personally to appear in court in any action in which he was sued, was in the mean time, by commandment, employed in the king's service, so that he could not come at the day assigned. It was directed to the justices that they might not record him in default for that day. Cowell.

WARRANTIZARE. In old conveyancing. To warrant; to bind one's self, by covenant in a deed of conveyance, to defend the grantee in his title and possession.

Warrantizare est defendere et acquietare tenentem, qui warrantum vocavit, in seisina sua; et tenens de re warranti

excambium habebit ad valentiam. Co. Litt. 365. To warrant is to defend and insure in peace the tenant, who calls for warranty, in his seisin; and the tenant in warranty will have an exchange in proportion to its value.

WARRANTOR. One who makes a warranty. Shep. Touch. 181.

Warrantor potest excipere quod querens non tenet terram de qua petit warrantiam, et quod donum fuit insufficiens. Hob. 21. A warrantor may object that the complainant does not hold the land of which he seeks the warranty, and that the gift was insufficient.

WARRANTY. In real property law. A real covenant by the grantor of lands, for himself and his heirs, to warrant and defend the title and possession of the estate granted, to the grantee and his heirs, whereby, either upon voucher, or judgment in the writ of *warrantia chartæ*, and the eviction of the grantee by paramount title, the grantor was bound to recompense him with other lands of equal value. Co. Litt. 365a.

Lineal warranty existed when the heir derived title to the land warranted either from or through the ancestor who made the warranty.

Collateral warranty existed when the heir's title was not derived from the warranting ancestor, and yet it barred the heir from claiming the land by any collateral title, upon the presumption that he might thereafter have assets by descent from or through the ancestor; and it imposed upon him the obligation of giving the warrantee other lands in case of eviction, provided he had assets. 2 Bl. Comm. 301, 302.

In sales of personal property. A warranty is a statement or representation made by the seller of goods, contemporaneously with and as a part of the contract of sale, though collateral to the express object of it, having reference to the character, quality, or title of the goods, and by which he promises or undertakes to insure that certain facts are or shall be as he then represents them. The warranty may be either *express* or *implied*. It is the former when created by the apt and explicit statements of the seller; the latter, when the law derives it by implication or inference from the nature of the transaction, or the relative situation or circumstances of the parties.

A warranty is an engagement by which a seller assures to a buyer the existence of some

fact affecting the transaction, whether past, present, or future. Civil Code Cal. § 1763.

In contracts. An undertaking or stipulation, in writing, or verbally, that a certain fact in relation to the subject of a contract is or shall be as it is stated or promised to be.

A warranty differs from a representation in that a warranty must always be given contemporaneously with, and as part of, the contract; whereas a representation precedes and induces to the contract. And, while that is their difference in nature, their difference in consequence or effect is this: that, upon breach of warranty, (or false warranty,) the contract remains binding, and damages only are recoverable for the breach; whereas, upon a false representation, the defrauded party may elect to avoid the contract, and recover the entire price paid. Brown.

The same transaction cannot be characterized as a warranty and a fraud at the same time. A warranty rests upon contract, while fraud or fraudulent representations have no element of contract in them, but are essentially a tort. When judges or law-writers speak of a fraudulent warranty, the language is neither accurate nor perspicuous. If there is a breach of warranty, it cannot be said that the warranty was fraudulent, with any more propriety than any other contract can be said to have been fraudulent, because there has been a breach of it. On the other hand, to speak of a false representation as a contract or warranty, or as tending to prove a contract or warranty, is a perversion of language and of correct ideas. 39 Ind. 81.

A *continuing* warranty is one which applies to the whole period during which the contract is in force. Thus, an undertaking in a charter-party that a vessel shall continue to be of the same class that she was at the time the charter-party was made is a continuing warranty. Sweet.

In insurance. In the law of insurance, "warranty" means any assertion or undertaking on the part of the assured, whether expressed in the contract or capable of being annexed to it, on the strict and literal truth or performance of which the liability of the underwriter is made to depend. Maude & P. Shipp. 377; Sweet.

WARRANTY DEED. One which contains a covenant of warranty.

WARRANTY, VOUCHER TO. In old practice. The calling a warrantor into court by the party warranted, (when tenant in a real action brought for recovery of such lands,) to defend the suit for him. Co. Litt. 101b.

WARREN. A term in English law for a place in which birds, fishes, or wild beasts are kept.

A franchise or privilege, either by prescription or grant from the king, to keep

N beasts and fowls of warren, which are hares, coneys, partridges, pheasants, etc.

Also any place to which such privilege extends. Mozley & Whitley.

O **WARSCOT.** In Saxon law. A customary or usual tribute or contribution towards armor, or the arming of the forces.

P **WARTH.** In old English law. A customary payment, supposed to be the same with *ward-penny*. Spelman; Blount.

WASH. A shallow part of a river or arm of the sea.

Q **WASHING-HORN.** The sounding of a horn for washing before dinner. The custom was formerly observed in the Temple.

R **WASHINGTON, TREATY OF.** A treaty signed on May 8, 1871, between Great Britain and the United States of America, with reference to certain differences arising out of the war between the northern and southern states of the Union, the Canadian fisheries, and other matters. Wharton.

S **WASTE.** Spoil or destruction, done or permitted, to lands, houses, gardens, trees, or other corporeal hereditaments, by the tenant thereof, to the prejudice of the heir, or of him in reversion or remainder. 2 Bl. Comm. 281.

T Waste is a spoil and destruction of an estate, either in houses, woods, or lands, by demolishing, not the temporary profits only, but the very substance of the thing, thereby rendering it wild and desolate, which the common law expresses very significantly by the word "*vastum*." 3 Bl. Comm. 223.

U Waste is a lasting damage to the reversion caused by the destruction, by the tenant for life or years, of such things on the land as are not included in its temporary profits. 29 Mo. 325.

V *Voluntary waste* is active or positive waste, waste done or committed, consisting in some act of destruction or devastation.

W *Permissive waste* is such as is merely suffered or permitted by the tenant, and consists in the neglect or omission to do what will prevent injury; as, to suffer a house to go to decay for the want of repair.

Equitable waste (which is voluntary only) is an unconscientious abuse of the privilege of non-impeachability for waste at common law, whereby a tenant for life, without impeachment of waste, will be restrained from committing willful, destructive, malicious, or extravagant waste, such as pulling down houses, cutting timber of too young a growth, or trees planted for ornament, or for shelter of premises. Wharton.

In old English criminal law. A prerogative or liberty, on the part of the crown, of committing *waste* on the lands of felons, by pulling down their houses, extirpating their gardens, plowing their meadows, and cutting down their woods. 4 Bl. Comm. 385.

WASTE-BOOK. A book used by merchants, to receive rough entries or memoranda of all transactions in the order of their occurrence, previous to their being posted in the journal. Otherwise called a "blotter."

WASTE, WRIT OF. See WRIT OF WASTE.

WASTORS. In old statutes. A kind of thieves.

WATCH, v. To keep guard; to stand as sentinel; to be on guard at night, for the preservation of the peace and good order.

WATCH, n. A body of constables on duty on any particular night.

WATCH AND WARD. "Watch" denotes keeping guard during the night; "ward," by day.

WATCHMAN. An officer in many cities and towns, whose duty it is to watch during the night and take care of the property of the inhabitants.

WATER-BAILIFF. The title of an officer, in port towns in England, appointed for the searching of ships. Also of an officer belonging to the city of London, who had the supervising and search of the fish brought thither. Cowell.

WATER-BAYLEY. In American law. An officer mentioned in the colony laws of New Plymouth, (A. D. 1671,) whose duty was to collect dues to the colony for fish taken in their waters. Probably another form of *water-bailiff*. Burrill.

WATER-COURSE. A running stream of water; a body of running water; a natural stream, including rivers, creeks, runs, and rivulets.

There must be a stream usually flowing in a particular direction, though it need not flow continually. It may sometimes be dry. It must flow in a definite channel, having a bed, sides, or banks, and usually discharge itself into some other stream or body of water. It must be something more than a mere surface drainage over the entire face of a tract of land, occasioned by unusual freshets or other extraordinary causes. It does not include the water flowing in the hollows or ravines in land, which is the mere surface-water from rain or melting snow, and is discharged through them from a higher to a lower level, but which at other times

are destitute of water. Such hollows or ravines are not, in legal contemplation, water-courses. 27 Wis. 661.

WATER-GAGE. A sea-wall or bank to restrain the current and overflowing of the water; also an instrument to measure water. Cowell.

WATER-GAVEL. In old records. A gavel or rent paid for fishing in or other benefit received from some river or water. Cowell; Blount.

WATER-MARK. A mark indicating the highest point to which water rises, or the lowest point to which it sinks.

WATER-MEASURE. In old statutes. A measure greater than Winchester measure by about three gallons in the bushel. Cowell.

WATER-ORDEAL. In Saxon and old English law. The ordeal or trial by water. The *hot-water* ordeal was performed by plunging the bare arm up to the elbow in boiling water, and escaping unhurt thereby. 4 Bl. Comm. 343. The *cold-water* ordeal was performed by casting the person suspected into a river or pond of cold water, when, if he floated therein, without any action of swimming, it was deemed an evidence of his guilt; but, if he sunk, he was acquitted. Id.

WATER-POWER. The water-power to which a riparian owner is entitled consists of the fall in the stream, when in its natural state, as it passes through his land, or along the boundary of it; or, in other words, it consists of the difference of level between the surface where the stream first touches his land, and the surface where it leaves it. 3 Rawle, 90.

WATERGANG. A Saxon word for a trench or course to carry a stream of water, such as are commonly made to drain water out of marshes. Cowell.

WATERSCAPE. An aqueduct or passage for water

WATERING STOCK. In the language of brokers, adding to the capital stock of a corporation by the issue of new stock, without increasing the real value represented by the capital.

WAVESON. In old records. Such goods as, after a wreck, swim or float on the waves. Jacob.

WAX SCOT. A duty anciently paid twice a year towards the charge of wax candles in churches. Spelman.

WAY. A passage, path, road, or street. In a technical sense, a *right* of passage over land.

A right of way is the privilege which an individual, or a particular description of persons, as the inhabitants of a village, or the owners or occupiers of certain farms, have of going over another's ground. It is an incorporeal hereditament of a real nature, entirely different from a public highway. Cruise, Dig. tit. 24, § 1.

The term "way" is derived from the Saxon, and means a right of use for passengers. It may be private or public. By the term "right of way" is generally meant a private way, which is an incorporeal hereditament of that class of easements in which a particular person, or particular description of persons, have an interest and a right, though another person is the owner of the fee of the land in which it is claimed. 43 Ind. 455.

WAY-BILL. A writing in which is set down the names of passengers who are carried in a public conveyance, or the description of goods sent with a common carrier by land. Wharton.

WAY-GOING CROP. A crop of grain sown by a tenant for a term certain, during his tenancy, but which will not ripen until after the expiration of his lease; to this, by custom in some places, the tenant is entitled

WAYLEAVE is a right of way over or through land for the carriage of minerals from a mine or quarry. It is an easement, being a species of the class called "rights of way," and is generally created by express grant or reservation. Sweet.

WAYNAGIUM. Implements of husbandry. 1 Reeve, Eng. Law, c. 5, p. 268.

WAYS AND MEANS. In a legislative body, the "committee on ways and means" is a committee appointed to inquire into and consider the methods and sources for raising revenue, and to propose means for providing the funds needed by the government.

WAYWARDENS. The English highway acts provide that in every parish forming part of a highway district there shall annually be elected one or more waywardens. The waywardens so elected, and the justices for the county residing within the district, form the highway board for the district. Each waywarden also represents his parish in regard to the levying of the highway rates, and in questions arising concerning the liability of his parish to repairs, etc. Sweet.

N **WEALD.** Sax. A wood; the woody part of a country.

WEALREAF. In old English law. The robbing of a dead man in his grave.

O **WEALTH.** All material objects, capable of satisfying human wants, desires, or tastes, having a value in exchange, and upon which human labor has been expended; *i. e.*, which have, by such labor, been either reclaimed from nature, extracted or gathered from the earth or sea, manufactured from raw materials, improved, adapted, or cultivated.

Q "The aggregate of all the things, whether material or immaterial, which contribute to comfort and enjoyment, which cannot be obtained without more or less labor, and which are objects of frequent barter and sale, is what we usually call 'wealth.'" Bowen, Pol. Econ.

S **WEAPON.** An instrument used in fighting; an instrument of offensive or defensive combat. The term is chiefly used, in law, in the statutes prohibiting the carrying of "concealed" or "deadly" weapons.

T **WEAR, or WEIR.** A great dam or fence made across a river, or against water, formed of stakes interlaced by twigs of osier, and accommodated for the taking of fish, or to convey a stream to a mill. Cowell; Jacob.

U **WEAR AND TEAR.** "Natural wear and tear" means deterioration or depreciation in value by ordinary and reasonable use of the subject-matter. 20 N. J. Law, 548.

V **WED.** Sax. A covenant or agreement. Cowell.

W **WEDBEDRIP.** Sax. In old English law. A customary service which tenants paid to their lords, in cutting down their corn, or doing other harvest duties; as if a *covenant to reap* for the lord at the time of his *bidding* or commanding. Cowell.

WEEK. Seven days of time.

WEHADINC. In old European law. The judicial combat, or duel; the trial by battel.

WEIGHAGE. In English law. A duty or toll paid for weighing merchandise. It is called "*tronage*" for weighing wool at the king's beam, or "*pesage*" for weighing other avoirdupois goods. 2 Chit. Com. Law, 16.

WEIGHT OF EVIDENCE. The balance or preponderance of evidence; the inclination of the greater amount of credible evi-

dence, offered in a trial, to support one side of the issue rather than the other.

The "weight" or "preponderance of proof" is a phrase constantly used, the meaning of which is well understood and easily defined. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the greater amount of credible evidence sustains the issue which is to be established before them. 9 Gray, 393.

WEIGHTS OF AUNCEL. See AUNCEL WEIGHT.

WEIR. A fence or an inclosure of twigs, set in a stream to catch fish. Pub. St. Mass. p. 1297.

WELL, *adj.* In marine insurance. A term used as descriptive of the safety and soundness of a vessel, in a warranty of her condition at a particular time and place; as, "warranted *well* at ——— on ———."

In the old reports. Good, sufficient, unobjectionable in law; the opposite of "ill."

WELL, *n.* A well, as the term is used in a conveyance, is an artificial excavation and erection in and upon land, which necessarily, from its nature and the mode of its use, includes and comprehends the substantial occupation and beneficial enjoyment of the whole premises on which it is situated. 6 Gray, 107, 110.

WELL KNOWING. A phrase used in pleading as the technical expression in laying a *scienter*, (*q. v.*)

WELSH MORTGAGE. In English law. A species of security which partakes of the nature of a mortgage, as there is a debt due, and an estate is given as security for the repayment, but differs from it in the circumstances that the rents and profits are to be received without account till the principal money is paid off, and there is no remedy to enforce payment, while the mortgagor has a perpetual power of redemption. It is now rarely used. 1 Pow. Mortg. 373a.

WEND. In old records. A large extent of ground, comprising several *juga*; a perambulation; a circuit. Spelman; Cowell.

WERA, or WERE. The estimation or price of a man, especially of one slain. In the criminal law of the Anglo-Saxons, every man's life had its value, called a "were," or "*capitis aestimatio*."

WEREGELT THEF. Sax. In old English law. A robber who might be ransomed. Fleta, lib. 1, c. 47, § 13.

WEREGILD, or WERGILD. This was the price of homicide, or other atrocious personal offense, paid partly to the king for the loss of a subject, partly to the lord for the loss of a vassal, and partly to the next of kin of the injured person. In the Anglo-Saxon laws, the amount of compensation varied with the degree or rank of the party slain. Brown.

WERELADA. A purging from a crime by the oaths of several persons, according to the degree and quality of the accused. Cowell.

WERGELT. In old Scotch law. A sum paid by an offender as a compensation or satisfaction for the offense; a weregild, or wergild.

WERP-GELD. Belg. In European law. Contribution for jettison; average.

WESTMINSTER. A city immediately adjoining London, and forming a part of the metropolis; formerly the seat of the superior courts of the kingdom.

WESTMINSTER CONFESSION. A document containing a statement of religious doctrine, concocted at a conference of British and continental Protestant divines at Westminster, in the year 1643, which subsequently became the basis of the Scotch Presbyterian Church. Wharton.

WESTMINSTER THE FIRST. The statute 3 Edw. I., A. D. 1275. This statute, which deserves the name of a code rather than an act, is divided into fifty-one chapters. Without extending the exemption of churchmen from civil jurisdiction, it protects the property of the church from the violence and spoliation of the king and the nobles, provides for freedom of popular elections, because sheriffs, coroners, and conservators of the peace were still chosen by the freeholders in the county court, and attempts had been made to influence the election of knights of the shire, from the time when they were instituted. It contains a declaration to enforce the enactment of *Magna Charta* against excessive fines, which might operate as perpetual imprisonment; enumerates and corrects the abuses of tenures, particularly as to marriage of wards; regulates the levying of tolls, which were imposed arbitrarily by the barons and by cities and boroughs; corrects and restrains the powers of the king's escheator and other officers; amends the criminal law, putting the crime of rape on the footing to which it has

been lately restored, as a most grievous, but not capital, offense; and embraces the subject of procedure in civil and criminal matters, introducing many regulations to render it cheap, simple, and expeditious. 1 Camp. Lives Ld. Ch. p. 167; 2 Reeve, Eng. Law, c. 9, p. 107. Certain parts of this act are repealed by St. 26 & 27 Vict. c. 125. Wharton.

WESTMINSTER THE SECOND. The statute 13 Edw. I. St. 1, A. D. 1285, otherwise called the "Statute *de Donis Conditionalibus*." See 2 Reeve, Eng. Law, c. 10, p. 163. Certain parts of this act are repealed by St. 19 & 20 Vict. c. 64, and St. 26 & 27 Vict. c. 125. Wharton.

WESTMINSTER THE THIRD, STATUTE OF. A statute passed in the eighteenth year of Edward I. More commonly known as the "Statute of *Quia Emptores*, (q. v.) See Barring. Ob. St. 167-169.

WEST SAXON LAWE. The laws of the West Saxons, which obtained in the counties to the south and west of England, from Kent to Devonshire. Blackstone supposes these to have been much the same with the laws of Alfred, being the municipal law of the far most considerable part of his dominions, and particularly including Berkshire, the seat of his peculiar residence. 1 Bl. Comm. 65.

WETHER. A castrated ram, at least one year old. In an indictment it may be called a "sheep." 4 Car. & P. 216.

WHALE. A royal fish, the head being the king's property, and the tail the queen's. 2 Steph. Comm. 19, 448, 540.

WHALER. A vessel employed in the whale fishery.

WHARF. A perpendicular bank or mound of timber, or stone and earth, raised on the shore of a harbor, river, canal, etc., or extending some distance into the water, for the convenience of lading and unlading ships and other vessels. Webster.

A broad, plain place near a river, canal, or other water, to lay wares on that are brought to or from the water. Cowell.

A wharf is a structure erected on a shore below high-water mark, and sometimes extending into the channel, for the laying vessels along-side to load or unload, and on which stores are often erected for the reception of cargoes. 6 Mass. 332.

WHARFAGE. Money paid for landing wares at a wharf, or for shipping or taking

N goods into a boat or barge from thence. Cowell.

O Strictly speaking, "wharfage" is money due, or money actually paid, for the privilege of landing goods upon, or loading a vessel while moored from, a wharf. 1 Brown, Adm. 37.

P **WHARFINGER.** One who owns or keeps a wharf for the purpose of receiving and shipping merchandise to or from it for hire.

Q **WHEEL.** An engine of torture used in medieval Europe, on which a criminal was bound while his limbs were broken one by one till he died.

R **WHEELAGE.** Duty or toll paid for carts, etc., passing over certain ground. Cowell.

WHEN AND WHERE. Technical words in pleading, formerly necessary in making *full defense* to certain actions.

S **WHENEVER.** This word, though often used as equivalent to "as soon as," is also often used where the time intended by it is, and will be until its arrival, or for some uncertain period, at least, indeterminate. 14 R. I. 188.

T **WHEREAS.** A word which implies a recital of a past fact. The word "whereas," when it renders the deed senseless or repugnant, may be struck out as impertinent, and shall not vitiate a deed in other respects sensible.

U **WHIG.** This name was applied in Scotland, A. D. 1648, to those violent Covenanters who opposed the Duke of Hamilton's invasion of England in order to restore Charles I. The appellation of "Whig" and "Tory" to political factions was first heard of in A. D. 1679, and, though as senseless as any cant terms that could be devised, they became instantly as familiar in use as they have since continued. 2 Hall. Const. Hist. c. 12; Wharton.

W **WHIPPING.** A mode of punishment, by the infliction of stripes, occasionally used in England and in a few of the American states.

WHIPPING-POST. A post or stake to which a criminal is tied to undergo the punishment of whipping. This penalty is now abolished, except in a few states.

WHITE. A Mongolian is not a "white person," within the meaning of the term as

used in the naturalization laws of the United States; the term applies only to persons of the Caucasian race. 5 Sawy. 155.

WHITE ACRE. A fictitious name given to a piece of land, in the English books, for purposes of illustration.

WHITE BONNET. In Scotch law. A fictitious offerer or bidder at a roup or auction sale. Bell.

WHITE MEATS. In old English law. Milk, butter, cheese, eggs, and any composition of them. Cowell.

WHITE RENTS. In English law. Rents paid in silver, and called "white rents," or "*redditus albi*," to distinguish them from rents payable in corn, labor, provisions, etc., called "black-rent" or "black-mail."

WHITE SPURS. A kind of esquires. Cowell.

WHITEFRIARS. A place in London between the Temple and Blackfriars, which was formerly a sanctuary, and therefore privileged from arrest. Wharton.

WHITEHART SILVER. A mulct on certain lands in or near to the forest of Whitehart, paid into the exchequer, imposed by Henry III. upon Thomas de la Linda, for killing a beautiful white hart which that king before had spared in hunting. Camd. Brit. 150.

WHITSUN FARTHING. Pentecostals, (*q. v.*)

WHITSUNTIDE. The feast of Pentecost, being the fiftieth day after Easter, and the first of the four cross-quarter days of the year. Wharton.

WHITTANWARII. In old English law. A class of offenders who whitened stolen ox-hides and horse-hides so that they could not be known and identified.

WHOLE BLOOD. Kinship by descent from the same father and mother; as distinguished from *half* blood, which is the relationship of those who have one parent in common, but not both.

WHOLESALE. To sell by wholesale is to sell by large parcels, generally in original packages, and not by retail.

WHORE. A whore is a woman who practices unlawful commerce with men, particularly one who does so for hire; a harlot; a concubine; a prostitute. 43 Iowa, 183.

WIC. A place on the sea-shore or the bank of a river.

WICA. A country house or farm. Cowell.

WICK. Sax. A village, town, or district. Hence, in composition, the territory over which a given jurisdiction extends. Thus, "bailiwick" is the territorial jurisdiction of a bailiff or sheriff or constable. "Sheriffwick" was also used in the old books.

WIDOW. A woman whose husband is dead, and who has not married again. The "king's widow" was one whose deceased husband had been the king's tenant *in capite*; she could not marry again without the royal permission.

WIDOW-BENCH. The share of her husband's estate which a widow is allowed besides her jointure.

WIDOW'S CHAMBER. In London, the apparel of a widow and the furniture of her chamber, left by her deceased husband, is so called, and the widow is entitled to it. 2 Bl. Comm. 518.

WIDOW'S QUARANTINE. In old English law. The space of forty days after the death of a man who died seised of lands, during which his widow might remain in her husband's capital mansion-house, without rent, and during which time her dower should be assigned. 2 Bl. Comm. 135.

WIDOW'S TERCE. In Scotch law. The right which a wife has after her husband's death to a third of the rents of lands in which her husband died infeft; dower. Bell.

WIDOWER. A man whose wife is dead, and who has not remarried.

WIDOWHOOD. The state or condition of being a widow. An estate is sometimes settled upon a woman "during widowhood," which is expressed in Latin, "*durante viduitate.*"

WIFA. L. Lat. In old European law. A mark or sign; a mark set up on land, to denote an exclusive occupation, or to prohibit entry. Spelman.

WIFE. A woman who has a husband living and undivorced. The correlative term is "husband."

WIFE'S EQUITY. When a husband is compelled to seek the aid of a court of equity

for the purpose of obtaining the possession or control of his wife's estate, that court will recognize the right of the wife to have a suitable and reasonable provision made, by settlement or otherwise, for herself and her children, out of the property thus brought within its jurisdiction. This right is called the "wife's equity," or "equity to a settlement." See 2 Kent, Comm. 139.

WIGREVE. In old English law. The overseer of a wood. Cowell.

WILD ANIMALS, (or animals *feræ naturæ.*) Animals of an untamable disposition.

WILD LAND. Land in a state of nature, as distinguished from improved or cultivated land. 4 Cow. 203.

WILD'S CASE, RULE IN. A devise to B. and his children or issue, B. having no issue at the time of the devise, gives him an estate tail; but, if he have issue at the time, B. and his children take joint estates for life. 6 Coke, 166; Tudor, Lead. Cas. Real Prop. 542, 581.

WILL. A will is the legal expression of a man's wishes as to the disposition of his property after his death. Code Ga. 1882, § 2394; Swinb. Wills, § 2.

An instrument in writing, executed in form of law, by which a person makes a disposition of his property, to take effect after his death.

Except where it would be inconsistent with the manifest intent of the legislature, the word "will" shall extend to a testament, and to a codicil, and to an appointment by will, or by writing in the nature of a will, in exercise of a power; and also to any other testamentary disposition. Code Va. 1887, § 2511.

A will is an instrument by which a person makes a disposition of his property, to take effect after his decease, and which is, in its own nature, ambulatory and revocable during his life. It is this ambulatory quality which forms the characteristic of wills; for though a disposition by deed may postpone the possession or enjoyment, or even the vesting, until the death of the disposing party, yet the postponement is in such case produced by the express terms, and does not result from the nature of the instrument. 45 Miss. 641.

A will, when it operates upon personal property, is sometimes called a "testament," and when upon real estate, a "devise;" but the more general and the more popular denomination of the instrument embracing equally real and personal estate is that of "last will and testament." 4 Kent, Comm. 501.

In criminal law. The power of the mind which directs the action of a man.

In Scotch practice. That part or clause of a process which contains the mandate or command to the officer. Bell

N **WILL, ESTATE AT.** This estate entitles the grantee or lessee to the possession of land during the pleasure of both the grantor and himself, yet it creates no sure or durable right, and is bounded by no definite limits as to duration. It must be at the reciprocal will of both parties, (for, if it be at the will of the lessor only, it is a lease for life,) and the dissent of either determines it. Wharton.

P **WILLA.** In Hindu law. The relation between a master or patron and his freedman, and the relation between two persons who had made a reciprocal testamentary contract. Wharton.

Q **WILLFUL.** Proceeding from a conscious motion of the will; intending the result which actually comes to pass; designed; intentional; malicious.

R A willful differs essentially from a negligent act. The one is positive and the other negative. Intention is always separated from negligence by a precise line of demarkation. 38 N. Y. Super. Ct. 317.

S In common parlance, "willful" is used in the sense of "intentional," as distinguished from "accidental" or "involuntary." But language of a statute affixing a punishment to acts done willfully may be restricted to such acts done with an unlawful intent. 29 N. J. Law, 96.

T **WILLFUL NEGLECT.** Willful neglect is the neglect of the husband to provide for his wife the common necessaries of life, he having the ability to do so; or it is the failure to do so by reason of idleness, profligacy, or dissipation. Civil Code Cal. § 105.

U **WILLFULLY.** Intentionally. In charging certain offenses, it is required that they should be stated to be *willfully* done. Archb. Crim. Pl. 51, 58; Leach, 556.

W **WILLS ACT.** In England. 1. The statute 32 Hen. VIII. c. 1, passed in 1540, by which persons seised in fee-simple of lands holden in socage tenure were enabled to devise the same at their will and pleasure, except to bodies corporate; and those who held estates by the tenure of chivalry were enabled to devise two-third parts thereof.

2. The statute 7 Wm. IV. & 1 Vict. c. 26, passed in 1837, and also called "Lord Langdale's Act." This act permits of the disposition by will of every kind of interest in real and personal estate, and provides that all wills, whether of real or of personal estate, shall be attested by two witnesses, and that such attestation shall be sufficient. Other important alterations are effected by this statute in the law of wills. Mozley & Whitley,

WINCHESTER MEASURE. The standard measure of England, originally kept at Winchester. 1 Bl. Comm. 274.

WINCHESTER, STATUTE OF. A statute passed in the thirteenth year of the reign of Edward I., by which the old Saxon law of police was enforced, with many additional provisions. 2 Reeve, Eng. Law, 163; Crabb, Hist. Eng. Law, 189.

WINDING UP. The name applied in England to the process of settling the accounts and liquidating the assets of a partnership or company, for the purpose of making distribution and dissolving the concern.

WINDING-UP ACTS. In English law. General acts of parliament, regulating settlement of corporate affairs on dissolution.

WINDOW. An opening made in the wall of a house to admit light and air, and to furnish a view or prospect. The use of this word in law is chiefly in connection with the doctrine of ancient lights and other rights of adjacent owners.

WINDOW TAX. A tax on windows, levied on houses which contained more than six windows, and were worth more than £5 per annum; established by St. 7 Wm. III. c. 18. The St. 14 & 15 Vict. c. 36, substituted for this tax a tax on inhabited houses. Wharton.

WINDSOR FOREST. A royal forest founded by Henry VIII.

WINTER CIRCUIT. An occasional circuit appointed for the trial of prisoners, in England, and in some cases of civil causes, between Michaelmas and Hilary terms.

WINTER HEYNING. The season between 11th November and 23d April, which is excepted from the liberty of commoning in certain forests. St. 23 Car. II. c. 3.

WISBY, LAWS OF. The name given to a code of maritime laws promulgated at Wisby, then the capital of Gothland, in Sweden, in the latter part of the thirteenth century. This compilation resembled the laws of Oleron in many respects, and was early adopted, as a system of sea laws, by the commercial nations of Northern Europe. It formed the foundation for the subsequent code of the Hanseatic League. A translation of the Laws of Wisby may be seen in the appendix to 1 Pet. Adm. And see 3 Kent, Comm. 13.

WISTA. In Saxon law. Half a hide of land, or sixty acres.

WIT. To know; to learn; to be informed. Used only in the infinitive, *to-wit*, which term is equivalent to "that is to say," "namely," or "*videlicet*."

WITAM. The purgation from an offense by the oath of the requisite number of witnesses.

WITAN. In Saxon law. Wise men; persons of information, especially in the laws; the king's advisers; members of the king's council; the optimates, or principal men of the kingdom. 1 Spence, Eq. Jur. 11, note.

WITCHCRAFT. Under Sts. 33 Hen. VIII. c. 8, and 1 Jac. I. c. 12, the offense of witchcraft, or supposed intercourse with evil spirits, was punishable with death. These acts were not repealed till 1736. 4 Bl. Comm. 60, 61.

WITE. Sax. A punishment, pain, penalty, mulct, or criminal fine. Cowell.

WITEKDEN. A taxation of the West Saxons, imposed by the public council of the kingdom.

WITENA DOM. In Saxon law. The judgment of the county court, or other court of competent jurisdiction, on the title to property, real or personal. 1 Spence, Eq. Jur. 22.

WITENAGEMOTE. "The assembly of wise men." This was the great national council or parliament of the Saxons in England, comprising the noblemen, high ecclesiastics, and other great thanes of the kingdom, advising and aiding the king in the general administration of government.

WITENS. The chiefs of the Saxon lords or thanes, their nobles, and wise men.

WITH ALL FAULTS. This phrase, used in a contract of sale, implies that the purchaser assumes the risk of all defects and imperfections, provided they do not destroy the identity of the thing sold.

WITH STRONG HAND. In pleading. A technical phrase indispensable in describing a forcible entry in an indictment. No other word or circumlocution will answer the same purpose. 8 Term. R 357.

WITHDRAWING A JUROR. In practice. The withdrawing of one of the twelve jurors from the box, with the result that, the

jury being now found to be incomplete, no further proceedings can be had in the cause. The withdrawing of a juror is always by the agreement of the parties, and is frequently done at the recommendation of the judge, where it is doubtful whether the action will lie; and in such case the consequence is that each party pays his own costs. It is, however, no bar to a future action for the same cause. 2 Tidd, Pr. 861, 862; 1 Archb. Pr. K. B. 196.

WITHDRAWING RECORD. In practice. The withdrawing by a plaintiff of the *nisi prius* or trial record filed in a cause, just before the trial is entered upon, for the purpose of preventing the cause from being tried. This may be done before the jury are sworn, and afterwards, by consent of the defendant's counsel. 2 Tidd, Pr. 851; 1 Archb. Pr. K. B. 189; 3 Chit. Pr. 870.

WITHERNAM. In practice. A taking by way of reprisal; a taking or a reprisal of other goods, in lieu of those that were formerly taken and eloigned or withholden. 2 Inst. 141. A reciprocal distress, in lieu of a previous one which has been eloigned. 3 Bl. Comm. 148.

WITHERSAKE. An apostate, or perfidious renegade. Cowell.

WITHOUT DAY. A term used to signify that an adjournment or continuance is indefinite or final, or that no subsequent time is fixed for another meeting, or for further proceedings. See *SINE DIE*.

WITHOUT IMPEACHMENT OF WASTE. The effect of the insertion of this clause in a lease for life is to give the tenant the right to cut timber on the estate, without making himself thereby liable to an action for waste.

WITHOUT PREJUDICE. Where an offer or admission is made "without prejudice," or a motion is denied "without prejudice," it is meant as a declaration that no rights or privileges of the party concerned are to be considered as thereby waived or lost except in so far as may be expressly conceded or decided.

WITHOUT RECOURSE. This phrase, used in making a qualified indorsement of a negotiable instrument, signifies that the indorser means to save himself from liability to subsequent holders, and is a notification that, if payment is refused by the parties primarily liable, recourse cannot be had to him.

N **WITHOUT RESERVE.** A term applied to a sale by auction, indicating that no price is reserved.

D **WITHOUT STINT.** Without limit; without any specified number.

P **WITHOUT THIS, THAT.** In pleading. Formal words used in pleadings by way of *traverse*, particularly by way of *special traverse*, (*q. v.*) importing an express denial of some matter of fact alleged in a previous pleading. Steph. Pl. 168, 169, 179, 180.

Q **WITNESS, v.** To subscribe one's name to a deed, will, or other document, for the purpose of attesting its authenticity, and proving its execution, if required, by bearing witness thereto.

R **WITNESS, n.** In the primary sense of the word, a witness is a person who has knowledge of an event. As the most direct mode of acquiring knowledge of an event is by seeing it, "witness" has acquired the sense of a person who is present at and observes a transaction. Sweet.

T A witness is a person whose declaration under oath (or affirmation) is received as evidence for any purpose, whether such declaration be made on oral examination or by deposition or affidavit. Code Civil Proc. Cal. § 1878; Gen. St. Minn. 1878, c. 73, § 6.

U One who is called upon to be present at a transaction, as a wedding, or the making of a will, that he may thereafter, if necessary, testify to the transaction.

V In conveyancing. One who sees the execution of an instrument, and subscribes it, for the purpose of confirming its authenticity by his testimony.

W **WITNESSING PART,** in a deed or other formal instrument, is that part which comes after the recitals, or, where there are no recitals, after the parties. It usually commences with a reference to the agreement or intention to be effectuated, then states or refers to the consideration, and concludes with the operative words and parcels, if any. Where a deed effectuates two distinct objects, there are two witnessing parts. 1 Dav. Prec. Conv. 63, et seq.; Sweet.

WITTINGLY means with knowledge and by design, excluding only cases which are the result of accident or forgetfulness, and including cases where one does an unlawful act through an erroneous belief of his right. 44 Conn. 357.

WOLD. Sax. In England. A down or champaign ground, hilly and void of wood. Cowell; Blount.

WOLF'S HEAD. In old English law. This term was used as descriptive of the condition of an outlaw. Such persons were said to carry a wolf's head, (*caput lupinum*;) for if caught alive they were to be brought to the king, and if they defended themselves they might be slain and their heads carried to the king, for they were no more to be accounted of than wolves. Termes de la Ley, "Woolferthfod."

WOMEN. All the females of the human species. All such females who have arrived at the age of puberty. Dig. 50, 16, 13.

WONG. Sax. In old records. A field. Spelman; Cowell.

WOOD-CORN. In old records. A certain quantity of oats or other grain, paid by customary tenants to the lord, for liberty to pick up dead or broken wood. Cowell.

WOOD-GELD. In old English law. Money paid for the liberty of taking wood in a forest. Cowell.

Immunity from such payment. Spelman.

WOOD-MOTE. In forest law. The old name of the court of attachments; otherwise called the "Forty-Days Court." Cowell; 3 Bl. Comm. 71.

WOOD PLEA COURT. A court held twice in the year in the forest of Clun, in Shropshire, for determining all matters of wood and agistments. Cowell.

WOOD-STREET COMPTER. The name of an old prison in London.

WOODS. A forest; land covered with a large and thick collection of natural forest trees. The old books say that a grant of "all his woods" (*omnes boscos suos*) will pass the land, as well as the trees growing upon it. Co. Litt. 46.

WOODWARDS. Officers of the forest, whose duty consists in looking after the wood and vert and venison, and preventing offenses relating to the same. Manw. 189.

WOOL-SACK. The seat of the lord chancellor of England in the house of lords, being a large square bag of wool, without back or arms, covered with red cloth. Webster; Brande.

WORDS OF LIMITATION. In a conveyance or will, words which have the effect of marking the duration of an estate are termed "words of limitation." Thus, in a grant to A. and his heirs, the words "and his heirs" are words of limitation, because they show that A. is to take an estate in fee-simple, and do not give his heirs anything. *Fearne, Rem. 78.*

WORDS OF PROCREATION. To create an estate tail by deed, it is necessary that words of procreation should be used in order to confine the estate to the descendants of the first grantee, as in the usual form of limitation,—“to A. and the heirs of his body.” *Sweet.*

WORDS OF PURCHASE. Words of purchase are words which denote the person who is to take the estate. Thus, if I grant land to A. for twenty-one years, and after the determination of that term to A.'s heirs, the word "heirs" does not denote the duration of A.'s estate, but the person who is to take the remainder on the expiration of the term, and is therefore called a "word of purchase." *Williams, Real Prop.; Fearne, Rem. 76, et seq.*

WORK AND LABOR. The name of one of the common counts in actions of *assumpsit*, being for work and labor done and materials furnished by the plaintiff for the defendant.

WORK-BEAST, or WORK-HORSE. These terms mean an animal of the horse kind, which can be rendered fit for service, as well as one of maturer age and in actual use. *8 Bush, 587.*

WORK-HOUSE. A place where convicts (or paupers) are confined and kept at labor.

WORKING DAYS. In settling lay-days, or days of demurrage, sometimes the contract specifies "working days;" in the computation, Sundays and custom-house holidays are excluded. *1 Bell, Comm. 577.*

WORKMAN. One who labors; one who is employed to do business for another.

WORLD. This term sometimes denotes all persons whatsoever who may have, claim, or acquire an interest in the subject-matter; as in saying that a judgment *in rem* binds "all the world."

WORSHIP. The act of offering honor and adoration to the Divine Being. Religious exercises participated in by a number of per-

sons assembled for that purpose, the disturbance of which is a statutory offense in many states.

In English law. A title of honor or dignity used in addresses to certain magistrates and other persons of rank or office.

WORT, or WORTH. A curtilage or country farm.

WORTHIEST OF BLOOD. In the English law of descent. A term applied to males, expressive of the preference given to them over females. See *2 Bl. Comm. 234-240.*

WORTHING OF LAND. A certain quantity of land so called in the manor of Kingsland, in Hereford. The tenants are called "worthies." *Wharton.*

WOUND. In criminal cases, the definition of a "wound" is an injury to the person by which the skin is broken. *22 Mo. 451; 6 Car. & P. 684.*

"In legal medicine, the term 'wound' is used in a much more comprehensive sense than in surgery. In the latter, it means strictly a solution of continuity; in the former, injuries of every description that affect either the hard or the soft parts; and accordingly under it are comprehended bruises, contusions, fractures, luxations," etc. *2 Beck, Med. Jur. 106.*

WOUNDING. An aggravated species of assault and battery, consisting in one person giving another some dangerous hurt. *3 Bl. Comm. 121.*

Wreccum maris significat illa bona quæ naufragio ad terram pelluntur. A wreck of the sea signifies those goods which are driven to shore from a shipwreck.

WRECK. At common law. Such goods as after a shipwreck are cast upon the land by the sea, and, as lying within the territory of some county, do not belong to the jurisdiction of the admiralty, but to the common law. *2 Inst. 167; 1 Bl. Comm. 290.*

Goods cast ashore from a wrecked vessel, where no living creature has escaped from the wreck alive; and which are forfeited to the crown, or to persons having the franchise of wreck. *Cowell.*

In American law. Goods cast ashore by the sea, and not claimed by the owner within a year, or other specified period; and which, in such case, become the property of the state. *2 Kent, Comm. 322.*

N In maritime law. A ship becomes a wreck when, in consequence of injuries received, she is rendered absolutely unnavigable, or unable to pursue her voyage, without repairs exceeding the half of her value. 6 Mass. 479.

P **WRECK COMMISSIONERS** are persons appointed by the English lord chancellor under the merchant shipping act, 1876, (section 29,) to hold investigations at the request of the board of trade into losses, abandonments, damages, and casualties of or to ships on or near the coast of the United Kingdom, whereby loss of life is caused. Sweet.

Q **WRECKFREE.** Exempt from the forfeiture of shipwrecked goods and vessels to the king. Cowell.

R **WRIT.** A precept in writing, couched in the form of a letter, running in the name of the king, president, or state, issuing from a court of justice, and sealed with its seal, addressed to a sheriff or other officer of the law, or directly to the person whose action the court desires to command, either as the commencement of a suit or other proceeding or as incidental to its progress, and requiring the performance of a specified act, or giving authority and commission to have it done.

S In regard to the division and classification of writs, see **CLOSE WRITS; JUDICIAL WRITS; ORIGINAL WRITS; PATENT WRITS; PREROGATIVE WRITS.**

T In old English law. An instrument in the form of a letter; a letter or letters of attorney. This is a very ancient sense of the word.

U In the old books, "writ" is used as equivalent to "action;" hence writs are sometimes divided into real, personal, and mixed.

V In Scotch law. A writing; an instrument in writing, as a deed, bond, contract, etc. 2 Forb. Inst. pt. 2, pp. 175-179.

W **WRIT DE BONO ET MALO.** See **DE BONO ET MALO; ASSIZE.**

WRIT DE HÆRETICO COMBURENDO. In English law. The name of a writ formerly issued by the secular courts, for the execution, by burning, of a man who had been convicted in the ecclesiastical courts of heresy.

WRIT DE RATIONABILI PARTE BONORUM. A writ which lay for a widow, against the executor of her deceased husband, to compel the executor to set off to her a third part of the decedent's personalty,

after payment of his debts. Fitzh. Nat. Brev. 122, L.

WRIT OF ASSISTANCE. A writ issuing out of chancery in pursuance of an order, commanding the sheriff to eject the defendant from certain lands and to put the plaintiff in possession; also an ancient writ issuing out of the exchequer. Mozley & Whitley.

WRIT OF ASSOCIATION. In English practice. A writ whereby certain persons (usually the clerk of assize and his subordinate officers) are directed to associate themselves with the justices and serjeants; and they are required to admit the said persons into their society in order to take the assizes. 3 Bl. Comm. 59.

WRIT OF ATTACHMENT. A writ employed to enforce obedience to an order or judgment of the court. It commands the sheriff to attach the disobedient party and to have him before the court to answer his contempt. Smith, Act. 176.

WRIT OF CONSPIRACY. A writ which anciently lay against persons who had conspired to injure the plaintiff, under the same circumstances which would now give him an action on the case.

WRIT OF COVENANT. A writ which lies where a party claims damages for breach of covenant; *i. e.*, of a promise under seal.

WRIT OF DEBT. A writ which lies where the party claims the recovery of a debt; *i. e.*, a liquidated or certain sum of money alleged to be due to him.

WRIT OF DECEIT. The name of a writ which lies where one man has done anything in the name of another, by which the latter is damnified and deceived. Fitzh. Nat. Brev. 95, E.

WRIT OF DELIVERY. A writ of execution employed to enforce a judgment for the delivery of chattels. It commands the sheriff to cause the chattels mentioned in the writ to be returned to the person who has obtained the judgment; and, if the chattels cannot be found, to distrain the person against whom the judgment was given until he returns them. Smith, Act. 175; Sweet.

WRIT OF DETINUE. A writ which lies where a party claims the specific recovery of goods and chattels, or deeds and writings, detained from him. This is seldom used; trover is the more frequent remedy, in cases where it may be brought. Bouvier.

WRIT OF DOWER. This is either a writ of dower *unde nihil habet*, which lies for a widow, commanding the tenant to assign her dower, no part of which has yet been set off to her; or a writ of *right of dower*, whereby she seeks to recover the remainder of the dower to which she is entitled, part having been already received from the tenant.

WRIT OF EJECTMENT. The writ in an action of ejectment, for the recovery of lands. See EJECTMENT.

WRIT OF ENTRY. A real action to recover the possession of land where the tenant (or owner) has been disseised or otherwise wrongfully dispossessed. If the disseisor has aliened the land, or if it has descended to his heir, the writ of entry is said to be in the *per*, because it alleges that the defendant (the alienee or heir) obtained possession *through* the original disseisor. If two alienations (or descents) have taken place, the writ is in the *per* and *curi*, because it alleges that the defendant (the second alienee) obtained possession *through* the first alienee, *to whom* the original disseisor had aliened it. If more than two alienations (or descents) have taken place, the writ is in the *post*, because it simply alleges that the defendant acquired possession *after* the original disseisin. Co. Litt. 238b; 3 Bl. Comm. 180. The writ of entry was abolished, with other real actions, in England, by St. 3 & 4 Wm. IV. c. 27, § 36, but is still in use in a few of the states of the Union. Sweet.

WRIT OF ERROR. A writ issued from a court of appellate jurisdiction, directed to the judge or judges of a court of record, requiring them to remit to the appellate court the record of an action before them, in which a final judgment has been entered, in order that examination may be made of certain errors alleged to have been committed, and that the judgment may be reversed, corrected, or affirmed, as the case may require.

A writ of error is defined to be a commission by which the judges of one court are authorized to examine a record upon which a judgment was given in another court, and, on such examination, to affirm or reverse the same, according to law. 6 Wheat. 409.

WRIT OF EXECUTION. A writ to put in force the judgment or decree of a court.

WRIT OF FALSE JUDGMENT. A writ which appears to be still in use to bring

appeals to the English high court from inferior courts not of record proceeding according to the course of the common law. Archb. Pr. 1427.

WRIT OF FORMEDON. A writ which lies for the recovery of an estate by a person claiming as issue in tail, or by the remainder-man or reversioner after the termination of the entail. See FORMEDON.

WRIT OF INQUIRY. In common-law practice. A writ which issues after the plaintiff in an action has obtained a judgment by default, on an unliquidated claim, directing the sheriff, with the aid of a jury, to inquire into the amount of the plaintiff's demand and assess his damages.

WRIT OF MAINPRIZE. In English law. A writ directed to the sheriff, (either generally, when any man is imprisoned for a bailable offense and bail has been refused, or specially, when the offense or cause of commitment is not properly bailable below,) commanding him to take sureties for the prisoner's appearance, commonly called "mainperners," and to set him at large. 3 Bl. Comm. 128.

WRIT OF MESNE. In old English law. A writ which was so called by reason of the words used in the writ, namely, "*Unde idem A. qui medius est inter C. et prefatum B.*;" that is, A., who is mesne between C., the lord paramount, and B., the tenant paravail. Co. Litt. 100a.

WRIT OF POSSESSION. This is the writ of execution employed to enforce a judgment to recover the possession of land. It commands the sheriff to enter the land and give possession of it to the person entitled under the judgment. Smith, Act. 175.

WRIT OF PRÆCIPE. This writ is also called a "writ of covenant," and is sued out by the party to whom lands are to be conveyed by fine, the foundation of which is a supposed agreement or covenant that the one shall convey the land to the other. 2 Bl. Comm. 349.

WRIT OF PREVENTION. This name is given to certain writs which may be issued in anticipation of suits which may arise. Co. Litt. 100.

WRIT OF PROCLAMATION. In English law. By the statute 31 Eliz. c. 3, when an *exigent* is sued out, a writ of proclamation shall issue at the same time, commanding the sheriff of the county where the

N defendant dwells to make three proclamations thereof, in places the most notorious, and most likely to come to his knowledge, a month before the outlawry shall take place. 3 Bl. Comm. 284.

O **WRIT OF PROTECTION.** In England, the queen may, by her writ of protection, privilege any person in her service from arrest in civil proceedings during a year and a day; but this prerogative is seldom, if ever, exercised. Archb. Pr. 687. See Co. Litt. 130a.

P **WRIT OF QUARE IMPEDIT.** See QUARE IMPEDIT.

Q **WRIT OF RECAPTION.** If, pending an action of replevin for a distress, the defendant distrains again for the same rent or service, the owner of the goods is not driven to another action of replevin, but is allowed a writ of recaption, by which he recovers the goods and damages for the defendant's contempt of the process of the law in making a second distress while the matter is *sub judice*. Woodf. Landl. & Ten. 484.

R **WRIT OF RESTITUTION.** A writ which is issued on the reversal of a judgment commanding the sheriff to restore to the defendant below the thing levied upon, if it has not been sold, and, if it has been sold, the proceeds. Bac. Abr. "Execution," Q.

S **WRIT OF RIGHT.** This was a writ which lay for one who had the right of property, against another who had the right of possession and the actual occupation. The writ properly lay only to recover corporeal hereditaments for an estate in fee-simple; but there were other writs, said to be "in the nature of a writ of right," available for the recovery of incorporeal hereditaments or of lands for a less estate than a fee-simple. Brown.

T In another sense of the term, a "writ of right" is one which is grantable as a matter of right, as opposed to a "prerogative writ," which is issued only as a matter of grace or discretion.

U **WRIT OF SUMMONS.** The writ by which, under the English judicature acts, all actions are commenced.

V **WRIT OF TOLT.** In English law. The name of a writ to remove proceedings on a writ of right patent from the court-baron into the county court.

W **WRIT OF TRIAL.** In English law. A writ directing an action brought in a supe-

rior court to be tried in an inferior court or before the under-sheriff, under St. 3 & 4 Wm. IV. c. 42. It is now superseded by the county courts act of 1867, c. 142, § 6, by which a defendant, in certain cases, is enabled to obtain an order that the action be tried in a county court. 3 Steph. Comm. 515, n.; Mozley & Whitley.

WRIT OF WASTE. The name of a writ to be issued against a tenant who has committed waste of the premises. There are several forms of this writ. Fitzh. Nat. Brev. 125.

WRIT PRO RETORNO HABENDO. A writ commanding the return of the goods to the defendant, upon a judgment in his favor in replevin, upon the plaintiff's default.

WRITER OF THE TALLIES. In England. An officer of the exchequer whose duty it was to write upon the tallies the letters of tellers' bills.

WRITER TO THE SIGNET. In Scotch law. An officer nearly corresponding to an attorney at law, in English and American practice. "Writers to the signet," called also "clerks to the signet," derive their name from the circumstance that they were anciently clerks in the office of the secretary of state, by whom writs were prepared and issued under the royal *signet* or seal; and, when the signet became employed in judicial proceedings, they obtained a monopoly of the privileges of acting as agents or attorneys before the court of session. Brande, voc. "Signet."

WRITING. The expression of ideas by letters visible to the eye. 14 Johns. 491. The giving an outward and objective form to a contract, will, etc., by means of letters or marks placed upon paper, parchment, or other material substance.

In the most general sense of the word, "writing" denotes a document, whether manuscript or printed, as opposed to mere spoken words. Writing is essential to the validity of certain contracts and other transactions. Sweet.

WRITING OBLIGATORY. The technical name by which a *bond* is described in pleading.

WRITTEN LAW. One of the two leading divisions of the Roman law, comprising the *leges*, *plebiscita*, *senatus-consulta*, *principum placita*, *magistratum edicta*, and *responsa prudentum*. Inst. 1, 2, 3.

Statute law; law deriving its force from express legislative enactment. 1 Bl. Comm. 62, 85.

WRONG. An injury; a tort; a violation of right or of law.

The idea of *rights* naturally suggests the correlative one of *wrongs*; for every right is capable of being violated. A right to receive payment for goods sold (for example) implies a wrong on the part of him who owes, but withholds the price; a right to live in personal security, a wrong on the part of him who commits personal violence. And therefore, while, in a general point of view, the law is intended for the establishment and maintenance of *rights*, we find it, on closer examination, to be dealing both with rights and wrongs. It first fixes the character and definition of rights, and then, with a view to their effectual security, proceeds to define wrongs, and to devise the means by which the latter shall be prevented or redressed. 1 Steph. Comm. 126.

AM. DICT. LAW—79

WRONG-DOER. One who commits an injury; a *tort-feasor*.

WRONGFULLY INTENDING. In the language of pleading, this phrase is appropriate to be used in alleging the malicious motive of the defendant in committing the injury which forms the cause of action.

WRONGOUS. In Scotch law. Wrongful; unlawful; as *wrongous* imprisonment. Ersk. Prin. 4, 4, 25.

WURTH. In Saxon law. Worthy; competent; capable. *Atheswurthe*, worthy of oath; admissible or competent to be sworn. Spelman.

WYTE. In old English law. Acquittance or immunity from amercement.