D. The fourth letter of the English alphabet. It is used as an abbreviation for a number of words, the more important and usual of which are as follows:

1. *Digestum*, or *Digesta*, that is, the Digest or Pandects in the Justinian collections of the civil law. Citations to this work are sometimes indicated by this abbreviation, but more commonly by "Dig."

2. *Dictum*. A remark or observation, as in the phrase "obiter dictum," (q. v.)

3. *Demissione*. "On the demise." An action of ejectment is entitled "Doe d. Stiles v. Roe;" that is, "Doe, on the demise of Stiles, against Roe."


6. "Dialogue." Used only in citations to the work called "Doctor and Student."

D. In the Roman system of notation, this letter stands for five hundred; and, when a horizontal dash or stroke is placed above it, it denotes five thousand.

D. B. E. An abbreviation for *de bene esse*, (q. v.)

D. B. N. An abbreviation for *de bonis non*; descriptive of a species of administration.

D. C. An abbreviation standing either for "District Court" or "District of Columbia."

D. E. R. I. C. An abbreviation used for *De ea re ita censuere*, (concerning that matter have so decreed,) in recording the decrees of the Roman senate. Tayl. Civil Law, 564, 566.

D. J. An abbreviation for "District Judge."

D. P. An abbreviation for *Domus Procerum*, the house of lords.

D. S. An abbreviation for "Deputy Sheriff."

D. S. B. An abbreviation for *debitum sine brevi*, or *debit sans breve*.

Da tua dum tua sunt, post mortem tune tua non sunt. 3 Bulst. 18. Give the things which are yours whilst they are yours; after death they are not yours.

DABIS? DABO. Lat. (Will you give? I will give.) In the Roman law. One of the forms of making a verbal stipulation. Inst. 3, 15, 1; Bract. fol. 155.

DACION. In Spanish law. The real and effective delivery of an object in the execution of a contract.

DAGGE. A kind of gun. 1 How. State Tr. 1124, 1125.

DAGUS, or DAIS. The raised floor at the upper end of a hall.

DAILY. Every day; every day in the week; every day in the week except one. A newspaper which is published six days in each week is a "daily" newspaper. 45 Cal. 30.

DAKER, or DIKER. Ten hides. Blount.

DALE and SALE. Fictitious names of places, used in the English books, as examples. "The manor of Dale and the manor of Sale, lying both in Vale."

DALUS, DAILUS, DAILIA. A certain measure of land; such narrow slips of pasture as are left between the plowed furrows in arable land. Cowell.

DAM. A construction of wood, stone, or other materials, made across a stream for the purpose of penning back the waters.

This word is used in two different senses. It properly means the work or structure, raised to obstruct the flow of the water in a river; but, by a well-settled usage, it is often applied to designate the pond of water created by this obstruction. 19 N. J. Eq. 248. See, also, 44 N. H. 78.

DAMAGE. Loss, injury, or deterioration, caused by the negligence, design, or accident of one person to another, in respect of the latter's person or property. The word is to be distinguished from its plural,—"damages," — which means a compensation in money for a loss or damage.

An injury produces a right in them who have suffered any damage by it to demand reparation of such damage from the authors of the injury. By
DAMAGE-CLEER. A fee assessed of the tenth part in the common pleas, and the twentieth part in the queen's bench and exchequer, out of all damages exceeding five marks recovered in those courts, in actions upon the case, covenant, trespass, etc., wherein the damages were uncertain: which the plaintiff was obliged to pay to the prothonotary or the officer of the court wherein he recovered, before he could have execution for the damages. This was originally a gratuity given to the prothonotaries and their clerks for drawing special writs and pleadings; but it was taken away by statute, since which, if any officer in these courts took any money in the name of damage-cleer, or anything in lieu thereof, he forfeited treble the value. Wharton.

DAMAGE PEASANT or FAISANT. Doing damage. A term applied to a person's cattle or beasts found upon another's land, doing damage by treading down the grass, grain, etc. 3 Bl. Comm. 7, 211; Tomlins. This phrase seems to have been introduced in the reign of Edward III., in place of the older expression "en son damage," (in damno suo.) Crabb, Eng. Law, 292.

DAMAGED GOODS. Goods, subject to duties, which have received some injury either in the voyage home or while bonded in warehouse.

DAMAGES. A pecuniary compensation or indemnity, which may be recovered in the courts by any person who has suffered loss, detriment, or injury, whether to his person, property, or rights, through the unlawful act or omission or negligence of another. A sum of money assessed by a jury, on finding for the plaintiff or successful party in an action, as a compensation for the injury done him by the opposite party. 2 Bl. Comm. 438; Co. Litt. 257a; 2 Tidd, Pr. 899, 870. Every person who suffers detriment from the unlawful act or omission of another may recover from the person in fault a compensation therefor in money, which is called "damages." Civil Code Cal. § 3231; Civil Code Dak. § 1940.

In the ancient usage, the word "damages" was employed in two significations. According to Coke, its proper and general sense included the costs of suit, while its strict or relative sense was exclusive of costs. 10 Coke, 116, 117; Co. Litt. 257a; 9 East, 399. The latter meaning has alone survived.

DAMAGES ULTRA. Additional damages claimed by a plaintiff not satisfied with those paid into court by the defendant.

Damages are either general or special. Damages for losses which necessarily result from the wrong sued for are called "general" damages, and may be shown under the ad damnum, or general allegation of damage; for the defendant does not need notice of such consequences to enable him to make his defense; he knows that they must exist, and will be in evidence. But if certain losses do not necessarily result from defendant's wrongful act, but, in fact, follow it as a natural and proximate consequence in the particular case, they are called "special," and must be specially alleged, that the defendant may have notice and be prepared to go into the inquiry. 28 Conn. 201, 212.

"General" damages are such as the law presumes to flow from any tortious act, and may be recovered without proof of any amount. "Special" damages are such as actually flowed from the act, and must be proved in order to be recovered. Code Ga. 1882, § 3070.

Damages may also be classed as direct and consequential. "Direct" damages are such as follow immediately upon the act done. "Consequential" damages are such as are the necessary and connected effect of the tortious act, though to some extent depending upon other circumstances. Code Ga. 1882, § 3071.

Another division of damages is into liquidated and unliquidated; the former term being applicable when the amount thereof has been ascertained by the judgment in the action or by the specific agreement of the parties; while the latter denotes such damages as are not yet reduced to a certainty in respect of amount, nothing more being established than the plaintiff's right to recover.

Damages are also either nominal or substantial; the former being trifling in amount, and not awarded as compensation for any injury, but merely in recognition of plaintiff's right and its technical infraction by defendant; while the latter are considerable in amount, and intended as real compensation for a real injury.

Damages are either compensatory or vindictive; the former when nothing more is allowed than a just and exact equivalent for plaintiff's loss or injury; the latter when a greater sum is given than amounts to mere compensation, in order to punish the defendant for violence, outrage, or other circumstances of aggravation attending the transaction. Vindictive damages are also called "exemplary" or "punitive."
DAMAIouse. In old English law. Causing damage or loss, as distinguished from *tortuous*, wrongful. Britt. c. 61.

DAME. In English law. The legal designation of the wife of a knight or baronet.

DAMNA. Damages, both inclusive and exclusive of costs.

DAMNATUS. In old English law. Condemned; prohibited by law; unlawful. *Dannatus odvus*, an unlawful connection.

DAMNI INJURIE ACTIO. An action given by the civil law for the damage done by one who intentionally injured the slave or beast of another. Calvin.

DAMNIFICATION. That which causes damage or loss.

DAMNIFY. To cause damage or injurious loss to a person.

DAMNOSA HÆREeditAS. In the civil law. A losing inheritance; an inheritance that was a charge, instead of a benefit. Dig. 50, 16, 119.

The term has also been applied to that species of property of a bankrupt which, so far from being valuable, would be a charge to the creditors; for example, a term of years where the rent would exceed the revenue. 7 East, 342; 3 Camp. 340; 1 Esp. N. P. 234.

DAMNUM. Lat. In the civil law. Damage; the loss or diminution of what is a man's own, either by fraud, carelessness, or accident.

In pleading and old English law. Damage; loss.

DAMNUM ABSQUE INJURIA. A loss which does not give rise to an action of damages against the person causing it; as where a person blocks up the windows of a new house overlooking his land, or injures a person's trade by setting up an establishment of the same kind in the neighborhood. Broom, Com. Law, 75.

DAMNUM FATALE. In the civil law. Fatal damage; damage from fate; loss happening from a cause beyond human control, (prud ex fato continuit), or an act of God, and for which bailies are not liable; such as shipwreck, lightning, and the like. Dig. 4, 9, 8, 1; Story, Bailm. § 465.

The civilians included in the phrase "damnum fatale" all those accidents which are summed up in the common-law expression, "Act of God or public enemies;" though, perhaps, it embraced some which would not now be admitted as occurring from an irresistible force. 8 Blackf. 535.

DAMNUM INFECTUM. In Roman law. Damage not yet committed, but threatened or impending. A preventive interdict might be obtained to prevent such damage from happening; and it was treated as a *quasi-delict*, because of the imminence of the danger.

DAMNUM REI AMISSÆ. In the civil law. A loss arising from a payment made by a party in consequence of an error of law. Mackeld. Rom. Law, § 178.

D a m n u m s i n e i n j u r i æ c e s s o p o t a s t. Lofft, 112. There may be damage or injury inflicted without any act of injustice.

DAN. Anciently the better sort of men in England had this title; so the Spanish *Don*. The old term of honor for men, as we now say Master or Mister. Wharton.

DANEGELT, DANEGELD. A tribute of 1s. and afterwards of 2s. upon every hide of land through the realm, levied by the Anglo-Saxons, for maintaining such a number of forces as were thought sufficient to clear the British seas of Danish pirates, who greatly annoyed their coasts. It continued a tax until the time of Stephen, and was one of the rights of the crown. Wharton.

DANELAGE. A system of laws introduced by the Danes on their invasion and conquest of England, and which was principally maintained in some of the midland counties, and also on the eastern coast. 1 Bl. Comm. 65; 4 Bl. Comm. 411; 1 Steph. Comm. 42.

DANGERIA. In old English law. A money payment made by forest-tenants, that they might have liberty to plow and sow in time of pannage, or mast feeding.

DANGEROUS WEAPON. One dangerous to life; one by the use of which a fatal wound may probably or possibly be given. As is the manner of use enters into the consideration as well as other circumstances, the question is for the jury.

DANGERS OF THE RIVER. This phrase, as used in bills of lading, means only the natural accidents incident to river navigation, and does not embrace such as may be avoided by the exercise of that skill, judgment, or foresight which are demanded from persons in a particular occupation. 35 Mo. 213. It includes dangers arising from unknown reefs which have suddenly formed in the channel, and are not discoverable by care and skill. 17 Fed. Rep. 478.
DANGERS OF THE ROAD. This phrase, in a bill of lading, when it refers to inland transportation, means such dangers as are immediately caused by roads, as the overturning of carriages in rough and precipitous places. 7 Exch. 743.

DANGERS OF THE SEA. The expression "dangers of the sea" means those accidents peculiar to navigation that are of an extraordinary nature, or arise from irresistible force or overwhelming power, which cannot be guarded against by the ordinary exertions of human skill and prudence. 32 J. Law, 320.

The expression is equivocal. It is capable of being interpreted to mean all dangers that arise upon the seas; or may be restricted to perils which arise directly and exclusively from the sea, or of which it is the efficient cause. In insurance policies, it may have the wider meaning; but in charter-parties, an exception, introduced to limit the obligation of the charterer to return the vessel, of dangers of the seas, should be construed, since the charterer has possession, against him, and confined to the limited sense. Thus construed, it does not include destruction of the vessel by fire. 3 Ware, 215, 2 Curt. 8.

DANISM. The act of lending money on usury.

DANO. In Spanish law. Damage; the deterioration, injury, or destruction which a man suffers with respect to his person or his property by the fault (culpa) of another. White, New Recop. b. 2, tit. 19, c. 3, § 1.

Dans et retinens, nihil dat. One who gives and yet retains does not give effectually. Tray. Lat. Max. 123. Or, one who gives, yet retains, [possession.] gives nothing.

DAPIFER. A steward either of a king or lord. Speelman.

DARE. In the civil law. To transfer property. When this transfer is made in order to discharge a debt, it is datio solvendi animo; when in order to receive an equivalent, to create an obligation, it is datio contrahendi animo; lastly, when made doneendi animo, from mere liberality, it is a gift, done datio.

DARE AD REMANENTIAM. To give away in fee, or forever.

DARRAIGN. To clear a legal account; to answer an accusation; to settle a controversy.

DARREIN. L. Fr. Last.

DARREIN CONTINUANCE. L. Fr. In practice. The last continuance.

DARREIN PRESENTMENT. L. Fr. In old English law. The last presentment. See ASSISE OF DARREIN PRESENTMENT.

DARREIN SEISIN. (L. Fr. Last seizin.) A plea which lay in some cases for the tenant in a writ of right. See 1 Rosc. Real Act. 206.

DATA. In old practice and conveyancing. The date of a deed; the time when it was given; that is, executed. Grounds whereon to proceed; facts from which to draw a conclusion.

DATE. The specification or mention, in a written instrument, of the time (day and year) when it was made. Also the time so specified.

That part of a deed or writing which expresses the day of the month and year in which it was made or given. 2 Bl. Comm. 304; Toullins.

The primary signification of date is not time in the abstract, nor time taken absolutely, but time given or specified; time in some way ascertained and fixed. When we speak of the date of a deed, we do not mean the time when it was actually executed, but the time of its execution, as given or stated in the deed itself. The date of an item, or of a charge in a book-account, is not necessarily the time when the article charged was, in fact, furnished, but rather the time given or set down in the account, in connection with such charge. And so the expression "the date of the last work done, or materials furnished," in an mechanic's lien law, may be taken, in the absence of anything in the act indicating a different intention, to mean the time when such work was done or materials furnished, as specified in the plaintiff's written claim. 32 N. J. Law, 513.

DATE CERTAINE. In French law. A deed is said to have a date certaine (fixed date) when it has been subjected to the formality of registration; after this formality has been complied with, the parties to the deed cannot by mutual consent change the date thereof. Arg. Fr. Merc. Law, 555.

DATIO. In the civil law. A giving, or act of giving. Datio in solutum; a giving in payment; a species of accord and satisfaction. Called, in modern law, "dation."

DATION. In the civil law. A gift; a giving of something. It is not exactly synonymous with "donation," for the latter implies generosity or liberality in making a gift, while dation may mean the giving of something to which the recipient is already entitled.

DATION EN PAIEMENT. In French law. A giving by the debtor and receipt by
the creditor of something in payment of a debt, instead of a sum of money.

It is somewhat like the accord and satisfaction of the common law. 16 Toullier, no. 45; Poth. Venet. no. 601.

DATIVE. A word derived from the Roman law, signifying "appointed by public authority." Thus, in Scotland, an executor- dative is an executor appointed by a court of justice, corresponding to an English administrator. Mozley & Whitley.

In old English law. In one's gift; that may be given and disposed of at will and pleasure.

DATUM. A first principle; a thing given; a date.

DATUR DIGNIORI. It is given to the more worthy. 2 Vent. 263.

DAUGHTER. An immediate female descendant.

DAUGHTER-IN-LAW. The wife of one's son.

DAUPHIN. In French law. The title of the eldest sons of the kings of France. Disused since 1850.

DAY. A period of time consisting of twenty-four hours, and including the solar day and the night. Co. Litt. 150a; Bract. fol. 264.

The space of time which elapses between two successive midnights. 2 Bl. Comm. 141.

That portion of time during which the sun is above the horizon, (called, sometimes, a "solar" day,) and, in addition, that part of the morning or evening during which sufficient of his light is above for the features of a man to be reasonably discerned. 3 Inst. 63; 9 Mass. 194.

The term may also denote an artificial period of time, computed from one fixed point to another twenty-four hours later, without any reference to the prevalence of light or darkness.

The word is sometimes used, in jurisprudence, in its astronomical sense of the space of time in which the earth makes one revolution upon its axis; or of the time between one midnight and the next; sometimes, in the popular sense, of the time between sunrise and sunset; and sometimes, in a conventional sense, of those hours or that recurring time which is by usage or law allotted to and deemed sufficient for the discharge of some duty or performance of some business; as where one speaks of a day's work, the whole of a business day, etc. Abbott.

In practice and pleading. A particular time assigned or given for the appearance of parties in court, the return of writs, etc. See DAYS IN BANK.

The whole of a term of court is considered as one day; and, by a legal fiction, the time between the submission and decision of a cause is also considered as one day, so that, although a party to an action may die between the time of the decision in the cause by the supreme court of a state and the filing of the mandate of the supreme court of the United States reversing that decision, no change of parties in the state court is necessary before carrying the mandate into effect. 19 Ark. 603.

DAY-BOOK. A tradesman's account-book; a book in which all the occurrences of the day are set down. It is usually a book of original entries.

DAYERIA. A dairy. Cowell.

DAYLIGHT. That portion of time before sunrise, and after sunset, which is accounted part of the day, (as distinguished from night,) in defining the offense of burglary. 4 Bl. Comm. 224; Cro. Jac. 103.

DAY-RULE, or DAY-WRIT. In English law. A permission granted to a prisoner to go out of prison, for the purpose of transacting his business, as to hear a case in which he is concerned at the assizes, etc. Abolished by 5 & 6 Vict. c. 22, § 12.

DAYS IN BANK. (L. Lat. dies in banco.) In practice. Certain stated days in term appointed for the appearance of parties, the return of process, etc., originally peculiar to the court of common bench, or bench, (bank,) as it was anciently called. 3 Bl. Comm. 277.

DAYS OF GRACE. A number of days allowed, as a matter of favor or grace, to a person who has to perform some act, or make some payment, after the time originally limited for the purpose has elapsed.

In old practice. Three days allowed to persons summoned in the English courts, beyond the day named in the writ, to make their appearance; the last day being called the "quarto die post." 3 Bl. Comm. 278.

In mercantile law. A certain number of days (generally three) allowed to the maker or acceptor of a bill, draft, or note, in which to make payment, after the expiration of the time expressed in the paper itself. Originally these days were granted only as a matter of grace or favor, but the allowance of them became an established custom of merchants, and was sanctioned by the courts, (and in some cases prescribed by statute,) so that they are now demandable as of right.
DE ALLOCATIONE FACIENDA, Breve. Writ for making an allowance. An old writ directed to the lord treasurer and barons of the exchequer, for allowing certain officers (as collectors of customs) in their accounts certain payments made by them. Reg. Orig. 192.

DE ALTO ET BASSO. Of high and low. A phrase anciently used to denote the absolute submission of all differences to arbitration. Cowell.

DE AMBITU. Lat. Concerning bribery. A phrase descriptive of the subject-matter of several of the Roman laws; as the Lex Aululia, the Lex Pompeia, the Lex Tullia, and others. See AMBITUS.

DE AMPLIORI GRATIA. Of more abundant or especial grace. Townsh. Pl. 18.

DE ANNO BISSEXTILI. Of the bissextile or leap year. The title of a statute passed in the twenty-first year of Henry III., which in fact, however, is nothing more than a sort of writ or direction to the justices of the bench, instructing them how the extraordinary day in the leap year was to be reckoned in cases where persons had a day to appear at the distance of a year, as on the essoin de maio leoti, and the like. It was thereby directed that the additional day should, together with that which went before, be reckoned only as one, and so, of course, within the preceding year. 1 Reeve, Eng. Law, 266.

DE ANNUA PENSIONE, Breve. Writ of annual pension. An ancient writ by which the king, having a yearly pension due him out of an abbey or priory for any of his chaplains, demanded the same of the abbot or prior, for the person named in the writ. Reg. Orig. 265b, 307; Fitzh. Nat. Brev. 231 G.

DE ANNUO REDITU. For a yearly rent. A writ to recover an annuity, no matter how payable, in goods or money. 2 Reeve, Eng. Law, 258.

DE APOSTATA CAPIENDO, Breve. Writ for taking an apostate. A writ which anciently lay against one who, having entered and professed some order of religion, left it and wandered up and down the country, contrary to the rules of his order, commanding the sheriff to apprehend him and deliver him again to his abbot or prior. Reg. Orig. 716, 267; Fitzh. Nat. Brev. 233, 234.

DE ARBITRATIONE FACTA. (Lat. Of arbitration had.) A writ formerly used
when an action was brought for a cause which had been settled by arbitration. Wats. Arb. 256.

**DE ARRESTANDIS BONIS NE DIS-SIPENTUR.** An old writ which lay to seize goods in the hands of a party during the pendency of a suit, to prevent their being made away with. Reg. Orig. 126b.

**DE ARRESTANDO IPSUM QUI PE-CUNIAM RECEPIT.** A writ which lay for the arrest of one who had taken the king's money to serve in the war, and hid himself to escape going. Reg. Orig. 24b.

**DE ARTE ET PARTE.** Of art and part. A phrase in old Scotch law.

**DE ASPORTATIS RELIGIOSORUM.** Concerning the property of religious persons carried away. The title of the statute 35 Edward I. passed to check the abuses of clerical possessions, one of which was the waste they suffered by being drained into foreign countries. 2 Reeve, Eng. Law, 157; 2 Inst. 580.

**DE ASSISA PROROGANDA.** (Lat. For proroguing assise.) A writ to put off an assise, issuing to the justices, where one of the parties is engaged in the service of the king.

**DE ATTORNATO RECIPIENDO.** A writ which lay to the judges of a court, requiring them to receive and admit an attorney for a party. Reg. Orig. 172; Flitzh. Nat. Brev. 156.

**DE AUDIENDO ET TERMINANDO.** For hearing and determining; to hear and determine. The name of a writ, or rather commission granted to certain justices to hear and determine cases of heinous misdemeanor, trespass, riotous breach of the peace, etc. Reg. Orig. 128, et seq.; Flitzh. Nat. Brev. 110 B. See OYER AND TERMINER.

**DE AVERIS CAPTIS IN WITHER- NAMIUM.** Writ for taking cattle in withernam. A writ which lay where the sheriff returned to a pluries writ of replevin that the cattle or goods, etc., were elomed, etc.; by which he was commanded to take the cattle of the defendant in withernam, (or reprisal,) and detain them until he could replevy the other cattle. Reg. Orig. 82; Flitzh. Nat. Brev. 73, E. F. See WITHERNAM.

**DE AVERIS REPLEGIANDIS.** A writ to reaply beasts. 3 Bl. Comm. 149.

**DE AVERIS RETORNANDIS.** For returning the cattle. A term applied to pledges given in the old action of replevin. 2 Reeve, Eng. Law, 177.

**DE BANCO.** Of the bench. A term formerly applied in England to the justices of the court of common pleas, or “bench,” as it was originally styled.

**DE BENE ESSE.** Conditionally; provisionally; in anticipation of future need. A phrase applied to proceedings which are taken ex parte or provisionally, and are allowed to stand as well done for the present, but which may be subject to future exception or challenge, and must then stand or fall according to their intrinsic merit and regularity.

Thus, “in certain cases, the courts will allow evidence to be taken out of the regular course, in order to prevent the evidence being lost by the death or the absence of the witness. This is called ‘taking evidence de bene esse,’ and is locked upon as a temporary and conditional examination, to be used only in case the witness cannot afterwards be examined in the suit in the regular way.” Hunt, Eq. 75; Haynes, Eq. 183; Mitf. Eq. 59, 149.

**DE BIEN ET DE MAL.** L. Fr. For good and evil. A phrase by which a party accused of a crime anciently put himself upon a jury, indicating his entire submission to their verdict.

**DE BIENS LE MORT.** L. Fr. Of the goods of the deceased. Dyer, 32.

**DE BIGAMIS.** Concerning men twice married. The title of the statute 4 Edw. I. St. 3; so called from the initial words of the fifth chapter. 2 Inst. 272; 2 Reeve, Eng. Law, 142.

**DE BONE MEMORIE.** L. Fr. Of good memory; of sound mind. 2 Inst. 510.

**DE BONIS ASPORTATIS.** For goods taken away; for taking away goods. The action of trespass for taking personal property is technically called “trespass de bonis asportatis.” 1 Tidd, Fr. 5.

**DE BONIS NON.** An abbreviation of De bonis non administratis, (q. c.) 1 Strange, 34.

**DE BONIS NON ADMINISTRATIS.** Of the goods not administered. When an administrator is appointed to succeed another, who has left the estate partially unsettled, he is said to be granted “administration de bonis non;” that is, of the goods not already administered.

**DE BONIS NON AMOVENDIS.** Writ for not removing goods. A writ an-
DE BONIS PROPRIS. Of his own goods. The technical name of a judgment against an administrator or executor to be satisfied from his own property, and not from the estate of the deceased, as in cases where he has been guilty of a devastavit or of a false plea of plene administravit.

DE BONIS TESTATORIS, or INTESTATI. Of the goods of the testator, or intestate. A term applied to a judgment awarding execution against the property of a testator or intestate, as distinguished from the individual property of his executor or administrator. 2 Archb. Pr. K. B. 148, 149.

DE BONIS TESTATORIS AC SI. (Lat. From the goods of the testator, if he has any, and, if not, from those of the executor.) A judgment rendered where an executor falsely pleads any matter as a release, or, generally, in any case where he is to be charged in case his testator's estate is insufficient. 1 Williams' Saund. 336b; Bac. Abr. "Executor," B, 3; 2 Archb. Pr. K. B. 148.

DE BONO ET MALO. "For good and ill." The Latin form of the law French phrase "De bien et de mal." In ancient criminal pleading, this was the expression with which the prisoner put himself upon a jury, indicating his absolute submission to their verdict.

This was also the name of the special writ of jail delivery formerly in use in England, which issued for each particular prisoner, of course. It was superseded by the general commission of jail delivery.

DE BONO GESTU. For good behavior; for good abasement.

DE CÆTERO. Henceforth.

DE CALCETO REPARANDO. Writ for repairing a causeway. An old writ by which the sheriff was commanded to detain the inhabitants of a place to repair and maintain a causeway, etc. Reg. Orig. 154.

DE CAPITALIBUS DOMINIS FEO-DI. Of the chief lords of the fee.

DE CAPITE MINUTIS. Of those who have lost their status, or civil condition. Dig. 4, 5. The name of a title in the Pandects. See CAPITIS DEMINUTO.

DE CARTIS REDDENDIS. (For restoring charters.) A writ to secure the delivery of charters or deeds; a writ of detinue. Reg. Orig. 159b.

DE CATALLIS REDDENDIS. (For restoring chattels.) A writ to secure the return specifically of chattels detained from the owner. Cowell.

DE CAUTIONE ADMITTENDA. Writ to take caution or security. A writ which anciently lay against a bishop who held an excommunicated person in prison for his contempt, notwithstanding he had offered sufficient security (idoneam cautizem) to obey the command of the church; commanding him to take such security and release the prisoner. Reg. Orig. 66; Fitzh. Nat. Brev. 63, C.

DE CERTIFICANDO. A writ requiring anything to be certified. A kind of certiorari. Reg. Orig. 151, 152.

DE CERTIORANDO. A writ for certifying. A writ directed to the sheriff, requiring him to certify to a particular fact. Reg. Orig. 24.


DE CHAR ET DE SANK. L. Fr. Of flesh and blood. Affaire rechat de char et de sank. Words used in claiming a person to be a villein, in the time of Edward II. Y. B. P. 1 Edw. II. p. 4.

DE CHIMINO. A writ for the enforcement of a right of way. Reg. Orig. 155.

DE CIBARIIS UTENDIS. Of victuals to be used. The title of a summariy statute passed 10 Edw. III. St. 3, to restrain the expense of entertainments. Baring. Ob. St. 240.

DE CLAMIA ADMITTENDA IN ITINERE PER APPTORIATUM. See CLAMIA ADMITTENDA, etc.

DE CLARO DIE. By daylight. Fleta, lib. 2, c. 76, § 8.

DE CLAUSO FRACTO. Of close broken; of breach of close. See CLAUSUM FREGIT.
DE CLERICO ADMITTENDO. See ADMITTENDO CLERICO.

DE CLERICO CAPTO PER STATUTUM MERCATORIUM DELIBERANDO. Write for delivering a clerk arrested on a statute merchant. A writ for the delivery of a clerk out of prison, who had been taken and imprisoned upon the breach of a statute merchant. Reg. Orig. 147b.

DE CLERICO CONVICTO DELIBERANDO. See CLERICO Convicto, etc.

DE CLERICO INFRA SACROS ORDINES CONSTITUTO NON ELIGENDO IN OFFICIO. See CLERICO IN VRA SACROS, etc.

DE CLERO. Concerning the clergy. The title of the statute 25 Edw. III. St. 3; containing a variety of provisions on the subject of presentations, indictments of spiritual persons, and the like. 2 Reeve, Eng. Law, 378.


DE COMMUNI DIVIDUNDO. For dividing a thing held in common. The name of an action given by the civil law. Mackeld. Rom. Law, § 499.

DE COMON DROIT. L. Fr. Of common right; that is, by the common law. Co. Litt. 142a.


DE CONCILIO CURLE. By the advice (or direction) of the court.

DE CONFLICTU LEGUM. Concerning the conflict of laws. The title of several works written on that subject. 2 Kent, Comm. 455.

DE CONJUNCTIM FEOFFATIS. Concerning persons jointly enfeoffed, or seised. The title of the statute 31 Edw. I., which was passed to prevent the delay occasioned by tenants in novel disseisin, and other writs, pleading that some one else was seised jointly with them. 2 Reeve, Eng. Law, 248.

DE CONSANGUINEO, and DE CONSANGUINITATE. Writs of cosinage, (q. v.)

DE CONSILIO. In old criminal law. Of counsel; concerning counsel or advice to commit a crime. Fleta, lib. 1, c. 31, § 8.

DE CONSILIO CURLE. By the advice or direction of the court. Bract. fol. 345b.

DE CONTINUANDO ASSISAM. Writ to continue an assise. Reg. Orig. 217b.

DE CONTUMACE CAPIENDO. Write for taking a contumacious person. A writ which issues out of the English court of chancery, in cases where a person has been pronounced by an ecclesiastical court to be contumacious, and in contempt. Shefl. Mar. & Div. 494-496, and notes. It is a commitment for contempt. Id.

DE COPIA LIBELLI DELIBERANDA. Writ for delivering the copy of a libel. An ancient writ directed to the judge of a spiritual court, commanding him to deliver to a defendant a copy of the libel filed against him in such court. Reg. Orig. 58. The writ in the register is directed to the Dean of the Arches, and his commissary. Id.

DE CORONATORE ELIGENDO. Writ for electing a coroner. A writ issued to the sheriff in England, commanding him to proceed to the election of a coroner, which is done in full county court. The freeholders being the electors. Sewell, Sheriffs, 372.


DE CORPORE COMITATUS. From the body of the county at large, as distinguished from a particular neighborhood, (de vicineto.) 3 Bl. Comm. 360.


DE CURIA CLAUDENDA. An obstele writ, to require a defendant to fence his court or land about his house, where it was left open to the injury of his neighbor's freehold. 1 Crabb, Real Prop. 314; 6 Mass. 90.
DE CURSU. Of course. The usual, necessary, and formal proceedings in an action are said to be de cursu; as distinguished from summary proceedings, or such as are incidental and may be taken on summons or motion. Writ de cursu are such as are issued of course, as distinguished from prerogative writs.

DE CUSTODE ADMITTENDO. Writ for admitting a guardian. Reg. Orig. 93b, 198.


DE CUSTODIA TERRÆ ET HÆRE­DIS, Breve. L. Lat. Writ of ward, or writ of right of ward. A writ which lay for a guardian in knight’s service or in socage, to recover the possession and custody of the infant, or the wardship of the land and heir. Reg. Orig. 161; Fitzh. Nat. Brev. 193, B; 3 Bl. Comm. 141.

DE DEBITO. A writ of debt. Reg. Orig. 139.

DE DEBITORE IN PARTES SE­CANDO. In Roman law. “Of cutting a debtor in pieces.” This was the name of a law contained in the Twelve Tables, the meaning of which has occasioned much controversy. Some commentators have concluded that it was literally the privilege of the creditors of an insolvent debtor (all other means failing) to cut his body into pieces and distribute it among them. Others contend that the language of this law must be taken figuratively, denoting a cutting up and apportionment of the debtor’s estate.


DE DECEPTIONE. A writ of deceit which lay against one who acted in the name of another whereby the latter was damned and deceived. Reg. Orig. 112.

DE DEONERANDA PRO RATA PORTIONIS. A writ that lay where one was distrained for rent that ought to be paid by others proportionably with him. Fitzh. Nat. Brev. 234; Terme de la Ley.

DE DIE IN DIEM. From day to day. Bract. fol. 2055.

DE DIVERSIS REGULIS JURIS ANTIQUI. Of divers rules of the ancient law. A celebrated title of the Digests, and the last in that collection. It consists of two hundred and eleven rules or maxims. Dig. 50, 17.

DE DOLO MALO. Of or founded upon fraud. Dig. 4, 3. See Actio de Dolo Malo.

DE DOMO REPARANDA. A writ which lay for one tenant in common to compel his co-tenant to contribute towards the repair of the common property.

DE DONIS. Concerning gifts, (or more fully, de donis conditionaliibus, concerning conditional gifts.) The name of a celebrated English statute, passed in the thirteenth year of Edw. 1, and constituting the first chapter of the statute of Westm. 2, by virtue of which estates in fee-simple conditional (formerly known as “dis conditionali”) were converted into estates in fee-tail, and which, by rendering such estates inalienable, introduced perpetuities, and so strengthened the power of the nobles. See 2 Bl. Comm. 112.

DE DOTE ASSIGNANDA. Writ for assigning dower. A writ which lay for the widow of a tenant in capite, commanding the king’s escheator to cause her dower to be assigned to her. Reg. Orig. 297; Fitzh. Nat. Brev. 263, C.

DE DOTE UNDE NHIIL HABET. A writ of dower which lay for a widow where no part of her dower had been assigned to her. It is now much disputed; but a form closely resembling it is still sometimes used in the United States. 4 Kent, Comm. 63; Stearns, Real Act. 302; 1 Washb. Real Prop. 230.

DE EJECTIONE CUSTODIE. A writ which lay for a guardian who had been forcibly ejected from his wardship. Reg. Orig. 162.

DE EJECTIONE FIRMÆ. A writ which lay at the suit of the tenant for years against the lessor, reversioner, remainderman, or stranger who had himself deprived the tenant of the occupation of the land during his term. 3 Bl. Comm. 199.
By a gradual extension of the scope of this form of action its object was made to include not only damages for the unlawful detainer, but also the possession for the remainder of the term, and eventually the possession of land generally. And, as it turned on the right of possession, this involved a determination of the right of property, or the title, and thus arose the modern action of ejectment.

DE ESCÆTA. Writ of escheat. A writ which a lord had, where his tenant died without heir, to recover the land. Reg. Orig. 1646; Fitzh. Nat. Brev. 143, 144, E.

DE ESCAMBIO MONETÆ. A writ of exchange of money. An ancient writ to authorize a merchant to make a bill of exchange, (litteras cambitorias facere.) Reg. Orig. 194.

DE ESSE IN PEREGRINATIONE. Of being on a journey. A species of essoin. 1 Reeve, Eng. Law, 119.

DE ESSENDÒ QUIETUM DE TOLONIO. A writ which lay for those who were by privilege free from the payment of toll, on their being molested therein. Fitzh. Nat. Brev. 226; Reg. Orig. 2586.

DE ESSONIO DE MALO LECTI. A writ which issued upon an essoin of malum lecti being cast, to examine whether the party was in fact sick or not. Reg. Orig. 8b.

DE ESTOVERIIS HABENDIS. Writ for having estovers. A writ which lay for a wife divorced a mensa et thoro, to recover her alimony or estovers. 1 Bl. Comm. 441; 1 Lev. 6.

DE ESTREPAMENTO. A writ which lay to prevent or stay waste by a tenant, during the pendency of a suit against him to recover the lands. Reg. Orig. 7ob; Fitzh. Nat. Brev. 60.

DE EU ET TRENE. L. Fr. Of water and whip of three cords. A term applied to a neife, that is, a bond woman or female villain, as employed in servile work, and subject to corporal punishment. Co. Litt. 256.

DE EVE ET DE TREVE. A law French phrase, equivalent to the Latin de aeo et de tritave, descriptive of the ancestral rights of lords in their villeins. Literally, "from grandfather and from great-grandfather’s great-grandfather." It occurs in the Year Books.

DE EXCOMMUNICATO CAPIENDO. A writ commanding the sheriff to arrest one who was excommunicated, and imprison him till he should become reconciled to the church. 3 Bl. Comm. 102.

DE EXCOMMUNICATO DELIBERANDO. A writ to deliver an excommunicated person, who has made satisfaction to the church, from prison. 3 Bl. Comm. 102.

DE EXCOMMUNICATO RECAPENDO. Writ for retaking an excommunicated person, where he had been liberated from prison without making satisfaction to the church, or giving security for that purpose. Reg. Orig. 67.

DE EXCUSATIONIBUS. "Concerning excuses." This is the title of book 27 of the Pandects, (in the Corpus Juris Civilis.) It treats of the circumstances which excuse one from filling the office of tutor or curator. The bulk of the extracts are from Mostedinus.


DE EXECUTIONE JUDICII. A writ directed to a sheriff or bailiff, commanding him to do execution upon a judgment. Reg. Orig. 18; Fitzh. Nat. Brev. 20.


DE EXONERATIONE SECTÆ. Writ for exoneration of suit. A writ that lay for the king’s ward to be discharged of all suit to the county court, hundred, leet, or court-baron, during the time of his wardship. Fitzh. Nat. Brev. 158; New Nat. Brev. 352.

DE EXPENSIS CIVIUM ET BURGSENSIUM. An obsolete writ addressed to the sheriff to levy the expenses of every citizen and burgess of parliament. 4 Inst. 46.

DE EXPENSIS MILITUM LEVANDIS. Writ for levying the expenses of knights. A writ directed to the sheriff for levying the allowance for knights of the shire in parliament. Reg. Orig. 1916, 192.

DE FACTO. In fact, in deed, actually. This phrase is used to characterize an officer, a government, a past action, or a state of affairs which exists actually and must be accepted for all practical purposes, but which
is illegal or illegitimate. In this sense it is the contrary of de jure, which means rightful, legitimate, just, or constitutional. Thus, an officer, king, or government de facto is one who is in actual possession of the office or supreme power, but by usurpation, or without respect to lawful title; while an officer, king, or governor de jure is one who has just claim and rightful title to the office or power, but who has never had plenary possession of the same, or is not now in actual possession. (4 Bl. Comm. 77, 78.) So a wife de facto is one whose marriage is voidable by decree, as distinguished from a wife de jure, or lawful wife. (4 Kent, Comm. 36.) (As to the distinction between governments de facto and de jure, see Government. As to officers de facto, see that title.)

But the term is also frequently used independently of any distinction from de jure; thus a blockade de facto is a blockade which is actually maintained, as distinguished from a mere paper blockade.

In old English law. De facto means respecting or concerning the principal act of a murder, which was technically denominated factum. See Fleta, lib. 1, c. 27, § 18.

**DE FACTO CONTRACT.** One which has purposed to pass the property from the owner to another. 74 N. Y. 575; L. R. 3 App. Cas. 459.

**DE FAIRE ECHELLE.** In French law. A clause commonly inserted in policies of marine insurance, equivalent to a license to touch and trade at intermediate ports. 14 Wend. 491.


**DE FALSO MONETA.** Of false money. The title of the statute 27 Edw. 1., ordaining that persons importing certain coins, called "pollards," and "crokards," should forfeit their lives and goods, and everything they could forfeit. 2 Reeve, Eng. Law. 228, 229.

De fide et officio judicis non recipitur quostio, sed de scientia sive sit error juris, sive facti. Concerning the fidelity and official conduct of a judge, no question is [will be] entertained; but [only] concerning his knowledge, whether the error [committed] be of law or of fact. Bac. Max. 68, reg. 17.

The bona fides and honesty of purpose of a judge cannot be questioned, but his decision may be impugned for error either of law or fact. Broom, Max. 85. The law doth so much respect the certainty of judgments, and the credit and authority of judges, that it will not permit any error to be assigned which impeacheth them in their trust and office, and in willful abuse of the same; but only in ignorance and mistaking either of the law, or of the case and matter of fact. Bac. Max. ubi supra. Thus, it cannot be assigned for error that a judge did that which he ought not to do: as that he entered a verdict for the plaintiff, where the jury gave it for the defendant. Fitzh. Nat. Brev. 20, 21; Bac. Max. ubi supra; Hardr. 127, arg.

**DE FIDEI LÆSIONE.** Of breach of faith or fidelity. 4 Reeve, Eng. Law. 99.

**DE FINE FORCE.** L. Fr. Of necessity; of pure necessity. See Fine Force.

**DE FINE NON CAPIENDO PRO PULCHRE FLACTTANDO.** A writ prohibiting the taking of fines for beau pleasor. Reg. Orig. 179.

**DE FINE PRO REDISSEISINA CAPIENDO.** A writ which lay for the release of one imprisoned for a re-disselion, on payment of a reasonable fine. Reg. Orig. 222b.

**DE FINIBUS LEVATIS.** Concerning fines levied. The title of the statute 27 Edw. 1., requiring fines thereafter to be levied, to be read openly and solemnly in court. 2 Inst. 521.

**DE FORISFACTURA MARITAGII.** Writ of forfeiture of marriage. Reg. Orig. 163, 164.

**DE FRANGENTIBUS PRISONAM.** Concerning those that break prison. The title of the statute 1 Edw. 11., ordaining that none from thenceforth who broke prison should have judgment of life or limb for breaking prison only, unless the cause for which he was taken and imprisoned required such a judgment if he was lawfully convicted thereof. 2 Reeve, Eng. Law. 290; 2 Inst. 589.


**DE GESTU ET FAMA.** Of behavior and reputation. An old writ which lay in cases where a person's conduct and reputation were impeached.

**DE GRATIA.** Of grace or favor, by favor. De speciali gratia, of special grace or favor.
De gratia speciali certa scientia et mero motu, talis clausula non valet in his in quibus presumitur principem esse ignorantem. 1 Coke, 53. The clause "of our special grace, certain knowledge, and mere motion," is of no avail in those things in which it is presumed that the prince was ignorant.

De grossis arboreibus decimae non dabantur sed de sylvis cedua decimae dabantur. 2 Rolle, 123. Of whole trees, tithes are not given; but of wood cut to be used, tithes are given.

DE HÆREDE DELIBERANDO ILLI QUI HÆFET CUSTODIAM TERRÆ. Writ for delivering an heir to him who has wardship of the land. A writ directed to the sheriff, to require one that had the body of him that was ward to another to deliver him to the person whose ward he was by reason of his land. Reg. Orig. 161.

DE HÆREDE RAPTO ET ABDUC-TO. Writ concerning an heir ravished and carried away. A writ which anciently lay for a lord who, having by right the wardship of his tenant under age, could not obtain his body, the same being carried away by another person. Reg. Orig. 163; Old Nat. Brev. 93.

DE HÆRETICO COMBURENDO. (Lat. For burning a heretic.) A writ which lay where a heretic had been convicted of heresy, had abjured, and had relapsed into heresy. It is said to be very ancient. Fitzh. Nat. Brev. 269; 4 Bl. Comm. 46.

DE HOMAGIO RESPECTUANO. A writ for respliting or postponing homage. Fitzh. Nat. Brev. 269, A.

DE HOMINE CAPTO IN WITHER-NAM. (Lat. For taking a man in withernam.) A writ to take a man who had carried away a bondman or bondwoman into another country beyond the reach of a writ of replevin.

DE HOMINE REPLEGIANDO. (Lat. For replevying a man.) A writ which lies to replevy a man out of prison, or out of the custody of a private person, upon giving security to the sheriff that the man shall be forthcoming to answer any charge against him. Fitzh. Nat. Brev. 66; 3 Bl. Comm. 129.

This writ has been superseded almost wholly, in modern practice, by that of habeas corpus; but it is still used, in some of the states, in an amended and altered form. See 1 Kent, Comm. 494 n; 34 Me. 136.

DE IDENTITATE NOMINIS. A writ which lay for one arrested in a personal action and committed to prison under a mistake as to his identity, the proper defendant bearing the same name. Reg. Orig. 194.

DE IDIOTA INQUIRENDO. An old common-law writ, long obsolete, to inquire whether a man be an idiot or not. 2 Steph. Comm. 309.

DE IIS QUI PONENDI SUNT IN ASSISIA. Of those who are to be put on assizes. The title of a statute passed 21 Edw. I., defining the qualifications of jurors. Crabb, Eng. Law, 167, 189; 2 Reeve, Eng. Law, 184.

DE INCREMENTO. Of increase; in addition. Costs de incremento, or costs of increase, are the costs adjudged by the court in civil actions, in addition to the damages and nominal costs found by the jury. Gilb. Com. Pl. 260.

DE INFIRMITATE. Of infirmity. The principal essoin in the time of Glanville; afterwards called "demalo." 1 Reeve, Eng. Law, 115. See DE MALO; ESSOIN.

DE INGRESSU. A writ of entry. Reg. Orig. 227b, et seq.

DE INJURIA. Of [his own] wrong. In the technical language of pleading, a replication de injuria is one that may be made in an action of tort where the defendant has admitted the acts complained of, but alleges, in his plea, certain new matter by way of justification or excuse; by this replication the plaintiff avers that the defendant committed the grievances in question "of his own wrong, and without any such cause," or motive or excuse, as that alleged in the plea, (de injuria sua propria absque tali causa;) or, admitting part of the matter pleaded, "without the rest of the cause" alleged, (absque residuo causa.)

In form it is a species of traverse, and it is frequently used when the pleading of the defendant, in answer to which it is directed, consists merely of matter of excuse of the alleged trespass, grievance, breach of contract, or other cause of action. Its comprehensive character in putting in issue all the material facts of the defendant's plea has also obtained for it the title of the general replication. Holtthouse.
DE INOFFICIOSO TESTAMENTO. Concerning an inofficious or undutiful will. A title of the civil law. Inst. 2, 18.

DE INTEGRUM. Arew; a second time. As it was before.

DE INTRUSIONE. A writ of intrusion; where a stranger entered after the death of the tenant, to the injury of the reversioner. Reg. Orig. 233b.

DE JACTURA EVITANDA. For avoiding a loss. A phrase applied to a defendant, as de lucro captando, to a plaintiff. 1 Litt. (Ky.) 51.

DE JUDAIUSMO, STATUTUM. The name of a statute passed in the reign of Edward I., which enacted severe and arbitrary penalties against the Jews.

DE JUDICATE SOLVENDO. For payment of the amount adjudged. A term applied in the Scotch law to bail to the action, or special bail.

DE JUDICIS. Of judicial proceedings. The title of the second part of the Digests or Pandects, including the fifth, sixth, seventh, eighth, ninth, tenth, and eleventh books. See Dig. procm. § 3.

DE JUDICIO SISTI. For appearing in court. A term applied in the Scotch and admiralty law, to bail for a defendant's appearance.

DE JURE. Of right; legitimate; lawful; by right and just title. In this sense it is the contrary of de facto, (which see.) It may also be contrasted with de gratia, in which case it means "as a matter of right," as de gratia means "by grace or favor." Again it may be contrasted with de aequitate; here meaning "by law," as the latter means "by equity." See Government.

De jure decimarum, originem ducentis de jure patronatus, tune cognitio spectat at legem civilium, i.e., communem. Godh, 63. With regard to the right of tithes, deducing its origin from the right of the patron, then the cognizance of them belongs to the civil law; that is, the common law.

DE LA PLUS BEALE, or BELLE. L. Fr. Of the most fair. A term applied to a species of dower, which was assigned out of the fairest of the husband's tenements. Litt. § 48. This was abolished with the military tenures. 2 Bl. Comm. 132; 1 Steph. Comm. 252.

DE LATERE. From the side; on the side; collaterally; of collaterals. Cod. 5, 5, 6.

DE LEGATIS ET FIDEI COMMIS- SIS. Of legacies and trusts. The name of a title of the Pandects. Dig. 30.


DE LIBERATISSIBUS ALLOCANDIS. A writ of various forms, to enable a citizen to recover the liberties to which he was entitled. Fitzh. Nat. Brev. 223; Reg. Orig. 262.

DE LICENTIA TRANSFRETANDI. Writ of permission to cross the sea. An old writ directed to the wardens of the port of Dover, or other seaport in England, commanding them to permit the persons named in the writ to cross the sea from such port, on certain conditions. Reg. Orig. 193b.

DE LUNATICO INQUIRENDO. The name of a writ directed to the sheriff, directing him to inquire by good and lawful men whether the party charged is a lunatic or not.

DE MAGNA ASSISA ELIGENDA. A writ by which the grand assise was chosen and summoned. Reg. Orig. 8; Fitzh. Nat. Brev. 4.

De majori et minori non varianti juris. Concerning greater and less laws do not vary. 2 Vern. 552.

DE MALO. Of illness. This phrase was frequently used to designate several species of ills, (q. e.,) such as de malo leali,
of illness in bed; de malo veniendi, of illness (or misfortune) in coming to the place where the court sat; de malo villa, of illness in the town where the court sat.

DE MANUCAPTIONE. Writ of manucaption, or mainprise. A writ which lay for one who, being taken and imprisoned on a charge of felony, had offered bail, which had been refused; requiring the sheriff to discharge him on his finding sufficient mainpners or bail. Reg. Orig. 268b; Fitzh. Nat. Brev. 249, G.

DE MANUTENENDO. Writ of maintenance. A writ which lay against a person for the offense of maintenance. Reg. Orig. 189, 182b.

DE MEDITATE LINGVAE. Of the half tongue; half of one tongue and half of another. This phrase describes that species of jury which, at common law, was allowed in both civil and criminal cases where one of the parties was an alien, not speaking or understanding English. It was composed of six English denizens or natives and six of the alien’s own countrymen.

DE MEDIO. A writ in the nature of a writ of right, which lay where upon a subfeudation the mesne (or middle) lord suffered his under-tenant or tenant paravell to be distraint upon by the lord paramount for the rent due him from the mesne lord. Booth, Real Act. 136.

DE MELIORIBUS DAMNIS. Of or for the better damages. A term used in practice to denote the election by a plaintiff against which of several defendants (where the damages have been assessed separately) he will take judgment. 1 Arch. Pr. K. B. 219; 8 Cow. 111.


De minimis non curat lex. The law does not care for, or take notice of, very small or trifling matters. The law does not concern itself about trifles. Cro. Eliz. 353. Thus, error in calculation of a fractional part of a penny will not be regarded. Hob. 88. So, the law will not, in general, notice the fraction of a day. Broom, Max. 142.

DE MINIS. Writ of threats. A writ which lay where a person was threatened with personal violence, or the destruction of his property, to compel the offender to keep the peace. Reg. Orig. 88b, 89; Fitzh. Nat. Brev. 79, G, 80.

DE MITTENDO TENOREM RECORDI. A writ to send the tenor of a record, or to exemplify it under the great seal. Reg. Orig. 220b.

DE MODERATA MISERICORDIA CAPIENDA. Writ for taking a moderate amercement. A writ, founded on Magna Charta, (c. 14,) which lay for one who was excessively amerced in a court not of record, directed to the lord of the court, or his bailiff, commanding him to take a moderate amercement of the party. Reg. Orig. 86b; Fitzh. Nat. Brev. 75, 76.

DE MODO DECIMANDI. Of a modus of tithing. A term applied in English ecclesiastical law to a prescription to have a special manner of tithing. 2 Bl. Comm. 29; 3 Steph. Comm. 130.


De morte hominis nulla est cunctatio longa. Where the death of a human being is concerned, [in a matter of life and death,] no delay is [considered] long. Co. Litt. 134.

DE NATIVO HABENDO. A writ which lay for a lord directed to the sheriff, commanding him to apprehend a fugitive villain, and restore him, with all his chattels, to the lord. Reg. Orig. 87; Fitzh. Nat. Brev. 77.

De nomine proprio non est curandum cum in substantia non erretur; quia nomina mutabilis sunt, res autem immobiles. 6 Coke, 66. As to the proper name, it is not to be regarded where it errs not in substance, because names are changeable, but things immutable.

De non apparentibus, et non existentibus, eadem est ratio. 5 Coke, 6. As to things not apparent, and those not existing, the rule is the same.

DE NON DECIMANDO. Of not paying tithes. A term applied in English ecclesiastical law to a prescription or claim to be entirely discharged of tithes, and to pay no compensation in lieu of them. 2 Bl. Comm. 31.
DE NON PROCEDENDO AD ASSISAM. A writ forbidding the justices from holding an assise in a particular case. Reg. Orig. 221.

DE NON RESIDENTIA CLERICI REGIS. An ancient writ where a parson was employed in the royal service, etc., to excuse and discharge him of non-residence. 2 Inst. 264.

DE NON SANE MEMORIE. L. Fr. Of unsound memory or mind; a phrase synonymous with non compos mentis.

DE NOVI OPERIS NUNCIATIONE. In the civil law. A form of interdict or injunction which lies in some cases where the defendant is about to erect a "new work" (q. v.) in derogation or injury of the plaintiff's rights.

DE NOVO. New; afresh; a second time. A "centum de novo" is a writ for summoning a jury for the second trial of a case which has been sent back from above for a new trial.

De nullo, quod est sua natura indivisible, et divisionem non patitur, nullam partem habebit vidua, sed satisfaciet ei ad valentiam. Co. Litt. 32. A widow shall have no part of that which in its own nature is indivisible, and is not susceptible of division, but let the heir satisfy her with an equivalent.

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

DE ODIO ET ATIA. A writ directed to the sheriff, commanding him to inquire whether a prisoner charged with murder was committed upon just cause of suspicion, or merely propter odio et atiam, (through hatred and ill will); and if, upon the inquisition, due cause of suspicion did not appear, then there issued another writ for the sheriff to admit him to bail. 3 Bl. Comm. 128.

DE OFFICE. L. Fr. Of office; in virtue of office; officially; in the discharge of ordinary duty.

DE ONERANDO PRO RATA PORTIONE. Write for charging according to a rateable proportion. A writ which lay for a joint tenant, or tenant in common, who was distracted for more rent than his proportion of the land came to. Reg. Orig. 182; Fitzh. Nat. Brev. 234, H.

DE PACE ET LEGALITATE TENENDA. For keeping the peace, and for good behavior.


DE PARCO FRACTO. A writ or action for damages caused by a pound-breath, (q. v.) It has long been obsolete. Co. Litt. 476b; 3 Bl. Comm. 146.

DE PARTITIONE FACIENDA. A writ which lay to make partition of lands or tenements held by several as co-parceeners, tenants in common, etc. Reg. Orig. 76; Fitzh. Nat. Brev. 61, R; Old Nat. Brev. 142.

DE PERAMBULATIONE FACIENDA. A writ which lay where there was a dispute as to the boundaries of two adjacent lordships or towns, directed to the sheriff, commanding him to take with him twelve discreet and lawful knights of his county and make the perambulation and set the bounds and limits in certainty. Fitzh. Nat. Brev. 309, D.

DE PIGNORE SURREPTO FURI, ACTIO. In the civil law. An action to recover a pledge stolen. Inst. 4, 1, 14.


DE PLACITO. Of a plea; of or in an action. Formal words used in declarations and other proceedings, as descriptive of the particular action brought.

DE PLAGIS ET MAHEMIO. Of wounds and mayhem. The name of a criminal appeal formerly in use in England, in
cases of wounding and maiming. Bract. fol. 144b; 2 Reeve, Eng. Law, 34. See Appeal.

DE PLANO. Lat. On the ground; on a level. A term of the Roman law descriptive of the method of hearing causes, when the praetor stood on the ground with the suitors, instead of the more formal method when he occupied a bench or tribunal; hence informal, or summary.

DE PLEGIIS ACQUIETANDIS. Writ for acquitting or releasing pledges. A writ that lay for a surety, against him for whom he had become surety for the payment of a certain sum of money at a certain day, where the latter had not paid the money at the appointed day, and the surety was compelled to pay it. Reg. Orig. 158; Fitzh. Nat. Brev. 137, C; 3 Reeve, Eng. Law, 65.

DE PONENDO SIGILLUM AD EXCEPTIONEM. Writ for putting a seal to an exception. A writ by which justices were formerly commanded to put their seals to exceptions taken by a party in a suit. Reg. Orig. 182.

DE POST DISSEISINA. Writ of post disseisin. A writ which lay for him who, having recovered lands or tenements by prœcto quod reidat, on default, or redivision, was again disseised by the former disseisor. Reg. Orig. 208; Fitzh. Nat. Brev. 190.

DE PRÆROGATIVA REGIS. The statute 17 Edw. 1. St. 1. c. 9, defining the prerogatives of the crown on certain subjects, but especially directing that the king shall have ward of the lands of idiots, taking the profits without waste, and finding them necessary. 2 Steph. Comm. 529.

DE PRÆSENTI. Of the present; in the present tense. See Per Verba De Præsentii.

DE PROPRIETATE PROBANDA. Writ for proving property. A writ directed to the sheriff, to inquire of the property or goods distrained, where the defendant in an action of replevin claims the property. 3 Bl. Comm. 145; Reg. Orig. 85b.

DE QUIBUS SUR DISSEISIN. An ancient writ of entry.

DE QUO, and DE QUIBUS. Of which. Formal words in the simple writ of entry, from which it was called a writ of entry "in the quo," or "in the quibus." 3 Reeve, Eng. Law, 33.

DE QUOTA LITIS. In the civil law. A contract by which one who has a claim difficult to recover agrees with another to give a part, for the purpose of obtaining his services to recover the rest. 1 Duval, no. 201.


DE RATIONABILI PARTE BONORUM. A writ which lay for the wife and children of a deceased person against his executors, to recover their reasonable part or share of his goods. 2 Bl. Comm. 492; Fitzh. Nat. Brev. 122, L.


DE REBUS. Of things. The title of the third part of the Digests or Pandects, comprising books 12-19, inclusive.

DE REBUS DUBISI. Of doubtful things or matters. Dig. 34, 5.

DE RECORDO ET PROCESSUM MITTENDIS. Writ to send the record and process of a cause to a superior court; a species of writ of error. Reg. Orig. 209.

DE RECTO. Writ of right. Reg. Orig. 1, 2; Bract. fol. 327b. See Writ of Right.

DE RECTO AD ADVOCATIONE. Writ of right of advowson. Reg. Orig. 296. A writ which lay for one who had an estate in an advowson to him and his heirs in fee-simple, if he were disturbed to present. Fitzh. Nat. Brev. 30, B. Abolished by St. 3 & 4 Wm. IV. c. 27.

DE RECTO DE RATIONABILI PARTE. Writ of right, of reasonable part. A writ which lay between privies in blood, as between brothers in gavelkind, or between sisters or other coparceners for lands in fee-simple, where one was deprived of his or her share by another. Reg. Orig. 30; Fitzh. Nat. Brev. 9, B. Abolished by St. 3 & 4 Wm. IV. c. 27.

DE REDISSISINA. Writ of redisseisin. A writ which lay where a man recovered by assise of novel disseisin land, rent, or common, and the like, and was put in possession thereof by verdict, and afterwards was disseised of the same land, rent, or common, by him by whom he was disseised before. Reg. Orig. 206b, Fitzh. Nat. Brev. 188, B.

DE REPARATIONE FACIENDA. A writ by which one tenant in common seeks to compel another to aid in repairing the property held in common. 8 Barn. & C. 269.

DE RESCUSSU. Writ of rescue or rescous. A writ which lay where cattle trained, or persons arrested, were rescued from those taking them. Reg. Orig. 117, 118; Fitzh. Nat. Brev. 101, C, G.

DE RETORNO HABENDO. For having a return; to have a return. A term applied to the judgment for the defendant in an action of replevin, awarding him a return of the goods repleived; and to the writ or execution issued thereon. 2 Tidd, Pr. 993, 1088; 3 Bl. Comm. 149. Applied also to the sureties given by the plaintiff on commencing the action. Id. 147.

DE RIEN CULPABLE. L. Fr. Guilty of nothing; not guilty.

DE SA VIE. L. Fr. Of his or her life; of his own life; as distinguished from pur autre vie, for another's life. Litt. §§ 85, 86.

DE SALVA GARDIA. A writ of safeguard allowed to strangers seeking their rights in English courts, and apprehending violence or injury to their persons or property. Reg. Orig. 26.


DE SCACCARIO. Of or concerning the exchequer. The title of a statute passed in the fifty-first year of Henry III. 2 Reeve, Eng. Law, 61.

DE SCUTAGIO HABENDO. Writ for having (or to have) escagio or scutage. A writ which anciently lay against tenants by knight-service, to compel them to serve in the king's wars or send substitutes, or to pay escagio; that is, a sum of money. Fitzh. Nat. Brev. 83, C. The same writ lay for one who had already served in the king's army, or paid a fine instead, against those who held of him by knight-service, to recover his escagio or scutage. Reg. Orig. 88; Fitzh. Nat. Brev. 83, D, F.

DE SE BENE GERENDO. For behaving himself well; for his good behavior. Yelv. 90, 154.

DE SECTA AD MOLENDINUM. Of suit to a mill. A writ which lay to compel one to continue his custom (of grinding) at a mill. 3 Bl. Comm. 235; Fitzh. Nat. Brev. 122, M.

De similibus ad similia eadem ratione procedendum est. From like things to like things we are to proceed by the same rule or reason, [i.e., we are allowed to argue from the analogy of cases.] Branch, Princ.

De similibus idem est judicandum. Of [respecting] like things, [in like cases,] the judgment is to be the same. 7 Coke, 18.

DE SON TORT. L. Fr. Of his own wrong. A stranger who takes upon him to act as an executor without any just authority is called an "executor of his own wrong," (de son tort.) 2 Bl. Comm. 507; 2 Steph. Comm. 244.

DE SON TORT DEMESNE. Of his own wrong. The law French equivalent of the Latin phrase de injuria, (q.v.)

DE STATUTO MERCATORIO. The writ of statute merchant. Reg. Orig. 146b.

DE STATUTO STAPULÆ. The writ of statute staple. Reg. Orig. 151.

DE SUPERONERATIONE PASTURÆ. Writ of surcharge of pasture. A judicial writ which lay for him who was implored in the county court, for surcharging a common with his cattle, in a case where he was formerly implored for it in the same court, and the cause was removed into one of the courts at Westminster. Reg. Jud. 36b.

DE TABULIS EXHIBENDIS. Of showing the tablets of a will. Dig. 43, 5.

DE TALLAGIO NON CONCEDENDO. Of not allowing tallage. The name given to the statutes 25 and 34 Edw. 1., restricting the power of the king to grant tallage. 2 Inst. 532; 2 Reeve, Eng. Law, 104.

DE TEMPORE CUJUS CONTRA RIMUM MEMORIA HOMINUM NON EXISTIT. From time whereof the memory of man does not exist to the contrary. Litt. § 170.
DE TEMPORE IN TEMPUS ET AD OMNIA TEMPORA. From time to time, and at all times. Townsh. Pl. 17

DE TEMPS DONT MEMORIE NE COURT. L. Fr. From time whereof memory runneth not; time out of memory of man. Litt. §§ 143, 145, 170.

DE TESTAMENTIS. Of testaments. The title of the fifth part of the Digests or Pandects; comprising the twenty-eighth to the thirty-sixth books, both inclusive.

DE THEOLONIO. A writ which lay for a person who was prevented from taking toll. Reg. Orig. 103.


DE TRANSGRESSIONE, AD AU-DIENDUM ET TERMINANDUM. A writ or commission for the hearing and determining any outrage or misdemeanor.

DE UNA PARTE. A deed de una parte is one where only one party grants, gives, or binds himself to do a thing to another. It differs from a deed inter partes, (q. v.) 2 Bouv. Inst. no. 2001.

DE UXORE RAPTA ET ABDUCTA. A writ which lay where a man's wife had been ravished and carried away. A species of writ of trespass. Reg. Orig. 97; Fitzh. Nat. Brev. 89, 9; 3 Bl. Comm. 139.

DE VASTO. Writ of waste. A writ which might be brought by him who had the immediate estate of inheritance in reversion or remainder, against the tenant for life, in dower, by curtesy, or for years, where the latter had committed waste in lands; calling upon the tenant to appear and show cause why he committed waste and destruction in the place named, to the disinheritson (ad execrationem) of the plaintiff. Fitzh. Nat. Brev. 55, C; 3 Bl. Comm. 227, 228. Abolished by St. 3 & 4 Wm. IV. c. 27. 3 Steph. Comm. 506.

DE VENTRE INSPICIENDI. A writ to inspect the body, where a woman feigns to be pregnant, to see whether she is with child. It lies for the heir presumptive to examine a widow suspected to be feigning pregnancy in order to enable a supposititious heir to obtain the estate. 1 Bl. Comm. 456; 2 Steph. Comm. 287.

It lay also where a woman sentenced to death pleaded pregnancy. 4 Bl. Comm. 495.

This writ has been recognized in America. 2 Chand. Crim. Tr. 381.

DE VERBO IN VERBUM. Word for word. Bract. fol. 1380. Literally, from word to word.

DE VERBORUM SIGNIFICA-TIONE. Of the signification of words. An important title of the Digests or Pandects, (Dig. 50, 16,) consisting entirely of definitions of words and phrases used in the Roman law.

DE VI LAICA AMOVENDA. Writ of (or for) removing lay force. A writ which lay where two parsons contended for a church, and one of them entered into it with a great number of laymen, and held out the other vi et armis; then he that was holden out had this writ directed to the sheriff, that he remove the force. Reg.Orig. 59; Fitzh. Nat. Brev. 54, D.

DE VICINETO. From the neighborhood, or vicinage. 3 Bl. Comm. 360. A term applied to a jury.

DE WARRANTIA CHARTÆ. Writ of warranty of charter. A writ which lay for him who was enfeoffed, with clause of warranty, [in the charter of fee-holdment,] and was afterwards impelled in an assise or other action, in which he could not come or call to warranty; in which case he might have this writ against the feoffor, or his heir, to compel him to warrant the land unto him. Reg. Orig. 157b; Fitzh. Nat. Brev. 134, D. Abolished by St. 3 & 4 Wm. IV. c. 27.

DE WARRANTIA DIEI. A writ that lay where a man had a day in any action to appear in proper person, and the king at that day, or before, employed him in some service, so that he could not appear at the day in court. It was directed to the justices, that they should not record him to be in default for his not appearing. Fitzh. Nat. Brev. 17, A; Termes de la Ley.

DEACON. In ecclesiastical law. A minister or servant in the church, whose office is to assist the priest in divine service and the distribution of the sacrament. It is the lowest order in the Church of England.

DEAD BODY. A corpse.

DEAD FREIGHT. When a merchant who has chartered a vessel puts on board a part only of the intended cargo, but yet, having chartered the whole vessel, is bound to pay freight for the unoccupied capacity, the
freight thus due is called "dead freight." L. R. 6 Q. B. 528; 15 East, 547.

DEAD LETTERS. Letters which the postal department has not been able to deliver to the persons for whom they were intended. They are sent to the "dead-letter office," where they are opened, and returned to the writer if his address can be ascertained.

DEAD MAN'S PART. In English law. That portion of the effects of a deceased person which, by the custom of London and York, is allowed to the administrator; being, where the deceased leaves a widow and children, one-third; where he leaves only a widow or only children, one-half; and, where he leaves neither, the whole. This portion the administrator was wont to apply to his own use, till the statute 1 Jac. II. c. 17, declared that the same should be subject to the statute of distributions. 2 Bl. Comm. 518; 2 Steph. Comm. 254; 4 Reeve, Eng. Law. 83. A similar portion in Scotch law is called "dead's part." (q. v.)

DEAD-PLEDGE. A mortgage; mortu­rum vadium.

DEAD RENT. In English law. A rent payable on a mining lease in addition to a royalty, so called because it is payable although the mine may not be worked.

DEAD USE. A future use.

DEADHEAD. This term is applied to persons other than the officers, agents, or employes of a railroad company who are permitted by the company to travel on the road without paying any fare therefor. Phillips, 21.

DEADLY FEUD. In old European law. A profession of irreconcilable hatred till a person is revenged even by the death of his enemy.

DEADLY WEAPON. Such weapons or instruments as are made and designed for offensive or defensive purposes, or for the destruction of life or the infliction of injury. 8 Bush, 387.

A deadly weapon is one likely to produce death or great bodily harm. 58 Cal. 245.

A deadly weapon is one which in the manner used is capable of producing death, or of inflicting great bodily injury, or seriously wounding. 4 Tex. App. 327.

DEAD'S PART. In Scotch law. The part remaining over beyond the shares secured to the widow and children by law. Of this the testator had the unqualified disposal.

DEAF AND DUMB. A man that is born deaf, dumb, and blind is looked upon by the law as in the same state with an idiot, he being supposed incapable of any understanding. 1 Bl. Comm. 304. Nevertheless, a deaf and dumb person may be tried for felony if the prisoner can be made to understand by means of signs. 1 Leach, C. L. 102.

DEAFFOREST. In old English law. To discharge from being forest. To free from forest laws.

DEAFFORESTED. Discharged from being a forest, or freed and exempted from the forest laws.

DEAL. To traffic; to transact business; to trade. Makers of an accommodation note are deemed dealers with whoever discounts it. 17 Wend. 524.

DEALER. A dealer, in the popular, and therefore in the statutory, sense of the word, is not one who buys to keep, or makes to sell, but one who buys to sell again. 27 Pa. St. 494; 33 Pa. St. 380.

DEALINGS. Transactions in the course of trade or business. Held to include payments to a bankrupt. Moody & M. 137; 3 Car. & L. 85.

DEAN. In English ecclesiastical law. An ecclesiastical dignitary who presides over the chapter of a cathedral, and is next in rank to the bishop. So called from having been originally appointed to superintend canons or prebendaries. 1 Bl. Comm. 382; Co. Litt. 95; Spelman.

There are several kinds of deans, namely: Deans of chapters; deans of peculiar; rural deans; deans in the colleges; honorary deans; deans of provinces.

DEAN AND CHAPTER. In ecclesiastical law. The council of a bishop, to assist him with their advice in the religious and also in the temporal affairs of the see. 3 Coke, 75; 1 Bl. Comm. 382; Co. Litt. 103, 300.

DEAN OF THE ARCHES. The presiding judge of the Court of Arches. He is also an assistant judge in the court of admiralty. 1 Kent, Comm. 371; 3 Steph. Comm. 727.

DEATH. The extinction of life; the departure of the soul from the body; defined by physicians as a total stoppage of the circulation of the blood, and a cessation of the
animal and vital functions consequent thereon, such as respiration, pulsation, etc.

In legal contemplation, it is of two kinds: (1) Natural, i.e., the extinction of life; (2) Civil, where a person is not actually dead, but is adjudged so by the law, as when a person is banished or abjures the realm, or enters into a monastery. Civil death also occurs where a man, by act of parliament or judgment of law, is attainted of treason or felony; for immediately upon such attaint he loses (subject, indeed, to some exceptions) his civil rights and capacities, and becomes, as it were, civiliter mortuus. But now, by the 33 & 34 Vict. c. 23, forfeiture for treason or felony has been abolished, but the person convicted is disqualified for offices, etc. Wharton.

Natural death is also used to denote a death which occurs by the unassisted operation of natural causes, as distinguished from a violent death, or one caused or accelerated by the interference of human agency.


DEATH-BED DEED. In Scotch law. A deed made by a person while laboring under a distemper of which he afterwards died. Ersk. Inst. 3, 8, 96. A deed is understood to be in death-bed, if, before signing and delivery thereof, the grantor was sick, and never convalesced thereafter. 1 Forbes, Inst. pt. 3, b. 2, c. 4, tit. 1, § 1. But it is not necessary that he should be actually confined to his bed at the time of making the deed. Bell.

DEATH'S PART. See Dead's Part; Dead Man's Part.

DEATHSMAN. The executioner; hangman; he that executes the extreme penalty of the law.

DEBAUCH. To entice, to corrupt, and, when used of a woman, to seduce. Originally, the term had a limited signification, meaning to entice or draw one away from his work, employment, or duty; and from this sense its application has enlarged to include the corruption of manners and violation of the person. In its modern legal sense, the word carries with it the idea of "carnal knowledge," aggravated by assault, violent seduction, ravishment. 2 Hilt. 323.

DEBENTURE. A certificate given by the collector of a port, under the United States customs laws, to the effect that an importer of merchandise therein named is entitled to a drawback, (q. v.) specifying the amount and time when payable. See Act Cong. March 2, 1799, § 80.

In English law. A security for a loan of money issued by a public company, usually creating a charge on the whole or a part of the company's stock and property, though not necessarily in the form of a mortgage. They are subject to certain regulations as to the mode of transfer, and ordinarily have coupons attached to facilitate the payment of interest. They are generally issued in a series, with provision that they shall rank pari passu in proportion to their amounts.

An instrument in use in some government departments, by which government is charged to pay to a creditor or his assigns the sum found due on auditing his accounts. Brande; Blount.

DEBENTURE STOCK. A stock or fund representing money borrowed by a company or public body, in England, and charged on the whole or part of its property.

Debet esse finis litium. There ought to be an end of suits; there should be some period put to litigation. Jenk. Cent. 61.

DEBET ET DETINET. He owes and detains. Words anciently used in the original writ, (and now, in English, in the plaintiff's declaration,) in an action of debt, where it was brought by one of the original contracting parties who personally gave the credit, against the other who personally incurred the debt, or against his heirs, if they were bound to the payment; as by the obligee against the obligor, by the landlord against the tenant, etc. The declaration, in such cases, states that the defendant "owes to," as well as "detains from," the plaintiff the debt or thing in question; and hence the action is said to be "in the debet et detinet." Where the declaration merely states that the defendant detains the debt, (as in actions by and against an executor for a debt due to or from the testator,) the action is said to be "in the detinet" alone. Fitzh. Nat. Brev. 119, G.; 3 Bl. Comm. 155.

DEBET ET SOLET. (Lat. He owes and is used to.) Where a man sues in a writ of right or to recover any right of which he is for the first time dispossessed, as of a suit at a mill or in case of a writ of quod permitat, he brings his writ in the debet et solet. Reg. Orig. 144a; Fitzh. Nat. Brev. 122, M.

Debet quis juri subjacere ubi delinquit. One [every one] ought to be subject
Debtor. A sum charged as due or owing. The term is used in book-keeping to denote the charging of a person or an account with all that is supplied to or paid out for him for the subject of the account.


DEBITA LAICORUM. L. Lat. In old English law. Debts of the laity, or of lay persons. Debts recoverable in the civil courts were anciently so called. Crabb, Eng. Law, 107.

Debita sequuntur personam debitoris. Debts follow the person of the debtor; that is, they have no locality, and may be collected wherever the debtor can be found. 2 Kent, Comm. 429; Story, Conf. Laws, § 362.

DEBITOR. In the civil and old English law. A debtor.

Debitor non presumitur donare. A debtor is not presumed to make a gift. Whatever disposition he makes of his property is supposed to be in satisfaction of his debts. 1 Kames, Eq. 212. Where a debtor gives money or goods, or grants land to his creditor, the natural presumption is that he means to get free from his obligation, and not to make a present, unless donation be expressed. Ersk. Inst. 3, 3, 93.

Debitorum pactio from creditorem petitio nec tolli nec minui potest. 1 Poth. Obl. 103; Broom, Max. 697. The rights of creditors can neither be taken away nor diminished by agreements among the debtors.

DEBITRIX. A female debtor.

DEBITUM. Something due, or owing; a debt.

Debitum et contractus sunt nullius loci. Debt and contract are of [belong to]; no place; have no particular locality. The obligation in these cases is purely personal, and actions to enforce it may be brought anywhere. 2 Inst. 251; Story, Conf. Laws. § 362; 1 Smith, Lead. Cas. 340, 363.

DEBITUM IN PRESENTI SOLVENDUM IN FUTURO. A debt or obligation complete when contracted, but of which the performance cannot be required till some future period.

DEBITUM SINE BREVI. L. Lat. Debt without writ; debt without a declaration. In old practice, this term denoted an action begun by original bill, instead of by writ. In modern usage, it is sometimes applied to a debt evidenced by confession of judgment without suit. The equivalent Norman-French phrase was "debit sans breve." Both are abbreviated to d. s. b.

DEBT. A sum of money due by certain and express agreement; as by bond for a determinate sum, a bill or note, a special bargain, or a rent reserved on a lease, where the amount is fixed and specific, and does not depend upon any subsequent valuation to settle it. 3 Bl. Comm. 154.

A debt is a sum of money due by contract. It is most frequently due by a certain and express agreement, which fixes the amount, independent of extrinsic circumstances. But it is not essential that the contract should be express, or that it should fix the precise amount to be paid. 1 Pet. 145.

Standing alone, the word "debts" is as applicable to a sum of money which has been promised at a future day, as to a sum of money now due and payable. To distinguish between the two, it may be said of the former that it is a debt owing, and of the latter that it is a debt due. Whether a claim or demand is a debt or not is in no respect determined by a reference to the time of payment. A sum of money which is certainly and in all events payable is a debt, without regard to the fact whether it be payable now or at a future time. A sum payable upon a contingency, however, is not a debt, or does not become a debt until the contingency has happened. 37 Cal. 534.

The word "debt" is of large import, including not only debts of record, or judgments, and debts by specially, but also obligations arising under simple contract, to a very wide extent; and in its popular sense includes all that is due to a man under any form of obligation or promise. 3 Metc. (Mass.) 523, 526.

"Debt" has been differently defined, owing to the different subject-matter of the statutes in which it has been used. Ordinarily, it imports a
DEBT

sum of money arising upon a contract, express or implied. In its more general sense, it is defined to be that which is due from one person to another, whether money, goods, or services; that which one person is bound to pay or perform to another. Under the legal-tender statutes, it seems to import any obligation by contract, express or implied, which may be discharged by money through the voluntary action of the party bound. Wherever he may be at liberty to perform his obligation by the payment of a specific sum of money, the party owing the obligation is subject to what, in these statutes, is termed "debt." 45 Barb. 618.

The word is sometimes used to denote an aggregate of separate debts, or the total sum of the existing claims against a person or company. Thus we speak of the "national debt," the "bonded debt" of a corporation, etc.

Synonyms. The term "demand" is of much broader import than "debt," and embraces rights of action belonging to the debtors or beyond those which could appropriately be called "debts." In this respect the term "demand" is one of very extensive import. 2 Hill, 223.

The words "debt" and "liability" are not synonymous. As applied to the pecuniary relations of parties, liability is a term of broader significance than debt. The legal acceptance of debt is a sum of money due by certain and express agreement. Liability is responsibility; the state of one who is bound in law and justice to do something which may be enforced by action. This liability may arise from contracts either express or implied, or in consequence of torts committed. 36 Iowa, 225.

"Debt" is not exactly synonymous with "duty." A debt is a legal liability to pay a specific sum of money; a duty is a legal obligation to perform some act. 1 Minor, 120.

In practice. The name of a common-law action, which lies to recover a certain specific sum of money, or a sum that can readily be reduced to a certainty. 3 Bl. Comm. 154; 3 Steph. Comm. 461; 1 Tidd. Pr. 3.

It is said to lie in the debet and detinet, (when it is stated that the defendant owes and detains,) or in the detinet, (when it is stated merely that he detains.) Debt in the detinet for goods differs from detine, because it is not essential in this action, as in detine, that the specific property in the goods should have been vested in the plaintiff at the time the action is brought. Dyer, 246.

DEBT BY SIMPLE CONTRACT. A debt or debt founded upon a verbal or implied contract, or upon any written agreement that is not under seal.

DEBT EX MUTUO. A species of debt or obligation mentioned by Glanville and Bracton, and which arose ex mutuo, out of a certain kind of loan. Glan. lib. 10, c. 3; Bract. fol. 99. See Mutuum; Ex Mutuo.

DEBT OF RECORD. A debt which appears to be due by the evidence of a court of record, as by a judgment or recognizance. 2 Bl. Comm. 465.

DEBTOR. A person to whom a debt is due; a creditor. 3 Bl. Comm. 18; Plowd. 543. Not used.

DEBTOR'S SUMMONS. In English law. A summons issuing from a court having jurisdiction in bankruptcy, upon the creditor proving a liquidated debt of not less than £50, which he has failed to collect after reasonable effort, stating that if the debtor fail, within one week if a trader, and within three weeks if a non-trader, to pay or compound for the sum specified, a petition may be presented against him praying that he may be adjudged a bankrupt. Bankruptcy Act 1869, § 7; Robs. Bankr.; Mozley & Whitley.

DECATOLIGUE. The ten commandments given by God to Moses. The Jews called them the "Ten Words," hence the name.


DECANIA. The office, jurisdiction, territory, or command of a decanus, or dean. Spelman.

DECANUS. In ecclesiastical and old European law. An officer having supervision over ten; a dean. A term applied not only to ecclesiastical, but to civil and military, officers. Decanus monasticus; a monastic dean, or dean of a monastery; an officer over ten monks. Decanus in majori ecclesia; dean of a cathedral church, presid-
ing over ten prebendaries. Decanus episcopi; a bishop’s or rural dean, presiding over ten clerks or parishes. Decanus frriorgi; dean of a friiorg. An officer among the Saxons who presided over a friiorg, tithing, decennary, or association of ten inhabitants; otherwise called a “tithing man,” or “borsholdor.” Decanus militaris; a military officer, having command of ten soldiers. Spelman.

In Roman law. An officer having the command of a company or “mess” of ten soldiers. Also an officer at Constantinople having charge of the burial of the dead.

DECAPITATION. The act of beheading. A mode of capital punishment by cutting off the head.

DECEASE, n. Death; departure from life.

DECEASE, e. To die; to depart life, or from life. This has always been a common term in Scotch law. “Gif ane man deceatis.” Skene.

DECEDENT. A deceased person; one who has lately died. Etymologically the word denotes a person who is dying, but it has come to be used in law as signifying any defunct person, (testate or intestate,) but always with reference to the settlement of his estate or the execution of his will.

DECEIT. A fraudulent and cheating misrepresentation, artifice, or device, used by one or more persons to deceive and trick another, who is ignorant of the true facts, to the prejudice and damage of the party imposed upon.

A subtle trick or device, whereunto may be referred all manner of craft and collusion used to deceive and defraud another by any means whatsoever, which hath no other or more proper name than deceit to distinguish the offense. [West Symb. § 68:] Jacob.

The word “deceit,” as well as “fraud,” excludes the idea of mistake, and imports knowledge that the artifice or device used to deceive or defraud is untrue. 61 Ill. 373.

In old English law. The name of an original writ, and the action founded on it, which lay to recover damages for any injury committed deceitfully, either in the name of another, (as by bringing an action in another’s name, and then suffering a nonsuit, whereby the plaintiff became liable to costs,) or by a fraudulent warranty of goods, or other personal injury committed contrary to good faith and honesty. Reg. Orig. 112–116; Fitzh. Nat. Brev. 95, E, 98.

Also the name of a judicial writ which formerly lay to recover lands which had been lost by default by the tenant in a real action, in consequence of his not having been summoned by the sheriff, or by the collusion of his attorney. Rosc. Real Act. 136; 3 Bl. Comm. 166.

DECEM TALES. (Ten such; or ten tales, jurors.) In practice. The name of a writ which issues in England, where, on a trial at bar, ten jurors are necessary to make up a full panel, commanding the sheriff to summon the requisite number. 3 Bl. Comm. 364; Reg. Jud. 39b; 3 Steph. Comm. 602.

DECEMVIRI LITIBUS JUDICANDIS. Lat. In the Roman law. Ten persons (five senators and five equites) who acted as the council or assistants of the praetor, when he decided on matters of law. Halifax, Civil Law, b. 3, c. 8. According to others, they were themselves judges. Calvin.

DECENNA. In old English law. A tithing or decennary; the precinct of a frankpledge; consisting of ten freeholders with their families. Spelman.

DECENNARIUS. Lat. One who held one-half a virgate of land. Du Cange. One of the ten freeholders in a decennary. Id.; Calvin. Decennier. One of the decennarii, or ten freeholders making up a tithing. Spelman.


Deceptis non decipientibus, jura subveniunt. The laws help persons who are deceived, not those deceiving. Tray. Lat. Max. 149.


DECESSUS. In the civil and old English law. Death; departure.

Decet tamen principem servare leges, quibus ipse servavat est. It behaves, indeed, the prince to keep the laws by which he himself is preserved.

DECIDE. To decide includes the power and right to deliberate, to weigh the reasons for and against, to see which preponderate, and to be governed by that preponderance. 5 Gray, 253.
DECIES TANTUM. (Ten times as much.) The name of an ancient writ that was used against a juror who had taken a bribe in money for his verdict. The injured party could thus recover ten times the amount of the bribe.

DECIMÆ. In ecclesiastical law. Tenth, or tithes. The tenth part of the annual profit of each living, payable formerly to the pope. There were several valuations made of these livings at different times. The decimæ (tithens) were appropriated to the crown, and a new valuation established, by 26 Hen. VIII. c. 3. 1 Bl. Comm. 254. See Tithes.

Decimæ debentur parochio. Tithes are due to the parish priest.

Decimæ de decimatis solvi non debent. Tithes are not to be paid from that which is given for tithes.

Decimæ de jure divino et canonico institutione pertinent ad personam. Dal. 50. Tithes belong to the parson by divine right and canonical institution.

Decimæ non debent solvi, ubi non est annua renovatio; et ex annuatibus renovantibus simul semel. Cro. Jac. 42. Tithes ought not to be paid where there is not an annual renovation, and from annual renovations once only.

DECIMATION. The punishing every tenth soldier by lot, for mutiny or other failure of duty, was termed "decimatio legiorum" by the Romans. Sometimes only the twentieth man was punished, (vicecentimatio,) or the hundredth, (centesimatio.)

DECIME. A French coin of the value of the tenth part of a franc, or nearly two cents.

Decipi quam fallere est tutius. It is safer to be deceived than to deceive. Lofti, 396.

DECISION. In practice. A judgment or decree pronounced by a court in settlement of a controversy submitted to it and by way of authoritative answer to the questions raised before it.

"Decision" is not synonymous with "opinion." A decision of the court is its judgment; the opinion is the reasons given for that judgment. 13 Cal. 27.

DECISIVE OATH. In the civil law. Where one of the parties to a suit, not being able to prove his charge, offered to refer the decision of the cause to the oath of his adversary, which the adversary was bound to accept, or tender the same proposal back again, otherwise the whole was taken as confessed by him. CoL 4, 1, 12.

DECLARANT. A person who makes a declaration.

DECLARATION. In pleading. The first of the pleadings on the part of the plaintiff in an action at law, being a formal and methodical specification of the facts and circumstances constituting his cause of action. It commonly comprises several sections or divisions, called "counts," and its formal parts follow each other in this order: Title, venue, commencement, cause of action, counts, conclusion. The declaration, at common law, answers to the "libel" in ecclesiastical and admiralty law, the "bill" in equity, the "petition" in civil law, the "complaint" in code pleading, and the "count" in real actions.

In evidence. An unsworn statement or narration of facts made by a party to the transaction, or by one who has an interest in the existence of the facts recounted. Or a similar statement made by a person since deceased, which is admissible in evidence in some cases, contrary to the general rule, a. g., a "dying declaration."

In practice. The declaration or declaratory part of a judgment, decree, or order is that part which gives the decision or opinion of the court on the question of law in the case. Thus, in an action raising a question as to the construction of a will, the judgment or order declares that, according to the true construction of the will, the plaintiff has become entitled to the residue of the testator's estate, or the like. Sweet.

In Scotch practice. The statement of a criminal or prisoner, taken before a magistrate. 2 Alis. Crim. Pr. 555.

DECLARATION OF INDEPENDENCE. A formal declaration or announcement, promulgated July 4, 1776, by the congress of the United States of America, in the name and behalf of the people of the colonies, asserting and proclaiming their independence of the British crown, vindicating their pretensions to political autonomy, and announcing themselves to the world as a free and independent nation.

DECLARATION OF INTENTION. A declaration made by an alien, as a preliminary to naturalization, before a court of record, to the effect that it is bona fide his intention to become a citizen of the United
States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty whereof at the time he may be a citizen or subject. Rev. St. § 2165.

DECLARATION OF PARIS. The name given to an agreement announcing four important rules of international law enacted between the principal European powers at the Congress of Paris in 1856. These rules are: (1) Privateering is and remains abolished; (2) the neutral flag covers enemy's goods, except contraband of war; (3) neutral goods, except contraband of war, are not liable to confiscation under a hostile flag; (4) blockades, to be binding, must be effective.

DECLARATION OF RIGHT. See BILL OF RIGHTS.

DECLARATION OF TRUST. The act by which the person who holds the legal title to property or an estate acknowledges and declares that he holds the same in trust to the use of another person or for certain specified purposes. The name is also used to designate the deed or other writing embodying such a declaration.

DECLARATION OF WAR. A public and formal proclamation by a nation, through its executive or legislative department, that a state of war exists between itself and another nation, and forbidding all persons to aid or assist the enemy.

DECLARATOR. In Scotch law. An action whereby it is sought to have some right of property, or of status, or other right judicially ascertained and declared. Bell.

DECLARATOR OF TRUST. In Scotch law. An action resorted to against a trustee who holds property upon titles ex facie for his own benefit. Bell.

DECLARATORY. Explanatory; designed to fix or elucidate what before was uncertain or doubtful; as a declaratory statute, which is one passed to put an end to a doubt as to what the law is, and which declares what it is and what it has been. 1 Bl. Comm. 86.

DECLARATORY ACTION. In Scotch law. An action in which the right of the pursuer (or plaintiff) is craved to be declared, but nothing claimed to be done by the defender, (defendant.) Ersk. Inst. 5, 1, 46. Otherwise called an “action of declarator.”

DECLARATORY DEGREE. In practice. A binding declaration of right in equity without consequential relief.

DECLARATORY JUDGMENT. A declaratory judgment is one which simply declares the rights of the parties, or expresses the opinion of the court on a question of law, without ordering anything to be done.

DECLARATORY PART OF A LAW. That which clearly defines rights to be observed and wrongs to be eschewed.

DECLARE. To solemnly assert a fact before witnesses, e. g., where a testator declares a paper signed by him to be his last will and testament.

This also is one of the words customarily used in the promise given by a person who is affirmed as a witness,—“sincerely and truly declare and affirm.” Hence, to make a positive and solemn asseveration.

With reference to pleadings, it means to draw up, serve, and file a declaration; e. g., a “rule to declare.” Also to allege in a declaration as a ground or cause of action; as “he declares upon a promissory note.”

DECLINATION. In Scotch law. A plea to the jurisdiction, on the ground that the judge is interested in the suit.

DECLINATOIRES. In French law. Pleas to the jurisdiction of the court; also of lis pendens, and of connexité, (q. v.)

DECLINATORY PLEA. In English practice. The plea of sanctuary, or of benefit of clergy, before trial or conviction. 2 Hale, P. C. 236; 4 Bl. Comm. 333. Now abolished. 4 Steph. Comm. 400, note; Id. 493, note.

DECLINATURE. In Scotch practice. An objection to the jurisdiction of a judge. Bell.

DECOCTION. The act of boiling a substance in water, for extracting its virtues. Also the liquor in which a substance has been boiled; water impregnated with the principles of any animal or vegetable substance boiled in it. Webster.

In an indictment “decoction” and “infusion” are eiusdem generis; and if one is alleged to have been administered, instead of the other, the variance is immaterial. 3 Camp. 74.

DECOCTOR. In the Roman law. A bankrupt; a spendthrift; a squanderer of public funds. Calvin.

DECOLLATIO. In old English and Scotch law. Decollation; the punishment of beheading. Fleta, lib. 1, c. 21, § 6.
DECONFES. In French law. A name formerly given to those persons who died without confession, whether they refused to confess or whether they were criminals to whom the sacrament was refused.

DECOY. A pond used for the breeding and maintenance of water-fowl. 11 Mod. 74, 130; 3 Salk. 9.

DECOY LETTER. A letter prepared and mailed for the purpose of detecting a criminal, particularly one who is perpetrating frauds upon the postal or revenue laws. 5 Dill. 39.

DEGREE. In practice. The judgment of a court of equity or admiralty, answering to the judgment of a court of common law. A decree in equity is a sentence or order of the court, pronounced on hearing and understanding all the points in issue, and determining the right of all the parties to the suit, according to equity and good conscience. 2 Daniell, Ch. Pr. 386.

Decree is the judgment of a court of equity, and is, to most intents and purposes, the same as a judgment of a court of common law. A decree, as distinguished from an order, is final, and is made at the hearing of the cause, whereas an order is interlocutory, and is made on motion or petition. Wherever an order may, in a certain event resulting from the direction contained in the order, lead to the termination of the suit in like manner as a decree made at the hearing, it is called a "decretal order." Brown. It is either interlocutory or final; the former where it passes upon some plea or issue arising in the cause, but not involving a definitive adjudication of the main question; the latter where it finally determines the whole matter in dispute.

In French law. Certain acts of the legislature or of the sovereign which have the force of law are called "decrees," as the Berlin and Milan decrees.

In Scotch law. A final judgment or sentence of court by which the question at issue between the parties is decided.

DEGREE DATIVE. In Scotch law. An order of a probate court appointing an administrator.

DEGREE NISI. A provisional decree, which will be made absolute on motion unless cause be shown against it. In English practice, it is the order made by the court for divorce, on satisfactory proof being given in support of a petition for dissolution of marriage; it remains imperfect for at least six months, (which period may be shortened by the court down to three,) and then, unless sufficient cause be shown, it is made absolute on motion, and the dissolution takes effect, subject to appeal. Wharton.

DEGREE OF CONSTITUTION. In Scotch practice. A decree by which a debt is ascertained. Bell.

In technical language, a decree which is requisite to found a title in the person of the creditor, whether that necessity arises from the death of the debtor or of the creditor. Id.

DEGREE OF FORTHCOMING. In Scotch law. A decree made after an arrestment (q. v.) ordering the debt to be paid or the effects of the debtor to be delivered to the arresting creditor. Bell.

DEGREE OF LOCALITY. In Scotch law. The decree of a teind court allocating stipend upon different heritors. It is equivalent to the apportionment of a tithe rent-charge.

DEGREE OF MODIFICATION. In Scotch law. A decree of the teind court modifying or fixing a stipend.

DEGREE OF REGISTRATION. In Scotch law. A proceeding giving immediate execution to the creditor; similar to a warrant of attorney to confess judgment.

DECRET. In Scotch law. The final judgment or sentence of a court.

DECRET ABSOLVITOR. In Scotch law. A decree dismissing a claim, or acquitting a defendant. 2 Kames, Eq. 367.

DECRET ARBITRAL. In Scotch law. An award of arbitrators. 1 Kames, Eq. 312, 313; 2 Kames, Eq. 367.

DECRET COGNITIONIS CAUSA. In Scotch law. When a creditor brings his action against the heir of his debtor in order to constitute the debt against him and attach the lands, and the heir appears and renounces the succession, the court then pronounces a decree cognitionis causa. Bell.

DECRET CONDEMNATOR. In Scotch law. One where the decision is in favor of the plaintiff. Ersk. Inst. 4, 3, 5.

DECRET OF VALUATION OF TEINDS. In Scotch law. A sentence of the court of sessions, (who are now in the place of the commissioners for the valuation of teinds,) determining the extent and value of teinds. Bell.

DECREMENTUM MARIS. Lat. In old English law. Decrease of the sea; the
receding of the sea from the land. Callis, Sewers, (53,) 65. See RELICTION.

DECREPIT. This term designates a person who is disabled, incapable, or incompetent, either from physical or mental weakness or defects, whether produced by age or other causes, to such an extent as to render the individual comparatively helpless in a personal conflict with one possessed of ordinary health and strength. 16 Tex. App. II.

DECRETA. In the Roman law. Judicial sentences given by the emperor as supreme judge.

Decreta conciliorum non ligant reges nostros. Moore, 906. The decrees of councils bind not our kings.

DEC RETAL ORDER. In chancery practice. An order made by the court of chancery, in the nature of a decree, upon a motion or petition.

An order in a chancery suit made on motion or otherwise not at the regular hearing of a cause, and yet not of an interlocutory nature, but finally disposing of the cause, so far as a decree could then have disposed of it. Mozley & Whitley.

DECRETALES BONIFACII OCTAVI. A supplemental collection of the canon law, published by Boniface VIII. in 1298; called, also, "Liber Sectus Decretalium," (Sixth Book of the Decretals.)

DECRETALES GREGORII NONI. The decretals of Gregory the Ninth. A collection of the laws of the church, published by order of Gregory IX. in 1227. It is composed of five books, subdivided into titles, and each title is divided into chapters. They are cited by using an X. (or extra;) thus "Cap. 8 X de Regulis Juris," etc.

DECRETALS. In ecclesiastical law. Letters of the pope, written at the suit or instance of one or more persons, determining some point or question in ecclesiastical law, and possessing the force of law. The decreals form the second part of the body of canon law.

This is also the title of the second of the two great divisions of the canon law, the first being called the "Decrees," (decretum.)

DECRETO. In Spanish colonial law. An order emanating from some superior tribunal, promulgated in the name and by the authority of the sovereign, in relation to ecclesiastical matters. Schm. Civil Law, 93, note.

DECRETUM. In the civil law. A species of imperial constitution, being a judgment or sentence given by the emperor upon hearing of a cause, (quod imperator cognosceo decrevit.) Inst. 1, 2, 6.

In canon law. An ecclesiastical law, in contradistinction to a secular law, (lex) 1 Mackeld. Civil Law, p. 81, § 93, (Kautmann's note.)

DECRETUM GRATIANI. Gratian's decree, or decr emit. A collection of ecclesiastical law in three books or parts, made in the year 1151, by Gratian, a Benediktine monk of Bologna, being the oldest as well as the first in order of the collections which together form the body of the Roman canon law. 1 Bl. Comm. 82; 1 Reeve, Eng. Law, 67.

DECROWNING. The act of depriving of a crown.

DECRY. To cry down; to deprive of credit. "The king may at any time derry or cry down any coin of the kingdom, and make it no longer current." 1 Bl. Comm. 278.

DECURIO. In the provincial administration of the Roman empire, the decurions were the chief men or official personages of the large towns. Taken as a body, the decurions of a city were charged with the entire control and administration of its internal affairs; having powers both magisterial and legislative. See 1 Spence, Eq. Jur. 54.

DEDBANA. In Saxon law. An actual homicide or manslaughter.

DEDI. (Lat. I have given.) A word used in deeds and other instruments of conveyance when such instruments were made in Latin, and anciently held to imply a warranty of title.

DEIDI ET CONCESSI. I have given and granted. The operative words of conveyance in ancient charters of feeblement, and deeds of gift and grant; the English "given and granted" being still the most proper, though not the essential, words by which such conveyances are made. 2 Bl. Comm. 53, 316, 317; 1 Steph. Comm. 164, 177, 473, 474.

DEDICATE. To appropriate and set apart one's private property to some public use; as to make a private way public by acts evincing an intention to do so.
DEDICATION. In real property law. An appropriation of land to some public use, made by the owner, and accepted for such use by or on behalf of the public. 23 Wis. 416; 33 N. J. Law, 13.

A deliberate appropriation of land by its owner for any general and public uses, reserving to himself no other rights than such as are perfectly compatible with the full exercise and enjoyment of the public uses to which he has devoted his property. 22 Wend. 472.

In copyright law. The first publication of a work, without having secured a copyright, is a dedication of it to the public; that having been done, any one may republish it. 5 McLean, 32; 7 West. Law J. 49; 5 McLean, 323.

DEDICATION-DAY. The feast of dedication of churches, or rather the feast day of the saint and patron of a church, which was celebrated not only by the inhabitants of the place, but by those of all the neighboring villages, who usually came thither; and such assemblies were allowed as lawful. It was usual for the people to feast and to drink on those days. Cowell.

DEDIMUS ET CONESSIMUS. (Lat. We have given and granted.) Words used by the king, or where there were moregrantors than one, instead of dedi et convessi.

DEDIMUS POTESTATEM. (We have given power.) In English practice. A writ or commission issuing out of chancery, empowering the persons named therein to perform certain acts, as to administer oaths to defendants in chancery and take their answers, to administer oaths of office to justices of the peace, etc. 3 Bl. Comm. 447. It was anciently allowed for many purposes not now in use, as to make an attorney, to take the acknowledgment of a fine, etc.

In the United States, a commission to take testimony is sometimes termed a “dedimus potestatem.” 3 Cranch, 293; 4 Wheat. 508.

DEDIMUS POTESTATEM DE ATTORNO FACIENDO. In old English practice. A writ, issued by royal authority, empowering an attorney to appear for a defendant. Prior to the statute of Westminster 2, a party could not appear in court by attorney without this writ.

DEDITION. The act of yielding up anything; surrender.

DEDITITII. In Roman law. Criminals who had been marked in the face or on the body with fire or an iron, so that the mark could not be erased, and subsequently manumitted. Calvin.

DEDUCTION. By “deduction” is understood a portion or thing which an heir has a right to take from the mass of the succession before any partition takes place. Civil Code La. art. 1358.

DEDUCTION FOR NEW. In marine insurance. An allowance or drawback credited to the insurers on the cost of repairing a vessel for damage arising from the perils of the sea insured against. This allowance is usually one-third, and is made on the theory that the parts restored with new materials are better, in that proportion, than they were before the damage.

DEED. A sealed instrument, containing a contract or covenant, delivered by the party to be bound thereby, and accepted by the party to whom the contract or covenant runs.

A writing containing a contract sealed and delivered to the party thereto. 3 Washb. Real Prop. 239.

In its legal sense, a “deed” is an instrument in writing, upon paper or parchment, between parties able to contract, subscribed, sealed, and delivered. 60 Ind. 572; 4 Kent, Comm. 452.

In a more restricted sense, a written agreement, signed, sealed, and delivered, by which one person conveys land, tenements, or hereditaments to another. This is its ordinary modern meaning.

The term is also used as synonymous with “fact,” “actuality,” or “act of parties.” Thus a thing “in deed” is one that has been really or expressly done; as opposed to “in law,” which means that it is merely implied or presumed to have been done.

DEED INDENTED, or INDENTURE. In conveyancing. A deed executed or purporting to be executed in parts, between two or more parties, and distinguished by having the edge of the paper or parchment on which it is written indented or cut at the top in a particular manner. This was formerly done at the top or side, in a line resembling the teeth of a saw; a formality derived from the ancient practice of dividing chirographs; but the cutting is now made either in a waving line, or more commonly by notching or nicking the paper at the edge. 2 Bl. Comm. 295, 296; Litt. § 370; Smith, Cont. 12.
DEED OF COVENANT. Covenants are sometimes entered into by a separate deed, for title, or for the indemnity of a purchaser or mortgagee, or for the production of title-deeds. A covenant with a penalty is sometimes taken for the payment of a debt, instead of a bond with a condition, but the legal remedy is the same in either case.

DEED POLL. In conveyancing. A deed of one part or made by one party only; and originally so called because the edge of the paper or parchment was polled or cut in a straight line, wherein it was distinguished from a deed indented or indenture.

DEED TO DECLARE USES. A deed made after a fine or common recovery, to show the object thereof.

DEED TO LEAD USES. A deed made before a fine or common recovery, to show the object thereof.

DEEM. To hold; consider; adjudge; condemn. When, by statute, certain acts are "deemed" to be a crime of a particular nature, they are such crime, and not a semblance of it, nor a mere fanciful approximation to or designation of the offense. 132 Mass. 247.

DEEMSTERS. Judges in the Isle of Man, who decide all controversies without process, writings, or any charges. These judges are chosen by the people, and are said by Spelman to be two in number. Spelman.

DEER-FALD. A park or fold for deer.

DEER-HAYES. Engines or great nets made of cord to catch deer. 19 Hen. VIII. c. 11.

DEFAOLUMNS. The act of a defaulter; misappropriation of trust funds or money held in any fiduciary capacity; failure to properly account for such funds. Usually spoken of officers of corporations or public officials.

DEFALCATION. The diminution of a debt or claim by deducting from it a smaller claim held by the debtor or payor.

DEFAMATION. The taking from one's reputation. The offense of injuring a person's character, fame, or reputation by false and malicious statements. The term seems to be comprehensive of both libel and slander.

DEFAMES. L. Fr. Infamous. Britt. c. 15.

DEFAULT. The omission or failure to fulfill a duty, observe a promise, discharge an obligation, or perform an agreement.

In practice. Omission; neglect or failure. When a defendant in an action at law omits to plead within the time allowed him for that purpose, or fails to appear on the trial, he is said to make default, and the judgment entered in the former case is technically called a "judgment by default." 3 Bl. Comm. 396; 1 Tidd, Pr. 562.

DEFAULTER. One who makes default. One who misappropriates money held by him in an official or fiduciary character, or fails to account for such money.

DEFEASANCE. An instrument which defeats the force or operation of some other deed or estate. That which is in the same deed is called a "condition;" and that which is in another deed is a "defeasance." Com. Dig. "Defeasance."

In conveyancing. A collateral deed made at the same time with a feoffment or other conveyance, containing certain conditions, upon the performance of which the estate then created may be defeated or totally undone. 2 Bl. Comm. 327; Co. Litt. 236, 237.

An instrument accompanying a bond, recognizance, or judgment, containing a condition which, when performed, defeats or undoes it. 2 Bl. Comm. 342; Co. Litt. 236, 237.

DEFEASIBLE. Subject to be defeated, annulled, revoked, or undone upon the happening of a future event or the performance of a condition subsequent, or by a conditional limitation. Usually spoken of estates and interests in land. For instance, a mortgagor's estate is defeasible (liable to be defeated) by the mortgagor's equity of redemption.

DEFEAT. See Defeasance.

DEFECT. The want or absence of some legal requisite; deficiency; imperfection; insufficiency.

DEFECTUM. Challenge propter. See Challenge.

DEFECTUS SANGUINIS. Lat. Failure of issue.

DEFEND. To prohibit or forbid. To deny. To contest and endeavor to defeat a claim or demand made against one in a court of justice. To oppose, repel, or resist.
DEFEND

In covenants of warranty in deeds, it means to protect, to maintain or keep secure, to guaranty, to agree to indemnify.

DEFENDANT. The person defending or denying; the party against whom relief or recovery is sought in an action or suit.

In common usage, this term is applied to the party put upon his defense, or summoned to answer a charge or complaint, in any species of action, civil or criminal, at law or in equity. Strictly, however, it does not apply to the person against whom a real action is brought, for in that proceeding the technical usage is to call the parties respectively the "demandant" and the "tenant."

DEFENDANT IN ERROR. The distinctive term appropriate to the party against whom a writ of error is sued out.

DEFENDEMUS. Lat. A word used in grants and donations, which binds the donor and his heirs to defend the donee, if any one go about to lay any incumbrance on the thing given other than what is contained in the deed of donation. Bract. I, 2, c. 16.

DEFENDER. (Fr.) To deny; to defend; to conduct a suit for a defendant; to forbid; to prevent; to protect.

DEFENDER. In Scotch and canon law. A defendant.

DEFENDER OF THE FAITH. A peculiar title belonging to the sovereign of England, as that of "Catholic" to the king of Spain, and that of "Most Christian" to the king of France. These titles were originally given by the popes of Rome; and that of Defender Fidel was first conferred by Pope Leo X. on King Henry VIII., as a reward for writing against Martin Luther; and the bull for it bears date quintd Idus Octob., 1521. Enc. Lond.

DEFENDERE SE PER CORPUS SUUM. To offer duel or combat as a legal trial and appeal. Abolished by 59 Geo. III. § 46. See BATTDEL.

DEFENDERE UNICA MANU. To wage law; a denial of an accusation upon oath. See WAGER OF LAW.

DEFENDIT VIM ET INJURIAM. He defends the force and injury. Fleta, lib. 5, c. 39, § 1.

DEFENDOUR. L. Fr. A defender or defendant; the party accused in an appeal. Brit. c. 22.

DEFENERATION. The act of lending money on usury.

DEFENSE. In old English law. A park or place fenced in for deer, and defended as a property and peculiar for that use and service. Cowell.

DEFENSE. That which is offered and alleged by the party proceeded against in an action or suit, as a reason in law or fact why the plaintiff should not recover or establish what he seeks; what is put forward to defeat an action. More properly what is sufficient when offered for this purpose. In either of these senses it may be either a denial, justification, or concession and avoidance of the facts averred as a ground of action, or an exception to their sufficiency in point of law.

In a stricter sense, defense is used to denote the answer made by the defendant to the plaintiff's action, by demurrer or plea at law or answer in equity. This is the meaning of the term in Scotch law. Ersk. Inst. 4, 1, 66.

Half defense was that which was made by the form "defends the force and injury, and says," (defendit vim et injuriam, et dicit.)

Full defense was that which was made by the form "defends the force and injury when and where it shall beware him, and the damages, and whatever else he ought to defend," (defendit vim et injuriam quando et ubi curia consideravit, et damna et quodquid quod ipsa defendere debet, et dicit,) commonly shortened into "defends the force and injury when," etc. Gilb. Com. Pl. 188; 8 Term. 632; 3 Bos. & P. 9, note; Co. Litt. 127b.

In matrimonial suits, in England, defenses are divided into absolute, t. c., suas as, being established to the satisfaction of the court, are a complete answer to the petition, so that the court can exercise no discretion, but is bound to dismiss the petition; and discretionary, or such as, being established, leave to the court a discretion whether it will pronounce a decree or dismiss the petition. Thus, in a suit for dissolution, condonation is an absolute, adultery by the petitioner a discretionary, defense. Browne, Div. 30.

Defense also means the forcible repelling of an attack made unlawfully with force and violence.

In old statutes and records, the term means prohibition; denial or refusal. Encontre le defense et le commandement de Roy; against the prohibition and commandment of the king. St. Westm. 1, c. 1. Also a state of severity, or of several or exclusive occupancy; a state of inclusion.

DEFENSE AU FOND EN DROIT. In French and Canadian law. A demurrer.

DEFENSE AU FOND EN FAIT. In French and Canadian law. The general issue. 3 Low. Can. 421.
DEFENSIVA. In old English law. A lord or earl of the marches, who was the warden and defender of his country. Cowell.

DEFENSIVE ALLEGATION. In English ecclesiastical law. A species of pleading, where the defendant, instead of denying the plaintiff's charge upon oath, has any circumstances to offer in his defense. This entitles him, in his turn, to the plaintiff's answer upon oath, upon which he may proceed to proofs as well as his antagonist. 3 Bl. Comm. 100; 3 Steph. Comm. 720.

DEFENSIVE WAR. A war in defense of, or for the protection of, national rights. It may be defensive in its principles, though offensive in its operations. 1 Kent, Comm. 50, note.

DEFENSOR. That part of any open field or place that was allotted for corn or hay, and upon which there was no common or feeding, was anciently said to be in defenso; so of any meadow ground that was laid in for hay only. The same term was applied to a wood where part was inclosed or fenced, to secure the growth of the underwood from the injury of cattle. Cowell.

DEFENSOR. In the civil law. A defender; one who assumed the defense of another's case in court. Also an advocate. A tutor or curator.

In canon law. The advocate or patron of a church. An officer who had charge of the temporalities of the church.

In old English law. A guardian, defender, or protector. The defendant in an action. A person vouched in to warranty.

DEFENSOR CIVITATIS. Lat. Defender or protector of a city or municipality. An officer under the Roman empire, whose duty it was to protect the people against the injustice of the magistrates, the insolence of the subaltern officers, and the rapacity of the money-lenders. Schm. Civil Law, Introd. 16; Cod. 1, 55, 4. He had the powers of a judge, with jurisdiction of pecuniary causes to a limited amount, and the lighter species of offenses. Cod. 1, 55, 1; Nov. 15, c. 3, § 2; Id. c. 6, § 1. He had also the care of the public records, and powers similar to those of a notary in regard to the execution of wills and conveyances.

DEFENSUM. An inclosure of land; any fenced ground. See DEFENSO.

DEFERRED LIFE ANNUITIES. In English law. Annuities for the life of the purchaser, but not commencing until a date subsequent to the date of buying them, so that, if the purchaser die before that date, the purchase money is lost. Granted by the commissioners for reduction of the national debt. See 16 & 17 Vict. c. 45, § 2. Wharton.

DEFERRED STOCK. Stock in a corporation is sometimes divided into "preferred," the holders of which are entitled to a fixed dividend payable out of the net earnings of the whole stock, and "deferred," the holders of which are entitled to all the residue of the net earnings after such fixed dividend has been paid to the holders of the preferred stock. Wharton.

Deficiente uno sanguine non potest esse haeres. 3 Coke, 41. One blood being wanting, he cannot be heir. But see § 8 & 4 Wm. IV. c. 106, § 9, and 33 & 34 Vict. c. 23, § 1.

DEFICIT. Something wanting, generally in the accounts of one intrusted with money, or in the money received by him.

DEFINE. To explain or state the exact meaning of words and phrases; to settle, make clear, establish boundaries.

"An examination of our Session Laws will show that acts have frequently been passed, the constitutionality of which has never been questioned, where the powers and duties conferred could not be considered as merely explaining or making more clear those previously conferred or attempted to be, although the word 'define' was used in the title. In legislation it is frequently used in the creation, enlarging, and extending the powers and duties of boards and officers, in defining certain offenses and providing punishment for the same, and thus enlarging and extending the scope of the criminal law. And it is properly used in the title where the object of the act is to determine or fix boundaries, more especially where a dispute has arisen concerning them. It is used between different governments, as to define the extent of a kingdom or country." 36 Mich. 452.

DEFINITION. A description of a thing by its properties; an explanation of the meaning of a word or term. Webster. The process of stating the exact meaning of a word by means of other words. Worcester.

DEFINITIVE. That which finally and completely ends and settles a controversy. A definitive sentence or judgment is put in opposition to an interlocutory judgment.

A distinction may be taken between a final and a definitive judgment. The former term is applicable when the judgment exhausts the powers of the particular court in which it is rendered; while the latter word designates a judgment that is above any review or contingency of reversal. 1 Cranch 108.
DEFINITIVE SENTENCE. The final judgment, decree, or sentence of an ecclesiastic court. 3 Bl. Comm. 101.

DEFLORATION. Seduction or debauching. The act by which a woman is deprived of her virginity.

DEFORCE. In English law. To withhold wrongfully; to withhold the possession of lands from one who is lawfully entitled to them. 3 Bl. Comm. 172.

In Scotch law. To resist the execution of the law; to oppose by force a public officer in the execution of his duty. Bell.

DEFORCEMENT. Deforcement is where a man wrongfully holds lands to which another person is entitled. It therefore includes disesein, abatement, discontinuance, and intrusion. Co. Litt. 277b, 331b. But it is applied especially to cases, not falling under those heads, where the person entitled to the freehold has never had possession; thus, where a lord has a seignory, and lands escheat to him propter defectum sanguinis, but the seisin is withheld from him, this is a deforcement, and the person who withholds the seisin is called a "deforcer." 3 Bl. Comm. 172.

In Scotch law. The opposition or resistance made to messengers or other public officers while they are actually engaged in the exercise of their offices. Ersk. Inst. 4, 4, 32.

DEFORCIANT. One who wrongfully keeps the owner of lands and tenements out of the possession of them. 2 Bl. Comm. 350.

DEFORCIARE. To withhold lands or tenements from the rightful owner. This is a word of art which cannot be supplied by any other word. Co. Litt. 331b.

DEFORCIATIO. In old English law. A distress, distraint, or seizure of goods for satisfaction of a lawful debt. Cowell.

DEFOSION. The punishment of being buried alive.

DEFRAUD. To practice fraud; to cheat or trick; to deprive a person of property or any interest, estate, or right by fraud, deceit, or artifice.

DEFRAUDACION. In Spanish law. The crime committed by a person who fraudulently avoids the payment of some public tax.

DEFRAUDACION. Privation by fraud.

DEFUNCT. Deceased; a deceased person. A common term in Scotch law.

DEGASTER. L. Fr. To waste.

DEGRADATION. A deprivation of dignity; dismissal from office. An ecclesiastical censure, whereby a clergyman is divested of his holy orders. There are two sorts by the canon law,—one summary, by word only; the other solemn, by stripping the party degraded of those ornaments and rights which are the ensigns of his degree. Degradation is otherwise called "deposition," but the canonists have distinguished between these two terms, deeming the former as the greater punishment of the two. There is likewise a degradation of a lord or knight at common law, and also by act of parliament. Wharton.

DEGRADATIONS. A term for waste in the French law.

DEGRADING. Reviling; holding one up to public obloquy; lowering a person in the estimation of the public.

DEGREE. In the law of descent and family relations. A step or grade, i. e., the distance, or number of removes, which separates two persons who are related by consanguinity. Thus we speak of cousins in the "second degree."

In criminal law. The term "degree" denotes a division or classification of one specific crime into several grades or stadia of guilt, according to the circumstances attending its commission. Thus, in some states, there may be "murder in the second degree."

DEHORS. L. Fr. Out of; without; beyond; foreign to; unconnected with. Dehors the record; foreign to the record. 3 Bl. Comm. 387.

DEI GRATIA. Lat. By the grace of God. A phrase used in the formal title of a king or queen, importing a claim of sovereignty by the favor or commission of God. In ancient times it was incorporated in the titles of inferior officers, (especially ecclesiastical,) but in later use was reserved as an assertion of "the divine right of kings."

DEI JUDICICUM. The judgment of God. The old Saxon trial by ordeal, so called because it was thought to be an appeal to God for the justice of a cause, and it was believed that the decision was according to the will and pleasure of Divine Providence. Wharton.

DEJACION. In Spanish law. Surrender; release; abandonment; e. g., the act of an insolvent in surrendering his property for
the benefit of his creditors, of an heir in

renouncing the succession, the abandonment

of insured property to the underwriters.

DEJERATION. A taking of a solemn

oath.

DEL BIEN ESTRE. L. Fr. In old

English practice. Of well being; of form.

The same as de bene esse. Brit. c. 39.

DEL CREDERE. In mercantile law.

A phrase borrowed from the Italians, equi-

alent to our word "guaranty" or "warranty,"

or the Scotch term "warrandice;" an agree-

ment by which a factor, when he sells goods

on credit, for an additional commission,

(called a "del credere commission,") guaran-

ties the solvency of the purchaser and his

performance of the contract. Such a factor

is called a "del credere agent." He is a mere

surety, liable only to his principal in case the

purchaser makes default. Story, Ag. 28.

DELAISSEMENT. In French marine


ch. 17.

DELATE. In Scotch law. To accuse.

Delated, accused. Delatit off arte and parte,

accused of being accessory to. 3 How. St.

Tr. 423, 440.

DELATIO. In the civil law. An accu-

sation or information.

DELATOR. An accuser; an informer;

a sycophant.

DELECTURA. In old English law. The

reward of an informer. Whishaw.

DELECTUS PERSONÆ. Lat. Choice

of the person. By this term is understood

the right of a partner to exercise his choice

and preference as to the admission of any

new members to the firm, and as to the per-

sons to be so admitted, if any.

In Scotch law. The personal preference

which is supposed to have been exercised by

a landlord in selecting his tenant, by the

members of a firm in making choice of part-

ners, in the appointment of persons to office,

and other cases. Nearly equivalent to per-

sonal trust, as a doctrine in law. Bell.

Delegata potestas non potest delegari.

2 Inst. 537. A delegated power cannot be

delegated.

DELEGATE. A person who is delegated

or commissioned to act in the stead of an-

other; a person to whom affairs are commit-

ted by another; an attorney.

A person elected or appointed to be a mem-

ber of a representative assembly. Usually

spoken of one sent to a special or occasional

assembly or convention.

The representative in congress of one of

the organized territories of the United States.

DELEGATES, THE HIGH COURT

OF. In English law. Formerly the court

of appeal from the ecclesiastical and admir-

alty courts. Abolished, upon the judicial com-

mittee of the privy council being constituted

the court of appeal in such cases.

DELEGATION. A sending away; a

putting into commission; the assignment of

debt to another; the intrusting another

with a general power to act for the good of

those who depute him.

At common law. The transfer of au-

thority by one person to another; the act of

making or commissioning a delegate.

The whole body of delegates or representa-

tives sent to a convention or assembly from

one district, place, or political unit are col-

lectively spoken of as a "delegation."

In the civil law. A species of novation

which consists in the change of one debtor

for another, when he who is indebted sub-

stitutes a third person who obligates himself

in his stead to the creditor, so that the first

debtor is acquitted and his obligation extin-

guished, and the creditor contents himself

with the obligation of the second debtor.

Delegation is essentially distinguished from

any other species of novation, in this: that

the former demands the consent of all three

parties, but the latter that only of the two

parties to the new debt. 1 Domat, § 2318;

48 Miss. 454.

Delegation is novation effected by the in-

tervention of another person whom the debt-

or, in order to be liberated from his cred-

itor, gives to such creditor, or to him whom

the creditor appoints; and such person so

given becomes obliged to the creditor in the

place of the original debtor. Burge, Sur. 173.

Delegatus non potest delegare. A de-

legate cannot delegate; an agent cannot dele-

gate his functions to a subagent without the

knowledge or consent of the principal; the

person to whom an office or duty is delegated

cannot lawfully devolve the duty on anoth-

er, unless he be expressly authorized so to

do. 9 Coke, 77; Broom, Max. 840; 2 Kent,


DELESTAGE. In French marine law.

A discharging of ballast (lest) from a vessel.
DELIBERATE. adj. By the use of this word, in describing a crime, the idea is conveyed that the perpetrator weighs the motives for the act and its consequences, the nature of the crime, or other things connected with his intentions, with a view to a decision thereon; that he carefully considers all these; and that the act is not suddenly committed. It implies that the perpetrator must be capable of the exercise of such mental powers as are called into use by deliberation and the consideration and weighing of motives and consequences. 28 Iowa, 524.

"Deliberation" and "premeditation" are of the same character of mental operations, differing only in degree. Deliberation is but prolonged premeditation. In other words, in law, deliberation is premeditation in a cool state of the blood, or, where there has been heat of passion, it is premeditation continued beyond the period within which there has been time for the blood to cool, in the given case. Deliberation is not only to think of beforehand, which may be but for an instant, but the inclination to do the act is considered, weighed, pondered upon, for such a length of time after a provocation is given as the jury may find was sufficient for the blood to cool. One in a heat of passion may premeditate without deliberating. Deliberation is only exercised in a cool state of the blood, while premeditation may be either in that state of the blood or in the heat of passion. 74 Mo. 249. See, also, 20 Tex. 522; 15 Nev. 173; 5 Mo. 364; 66 Mo. 13.

DELICIT. In the civil law. A wrong or injury; an offense; a violation of public or private duty. It will be observed that this word, taken in its most general sense, is wider in both directions than our English term "tort." On the one hand, it includes those wrongful acts which, while directly affecting some individual or his property, yet extend in their injurious consequences to the peace or security of the community at large, and hence rise to the grade of crimes or misdemeanors. These acts were termed in the Roman law "public delicts;" while those for which the only penalty exacted was compensation to the person primarily injured were denominated "private delicts." On the other hand, the term appears to have included injurious actions which transpired without any malicious intention on the part of the doer. Thus Pothier gives the name "quasi delicts" to the acts of a person who, without malignity, but by an inexcusable imprudence, causes an injury to another. Poth. Obl. 116. But the term is used in modern jurisprudence as a convenient synonym of "tort," that is, a wrongful and injurious violation of a jus in rem or right available against all the world. This appears in the two contrasted phrases, "actions ex contractu" and "actions ex delicto."

DELICTUM. Lat. A delict, tort, wrong, injury, or offense. Actions ex delicto are such as are founded on a tort, as distinguished from actions on contract.

Culpability, blameworthiness, or legal delinquency. The word occurs in this sense in the maxim, "In pari delicto melior est conditio defendentis," (which see.)

A challenge of a juror proper delictum is for some crime or misdemeanor that affects his credit and renders him infamous. 3 Bl. Comm. 363; 2 Kent, Comm. 241.

DELIMIT. To mark or lay out the limits or boundary line of a territory or country.

DELIMITATION. The act of fixing, marking off, or describing the limits or boundary line of a territory or country.

Dilenquens per iram provocatus puniri debet mitius. 3 Inst. 55. A delinquent provoked by anger ought to be punished more mildly.

DELIQUENT. In the civil law. He who has been guilty of some crime, offense, or failure of duty.

DELIRIUM. In medical jurisprudence. Delirium is that state of the mind in which
it acts without being directed by the power of volition, which is wholly or partially sus-
pended. This happens most perfectly in dreams. But what is commonly called "de-
lirium" is always preceded or attended by a feverish and highly diseased state of the
body. The patient in delirium is wholly un-
conscious of surrounding objects, or con-
"erves them to be different from what they
really are. His thoughts seem to drift about,
 wildering and tossing amidst distracted
dreams. And his observations, when he makes any, as often happens, are wild and
incoherent; or, from excess of pain, he sinks
into a low muttering, or silent and death-like
stupor. Rush, Mind, 9, 298.

The law contemplates this species of men-
tal derangement as an intellectual eclipse; as
a darkness occasioned by a cloud of disease
passing over the mind; and which must soon
terminate in health or in death. 1 Blan.
386.

DEdIIRIUM FEBrILE. In medical ju-
risprudence. A form of mental aberration
incident to fevers, and sometimes to the last
stages of chronic diseases.

DElIRIUM TREMENS. A species of
mental aberration or temporary insanity
which is induced by the excessive and pro-
tracted use of intoxicating liquors.

DELIro. In Spanish law. Crime; a
crime, offense, or delict. White, New Recop.
b. 2, tit. 19, c. 1, § 4.

DElIerance. In practice. The
verdict rendered by a jury.

DElIery. In conveyancing. The
final and absolute transfer of a deed, properly
executed, to the grantee, or to some person
for his use, in such manner that it cannot be
recalled by the grantor. 13 N. J. Eq. 455;
1 Dev. Eq. 14.

In the law of sales. The tradition or
transfer of the possession of personal prop-
erty from one person to another.

Delivery is either actual or constructive. Thus,
if goods cannot conveniently be actually handed
from one person to another, as if they are in a
warehouse or a ship, the delivery of the key of the
warehouse, a delivery of goods, bill of lading, etc., is
a constructive or symbolical delivery of the goods
themselves. Williams, Pers. Prop. 57; Benj. Sales,
573.

In medical jurisprudence. The act of
a woman giving birth to her offspring.

DEIIEIrIY BonD. A bond given
upon the seizure of goods (as under the rev-

enue laws) conditioned for their restoration
to the defendant, or the payment of their val-
ue, if so adjudged.

DElIery OrDEr. An order ad-
ressed, in England, by the owner of goods
to a person holding them on his behalf, re-
questing him to deliver them to a person
named in the order. Delivery orders are
chiefly used in the case of goods held by dock
companies, wharfingers, etc.

DELUsion. In medical jurisprudence.
An insane delusion is an unreasoning and in-
corrigible belief in the existence of facts which
are either impossible absolutely, or, at least,
impossible under the circumstances of the
individual. It is never the result of reasoning
and reflection; it is not generated by them,
and it cannot be dispelled by them; and hence
it is not to be confounded with an opinion,
however fantastic the latter may be. 10 Fed.
Rep. 170.

DEII. An abbreviation for "demise;" e.
. g., Doe dem. Smith, Doe, on the demise of
Smith.

DEIIAiN. See DeMMsbNE.

DEIIAND, v. In practice. To claim
as one's due; to require; to ask relief. To
summon; to call in court. "Although sol-
emnly demanded, comes not, but makes de-
fault."

DEIIAND, n. A claim; the assertion of a
legal right; a legal obligation asserted in the
courts. "Demand" is a word of art of an ex-
tent greater in its signification than any other
word except "claim." Co. Litt. 291; 2 Hill,
220.

Demand embraces all sorts of actions, rights, and
titles, conditions before or after breach, executions,
appeals, rents of all kinds, covenants, annuities,
contracts, recognizances, statutes, commons, etc.
A release of all demands to date bars an action for
damages accruing after the date from a nuisance
previously erected. 1 Denio, 267.

Demand is more comprehensive in import than
"debt" or "duy." 4 Johns. 586; 2 Hill, 230.

Demand, or claim, is properly used in reference
to a cause of action. 32 How. Pr. 290.

An imperative request preferred by one
person to another, under a claim of right, re-
quiring the latter to do or yield something or
to abstain from some act.

DEIIAND IN RECONVENTION. A
demand which the defendant institutes in con-
sequence of that which the plaintiff has
brought against him. Used in Louisiana.

DEIIANDA. In Spanish law. The pet-
tion of a plaintiff, setting forth his demand.
Las Partidas, pt. 3, tit. 10, l. 3.
DEMANDANT. The plaintiff or party suing in a real action. Co. Litt. 127.

DEMANDRESS. A female demandant.

DEMEASE. In old English law. Death.

DEMEMBRATION. In Scotch law. Maliciously cutting off or otherwise separating one limb from another. 1 Hume, 323; Bell.

DEMENS. One whose mental faculties are enfeebled; one who has lost his mind; distinguishable from amens, one totally insane. 4 Coke, 128.

DEMENTED. Of unsound mind.

DEMENTENANT EN AVANT. L. Fr. From this time forward. Kelham.

DEMENTIA. In medical jurisprudence. That form of insanity where the mental derangement is accompanied with a general derangement of the faculties. It is characterized by forgetfulness, inability to follow any train of thought, and indifference to passing events. 4 Sawy. 677; per Field, J.

Senile dementia is that peculiar decay of the mental faculties which occurs in extreme old age, and in many cases much earlier, whereby the person is reduced to second childhood, and becomes sometimes wholly incompetent to enter into any binding contract, or even to execute a will. It is the recurrence of second childhood by mere decay. 1 Redif. Wills, 63.

Dementia denotes an impaired state of the mental powers, a f easliness of mind caused by disease, and not accompanied by delusion or uncontrollable impulse, without defining the degree of incapacity. Dementia may exist without complete prostration of the mental powers. 44 N. H. 531.

DEMESNE. Domain; dominical; held in one's own right, and not of a superior; not allotted to tenants. See DEMESNE LANDS.

In the language of pleading, own; proper; original. Thus, son assault demesne, his own assault, his assault originally or in the first place.

DEMESNE AS OF FEE. A man is said to be seised in his demesne as of fee of a corporeal inheritance, because he has a property, dominicum or demesne, in the thing itself. But when he has no dominion in the thing itself, as in the case of an incorporeal hereditament, he is said to be seised as of fee, and not in his demesne as of fee. 2 Bl. Comm. 106; Littleton, § 10; 17 Serg. & R. 196.

DEMESNE LANDS. In English law. Those lands of a manor not granted out in tenancy, but reserved by the lord for his own use and occupation. Lands set apart and appropriated by the lord for his own private use, as for the supply of his table, and the maintenance of his family; the opposite of tenement lands. Tenancy and demesne, however, were not in every sense the opposites of each other; lands held for years or at will being included among demesne lands, as well as those in the lord's actual possession. Spelman; 2 Bl. Comm. 90.

DEMESNE LANDS OF THE CROWN. That share of lands reserved to the crown at the original distribution of landed property, or which came to it afterwards by forfeiture or otherwise. 1 Bl. Comm. 286; 2 Steph. Comm. 550.

DEMSNIAL. Pertaining to a demesne.

DEMI. French. Half; the half. Used chiefly in composition.

DEMI-MARK. Half a mark; a sum of money which was anciently required to be tendered in a writ of right, the effect of such tender being to put the demandant, in the first instance, upon proof of the seisin as stated in his count; that is, to prove that the seisin was in the king's reign there stated. Rose. Real Act. 216.

DEMI-OFFICIAL. Partly official or authorized. Having color of official right.

DEMI-SANGUE, or DEMY-SANGUE. Half-blood.

DEMI-VILL. A town consisting of five freemen, or frank-pledges. Spelman.

DEMIDIEtas. In old records. A half or moiety.

DEMIES. In some universities and colleges this term is synonymous with "scholars."

DEMINUTIO. In the civil law. A taking away; loss or deprivation. See CAPTRIS DEMINUTIO.

DEMISE, v. In conveyancing. To convey or create an estate for years or life; to lease. The usual and operative word in leases: "Have granted, demised, and to farm let, and by these presents do grant, demise, and to farm let." 2 Bl. Comm. 317; 1 Steph. Comm. 476; Co. Litt. 45a.

DEMISE, n. In conveyancing. A conveyance of an estate to another for life, for years,
or at will; most commonly for years; a lease. 1 Steph. Comm. 475.

Originally a posthumous grant; commonly a lease or conveyance for a term of years; sometimes applied to any conveyance, in fee, for life, or for years. Pub. St. Mass. 1882, p. 1289.

"Demise" is synonymous with "lease" or "let," except that demise ex vi termini implies a covenant for title, and also a covenant for quiet enjoyment, whereas lease or let implies neither of these covenants. Brown.

The word is also used as a synonym for "death" or "decrease." It England it is especially employed to denote the death of the sovereign.

DEMISE AND REDEMISE. In conveyancing. Mutual leases made from one party to another on each side of the same land, or something out of it; as when A. grants a lease to B. at a nominal rent, (as of a pepper corn,) and B. redeems the same property to A. for a shorter time at a real substantial rent. Jacob; Whishaw.

DEMISE OF THE CROWN. The natural dissolution of the king is generally so called; an expression which signifies merely a transfer of property. By demise of the crown we mean only that, in consequence of the disunion of the king's natural body from his body politic, the kingdom is transferred or demised to his successor, and so the royal digny remains perpetual. 1 Bl. Comm. 249; Plowd. 234.

DEMISI. I have demised or leased. De­ misi, concessi, et ad firmam tradidi; have demised, granted, and to farm let. The usual operative words in ancient leases, as the corresponding English words are in the modern forms. 2 Bl. Comm. 317, 318.

DEMOBILIZATION. In military law. The dismissal of an army or body of troops from active service.

DEMOCRACY. That form of government in which the sovereign power resides in and is exercised by the whole body of free citizens; as distinguished from a monarchy, aristocracy, or oligarchy. According to the theory of a pure democracy, every citizen should participate directly in the business of governing, and the legislative assembly should comprise the whole people. But the ultimate lodgment of the sovereignty being the distinguishing feature, the introduction of the representative system does not remove a government from this type. However, a government of the latter kind is sometimes specifically described as a "representative democracy."

DEMOCRATIC. Of or pertaining to democracy, or to the party of the democrats.

DEMONETIZATION. The disuse of a particular metal for purposes of coinage. The withdrawal of the value of a metal as money.

DEMONSTRATIO. Description; addition; denomination. Occurring often in the phrase, "Pulsa demonstratio non nocet," (a false description does not harm.)

DEMONSTRATION. Description pointing out. That which is said or written to designate a thing or person.

In evidence. Absolutely convincing proof. That proof which excludes all possibility of error.

DEMONSTRATIVE LEGACY. A bequest of a certain sum of money, with a direction that it shall be paid out of a particular fund. It differs from a specific legacy in this respect: that, if the fund out of which it is payable fails for any cause, it is nevertheless entitled to come on the estate as a general legacy. And it differs from a general legacy in this: that it does not abide in that class, but in the class of specific legacies. 63 Pa. St. 316. See, also, 17 Ohio St. 413; 42 Ala. 9.

A legacy of quantity is ordinarily a general legacy; but there are legacies of quantity in the nature of specific legacies, as of so much money, with reference to a particular fund for payment. This kind of legacy is called by the civilians a "demonstrative legacy," and it is so far general and differs so much in effect from one properly specific that, if the fund be called in or fail, the legatee will not be deprived of his legacy, but be permitted to receive it out of the general assets; yet the legacy is so far specific that it will not be liable to abate with general legacies upon a deficiency of assets. 2 Williams, Ex'rs, 1073.

DEMPSTER. In Scotch law. A doomsman. One who pronounced the sentence of court. 1 How. State Tr. 937.

DEMUR. To present a demurrer; to take an exception to the sufficiency in point of law of a pleading or state of facts alleged.

DEMURRABLE. A pleading, petition, or the like, is said to be demurrable when it does not state such facts as support the claim, prayer, or defense put forward. 5 Ch. Div. 979.

DEMURRAGE. In maritime law. The sum which is fixed by the contract of carriage, or which is allowed, as remuneration
to the owner of a ship for the detention of his vessel beyond the number of days allowed by the charter-party for loading and unloading or for sailing. Also the detention of the vessel by the freighter beyond such time. See 3 Kent, Comm. 203; 2 Steph. Comm. 185.

Demurrage is only an extended freight or reward to the vessel, in compensation for the earnings she is improperly caused to lose. Every improper detention of a vessel may be considered a demurrage, and compensation under that name be obtained for it. 1 Holmes, 290.

Demurrage is the allowance or compensation due to the master or owners of a ship, by the freighter, for the time the vessel may have been detained beyond the time specified or implied in the contract of affreightment or the charter-party. Bell.

DEMMURANT. One who demurs; the party who, in pleading, interposes a demurrer.

DEMMURRER. In pleading, The formal mode of disputing the sufficiency in law of the pleading of the other side. In effect it is an allegation that, even if the facts as stated in the pleading to which objection is taken be true, yet their legal consequences are not such as to put the demurring party to the necessity of answering them or proceeding further with the cause.

An objection made by one party to his opponent’s pleading, alleging that he ought not to answer it, for some defect in law in the pleading. It admits the facts, and refers the law arising thereon to the court. 7 How. 581.

It imports that the objecting party will not proceed, but will wait the judgment of the court whether he is bound so to do. Co. Litt. 71b; Steph. Pl. 61.

A general demurrer is one which excepts to the sufficiency of a previous pleading in general terms, without showing specifically the nature of the objection; and such demurrer is sufficient when the objection is on matter of substance.

A special demurrer is one which excepts to the sufficiency of the pleadings of the other party, and shows specifically the nature of the objection and the particular ground of exception. Steph. Pl. 158.

In equity. An allegation of a defendant, which, admitting the matters of fact alleged by the bill to be true, shows that as they are therein set forth they are insufficient for the plaintiff to proceed upon or to oblige the defendant to answer; or that, for some reason apparent on the face of the bill, or on account of the omission of some matter which ought to be contained therein, or for want of some circumstances which ought to be attendant thereon, the defendant ought not to be compelled to answer to the whole bill, or to some certain part thereof. Mitf. Eq. Pl. 107.

Demurrer to interrogatories is the reason which a defendant tenderers for not answering a particular question in interrogatories. 2 Swanst. 194. It is not, strictly speaking, a demurrer, except in the popular sense of the word. Gres. Eq. Ev. 61.

DEMMURRER BOOK. In practice. A record of the issue on a demurrer at law, containing a transcript of the pleadings, with proper entries; and intended for the use of the court and counsel on the argument. 3 Bl. Comm. 317; 3 Steph. Comm. 581.

DEMMURER TO EVIDENCE. This proceeding (now practically obsolete) was analogous to a demurrer to a pleading. It was an objection or exception by one of the parties in an action at law, to the effect that the evidence which his adversary had produced was insufficient in point of law (whether true or not) to make out his case or sustain the issue. Upon joinder in demurrer, the jury was discharged, and the case was argued to the court in banc, who gave judgment upon the facts as shown in evidence. See 3 Bl. Comm. 372.

DEMY SANKE, DEMY SANGUE. Half-blood. A corruption of demi-sang.


DEN AND STROND. In old English law. Liberty for ships or vessels to run aground, or come ashore. Cowell.

DENARIATE. In old English law. As much land as is worth one penny per annum.

DENARI. An ancient general term for any sort of pecunia numerata, or ready money. The French use the word “denier” in the same sense,—payer de ses propres deniers.

DENARI DE CARITATE. In English law. Customary oblations made to a cathedral church at Pentecost.

DENARI S. PETRI. (Commonly called “Peter’s Pence.”) An annual payment on St. Peter’s feast of a penny from every family to the pope, during the time that the Roman Catholic religion was established in England.
DENARIUS. The chief silver coin among the Romans, worth 8d.; it was the seventh part of a Roman ounce. Also an English penny. The denarius was first coined five years before the first Punic war, B.C. 269. In later times a copper coin was called "denarius." Smith, Dict. Antig.

DENARIUS DEI. (Lat. "God's penny.") Earnest money; money given as a token of the completion of a bargain. It differs from arrha, in this: that arrha is a part of the consideration, while the denarius Dei is no part of it. The latter was given away in charity; whence the name.

DENARIUS TERTIUS COMITATUS. In old English law. A third part or penny of the county paid to its earl, the other two parts being reserved to the crown.

DENIAL. A traverse in the pleading of one party of an allegation of fact set up by the other; a defense.

DENIER. L. Fr. In old English law. Denial; refusal. Denier is when the rent (being demanded upon the land) is not paid. Finch, Law, b. 3, c. 5.

DENIER A DIEU In French law. Earnest money; a sum of money given in token of the completion of a bargain. The phrase is a translation of the Latin Denarius Dei, (q. v.)

DENIZATION. The act of making one a denizen; the conferring of the privileges of citizenship upon an alien born. Cro. Jac. 540. See Denizen.

DENIZE. To make a man a denizen or citizen.

DENIZEN. In English law. A person who, being an alien born, has obtained, ex donacione regis, letters patent to make him an English subject,—a high and incommunicable branch of the royal prerogative. A denizen is in a kind of middle state between an alien and a natural-born subject, and partakes of the status of both of these. 1 Bl. Comm. 374; 7 Coke, 6.

The term is used to signify a person who, being an alien by birth, has obtained letters patent making him an English subject. The king may denize, but not naturalize, a man; the latter requiring the consent of parliament, as under the naturalization act, 1570, (32 & 33 Vict. c. 14.) A denizen holds a position midway between an alien and a natural-born or naturalized subject, being able to take lands by purchase or devise, (which an alien could not until 1570 do,) but not able to take lands by descent, (which a natural-born or naturalized subject may do.) Brown

The word is also used in this sense in South Carolina. See 1 McCord, Eq. 352.

A denizen, in the primary, but obsolete, sense of the word, is a natural-born subject of a country. Co. Litt. 129a.

DENMAN'S (LORD) ACT. An English statute, for the amendment of the law of evidence, (6 & 7 Vict. c. 55,) which provides that no person offered as a witness shall thereafter be excluded by reason of incapacity, from crime or interest, from giving evidence.

DENMAN'S (MR.) ACT. An English statute, for the amendment of procedure in criminal trials, (25 & 26 Vict. c. 18,) allowing counsel to sum up the evidence in criminal as in civil trials, provided the prisoner be defended by counsel.

DENOMBREMENT. In French feudal law. A minute or act drawn up, on the creation of a fief, containing a description of the fief, and all the rights and incidents belonging to it. Guyot, Inst. Feud. c. 3.

Denominatio fieri debet a dignoribus. Denomination should be made from the more worthy.

DENONCER. In Mexican law. A denunciation was a judicial proceeding, and, though real property might be acquired by an alien in fraud of the law,—that is, without observing its requirements,—he nevertheless retained his right and title to it, but was liable to be deprived of it by the proper proceeding of denunciation, which in its substantive characteristics was equivalent to the inquest of office found, at common law. 26 Cal. 477.

DENSHIRING OF LAND. (Otherwise called "burn-beating.") A method of improving land by casting parings of earth, turf, and stubble into heaps, which when dried are burned into ashes for a compost. Cowell.

DENUMERATION. The act of present payment.

DENUNCIA DE OBRA NUEVA. In Spanish law. The denunciation of a new work; being a proceeding to restrain the erection of some new work, as, for instance, a building which may, if completed, injuriously affect the property of the complainant; it is of a character similar to the interdicts of possession. Escriche; 1 Cal. 63.

DENUNCIATION. In the civil law. The act by which an individual informs a public officer, whose duty it is to prosecute offenders, that a crime has been committed.
DENUNCIATION

In Scotch practice. The act by which a person is declared to be a rebel, who has disobeyed the charge given on letters of horning. Bell.

DENUNTIA TIO. In old English law. A public notice or summons. Bract. 2025.

DEODAND. (L. Lat. Deo dandum, a thing to be given to God.) In English law. Any personal chattel which was the immediate occasion of the death of any reasonable creature, and which was forfeited to the crown to be applied to pious uses, and distributed in aims by the high almoner. 1 Hale, P. C. 419; Fleta, lib. 1, c. 25; 1 Bl. Comm. 300; 2 Steph. Comm. 365.

DEOR HEDGE. In old English law. The hedge inclosing a deer park.

DEPART. In pleading. To forsake or abandon the ground assumed in a former pleading, and assume a new one. See DEPARTURE.

In maritime law. To leave a port; to be out of a port. To depart imports more than to sail, or set sail. A warranty in a policy that a vessel shall depart on or before a particular day is a warranty not only that she shall sail, but that she shall be out of the port on or before that day. 3 Manl & S. 461; 3 Kent, Comm. 307, note. "To depart" does not mean merely to break ground, but fairly to set forward upon the voyage. 6 Taunt. 241.

DEPARTMENT. 1. One of the territorial divisions of a country. The term is chiefly used in this sense in France, where the division of the country into departments is somewhat analogous, both territorially and for governmental purposes, to the division of an American state into counties.

2. One of the divisions of the executive branch of government. Used in this sense in the United States, where each department is charged with a specific class of duties, and comprises an organized staff of officials; e. g., the department of state, department of war, etc.

DEPARTURE. In maritime law. A deviation from the course prescribed in the policy of insurance.

In pleading. The statement of matter in a replication, rejoinder, or subsequent pleading, as a cause of action or defense, which is not pursuant to the previous pleading of the same party, and which does not support and fortify it. 2 Williams, Saund. 840, note 1; 2 Wils. 98; Co. Litt. 394a.

A departure, in pleading, is when a party quits or departs from the case or defense which he has first made, and has recourse to another. 49 Ind. 111; 16 Johns. 205; 13 N. Y. 83, 89.

A departure takes place when, in any pleading, the party deserts the ground that he took in his last antecedent pleading, and resorts to another. Steph. Pl. 410. Or, in other words, when the second pleading contains matter not pursuant to the former, and which does not support and fortify it. Co. Litt. 304a. Hence a departure obviously can never take place till the replication. Steph. Pl. 410. Each subsequent pleading must pursue or support the former one; i. e., the replication must support the declaration, and the rejoinder the plea, without departing out of it. 3 Bl. Comm. 310.

DEPARTURE IN DESPITE OF COURT. In old English practice. The tenant in a real action, having once appeared, was considered as constructively present in court until again called upon. Hence if, upon being demanded, he failed to appear, he was said to have "departed in despite [i. e., contempt] of the court."

DEPASTURE. In old English law. To pasture. "If a man depassures unprofitable cattle in his ground." Bumb. 1, case 1.

DEPECULATION. A robbing of the prince or commonwealth; an embezze ling of the public treasure.

DEPENDENCY. A territory distinct from the country in which the supreme sovereign power resides, but belonging rightfully to it, and subject to the laws and regulations which the sovereign may think proper to prescribe. 3 Wash. C. C. 285.

It differs from a colony, because it is not settled by the citizens of the sovereign or mother state; and from possession, because it is held by other title than that of mere conquest.

DEPENDENT CONTRACT. One which depends or is conditioned upon another. One which it is not the duty of the contractor to perform until some obligation contained in the same agreement has been performed by the other party. Ham. Parties, 17, 29, 30, 109.

DEPENDENT COVENANTS are those in which the performance of one depends on the performance of the other.

DEPENDING. In practice. Pending or undetermined; in progress. See 5 Coke, 47.

DEPESAS. In Spanish-American law. Spaces of ground in towns reserved for commons or public pasturage. 12 Pet. 443, note.
DEFONE

DEPOSE. In Scotch practice. To depose; to make oath in writing.

DEPONENT. In practice. One who deposes (that is, testifies or makes oath in writing) to the truth of certain facts; one who gives under oath testimony which is reduced to writing; one who makes oath to a written statement. The party making an affidavit is generally so called.

The word "deponer, " from which is derived "deponent, " has relation to the mode in which the oath is administered, (by the witness placing his hand upon the book of the holy evangelists,) and not as to whether the testimony is delivered oral­ly or reduced to writing. "Deponent" is included in the term "witness," but "witness" is more gen­eral. 47 Me. 218.

DEPONER. In old Scotch practice. A deponent. 3 How. State Tr. 695.

DEPOPULATIO AGRORUM. In old English law. The crime of destroying, ravaging, or laying waste a country. 2 Hale, P. C. 533; 4 Bl. Comm. 373.

DEPOPULATION. In old English law. A species of waste by which the population of the kingdom was diminished. Depopula­tion of houses was a public offense. 12 Coke, 30, 31.

DEPORTATIO. Lat. In the civil law. A kind of banishment, where a condemned person was sent or carried away to some foreign country, usually to an island, (in jus­sum deportatur,) and thus taken out of the number of Roman citizens.

DEPORTATION. Banishment to a foreign country, attended with confiscation of property and deprivation of civil rights. A punishment derived from the deportatio (q. v.) of the Roman law, and still in use in France.

In Roman law. A perpetual banishment, depriving the banished of his rights as a citizen; it differed from relegation (q. v.) and exile, (q. v.) 1 Brown, Civil & Adm. Law, 125, note; Inst. 1, 12, 1, and 2; Dig. 48, 22, 14, 1.

DEPOSE. In practice. In ancient usage, to testify as a witness; to give evidence under oath.

In modern usage. To make a deposition; to give evidence in the shape of a deposition; to make statements which are written down and sworn to; to give testimony which is reduced to writing by a duly-quali­fied officer and sworn to by the deponent.

To deprive an individual of a public em­ployment or office against his will. Wolley, Inst. § 1063. The term is usually applied to the deprivation of all authority of a sov­ereign.

DEPOSIT. A naked bailment of goods to be kept for the depositor without reward, and to be returned when he shall require it. Jones, Bailm. 36, 117; 9 Mass. 470.

A bailment of goods to be kept by the bailee without reward, and delivered according to the object or purpose of the original trust. Story, Bailm. § 41.

A deposit, in general, is an act by which a person receives the property of another, binding himself to preserve it and return it in kind. Civil Code La. art. 2925.

When chattels are delivered by one person to another to keep for the use of the bailor, it is called a "deposit." The depositary may undertake to keep it without reward, or gratuitously; it is then a naked deposit. If he receives or expects a reward or hire, he is then a depositary for hire. Very variant consequences follow the differences in the contract. Code Ga. 1882, § 2103.

According to the classification of the civil law, deposits are of the following several sorts: (1) Necessary, made upon some sudden emergency, and from some pressing necessity; as, for instance, in case of a fire, a shipwreck, or other overwhelming calamity, when property is confined to any person whom the depositor may meet without proper opportunity for reflection or choice, and thence it is called "miserable depositum." (2) Voluntary, which arises from the mere consent and agreement of the parties. The common law has made no such division. There is another class of deposits called "in­voluntary," which may be without the assent or even knowledge of the depositor; as lumber, etc., left upon another's land by the subsidence of a flood.

The civilians again divide deposits into "simple deposits," made by one or more persons having a common interest, and "sequestrations," made by one or more persons, each of whom has a different and adverse interest in controversy touching it; and these last are of two sorts,—"conventional," or such as are made by the mere agreement of the parties without any judicial act; and "judicial," or such as are made by order of a court in the course of some proceeding.

There is another class of deposits called "irregular," as when a person, having a sum of money which he does not think safe in his own hands, confines it to another, who is to
return to him, not the same money, but a like sum when he shall demand it. There is also a "quasi deposit," as where a person comes lawfully to the possession of another person's property by finding it; and a "special deposit" of money or bills in a bank, where the specific money, the very silver or gold, coin or bills, deposited, are to be restored, and not an equivalent. Story, Bailm. § 44, et seq.

The difference between a deposit and a mandate is that while the object of a deposit is that the thing bailed be kept, simply, the object of a mandate is that the thing may be transported from point to point, or that something be done about it. 8 Ga. 178.

Deposits made with bankers may be divided into two classes,—those in which the bank becomes bailee of the depositor, the title to the thing deposited remaining with the latter; and that kind peculiar to banking business, in which the depositor, for his own convenience, parts with the title to his money, and loans it to the banker, and the latter, in consideration of the loan of the money, and the right to use it for his own profit, agrees to refund the same amount, or any part thereof, on demand. Money collected by one bank for another, placed by the collecting bank with the bulk of its ordinary banking funds, and credited to the transmitting bank in account, becomes the money of the former. It is a deposit of the latter class. 2 Wall. 292.

Deposit, in respect to dealings of banks, includes not only a bailment of money to be returned in the same identical specie, but also all that class of contracts where money is placed in the hands of bankers to be returned, in other money, on call. 15 N. Y. 9, 165, 163.

The word is also sometimes used to designate money lodged with a person as an earnest or security for the performance of some contract, to be forfeited if the depositor fails in his undertaking.

DEPOSIT ACCOUNT. An account of sums lodged with a bank not to be drawn upon by checks, and usually not to be withdrawn except after a fixed notice.

DEPOSIT COMPANY. A company whose business is the safe-keeping of securities or other valuables deposited in boxes or safes in its building which are leased to the depositors.

DEPOSIT, GRATUITOUS. Gratuitous deposit is a deposit for which the depository receives no consideration beyond the mere possession of the thing deposited. Civil Code Cal. § 1844.

DEPOSIT OF TITLE-DEEDS. A method of pledging real property as security for a loan, by placing the title-deeds of the land in the keeping of the lender as pledgee.

DEPOSITARY. The party receiving a deposit; one with whom anything is lodged in trust, as "depository" is the place where it is put. The obligation on the part of the depository is that he keep the thing with reasonable care, and, upon request, restore it to the depositor, or otherwise deliver it, according to the original trust.

DEPOSITION. In Scotch law. Deposit or depositum, the species of bailment so called. Bell.

DEPOSITION. The testimony of a witness taken upon interrogatories, not in open court, but in pursuance of a commission to take testimony issued by a court, or under a general law on the subject, and reduced to writing and duly authenticated, and intended to be used upon the trial of an action in court.

A deposition is a written declaration under oath, made upon notice to the adverse party for the purpose of enabling him to attend and cross-examine; or upon written interrogatories. Code Civil Proc. Cal. § 2004; Code Civil Proc. Dak. § 405.

A deposition is evidence given by a witness under interrogatories, oral or written, and usually written down by an official person. In its generic sense, it embraces all written evidence verified by oath, and includes affidavits; but, in legal language, a distinction is maintained between depositions and affidavits. 3 Blatchf. 456.

The term sometimes is used in a special sense to denote a statement made orally by a person on oath before an examiner, commissioner, or officer of the court, (but not in open court,) and taken down in writing by the examiner or under his direction. Sweet.

In ecclesiastical law. The act of depriving a clergyman, by a competent tribunal, of his clerical orders, to punish him for some offense and to prevent his acting in future in his clerical character. Ayl. Par. 206.

DEPOSITO. In Spanish law Deposit; the species of bailment so called. Schm. Civil Law, 193.

DEPOSITOR. One who makes a deposit.

DEPOSITORY. The place where a deposit (q. v.) is placed and kept.

DEPOSITUM. One of the four real contracts specified by Justinian, and having the following characteristics: (1) The depository or depositee is not liable for negligence, however extreme, but only for fraud, dolus; (2) the property remains in the depository, the depository having only the possession.
**Dépôt**

*Precarium* and *sequestre* were two varieties of the *depositum*.

**Dépôt.** In the French law, is the *depositum* of the Roman and the deposit of the English law. It is of two kinds, being either (1) dépôt simply so called, and which may be either voluntary or necessary, and (2) *sequestre*, which is a deposit made either under an agreement of the parties, and to abide the event of pending litigation regarding it, or by virtue of the direction of the court or a judge, pending litigation regarding it. Brown; Civil Code La. 2897.

**Déprave.** To defame; vilify; exhibit contempt for. In England it is a criminal offense to "déprave" the Lord’s supper or the Book of Common Prayer. Steph. Crim. Dig. 99.

**Dépredation.** In French law. The pillage which is made of the goods of a decedent.

**Déprivation.** In English ecclesiastical law. The taking away from a clergyman his benefice or other spiritual promotion or dignity, either by sentence declaratory in the proper court for fit and sufficient causes or in pursuance of divers penal statutes which declare the benefice void for some non-feasance or neglect, or some malfeasance or crime. 3 Steph. Comm. 87, 88; Burn, Ecc. Law, tit. "Déprivation."

**Dépriver.** In a constitutional provision that no person shall be "déprivé of his property" without due process of law, this word is equivalent to the term "take," and denotes a taking altogether, a seizure, a direct appropriation, dispossession of the owner. 21 Pa. St. 147.

**Députize.** To appoint a deputy; to appoint or commission one to act as deputy to an officer. In a general sense, the term is descriptive of empowering one person to act for another in any capacity or relation, but in law it is almost always restricted to the substitution of a person appointed to act for an officer of the law.

**Députy.** A substitute; a person duly authorized by an officer to exercise some or all of the functions pertaining to the office, in the place and stead of the latter.

A deputy differs from an assignee, in that an assignee has an interest in the office itself, and does all things in his own name, for whom his grantor shall not answer, except in special cases; but a deputy has not any interest in the office, and is only the shadow of the officer in whose name he acts. And there is a distinction in doing an act by an agent and by a deputy. An agent can only bind his principal when he does the act in the name of the principal. But a deputy may do the act and sign his own name, and it binds his principal; for a deputy has, in law, the whole power of his principal. Wharton.

**Députy LieutenanT.** The deputy of a lord lieutenant of a county in England.

**Députy Steward.** A steward of a manor may depute or authorize another to hold a court; and the acts done in a court so holden will be as legal as if the court had been holden by the chief steward in person. So an under steward or deputy may authorize another as subdeputy, *pro hac vice*, to hold a court for him; such limited authority not being inconsistent with the rule *delegatus non potest delegare*. Wharton.

**Déraign.** Seems to mean, literally, to confound and disorder, or to turn out of course, or displace; as *deraignment* or departure out of religion, in St. 31 Hen. VIII. c. 6. In the common law, the word is used generally in the sense of to prove; viz., to *deraign* a right, *deraign* the warranty, etc. Glanv. lib. 2, c. 6; Fitzh. Nat. Brev. 146. Perhaps this word "deraign," and the word "deraignment," derived from it, may be used in the sense of to prove and a proving, by disproving of what is asserted in opposition to truth and fact. Jacob.

**Derecho.** In Spanish law. Law or right. *Derecho común*, common law. The civil law is so called. A right. *Derechos*, rights.

**Derelict.** Forsaken; abandoned; deserted; cast away.

Personal property abandoned or thrown away by the owner in such manner as to indicate that he intends to make no further claim thereto. 2 Bl. Comm. 9; 2 Reeve, Eng. Law, 9.

Land left uncovered by the receding of water from its former bed. 2 Rolle, Abr. 170; 2 Bl. Comm. 262; 1 Crabb, Real Prop. 109.

**Derelication.** The gaining of land from the water, in consequence of the sea shrinking back below the usual water mark; the opposite of *allocation*. (q. v.) Dyer, 3269; 2 Bl. Comm. 262; 1 Steph. Comm. 419.

In the civil law. The voluntary abandonment of goods by the owner, without the hope or the purpose of returning to the possession. 12 Ga. 473; 2 Bl. Comm. 9.
Derivativa potestas non potest esse major primitiva. Noy, Max.; Wing. Max. 66. The derivative power cannot be greater than the primitive.

DERIVATIVE. Coming from another; taken from something preceding; secondary; that which has not its origin in itself, but owes its existence to something foregoing.

DERIVATIVE CONVEYANCES. Conveyances which presuppose some other conveyance precedent, and only serve to enlarge, confirm, alter, restrain, restore, or transfer the interest granted by such original conveyance. They are releases, confirmations, surrenders, assignments, and defeasances. 2 Bl. Comm. 324.

DEROGATION. The partial repeal or abolishing of a law, as by a subsequent act which limits its scope or impairs its utility and force. Distinguished from abrogation, which means the entire repeal and annulment of a law. Dig. 50, 17, 102.

DEROGATORY CLAUSE. In a will, this is a sentence or secret character inserted by the testator, of which he reserves the knowledge to himself, with a condition that no will he may make thereafter should be valid, unless this clause be inserted word for word. This is done as a precaution to guard against later wills being extorted by violence, or otherwise improperly obtained. By the law of England such a clause would be void, as tending to make the will irrevocable. Wharton.

Derogatur legi, cum pars detrahirut; abrogatur legi, cum prorsus tollitur. To derogate from a law is to take away part of it; to abrogate a law is to abolish it entirely. Dig. 50, 17, 102.

DESAFUERO. In Spanish law. An irregular action committed with violence against law, custom, or reason.

DESAMORTIZACION. In Mexican law. The desamortizacion of property is to take it out of mortmain, (dead hands) that is, to unloose it from the grasp, as it were, of ecclesiastical or civil corporations. The term has no equivalent in English. Hall, Mex. Law. § 749.

DESCENDANT. One who is descended from another; a person who proceeds from the body of another, such as a child, grandchild, etc., to the remotest degree. The term is the opposite of “ascendant.” (q. v.)

Descendants is a good term of description in a will, and includes all who proceed from the body of the person named; as grandchildren and great-grandchildren. Amb. 397; 2 Hil. Real. Prop. 242.

DESCENDER. Descent; in the descent.

See FORMEDON.

DESCRIPTIO PERSONÆ. Lat. Description of the person. By this is meant a word or phrase used merely for the purpose of identifying or pointing out the person intended, and not as an intimation that the language in connection with which it occurs is to apply to him only in the official or technical character which might appear to be indicated by the word.
DESCRIPTION. 1. A delineation or account of a particular subject by the recital of its characteristic accidents and qualities.
2. A written enumeration of items composing an estate, or of its condition, or of titles or documents; like an inventory, but with more particularity, and without involving the idea of an appraisement.
3. An exact written account of an article, mechanical device, or process which is the subject of an application for a patent.
4. A method of pointing out a particular person by referring to his relationship to some other person or his character as an officer, trustee, executor, etc.
5. That part of a conveyance, advertisement of sale, etc., which identifies the land intended to be affected.

DESERt. To leave or quit with an intention to cause a permanent separation; to forsake utterly; to abandon.

DESERTION. The act by which a person abandons and forsakes, without justification, or unauthorized, a station or condition of public or social life, renouncing its responsibilities and evading its duties.
The act of forsaking, deserting, or abandoning a person with whom one is legally bound to live, or for whom one is legally bound to provide, as a wife or husband.
The act by which a man quits the society of his wife and children, or either of them, and renounces his duties towards them.
"For the purposes of this case it is sufficient to say that the offense of desertion consists in the cessation of cohabitation, coupled with a determination in the mind of the offending person not to renew it." 43 Conn. 318.

An offense which consists in the abandonment of his duties by a person employed in the public service, in the army or navy, without leave, and with the intention not to return.
In respect to the military service, there is a distinction between desertion and simple absence without leave. In order to constitute desertion, there must be both an absence and an intention not to return to the service. 115 Mass. 336.

DESERTION OF A SEAMAN. The act by which a seaman deserts and abandons a ship or vessel, in which he had engaged to perform a voyage, before the expiration of his time, and without leave.
By desertion, in the maritime law, is meant, not a mere unauthorized absence from the ship without leave, but an unauthorized absence from the ship, with an intention not to return to her service, or, as it is often expressed, animo non revertere; that is, with an intention to desert. 3 Story, 165.

DESHONORA. In Spanish law. Dishonor; injury; slander. Las Partidas, pt. 7, tit. 9, l. 1, 6.

DESIGN. In the law of evidence. Purpose or intention, combined with plan, or implying a plan in the mind. Burrill, Circ. Ev. 331.
As a term of art, the giving of a visible form to the conceptions of the mind, or invention. 4 Wash. C. C. 48.

Designatio justiciariorum est a rege; jurisdictio vero ordinaria a lege. 4 Inst. 74. The appointment of justices is by the king, but their ordinary jurisdiction by the law.

DESIGNATIO PERSONÆ. The description of a person or a party to a deed or contract.

Designatio unius est exclusio alterius, et expressum facit cessare tacitum. Co. Litt. 210. The specifying of one is the exclusion of another, and that which is expressed makes that which is understood to cease.

DESIGNATION. A description or descriptive expression by which a person or thing is denoted in a will without using the name.

DESIRE. This term, used in a will in relation to the management and distribution of property, is sufficient to create a trust, although it is precatory rather than imperative. 78 Ky. 123.

DESLINDE. A term used in the Spanish law, denoting the act by which the boundaries of an estate or portion of a country are determined.


DESPACHEURS. In maritime law. Persons appointed to settle cases of average.

DESPATCHES. Official communications of official persons on the affairs of government.

DESPERATE. Hopeless; worthless. This term is used in inventories and schedules of assets, particularly by executors, etc., to describe debts or claims which are considered impossible or hopeless of collection. See 11 Wend. 365.

DESPERATE DEBT. A hopeless debt; an irrecoverable obligation.

DESPITUS. Contempt. See Despite. A contemptible person. Fleta, lib. 4, c. 5.

DESPÓJAR. A possessory action of the Mexican law. It is brought to recover possession of immovable property, of which one has been despoiled (despojado) by another. The word “despoil” (despojar) involves, in its signification, violence or clandestine means by which one is deprived of that which he possesses. 1 Cal. 268.

DESPOL. This word involves, in its signification, violence or clandestine means by which one is deprived of that which he possesses. Its Spanish equivalent, despojar, is a term used in Mexican law. 1 Cal. 268.

DESPONSATION. The act of betrothing persons to each other.

DESPOSORIO. In Spanish law. Espousals; mutual promises of future marriage. White, New Recop. b. 1, tit. 6, c. 1, § 1.

DESPOT. This word, in its original and most simple acceptance, signifies master and supreme lord; it is synonymous with monarch; but taken in bad part, as it is usually employed, it signifies a tyrant. In some states, despot is the title given to the sovereign, as king is given in others. Enc. Lond.

DESPOTISM. That abuse of government where the sovereign power is not divided, but united in the hands of a single man, whatever may be his official title. It is not, properly, a form of government. Toullier, Dr. Civ. Fr. tit. prél. n. 32.

“Despotism” is not exactly synonymous with “autocracy,” for the former involves the idea of tyranny or abuse of power, which is not necessarily implied by the latter. Every despotism is autocratic; but an autocracy is not necessarily despotic.

DESPOTIZE. To act as a despot. Webster.

DESRÉNABLE. L. Fr. Unreasonable. Brit. c. 121.

DESSAISISSEMENT. In French law. When a person is declared bankrupt, he is immediately deprived of the enjoyment and administration of all his property; this deprivation, which extends to all his rights, is called “dessaisissement.” Arg. Fr. Merc. Law, 550.

DESTINATION. The purpose to which it is intended an article or a fund shall be applied. A testator gives a destination to a legacy when he prescribes the specific use to which it shall be put.

The port at which a ship is to end her voyage is called her “port of destination.” Pardessus, no. 600.

DESTRUCTION. A term used in old English law, generally in connection with waste, and having, according to some, the same meaning. 1 Reeve, Eng. Law, 355; 3 Bl. Comm. 223. Britton, however, makes a distinction between waste of woods and destruction of houses. Brit. c. 66.

DESUBITO. To weary a person with continual barkings, and then to bite; spoken of dogs. Leg Alured. 26, cited in Cunningham’s Dict.

DESUETUDE. Disuse; cessation or discontinuance of use. Applied to obsolete statutes.

DETACHIARE. To seize or take into custody another’s goods or person.

DETAINER. The act (or the juridical fact) of withholding from a person lawfully entitled the possession of land or goods; or the restraint of a man’s personal liberty against his will.

The wrongful keeping of a person’s goods is called an “unlawful detainer” although the original taking may have been lawful. As, if one drags another’s cattle, damage feasant, and before they are impounded the owner tenders sufficient amends; now, though the original taking was lawful, the subsequent detention of them after tender of amends is not lawful, and the owner has an action of replevin to recover them, in which he will recover damages for the detention, and not for the captio, because the original taking was lawful. 3 Steph. Comm. 345.

In practice. A writ or instrument, issued or made by a competent officer, authorizing the keeper of a prison to keep in his custody a person therein named. A detainer may be lodged against one within the walls of a prison, on what account soever he is there. Com. Dig. “Process,” E, (3 B.) This writ was superseded by 1 & 2 Vict. c. 110, §§ 1, 2.

DETAÍMENT. This term is used in policies of marine insurance, in the clause relating to “arrests, restraints, and detainments.” The last two words are construed as equivalents, each meaning the effect of superior force operating directly on the vessel. 6 Mass. 109.

DETENTIO. In the civil law. That condition of fact under which one can exercise his power over a corporeal thing at his
pleasure, to the exclusion of all others. It
forms the substance of possession in all its

DE TENTION. The act of keeping back
or withholding, either accidentally or by de-
sign, a person or thing. See DE TAINER.

DE TENT ION IN A REFORMA-
tory, as a punishment or measure of pre-
vention, is where a juvenile offender is sen-
tenced to be sent to a reformatory school, to
be there detained for a certain period of time.
1 Russ. Crimes, 82.

DETERMINABLE. That which may
cease or determine upon the happening of a
certain contingency. 2 Bl. Comm. 121.

DETERMINABLE FEE. (Also called a
"qualified" or "base" fee.) One which has
a qualification subjoined to it, and which
must be determined whenever the qualifica-
tion annexed to it is at an end. 2 Bl. Comm.
109.

An estate in fee which is liable to be de-
termined 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; 35 Wis. 36.

DETERMINABLE FREEHOLDS. Es-
tates 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 bene-
fit; in these and similar cases, whenever the
contingency happens,—when the widow mar-
ries, or when the grantee obtains the benefit, —
the respective estates are absolutely deter-
mined and gone. Yet, while they subsist, they
are reckoned estates for life; because they
may by possibility last for life, if the con-
tingencies upon which they are to deter-
mime do not sooner happen. 2 Bl. Comm.
121.

DETERM INATE. That which is ascer-
tained; what is particularly designated.

DETERMINATION. The decision of a
court of justice. The ending or expiration
of an estate or interest in property, or of a
right, power, or authority.

DETERMINE. To come to an end. To
bring to an end. 2 Bl. Comm. 121; 1 Washb.
Real Prop. 380.

DETESTATIO. Lat. In the civil law.
A summoning made, or notice given, in the
presence of witnesses, (demuntiatio facta
cum testatione.) Dig. 50, 16, 40.

DE T INET. Lat. He detains. In old
English law. A species of action of debt,
which lay for the specific recovery of goods,
under a contract to deliver them. 1 Reeves,
Eng. Law, 159.

In pleading. An action of debt is said to
be in the detinnet when it is alleged merely
that the defendant withholds or unjustly de-
tains from the plaintiff the thing or amount
demanded.

An action of replevin is said to be in the
detinnet when the defendant retains possess-
sion of the property until after judgment in

DE TE NUE. In practice. A form of ac-
tion which lies for the recovery, in specie,
of personal chattels from one who acquired
possession of them lawfully, but retains it
without right, together with damages for the
detention. 3 Bl. Comm. 152.

The action of detinuet is defined in the old books
as a remedy founded upon the delivery of goods
by the owner to another to keep, who afterwards
refuses to redeliver them to the bailor; and it is
said that, to authorize the maintenance of the ac-
tion, it is necessary that the defendant should have
come lawfully into the possession of the chattel,
either by delivery to him or by finding it. In fact,
it was once understood to be the law that detinent
does not lie where the property had been tortiously
taken. But it is, upon principle, very unimport-
tant in what manner the defendant's possession
commenced, since the gist of the action is the
wrongful detainer, and not the original taking.
It is only incumbent upon the plaintiff to prove
property in himself, and possession in the defend-
ant. At present, the action of detinuet is proper
in every case where the owner prefers recovering
the specific property to damages for its conversion,
and no regard is had to the manner in which the
defendant acquired the possession. 9 Port. (Ala.)
151.

DE TINE UE OF GOODS IN FRANK
MARRIAGE. A writ formerly available
to a wife after a divorce, for the recovery of
the goods given with her in marriage. Mox-
ley & Whitley.

DE T IN U T. In pleading. An action of
replevin is said to be in the detinuit when the
plaintiff acquires possession of the prop-
ing claimed by means of the writ. The right
to retain is, of course, subject in such case to
the judgment of the court upon his title to

DETRACTARI. To be torn in pieces
by horses. Fleta, 1, 1, c. 37.

DE TUN ICARI. To discover or lay open
DEUNX.  

DEUNX, pl. DEUNCES.  Lat. In the Roman law. A division of the as, containing eleven unciæ or duodecimal parts; the proportion of eleven-twelfths. 2 Bl. Comm. 462, note. See As.

Deus solus hæredem facere potest, non homo. God alone, and not man, can make an heir. Co. Litt. 7b; Broom. Max. 516.

DETEREGAMY.  The act, or condition, of one who marries a wife after the death of a former wife.

DEVADIATUS, or DIVADIATUS. An offender without sureties or pledges. Cowell.

DEVASTATION.  Wasteful use of the property of a deceased person, as for extravagant funeral or other unnecessary expenses. 2 Bl. Comm. 508.

DEVASTAVERUNT. They have wasted. A term applied in old English law to waste by executors and administrators, and to the process issued against them therefor. Cowell. See DEVASTAVIT.

DEVASTAVIT.  Lat. He has wasted. The act of an executor or administrator in wasting the goods of the deceased; mismanagement of the estate by which a loss occurs; a breach of trust or misappropriation of assets held in a fiduciary character; any violation or neglect of duty by an executor or administrator, involving loss to the decedent’s estate, which makes him personally responsible to heirs, creditors, or legatees.

Also, if plaintiff, in an action against an executor or administrator, has obtained judgment, the usual execution runs de bonis testatoris; but, if the sheriff returns to such a writ nulla bona testatoris nec propria, the plaintiff may, forthwith, upon this return, sue out an execution against the property or person of the executor or administrator, in as full a manner as in an action against him, sued in his own right. Such a return is called a “devastavit.” Brown.

DEVENEERUNT. A writ, now obsolete, directed to the king’s escheators when any of the king’s tenants in capite dies, and when his son and heir dies within age and in the king’s custody, commanding the escheat, or that by the oaths of twelve good and lawful men they shall inquire what lands or teneaments by the death of the tenant have come to the king. Dyer, 360; Termes de la Ley.

DEVEST.  To deprive; to take away; to withdraw. Usually spoken of an authority, power, property, or title; as the estate is de vested.

Devest is opposite to invest. As to invest signifies to deliver the possession of anything to another, so to de vest signifies to take it away. Jacob.

It is sometimes written “divest” but “de vest” has the support of the best authority. Burrill.

DEVIA TION.  In insurance. Varying from the risks insured against, as described in the policy, without necessity or just cause, after the risk has begun. 1 Phil. Ins. § 977, et seq.; 1 Arn. Ins. 415, et seq.

Any unnecessary or unexcused departure from the usual or general mode of carrying on the voyage insured. 15 Amer. Law Rev. 108.

Deviation is a departure from the course of the voyage insured, or an unreasonable delay in pursuing the voyage, or the commencement of an entirely different voyage. Civil Code Cal. § 2694.

A deviation is a voluntary departure from or delay in the usual and regular course of a voyage insured, without necessity or reasonable cause. This discharges the insurer, from the time of the deviation. 9 Mass. 436.

In contracts. A change made in the progress of a work from the original terms or design or method agreed upon.

DEVICE.  In a statute against gaming devices, this term is to be understood as meaning something formed by design, a contrivance, an invention. It is to be distinguished from “substitute,” which means something put in the place of another thing, or used instead of something else. 59 Ala. 91.

DEVIL ON THE NECK. An instrument of torture, formerly used to extort confessions, etc. It was made of several irons, which were fastened to the neck and legs, and wrenched together so as to break the back. Cowell.

DEVISABLE.  Capable of being devised. 1 Pow. Dev. 165; 2 Bl. Comm. 373.

DEVISAVIT VEL NON. In practice. The name of an issue sent out of a court of chancery, or one which exercises chancery jurisdiction, to a court of law, to try the validity of a paper asserted and denied to be a will, to ascertain whether or not the testator did devise, or whether or not that paper was
hisl will. 7 Brown, Parl. Cas. 437; 2 Atk. 424; 5 Pa. St. 21.

DEVISE. A gift of real property by will.
Devise properly relates to the disposal of real property, not of personal. 21 Barb. 351, 501.
Devise is properly applied to gifts of real property by will, but may be extended to embrace personal property, to execute the intention of the testator. 6 Ired. Eq. 173.
The words "devise," "legacy," and "bequest" may be applied indifferently to real or personal property, if such appears by the context of a will to have been the testator's intention. 21 N. H. 514.
Devises are contingent or vested; that is, after the death of the testator. Contingent, when the vesting of any estate in the devisee is made to depend upon some future event, in which case, if the event never occur, or until it does occur, no estate vests under the devise. But, when the future event is referred to merely to determine the time at which the devisee shall come into the use of the estate, this does not hinder the vesting of the estate at the death of the testator. 1 Jarm. Wills, c. 25.
An executory devise of lands is such a disposition of them by will that thereby no estate vests at the death of the devisor, but only on some future contingency. It differs from a remainder in three very material points: (1) That it needs not any particular estate to support it; (2) that by it a fee-simple or other less estate may be limited after a fee-simple; (3) that by this means a remainder may be limited of a chattel interest, after a particular estate for life created in the same. 2 Bl. Comm. 172.

DEVISEER. The person to whom lands or other real property are devised or given by will. 1 Pow. Dev. c. 7.

DEVISOR. A giver of lands or real estate by will; the maker of a will of lands; a testator.

DEVOR. Fr. Duty. It is used in the statute of 2 Rich. II. c. 3, in the sense of duties or customs.

DEVOLUTION. In ecclesiastical law. The forfeiture of a right or power (as the right of presentation to a living) in consequence of its non-user by the person holding it, or of some other act or omission on his part, and its resulting transfer to the person next entitled.

DEVOLVE. "To devolve means to pass from a person dying to a person living; the etymology of the word shows its meaning." 1 Mylne & K. 648.

DEVY. L. Fr. Dies; deceases. Bendloe, 5.

DEXTANS. Lat. In Roman law. A division of the as, consisting of ten uncia; ten-twelfths, or five-sixths. 2 Bl. Comm. 462, note m.

DEXTRARIUS. One at the right hand of another.

DEXTRAS DARE. To shake hands in token of friendship; or to give up oneself to the power of another person.

DI COLONNA. In maritime law. The contract which takes place between the owner of a ship, the captain, and the mariners, who agree that the voyage shall be for the benefit of all. The term is used in the Italian law. Emerig. Mar. Loans, § 5.

DI. ET FI. L. Lat. In old writs. An abbreviation of diiecto et fidei, (to his beloved and faithful.)

DIACONATE. The office of a deacon.

DIACONUS. A deacon.

DIAGNOSIS. A medical term, meaning the discovery of the source of a patient's illness.

DIALECTICS. That branch of logic which teaches the rules and modes of reasoning.

DIALLAGE. A rhetorical figure in which arguments are placed in various points of view, and then turned to one point. Enc. Lond.

DIALOGUS DE SCACCARIO. Dialogue of or about the exchequer. An ancient treatise on the court of exchequer, attributed by some to Gervase of Tilbury, by others to Richard Fitz Nigel, bishop of London in the reign of Richard I. It is quoted by Lord Coke under the name of Ockham. Crabb, Eng. Law, 71.

DIANATIC. A logical reasoning in a progressive manner, proceeding from one subject to another. Enc. Lond.

DIARIUM. Daily food, or as much as will suffice for the day. Du Cange.

DIATIM. In old records. Daily; every day; from day to day. Spelman.

DICA. In old English law. A tally for accounts, by number of cuts, (taillees,) marks, or notches. Cowell. See TALLIA, TALLY.

DICAST. An officer in ancient Greece answering in some respects to our jurymen, but combining, on trials had before them, the
functions of both judge and jury. The decisions are made by numbers varying, according to the importance of the case, from one to five hundred.

**DICE.** Small cubes of bone or ivory, marked with figures or devices on their several sides, used in playing certain games of chance. See 55 Ala. 198.

**DICTATE.** To order or instruct what is to be said or written. To pronounce, word by word, what is meant to be written by another. 6 Mart. (N. S.) 143.

**DICTATION.** In Louisiana, this term is used in a technical sense, and means to pronounce orally what is destined to be written at the same time by another. It is used in reference to nuncupative wills. 16 La. Ann. 220.

**DICTATOR.** A magistrate invested with unlimited power, and created in times of national distress and peril. Among the Romans, he continued in office for six months only, and had unlimited power and authority over both the property and lives of the citizens.

**DICTORES.** Arbitrators.

**DICTUM.** In general. A statement, remark, or observation. *Gratia dictum;* a gratuitous or voluntary representation; one of which a party is not bound to make. 2 Kent, Comm. 486. *Simplex dictum;* a mere assertion; an assertion without proof. Bract. fol. 320.

The word is generally used as an abbreviated form of *obiter dictum,* "a remark by the way;" that is, an observation or remark made by a judge in pronouncing an opinion upon a cause, concerning some rule, principle, or application of law, or the solution of a question suggested by the case at bar, but not necessarily involved in the case or essential to its determination; any statement of the law enunciated by the court merely by way of illustration, argument, analogy, or suggestion.

Dicta are opinions of a judge which do not embody the resolution or determination of the court, and made without argument, or full consideration of the point, are not the profession deliberate determinations of the judge himself. *Obiter dicta* are such opinions uttered by the way, not upon the point or question pending, as if turning aside for the time from the main topic of the case to collateral subjects. 62 N. Y. 47, 58.

In old English law. *Dictum* meant an arbitration, or the award of arbitrators.

In French law. The report of a judgment made by one of the judges who has given it. *Poth. Proc. Civil, pt. 1, c. 5, art. 2.*

**DICTUM DE KENILWORTH.** The edict or declaration of Kenilworth. An edict or award between King Henry III, and all the barons and others who had been in arms against him; and so called because it was made at Kenilworth Castle, in Warwickshire, in the fifty-first year of his reign, containing a composition of five years' rent for the lands and estates of those who had forfeited them in that rebellion. Blount; 2 Reeve, *Eng. Law, 62.*

**DIE WITHOUT ISSUE.** See DYING WITHOUT ISSUE.

**DIEI DICTIO.** Lat. In Roman law. This name was given to a notice promulgated by a magistrate of his intention to present an impeachment against a citizen before the people, specifying the day appointed, the name of the accused, and the crime charged.

**DIEM CLAUSIT EXTREMUM.** (Lat. He has closed his last day.—died.) A writ which formerly lay on the death of a tenant *in capite,* to ascertain the lands of which he died seised, and reclaim them into the king's hands. It was directed to the king's escheators. *Fitzh. Nat. Brev. 251, K; 2 Reeve, Eng. Law, 327.*

A writ awarded out of the exchequer after the death of a crown debtor, the sheriff being commanded by it to inquire by a jury when and where the crown debtor died, and what chattels, debts, and lands he had at the time of his decease, and to take and seize them into the crown's hands. 4 Steph. Comm. 47, 48.

**DIES.** Lat. A day; days. Days for appearance in court. Provisions or maintenance for a day. The king's rents were anciently reserved by so many days' provisions. Speiman; Cowell; Blount.

**DIES A QUO.** (The day from which.) In the civil law. The day from which a transaction begins; the commencement of it; the conclusion being the *dies ad quem.* *Mackeld. Rom. Law, § 185.*

**DIES AMORIS.** A day of favor. The name given to the appearance day of the term on the fourth day, or *quarto die post.* It was the day given by the favor and indulgence of the court to the defendant for his appearance, when all parties appeared in court, and
had their appearance recorded by the proper officer. Wharton.

DIES CEDIT. The day begins; dies venit, the day has come. Two expressions in Roman law which signify the vesting or fixing of an interest, and the interest becoming a present one. Sandars' Just. Inst. (5th Ed.) 225, 232.

DIES COMMUNES IN BANCO. Regular days for appearance in court; called, also, "common return-days." 2 Reeve, Eng. Law, 57.

DIES DATUS. A day given or allowed, (to a defendant in an action;) amounting to a continuance. But the name was appropriate only to a continuance before a declaration filed; if afterwards allowed, it was called an "impairance."

DIES DATUS IN BANCO. A day given in the bench, (or court of common pleas.) Bract. fols. 257b, 361. A day given in bank, as distinguished from a day at nisi prius. Co. Litt. 135.

DIES DATUS PARTIBUS. A day given to the parties to an action; an adjournment or continuance. Crabb, Eng. Law, 217.


DIES DOMINICUS. The Lord's day; Sunday.

DIES dominicus non est iuridicus. Sunday is not a court day, or day for judicial proceedings, or legal purposes. Co. Litt. 135a; Noy, Max. 2; Wing. Max. 7, max. 5; Broom, Max. 21.

DIES EXCRESCENS. In old English law. The added or increasing day in leap year. Bract. fols. 359, 359b.

DIES FASTI. In Roman law. Days on which the courts were open, and justice could be legally administered; days on which it was lawful for the praetor to pronounce (faeri) the three words, "do," "dico," "ad-dico." Mackeld. Rom. Law, § 39, and note; 3 Bl. Comm. 424, note; Calvin. Hence called "triercibial days," answering to the dies juridici of the English law.

DIES FERIATI. Lat. In the civil law. Holidays. Dig. 2, 12, 2, 9.

DIES GRATIAE. In old English practice. A day of grace, courtesy, or favor.

Co. Litt. 134b. The quarto die post was sometimes so called. Id. 135a.

Dies inceptus pro completo habetur. A day begun is held as complete.

Dies incertus pro conditione habetur. An uncertain day is held as a condition.

DIES INTERCISI. In Roman law. Divided days; days on which the courts were open for a part of the day. Calvin.

DIES LEGITIMUS. In the civil and old English law. A lawful or law day; a term day; a day of appearance.

DIES MARCHIE. In old English law. The day of meeting of English and Scotch, which was annually held on the marches or borders to adjust their differences and preserve peace.

DIES NEFASTI. In Roman law. Days on which the courts were closed, and it was unlawful to administer justice; answering to the dies non juridici of the English law. Mackeld. Rom. Law, § 39, note.

DIES NON. An abbreviation of Dies non juridicus, (q. v.)

DIES NON JURIDICUS. In practice. A day not juridical; not a court-day. A day on which courts are not open for business, such as Sundays and some holidays.

DIES PACIS. (Lat. Day of peace,) The year was formerly divided into the days of the peace of the church and the days of the peace of the king, including in the two divisions all the days of the year. Crabb, Eng. Law, 33.

DIES SOLARIS. In old English law. A solar day, as distinguished from what was called "dies lunaris," (a lunar day;) both composing an artificial day. Bract. fol. 264. See DAY.

DIES SOLIS. In the civil and old English law. Sunday, (literally, the day of the sun.) See Cod. 3, 12, 7.

DIES UTILES. Juridical days; useful or available days. A term of the Roman law, used to designate those especial days occurring within the limits of a prescribed period of time upon which it was lawful, or possible, to do a specific act.

DIET. A general legislative assembly is sometimes so called on the continent of Europe.

In Scotch practice. The sitting of a court. An appearance day. A day fixed
for the trial of a criminal cause. A criminal cause as prepared for trial.

DIETA. A day's journey; a day's work; a day's expenses.

DIETS OF COMPEARANCE. In Scotch law. The days within which parties in civil and criminal prosecutions are cited to appear. Bell.

DIEU ET MON DROIT. Fr. God and my right. The motto of the royal arms of England, first assumed by Richard I.

DIEU SON ACTE. L. Fr. In old law. God his act; God's act. An event beyond human foresight or control. Termes de la Ley.

DIFFACERE. To destroy; to disfigure or deface.

Difficile est ut unus homo vicem duorum sustineat. 4 Coke, 118. It is difficult that one man should sustain the place of two.

DIFFORCIARE. In old English law. To deny, or keep from one. Difforciare rectum, to deny justice to any one, after having been required to do it.

DIGAMA, or DIGAMY. Second marriage; marriage to a second wife after the death of the first, as "bigamy," in law, is having two wives at once. Originally, a man who married a widow, or married again after the death of his wife, was said to be guilty of bigamy. Co. Litt. 40b, note.

DIGEST. A collection or compilation, embodying the chief matter of numerous books in one, disposed under proper heads or titles, and usually by an alphabetical arrangement, for facility in reference.

As a legal term, "digest" is to be distinguished from "abridgment." The latter is a summary or epitome of the contents of a single work, in which, as a rule, the original order or sequence of parts is preserved, and in which the principal labor of the compiler is in the matter of consolidation. A digest is wider in its scope; is made up of quotations or paraphrased passages; and has its own system of classification and arrangement. An "index" merely points out the places where particular matters may be found, without purporting to give such matters in extenso. A "treatise" or "commentary" is not a compilation, but an original composition, though it may include quotations and excerpts.

A reference to the "Digest," or "Dig.," is always understood to designate the Digest (or Pandects) of the Justinian collection; that being the digest par eminence, and the authoritative compilation of the Roman law.


DIGESTS. The ordinary name of the Pandects of Justinian, which are now usually cited by the abbreviation "Dig." instead of "Ff.," as formerly. Sometimes called "Digest," in the singular.

DIGGING. Has been held as synonymous with "excavating," and not confined to the removal of earth. 1 N. Y. 316.

DIGNITARY. In canon law. A person holding an ecclesiastical benefice or dignity, which gave him some pre-eminence above mere priests and canons. To this class exclusively belonged all bishops, deans, archdeacons, etc.; but it now includes all the prebendaries and canons of the church. Brande.

DIGNITY. In English law. An honor; a title, station, or distinction of honor. Dignities are a species of incorporeal hereditaments, in which a person may have a property or estate. 2 Bl. Comm. 37; 1 Bl. Comm. 396; 1 Crabb, Real Prop. 468, et seq.

DILJUDICATION. Judicial decision or determination.

DILACION. In Spanish law. A space of time granted to a party to a suit in which to answer a demand or produce evidence of a disputed fact.

DILAPIDATION. A species of ecclesiastical waste which occurs whenever the incumbent suffers any edifices of his ecclesiastical living to go to ruin or decay. It is either voluntary, by pulling down, or permissive, by suffering the church, parsonage-houses, and other buildings thereunto belonging, to decay. And the remedy for either lies either in the spiritual court, where the canon law prevails, or in the courts of common law. It is also held to be good cause of deprivation if the bishop, parson, or other ecclesiastical person dilapidates buildings or cuts down timber growing on the patrimoniy of the church, unless for necessary repairs; and that a writ of prohibition will also lie against him in the common-law courts. 3 Bl. Comm. 91.

The term is also used, in the law of landlord and tenant, to signify the neglect of necessary repairs to a building, or suffering it to fall into a state of decay, or the pulling down of the building or any part of it.
DILATIONES, ETC. 368 DIMISSORY LETTERS

Dilatones in lege sunt odiosae. Delays in law are odious. Branch, Prince.

DILATORY DEFENSE. In chancery practice. One the object of which is to dismiss, suspend, or obstruct the suit, without touching the merits, until the impediment or obstacle insisted on shall be removed. 3 Bl. Comm. 301, 302.

DILATORY PLEAS. A class of defenses at common law, founded on some matter of fact not connected with the merits of the case, but such as might exist without impeaching the right of action itself. They were either pleas to the jurisdiction, showing that, by reason of some matter therein stated, the case was not within the jurisdiction of the court; or pleas in suspension, showing some matter of temporary incapacity to proceed with the suit; or pleas in abatement, showing some matter for abatement or quashing the declaration. 3 Steph. Comm. 576.

DILIGENCE. Prudence; vigilant activity; attentiveness; or care, of which there are infinite shades, from the slightest momentary thought to the most vigilant anxiety; but the law recognizes only three degrees of diligence: (1) Common or ordinary, which men, in general, exert in respect of their own concerns; the standard is necessarily variable with respect to the facts, although it may be uniform with respect to the principle. (2) High or great, which is extraordinary diligence, or that which very prudent persons take of their own concerns. (3) Low or slight, which is that which persons of less than common prudence, or indeed of no prudence at all, take of their own concerns.

The civil law is in perfect conformity with the common law. It lays down three degrees of diligence.—ordinary, (diligentia;) extraordinary, (exsistentissima diligentia;) slight, (levisima diligentia.) Story, Balm. 19.

There may be a high degree of diligence, a common degree of diligence, and a slight degree of diligence, with their corresponding degrees of negligence, and these can be clearly enough defined for all practical purposes, and, with a view to the business of life, seem to be all that are really necessary. Common or ordinary diligence is that degree of diligence which men in general exercise in respect to their own concerns; high or great diligence is of course extraordinary diligence, or that which very prudent persons take of their own concerns; and low or slight diligence is that which persons of less than common prudence, or indeed of any prudence at all, take of their own concerns. Ordinary negligence is the want of ordinary diligence; slight, or less than ordinary, negligence is the want of great diligence; and gross or more than ordinary negligence is the want of slight diligence. 5 Kan. 180.

In Scotch law and practice. Process of law, by which persons, lands, or effects are seized in execution or in security for debt. Ersk. Inst. 2, 11, 1. Brande. Process for enforcing the attendance of witnesses, or the production of writings. Ersk. Inst. 4, 1, 71.

DILIGIATUS. (Fr. De lege ejectus, Lat.) Outlawed.

DILLIGROUT. In old English law. Pottage formerly made for the king’s table on the coronation day. There was a tenure in serjeantry, by which lands were held of the king by the service of finding this pottage at that solemnity.

DIME. A silver coin of the United States, of the value of ten cents, or one-tenth of the dollar.

DIMIDIA, DIMIDIIUM, DIMIDIUS. Half; a half; the half.

DIMIDITAS. The moiety or half of a thing.

DIMINUTIO. In the civil law. Diminution; a taking away; loss or deprivation. Diminutio capitis, loss of status or condition. See CAPITIS DIMINUTIO.

DIMINATION. Incompleteness. A word signifying that the record sent up from an inferior to a superior court for review is incomplete, or not fully certified. In such case the party may suggest a “diminution of the record,” which may be rectified by a certiorari. 2 Tidd, Pr. 1109.

DIMISI. In old conveyancing. I have demised. Dimisi, concessi, et ali firmam tradidi, have demised, granted, and to farm let. The usual words of operation in a lease. 2 Bl. Comm. 317, 318.

DIMISIT. In old conveyancing. [He] has demised. See Dimisi.

DIMISSORIÆ LETTERÆ. In the civil law. Letters dimissory or dismissory, commonly called “apostles,” (quia vulgo apostolae dicuntur.) Dig. 50, 16, 106. See APOSTLES.

DIMISSORY LETTERS. Where a candidate for holy orders has a title of ordination in one diocese in England, and is to be ordained in another, the bishop of the former diocese gives letters dimissory to the bishop of the latter to enable him to ordain the candidate. Holthouse.
DINARCHY. A government of two persons.


In Roman law. A civil division of the Roman empire, embracing several provinces. Calvin.

DIOCESAN. Belonging to a diocese; a bishop, as he stands related to his own clergy or flock.

DIOCESAN COURTS. In English law. The consistorial courts of each diocese, exercising general jurisdiction of all matters arising locally within their respective limits, with the exception of places subject to pecuniary jurisdiction; deciding all matters of spiritual discipline,—suspending or depriving clergymen,—and administering the other branches of the ecclesiastical law. 2 Steph. Comm. 672.


DIOICHIA. The district over which a bishop exercised his spiritual functions.

DIPLOMA. In the civil law. A royal charter; letters patent granted by a prince or sovereign. Calvin.

An instrument given by colleges and societies on the conferring of any degrees.

A license granted to a physician, etc., to practice his art or profession. See 25 Wend. 469.

DIPLOMACY. The science which treats of the relations and interests of nations with nations.

Negotiation or intercourse between nations through their representatives. The rules, customs, and privileges of representatives at foreign courts.

DIPLOMATIC AGENT. In International law. A general name for all classes of persons charged with the negotiation, transaction, or superintendence of the diplomatic business of one nation at the court of another. See Rev. St. U. S. § 1674.

DIPLOMATICS. The science of diplomas, or of ancient writings and documents; the art of judging of ancient charters, public documents, diplomas, etc., and discriminating the true from the false. Webster.

DIPSMANIA. In medical jurisprudence. An irresistible impulse to indulge in intoxication, either by the use of alcohol or of drugs such as opium. This mania or disease is classed as one of the minor forms of insanity. 19 Neb. 614. 28 N. W. Rep. 273; 1 Bish. Crim. Law, § 304.

DIPSMANIAC. A person subject to dipsomania. One who has an irresistible desire for alcoholic liquors.

DIPTYCHA. Diplychs; tablets of wood, metal, or other substance, used among the Romans for the purpose of writing, and folded like a book of two leaves. The diplychs of antiquity were especially employed for public registers. They were used in the Greek, and afterwards in the Roman, church, as registers of the names of those for whom supplication was to be made, and are ranked among the earliest monastic records. Burrill.

DIRECT. Immediate; by the shortest course; without circuitry; operating by an immediate connection or relation, instead of operating through a medium; the opposite of indirect.

In the usual or natural course or line; immediately upwards or downwards; as distinguished from that which is out of the line, or on the side of it; the opposite of collateral.

In the usual or regular course or order, as distinguished from that which diverts, interrupts, or opposes; the opposite of cross or contrary.

DIRECT EVIDENCE. Evidence directly proving any matter, as opposed to circumstantial evidence, which is often called "indirect." It is usually conclusive, but, like other evidence, it is fallible, and that on various accounts. It is not to be confounded with primary evidence, as opposed to secondary, although in point of fact it usually is primary. Brown.

DIRECT EXAMINATION. In practice. The first interrogation or examination of a witness, on the merits, by the party on whose behalf he is called. This is to be distinguished from an examination in pais, or on the voir dire, which is merely preliminary, and is had when the competency of the witness is challenged; from the cross-examination, which is conducted by the adverse party; and from the redirect examination, which follows the cross-examination, and is had by the party who first examined the witness.
DIRECT INTEREST. A direct interest, such as would render the interested party incompetent to testify in regard to the matter, is an interest which is certain, and not contingent or doubtful. A matter which is dependent alone on the successful prosecution of an execution cannot be considered as uncertain, or otherwise than direct, in this sense. 1 Ala. 65.

DIRECT INTERROGATORIES. On the taking of a deposition, where written interrogatories are framed, those put by the party calling the witness are named "direct interrogatories," (corresponding to the questions asked on a direct examination,) while those put by the adverse party are called "cross-interrogatories."

DIRECT LINE. Property is said to descend or be inherited in the direct line when it passes in lineal succession; from ancestor to son, grandson, great-grandson, and so on.

DIRECT TAX. A direct tax is one which is demanded from the very persons who, it is intended or desired, should pay it. Indirect taxes are those which are demanded from one person, in the expectation and intention that he shall indemnify himself at the expense of another. Mill, Pol. Econ.

Taxes are divided into "direct," under which designation would be included those which are assessed upon the property, person, business, income, etc., of those who are to pay them, and "indirect," or those which are levied on commodities before they reach the consumer, and are paid by those upon whom they ultimately fall, not as taxes, but as part of the market price of the commodity. Cooley, Tax'n, 6.

Historical evidence shows that personal property, contracts, occupations, and the like, have never been regarded as the subjects of direct tax. The phrase is understood to be limited to taxes on land and its appurtenances, and on polls. 8 Wall. 338.

DIRECTION. 1. The act of governing; management; superintendence. Also the body of persons (called "directors") who are charged with the management and administration of a corporation or institution.

2. The charge or instruction given by the court to a jury upon a point of law arising or involved in the case, to be by them applied to the facts in evidence.

3. The clause of a bill in equity containing the address of the bill to the court.

DIRECTOR OF THE MINT. An officer having the control, management, and superintendence of the United States mint and its branches. He is appointed by the president, by and with the advice and consent of the senate.

DIRECTORS. Persons appointed or elected according to law, authorized to manage and direct the affairs of a corporation or company. The whole of the directors collectively form the board of directors. Wharton.

DIRECTORY. A provision in a statute, rule of procedure, or the like, is said to be directory when it is to be considered as a mere direction or instruction of no obligatory force, and involving no invalidating consequence for its disregard, as opposed to an imperative or mandatory provision, which must be followed. The general rule is that the prescriptions of a statute relating to the performance of a public duty are so far directory that, though neglect of them may be punishable, yet it does not affect the validity of the acts done under them, as in the case of a statute requiring an officer to prepare and deliver a document to another officer on or before a certain day. Maxw. Interp. St. 330, et seq.

DIRECTORY TRUST. Where, by the terms of a trust, the fund is directed to be vested in a particular manner till the period arrives at which it is to be appropriated, this is called a "directory trust." It is distinguished from a discretionary trust, in which the trustee has a discretion as to the management of the fund. 10 Yerg. 272.

DIRIBITORES. In Roman law. Officers who distributed ballots to the people, to be used in voting. Tayl. Civil Law, 192.

DIRIMENT IMPEDIMENTS. In canon law. Absolute bars to marriage, which would make it null ab initio.

DISABILITY. The want of legal ability or capacity to exercise legal rights, either special or ordinary, or to do certain acts with proper legal effect, or to enjoy certain privileges or powers of free action.

At the present day, disability is generally used to indicate an incapacity for the full enjoyment of ordinary legal rights; thus married women, persons under age, insane persons, and felons convicted are said to be under disability. Sometimes the term is used in a more limited sense, as when it signifies an impediment to marriage, or the restraints placed upon clergymen by reason of their spiritual avocations. Mozley & Whitney.

Disability is either general or special; the former when it incapacitates the person for the performance of all legal acts of a general class, or giving to them their ordinary legal effect; the latter when it debars him from one specific act.
Disability is also either personal or absolute; the former where it attaches to the particular person, and arises out of his status, his previous act, or his natural or juridical incapacity; the latter where it originates with a particular person, but extends also to his descendants or successors.

Considered with special reference to the capacity to contract a marriage, disability is either canonical or civil; a disability of the former class makes the marriage voidable only, while the latter, in general, avoids it entirely.

DISABLE. In its ordinary sense, to disable is to cause a disability, (q. v.)

In the old language of pleading, to disable is to take advantage of one's own or another's disability. Thus, it is "an express maxim of the common law that the party shall not disable himself;" but "this disability to disable himself * * * is personal." 4 Coke, 123b.

DISABLING STATUTES. These are acts of parliament, restraining and regulating the exercise of a right or the power of alienation; the term is specially applied to 1 Eliz. c. 19, and similar acts restraining the power of ecclesiastical corporations to make leases.

DISADVOCARE. To deny a thing.

DISAFFIRM. To repudiate; to revoke a consent once given; to recall an affirmance. To refuse one's subsequent sanction to a former act; to disclaim the intention of being bound by an antecedent transaction.

DISAFFIRMANCE. The repudiation of a former transaction. The refusal by one who has the right to refuse, (as in the case of a voidable contract,) to abide by his former acts, or accept the legal consequences of the same. It may either be "express" (in words) or "implied" from acts expressing the intention of the party to disregard the obligations of the contract.

DISAFFOREST. To restore to their former condition lands which have been turned into forests. To remove from the operation of the forest laws. 2 Bl. Comm. 416.

DISAGREEMENT. The refusal by a grantee, lessee, etc., to accept an estate, lease, etc., made to him; the amnulling of a thing that had essence before. No estate can be vested in a person against his will. Consequently no one can become a grantee, etc., without his agreement. The law implies such an agreement until the contrary is shown, but his disagreement renders the grant, etc., inoperative. Wharton.

DISALT. To disable a person.

DISAPPROPRIATION. This is where the appropriation of a benefice is severed, either by the patron presenting a clerk or by the corporation which has the appropriation being dissolved. 1 Bl. Comm. 355.

DISAVOW. To repudiate the unauthorized acts of an agent; to deny the authority by which he assumed to act.

DISBAR. In England, to deprive a barrister permanently of the privileges of his position; it is analogous to striking an attorney off the rolls. In America, the word describes the act of a court in withdrawing from an attorney the right to practise at its bar.

DISBOCATIO. In old English law. A conversion of wood grounds into arable or pasture; an assarting. Cowell. See ASSART.

DISBURSEMENTS. Money expended by an executor, guardian, trustee, etc., for the benefit of the estate in his hands, or in connection with its administration. The term is also used under the codes of civil procedure, to designate the expenditures necessarily made by a party in the progress of an action, aside from the fees of officers and court costs, which are allowed, eo nomine, together with costs.

DISCARCARE. In old English law. To discharge, to unload: as a vessel. Carcare et discarcare; to charge and discharge; to load and unload. Cowell.

DISCARGARE. In old European law. To discharge or unload, as a wagon. Spelman.

DISCEP'TIO CAUSA. In Roman law. The argument of a cause by the counsel on both sides. Calvin.

DISCHARGE. The opposite of charge; hence to release; liberate; annul; unburden; disencumber.

In the law of contracts. To cancel or unloose the obligation of a contract; to make an agreement or contract null and inoperative. As a noun, the word means the act or instrument by which the binding force of a contract is terminated, irrespective of whether the contract is carried out to the full extent contemplated (in which case the
Discharge is the result of performance or is broken off before complete execution.

Discharge is a generic term; its principal species are rescission, release, accord and satisfaction, performance, judgment, composition, bankruptcy, merger, (q. v.)—Leake, Cont. 413.

As applied to demands, claims, rights of action, incumbrances, etc., to discharge the debt or claim is to extinguish it, to annul its obligatory force, to satisfy it. And here also the term is generic; thus a debt, a mortgage, a legacy, may be discharged by payment or performance, or by any act short of that, lawful in itself, which the creditor accepts as sufficient. To discharge a person is to liberate him from the binding force of an obligation, debt, or claim.

Discharge by operation of law is where the discharge takes place, whether it was intended by the parties or not; thus, if a creditor appoints his debtor his executor, the debt is discharged by operation of law, because the executor cannot have an action against himself. Co. Litt. 364b, note 1; Williams, Extr., 1216; Chit. Cont. 714.

In civil practice. To discharge a rule, an order, an injunction, a certificate, process of execution, or in general any proceeding in a court, is to cancel or annul it, or to revoke it, or to refuse to confirm its original provisional force.

To discharge a jury is to relieve them from any further consideration of a cause. This is done when the continuance of the trial is, by any cause, rendered impossible; also when the jury, after deliberation, cannot agree on a verdict.

In equity practice. In the process of accounting before a master in chancery, the discharge is a statement of expenses and counter-claims brought in and filed, by way of set-off, by the accounting defendant; which follows the charge in order.

In criminal practice. The act by which a person in confinement, held on an accusation of some crime or misdemeanor, is set at liberty. The writing containing the order for his being so set at liberty is also called a "discharge."

In bankruptcy practice. The discharge of the bankrupt is the step which regularly follows the adjudication of bankruptcy and the administration of his estate. By it he is released from the obligation of all his debts which were or might be proved in the proceedings, so that they are no longer a charge upon him. and so that he may thereafter engage in business and acquire property without its being liable for the satisfaction of such former debts.

In maritime law. The unloading or unloading of a cargo from a vessel. Story, J., 2 Sum. 589, 600.

DISCLAIMER. The repudiation or renunciation of a right or claim vested in a person or which he had formerly alleged to be his. The refusal, waiver, or denial of an estate or right offered to a person. The disclaimer, denial, or renunciation of an interest, right, or property imputed to a person or alleged to be his. Also the declaration, or the instrument, by which such disclaimer is published.

Of estates. The act by which a party refuses to accept an estate which has been conveyed to him. Thus, a trustee is said to disclaim who releases to his fellow-trustees his estate, and relieves himself of the trust. 1 Hil. Real Prop. 354; 13 Conn. 83.

A renunciation or a denial by a tenant of his landlord's title, either by refusing to pay rent, denying any obligation to pay, or by setting up a title in himself or a third person, and this is a distinct ground of forfeiture of the lease or other tenancy, whether of land or tithe. See 16 Ch. Div. 730.

In pleading. A renunciation by the defendant of all claim to the subject of the demand made by the plaintiff's bill. Coop. Eq. Pl. 309; Mitf. Eq. Pl. 318.

In patent law. When the title and specifications of a patent do not agree, or when part of that which it covers is not strictly patentable, because neither new nor useful, the patentee is empowered, with leave of the court, to enter a disclaimer of any part of either the title or the specification, and the disclaimer is then deemed to be part of the letters patent or specification, so as to render them valid for the future. Johns. Pat. 151.

DISCLAMATION. In Scotch law. Disavowal of tenure; denial that one holds lands of another. Bell.

DISCOMMON. To deprive commona ble lands of their commonal quality, by in closing and appropriating or improving them.

DISCONTINUANCE. In practice. The termination of an action, in consequence of the plaintiff's omitting to continue the process or proceedings by proper entries on the record. 3 Bl. Comm. 296; 1 Tidd, Pr. 678; 2 Arch. Pr. K. B. 233.

In practice, a discontinuance is a chasm or gap left by neglecting to enter a continuance. By our practice, a neglect to enter a continuance, even in a defaulted action, by no means puts an end to it.
DISCONTINUANCE

and such actions may always be brought forward. 56 N. H. 416.

The cessation of the proceedings in an action where the plaintiff voluntarily puts an end to it, either by giving notice in writing to the defendant before any step has been taken in the action subsequent to the answer, or at any other time by order of the court or a judge.

In practice, discontinuance and dismissal import the same thing, viz., that the cause is sent out of court. 45 Mo. 233.

In pleading. That technical interruption of the proceedings in an action which follows where a defendant does not answer the whole of the plaintiff's declaration, and the plaintiff omits to take judgment for the part unanswered. Steph. Pl. 216, 217.

DISCONTINUANCE OF AN ESTATE. The termination or suspension of an estate-tail, in consequence of the act of the tenant in tail, in conveying a larger estate in the land than he was by law entitled to do. 2 Bl. Comm. 275; 3 Bl. Comm. 171. An alienation made or suffered by tenant in tail, or by any that is seised in auter drolf, whereby the issue in tail, or the heir or successor, or those in reversion or remainder, are driven to their action, and cannot enter. Co. Litt. 325a. The cesser of a seisin under an estate, and the acquisition of a seisin under a new and necessarily a wrong­ful title. Prest. Merg. c. ii.

Discontinuare nihil alio signat quam intermitture, desunescre, interrumpere. Co. Litt. 325. To discontinue signifies nothing else than to intermit, to disuse, to interrupt.

DISCONTINUOUS EASEMENT. One the enjoyment of which can be had only by the interference of man, as rights of way, or a right to draw water; as distinguished from a continuos easement, which is one the enjoyment of which is or may be continu­ual, without the necessity of any actual interference by man, as a water-spout, or a right of light or air. Washb. Easem. 13; Gale, Easem. 16; 21 N. Y. 503; 60 Mich. 252, 27 N. W. Rep. 509. This distinction is derived from the French law. See Code Civil, art. 688.

DISCONTINUOUS SERVITUDE. See DISCONTINUOUS EASEMENT.

DISCONVENABLE. L. Fr. Improper; anfit. Kelham.

DISCOUNT. In a general sense. An allowance or deduction made from a gross sum on any account whatever. In a more limited and technical sense. The taking of interest in advance.

By the language of the commercial world and the settled practice of banks, a discount by a bank means a drawback or deduction made upon its advances or loans of money, upon negotiable paper or other evidences of debt payable at a future day, which are transferred to the bank. 8 Wheat. 338; 15 Ohio St. 87.

Although the discounting of notes or bills, in its most comprehensive sense, may mean lending money and taking notes in payment, yet, in its more ordinary sense, the discounting of notes or bills means advancing a consideration for a bill or note, deducting or discounting the interest which will accrue for the time the note has to run. 13 Conn. 248.

Discounting by a bank means lending money upon a note, and deducting the interest or premium in advance. 17 N. Y. 507, 515; 48 Mo. 189.

The ordinary meaning of the term "to discount" is to take interest in advance, and in banking is a mode of loaning money. It is the advance of money not due till some future period, less the interest which would be due thereon when payable. 42 Md. 592.

Discount, as we have seen, is the difference between the price and the amount of the debt, the evidence of which is transferred. That difference represents interest charged, being at the same rate, according to which the price paid, if invested until the maturity of the debt, will just produce its amount. 104 U. S. 376.

Discounting a note and buying it are not identical in meaning; the latter expression being used to denote the transaction when the seller does not indorse the note, and is not accountable for it. 23 Minn. 205.

In practice. A set-off or defealcation in an action. Vin. Abr. "Discount." But see 1 Metc. (Ky.) 597.

DISCOUNT BROKER. A bill broker; one who discounts bills of exchange and promissory notes, and advances money on securities.

DISCOVERT. Not married; not subject to the disabilities of coverture. It applies equally to a maid and a widow.

DISCOVERY. Invention; finding out. The finding of an island or country not previously known to geographers.

In patent law. The finding out some substance, mechanical device, improvement, or application, not previously known.

Discovery, as used in the patent laws, depends upon invention. Every invention may, in a certain sense, embrace more or less of discovery, for it must always include something that is new; but
It by no means follows that every discovery is an
invention. 5 Blatchf. 121.

Also used of the disclosure by a bankrupt
of his property for the benefit of creditors.

In practice. The disclosure by the de-
fendant of facts, titles, documents, or other
things which are in his exclusive knowledge
or possession, and which are necessary to the
party seeking the discovery as a part of a
cause or action pending or to be brought in
another court, or as evidence of his rights or
title in such proceeding.

DISCOVERY, BILL OF. In equity
pleading. A bill for the discovery of facts
resting in the knowledge of the defendant, or
of deeds or writings, or other things in his
custody or power; but seeking no relief in
consequence of the discovery, though it may
pray for a stay of proceedings at law till the
discovery is made. Story, Eq. Pl. §§ 311,
312, and notes; Mitif. Eq. Pl. 53.

DISCREDIT. To destroy or impair
the credibility of a person; to impeach; to lessen
the degree of credit to be accorded to a wit-
ness or document, as by impugning the ve-
racity of the one or the genuineness of the
other; to disparage or weaken the reliance
upon the testimony of a witness, or upon docu-
mentary evidence, by any means what-
ever.

DISCREPANCY. A difference between
two things which ought to be identical, as be-
tween one writing and another; a variance,
(q. v.)

Discretio est discernere per legem
quid sit justum. 10 Coke, 140. Discretion
is to know through law what is just.

DISCRETION. A liberty or privilege
allowed to a judge, within the confines of
right and justice, but independent of narrow
and unbending rules of positive law, to de-
cide and act in accordance with what is fair,
equitable, and wholesome, as determined up-
on the peculiar circumstances of the case, and
as discerned by his personal wisdom and ex-
perience, guided by the spirit, principles, and
analogies of the law.

When applied to public functionaries, discretion
means a power or right conferred upon them by
law of acting officially in certain circumstances,
according to the dictates of their own judgment
and conscience, uncontrolled by the judgment or
conscience of others. This discretion undoubtedly
is to some extent regulated by usage, or, if the term
is preferred, by fixed principles. But by this is to
be understood nothing more than that the same
court cannot, consistently with its own dignity,
and with its character and duty of administering

impartial justice, decide in different ways two
cases in every respect exactly alike. The question
of fact whether the two cases are alike in every
color, circumstance, and feature is of necessity to
be submitted to the judgment of some tribunal.
18 Wend. 79, 99.

Lord Coke defines judicial discretion to be "dis-
cernere per legem quid sit justum," to see what
would be just according to the laws in the pre-
mises. It does not mean a wild self-willfulness,
which may prompt to any and every act; but this
judicial discretion is guided by the law; (see what
the law declares upon a certain statement of facts,
and then decide in accordance with the law,) so as
to do substantial equity and justice. 13 Mo. 543.

True, it is a matter of discretion; but then the
discretion is not willful or arbitrary, but legal.
And, although its exercise be not purely a matter
of law, yet it "involves a matter of law or legal in-
ference," in the language of the Code, and an ap-
peal will lie. 70 N. C. 171.

In criminal law and the law of torts, it
means the capacity to distinguish between
what is right and wrong, lawful or unlawful,
wise or foolish, sufficiently to render one
amenable and responsible for his acts.

DISCRETIONARY TRUSTS. Such as
are not marked out on fixed lines, but allow
certain amount of discretion in their exer-
cise. Those which cannot be duly admin-
istered without the application of a certain
degree of prudence and judgment.

DISCUSSION. In the civil law A
proceeding, at the instance of a surety, by
which the creditor is obliged to exhaust the
property of the principal debtor, towards the
satisfaction of the debt, before having re-
course to the surety; and this right of the
surety is termed the "benefit of discussion." Civil Code La. art. 3045, et seq.

In Scotch law. The ranking of
the proper order in which heirs are liable to sat-
isfy the debts of the deceased. Bell.

DISEASE. In construing a policy of life
insurance, it is generally true that, before
any temporary ailment can be called a "dis-
case," it must be such as to indicate a vice
in the constitution, or be so serious as to have
some bearing upon general health and the
continuance of life, or such as, according to
common understanding, would be called a
"disease." 70 N. Y. 77.

DISENTAILING DEED. In English
law. An enrolled assurance barring an en-
tail, pursuant to 3 & 4 Wm. IV. c. 74.

DISFRANCHISE. To deprive of the
rights and privileges of a free citizen; to de-
prive of chartered rights and immunities; to
deprive of any franchise, as of the right of
voting in elections, etc. Webster.
DISFRANCHISEMENT. The act of disfranchising. The act of depriving a member of a corporation of his right as such, by expulsion. 1 Bouv. Inst. no. 192.

It differs from amotion, (q. v.) which is applicable to the removal of an officer from office, leaving him his rights as a member. Willcock, Mun. Corp. no. 708; Ang. & A. Corp. 237.

DISGAVEL. In English law. To deprive lands of that principal quality of gavel-kind tenure by which they descend equally among all the sons of the tenant. 2 Wood. Lect. 76; 2 Bl. Comm. 85.

DISGRACE. Ignominy; shame; dishonor. No witness is required to disgrace himself. 13 How. State Tr. 17, 334.

DISGRADING. In old English law. The depriving of an order or dignity.

DISGUISE. A counterfeit habit; a dress intended to conceal the person who wears it. Webster.

Anything worn upon the person with the intention of altering the wearer's appearance that he shall not be recognized by those familiar with him, or that he shall be taken for another person.

A person lying in ambush, or concealed behind bushes, is not in "disguise," within the meaning of a statute declaring the county liable in damages to the next of kin of any one murdered by persons in disguise. 46 Ala. 118, 142.

DISHERISON. Disinheritance; depriving one of an inheritance.Obsolete.

DISHONOR. In mercantile law and usage. To refuse or decline to accept a bill of exchange, or to refuse or neglect to pay a bill or note at maturity.

A negotiable instrument is dishonored when it is either not paid or not accepted, according to its tenor, on presentment for that purpose, or without presentment, where that is excused. Civil Code Cal. § 3141.

DISINCARCERATE. To set at liberty, to free from prison.

DISINHERISON. In the civil law. The act of depriving a forced heir of the inheritance which the law gives him.

DISINHERITANCE. The act by which the owner of an estate deprives a person of the right to inherit the same, who would otherwise be his heir.

DISINTERESTED. Not concerned, in respect to possible gain or loss, in the result of the pending proceeding.

DISINTERESTED WITNESS. One who has no interest in the cause or matter in issue, and who is lawfully competent to testify.

DISJUNCTIM. Lat. In the civil law. Separately; severally. The opposite of conjunctim, (q. v.) Inst. 2, 20, 8.

DISJUNCTIVE ALLEGATION. A statement in a pleading or indictment which expresses or charges a thing alternatively, with the conjunction "or;" for instance, an averment that defendant "murdered, or caused to be murdered," etc., would be of this character.

DISJUNCTIVE TERM. One which is placed between two contraries, by the affirming of one of which the other is taken away; it is usually expressed by the word "or."

DISMES. Tenth; tithes, (q. v.) The original form of "dime," the name of the American coin.

DISMISS. To send away; to discharge; to cause to be removed. To dismiss an action or suit is to send it out of court without any further consideration or hearing.

DISMORTGAGE. To redeem from mortgage.

DISORDER. Turbulent or rioutous behavior; immoral or indecent conduct. The breach of the public decorum and morality.

DISORDERLY HOUSE. In criminal law. A house the inmates of which behave so badly as to become a nuisance to the neighborhood. It has a wide meaning, and includes bawdy houses, common gaming houses, and places of a like character. 1 Bish. Crim. Law, § 1106; 2 Cranch, C. C. 675.

DISORDERLY PERSONS. Such as are dangerous or hurtful to the public peace and welfare by reason of their misconduct or vicious habits, and are therefore amenable to police regulation. The phrase is chiefly used in statutes, and the scope of the term depends on local regulations. See 4 Bl. Comm. 169.

DISPARAGARE. In old English law. To bring together those that are unequal, (dispars confere;) to connect in an indecorous and unworthy manner; to connect in marriage those that are unequal in blood and parentage.

DISPARAGATIO. In old English law. Disparagement. Hæredes maritentur absque
DISPARAGATION, heirs shall be married without disparagement. *Magna Charta.* (9 Hen. III.) c. 6.

**DISPARAGATION.** I. Fr. Disparagement; the matching an heir, etc., in marriage, under his or her degree or condition, or against the rules of decency. Kelham.

**DISPARAGE.** To connect unequally; to match unsuitably.

**DISPARAGEMENT.** In old English law. An injury by union or comparison with some person or thing of inferior rank or excellence. Marriage without *disparagement* was marriage to one of suitable rank and character. 2 Bl. Comm. 70; Co. Litt. 82b.

**DISPARAGIUM.** In old Scotch law. Inequality in blood, honor, dignity, or otherwise. Skene de *Verb. Sign.*

Disparata non debent fungi. Things unlike ought not to be joined. Jenk. Cent. 24, marg.

**DISPARK.** To dissolve a park. Cro. Car. 59. To convert it into ordinary ground.

**DISPATCH or DESPATCH.** A message, letter, or order sent with speed on affairs of state; a telegraphic message.

**DISPAUPER.** When a person, by reason of his poverty, is admitted to sue *in forma pauporis,* and afterwards, before the suit be ended, acquires any lands, or personal estate, or is guilty of anything whereby he is liable to have this privilege taken from him, then he loses the right to sue *in forma pauporis,* and is said to be dispaupered. Wharton.

Dispensatio est mali prohibitio provided relaxatio, utilitatis seu necessitate pensata; et est de jure domino regi concessa, propter impossibilitatem praevindendi de omnibus particularibus. A dispensation is the provident relaxation of a *malum prohibitum* weighed from utility or necessity; and it is conceded by law to the king on account of the impossibility of foreknowledge concerning all particulars. 10 Coke, 88.

Dispensatio est vulner, quod vulnerat jus commune. A dispensation is a wound, which wounds common law. Dav. Ir. K. B. 59.

**DISPENSATION.** An exemption from some laws; a permission to do something forbidden; an allowance to omit something commanded; the canonistic name for a license. Wharton.

A relaxation of law for the benefit or advantage of an individual. In the United States, no power exists, except in the legislature, to dispense with law; and then it is not so much a dispensation as a change of the law. Bouvier.

**DISPERSONARE.** To scandalize or disparage. Blount.

**DISPLACE.** This term, as used in shipping articles, means "disrate," and does not import authority of the master to discharge a second mate, notwithstanding a usage in the whaling trade never to disrate an officer to a seaman. 103 Mass. 63.

**DISPONE.** In Scotch law. To grant or convey. A technical word essential to the conveyance of heritable property, and for which no equivalent is accepted, however clear may be the meaning of the party. Paters. Comp.

**DISPOSE.** To alienate or direct the ownership of property, as disposition by will. 42 N. Y. 79. Used also of the determination of suits. 18 Wall. 664. Called a word of large extent. Freem. 177.

**DISPOSING CAPACITY OR MIND.** These are alternative or synonymous phrases in the law of wills for "sound mind," and "testamentary capacity," (q. v.)

**DISPOSITION.** In Scotch law. A deed of alienation by which a right to property is conveyed. Bell.

**DISPOSITIVE FACTS.** Such as produce or bring about the origination, transfer, or extinction of rights. They are either *inestitute,* those by means of which a right comes into existence, *divestitive,* those through which it terminates, or *translatitive,* those through which it passes from one person to another.

**DISPOSSESSION.** Ouster; a wrong that carries with it the emotion of possession. An act whereby the wrong-doer gets the actual occupation of the land or hereditament. It includes abatement, intrusion, disceisin, discontinuance, defacement. 3 Bl. Comm. 167.


**DISPUTABLE PRESUMPTION.** A presumption of law, which may be rebutted or disproved. Best, *Pres. § 25.*
DISPUTATIO FORI. In the civil law. Discussion or argument before a court. Mackeld. Rom. Law, § 38; Dig. 1, 2, 2, 5.

DISRATIONARE, or DIRATIONARE. To justify; to clear one's self of a fault; to traverse an indictment; to disprove. Enc. Lond.

DISSASINA. In old Scotch law. Disseisin; dispossession. Skene.

DISSECTION. The anatomical examination of a dead body.

DISSEISE. To dispossess; to deprive.

DISSEISEE. One who is wrongfully put out of possession of his lands; one who is disseised.

DISSEISIN. Dispossession; a deprivation of possession; a privation of seisin; a usurpation of the right of seisin and possession, and an exercise of such powers and privileges of ownership as to keep out or displace him to whom these rightfully belong. 3 Washib. Real Prop. 125.

It is a wrongfull putting out of him that is seised of the freehold, not, as in abatement or intrusion, a wrongfull entry, where the possession was vacant, but an attack upon him who is in actual possession, and turning him out. It is an ouster from a freehold in deed, as abatement and intrusion are ousters in law. 3 Steph. Comm. 386.

When one man invades the possession of another, and by force or surprise turns him out of the occupation of his lands, this is termed a "disseisin," being a deprivation of that actual seisin or corporeal possession of the freehold which the tenant before enjoyed. In other words, a disseisin is said to be when one enters intending to usurp the possession, and to oust another from the freehold. To constitute an entry a disseisin, there must be an ouster of the freehold, either by taking the profits or by claiming the inheritance. Brown.

According to the modern authorities, there seems to be no legal difference between the words "seisin" and "possession," although there is a difference between the words "disseisin" and "dispossession;" the former meaning an estate gained by wrong and injury, whereas the latter may be by right or by wrong; the former denoting an ouster of the disseisin, or some act equivalent to it, whereas by the latter no such act is implied. 6 Metc. (Mass.) 439.

Equitable disseisin is where a person is wrongfully deprived of the equitable seisin of land, e. g., of the rents and profits. 2 Meriv. 171; 2 Jac. & W. 166.

Disseisin by election is where a person alleges or admits himself to be disseised when he has not really been so.

DISSEISINAM satis facit, qui uti non permittit possessorem, vel minus commode, licet omnino non expellat. Co. Litt. 331. He makes disseisin enough who does not permit the possessor to enjoy, or makes his enjoyment less beneficial, although he does not expel him altogether.

DISSEISITRIX. A female disseisor; a disseisoress. Fleta, lib. 4, c. 12, § 4.

DISSEISOR. One who puts another out of the possession of his lands wrongfully.

DISSEISORESS. A woman who unlawfully puts another out of his land.

DISSENT. Contrariety of opinion; refusal to agree with something already stated or adjudged or to an act previously performed.

The term is most commonly used in American law to denote the explicit disagreement of one or more judges of a court with the decision passed by the majority upon a case before them. In such event, the non-concurring judge is reported as "dissenting," and sometimes files a "dissenting opinion."

DISSENTERS. Protestant seceders from the established church of England. They are of many denominations, principally Presbyterians, Independents, Methodists, and Baptists; but, as to church government, the Baptists are Independents.

DISSENTING OPINION. The opinion in which a judge announces his dissent from the conclusions held by the majority of the court, and expounds his own views.

DISSIGNARE. In old law. To break open a seal. Whishaw.

DISSIMILITATE. In contracts. The dissolution of a contract is the cancellation or abrogation of it by the parties themselves, with the effect of annulling the binding force of the agreement, and restoring each party to his original rights. In this sense it is frequently used in the phrase "dissolution of a partnership."

Of corporations. The dissolution of a corporation is the termination of its existence as a body politic. This may take place in
Dissolution

several ways; as by act of the legislature, where that is constitutional; by surrender or forfeiture of its charter; by expiration of its charter by lapse of time; by proceedings for winding it up under the law; by loss of all its members or their reduction below the statutory limit.

In practice. The act of rendering a legal proceeding null, abrogating or revoking it; unleashing its constraining force; as when an injunction is dissolved by the court.

Dissolution of Parliament.
The crown may dissolve parliament either in person or by proclamation; the dissolution is usually by proclamation, after a prorogation. No parliament may last for a longer period than seven years. Septennial Act, 1 Geo. I, c. 38. Under 6 Anne, c. 37, upon a demise of the crown, parliament became ipso facto dissolved six months afterwards, but under the Reform Act, 1867, its continuance is nowwise affected by such demise. May, Parl. Pr. (6th Ed.) 43. Brown.

Dissolve. To terminate; abrogate; cancel; annul; disintegrate. To release or unloose the binding force of anything. As to "dissolve a corporation," to "dissolve an injunction."

The phrase "dissolving a corporation" is sometimes used as synonymous with annulling the charter or terminating the existence of the corporation, and sometimes as meaning merely a judicial act which alienates the property and suspends the business of the corporation, without terminating its existence. A corporation may, for certain purposes, be considered as dissolved so far as to be incapable of doing injury to the public, while it yet retains vitality so far as essential for the protection of the rights of others. 1 Holmes, 104.

Dissuade. In criminal law. To advise and procure a person not to do an act. To dissuade a witness from giving evidence against a person indicted is an indictable offense at common law. Hawk. P. C. b. 1, c. 21, § 15.

Distiller. Every person who produces distilled spirits, or who brews or makes mash, wort, or wash, fit for distillation or for the production of spirits, or who, by any process of evaporation, separates alcoholic spirit from any fermented substance, or who, making or keeping mash, wort, or wash, has also in his possession or use a still, shall be regarded as a distiller. Rev. St. U. S. § 3247. See 16 Blatchf. 547; 2 Ben. 438.

Distillery. The strict meaning of "distillery" is a place or building where alcoholic liquors are distilled or manufactured; not every building where the process of distillation is used. 45 N. Y. 499.

Distincte et Aperte. In old English practice. Distinctly and openly. Formal words in writs of error, referring to the return required to be made to them. Reg. Orig. 17.

Distinguenda sunt temporis. The time is to be considered. 1 Coke, 16a; 2 Pick. 327; 14 N. Y. 380, 393.

Distinguenda sunt temporis; aliud est facere, aliud percerere. Times must be distinguished; it is one thing to do, another to perfect. 3 Leon. 243; Branch, Prine.

Distinguenda sunt in tempore; distinguia tempora et concordabias leges. Times are to be distinguished; distinguish times, and you will harmonize laws. 1 Coke, 24. A maxim applied to the construction of statutes.

Distinguish. To point out an essential difference; to prove a case cited as applicable, inapplicable.

Distracted Person. A term used in the statutes of Illinois (Rev. Laws Ill. 1833, p. 322) and New Hampshire (Dig. N. H. Laws, 1830, p. 393) to express a state of insanity.

Distractio. In the civil law. The sale of a pledge by a debtor. The appropriation of the property of a ward by a guardian. Calvin.

Distrachere. To sell; to draw apart; to dissolve a contract; to divorce. Calvin.

Distrain. To take as a pledge property of another, and keep the same until he performs his obligation or until the property is repleved by the sheriff. It was used to secure an appearance in court, payment of rent, performance of services, etc. 3 Bl. Comm. 231; Fitzh. Nat. Brev. 32, B, C, 223.

Distress is now generally resorted to for the purpose of enforcing the payment of rent, taxes, or other duties.

Distrainer, or Distrainor. He who seizes a distress.

Distrain. Seizure.

Distress. The taking a personal chattel out of the possession of a wrong-doer into the custody of the party injured, to procure a satisfaction for a wrong committed; as for non-payment of rent, or injury done by cattle. 3 Bl. Comm. 6, 7; Co. Litt. 47. The
taking of beasts or other personal property by way of pledge, to enforce the performance of something due from the party distrained upon. 3 Bl. Comm. 231. The taking of a defendant's goods, in order to compel an appearance in court. Id. 250; 3 Steph. Comm. 361, 363.

DISTRESS INFINITE. One that has no bounds with regard to its quantity, and may be repeated from time to time, until the stubbornness of the party is conquered. Such are distresses for fealty or suit of court, and for compelling jurors to attend. 3 Bl. Comm. 231.

DISTRIBUTEE. Distributee is admissible to denote one of the persons who are entitled, under the statute of distributions, to the personal estate of one who is dead intestate. 9 Ired. 278.

DISTRIBUTION. In practice. The apportionment and division, under authority of a court, of the remainder of the estate of an intestate, after payment of the debts and charges, among those who are legally entitled to share in the same.

DISTRIBUTIVE FINDING OF THE ISSUE. The jury are bound to give their verdict for that party who, upon the evidence, appears to them to have succeeded in establishing his side of the issue. But there are cases in which an issue may be found distributively, i.e., in part for plaintiff, and in part for defendant. Thus, in an action for goods sold and work done, if the defendant pleaded that he never was indebted, on which issue was joined, a verdict might be found for the plaintiff as to the goods, and for the defendant as to the work. Steph. Pl. (7th Ed.) 77d.

DISTRIBUTIVE JUSTICE. See Justice.

DISTRICT. One of the portions into which an entire state or country may be divided, for judicial, political, or administrative purposes.

The United States are divided into judicial districts, in each of which is established a district court. They are also divided into election districts, collection districts, etc.

The circuit or territory within which a person may be compelled to appear. Cowell. Circuit of authority; province. Enc. Lond.

DISTRICT ATTORNEY. The prosecuting officer of the United States government in each of the federal judicial districts. Also, under the state governments, the prosecuting officer who represents the state in each of its judicial districts. In some states, where the territory is divided, for judicial purposes, into sections called by some other name than "districts," the same officer is designated "county attorney" or "state's attorney."

DISTRICT CLERK. The clerk of a district court of either a state or the United States.

DISTRICT COURTS. Courts of the United States, each having territorial jurisdiction over a district, which may include a whole state or only part of it. Each of these courts is presided over by one judge, who must reside within the district. These courts have original jurisdiction over all admiralty and maritime causes and all proceedings in bankruptcy, and over all penal and criminal matters cognizable under the laws of the United States, exclusive jurisdiction over which is not vested either in the supreme or circuit courts.

Inferior courts of record in California, Connecticut, Iowa, Kansas, Louisiana, Minnesota, Nebraska, Nevada, Ohio, and Texas are also called "district courts." Their jurisdiction is for the most part similar to that of county courts. (q. e.)

DISTRICT JUDGE. The judge of a United States district court; also, in some states, the judge of a district court of the state.

DISTRICT OF COLUMBIA. A territory situated on the Potomac river, and being the seat of government of the United States. It was originally ten miles square, and was composed of portions of Maryland and Virginia ceded by those states to the United States; but in 1846 the tract coming from Virginia was retroceded. Legally it is neither a state nor a territory, but is made subject, by the constitution, to the exclusive jurisdiction of congress.

DISTRICT PARISHES. Ecclesiastical divisions of parishes in England, for all purposes of worship, and for the celebration of marriages, christenings, churchings, and burials, formed at the instance of the queen's commissioners for building new churches. See 3 Steph. Comm. 744.

DISTRICT REGISTRY. By the English judicature act, 1873, § 60, it is provided that to facilitate proceedings in country districts the crown may, from time to time, by
DISTRICTIO. A distress; a distraint. Cowell.

DISTRINGAS. In English practice. A writ directed to the sheriff of the county in which a defendant resides, or has any goods or chattels, commanding him to distrain upon the goods and chattels of the defendant for forty shillings, in order to compel his appearance. 3 Steph. Comm. 567. This writ issues in cases where it is found impracticable to get at the defendant personally, so as to serve a summons upon him. Id.

A distringas is also used in equity, as the first process to compel the appearance of a corporation aggregate. St. 11 Geo. IV. and 1 Wm. IV. c. 36.

A form of execution in the actions of detinue and assise of nuisance. Brooke, Abr. pl. 26; 1 Rawle, 44.

DISTRINGAS JURATORES. A writ commanding the sheriff to have the bodies of the jurors, or to distrain them by their lands and goods, that they may appear upon the day appointed. 3 Bl. Comm. 354. It issues at the same time with the venture, though in theory afterwards, founded on the supposed neglect of the juror to attend. 3 Steph. Comm. 590.

DISTRINGAS NUPER VICE COMITEM. A writ to distrain the goods of one who lately filled the office of sheriff, to compel him to do some act which he ought to have done before leaving the office; as to bring in the body of a defendant, or to sell goods attached under a fl. fa.

DISTRINGAS VICECOMITEM. A writ of distringas, directed to the coroner, may be issued against a sheriff if he neglects to execute a writ of conditionem exponas. Arch. Pr. 584.

DISTRINGERE. In feudal and old English law. To distrain; to coerce or compel. Spelman; Calvin.

DISTURBANCE. A wrong done to an incorporeal hereditament by hindering or disquieting the owner in the enjoyment of it. Finch, 187; 3 Bl. Comm. 235.

DISTURBANCE OF COMMON. The doing any act by which the right of another to his common is incommmoded or diminished; as where one who has no right of common puts his cattle into the land, or where one who has a right of common puts in cattle which are not commomable, or surcharges the common; or where the owner of the land, or other person, incloses or otherwise obstructs it. 3 Bl. Comm. 237–241; 3 Steph. Comm. 511, 512.

DISTURBANCE OF FRANCHISE. The disturbing or incommodating a man in the lawful exercise of his franchise, whereby the profits arising from it are diminished. 3 Bl. Comm. 236; 3 Steph. Comm. 510; 2 Crabb, Real Prop. p. 1074, § 2472a.

DISTURBANCE OF PATRONAGE. The hindrance or obstruction of a patron from presenting his clerk to a benefice. 3 Bl. Comm. 242; 3 Steph. Comm. 514.

DISTURBANCE OF PUBLIC WORSHIP. Any acts or conduct which interfere with the peace and good order of an assembly of persons lawfully met together for religious exercises.

DISTURBANCE OF TENURE. In the law of tenure, disturbance is where a stranger, by menaces, force, persuasion, or otherwise, causes a tenant to leave his tenancy; this disturbance of tenure is an injury to the lord for which an action will lie. 3 Steph. Comm. 414.

DISTURBANCE OF WAYS. This happens where a person who has a right of way over another's ground by grant or prescription is obstructed by inclosures or other obstacles, or by plowing across it, by which means he cannot enjoy his right of way, or at least in so commodious a manner as he might have done. 3 Bl. Comm. 241.
DISTURBER. If a bishop refuse or neglect to examine or admit a patron's clerk, without reason assigned or notice given, he is styled a "disturber" by the law, and shall not have any title to present by lapsed; for no man shall have advantage of his own wrong. 2 Bl. Comm. 278.

DITCH. The words "ditch" and "drain" have no technical or exact meaning. They both may mean a hollow space in the ground, natural or artificial, where water is collected or passes off. 5 Gray, 64.

DITES OUSTER. L. Fr. Say over. The form of awarding a respondeas ouster, in the Year Books. M. 6 Edw. III. 49.

DITTAY. In Scotch law. A technical term in civil law; signifying the matter of charge or ground of indictment against a person accused of crime. Taking up ditta is obtaining informations and presentments of crime in order to trial. Skene, de Verb. Sign.; Bell.

DIVERSION. A turning aside or altering the natural course of a thing. The term is chiefly applied to the unauthorized changing the course of a water-course to the prejudice of a lower proprietor.

DIVERSES DES COURTS. A treatise on courts and their jurisdiction, written in French in the reign of Edward III. as is supposed, and by some attributed to Fitzherbert. It was first printed in 1525, and again in 1534. Crabb, Eng. Law, 330, 483.

DIVERSITY. In criminal pleading. A plea by the prisoner in bar of execution, alleging that he is not the same who was attainted, upon which a jury is immediately impaneled to try the collateral issue thus raised, viz., the identity of the person, and not whether he is guilty or innocent, for that has been already decided. 4 Bl. Comm. 396.

DIVERSO INTUITU. Lat. With a different view, purpose, or design; in a different view or point of view; by a different course or process. 1 W. Bl. 89; 4 Kent, Comm. 211, note.

DIVERSORIUM. In old English law. A lodging or inn. Townsh. Pl. 38.

DIVERT. To turn aside; to turn out of the way; to alter the course of things. Usually applied to water-courses. Ang. Water-Courses, § 97, et seq. Sometimes to roads. 8 East, 394.

DIVES. In the practice of the English chancery division, "dives costs" are costs on the ordinary scale, as opposed to the costs formerly allowed to a successful pauper suing or defending in formâ pauperis, and which consisted only of his costs out of pocket. Daniell, Ch. Pr. 43.

DIVEST. Equivalent to devest. (q. e.)

DIVESTITIVE FACT. A fact by means of which a right is divested, terminated, or extinguished; as the right of a tenant terminates with the expiration of his lease, and the right of a creditor is at an end when his debt has been paid. Holl. Jur. 132.

Divide et impera, cum radix et vertex imperii in obedientium consensus rata sunt. 4 Inst. 35. Divide and govern, since the foundation and crown of empire are established in the consent of the obedient.

DIVIDEND. A fund to be divided. The share allotted to each of several persons entitled to share in a division of profits or property. Thus, dividend may denote a fund set apart by a corporation out of its profits, to be apportioned among the share-holders, or the proportional amount falling to each. In bankruptcy or insolvency practice, a dividend is a proportional payment to the creditors out of the insolvent estate.

In old English law. The term denotes one part of an indenture, (q. e.)

DIVIDENDA. In old records. An indenture; one counterpart of an indenture.

DIVINARE. Lat. To divine; to conjecture or guess; to foretell. Divinatio, a conjecturing or guessing.

Divinatio, non interpretatio est, quae omnino recedit a litera. That is guessing, not interpretation, which altogether departs from the letter. Bac. Max. 18, (in reg. 3,) citing Yearb. 3 Hen. VI. 20.

DIVINE SERVICE. Divine service was the name of a feudal tenure, by which the tenants were obliged to do some special divine services in certain; as to sing so many masses, to distribute such a sum in alms, and the like. (2 Bl. Comm. 192; 1 Steph. Comm. 227.) It differed from tenure in frankalmoina, in this: that, in case of the tenure by divine service, the lord of whom the lands were held might distrain for its non-performance, whereas, in case of frankalmoina, the lord has no remedy by distrain for neglect of the service, but merely a right
of complaint to the visitor to correct it. Mozley & Whitley.

DIVISA. In old English law. A device, award, or decree; also a devise; also bounds or limits of division of a parish or farm, etc. Cowell. Also a court held on the boundary, in order to settle disputes of the tenants.

Divisibilis est semper divisibilis. A thing divisible may be forever divided.

DIVISIBLE. That which is susceptible of being divided.

A contract cannot, in general, be divided in such a manner that an action may be brought, or a right accru, on a part of it. 2 Pa. St. 454.

DIVISIM. In old English law. Severally; separately. Bract. fol. 47.

DIVISION. In English law. One of the smaller subdivisions of a county. Used in Lincolnshire as synonymous with "riding" in Yorkshire.

DIVISION OF OPINION. In the practice of appellate courts, this term denotes such a disagreement among the judges that there is not a majority in favor of any one view, and hence no decision can be rendered on the case. But it sometimes also denotes a division into two classes, one of which may comprise a majority of the judges; as when we speak of a decision having proceeded from a "divided court."

DIVISIONAL COURTS. Courts in England, consisting of two or (in special cases) more judges of the high court of justice, sitting to transact certain kinds of business which cannot be disposed of by one judge.

DIVISUM IMPERIUM. Lat. A divided jurisdiction. Applied, e. g., to the jurisdiction of courts of common law and equity over the same subject. 1 Kent, Comm. 306; 4 Steph. Comm. 9.

DIVORCE. The legal separation of man and wife, effected, for cause, by the judgment of a court, and either totally dissolving the marriage relation, or suspending its effects so far as concerns the cohabitation of the parties.

The dissolution is termed "divorce from the bond of matrimony," or, in the Latin form of the expression, "a vinculo matrimonii;" the suspension, "divorce from bed and board," "a mensa et thoro." The former divorce puts an end to the marriage; the latter leaves it in full force. 2 Bish. Mar. & Div. § 235. The term "divorce" is now applied, in England, both to decrees of nullity and decrees of dissolution of marriage, while in America it is used only in cases of divorce a mensa or a vinculo, a decree of nullity of marriage being granted for the causes for which a divorce a vinculo was formerly obtainable in England.

DIVORCE A MENS ET THORO. A divorce from table and bed, or from bed and board. A partial or qualified divorce, by which the parties are separated and forbidden to live or cohabit together, without affecting the marriage itself. 1 Bl. Comm. 440; 3 Bl. Comm. 94; 2 Steph. Comm. 311; 2 Bish. Mar. & Div. § 225.


Divortium dicitur a divertendo, quia divertitur ab uxore. Co. Litt. 235. Divorce is called from divertendo, because a man is diverted from his wife.

DIXIEME. Fr. Tenth; the tenth part. Ord. Mar. liv. 1, tit. 1, art. 9.


DO. Lat. I give. The ancient and aptest word of feoffment and of gift. 2 Bl. Comm. 310, 316; Co. Litt. 9.

DO, DICO, ADDICO. Lat. I give, I say, I adjudge. Three words used in the Roman law, to express the extent of the civil jurisdiction of the prætor. Do denotet that he gave or granted actions, exceptions, and judicess; dico, that he pronounced judgment; addico, that he adjudged the controverted property, or the goods of the debtor, etc., to the plaintiff. Mackeld. Rom. Law, § 39.

DO, LEGO. Lat. I give, I bequeath; or I give and bequeath. The formal words of making a bequest or legacy, in the Roman law. Titio et Seio hominem Stichum do, lego, I give and bequeath to Titius and Seins my man Stichus. Inst. 2, 20, 8, 30, 31. The expression is literally retained in modern wills.

DO UT DES. Lat. I give that you may give; I give [you] that you may give [me.] A formula in the civil law, constituting a general division under which those contracts (termed "innominate") were classed in which something was given by one party as a consideration for something
DO UT FACIAS. Lat. I give that you may do; I give [you] that you may do or make [for me.] A formula in the civil law, under which those contracts were classed in which one party gave or agreed to give money, in consideration the other party did or performed certain work. Dig. 19, 5, 5; 2 Bl. Comm. 444.

In this and the foregoing phrase, the conjunction "ut" is not to be taken as the technical means of expressing a consideration. In the Roman usage, this word imported a modus, that is, a qualification; while a consideration (causa) was more aptly expressed by the word "quia."

DOCK, v. To curtail or diminish, as to dock an entail.

DOCK, n. The cage or inclosed space in a criminal court where prisoners stand when brought in for trial.

The space, in a river or harbor, inclosed between two wharves. 17 How. 434.

DOCK-MASTER. An officer invested with powers within the docks, and a certain distance therefrom, to direct the mooring and removing of ships, so as to prevent obstruction to the dock entrances. Mozley & Whitley.

DOCK WARRANT. In English law. A warrant given by dock-owners to the owner of merchandise imported and warehoused on the dock, upon the faith of the bills of lading, as a recognition of his title to the goods. It is a negotiable instrument. Pull. Port of London, p. 375.

DOCKAGE. The sum charged for the use of a dock. In the case of a dry-dock, it has been held in the nature of rent. 1 Newb. Adm. 69.


DOCKET, n. A minute, abstract, or brief entry; or the book containing such entries. A small piece of paper or parchment having the effect of a larger. Blount.

In practice. A formal record, entered in brief, of the proceedings in a court of justice.

A book containing an entry in brief of all the important acts done in court in the conduct of each case, from its inception to its conclusion. Pub. St. Mass. 1882, p. 1290.

The docket of judgments is a brief writing or statement of a judgment made from the record or roll, generally kept in books, alphabetically arranged, by the clerk of the court or county clerk. 1 Bradf. Sar. 369.

The name of "docket" or "trial docket" is sometimes given to the list or calendar of causes set to be tried at a specified term, prepared by the clerks for the use of the court and bar.

In the practice of some of the states there are several species of dockets, such as the "appearance docket," "judgment docket," "execution docket," etc., each containing a brief record of the class of proceedings indicated by its name.

DOCKET, STRIKING A. A phrase formerly used in English bankruptcy practice. It referred to the entry of certain papers at the bankruptcy office, preliminary to the prosecution of the suit against a trader who had become bankrupt. These papers consisted of the affidavit, the bond, and the petition of the creditor, and their object was to obtain from the lord chancellor his fiat, authorizing the petitioner to prosecute his complaint against the bankrupt in the bankruptcy courts. Brown.

DOCTOR. This term means, simply, practitioner of physic, without respect to system pursued. A certificate of a homoeopathic physician is a "doctor's certificate." 4 E. D. Smith, 1.

DOCTOR AND STUDENT. The title of a work written by St. Germain in the reign of Henry VIII. in which many principles of the common law are discussed in a popular manner. It is in the form of a dialogue between a doctor of divinity and a student in law, and has always been considered a book of merit and authority. 1 Kent, Comm. 504; Crabb, Eng. Law, 482.

DOCTORS' COMMONS. An institution near St. Paul's Churchyard, in London, where, for a long time previous to 1557, the ecclesiastical and admirality courts used to be held.

DOCTRINE. A rule, principle, theory, or tenet of the law; as, the doctrine of merger, the doctrine of relation, etc.

DOCUMENT. An instrument on which is recorded, by means of letters, figures, or marks, matter which may be evidentially used. In this sense the term "document" applies to writings; to words printed, lithographed, or photographed; to seals, plates, or
stones on which inscriptions are cut or engraved; to photographs and pictures; to maps and plans. The inscription may be on stone or gems, or on wood, as well as on paper or parchment. 1 Whart. Ev. § 614.

DOCUMENTS. The deeds, agreements, title-papers, letters, receipts, and other written instruments used to prove a fact.

In the civil law. Evidence delivered in the forms established by law, of whatever nature such evidence may be. The term is, however, applied principally to the testimony of witnesses. Sav. Dr. Rom. § 165.

DODRANS. Lat. In Roman law. A subdivision of the as, containing nine unciae; the proportion of nine-twelfths, or three-fourths.

DOE, JOHN. The name of the fictitious plaintiff in the action of ejectment. 3 Steph. Comm. 618.

DÉD-BANA. In Saxon law. The actual perpetrator of a homicide.

DOER. In Scotch law. An agent or attorney. 1 Kames, Eq. 325.

DOG-DRAW. In old forest law. The manifest depravity of an offender against venison in a forest, when he was found drawing after a deer by the scent of a hound led in his hand; or where a person had wounded a deer or wild beast, by shooting at him, or otherwise, and was caught with a dog drawing after him to receive the same. Manwood, Forest Law, 2, c. 8.

DOG-LATIN. The Latin of illiterate persons; Latin words put together on the English grammatical system.

DOGGER. In maritime law. A light ship or vessel; dogger-fish, fish brought in ships. Cowell.

DOGGER-MEN. Fishermen that belong to dogger-ships.

DOGMA. In the civil law. A word occasionally used as descriptive of an ordinance of the senate. See Nov. 2, 1, 1; Dig. 27, 1, 6.

DOING. The formal word by which services were reserved and expressed in old conveyances; as “rendering” (rediendo) was expressive of rent. Perk. c. 10, §§ 625, 635, 638.

DOITKIN, or DOTT. A base coin of small value, prohibited by St. 3 Hen. V. c. 1. We still retain the phrase, in the common saying, when we would undervalue a man, that he is not worth a doit. Jacob.

DOLE. A part or portion of a meadow so called; and the word has the general signification of share, portion, or the like; as “to dole out” anything among so many poor persons, meaning to deal or distribute portions to them. Holthouse.


DOLES, or DOOLS. Slips of pasture left between the furrows of plowed land.


DOLG-BOTE. A recompense for a scar or wound. Cowell.

DOLI CAPAX. Lat. Capable of malice or criminal intention; having sufficient discretion and intelligence to distinguish between right and wrong, and so to become amenable to the criminal laws.

DOLI INCAPAX. Incapable of criminal intention or malice; not of the age of discretion; not possessed of sufficient discretion and intelligence to distinguish between right and wrong to the extent of being criminally responsible for his actions.

DOLLAR. The unit employed in the United States in calculating money values. It is coined both in gold and silver, and is of the value of one hundred cents.

DOLO. In Spanish law. Bad or mischievous design. White, New Recop. b. 1, tit. 1, c. 1, § 3.

Dolo factu qui petit quod redditurus est. He acts with guile who demands that which he will have to return. Broom, Max. 346.

Dolo malo pactum se non servaturum. Dig. 2, 14, 7, § 9. An agreement induced by fraud cannot stand.

Dolosus versatur in generalibus. A person intending to deceive deals in general terms. Wing. Max. 636; 2 Coke, 34a; 6 Clark & F. 699; Broom. Max. 289.

Dolus ex indiciis perspicuis probatur convenit. Fraud should be proved by clear tokens. Code, 2, 21, 6; 1 Story, Cont. § 625.

DOLUS. In the civil law. Guile; deceitfulness; malicious fraud. A fraudulent address or trick used to deceive some one; a fraud. Dig. 4, 3, 1. Any subtle contrivance by words or acts with a design to circumvent. 2 Kent, Comm. 560; Code, 2, 21.
Such acts or omissions as operate as a deception upon the other party, or violate the just confidence reposed by him, whether there be a deceitful intent (malus animus) or not. Poth. Traité de Dép't, nn. 23, 27; Story, Bailm. § 20a; 2 Kent, Comm. 506, note.

Fraud, willfulness, or intentionality. In that use it is opposed to culpa, which is negligence merely, in greater or less degree. The policy of the law may sometimes treat extreme culpa as if it were dolus, upon the maxim culpa dolo doli comparatur. A person is always liable for dolus producing damage, but not always for culpa producing damage, even though extreme, e.g., a depository is only liable for dolus, and not for negligence. Brown.

Dolus auctoris non nocet successori. The fraud of a predecessor prejudices not his successor.

Dolus circuitu non purgatur. Fraud is not purged by circuitry. Bac. Max. 4; Broom, Max. 228.

DOLUS DANS LOCUM CONTRACT-UI. Fraud (or deceit) giving rise to the contract; that is, a fraudulent misrepresentation made by one of the parties to the contract, and relied upon by the other, and which was actually instrumental in inducing the latter to enter into the contract.

Dolus est machinatio, cum aliquid dissimulat aliquid agit. Lane, 47. Deceit is an artifice, since it pretends one thing and does another.

Dolus et fraud nemini patrocinentur, (patrocinari debent.) Deceit and fraud shall excuse or benefit no man. Yearb. 14 Hen. VIII. 8; Best, Ev. p. 403, § 428; 1 Story, Eq. Jur. § 395.

Dolus latet in generalibus. Fraud lurks in generalities. Tray. Lat. Max. 162.

DOLUS MALUS. Fraud; deceit with an evil intention. Distinguished from dolus bonus, justifiable or allowable deceit. Calvin; Broom, Max. 349; Mackeld. Rom. Law, § 173. Misconduct. Magna negligentia culpa est; magna culpa dolus est. (great negligence is a fault; a great fault is fraud.) 2 Kent, Comm. 560, note.

Dolus versatur in generalibus. Fraud deals in generalities. 2 Coke, 34a; 3 Coke, clq.

DOM. PROC. An abbreviation of Domus Procerum or Domo Procerum; the

DOMESMEN. (Sax.) An inferior kind of judges. Men appointed to doom (judge) of lords in England. Sometimes expressed by the letters D. P.

DOMAIN. The complete and absolute ownership of land; a paramount and individual right of property in land. Also the real estate so owned. The inherent sovereign power claimed by the legislature of a state, of controlling private property for public uses, is termed the "right of eminent domain." 2 Kent, Comm. 339.

The public lands of a state are frequently termed the "public domain," or "domain of the state." 1 Kent, Comm. 166, 259; 2 Kent, Comm. 339, note.

A distinction has been made between "property" and "domain." The former is said to be that quality which is conceived to be in the thing itself, considered as belonging to such or such person, exclusively of all others. By the latter is understood that right which the owner has of disposing of the thing. Hence "domain" and "property" are said to be correlative terms. The one is the active right to dispose of; the other a passive quality which follows the thing and places it at the disposition of the owner. 3 Toullier, no. 83.

DOMBE C, DOMBOC. (Sax. From dom, judgment, and boc, book.) Dome-book or doom-book. A name given among the Saxons to a code of laws. Several of the Saxon kings published domboes, but the most important one was that attributed to Alfred. Crabb, Com. Law, 7. This is sometimes con-founded with the celebrated Domesday-Book. See DOME-BOOK, DOMESDAY.


DOME-BOOK. A book or code said to have been compiled under the direction of Alfred, for the general use of the whole kingdom of England; containing, as is supposed, the principal maxims of the common law, the penalties for misdemeanors, and the forms of judicial proceedings. It is said to have been extant so late as the reign of Edward IV., but is now lost. 1 Bl. Comm. 64, 65.

DOMESDAY, DOMESDAY-BOOK. (Sax.) An ancient record made in the time of William the Conqueror, and now remaining in the English exchequer, consisting of two volumes of unequal size, containing minute and accurate surveys of the lands in England. 2 Bl. Comm. 49, 50. The work was begun by five justices in each county in 1081, and finished in 1086.

DOMESMEN. (Sax.) An inferior kind of judges. Men appointed to doom (judge)
in matters in controversy. Cowell. Suitors in a court of a manor in ancient demesne, who are judges there. Blount; Whishaw; Termes de la Ley.

DOMESTIC, n. Domestics, or, in full, domestic servants, are servants who reside in the same house with the master they serve. The term does not extend to workmen or laborers employed out of doors. 6 La. Ann. 276.

The Louisiana Civil Code enumerates as domestics those who receive wages and stay in the house of the person paying and employing them, for his own service or that of his family; such as valets, footmen, cooks, butlers, and others who reside in the house. Persons employed in public houses are not included. 6 La. Ann. 276.

DOMESTIC, adj. Pertaining, belonging, or relating to a home, a domicile, or to the place of birth, origin, creation, or transaction. See the following titles.

DOMESTIC ADMINISTRATOR. One appointed at the place of the domicile of the decedent; distinguished from a foreign or an ancillary administrator.

DOMESTIC ANIMALS. Horses are embraced within this description. 2 Allen, 209. But dogs are not. 75 Me. 562.

DOMESTIC ATTACHMENT. A species of attachment against resident debtors who absent or conceal themselves, as foreign attachment (q. e.) against non-residents. 20 Pa. St. 144.

DOMESTIC BILL OF EXCHANGE. A bill of exchange drawn on a person residing in the same state with the drawer; or dated at a place in the state, and drawn on a person living within the state. It is the residence of the drawer and drawee which must determine whether a bill is domestic or foreign. 25 Miss. 143.

DOMESTIC COMMERCE. Commerce carried on wholly within the limits of the United States, as distinguished from foreign commerce. Also, commerce carried on within the limits of a single state, as distinguished from interstate commerce.

DOMESTIC CORPORATIONS. Such as were created by the laws of the same state wherein they transact business.

DOMESTIC COURTS. Those existing and having jurisdiction at the place of the party's residence or domicile.

DOMESTIC FACTOR. One who resides and does business in the same state or country with his principal.

DOMESTIC JUDGMENT. A judgment or decree is domestic in the courts of the same state or country where it was originally rendered; in other states or countries it is called foreign.

DOMESTIC MANUFACTURES. This term in a state statute is used, generally, of manufactures within its jurisdiction. 64 Pa. St. 100.

DOMESTICUS. In old European law. A seneschal, steward, or major domo; a judge's assistant; an assessor. (q. e.) Spelman.

DOMICELLA. In old English law. A damsel. Fleta, lib. 1, c. 20, § 80.

DOMICELLUS. In old English law. A better sort of servant in monasteries; also an appellation of a king's bastard.

DOMICILE. That place in which a man has voluntarily fixed the habitation of himself and family, not for a mere special or temporary purpose, but with the present intention of making a permanent home, until some unexpected event shall occur to induce him to adopt some other permanent home.

In its ordinary acceptation, a person's domicile is the place where he lives or has his home. In a strict and legal sense, that is properly the domicile of a person where he has his true, fixed, permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning. 42 Vt. 350; 9 Fred. 99.

Domicile is but the established, fixed, permanent, or ordinary dwelling-place or place of residence of a person, as distinguished from his temporary and transient, though actual, place of residence. It is his legal residence, as distinguished from his temporary place of abode; or his home, as distinguished from a place to which business or pleasure may temporarily call him. 29 Conn. 74.

Domicile is the place where a person has fixed his habitation and has a permanent residence, without any present intention of removing therefrom. 4 Barb. 504, 530.

One's domicile is the place where one's family permanently resides. 46 Ga. 277.

In international law, "domicile" means a residence at a particular place, accompanied with positive or presumptive proof of intending to continue there for an unlimited time. 32 N. J. Law, 192.

"Domicile" and "residence" are not synonymous. The domicile is the home, the fixed place of habitation; while residence is a transient place of dwelling. 5 Sandf. 44.

The domicile is the habituation fixed in any place with an intention of always staying there, while simple residence is much more temporary in its character. 4 Hun, 489.
Domicile is of three sorts,—domicile by birth, domicile by choice, and domicile by operation of law. The first is the common case of the place of birth, domicilium originis; the second is that which is voluntarily acquired by a party, proprio motu; the last is consequential, as that of the wife arising from marriage. Story, Confl. Laws, § 46.

The term "domicile of succession," as contradistinguished from a commercial, a political, or a forensic domicile, may be defined to be the actual residence of a man within some particular jurisdiction, of such character as shall, in accordance with certain well-established principles of the public law, give direction to the succession of his personal estate. 7 Fia. 81.

DOMICILE OF ORIGIN. The home of the parents. Phillim. Dom. 25, 101. That which arises from a man's birth and connections, 5 Ves. 750. The domicile of the parents at the time of birth, or what is termed the "domicile of origin," constitutes the domicile of an infant, and continues until abandoned, or until the acquisition of a new domicile in a different place. 1 Brock. 389, 393.

DOMICILED. Established in a given domicile; belonging to a given state or jurisdiction by right of domicile.

DOMICILIARY. Pertaining to domicile; relating to one's domicile. Existing or created at, or connected with, the domicile of a suitor or of a decedent.

DOMICILIANE. To establish one's domicile; to take up one's fixed residence in a given place. To establish the domicile of another person whose legal residence follows one's own.

DOMICILIUM. Domicile, (q. v.)

DOMIGERIUM. In old English law. Power over another; also danger. Bract. l. 4, t. 1, c. 10.

DOMINA. (DAME.) A title given to honorable women, who anciently, in their own right of inheritance, held a barony. Cowell.

DOMINANT. The tenement whose owner, as such, enjoys an easement over an adjoining tenement is called the "dominant tenement;" while that which is subject to the easement is called the "servient" one.

DOMINANT TENEMENT. A term used in the civil and Scotch law, and thence in ours, relating to servitudes, meaning the tenement or subject in favor of which the service is constituted; as the tenement over which the servitude extends is called the "servient tenement." Wharton.

DOMINATIO. In old English law. Lordship.

DOMINICA PALMARUM. (Dominica in ramis palmarum.) L. Lat. Palm Sunday. Townsh. Pl. 131; Cowell; Blount.

DOMINICAL. That which denotes the Lord's day, or Sunday.

DOMINICIDE. The act of killing one's lord or master.

DOMINICUM. Lat. Domain; demesne. A lordship. That of which one has the lordship or ownership. That which remains under the lord's immediate charge and control. Sp.-Iman.

Property; domain; anything pertaining to a lord. Cowell.

In ecclesiastical law. A church, or any other building consecrated to God. Du Cange.


DOMINION. Ownership, or right to property. 2 Bl. Comm. l. "The holder has the dominion of the bill." 8 East, 579.

Sovereignty or lordship; as the dominion of the seas. Moll. de Jure Mar. 91, 92.

DOMINIUM. In the civil and old English law. Ownership; property in the largest sense, including both the right of property and the right of possession or use.

The mere right of property, as distinguished from the possession or usufruct. Dig. 41, 2, 17, 1; Calvin. The right which a lord had in the fee of his tenant. In this sense the word is very clearly distinguished by Bracton from dominium.

The estate of a feejee to uses. "The feoffees to use shall have the dominium, and the cestui que use the disposition." Latch, 187.

Sovereignty or dominion. Dominium maris, the sovereignty of the sea.

DOMINIUM DIRECTUM. In the civil law. Strict ownership; that which was founded on strict law, as distinguished from equity.

In later law. Property without use; the right of a landlord. Tayl. Civil Law, 475.

In feudal law. Right or proper ownership; the right of a superior or lord, as distinguished from that of his vassal or tenant.
The title or property which the sovereign in England is considered as possessing in all the lands of the kingdom, they being held either immediately or mediatly of him as lord paramount.

**DOMINIUM DIRECTUM ET UTILE.**
The complete and absolute dominion in property; the union of the title and the exclusive use. 7 Cranch, 603.

**DOMINIUM EMINENS.** Eminent domain.

Dominium non potest esse in pendenti. Lordship cannot be in suspense, i.e., property cannot remain in abeyance. Halk. Law Max. 39.

**DOMINIUM PLENUM.** Full ownership; the union of the dominium directum with the dominium utile. Tayl. Civil Law, 478.

**DOMINIUM UTILE.** In the civil law. Equitae or praetorian ownership; that which was founded on equity. Mack. Rom. Law, § 327, note.

In later law. Use without property; the right of a tenant. Tayl. Civil Law, 478.

In feudal law. Useful or beneficial ownership; the usufruct, or right to the use and profits of the soil, as distinguished from the dominium directum, (q. v.,) or ownership of the soil itself; the right of a vassal or tenant. 2 Bl. Comm. 105.

**DOMINO VOLENTE.** Lat. The owner being willing; with the consent of the owner.

**DOMINUS.** In feudal and ecclesiastical law. A lord, or feudal superior. Dominus rex, the lord the king; the king's title as lord paramount. 1 Bl. Comm. 367. Dominus capitalis, a chief lord. Dominus mediatus, a mesne or intermediate lord. Dominus ligius, liege lord or sovereign. Id.

Lord or sir; a title of distinction. It usually denoted a knight or clergyman; and, according to Cowell, was sometimes given to a gentleman of quality, though not a knight, especially if he were lord of a manor.

The owner or proprietor of a thing, as distinguished from him who uses it merely. Calvin. A master or principal, as distinguished from an agent or attorney. Story, Ag. § 3.

In the civil law. A husband. A family. Vicat.

Dominus capitalis loco hæredis habetur, quoties per defectum vel delictum extinguitur sanguis sui tenentis. Co. Litt. 18. The supreme lord takes the place of the heir, as often as the blood of the tenant is extinct through deficiency or crime.

**DOMINUS LITIS.** Lat. The master of the suit; i.e., the person who was really and directly interested in the suit as a party, as distinguished from his attorney or advocate.

But the term is also applied to one who, though not originally a party, has made himself such, by intervention or otherwise, and has assumed entire control and responsibility for one side, and is treated by the court as liable for costs. See 1 Curt. 201.

**DOMINUS NAVIS.** In the civil law. The owner of a vessel. Dig. 39, 4, 11, 2.

Dominus non maritabit pupillum nisi semel. Co. Litt. 9. A lord cannot give a ward in marriage but once.

Dominus rex nullum habere potest parem, multo minus superiorem. The king cannot have an equal, much less a superior. 1 Reeves, Eng. Law, 115.

**DOMITE.** Lat. Tame; domesticated; not wild. Applied to domestic animals, in which a man may have an absolute property. 2 Bl. Comm. 391.

**DOMMAGES INTERETS.** In French law. Damages.

**DOMO REPARANDâ.** A writ that lay for one against his neighbor, by the anticipated full of whose house he feared a damage and injury to his own. Reg. Orig. 153.

**DOMUS.** Lat. In the civil and old English law. A house or dwelling; a habitation. Inst. 4, 4, 8; Townsh. Pl. 183-185.

**DOMUS CAPITULARIS.** In old records. A chapter-house; the chapter-house. Dyer, 265.

**DOMUS CONVERSORUM.** An ancient house built or appointed by King Henry III. for such Jews as were converted to the Christian faith; but King Edward III., who expelled the Jews from the kingdom, deputed the place for the custody of the rolls and records of the chancery. Jacob.

**DOMUS DEI.** The house of God; a name applied to many hospitals and religious houses.

**DOMUS PROCERUM.** The house of lords, abbreviated into Dom. Proc., or D. P.

Domus sua cuique est tutissimum refugium. To every man his own house is-
his safest refuge. 5 Coke, 91b; 11 Coke, 82; 3 Inst. 162. The house of every one is to him as his castle and fortress, as well for his defense against injury and violence as for his repose. 5 Coke, 91b; Say. 227; Broom, Max. 432. A man’s dwelling-house is his castle, not for his own personal protection merely, but also for the protection of his family and his property therein. 4 Hill, 437.

Domus tutissimum quicue refugium atque receptaculum sit. A man’s house should be his safest refuge and shelter. A maxim of the Roman law. Dig. 2, 4, 18.

Dona clandestina sunt semper suspiciose. 3 Coke, 81. Clandestine gifts are always suspicious.

Donari videtur, quod nullo jure cogente conceditur. Dig. 50, 17, 82. A thing is said to be given when it is yielded otherwise than by virtue of right.

DONATARIUS. A donee; one to whom something is given.

DONATIO. Lat. A gift. A transfer of the title to property to one who receives it without paying for it. Vient. The act by which the owner of a thing voluntarily transfers the title and possession of the same from himself to another person, without any consideration.

Its literal translation, “gift,” has acquired in real law a more limited meaning, being applied to the conveyance of estates tall. 2 Bl. Comm. 310; Littleton, § 59; West. Symb. § 354; 4 Cruise, Dig. 51. There are several kinds of donatio, as: Donatio simplex et para, (simple and pure gift without compulsion or consideration); Donatio absoluta et larga, (an absolute gift); Donatio conditionalis, (a conditional gift); Donatio stricta et coercetura, (a restricted gift, as an estate tail.)

DONATIO INTER VIVOS. A gift between the living. The ordinary kind of gift by one person to another. 2 Kent, Comm. 438; 2 Steph. Comm. 102. A term derived from the civil law. Inst. 2, 7, 2.

A donation inter vivos (between living persons) is an act by which the donee divests himself at present and irrevocably of the thing given in favor of the donee who accepts it. Civil Code La. art. 1468.

DONATIO MORTIS CAUSA. (Lat. A gift in prospect of death.) A gift made by a person in sickness, who, apprehending his dissolution near, delivers, or causes to be delivered, to another the possession of any personal goods, to keep as his own in case of the donor’s decease. 2 Bl. Comm. 514.

The civil law defines it to be a gift under apprehension of death; as when anything is given upon condition that, if the donor dies, the donee shall possess it absolutely, or return it if the donor should survive or should repent of having made the gift, or if the donee should die before the donor. 1 Miles, 109-117.

A gift in view of death is one which is made in contemplation, fear, or peril of death, and with intent that it shall take effect only in case of the death of the giver. Civil Code Cal. § 1149.

A donation mortis causa (in prospect of death) is an act to take effect when the donor shall no longer exist, by which he disposes of the whole or a part of his property, and which is irrevocable. Civil Code La. art. 1469.


Donatio perficitur possessione acippientis. A gift is perfected [made complete] by the possession of the receiver. Jenk. Cent. 109, case 9. A gift is incomplete until possession is delivered. 2 Kent, Comm. 438.

Donatio principis intelligentur sine praecipuo tertii. Dav. Ir. K. B. 75. A gift of the prince is understood without prejudice to a third party.

DONATIO PROPTER NUPTIAS. A gift on account of marriage. In Roman law, the bridegroom’s gift to the bride in anticipation of marriage and to secure her dos was called “donatio ante nuptias;” but by an ordinance of Justinian such gift might be made after as well as before marriage, and in that case it was called “donatio propter nuptias.” Mackeld. Rom. Law, § 572.

DONATION. In ecclesiastical law. A mode of acquiring a benefice by deed of gift alone, without presentation, institution, or induction. 3 Steph. Comm. 81.

In general. A gift. See DONATIO.

DONATIVE ADVOWSON. In ecclesiastical law. A species of advowson, where the benefice is conferred on the clerk by the patron’s deed of donation, without presentation, institution, or induction. 2 Bl. Comm. 23; Termes de la Ley.

DONATOR. A donor; one who makes a gift, (donatio.)

Donator nunquam desint possidere, antequam donatorius incipiat possidere. The donor never ceases to possess, until the donee begins to possess. Bract. fol. 41b.
DONATORIUS. A donee; a person to whom a gift is made; a purchaser. Bract. fol. 13, et seq.

DONATORY. The person on whom the king bestows his right to any forfeiture that has fallen to the crown.

DONE. Distinguished from “made.” “A deed made” may no doubt mean an ‘instrument made;’ but a ‘deed done’ is not an ‘instrument done,—it is an ‘act done;’ and therefore these words, ‘made and done,’ apply to acts, as well as deeds.” Lord Brougham, 4 Bell, App. Cas. 38.

DONEE. In old English law. He to whom lands were given; the party to whom a donatio was made.

In later law. He to whom lands or tenements are given in tail. Litt. § 57.

In modern and American law. The party executing a power; otherwise called the “appointer.” 4 Kent, Comm. 316.

DONIS, STATUTE DE. See DE DONIS, THE STATUTE.

DONNEUR D’AVAL. In French law. Guarantor of negotiable paper other than by indorsement.

DONOR. In old English law. He by whom lands were given to another; the party making a donatio.

In later law. He who gives lands or tenements to another in tail. Litt. § 57; Termes de la Ley.

In modern and American law. The party conferring a power. 4 Kent, Comm. 316.

DONUM. Lat. In the civil law. A gift; a free gift. Calvin. Distinguished from munus. Dig. 50, 16, 194.

DOOM. In Scotch law. Judicial sentence, or judgment. The decision or sentence of a court orally pronounced by an officer called a “dempster” or “deemster.” In modern usage, criminal sentences still end with the words “which is pronounced for doom.”

DOOMSDAY-BOOK. See DOMESDAY-Book.

DOOR. The place of usual entrance in a house, or into a room in the house.

DORMANT. Literally, sleeping; hence inactive; in abeyance; unknown; concealed.

DORMANT CLAIM. One which is in abeyance.

DORMANT EXECUTION. One which a creditor delivers to the sheriff with directions to levy only, and not to sell, until further orders, or until a junior execution is received.

DORMANT JUDGMENT. One which has not been satisfied, nor extinguished by lapse of time, but which has remained so long unexecuted that execution cannot now be issued upon it without first reviving the judgment.

DORMANT PARTNERS. Those whose names are not known or do not appear as partners, but who nevertheless are silent partners, and partake of the profits, and thereby become partners, either absolutely to all intents and purposes, or at all events in respect to third parties. Dormant partners, in strictness of language, mean those who are merely passive in the firm, whether known or unknown, in contradistinction to those who are active and conduct the business of the firm, as principals. See Story, Partn. § 80.

A dormant partner is one who takes no part in the business, and whose connection with the business is unknown. Both secrecy and inactivity are implied by the word. 47 N. Y. 15.

Dormiunt aliquando leges, nunquam moriuntur. 2 Inst. 161. The laws sometimes sleep, never die.

DORSUM. Lat. The back. In domo recordi, on the back of the record. 5 Coke, 44b.

DORTURE. (Contracted from dormiture.) A dormitory of a convent; a place to sleep in.

DOS. In Roman law. Dowry; a wife’s marriage portion; all that property which on marriage is transferred by the wife herself or by another to the husband with a view of diminishing the burden which the marriage will entail upon him. It is of three kinds. Profectitia dos is that which is derived from the property of the wife’s father or paternal grandfather. That dos is termed adventitia which is not profectitia in respect to its source, whether it is given by the wife from her own estate or by the wife’s mother or a third person. It is termed receptitia dos when accompanied by a stipulation for its reclamation by the constitutor on the termination of the marriage. See Mackeld. Rom. Law, §§ 561, 563.
In old English law. The portion given to the wife by the husband at the church door, in consideration of the marriage; dower; the wife’s portion out of her deceased husband’s estate in case he had not endowed her.

Dos de dote peti non debet. Dower ought not to be demanded of dower. Co. Litt. 31; 4 Coke, 1226. A widow is not dowable of lands assigned to another woman in dower. 1 Hil. Real Prop. 135.

DOS RATIONABILIS. A reasonable marriage portion. A reasonable part of her husband’s estate, to which every widow is entitled, of lands of which her husband may have endowed her on the day of marriage. Co. Litt. 336. Dower, at common law. 2 Bl. Comm. 134.

Dos rationabilis vel legitima est cujuslibet mulieris de quocumque tenemento tertia pars omnium terrarum et tenementorum, quae vir suus tenuit in dominio suo ut de feodo, etc. Co. Litt. 336. Reasonable or legitimate dower belongs to every woman of a third part of all the lands and tenements of which her husband was seised in his demesne, as of fee, etc.

DOT. (A French word, adopted in Louisiana.) The fortune, portion, or dowry which a woman brings to her husband by the marriage. 6 Mart. (N. S.) 460.

DOTAGE. Dotage is that feebleness of the mental faculties which proceeds from old age. It is a diminution or decay of that intellectual power which was once possessed. It is the slow approach of death; of that irrecoverable cessation, without hurt or disease, of all the functions which once belonged to the living animal. The external functions gradually cease; the senses waste away by degrees; and the mind is imperceptibly visited by decay. 1 Bland, 389.

DOTAL. Relating to the dotal or portion of a woman; constituting her portion; comprised in her portion.

DOTAL PROPERTY. In the civil law in Louisiana, by this term is understood that property which the wife brings to the husband to assist him in bearing the expenses of the marriage establishment. Extradotal property, otherwise called "paraphernal property," is that which forms no part of the dowry. Civil Code La. art. 2335.


DOTION. The act of giving a dowry or portion; endowment in general, including the endowment of a hospital or other charitable institution.

DOTE, n. In Spanish law. The marriage portion of a wife. White, New Recop. b. 1, tit. 6, c. 1. The property which the wife gives to the husband on account of marriage, or for the purpose of supporting the matrimonial expenses. Id. b. 1, tit. 7, c. 1, § 1; Schm. Civil Law, 75.

DOTE, v. "To besot" is to stupefy, to make dull or senseless, to make to dote; and "to dote" is to be devious, silly, or insane. These are some of the meanings. 7 Ind. 441.

DOTE ASSIGNANDA. A writ which lay for a widow, when it was judicially ascertained that a tenant to the king was seised of tenements in fee or fee-tail at the day of his death, and that he held of the king in chief. In such case the widow might come into chancery, and then make oath that she would not marry without the king’s leave, and then she might have this writ. These widows were called the "king’s widows." Jacob; Holthouse.

DOTE UNDE NIHIL HABET. A writ which lies for a widow to whom no dower has been assigned. 3 Bl. Comm. 182. By 23 & 24 Vict. c. 126, an ordinary action commenced by writ of summons has taken its place; but it remains in force in the United States. Dower unde nihil habet (which title see.)

Doti lex favet; premium pudoris est; ideo paratur. Co. Litt. 31. The law favors dower; it is the reward of chastity; therefore let it be preserved.

DOTIS ADMINISTRATIO. Administration of dower, where the widow holds more than her share, etc.

DOTISSA. A dowager.

DOUBLE AVAIL OF MARRIAGE. In Scotch law. Double the ordinary or single value of a marriage. Bell. See DUXPlex ValoR MArtIGII.

DOUBLE BOND. In Scotch law. A bond with a penalty, as distinguished from a single bond. 2 Kames, Eq. 359.
DOUBLE COMPLAINT, or DOUBLE QUARREL. A grievance made known by a clerk or other person, to the archbishop of the province, against the ordinary, for delaying or refusing to do justice in some cause ecclesiastical, as to give sentence, institute a clerk, etc. It is termed a “double complaint,” because it is most commonly made against both the judge and him at whose suit justice is denied or delayed; the effect whereof is that the archbishop, taking notice of the delay, directs his letters, under his authentic seal, to all clergymen of his province, commanding them to admonish the ordinary, within a certain number of days, to do the justice required, or otherwise to appear before him or his official, and there allege the cause of his delay; and to signify to the ordinary that if he neither perform the thing enjoined, nor appear nor show cause against it, he himself, in his court of audience, will forthwith proceed to do the justice that is due. Cowell.

DOUBLE COSTS. In practice. The ordinary single costs of suit, and one-half of that amount in addition. 2 Tidd, Pr. 987. "Double" is not used here in its ordinary sense of "twice" the amount. These costs are now abolished in England by St. 5 & 6 Vict. c. 97. Wharton.

DOUBLE DAMAGES. Twice the amount of actual damages as found by the verdict of a jury.

DOUBLE EAGLE. A gold coin of the United States of the value of twenty dollars.

DOUBLE ENTRY. A system of mercantile book-keeping, in which the entries in the day-book, etc., are posted twice into the ledger. First, to a personal account, that is, to the account of the person with whom the dealing to which any given entry refers has taken place; secondly, to an impersonal account, as "goods." Mozley & Whitley.

DOUBLE FINE. In old English law. A fine sur done grant et render was called a “double fine,” because it comprehended the fine sur comitance de droit come ceo, etc., and the fine sur concessit. 2 Bl. Comm. 353.

DOUBLE INSURANCE is where divers insurances are made upon the same interest in the same subject against the same risks in favor of the same assured, in proportions exceeding the value. 1 Phill. Ins. §§ 359, 366.

A double insurance exists where the same person is insured by several insurers separately in respect to the same subject and interest. Civil Code Cal. § 2541.

DOUBLE PLEADING. This is not allowed either in the declaration or subsequent pleadings. Its meaning with respect to the former is that the declaration must not, in support of a single demand, allege several distinct matters, by any one of which that demand is sufficiently supported. With respect to the subsequent pleadings, the meaning is that none of them is to contain several distinct answers to that which preceded it; and the reason of the rule in each case is that such pleading tends to several issues in respect of a single claim. Wharton.

DOUBLE POSSIBILITY. A possibility upon a possibility. 2 Bl. Comm. 170.

DOUBLE RENT. In English law. Rent payable by a tenant who continues in possession after the time for which he has given notice to quit, until the time of his quitting possession. St. 11 Geo. II. c. 19.

DOUBLE VALUE. This is a penalty on a tenant holding over after his landlord's notice to quit. By 4 Geo. II. c. 28, § 1, it is enacted that if any tenant for life or years hold over any lands, etc., after the determination of his estate, after demand made, and notice in writing given, for delivering the possession thereof, by the landlord, or the person having the reversion or remainder therein, or his agent thereunto lawfully authorized, such tenant so holding over shall pay to the person so kept out of possession at the rate of double the yearly value of the lands, etc., so detained, for so long a time as the same are detained. See Woolf. Landl. & Ten. (12th Ed.) 717, et seq.

DOUBLE VOUCHER. This was when a common recovery was had, and an estate of freehold was first conveyed to any indiffer­ent person against whom the process was brought, and then he vouched the tenant in tail, who vouched over the common vouchee. For, if a recovery were had immediately against a tenant in tail, it barred only the estate in the premises of which he was then actually seized, whereas, if the recovery were had against another person, and the tenant in tail were vouchee, it barred every latent right and interest which he might have in the lands recovered. 2 Bl. Comm. 359.

DOUBLE WASTE. When a tenant bound to repair suffers a house to be wasted, and then unlawfully falls timber to repair it,
DOWAGERS-QUEEN. The widow of the king. As such she enjoys most of the privileges belonging to her as queen consort. It is not treason to conspire her death or violate her chastity, because the succession to the crown is not thereby endangered. No man, however, can marry her without a special license from the sovereign, on pain of forfeiting his lands or goods. 1 Bl. Comm. 233.

DOWER. The provision which the law makes for a widow out of the lands or tenements of her husband, for her support and the nurture of her children. Co. Litt. 30a; 2 Bl. Comm. 130; 4 Kent, Comm. 35; 1 Washb. Real Prop. 146.

Dower is an estate for the life of the widow in a certain portion of the following real estate of her husband, to which she has not relinquished her right during the marriage: (1) Of all lands of which the husband was seised in fee during the marriage; (2) of all lands to which another was seised in fee to his use; (3) of all lands to which, at the time of his death, he had a perfect equity, having paid all the purchase money therefor. Code Ala. 1886, § 1892.

The term, both technically and in popular acceptation, has reference to real estate exclusively.

"Dower," in modern use, is and should be distinguished from "dowry." The former is a provision for a widow on her husband's death; the latter is a bride's portion on her marriage.

DOWER AD OSTIJM ECCLESIE. Dower at the church door or porch. An ancient kind of dower in England, where a man, (being tenant in fee-simple, of full age,) openly at the church door, where all marriages were formerly celebrated, after alliance made and troth plighted between them, endowed his wife with the whole of his lands, or such quantity as he pleased, at the same time specifying and ascertaining the same. Litt. § 39; 2 Bl. Comm. 133.

DOWER BY THE COMMON LAW. The ordinary kind of dower in English and American law, consisting of one-third of the lands of which the husband was seised in fee at any time during the coverture. Litt. § 36; 2 Bl. Comm. 132; 2 Steph. Comm. 302; 4 Kent, Comm. 35.

DOWER BY CUSTOM. A kind of dower in England, regulated by custom, where the quantity allowed the wife differed from the proportion of the common law; as that the wife should have half the husband's lands; or, in some places, the whole; and, in
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DOWER DE LA PLUIS BELLE.  
L. Fr. Dower of the fairest [part.] A species of ancient English dower, incident to the old tenures, where there was a guardian in chivalry, and the wife occupied lands of the heir as guardian in socage. If the wife brought a writ of dower against such guardian in chivalry, he might show this matter, and pray that the wife might be endowed de la plus belle of the tenement in socage. Litt. § 48. This kind of dower was abolished with the military tenures. 2 Bl. Comm. 132.

DOWER EX ASSENSU PATRIS. Dower by the father's assent. A species of dower ad ostium ecclesia, made when the husband's father was alive, and the son, by his consent expressly given, endowed his wife with parcel of his father's lands. Litt. § 40; 2 Bl. Comm. 133.

DOWER UNDE NIHIL HABET. A writ of right which lay for a widow to whom no dower had been assigned.

DOWLE STONES. Stones dividing lands, etc. Cowell.

DOWMENT. In old English law. Endowmet; dower.

DOWRESS. A woman entitled to dower; a tenant in dower. 2 P. Wms. 707.

DOWRY. The property which a woman brings to her husband in marriage; now more commonly called a "portion."

By dowry is meant the effects which the wife brings to the husband to support the expenses of marriage. Civil Code La. art. 2337.

This word expresses the proper meaning of the "dos" of the Roman, the "dot" of the French, and the "dote" of the Spanish law, but is a very different thing from "dower," with which it has sometimes been confounded.

By dowry, in the Louisiana Civil Code, is meant the effects which the wife brings to the husband to support the expenses of marriage. It is given to the husband, to be enjoyed by him so long as the marriage shall last, and the income of it belongs to him. He alone has the administration of it during marriage, and his wife cannot deprive him of it. The real estate settled as dowry is inalienable during marriage, unless the marriage contract contains a stipulation to the contrary. 6 La. Ann. 786.

DOZEN PEERS. Twelve peers assembled at the instance of the barons, in the reign of Henry III., to be privy counselors, or rather conservators of the kingdom.

DRACHMA. A term employed in old pladings and records, to denote a goat. Townsh. Pl. 180.

An Athenian silver coin, of the value of about 74d. sterling.

DRACONIAN LAWS. A code of laws prepared by Draco, the celebrated lawgiver of Athens. These laws were exceedingly severe, and the term is now sometimes applied to any laws of unusual harshness.

DRAFT. The common term for a bill of exchange; as being drawn by one person on another. 2 Bl. Comm. 467.

An order for the payment of money drawn by one person on another. It is said to be a nomen generalissimum, and to include all such orders. 1 Story, 30.

Draft also signifies a tentative, provisional, or preparatory writing out of any document (as a will, contract, lease, etc.) for purposes of discussion and correction, and which is afterwards to be copied out in its final shape.

DRAFTSMAN. Any one who draws or frames a legal document, e.g., a will, conveyance, pleading, etc.

DRAGOMAN. An interpreter employed in the east, and particularly at the Turkish court.

DRAIN, v. To make dry; to draw off water; to rid land of its superfluous moisture by adapting or improving natural water-courses and supplementing them, when necessary, by artificial ditches. 58 Cal. 639.

DRAIN, n. A trench or ditch to convey water from wet land; a channel through which water may flow off.

The word has no technical legal meaning. Any hollow space in the ground, natural or artificial, where water is collected and passes off, is a ditch or drain. 5 Gray, 61.

The word "drain" also sometimes denotes the easement or servitude (acquired by grant or prescription) which consists in the right to drain water through another's land. See 3 Kent, Comm. 436.

DRAM. In common parlance, this term means a drink of some substance containing
alcohol, something which can produce intoxication. 32 Tex. 228.

DRAM-SHOP. A drinking saloon, where liquors are sold to be drunk on the premises.

DRAMATIC COMPOSITION. A mere exhibition, spectacle, or scene is not a "dramatic composition," within the meaning of the copyright laws. 1 Abb. (U. S.) 356.

DRAW. In old criminal practice. To drag (on a hurdle) to the place of execution. Anciently no hurdle was allowed, but the criminal was actually dragged along the road to the place of execution. A part of the ancient punishment of traitors was the being thus drawn. 4 Bl. Comm. 92, 377.

In mercantile law. To draw a bill of exchange is to write (or cause it to be written) and sign it.

DRAWBACK. In the customs laws, this term denotes an allowance made by the government upon the duties due on imported merchandise when the importer, instead of selling it here, re-exports it; or the refunding of such duties if already paid. This allowance amounts, in some cases, to the whole of the original duties; in others, to a part only.

A drawback is a device resorted to for enabling a commodity affected by taxes to be exported and sold in the foreign market on the same terms as if it had not been taxed at all. It differs in this from a bounty, that the latter enables a commodity to be sold for less than its natural cost, whereas a drawback enables it to be sold exactly at its natural cost.

DRAWEE. A person to whom a bill of exchange is addressed, and who is requested to pay the amount of money therein mentioned.

DRAWER. The person making a bill of exchange and addressing it to the drawee.

DRAWING. In patent law. A representation of the appearance of material objects by means of lines and marks upon paper, card-board, or other substance.

DRAWING TO EXECUTION. In English criminal law. The act of drawing a condemned criminal on a hurdle from the place of prison to the place of execution. 4 Bl. Comm. 377. Where a man was hanged on an appeal of death, the wife of the person killed and all his kindred drew the felon to execution.

DRAWLATCHES. Thieves; robbers. Cowell.
DROFDEN, or DROFSENNE. A grove or woody place where cattle are kept. Jac. 1.

DROFLAND. Sax. A quit rent, or yearly payment, formerly made by some tenants to the king, or their landlords, for driving their cattle through a manor to fairs or markets. Cowell; Blount.

DROIT. In French law. Right, justice, equity, law, the whole body of law: also a right.

This term exhibits the same ambiguity which is discoverable in the German equivalent, "recht" and the English word "right." On the one hand, these terms answer to the Roman "jus," and thus indicate law in the abstract, considered as the foundation of all rights, or the complex of underlying moral principles which impart the character of justice to all positive law, or give it an ethical content. Taken in this abstract sense, the terms may be adjectives, in which case they are equivalent to "just," or nouns, in which case they may be paraphrased by the expressions "justice," "morality," or "equity." On the other hand, they serve to point out a right; that is, a power, privilege, faculty, or demand, inherent in one person, and incident upon another. In the latter signification, droit (or recht or right) is the correlative of "duty" or "obligation." In the former sense, it may be considered as opposed to wrong, injustice, or the absence of law. Droit has the further ambiguity that it is sometimes used to denote the existing body of law considered as one whole, or the sum total of a number of individual laws taken together. See JUS; RECHT; RIGHT.

In old English law. A writ of right, so called in the old books. Co. Litt. 1589.

Law. The common law is sometimes termed "common droit." Litt. § 213; Co. Litt. 142a.

DROIT-CLOSE. An ancient writ, directed to the lord of ancient demesne on behalf of those of his tenants who held their lands and tenements by charter in fee-simple, in fee-tail, for life, or in dower. Fitzh. Nat. Brev. 23.

DROIT D'ACCESSION. In French law. That property which is acquired by making a new species of the material of another. It is equivalent to the Roman "specificatio."

DROIT D'AUBAINE. In French law. A rule by which all the property of a deceased foreigner, whether movable or immoveable, was confiscated to the use of the state, to the exclusion of his heirs, whether claiming ab intestato or under a will of the deceased. Finally abolished in 1819.

DROIT D'EXECUTION. In French law. The right of a stockbroker to sell the securities bought by him for account of a client, if the latter does not accept delivery thereof. The same expression is also applied to the sale by a stockbroker of securities deposited with him by his client, in order to guaranty the payment of operations for which the latter has given instructions. Arg. Fr. Merc. Law, 557.

DROIT DE BRIS. A right formerly claimed by the lords of the coasts of certain parts of France, to shipwrecks, by which not only the property, but the persons of those who were cast away, were confiscated for the prince who was lord of the coast. Otherwise called "droit de bris sur le naufrage." This right prevailed chiefly in Bretagne, and was solemnly abrogated by Henry III., as duke of Normandy, Aquitaine, and Guienne, in a charter granted A. D. 1226, preserved among the rolls at Bordeaux.

DROIT DE GARDE. In French feudal law. Right of ward. The guardianship of the estate and person of a noble vassal, to which the king, during his minority, was entitled. Steph. Lect. 250.

DROIT DE GITE. In French feudal law. The duty incumbent on a roturier, holding lands within the royal domain, of supplying board and lodging to the king and to his suite while on a royal progress. Steph. Lect. 351.

DROIT DE GREFFE. In old French law. The right of selling various offices connected with the custody of judicial records or notarial acts. Steph. Lect. 354. A privilege of the French kings.

DROIT DE MAITRISE. In old French law. A charge payable to the crown by any one who, after having served his apprenticeship in any commercial guild or brotherhood, sought to become a master workman in it on his own account. Steph. Lect. 354.

DROIT DE PRISE. In French feudal law. The duty (incumbent on a roturier) of supplying to the king on credit, during a certain period, such articles of domestic consumption as might be required for the royal household. Steph. Lect. 351.
DROIT DE QUINT. In French feudal law. A relief payable by a noble vassal to the king as his seigneur, on every change in the ownership of his fief. Steph. Lect. 350.

DROIT DE SUITE. In French Law. The right of a creditor to pursue the debtor's property into the hands of third persons for the enforcement of his claim.

DROIT-DROIT. A double right; that is, the right of possession and the right of property. These two rights were, by the theory of our ancient law, distinct; and the above phrase was used to indicate the concomitance of both in one person, which concomitance was necessary to constitute a complete title to land. Mozley & Whitley.

DROIT ÉCRIT. In French law. (The written law.) The Roman civil law, or Corpus Juris Civilis. Steph. Lect. 130.

Droit ne done plus que soit demaunde. The law gives not more than is demanded. 2 Inst. 286.


DROITS CIVILS. This phrase in French law denotes private rights, the exercise of which is independent of the status (qualité) of citizen. Foreigners enjoy them; and the extent of that enjoyment is determined by the principle of reciprocity. Conversely, foreigners may be sued on contracts made by them in France. Brown.

DROITS OF ADMIRALTY. Rights or perquisites of the admiralty. A term applied to goods found derelict at sea. Applied also to property captured in time of war by non-commissioned vessels of a belligerent nation. 1 Kent, Comm. 96.

DROITURAL. What belongs of right; relating to right; as real actions are either droitural or possessory.—droitural when the plaintiff seeks to recover the property. Finch, Law, 257.

DROMONES, DROMOS, DROMUNDA. These were at first high ships of great burden, but afterwards those which we now call "men-of-war." Jacob.

DROP. In English practice. When the members of a court are equally divided on the argument showing cause against a rule nisi, no order is made, i. e., the rule is neither discharged nor made absolute, and the rule is said to drop. In practice, there being a right to appeal, it has been usual to make an order in one way, the junior judge withdrawing his judgment. Wharton.

DROP-LETTER. A letter addressed for delivery in the same city or district in which it is posted.

DROVE-ROAD. In Scotch law. A road for driving cattle. 7 Bell, App. Cas. 43, 53, 57. A drift-road. Lord Brougham, 1d.

DROVE-STANCE. In Scotch law. A place adjoining a drove-road, for resting and refreshing sheep and cattle on their journey. 7 Bell, App. Cas. 53, 57.

DROWN. To merge or sink. "In some cases a right of freehold shall drown in a chattel." Co. Litt. 266a, 321a.

DRU. A thicket of wood in a valley. Domesday.

DRUG. The general name of substances used in medicine; any substance, vegetable, animal, or mineral, used in the composition or preparation of medicines. The term is also applied to materials used in dyeing and in chemistry. See 79 N. C. 251; 53 Vt. 426.

DRUGGIST. A dealer in drugs; one whose business is to sell drugs and medicines. In strict usage, this term is to be distinguished from "apothecary." A druggist deals in the uncompounded medicinal substances; the business of an apothecary is to mix and compound them. But in America the two words are used interchangeably, as the same persons usually discharge both functions.

DRUMMER. A term applied to commercial agents who travel for wholesale merchants and supply the retail trade with goods, or take orders for goods to be shipped to the retail dealer. 4 Lea, 96; 34 Ark. 557.

DRUNGARIUS. In old European law. The commander of a drungus, or band of soldiers. Applied also to a naval commander. Speelman.

DRUNGUS. In old European law. A band of soldiers, (globus militum.) Speelman.

DRUNKARD. He is a drunkard whose habit it is to get drunk; whose ebriety has become habitual. The terms "drunkard" and "habitual drunkard" mean the same thing. 5 Gray, 85.

DRUNKENNESS. In medical jurisprudence. The condition of a man whose mind is affected by the immediate use of intoxicating drinks.

**DRY EXCHANGE.** In English law. A term formerly in use, said to have been invented for the purpose of disguising and covering usury; something being pretended to pass on both sides, whereas, in truth, nothing passed but on one side, in which respect it was called "dry." Cowell; Blount.

**DRY-MULTURES.** In Scotch law. Corn paid to the owner of a mill, whether the payers grind or not.

**DRY RENT.** Rent-seck; a rent reserved without a clause of distress.

**DRY TRUST.** A passive trust; one which requires no action on the part of the trustee beyond turning over money or property to the cestui que trust.

**DUARCHY.** A form of government where two reign jointly.

**Duas uxores uodem tempor habere non licet.** It is not lawful to have two wives at the same time. Inst. 1, 10, 6; 1 Bl. Comm. 436.

**DUBITANS.** Doubting. Dobbin, J., dubitans. 1 Show. 364.

**DUBITANTE.** Doubting. Is affixed to the name of a judge, in the reports, to signify that he doubted the decision rendered.

**DUBITATUR.** It is doubted. A word frequently used in the reports to indicate that a point is considered doubtful.

**DUBITAVIT.** Doubted. Vaughan, C. J., dubitavit. Freem. 150.

**DUCAT.** A foreign coin, varying in value in different countries, but usually worth about $2.26 of our money.

**DUCATUS.** In feudal and old English law. A duchy, the dignity or territory of a duke.

**DUCES TECUM.** (Lat. Bring with you.) The name of certain species of writs, of which the subprena duces tecum is the most usual, requiring a party who is summoned to appear in court to bring with him some document, piece of evidence, or other thing to be used or inspected by the court.

**DUCES TECUM LICET Languidus.** (Bring with you, although sick.) In practice. An ancient writ, now obsolete, directed to the sheriff, upon a return that he could not bring his prisoner without danger of death, he being adeo languidus, (so sick;) whereupon the court granted a habeas corpus in the nature of a duces tecum licet languidus. Cowell; Blount.

**DUCHY COURT OF LANCASTER.** A tribunal of special jurisdiction, held before the chancellor of the duchy, or his deputy, concerning all matters of equity relating to lands helden of the crown in right of the duchy of Lancaster; which is a thing very distinct from the county palatine, (which has also its separate chancery, for sealing of writs, and the like,) and comprises much territory which lies at a vast distance from it; as particularly a very large district surrounded by the city of Westminster. The proceedings in this court are the same as were those on the equity side of the court of chancery, so that it seems not to be a court of record; and, indeed, it has been held that the court of chancery has a concurrent jurisdiction with the duchy court, and may take cognizance of the same causes. The appeal from this court lies to the court of appeal. Jud. Act 1873, § 18; 3 Bl. Comm. 78.

**DUCHEY OF LANCASTER.** Those lands which formerly belonged to the dukes of Lancaster, and now belong to the crown in right of the duchy. The duchy is distinct from the county palatine of Lancaster, and includes not only the county, but also much territory at a distance from it, especially the Savoy in London and some land near Westminster. 3 Bl. Comm. 78.

**DUCKING-STOOL.** See CASTIGATORY.

**DUCROIRE.** In French law. Guaranty; equivalent to del credere, (which see.)

**DUE.** 1. Just; proper; regular; lawful; sufficient; as in the phrases "due care," "due process of law," "due notice."

2. Owning; payable; justly owed. That which one contracts to pay or perform to another; that which law or justice requires to be paid or done.

3. Owed, or owing, as distinguished from payable. A debt is often said to be due from a person where he is the party owing it, or primarily bound to pay, whether the time for payment has or has not arrived.

4. Payable. A bill or note is commonly said to be due when the time for payment of it has arrived. 6 Pet. 29, 36.

**DUE-BILL.** A brief written acknowledgment of a debt. It is not made payable to order, like a promissory note. See I. O. U.
DUE CARE. Just, proper, and sufficient care, so far as the circumstances demand it; the absence of negligence.

This term, as usually understood in cases where the gist of the action is the defendant's negligence, implies not only that a party has not been negligent or careless, but that he has been guilty of no violation of law in relation to the subject-matter or transaction which constitutes the cause of action. Evidence that a party is guilty of a violation of law supports the issue of a want of proper care; nor can it be doubted that in these and similar actions the averment in the declaration of the use of due care, and the denial of it in the answer, properly and distinctly put in issue the legality of the conduct of the party as contributing to the accident or injury which forms the groundwork of the action. No specific averment of the particular unlawful act which caused or contributed to produce the result complained of should, in such cases, be deemed necessary. 10 Allen, 18. See, also, Id. 583.

DUE COURSE OF LAW. This phrase is synonymous with "due process of law," or "the law of the land," and the general definition thereof is "law in its regular course of administration through courts of justice;" and, while not always necessarily confined to judicial proceedings, yet these words have such a significance, when used to designate the kind of an eviction, or ouster, from real estate by which a party is dispossessed, as to preclude thereunder proof of a constructive eviction resulting from the purchase of a paramount title when hostilely asserted by the party holding it. 19 Kan. 542. See, also, 34 Ala. 236; 11 Wend. 685; 63 Ala. 436; 38 Miss. 424; 3 Stew. 108; 4 Dill. 266.

DUE NOTICE. No fixed rule can be established as to what shall constitute "due notice." "Due" is a relative term, and must be applied to each case in the exercise of the discretion of the court in view of the particular circumstances. 1 McAll. 420.

DUE PROCESS OF LAW. Law in its regular course of administration through courts of justice. 3 Story, Const. 264, 661.

"Due process of law in each particular case means such an exercise of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs." Cooley, Const. Lim. 441. See, also, 12 N. Y. 209; 5 Mich. 251; 6 Cold. 233; 49 Cal. 403.

Whatever difficulty may be experienced in giving to these terms a definition which will embrace every permissible exertion of power affecting private rights, and exclude such as is forbidden, there can be no doubt of their meaning when applied to judicial proceedings. They then mean a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the enforcement and protection of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution—that is, by the law of its creation—to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the state, or his voluntary appearance. 95 U. S. 733.

Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law. 58 Ala. 590.

These phrases in the constitution do not mean the general body of the law, common and statute, as it was at the time the constitution took effect; for that would seem to deny the right of the legislature to amend or repeal the law. They refer to certain fundamental rights, which that system of jurisprudence, of which ours is a derivative, has always recognized. 50 Miss. 468.

"Due process of law," as used in the constitution, cannot mean less than a prosecution or suit instituted and conducted according to the prescribed forms and solemnities for ascertainment of guilt, or determining the title to property. 3 N. Y. 511, 517; 4 Hill, 140; 10 N. Y. 574, 397.

DUEL. A duel is any combat with deadly weapons, fought between two or more persons, by previous agreement or upon a previous quarrel. Pen. Code Cal. § 225.

DUELLUM. The trial by battel or judicial combat. See Battel.

DUES. Certain payments; rates or taxes.

DUKE, in English law, is a title of nobility, ranking immediately next to the Prince of Wales. It is only a title of dignity. Conferring it does not give any domain, territory, or jurisdiction over the place whence the title is taken. Duchess, the consort of a duke. Wharton.

DUKE OF EXETER'S DAUGHTER. The name of a rack in the Tower, so called after a minister of Henry VI., who sought to introduce it into England.

DULOCRACY. A government where servants and slaves have so much license and privilege that they domineer. Wharton.

DULY. In due or proper form or manner.
Regularly; upon a proper foundation, as distinguished from mere form.

DUM. Lat. While; as long as; until; upon condition that; provided that.

DUM BENE SE GESSERIT. While he shall conduct himself well; during good behavior. Expressive of a tenure of office not dependent upon the pleasure of the appointing power, nor for a limited period, but terminable only upon the death or misconduct of the incumbent.

DUM FERET OPUS. While the work glows; in the heat of action. 1 Kent, Comm. 120.

DUM FUIT IN PRISONA. In English law. A writ which lay for a man who had aliened lands under duress by imprisonment, to restore to him his proper estates. 2 Inst. 482. Abolished by St. 3 & 4 Wm. IV. c. 27.

DUM FUIT INFRA ETATEM. (While he was within age.) In old English practice. A writ of entry which formerly lay for an infant after he had attained his full age, to recover lands which he had aliened in fee, in tail, or for life, during his infancy; and, after his death, his heir had the same remedy. Reg. Orig. 2286; Fitzh. Nat. Brev. 192, G; Litt. § 406; Co. Litt. 247b.

DUM NON FUIT COMPOS MENTIS. The name of a writ which the heirs of a person who was non compos mentis, and who aliened his lands, might have sued out to restore him to his rights. Abolished by 3 & 4 Wm. IV. c. 27.

DUM RECENT FUIT MALEFICIUM. While the offense was fresh. A term employed in the old law of appeal of rape. Bract. fol. 147.

DUM SOLA. While sole, or single. Dum sola fuerit, while she shall remain sole. Dum sola et casta sizerit, while she lives single and chaste. Words of limitation in old conveyances. Co. Litt. 235a. Also applied generally to an unmarried woman in connection with something that was or might be done during that condition.

DUMB. One who cannot speak; a person who is mute.

DUMB-BIDDING. In sales at auction, when the minimum amount which the owner will take for the article is written on a piece of paper, and placed by the owner under a candlestick, or other thing, and it is agreed that no bidding shall avail unless equal to that. this is called "dumb-bidding." Bab. Auct. 44.

DUMMODO. Provided; provided that. A word of limitation in the Latin forms of conveyances, of frequent use in introducing a reservation; as in reserving a rent.

DUN. A mountain or high open place. The names of places ending in dun or don were either built on hills or near them in open places.

DUNA. In old records. A bank of earth cast up; the side of a ditch. Cowell.

DUNGEON. Such an under-ground prison or cell as was formerly placed in the strongest part of a fortress; a dark or subterraneous prison.

DUNIO. A double; a kind of base coin less than a farthing.

DUNNAGE. Pieces of wood placed against the sides and bottom of the hold of a vessel, to preserve the cargo from the effect of leakage, according to its nature and quality. Abb. Shipp. 227.

There is considerable resemblance between dunnage and ballast. The latter is used for trimming the ship, and bringing it down to a draft of water proper and safe for sailing. Dunnage is placed under the cargo to keep it from being wetted by water getting into the hold, or between the different parcels to keep them from bruising and injuring each other. 13 Wall. 674.

DUNSETS. People that dwell on hilly places or mountains. Jacob.

Duo non possunt in solido unae rem possidere. Two cannot possess one thing in entirety. Co. Litt. 968.

Duo sunt instrumenta ad omnes rationes aut confrandandas aut impugnandae, ratio et authoritas. There are two instruments for confirming or impugning all things,—reason and authority. 8 Coke, 16.

DUODECEMVIRALE JUDICUM. The trial by twelve men, or by jury. Applied to juries de mediatate lingue. Mol. de Jure Mar. 448.

DUODECIMA MANUS. Twelve hands. The oaths of twelve men, including himself, by whom the defendant was allowed to make his law. 3 Bl. Comm. 343.

DUODENA MANU. A dozen hands, i.e., twelve witnesses to purge a criminal of an offense.

Duorum in solidum dominium vel possessio esse non potest. Ownership or possession in entirety cannot be in two persons of the same thing. Dig. 13, 6, 5, 15; Mackeld. Rom. Law, § 245. Bract. fol. 256.

DUPLA. In the civil law. Double the price of a thing. Dig. 21, 2, 2.

DUPLEX QUERELA. Double complaint. An ecclesiastical proceeding, which is in the nature of an appeal from an ordinary’s refusal to institute, to his next immediate superior; as from a bishop to the archbishop. If the superior adjudges the cause of refusal to be insufficient, he will grant institution to the appellant. Philiwm. Ecc. Law, 440.

DUPLEX VALOR MARITAGII. In old English law. Double the value of the marriage. While an infant was in ward, the guardian had the power of tendering him or her a suitable match, without disarrangement, which if the infants refused, they forfeited the value of the marriage to their guardian, that is, so much as a jury would assess or any one would give to the guardian for such an alliance; and, if the infants married themselves without the guardian’s consent, they forfeited double the value of the marriage. 2 Bl. Comm. 70; Litt. § 110; Co. Litt. 829.

DUPPLICATE. When two written documents are substantially alike, so that each might be a copy or transcript from the other, while both stand on the same footing as original instruments, they are called “duplicates.” Agreements, deeds, and other documents are frequently executed in duplicate, in order that each party may have an original in his possession.

A duplicate is sometimes defined to be the “copy” of a thing; but, though generally a copy, a duplicate differs from a mere copy, in having all the validity of an original. Nor, it seems, need it be an exact copy. Defined also to be the “counterpart” of an instrument; but in indentures there is a distinction between counterparts executed by the several parties respectively, each party affixing his or her seal to only one counterpart, and duplicate originals, each executed by all the parties. 7 Man. & G. 91, note. The old indentures, charters, or chirographs seem to have had the character of duplicates. Burrell.

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In English law. The certificate of discharge given to an insolvent debtor who takes the benefit of the act for the relief of insolvent debtors.

The ticket given by a pawnbroker to the pawner of a chattel.

DUPPLICATE WILL. A term used in England, where a testator executes two copies of his will, one to keep himself, and the other to be deposited with another person. Upon application for probate of a duplicate will, both copies must be deposited in the registry of the court of probate.

DUPICATIO. In the civil law. The defendant’s answer to the plaintiff’s replication; corresponding to the rejoinder of the common law.

Duplicationem possibilitatis lex non patitur. The law does not allow the doubling of a possibility. 1 Rolle, 321.

DUPICATUM JUS. Double right. Bract. fol. 2336. See DROIT-DROIT.

DUPILICTY. The technical fault, in pleading, of uniting two or more causes of action in one count in a writ, or two or more grounds of defense in one plea, or two or more breaches in a replication.

DUPLY, n. (From Lat. duplicatio, q. v.) In Scotch pleading. The defendant’s answer to the plaintiff’s replication.

DUPLY, v. In Scotch pleading. To rejoin. “It is duplyed by the panel.” 3 State Trials, 471.


DURANTE ABSENTA. During absence. In some jurisdictions, administration of a decedent’s estate is said to be granted durante absenta in cases where the absence of the proper propenents of the will, or of an executor, delays or imperils the settlement of the estate.

DURANTE BENE PLACITO. During good pleasure. The ancient tenure of English judges was durante bene placito. 1 Bl. Comm. 267, 342.

DURANTE MINORAE ÄSTATE. During minority. 2 Bl. Comm. 503; 5 Coke, 29, 30. Words taken from the old form of letters of administration. 5 Coke, ubi supra.
DURANTE VIDUITATE. During widowhood. 2 Bl. Comm. 124. Durante castig viduitate, during chaste widowhood. 10 East, 520.

DURBAR. In India. A court, audience, or levee. Mozley & Whitley.

DURESS, n. To subject to duress. A word used by Lord Bacon. "If the party duressed do make any motion," etc. Bac. Max. 89, reg. 22.

DURESS, n. Unlawful constraint exercised upon a man whereby he is forced to do some act against his will. It may be either "duress of imprisonment," where the person is deprived of his liberty in order to force him to compliance, or by violence, beating, or other actual injury, or duress per minus, consisting in threats of imprisonment or great physical injury or death. Duress may also include the same injuries, threats, or restraint exercised upon the man's wife, child, or parent.

Duress consists in any illegal imprisonment, or legal imprisonment used for an illegal purpose, or threats of bodily or other harm, or other means amounting to or tending to coerce the will of another, and actually inducing him to do an act contrary to his free will. Code Ga. 1882, § 2637.

By duress, in its more extended sense, is meant that degree of severity, either threatened or impending or actually inflicted, which is sufficient to overcome the mind and will of a person of ordinary firmness. Duress per minus is restricted to fear of loss of life, or of mayhem, or loss of limb, or other remediless harm to the person. 39 Me. 539.

DURESS OF IMPRISONMENT. The wrongful imprisonment of a person, or the illegal restraint of his liberty, in order to compel him to do some act. 1 Bl. Comm. 130, 131, 136, 187; 1 Steph. Comm. 137; 2 Kent, Comm. 453.

DURRESS PER MINAS. Duress by threats. The use of threats and menaces to compel a person, by the fear of death, or grievous bodily harm, as mayhem or loss of limb, to do some lawful act, or to commit a misdemeanor. 1 Bl. Comm. 130; 4 Bl. Comm. 30; 4 Steph. Comm. 83. See METUS.

DURESSOR. One who subjects another to duress; one who compels another to do a thing, as by menace. Bac. Max. 90, reg. 22.

DURHAM. A county palatine in England, the jurisdiction of which was vested in the Bishop of Durham until the statute 6 & 7 Wm. IV. c. 19, vested it as a separate franchise and royalty in the crown. The jurisdiction of the Durham court of pleas was transferred to the supreme court of judicature by the judicature act of 1873.

DURSLEY. In old English law. Blows without wounding or bloodshed; dry blows. Blount.

DUSTUCK. A term used in Hindostan for a passport, permit, or order from the English East Indian Company. It generally meant a permit under their seal, exempting goods from the payment of duties. Enc. Lond.

DUTCH AUCTION. A method of sale by auction which consists in the public offer of the property at a price beyond its value, and then gradually lowering the price until some one becomes the purchaser. 26 Ohio St. 482.

DUTIES. In its most usual signification this word is the synonym of imposts or customs; but it is sometimes used in a broader sense, as including all manner of taxes, charges, or governmental impositions.

DUTY. In its use in jurisprudence, this word is the correlative of right. Thus, wherever there exists a right in any person, there also rests a corresponding duty upon some other person or upon all persons generally. But it is also used, in a wider sense, to designate that class of moral obligations which lie outside the juridical sphere: such, namely, as rest upon an imperative ethical basis, but have not been recognized by the law as within its proper province for purposes of enforcement or redress. Thus, gratitude towards a benefactor is a duty, but its refusal will not ground an action. In this meaning "duty" is the equivalent of "moral obligation," as distinguished from a "legal obligation."

As a technical term of the law, "duty" signifies a thing due; that which is due from a person; that which a person owes to another. An obligation to do a thing. A word of more extensive signification than "debts," although both are expressed by the same Latin word "debitum." 26 Vt. 725, 733.

But in practice it is commonly reserved as the designation of those obligations of performance, care, or observance which rest upon a person in an official or fiduciary capacity; as the duty of an executor, trustee, manager, etc.

It also denotes a tax or impost due to the
DUUMVIRI. (From duo, two, and viri, men.) A general appellation among the ancient Romans, given to any magistrates elected in pairs to fill any office, or perform any function. Brund. 

*Duumvir municipales* were two annual magistrates in the towns and colonies, having judicial powers. Calvin. 

*Duumvir navales* were officers appointed to man, equip, and refit the navy. Id.

DUX. In Roman law. A leader or military commander. The commander of an army. Dig. 3, 2, 2, pr.

In feudal and old European law. Duke; a title of honor, or order of nobility. 1 Bl. Comm. 397; Crabb, Eng. Law. 236.

In later law. A military governor of a province. See Cod. 1, 27, 2. A military officer having charge of the borders or frontiers of the empire, called "dux limitis." Cod. 1, 49, 1, pr. At this period, the word began to be used as a title of honor or dignity.

Dwell. To have an abode; to inhabit; to live in a place.

Dwelling-house. The house in which a man lives with his family; a residence; the apartment or building, or group of buildings, occupied by a family as a place of residence.

In conveyancing. Includes all buildings attached to or connected with the house. 2 Hill. Real Prop. 338, and note.

In the law of burglary. A house in which the occupier and his family usually reside, or, in other words, dwell, and lie in. Whart. Crim. Law, 357.

Dwelling-place. This term is not synonymous with a "place of pauper settlement." 49 N. H. 553.

Dwelling-place, or home, means some permanent abode or residence, with intention to remain; and is not synonymous with "domicile," as used in international law, but has a more limited and restricted meaning. 19 Me. 293.

Dying declarations. Statements made by a person who is lying at the point of death, and is conscious of his approaching dissolution, in reference to the manner in which he received the injuries of which he is dying, or other immediate cause of his death, and in reference to the person who inflicted such injuries or the connection with such injuries of a person who is charged or suspected of having committed them; which statements are admissible in evidence in a trial for homicide where the killing of the declarant is the crime charged to the defendant.

Dying without issue. At common law this phrase imports an indefinite failure of issue, and not a dying without issue surviving at the time of the death of the first taker. But this rule has been changed in some of the states, by statute or decisions, and in England by St. 7 Wm. IV., and 1 Vict. c. 26, § 29.

The words "die without issue," and "die without leaving issue," in a devise of real estate, import an indefinite failure of issue, and not the failure of issue at the death of the first taker. And no distinction is to be made between the words "without issue" and "without leaving issue." 32 Barb. 238; 20 How. Pr 41; 3 Port. 69; 6 Port. 319.

In Connecticut, it has been repeatedly held that the expression "dying without issue," and like expressions, have reference to the time of the death of the party, and not to an indefinite failure of issue. 34 Me. 170.

Dying without children imports not a failure of issue at any indefinite future period, but a leaving no children at the death of the legatee. 13 N. J. Eq. 105.

DykE-Reed, or DyKE-Reeve. An officer who has the care and oversight of the dykes and drains in fenny counties.

DYSNOMY. Bad legislation; the enactment of bad laws.

DYSPEPSIA. A state of the stomach in which its functions are disturbed, without the presence of other diseases, or when, if other diseases are present, they are of minor importance. Dungl. Med. Diet.

DyVour. In Scotch law. A bankrupt.

DyVour's habit. In Scotch law. A habit which debtors who are set free on a cessio bonorum are obliged to wear, unless in the summons and process of cessio it be libeled, sustained, and proved that the bankruptcy proceeds from misfortune. And bankrupts are condemned to submit to the habit, even where no suspicion of fraud lies against them, if they have been dealers in an illicit trade. Ersk. Prin. 4, 3, 13.

E. A Latin preposition, meaning from, out of, after, or according. It occurs in many Latin phrases; but (in this form) only before a consonant. When the initial of the following word is a vowel, ez is used.

E CONTRA. From the opposite; on the contrary.

E CONVERSO. Conversely. On the other hand; on the contrary. Equivalent to e contra.

E. G. An abbreviation of exempli gratia. For the sake of an example.

E MERA GRATIA. Out of mere grace or favor.

E PLURIBUS UNUM. One out of many. The motto of the United States of America.

EA. Sax. The water or river; also the mouth of a river on the shore between high and low water-mark.

Ea est accipienda interpretatio, quae vitio careat. That interpretation is to be received [or adopted] which is free from fault [or wrong.] The law will not intend a wrong. Bac. Max. 17, (in reg. 3.)

EA INTENTIONE. With that intent. Held not to make a condition, but a confidence and trust. Dyer, 138b.

Ea quae, commendandi causa, in ventionibus dicuntur, si palam appareant, ventionorem non obligant. Those things which are said on sales, in the way of commendation, if [the qualities of the thing sold] appear openly, do not bind the seller. Dig. 18, 1, 43, pr.

Ea quae dari impossibilita sunt, vel quae in rerum natura non sunt, proxon adjectis habentur. Those things which are impossible to be given, or which are not in the nature of things, are regarded as not added. [as no part of an agreement.] Dig. 50, 17, 135.

Ea que in curia nostra rite acta sunt debitae executioni demandari debent. Co. Litt. 289. Those things which are properly transacted in our court ought to be committed to a due execution.

Ea quae raro accidunt non temere in agendis negotiis computatur. Those things which rarely happen are not to be taken into account in the transaction of business, without sufficient reason. Dig. 50, 17, 64.

EACH. The effect of this word, used in the covenants of a bond, is to create a several obligation. 3 Dow. & R. 112; 5 Term 522; 2 Day, 442; 104 Mass. 217.

Eadem causa diversis rationibus co-ram judicibus ecclesiasticis et secularibus ventilatur. 2 Inst. 622. The same cause is argued upon different principles before ecclesiastical and secular judges.

Eadem est ratio, eadem est lex. The same reason, the same law. 7 Pick. 493.

Eadem mens presumitur regis quae est juris et quae esse debet, praesertim in dubiis. Ilbl. 154. The mind of the sovereign is presumed to be coincident with that of the law, and with that which it ought to be, especially in ambiguous matters.

EAGLE. A gold coin of the United States of the value of ten dollars.

EALDER, or EALDING. In old Saxon law. An elder or chief.

E A L D E R M A N, or EALDORMAN. The name of a Saxon magistrate; alderman; analogous to earl among the Danes, and sen-ator among the Romans. See ALDERMAN.

EALDOR-BISCYP. An archbishop.

EALDORBURG. Sax. The metropolis; the chief city. Obsolete.

EALHEUS. (Fr. cale, Sax., ale, and hus, house.) An ale-house.

EALHORDA. Sax. The privilege of assaying and selling beer. Obsolete.

EAR GRASS. In English law. Such grass which is upon the land after the mowing, until the feast of the Annunciation after 3 Leon. 213.

EAR-MARK. A mark put upon a thing to distinguish it from another. Originally
and literally, a mark upon the ear; a mode of marking sheep and other animals.

Property is said to be ear-marked when it can be identified or distinguished from other property of the same nature.

Money has no ear-mark, but it is an ordinary term for a privy mark made by any one on a coin.

EAR-WITNESS. In the law of evidence. One who attests or can attest anything as heard by himself.

EARL. A title of nobility, formerly the highest in England, now the third, ranking between a marquis and a viscount, and corresponding with the French "comte" and the German "graf." The title originated with the Saxons, and is the most ancient of the English peerage. William the Conqueror first made this title hereditary, giving it in fee to his nobles; and allotting them for the support of their state the third penny out of the sheriff's court, issuing out of all pleas of the shire, whence they had their ancient title "shiremen." At present the title is accompanied by no territory, private or judicial rights, but merely confers nobility and an hereditary seat in the house of lords. Wharton.

EARL MARSHAL OF ENGLAND. A great officer of state who had anciently several courts under his jurisdiction, as the court of chivalry and the court of honor. Under him is the herald's office, or college of arms. He was also a judge of the Marshalsea court, now abolished. This office is of great antiquity, and has been for several ages hereditary in the family of the Howards. 3 Bl. Comm. 68, 103; 3 Steph. Comm. 335, note.

EARLDOM. The dignity or jurisdiction of an earl. The dignity only remains now, as the jurisdiction has been given over to the sheriff. 1 Bl. Comm. 339.

EARLES-PENNY. Money given in part payment. See EARNEST.

EARNEST. The payment of a part of the price of goods sold, or the delivery of part of such goods, for the purpose of binding the contract. 108 Mass. 54.

A token or pledge passing between the parties, by way of evidence, or ratification of the sale. 2 Kent. Comm. 495, note.

EARNINGS. This term is used to denote a larger class of credits than would be included in the term "wages." 102 Mass. 235; 115 Mass. 165.

The gains of the person derived from his services or labor without the aid of capital. 20 Wis. 330. See, also, 46 N. II. 48.

"Gross" earnings are the total receipts before deducting expenditures. "As a general proposition, net earnings are the excess of the gross earnings over the expenditures defrayed in producing them, aside from, and exclusive of, the expenditure of capital laid out in constructing and equipping the works themselves." 99 U. S. 420. See, also, 44 Ohio St. 315, 7 N. E. Rep. 139; 54 Conn. 168, 5 Atl. Rep. 851.

"Surplus" earnings of a company or corporation means the amount owned by the company over and above its capital and actual liabilities. 76 N. Y. 74.

EARTH. Soil of all kinds, including gravel, clay, loam, and the like, in distinction from the firm rock. 75 N. Y. 76.

EASEMENT. A right in the owner of one parcel of land, by reason of such ownership, to use the land of another for a special purpose not inconsistent with a general property in the owner. 2 Washb. Real Prop. 25.

A privilege which the owner of one adjacent tenement hath of another, existing in respect of their several tenements, by which that owner against whose tenement the privilege exists is obliged to suffer or not to do something on or in regard to his own land for the advantage of him in whose land the privilege exists. Termes de la Ley.

A private easement is a privilege, service, or convenience which one neighbor has of another, by prescription, grant, or necessary implication, and without profit; as a way over his land, a gate-way, water-course, and the like. Kitch. 105; 3 Cruise, Dig. 484.

The land against which the easement or privilege exists is called the "servient" tenement, and the estate to which it is annexed the "dominant" tenement; and their owners are called respectively the "servient" and "dominant" owner. These terms are taken from the civil law.

At the present day, the distinction between an "easement" and a "license" is well settled and fully recognized, although it becomes difficult in some of the cases to discover a substantial difference between them.

An easement, it has appeared, is a liberty, privilege, or advantage in land, without profit, and existing distinct from the ownership of the soil; and it has appeared, also, that a claim for an easement must be founded upon a deed or writing, or upon prescription, which supposes one. It is a permanent interest in another's land, with a right to enjoy it fully and without obstruction. A
license, on the other hand, is a bare authority to do a certain act or series of acts upon another's land, without possessing any estate therein; and, it being founded in personal confidence, it is not assignable, and it is gone if the owner of the land who gives the license transfers his title to another, or if either party die. 3 Pin. 415.

Classification. Easements are classified as

affirmative or negative; the former being those where the servient estate permits something to be done thereon, (as to pass over it, or to discharge water upon it;) the latter being those where the owner of the servient estate is prohibited from doing something otherwise lawful upon his estate, because it will affect the dominant estate, (as interrupting the light and air from the latter by building on the former.) 2 Washb. Real Prop. 301.

They are also either continuous or discontinuous; the former depending on some natural conformation of the servient tenement, or artificial structure upon it, which constitutes the easement or the means of enjoying it; the latter being such as have no means specially constructed or appropriated for their enjoyment, and are enjoyed at intervals, leaving in the mean time no visible signs of their existence. 18 N. J. Eq. 262.

Easements are also classified as private or public, according as their enjoyment belongs to an individual or to the community.

They may also be either of necessity or of convenience. The former is the case where the easement is indispensable to the enjoyment of the dominant estate; the latter, where the easement increases the facility, comfort, or convenience of the enjoyment of the dominant estate, or of some right connected with it.

An appurtenant (or appendant) easement is one which is attached to and passes with the dominant tenement as an appurtenance thereof.

EAST. In the customs laws of the United States, the term "countries east of the Cape of Good Hope" means countries with which, formerly, the United States ordinarily carried on commercial intercourse by passing around that cape. 101 U. S. 790.

EAST GREENWICH. The name of a royal manor in the county of Kent, England; mentioned in royal grants or patents, as descriptive of the tenure of free socage.

EAST INDIA COMPANY. The East India Company was originally established for prosecuting the trade between England and India, which they acquired a right to carry on exclusively. Since the middle of the last century, however, the company's political affairs had become of more importance than their commerce. In 1858, by 21 & 22 Vict. c. 106, the government of the territories of the company was transferred to the crown. Wharton.

EASTER. A feast of the Christian church held in memory of our Saviour's resurrection. The Greeks and Latins call it "pascha," (passover,) to which Jewish feast our Easter answers. This feast has been annually celebrated since the time of the apostles, and is one of the most important festivals in the Christian calendar, being that which regulates and determines the times of all the other movable feasts. Enc. Lond.

EASTER-OFFERINGS, or EASTER-DUES. In English law. Small sums of money paid to the parochial clergy by the parishioners at Easter as a compensation for personal tithes, or the tithe for personal labor; recoverable under 7 & 8 Wm. III. c. 6, before justices of the peace.

EASTER TERM. In English law. One of the four terms of the courts. It is now a fixed term, beginning on the 15th of April and ending on the 8th of May in every year, though sometimes prolonged so late as the 13th of May, under St. 11 Geo. IV. and 1 Wm. IV. c. 70. From November 2, 1875, the division of the legal year into terms is abolished so far as concerns the administration of justice. 3 Steph. Comm. 482-486; Mozley & Whitley.

EASTERLING. A coin struck by Richard II., which is supposed to have given rise to the name of "sterling," as applied to English money.

EASTERY. This word, when used alone, will be construed to mean "due east." But that is a rule of necessity growing out of the indefiniteness of the term, and has no application where other words are used for the purpose of qualifying its meaning. Where such is the case, instead of meaning "due east," it means precisely what the qualifying word makes it mean. 32 Cal. 227.

EASTINUS. An easterly coast or country.

EAT INDE SINE DIE. In criminal practice. Words used on the acquittal of a
defendant, that he may go thence without a day, i. e., be dismissed without any further
continuance or adjournment.

EATING-HOUSE. Any place where
food or refreshments of any kind, not in-
cluding spirits, wines, ale, beer, or other malt
liquors, are provided for casual visitors, and
sold for consumption therein. Act Cong.
July 13, 1866, § 9, (14 St. at Large, 118.)

EAVES. The edge of a roof, built so as
to project over the walls of a house, in order
that the rain may drop therefrom to the
ground instead of running down the wall.

EAVESDROPPING. In English crim-
inal law. The offense of listening under
walls or windows, or the eaves of a house, to
hearken after discourse, and thereupon to
frame slanderous and mischievous tales. 4
Bl. Comm. 168. It is a misdemeanor at com-
mon law, indictable at sessions, and punish-
able by fine and finding sureties for good behav-
ior. Id.; Steph. Crim. Law, 109. See
3 Head, 300.

EBB AND FLOW. An expression used
formerly in this country to denote the limits of
admiralty jurisdiction. See 3 Mason, 127;
2 Story, 176; 2 Gall. 308; 4 Wall. 562; 8
Wall. 15.

EBBA. In old English law. Ebb. *Ebba
et fluctus; ebb and flow of tide; ebb and
flood. Bract. fols. 205, 338. The time oc-
cupied by one ebb and flood was anciently
granted to persons essoined as being beyond
sea, in addition to the period of forty days.
See Fleta, lib. 6, c. 8, § 2.

EBDOMADARIUS. In ecclesiastical
law. An officer in cathedral churches who
supervised the regular performance of divine
service, and prescribed the particular duties
of each person in the choir.

EBEREMORTH, EBEREMORS,
EBERE-MURDER. See ABEREMURDER.

Ecce modo mirum, quod femina fert
breve regis, non nominando virum,
conjunctum robore legis. Co. Litt. 132d.
Behold, indeed, a wonder! that a woman has
the king's writ without naming her husband,
who by law is united to her.

ECCHYMOSIS. In medical jurispru-
dence. Blackness. It is an extravasation
of blood by rupture of capillary vessels, and
hence it follows contusion; but it may ex-
ist, as in cases of scurvy and other morbid
172.

ECCLESIA. Lat. An assembly. A
Christian assembly; a church. A place of re-
ligious worship. Spelman.

Ecclesia ecclesiae decimas solvere non
debet. Cro. Eliz. 479. A church ought
not to pay tithes to a church.

Ecclesia est domus mansionalis Om-
nipotentis Dei. 2 Inst. 164. The church
is the mansion-house of the Omnipotent God.

Ecclesia est infra ætatem et in cus-
todia domini regis, qui tenetur jura et
hereditates ejusdem manu tenere et
defendere. 11 Coke, 49. The church is
under age, and in the custody of the king,
who is bound to uphold and defend its rights
and inheritances.

Ecclesia fungitur vice minoris; meli-
orem conditionem suam facere potest,
The church enjoys the privilege of a minor;
it can make its own condition better, but not
worse.

Ecclesia non moritur. 2 Inst. 3. The
church does not die.

Ecclesiae magis favendum est quam
personæ. Godol. Ecc. Law, 172. The
church is to be more favored than the person.

ECCLESIAE SCULPTURA. The image
or sculpture of a church in ancient times was
often cut out or cast in plate or other metal,
and preserved as a religious treasure or relic,
and to perpetuate the memory of some fa-
amous churches. Jacob.

ECCLESIAARCH. The ruler of a church.

ECCLESIASTIC, n. A clergyman; a
priest; a man consecrated to the service of
the church.

ECCLESIASTICAL. Something belong-
ing to or set apart for the church, as dis-
tinguished from "civil" or "secular," with
regard to the world. Wharton.

ECCLESIASTICAL AUTHORITIES.
In England, the clergy, under the sovereign,
as temporal head of the church, set apart
from the rest of the people or laity, in order
to superintend the public worship of God and
the other ceremonies of religion, and to ad-
minister spiritual counsel and instruction.
The several orders of the clergy are: (1)
Archbishops and bishops; (2) deans and
chaplains; (3) archdeacons; (4) rural deans;
(5) Parsons (under whom are included ap-
propriators) and vicars; (6) curates. Church-

Eating-House 407  Ecclesiastical Authorities
wardens or sidesmen, and parish clerks and sextons, inasmuch as their duties are connected with the church, may be considered to be a species of ecclesiastical authorities. Wharton.

**ECCLESIASTICAL COMMISSIONERS.** In English law. A body corporate, erected by St. 6 & 7 Wm. IV. c. 77, empowered to suggest measures conducive to the efficiency of the established church, to be ratified by orders in council. Wharton. See 3 Steph. Comm. 156, 157.

**ECCLESIASTICAL CORPORATIONS.** Such corporations as are composed of persons who take a lively interest in the advancement of religion, and who are associated and incorporated for that purpose. Ang. & A. Corp. § 36.

Corporations whose members are spiritual persons are distinguished from *lay* corporations. 1 Bl. Comm. 470.

**ECCLESIASTICAL COURTS.** A system of courts in England, held by authority of the sovereign, and having jurisdiction over matters pertaining to the religion and ritual of the established church, and the rights, duties, and discipline of ecclesiastical persons as such. They are as follows: The archdeacon’s court, consistory court, court of arches, court of peculiar, prerogative court, court of delegates, court of convocation, court of audience, court of faculties, and court of commissioners of review. See those several titles; and see 3 Bl. Comm. 64–68.

**ECCLESIASTICAL DIVISION OF ENGLAND.** This is a division into provinces, dioceses, archdeaconries, rural deaneries, and parishes.

**ECCLESIASTICAL LAW.** The body of jurisprudence administered by the ecclesiastical courts of England; derived, in large measure, from the canon and civil law. As now restricted, it applies mainly to the affairs, and the doctrine, discipline, and worship, of the established church.

**ECDICUS.** The attorney, proctor, or advocate of a corporation. *Episcoporum edicit;* bishops’ proctors; church lawyers. 1 Reeve, Eng. Law, 65.

**ECHANTILLON.** In French law. One of the two parts or pieces of a wooden tally. That in possession of the debtor is properly called the “tally,” the other “echantillon.” Poth. Obl. pt. 4, c. 1, art. 2, § 8.

**ECHEVIN.** In French law. A municipal officer corresponding with alderman or burgess, and having in some instances a civil jurisdiction in certain causes of trilling importance.

**ECHOUEMENT.** In French marine law. Stranding. Emerig. Tr. des Ass. c. 12, s. 13, no. 1.

**ECLAMPSIA PARTURIENTIUM.** In medical jurisprudence. The name of a disease accompanied by apoplectic convulsions, and which produces aberration of mind at childbirth.

**ECLECTIC PRACTICE.** In medicine. That system followed by physicians who select their modes of practice and medicines from various schools. Webster.

“Without professing to understand much of medical phraseology, we suppose that the terms ‘allopathic practice’ and ‘legitimate business’ mean the ordinary method commonly adopted by the great body of learned and eminent physicians, which is taught in their institutions, established by their highest authorities, and accepted by the larger and more respectable portion of the community. By ‘eclectic practice,’ without imputing it to, as the counsel for the plaintiff seem inclined to, an odor of illegality, we presume is intended another and different system, unusual and eccentric, not countenanced by the classes before referred to, but characterized by them as spurious and denounced as dangerous. It is sufficient to say that the two modes of treating human maladies are essentially distinct, and based upon different views of the nature and causes of diseases, their appropriate remedies, and the modes of applying them.” 34 Conn. 453.

**ECRIVAIN.** In French marine law. The clerk of a ship. Emerig. Tr. des Ass. c. 11, s. 3, no. 2.

**ECUMENICAL.** General; universal; as an ecumenical council.

**EDDERBRECHE.** In Saxon law. The offense of hedge-breaking. Obsolete.

**EDESTIA.** In old records. Buildings.

**EDIT.** A positive law promulgated by the sovereign of a country, and having reference either to the whole land or some of its divisions, but usually relating to affairs of state. It differs from a “public proclamation,” in that it enacts a new statute, and carries with it the authority of law.

**EDICTAL CITATION.** In Scotch law. A citation published at the market-cross of Edinburgh, and pier and shore of Leith. Used against foreigners not within the kingdom, but having a landed estate there, and against natives out of the kingdom. Bell.
EDICTS OF JUSTINIAN. Thirteen constitutions or laws of this prince, found in most editions of the Corpus Juris Civilis, after the Novels. Being confined to matters of police in the provinces of the empire, they are of little use.

EDICTUM. In the Roman law. An edict; a mandate, or ordinance. An ordinance, or law, enacted by the emperor without the senate; belonging to the class of constitutiones principis. Inst. 1, 2, 6. An edict was a mere voluntary constitution of the emperor; differing from a rescript, in not being returned in the way of answer; and from a decree, in not being given in judgment; and from both, in not being founded upon solicitation. Tayl. Civil Law, 233.

A general order published by the praetor, on entering upon his office, containing the system of rules by which he would administer justice during the year of his office. Dig. 1, 2, 2, 10; Mackeld. Rom. Law, § 35. Tayl. Civil Law, 214. See Calvin.

EDICTUM PERPETUUM. In Roman law. The perpetual edict. A compilation of system of law in fifty books, digested by Julian, a lawyer of great eminence under the reign of Adrian, from the Praetor's edicts and other parts of the Jus Honorum. All the remains of it which have come down to us are the extracts of it in the Digests. Butl. Hor. Jur. 52.

EDICTUM THEODORICI. This is the first collection of law that was made after the downfall of the Roman power in Italy. It was promulgated by Theodoric, king of the Ostrogoths, at Rome in A.D. 500. It consists of 154 chapters, in which we recognize parts taken from the Code and Novellae of Theodosius, from the Codices Gregorianus and Hermogenianus, and the Sententiae of Paulus. The edict was doubtless drawn up by Roman writers, but the original sources are more disfigured and altered than in any other compilation. This collection of law was intended to apply both to the Goths and the Romans, so far as its provisions went; but, when it made no alteration in the Gothic law, that law was still to be in force. Savigny, Geschichte des B. R.

EDITUS. In old English law. Put forth or promulgated, when speaking of the passage of a statute; and brought forth, or born, when speaking of the birth of a child.

EDUCATE. Includes proper moral, as well as intellectual and physical, instruction. Code Tenn. § 2521; 6 Heisk. 395.

EDUCATION. Within the meaning of a statute relative to the powers and duties of guardians, this term comprehends not merely the instruction received at school or college, but the whole course of training, moral, intellectual, and physical. 6 Heisk. 400.

Education may be particularly directed to either the mental, moral, or physical powers and faculties, but in its broadest and best sense it relates to them all. 145 Mass. 146; 13 N. E. Rep. 354.

EFFECT. The result which an instrument between parties will produce in their relative rights, or which a statute will produce upon the existing law, as discovered from the language used, the forms employed, or other materials for construing it.

The phrases "take effect," "be in force," "go into operation," etc., have been used interchangeably ever since the organization of the state. 4 Ind. 842.

EFFECTS. Personal estate or property. This word has been held to be more comprehensive than the word "goods," as including fixtures, which "goods" will not include. 7 Taunt. 183; 4 J. B. Moore, 73; 4 Barn. & A. 206.

In wills. The word "effects" is equivalent to "property," or "worldly substance," and, if used simpliciter, as in a gift of "all my effects," will carry the whole personal estate. Ves. Jr. 507; Ward. Leg. 209. The addition of the words "real and personal" will extend it so as to embrace the whole of the testator's real and personal estate. Cwop. 299; 3 Brown, Parl. Cas. 388.

This is a word often found in wills, and, being equivalent to "property," or "worldly substance," its force depends greatly upon the association of the adjectives "real" and "personal." "Real and personal effects" would embrace the whole estate; but the word "effects" alone must be confined to personal estate simply, unless an intention appears to the contrary. Schouler, Wills, § 509. See 1 Cwop. 304.

Effectus sequitur causam. Wing. 226. The effect follows the cause.

EFFENDI. In Turkish language. Master; a title of respect.

EFFIGY. The corporeal representation of a person.

To make the effigy of a person with an intent to make him the object of ridicule is a libel. 2 Chit. Crim. Law, 866.
EFFLUX. The running of a prescribed period of time to its end; expiration by lapse of time. Particularly applied to the termination of a lease by the expiration of the term for which it was made.

EFFLUXION OF TIME. When this phrase is used in leases, conveyances, and other like deeds, or in agreements expressed in simple writing, it indicates the conclusion or expiration of an agreed term of years specified in the deed or writing, such conclusion or expiration arising in the natural course of events, in contradistinction to the determination of the term by the acts of the parties or by some unexpected or unusual incident or other sudden event. Brown.

EFFORCIALITER. Forcibly; applied to military force.

EFFRACTION. A breach made by the use of force.

EFFRATOR. One who breaks through; one who commits a burglary.

EFFUSIO SANGUINIS. In old English law. The shedding of blood; the mulet, fine, vari, or penalty imposed for the shedding of blood, which the king granted to many lords of manors. Cowell; Tomlins. See Bloodwitr.

EFTERS. In Saxon law. Ways, walks, or hedges. Blount.

EGALITY. Owelty, (q. n.) Co. Litt. 169a.

EGO. I; myself. This term is used in forming genealogical tables, to represent the person who is the object of inquiry.

EGO, TALIS. I, such a one. Words used in describing the forms of old deeds. Fleta, lib. 3, c. 14, § 5.

EGREDIENS ET EXEUNIS. In old pleading. Going forth and issuing out of (land.) Townsh. Pl. 17.

EGYPTIANS, commonly called "Gypsies," are counterfeit rogués, Welsh or English, that disguise themselves in speech and apparel, and wander up and down the country, pretending to have skill in telling fortunes, and to deceive the common people, but live chiefly by fitching and stealing, and, therefore, the statutes of 1 & 2 Mar. c. 4, and 5 Eliz. c. 20, were made to punish such as felons if they departed not the realm or continued to a month. Termes de la Ley.

Ei incumbit probatio, qui dicit, non qui negat; cum per rerum naturam factum negantis probatio nulla sit. The proof lies upon him who affirms, not upon him who denies; since, by the nature of things, he who denies a fact cannot produce any proof.

Ei nihil turpe, cui nihil satis. To him to whom nothing is enough, nothing is base. 4 Inst. 53.

EIA, or EY. An island. Cowell.

EIGNE. L. Fr. Eldest; eldest-born. The term is of common occurrence in the old books. Thus, bastard eigne means an illegitimate son whose parents afterwards marry and have a second son for lawful issue, the latter being called mulier puisne, (after-born.) Eigne is probably a corrupt form of the French "ainé." 2 Bl. Comm. 248; Litt. § 399.

EIK. In Scotch law. An addition; as, eik to a reversion, eik to a confirmation. Bell.

EINECIA. Eldership. See Esney.

EINETIUS. In English law. The oldest; the first-born. Spelman.

BIRE, or EYRE. In old English law. A journey, route, or circuit. Justices in eyre were judges who were sent by commission, every seven years, into various counties to hold the assizes and hear pleas of the crown. 3 Bl. Comm. 58.

EIRENARCHA. A name formerly given to a justice of the peace. In the Digests, the word is written "irenarcha."

Eisadem modis dissolvitur obligatione quae nascitur ex contractu, vel quasi, quibus contrahitur. An obligation which arises from contract, or quasi contract, is dissolved in the same ways in which it is contracted. Fleta, lib. 2, c. 60, § 19.

EISNE. The senior; the oldest son. Spelled, also, "eigne," "einsne," "aisne," "eign." Termes de la Ley; Kelham.

EISNETIA, EINETIA. The share of the oldest son. The portion acquired by primogeniture. Termes de la Ley; Co. Litt. 166b; Cowell.

EITHER. May be used in the sense of "each." 59 Ill. 67.

This word does not mean "all;" but does mean one or the other of two or more specified things. (Tex.) 4 S. W. Rep. 558.
EJECT. To cast, or throw out; to oust, or dispossess; to put or turn out of possession. 3 Bl. Comm. 198, 199, 200.

EJECTA. In old English law. A woman ravished or deflowered, or cast forth from the virtuous. Blount.

EJECTION. A turning out of possession. 3 Bl. Comm. 199.

EJECTIONE CUSTODIÆ. In old English law. Ejection of ward. This phrase, which is the Latin equivalent for the French "ejection de garde," was the title of a writ which lay for a guardian when turned out of any land of his ward during the minority of the latter. Brown.

EJECTIONE FIRMAE. Ejection, or ejection of farm. The name of a writ or action of trespass, which lay at common law where lands or tenements were let for a term of years, and afterwards the lessor, reversor, remainder-man, or any stranger ejected or ousted the lessee of his term, firma, or form. (ipsum a forma ejectit.) In this case the latter might have his writ of ejection, by which he recovered at first damages for the trespass only, but it was afterwards made a remedy to recover back the term itself, or the remainder of it, with damages. Reg. Orig. 227b; Fitzh. Nat. Brev. 220, F, G; 3 Bl. Comm. 199; Litt. § 322; Crabb, Eng. Law, 290, 448. It is the foundation of the modern action of ejection.

EJECTMENT. At common law, this was the name of a mixed action (springing from the earlier personal action of ejections firmae) which lay for the recovery of the possession of land, and for damages for the unlawful detention of its possession. The action was highly fictitious, being in theory only for the recovery of a term for years, and brought by a purely fictitious person, as lessee in a supposed lease from the real party in interest. The latter's title, however, must be established in order to warrant a recovery, and the establishment of such title, though nominally a mere incident, is in reality the object of the action. Hence this convenient form of suit came to be adopted as the usual method of trying titles to land. See 3 Bl. Comm. 199.

It was the only mixed action at common law, the whole method of proceeding in which was anomalous, and depended on fictions invented and upheld by the court for the convenience of justice, in order to escape from the inconveniences which were found to attend the ancient forms of real and mixed actions.

EJECTUM. That which is thrown up by the sea. Also jetsam, wreck, etc.


EJERCITORIA. In Spanish law. The name of an action lying against a ship's owner, upon the contracts or obligations made by the master for repairs or supplies. It corresponds to the actio exercitoria of the Roman law. Mackeld. Rom. Law, § 512.

EJIDOS. In Spanish law. Commons; lands used in common by the inhabitants of a city, pueblo, or town, for pasture, wood, threshing-ground, etc. 15 Cal. 554.

EJURATION. Renouncing or resigning one's place.

Ejus est interpretari cujus est condere. It is his to interpret whose it is to enact. Tayl. Civil Law, 96.

Ejus est nolle, qui potest velle. He who can will, [exercise volition.] has a right to refuse to will, [to withhold consent.] Dig. 50, 7, 3.

Ejus est periculum cujus est dominium aut commodum. He who has the dominion or advantage has the risk.

Ejus nulla culpa est, cui parere ncessae sit. No guilt attaches to him who is compelled to obey. Dig. 50, 17, 169, pr. Obedience to existing laws is a sufficient extenuation of guilt before a civil tribunal. Broom, Max. 12, note.

EJUSDEM GENERIS. Of the same kind, class, or nature.

ELABORARE. In old European law. To gain, acquire, or purchase, as by labor and industry.

ELABORATUS. Property which is the acquisition of labor. Spelman.

ELDER BRETHREN. A distinguished body of men, elected as masters of Trinity House, an institution incorporated in the reign of Henry VIII., charged with numerous important duties relating to the marine, such as the superintendence of light-houses. Mozley & Whitley; 2 Steph. Comm. 502.

ELDER TITLE. A title of earlier date, but coming simultaneously into operation.
with a title of younger origin, is called the "elder title," and prevails.

ELDEST. He or she who has the greatest age.

The "eldest son" is the first-born son. If there is only one son, he may still be described as the "eldest." L. R. 7 H. L. 644.

Electa una via, non datur recursus ad alteram. He who has chosen one way cannot have recourse to another. 10 Toull. no. 170.

ELECTED. The word "elected," in its ordinary signification, carries with it the idea of a vote, generally popular, sometimes more restricted, and cannot be held the synonym of any other mode of filling a position. 5 Nev. 121.

Electio est interna libera et spontanea separatio unius rei ab alia, sine compulsione, consistens in animo et voluntate. Dyer, 281. Election is an internal, free, and spontaneous separation of one thing from another, without compulsion, consisting in intention and will.


ELECTION. The act of choosing or selecting one or more from a greater number of persons, things, courses, or rights. The choice of an alternative.

The internal, free, and spontaneous separation of one thing from another, without compulsion, consisting in intention and will. Dyer, 281.

The selection of one man from among several candidates to discharge certain duties in a state, corporation, or society.

The choice which is open to a debtor who is bound in an alternative obligation to select either one of the alternatives.

In equity. The obligation imposed upon a party to choose between two inconsistent or alternative rights or claims, in cases where there is clear intention of the person from whom he derives one that he should not enjoy both. 2 Story, Eq. Jur. § 1075.

The doctrine of election presupposes a plurality of gifts or rights, with an intention, express or implied, of the party who has a right to control one or both, that one should be a substitute for the other. 1 Swanst. 594; note b; 3 Wood. Lect. 491; 2 Rep. Leg. 482-578.

In practice. The liberty of choosing (or the act of choosing) one out of several means afforded by law for the redress of an injury, or one out of several available forms of action.

In criminal law. The choice, by the prosecution, upon which of several counts in an indictment (charging distinct offenses of the same degree, but not parts of a continuous series of acts) it will proceed.

Election Auditors. In English law. Officers annually appointed, to whom was committed the duty of taking and publishing the account of all expenses incurred at parliamentary elections. See 17 & 18 Vict. c. 102, §§ 18, 26-28. But these sections have been repealed by the 26 Vict. c. 29, which throws the duty of preparing the accounts on the declared agent of the candidate, and the duty of publishing an abstract of it on the returning officer. Wharton.

Election District. A subdivision of territory, whether of state, county, or city, the boundaries of which are fixed by law, for convenience in local or general elections. 41 Pa. St. 493.


Election Petitions. Petitions for inquiry into the validity of elections of members of parliament, when it is alleged that the return of a member is invalid for bribery or any other reason. These petitions are heard by a judge of one of the common-law divisions of the high court.

Electiones sunt rite et libere sine interruptione aliqua. Elections should be made in due form, and freely, without any interruption. 2 Inst. 169.

Elective. Dependent upon choice; bestowed or passing by election. Also pertaining or relating to elections; conferring the right or power to vote at elections.

Elector. He that has a vote in the choice of any officer; a constituent; also the title of certain German princes who formerly had a voice in the election of the German emperors.

Electoral. Pertaining to electors or elections; composed or consisting of electors.

Electoral College. The body of princes formerly entitled to elect the emperor of Germany. Also a name sometimes given,
in the United States, to the body of electors chosen by the people to elect the president and vice-president. Webster.

**ELECTORS OF PRESIDENT.** Persons chosen by the people at a so-called "presidential election," to elect a president and vice-president of the United States.

**ELEEMOSYNA REGIS, and ELEEMOSYNA ARATRI, or CARUCARUM.** A penny which King Ethelred ordered to be paid for every plow in England towards the support of the poor. *Leg. Ethel. c. 1.*

**ELEEMOSYNÆ.** Possessions belonging to the church. Blount.

**ELEEMOSYNARIA.** The place in a religious house where the common alms were deposited, and thence by the almoner distributed to the poor.

In old English law. The *aunmire, aunbry, or ambry*; words still used in common speech in the north of England, to denote a pantry or cupboard. Cowell.

The office of almoner. Cowell.

**ELEEMOSYNAE.** In old English law. An almoner, or chief officer, who received the eleemosynary rents and gifts, and in due method distributed them to pious and charitable uses. Cowell; Wharton.

The name of an officer (lord almoner) of the English kings, in former times, who distributed the royal alms or bounty. *Fleta, lib. 2, c. 29.*

**ELEEMOSYNARY.** Relating to the distribution of alms, bounty, or charity; charitable.

**ELEEMOSYNARY CORPORATIONS.** Such as are constituted for the perpetual distribution of the free alms and bounty of the founder, in such manner as he has directed; and in this class are ranked hospitals for the relief of poor and impotent persons, and colleges for the promotion of learning and piety, and the support of persons engaged in literary pursuits. These corporations are lay, and not ecclesiastical, even though composed of ecclesiastical persons, and although they in some things partake of the nature, privileges, and restrictions of ecclesiastical bodies. *1 Bl. Comm. 471.*

Eleemosynary corporations are for the management of private property according to the will of the donors. They are private lay corporations, such as colleges, hospitals, etc. They differ from civil corporations in that the former are the mere creatures of public institution, created exclusively for the public advantage, and subject to governmental control and visitation; whereas a private corporation, especially one organized for charitable purposes, is the creature of private benefaction, endowed and founded by private individuals, and subject to their control, laws, and visitation, and not to those of the government. *4 Wheat. 518, 660.*

**ELEGANTER.** In the civil law. Accurately; with discrimination. *3 Story, 611, 636.*

**ELEGIT.** (Lat. He has chosen.) This is the name, in English practice, of a writ of execution first given by the statute of Westm. 2 (13 Edw. I. c. 18) either upon a judgment for a debt or damages or upon the forfeiture of a recognizance taken in the king's court. It is so called because it is in the choice or election of the plaintiff whether he will sue out this writ or a *fl. fa.* By it the defendant's goods and chattels are appraised, and all of them (except oxen and beasts of the plow) are delivered to the plaintiff, at such reasonable appraisement and price, in part satisfaction of his debt. If the goods are not sufficient, then the moiety of his freehold lands, which he had at the time of the judgment given, are also to be delivered to the plaintiff, to hold till out of the rents and profits thereof the debt be levied, or till the defendant's interest be expired. During this period the plaintiff is called "tenant by elegit," and his estate, an "estate by elegit." This writ, or its analogue, is in use in some of the United States, as Virginia and Kentucky. See *3 Bl. Comm. 418; 4 Kent, Comm. 431, 436, and notes; 10 Grat. 580.*

**ELEMENTS.** The forces of nature. The elements are the means through which God acts, and "damages by the elements" means the same thing as "damages by the act of God." *35 Cal. 416.*

**ELIGIBLE.** As applied to a candidate for an elective office, this term means capable of being chosen; the subject of selection or choice; and also implies competency to hold the office if chosen. *15 Ind. 331; 15 Cal. 121; 14 Wis. 497.*

**ELIMINATION.** In old English law. The act of banishing or turning out of doors; rejection.

**ELINGUATION.** The punishment of cutting out the tongue.

**ELISORS.** In practice. Electors or choosers. Persons appointed by the court to execute writs of *ventre,* in cases where both
the sheriff and coroner are disqualified from acting, and whose duty is to choose—that is, name and return—the jury. 3 Bl. Comm. 555; Co Litt. 158; 3 Steph. Comm. 597, note.

Persons appointed to execute any writ, in default of the sheriff and coroner, are also called "elisors."

ELL. A measure of length, answering to the modern yard. 1 Bl. Comm. 275.

ELOGIUM. In the civil law. A will or testament.

ELOIGN. In practice. (Fr. éloigner, to remove to a distance; to remove afar off.) A return to a writ of replevin, when the chattels have been removed out of the way of the sheriff.

ELOIGNMENT. The getting a thing or person out of the way; or removing it to a distance, so as to be out of reach.

ELOIGNATA. In practice. Eloigned; carried away to a distance. The old form of the return made by a sheriff to a writ of replevin, stating that the goods or beasts had been eloigned; that is, carried to a distance, to places to him unknown. 3 Bl. Comm. 148; 3 Steph. Comm. 522; Fitzh. Nat. Brev. 73, 74; Archb. N. Pract. 552.

ELOIGNATUS. Eloigned. A return made by a sheriff to a writ de homine reple­gando, stating that the party to be repleived has been eloigned, or conveyed out of his jurisdiction. 3 Bl. Comm. 129.

ELOANGAVIT. In England, where in a proceeding by foreign attachment the plaintiff has obtained judgment of appraisement, but by reason of some act of the garnishee the goods cannot be appraised, (as where he has removed them from the city, or has sold them, etc.,) the serjeant-at-mace returns that the garnishee has eloigned them, i.e., removed them out of the jurisdiction, and on this return (called an "elongavit") judgment is given for the plaintiff that an inquiry be made of the goods eloigned. This inquiry is set down for trial, and the assessment is made by a jury after the manner of ordinary issues. Sweet.

ELOPEMENT. The act of a wife who voluntarily deserts her husband to cohabit with another man. 2 Bl. Comm. 130. To constitute an elopement, the wife must not only leave the husband, but go beyond his actual control; for if she abandons the husband, and goes and lives in adultery in a house belonging to him, it is said not to be an elopement. 3 N. H. 42.

"ELSEWHERE." In another place; in any other place. See 1 Vern. 4, and note.

In shipping articles, this term, following the designation of the port of destination, must be construed either as void for uncertainty or as subordinate to the principal voyage stated in the preceding words. 2 Gall. 477.

ELUVIONES. In old pleading. Spring tides. Townsh. Pl. 197.

EMANCIPATION. The act by which one who was unfree, or under the power and control of another, is set at liberty and made his own master.

In Roman law. The enfranchisement of a son by his father, which was anciently done by the formality of an imaginary sale. This was abolished by Justinian, who substituted the simpler proceeding of a manumission before a magistrate. Inst. 1, 12. 6.

In Louisiana. The emancipation of minors is especially recognized and regulated by law.

In England. The term "emancipation" has been borrowed from the Roman law, and is constantly used in the law of parochial settlements. 7 Adol. & E. (N. S.) 574, note.

EMANCIPATION PROCLAMA­TION. An executive proclamation, declaring that all persons held in slavery in certain designated states and districts were and should remain free. It was issued January 1, 1865, by Abraham Lincoln, as president of the United States and commander in chief.

EMBARGO. A proclamation or order of state, usually issued in time of war or threatened hostilities, prohibiting the departure of ships or goods from some or all the ports of such state until further order. 2 Wheat. 148.

Embargo is the hindering or detention by any government of ships of commerce in its ports. If the embargo is laid upon ships belonging to citizens of the state imposing it, it is called a "civil embargo;" if, as more commonly happens, it is laid upon ships belonging to the enemy, it is called a "hostile embargo." The effect of this latter embargo is that the vessels detained are restored to the rightful owners if no war follows, but are forfeited to the embargoeing government if war does follow, the declaration of war being held to relate back to the original seizure and detention. Brown.

The temporary or permanent sequestration of the property of individuals for the purposes of a government, e. g., to obtain vessels for the transport of troops, the owners being re-
EMBASSADOR. See Ambassador.

EMBASSAGE, or EMBASSY. The message or commission given by a sovereign or state to a minister, called an "ambassador," empowered to treat or communicate with another sovereign or state; also the establishment of an ambassador.

EMBER DAYS. In ecclesiastical law. Those days which the ancient fathers called "quatuor tempora jejuniti" are of great antiquity in the church. They are observed on Wednesday, Friday, and Saturday next after Quadragesima Sunday, or the first Sunday in Lent, after Whitsuntide, Holyrood Day, in September, and St. Lucy's Day, about the middle of December. Brit. c. 53. Our almanacs call the weeks in which they fall the "Ember Weeks," and they are now chiefly noticed on account of the ordination of priests and deacons; because the canon appoints the Sundays next after the Ember weeks for the solemn times of ordination, though the bishops, if they please, may ordain on any Sunday or holiday. Enc. Lond.

EMBEZZLEMENT. The fraudulent appropriation to his own use or benefit of property or money intrusted to him by another, by a clerk, agent, trustee, public officer, or other person acting in a fiduciary character. See 4 Bl. Comm. 230, 231; 3 Kent, Comm. 194; 4 Steph. Comm. 168, 169, 219; 40 N. Y. Super. Ct. 41.

Embezzlement is the fraudulent appropriation of property by a person to whom it has been intrusted. Pen. Code Cal. § 503; Pen. Code Dak. § 596.

Embezzlement is a species of larceny, and the term is applicable to cases of furtive and fraudulent appropriation by clerks, servants, or carriers of property coming into their possession by virtue of their employment. It is distinguished from "larceny," properly so called, as being committed in respect of property which is not at the time in the actual or legal possession of the owner. 41 How. Pr. 294; 4 Steph. Comm. 168.

Embezzlement is not an offense at common law, but was created by statute. "Embezzle" includes in its meaning appropriation to one's own use, and therefore the use of the single word "embezzle," in the indictment or information, contains within itself the charge that the defendant appropriated the money or property to his own use. 34 La. Ann. 1158.

EMBLEM. The vegetable chattels called "emblements" are the corn and other growth of the earth which are produced annually, not spontaneously, but by labor and industry, and hence are called "fructus industriales." 64 Pa. St. 137.

The growing crops of those vegetable productions of the soil which are annually produced by the labor of the cultivator. They are deemed personal property, and pass as such to the executor or administrator of the occupier, whether he were the owner in fee, or for life, or for years, if he die before he has actually cut, reaped, or gathered the same; and this, although, being affixed to the soil, they might for some purposes be considered, while growing, as part of the reality. Wharton.

The term also denotes the right of a tenant to take and carry away, after his tenancy has ended, such annual products of the land as have resulted from his own care and labor.

Emblements are the away-going crop; in other words, the crop which is upon the ground and unreaped when the tenant goes away, his lease having determined; and the right to emblements is the right in the tenant to take away the away-going crop, and for that purpose to come upon the land, and do all other necessary things thereon. Brown.

EMBLERS DE GENTZ. L. Fr. A stealing from the people. The phrase occurs in the old rolls of parliament: "Whereas divers murderers, emblers de gentz, and robberies are committed," etc.

EMBRACE. A person guilty of the offense of embracery, (q. c.) See Co. Litt. 369.

EMBRACERY. In criminal law. This offense consists in the attempt to influence a jury corruptly to one side or the other, by promises, persuasions, entreaties, entertainments, doweurs, and the like. The person guilty of it is called an "embracer." Brown.

EMENDA. Amends; something given in reparation for a trespass; or, in old Saxon times, in compensation for an injury or crime. Spelman.

EMENDALS. An old word still made use of in the accounts of the Society of the Inner Temple, where so much in emendals at the foot of an account on the balance thereof signifies so much money in the bank or stock of the houses, for reparation of losses, or other emergent occasions. Spelman.

EMENDARE. In Saxon law. To make amends or satisfaction for any crime or trespass committed; to pay a fine; to be fined. Spelman. Emendare se, to redeem, or ransom one's life, by payment of a wergild.

EMENDATIO. In old English law. Amendment, or correction. The power of
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EMIT

EMENDATIO PANIS ET CEREVERISÆ. In old English law. The power of supervising and correcting the weights and measures of bread and ale, (assisting bread and beer.) Cowell.

EMERGERE. To arise; to come to light. "Unless a matter happen to emerge after issue joined." Hale, Anal. § 1.

EMERGENT YEAR. The epoch or date whence any people begin to compute their time.

EMIGRANT. One who quits his country for any lawful reason, with a design to settle elsewhere, and who takes his family and property, if he has any, with him. Vattel, b. 1, c. 19, § 24.

EMIGRATION. The act of changing one's domicile from one country or state to another.

It is to be distinguished from "expatriation." The latter means the abandonment of one's country and renunciation of one's citizenship in it, while emigration denotes merely the removal of person and property to a foreign state. The former is usually the consequence of the latter. Emigration is also used of the removal from one section to another of the same country.

EMINENCE. An honorary title given to cardinals. They were called "illustrissimi" and "reverendissimi" until the pontificate of Urban VIII.

EMINENT DOMAIN. Eminent domain is the right of the people or government to take private property for public use. Code Civil Proc. Cal. § 1237.

The right of eminent domain is the right of the state, through its regular organization, to reassert, either temporarily or permanently, its dominion over any portion of the soil of the state on account of public exigency and for the public good. Thus, in time of war or insurrection, the proper authorities may possess and hold any part of the territory of the state for the common safety; and in time of peace the legislature may authorize the appropriation of the same to public purposes, such as the opening of roads, construction of defenses, or providing channels for trade or travel. Code Ga. 1882, § 2222.

Eminent domain is the right which a government retains over the estates of individuals to resume them for public use. Wharton.

The right of society, or of the sovereign, to dispose, in case of necessity, and for the public safety, of all the wealth contained in the state, is called "eminent domain." 2 Paine, 658.

Eminent domain is the highest and most exact idea of property remaining in the government, or in the aggregate body of the people in their sovereign capacity. It gives a right to resume the possession of the property in the manner directed by the constitution and the laws of the state, whenever the public interest requires it. 3 Paine, 45, 73.

"The exaction of money from individuals under the right of taxation, and the appropriation of private property for public use by virtue of the power of eminent domain, must not be confused. In paying taxes the citizen contributes his just and ascertained share to the expenses of the government under which he lives. But when his property is taken under the power of eminent domain, he is compelled to surrender to the public something above and beyond his due proportion for the public benefit. The matter is special. It is in the nature of a compulsory sale to the state." Black, Tax-Titles, § 3.

The term "eminent domain" is sometimes (but inaccurately) applied to the land, buildings, etc., owned directly by the government, and which have not yet passed into any private ownership. This species of property is much better designated as the "public domain," or "national domain."

EMISSARY. A person sent upon a mission as the agent of another; also a secret agent sent to ascertain the sentiments and designs of others, and to propagate opinions favorable to his employer.

EMISSION. In medical jurisprudence. The ejection or throwing out of any secretion or other matter from the body; the expulsion of urine, semen, etc.

EMIT. In American law. To put forth or send out; to issue. "No state shall emit bills of credit." Const. U. S. art. 1, § 10.

To issue; to give forth with authority; to put into circulation. See BILL OF CREDIT.

The word "emit" is never employed in describing those contracts by which a state binds itself to pay money at a future day for services actually received, or for money borrowed for present use. Nor are instruments executed for such purposes, in common language, denominated "bills of credit." "To emit bills of credit" conveys to the mind the idea of issuing paper intended to circulate through the community, for its ordinary purposes, as money, which paper is redeemable at a future day. 4 Pet. 410; 11 Pet. 257; 28 Ark. 309; 1 Scam. 87.
In Scotch practice. To speak out; to state in words. A prisoner is said to emit a declaration. 2 Alis. Crim. Pr. 560.

EMMENAGOGUES. In medical jurisprudence. The name of a class of medicines supposed to have the property of promoting the menstrual discharge, and sometimes used for the purpose of procuring abortion.

EMOLUMENT. The profit arising from office or employment; that which is received as a compensation for services, or which is annexed to the possession of office as salary, fees, and perquisites; advantage; gain, public or private. Webster. Any perquisite, advantage, profit, or gain arising from the possession of an office. 105 Pa. St. 303.

EMOTIONAL INSANITY. The species of mental aberration produced by a violent excitement of the emotions or passions, though the reasoning faculties may remain unimpaired.

EMPALEMENT. In ancient law. A mode of inflicting punishment, by thrusting a sharp pole up the fundament. Enc. Lond.

EMPANNER. The writing or entering by the sheriff, on a parchement schedule or roll of paper, the names of a jury summoned by him. Cowell.

EMPARLANCE. See IMPARLANCE.


EMPEROR. The title of the sovereign ruler of an empire. This designation was adopted by the rulers of the Roman world after the decay of the republic, and was assumed by those who claimed to be their successors in the "Holy Roman Empire," as also by Napoleon. It is now used as the title of the monarch of some single countries, as lately in Brazil, and some composite states, as Germany and Austria-Hungary, and by the queen of England as "Empress of India."
The title "emperor" seems to denote a power and dignity superior to that of a "king." It appears to be the appropriate style of the executive head of a federal government, constructed on the monarchical principle, and comprising in its organization several distinct kingdoms or other quasi sovereign states; as is the case with the German empire at the present day.

EMPHYTEUSIS. In the Roman and civil law. A contract by which a landed estate was leased to a tenant, either in perpetuity or for a long term of years, upon the reservation of an annual rent or canon, and upon the condition that the lessee should improve the property, by building, cultivating, or otherwise, and with a right in the lessee to alien the estate at pleasure or pass it to his heirs by descent, and free from any re-vocation, re-entry, or claim of forfeiture on the part of the grantor, except for non-payment of the rent. Inst. 3, 25, 3; 3 Bl. Comm. 232; Maine, Anc. Law, 289.
The right granted by such a contract, (Jus emphyteuticum, or emphyteuticarium.) The real right by which a person is entitled to enjoy another's estate as if it were his own, and to dispose of its substance, as far as can be done without deteriorating it. Mackeld. Rom. Law, § 326.

EMPHYTEUTA. In the civil law. The person to whom an emphyteusis is granted; the lessee or tenant under a contract of emphyteusis.

EMPHYTEUTICUS. In the civil law. Founded on, growing out of, or having the character of, an emphyteusis; held under an emphyteusis. 3 Bl. Comm. 292.

EMPIRE. The dominion or jurisdiction of an emperor; the region over which the dominion of an emperor extends; imperial power; supreme dominion; sovereign command.

EMPIRIC. A practitioner in medicine or surgery, who proceeds on experience only, without science or legal qualification; a quack.

EMPLAZAMIENTO. In Spanish law. A summons or citation, issued by authority of a judge, requiring the person to whom it is addressed to appear before the tribunal at a designated day and hour.

EMPLIEAD. To indict; to prefer a charge against; to accuse.

EMPLOI. In French law. Equitable conversion. When property covered by the régime dotal is sold, the proceeds of the sale must be reinvested for the benefit of the wife. It is the duty of the purchaser to see that the price is so reinvested. Arg. Fr. Merc. Law. 557.

EMPLOY. To engage in one's service; to use as an agent or substitute in transacting business; to commission and intrust with the management of one's affairs; and, when used in respect to a servant or hired laborer, the term is equivalent to hiring, which im-
plies a request and a contract for a compensation, and has but this one meaning when used in the ordinary affairs and business of life. 11 N. Y. 599; 58 N. Y. 371.

EMPLOYED. This signifies both the act of doing a thing and the being under contract or orders to do it. 14 Pet. 464, 475; 2 Paine, 721, 745.

EMPLOYEE. This word “is from the French, but has become somewhat naturalized in our language. Strictly and etymologically, it means ‘a person employed,’ but, in practice in the French language, it ordinarily is used to signify a person in some official employment, and as generally used with us, though perhaps not confined to any official employment, it is understood to mean some permanent employment or position.” 2 Lussa. 453. See, also, 75 N. Y. 41; 111 Ind. 324, 12 N. E. Rep. 501.

The word is more extensive than “clerk” or “officer.” It signifies any one in place, or having charge or using a function, as well as one in office. 3 Ct. Cl. 260.

EMPLOYMENT. This word does not necessarily import an engagement or rendering services for another. A person may as well be “employed” about his own business as in the transaction of the same for a principal. 43 Mo. 51; 56 Law J. Q. B. Div. 251.

EMPORIUM. A place for wholesale trade in commodities carried by sea. The name is sometimes applied to a seaport town, but it properly signifies only a particular place in such a town. Smith, Dict. Antiq.

EMPRESTITO. In Spanish law. A loan. Something lent to the borrower at his request. Las Partidas, pt. 3, tit. 18, l. 70.

EMPTIO, EMPTION. The act of buying; a purchase.

EMPTIO BONORUM. Lat. In Roman law. A species of forced assignment for the benefit of creditors; being a public sale of an insolvent debtor’s estate, whereby the purchaser succeeded to all his property, rights, and claims, and became responsible for his debts and liabilities to the extent of a quota fixed before the transfer. See Mackeild. Rom. Law, § 521.

EMPTIO ET VENDITIO. Lat. Purchase and sale; sometimes translated “emption and vendition.” The name of the contract of sale in the Roman law. Inst. 3, 23; Bract. fol. 61b. Sometimes made a compound word, emptio-venditio.

A consensual contract to deliver a thing for a certain price.

An agreement for the seller to part with a thing for money given to him by the buyer. 3 Salk. 61.

EMPTOR. A buyer or purchaser.

Emptor emit quam minimo potest, venditor vendit quam maximo potest. The buyer purchases for the lowest price he can; the seller sells for the highest price he can. 2 Kent, Comm. 486.

EMTIO. In the civil law. Purchase. This form of the word is used in the Digests and Code. Dig. 18, 1;Cod. 4, 49.

EMTOR. In the civil law. A buyer or purchaser; the buyer. Dig. 18, 1; Cod. 4, 49.

EMTRIX. In the civil law. A female purchaser; the purchaser. Cod. 4, 54, 1.

EN ARERE. L. Fr. In time past. 2 Inst. 506.

EN AUTRE DROIT. In the right of another. See Autre Droit.

EN BANKE. L. Fr. In the bench. 1 Anders. 51.

EN BREVET. In French law. An acte is said to be en brevet when a copy of it has not been recorded by the notary who drew it.

EN DECLARATION DE SIMULATION. A form of action used in Louisiana. Its object is to have a contract declared judicially a simulation and a nullity, to remove a cloud from the title, and to bring back, for any legal purpose, the thing sold to the estate of the true owner. 20 La. Ann. 169.

EN DEMEURE. In default. Used in Louisiana of a debtor who fails to pay on demand according to the terms of his obligation. See 3 Mart. (N. S.) 574.

En eschange il convient que les estates soient egales. Co. Litt. 50. In an exchange it is desirable that the estates be equal.

EN FAIT. Fr. In fact; in deed; actually.

EN GROS. Fr. In gross. Total; by wholesale.

EN JUICIO. Span. Judicially; in a court of law; in a suit at law. White, New Recop. b. 2, tit. 8, c. 1.

EN MASSE. Fr. In a mass; in a lump; at wholesale.
EN MORT MEYNE. L. Fr. In a dead hand; in mortmain. Britt. c. 43.

EN OWEL MAIN. L. Fr. In equal hand. The word "owel" occurs also in the phrase "owelly of partition."

EN RECOUVREMENT. Fr. In French law. An expression employed to denote that an indorsement made in favor of a person does not transfer to him the property in the bill of exchange, but merely constitutes an authority to such person to recover the amount of the bill. Arg. Fr. Merc. Law, 558.

EN ROUTE. Fr. On the way; in course of a voyage or journey; in course of transportation.

EN VENTRE SA MERE. L. Fr. In its mother's womb. A term descriptive of an unborn child. For some purposes the law regards an infant "en ventre" as in being. It may take a legacy; have a guardian; an estate may be limited to its use, etc. 1 Bl. Comm. 193.

EN VIE. L. Fr. In life; alive. Britt. c. 50.

ENABLING POWER. When the donor of a power, who is the owner of the estate, confers upon persons not seised of the fee the right of creating interests to take effect out of it, which could not be done by the donee of the power unless by such authority, this is called an "enabling power." 2 Bouv. Inst, no. 1928.

ENABLING STATUTE. The act of 32 Henry VIII, c. 28, by which tenants in tail, husbands seised in right of their wives, and others, were empowered to make leases for their lives or for twenty-one years, which they could not do before. 2 Bl. Comm. 319; Co. Litt. 44a. The phrase is also applied to any statute enabling persons or corporations to do what before they could not.

ENACH. In Saxon law. The satisfaction for a crime; the recompense for a fault. Skene.

ENACT. To establish by law; to perform or effect; to decree. The usual introductory formula in making laws is, "Be it enacted."

ENAJENACION. In Spanish and Mexican law. Alienation; transfer of property. The act by which the property in a thing, by lucrative title, is transferred, as a donation; or by onerous title, as by sale or barter. In a more extended sense, the term comprises also the contracts of emphytesis, pledge, and mortgage, and even the creation of a servitude upon an estate. Escriche; 26 Cal. 88.

ENBREVER. L. Fr. To write down in short; to abbreviate, or, in old language, "imbreviate;" to put into a schedule. Britt. c. 1.

ENCAUSTUM. In the civil law. A kind of ink or writing fluid appropriate to the use of the emperor. Cod. 1, 23, 6.

ENCEINTE. Pregnant. See PREGNANCY.

ENCHESON. The occasion, cause, or reason for which anything is done. Terms de la Ley.

ENCLOSE. In the Scotch law. To shut up a jury after the case has been submitted to them. 2 Alis. Crim. Pr. 634. See INCLOSE.

ENCLOSURE. See INCLUSION.

ENCOMIENDA. In Spanish law. A grant from the crown to a private person of a certain portion of territory in the Spanish colonies, together with the concession of a certain number of the native inhabitants, on the feudal principle of commendation. 2 Wools. Pol. Science, 161, 162. Also a royal grant of privileges to the military orders of Spain.

ENCOUARGE. In criminal law. To instigate; to incite to action; to give courage to; to inspire; to embolden; to raise confidence; to make confident. 7 Q. B. Div. 255; 4 Burr. 2073. See AID.

ENCROACH. To gain unlawfully upon the lands, property, or authority of another; as if one man presses upon the grounds of another too far, or if a tenant owe two shillings rent-service, and the lord exact three. So, too, the Spencers were said to encroach the king's authority. Blount; Plowd. 942.

In the law of easements. Where the owner of an easement alters the dominant tenement, so as to impose an additional restriction or burden on the servient tenement, he is said to commit an encroachment. Sweet.

ENCUMBER. See INCUMBER.

ENCUMBRANCE. See INCUMBRANCE.

END. Object; intent. Things are construed according to the end. Finch, Law, b. 1, c. 3, no. 10.
ENDENZIE, or ENDENIZEN. To make free; to enfranchise.

ENDORSE. See INDORSE.

ENDOWED SCHOOLS. In England, certain schools having endowments are distinctively known as "endowed schools;" and a series of acts of parliament regulating them are known as the "endowed schools acts." Mozley & Whitley.

ENDOWMENT. 1. The assignment of dower; the setting off a woman's dower. 2 Bl. Comm. 135.
2. In appropriations of churches, (in English law,) the setting off a sufficient maintenance for the vicar in perpetuity. 1 Bl. Comm. 387.
3. The act of settling a fund, or permanent pecuniary provision, for the maintenance of a public institution, charity, college, etc.
4. A fund settled upon a public institution, etc., for its maintenance or use.
   The words "endowment" and "fund," in a statute exempting from taxation the real estate, the furniture and personal property, and the "endowment or fund" of religious and educational corporations, are juxted generis, and intended to comprehend a class of property different from the other two, not real estate or chattels. The difference between the words is that "fund" is a general term, including the endowment, while "endowment" means that particular fund, or part of the fund, of the institution, bestowed for its more permanent uses, and usually kept sacred for the purposes intended. The word "endowment" does not, in such an enactment, include real estate. 33 N. J. Law, 360.

ENDOWMENT POLICY In life insurance. A policy which is payable when the insured reaches a given age, or upon his decease, if that occurs earlier.

ENEMY, in public law, signifies either the nation which is at war with another, or a citizen or subject of such nation.

ENFEOFF. To invest with an estate by feoffment. To make a gift of any corporeal hereditaments to another. See FEOFFMENT.

ENFEOFFMENT. The act of investing with any dignity or possession; also the instrument or deed by which a person is invested with possessions.

ENFRANCHISE. To make free; to incorporate a man in a society or body politic.

ENFRANCHISEMENT. The act of making free; giving a franchise or freedom to; investiture with privileges or capacities of freedom, or municipal or political liberty. Admission to the freedom of a city; admission to political rights, and particularly the right of suffrage. Anciently, the acquisition of freedom by a villein from his lord.

The word is now used principally either of the manumission of slaves, (q. v.) of giving to a borough or other constituency a right to return a member or members to parliament, or of the conversion of copyhold into freehold. Mozley & Whitley.

ENFRANCHISEMENT OF COPYHOLDS. In English law. The conversion of copyhold into freehold tenure, by a conveyance of the fee-simple of the property from the lord of the manor to the copyholder, or by a release from the lord of all seigniorial rights, etc., which destroys the customary descent, and also all rights and privileges annexed to the copyholder's estate. 1 Watk. Copyh. 362; 2 Steph. Comm. 51.

ENGAGEMENT. In French law. A contract. The obligation arising from a quasi contract.

The terms "obligation" and "engagement" are said to be synonymous, (17 Toullier, no. 1;) but the Code seems specially to apply the term "engagement" to those obligations which the law imposes on a man without the intervention of any contract, either on the part of the obligor or the obligee, (article 1370.) An engagement to do or omit to do something amounts to a promise. 21 N. J. Law, 369.

In English Practice. The term has been appropriated to denote a contract entered into by a married woman with the intention of binding or charging her separate estate, or, with stricter accuracy, a promise which in the case of a person sui juris would be a contract, but in the case of a married woman is not a contract, because she cannot bind herself personally, even in equity. Her engagements, therefore, merely operate as dispositions or appointments pro tanto of her separate estate. Sweet.

"ENGINE." This is said to be a word of very general signification; and, when used in an act, its meaning must be sought out from the act itself, and the language which surrounds it, and also from other acts in pari materia, in which it occurs. Abbott, J., 6 Maule & S. 192. In a large sense, it applies to all utensils and tools which afford the means of carrying on a trade. But in a more limited sense it means a thing of considerable dimensions, of a fixed or permanent nature, analogous to an erection or building. Id. 182.
ENGLESHERE. A law was made by Canute, for the preservation of his Danes, that, when a man was killed, the hundred or town should be liable to be anercised, unless it could be proved that the person killed was an Englishman. This proof was called "Engleshere." 1 Hale, P. C. 447; 4 Bl. Comm. 195; Spelman.

ENGLETERRE. England.

ENGLISH INFORMATION. In English law. A proceeding in the court of exchequer in matters of revenue.

"ENGLISH MARRIAGE." This phrase may refer to the place where the marriage is solemnized, or it may refer to the nationality and domicile of the parties between whom it is solemnized, the place where the union so created is to be enjoyed. 6 Proh. Div. 51.

ENGRAVE does not include the process of reproducing pictures by means of photography. 5 Blatchf. 325.

ENGROSS. To copy the rude draft of an instrument in a fair, large hand. To write out, in a large, fair hand, on parchment.

In old criminal law. To buy up so much of a commodity on the market as to obtain a monopoly and sell again at a forced price.

ENGROSSER. One who engrosses or writes on parchment in a large, fair hand.

One who purchases large quantities of any commodity in order to acquire a monopoly, and to sell them again at high prices.

ENGROSSING. In English law. The getting into one's possession, or buying up, large quantities of corn, or other dead victuals, with intent to sell them again. The total engrossing of any other commodity, with intent to sell it at an unreasonable price. 4 Bl. Comm. 158, 159. This was a misdemeanor, punishable by fine and imprisonment. Steph. Crim. Law, 95. Now repealed by 7 & 8 Vict. c. 24. 4 Steph. Comm. 291, note.

ENHANCED. This word, taken in an unqualified sense, is synonymous with "increased," and comprehends any increase of value, however caused or arising. 32 Fed. Rep. 812.

ENITIA PARS. The share of the eldest. A term of the English law descriptive of the lot or share chosen by the eldest of coparents when they make a voluntary partition. The first choice (primer election) belongs to the eldest. Co. Litt. 166.

Enitia pars semper preferenda est propter privilegium etatis. Co. Litt. 166. The part of the elder sister is always to be preferred on account of the privilege of age.

ENJOIN. To require; command; positively direct. To require a person, by writ of injunction from a court of equity, to perform, or to abstain or desist from, some act.

ENJOY. The exercise of a right; the possession and fruition of a right, privilege, or incorporeal hereditament.

ENLARGE. To make larger; to increase; to extend a time limit; to grant further time. Also to set at liberty one who has been imprisoned or in custody.

ENLARGER L'ESTATE. A species of release which inures by way of enlarging an estate, and consists of a conveyance of the exterior interest to the particular tenant; as if there be tenant for life or years, remainder to another in fee, and he in remainder releases all his right to the particular tenant and his heirs, this gives him the estate in fee. 1 Steph. Comm. 518.

ENLARGING. Extending, or making more comprehensive; as an enlarging statute, which is one extending the common law.

ENLARGING STATUTE. A remedial statute which enlarges or extends the common law. 1 Bl. Comm. 85, 57.

ENLISTMENT. The act of one who voluntarily enters the military or naval service of the government, contracting to serve in a subordinate capacity.

The words "enlist" and "enlistment," in law, as in common usage, may signify either the complete fact of entering into the military service, or the first step taken by the recruit towards that end. When used in the former sense, as in statutes conferring a right to compel the military service of enlisted men, the enlistment is not deemed completed until the man has been mustered into the service. 8 Allen, 480.

Enlistment does not include the entry of a person into the military service under a commission as an officer. 48 N. H. 290.

Enlisted applies to a drafted man as well as a volunteer, whose name is duly entered on the military rolls. 107 Mass. 383.

ENORMIA. In old practice and pleading. Unlawful or wrongful acts; wrongs. Et alia enormia, and other wrongs. This phrase constantly occurs in the old writs and declarations of trespass.
ENORMOUS. Aggravated. "So enormous a trespass." Vaughan, 115. Written "enormious," in some of the old books. Enormious is where a thing is made without a rule or against law. Brownl. pt. 2, p. 19.

ENPLEET. Anciently used for implead. Cowell.

ENQUÊTE, or ENQUEST. In canon law. An examination of witnesses, taken down in writing, by or before an authorized judge, for the purpose of gathering testimony to be used on a trial.

ENRÉGISTREMENT. In French law. Registration. A formality which consists in inscribing on a register, specially kept for the purpose by the government, a summary analysis of certain deeds and documents. At the same time that such analysis is inscribed upon the register, the clerk places upon the deed a memorandum indicating the date upon which it was registered, and at the side of such memorandum an impression is made with a stamp. Arg. Fr. Merc. Law, 558.

ENROLL. To register; to make a record; to enter on the rolls of a court; to transcribe.

ENROLLMENT. In English law. The registering or entering on the rolls of chancery, king's bench, common pleas, or exchequer, or by the clerk of the peace in the records of the quarter sessions, of any lawful act; as a recognizance, a deed of bargain and sale, and the like. Jacob.

ENROLLMENT OF VESSELS. In the laws of the United States on the subject of merchant shipping, the recording and certification of vessels employed in coastwise or inland navigation; as distinguished from the "registration" of vessels employed in foreign commerce. 3 Wall. 566.

ENS LEGIS. L. Lat. A creature of the law; an artificial being, as contrasted with a natural person. Applied to corporations, considered as deriving their existence entirely from the law.

ENSCHEDULE. To insert in a list, account, or writing.

ENSEAL. To seal. Ensealing is still used as a formal word in conveyancing.

ENSERVER. L. Fr. To make subject to a service or servitude. Britt. c. 54.

ENTAIL, n. A fee abridged or limited to the issue, or certain classes of issue, instead of descending to all the heirs. 1 Washb. Real Prop. 56; Cowell; 2 Bl. Comm 112, note.

Entail, in legal treatises, is used to signify an estate tail, especially with reference to the restraint which such an estate imposes upon its owner, or, in other words, the points wherein such an estate differs from an estate in fee-simple. And this is often its popular sense; but sometimes it is, in popular language, used differently, so as to signify a succession of life estates, as when it is said that "an entail ends with A.," meaning that A. is the first person who is entitled to bar or cut off the entail, being in law the first tenant in tail. Mozley & Whitley.

ENTAINED. Settled or limited to specified heirs, or in tail.

ENTAINED MONEY. Money directed to be invested in reality to be entailed. 3 & 4 Wm. IV. c. 74, §§ 70, 71, 72.

ENTENCION. In old English law. The plaintiff's count or declaration.

ENTENDMENT. The old form of intendment, (q. v.), derived directly from the French, and used to denote the true meaning or signification of a word or sentence; that is, the understanding or construction of law. Cowell.

ENTER. In the law of real property. To go upon land for the purpose of taking possession of it. In strict usage, the entering is preliminary to the taking possession, but in common parlance the entry is now merged in the taking possession.

In practice. To place anything before a court, or upon or among the records, in a formal and regular manner, and usually in writing; as to "enter an appearance," to "enter a judgment." In this sense the word is nearly equivalent to setting down formally in writing, in either a full or abridged form.

ENTERCEUR. L. Fr. A party challenging (claiming) goods; he who has placed them in the hands of a third person. Kelham.

ENTERING JUDGMENTS. The formal entry of the judgment on the rolls of the court, which is necessary before bringing an appeal or an action on the judgment.

ENTERING SHORT. When bills not due are paid into a bank by a customer, it is the custom of some bankers not to carry the amount of the bills directly to his credit, but to "enter them short," as it is called, i. e., to note down the receipt of the bills, their
amounts, and the times when they become due in a previous column of the page, and the amounts when received are carried forward into the usual cash column. Sometimes, instead of entering such bills short, bankers credit the customer directly with the amount of the bills as cash, charging interest on any advances they may make on their account, and allow him at once to draw upon them to that amount. If the banker becomes bankrupt, the property in bills entered short does not pass to his assignees, but the customer is entitled to them if they remain in his hands, or to their proceeds, if received, subject to any lien the banker may have upon them. Wharton.

ENTERTAINMENT. This word is synonymous with "board," and includes the ordinary necessaries of life. 2 Miles, 323.

ENTICE. To solicit, persuade, or procure. 12 Abb. Pr. (N. S.) 187.

ENTIRE. Whole; without division, separation, or diminution.

ENTIRE CONTRACT. Where a contract consists of many parts, which may be considered as parts of one whole, the contract is entire. When the parts may be considered as so many distinct contracts, entered into at one time, and expressed in the same instrument, but not thereby made one contract, the contract is a separable contract. But, if the consideration of the contract is single and entire, the contract must be held to be entire, although the subject of the contract may consist of several distinct and wholly independent items. 2 Pars. Cont. 517.

ENTIRE DAY. This phrase signifies an undivided day, not parts of two days. An entire day must have a legal, fixed, precise time to begin, and a fixed, precise time to end. A day, in contemplation of law, comprises all the twenty-four hours, beginning and ending at twelve o'clock at night. 43 Ala. 325.

In a statute requiring the closing of all liquor saloons during "the entire day of any election," etc., this phrase means the natural day of twenty-four hours, beginning and terminating at midnight. 7 Tex. App. 30; Id. 192.

ENTIRE INTEREST. The whole interest or right, without diminution. Where a person in selling his tract of land sells also his entire interest in all improvements upon public land adjacent thereto, this vests in the purchaser only a quitclaim of his interest in the improvements. 18 La. Ann. 410.

ENTIRE TENANCY. A sole possession by one person, called "severality," which is contrary to several tenancy, where a joint or common possession is in one or more.

ENTIRE USE, BENEFIT, ETC. These words in the habendum of a trust-deed for the benefit of a married woman are equivalent to the words "sole use," or "sole and separate use," and consequently her husband takes nothing under such deed. 3 Ired. Eq. 414.

ENTIRETY. The whole, in contradistinction to a moiety or part only. When land is conveyed to husband and wife, they do not take by moieties, but both are seized of the entirety. 2 Kent, Comm. 132; 4 Kent, Comm. 362. Parencers, on the other hand, have not an entirety of interest, but each is properly entitled to the whole of a distinct moiety. 2 Bl. Comm. 158.

The word is also used to designate that which the law considers as one whole, and not capable of being divided into parts. Thus, a judgment, it is held, is an entirety, and, if void as to one of the two defendants, cannot be valid as to the other. So, if a contract is an entirety, no part of the consideration is due until the whole has been performed.

ENTITLE. In its usual sense, to entitle is to give a right or title. Therefore a person is said to be entitled to property when he has a right to it.

In ecclesiastical law. To entitle is to give a title or ordination as a minister.

ENTREBAT. L. Fr. An intruder or interloper. Brit. c. 114.


ENTREPO'T. A warehouse or magazine for the deposit of goods. In France, a building or place where goods from abroad may be deposited, and from whence they may be withdrawn for exportation to another country, without paying a duty. Brande; Webster.

ENTRY. 1. In real property law. Entry is the act of going peaceably upon a piece of land which is claimed as one's own, but which is held by another person, with the intention and for the purpose of taking possession of the same.

Entry is a remedy which the law affords to an injured party ousted of his lands by another person, who has taken possession thereof without right. This remedy (which must in all cases be pursued peaceably) takes place in three only out
of the five species of ouster, viz., abatement, intrusion, and dis sineas; for, as in these three cases the original entry of the wrong-doer is unlawful, so the wrong may be remedied by the mere entry of the former possessor. But it is otherwise upon a discontinuance or de formation, for in these latter two cases the former possessor cannot remedy the wrong by entry, but must do so by action, inasmuch as the original entry being in these cases lawful, and therefore conferring an apparent right of possession, the law will not suffer such apparent right to be overthrown by the mere act or entry of the claimant. Brown.

An entry at common law is nothing more than an assertion of title by going on the land; or, if that was hazardous, by making continual claim. Anciently, an actual entry was required to be made and a lease executed on the land to sustain the act of ejectment; but now nothing of that kind is necessary. The entry and the lease, as well as the ouster, are fictions, and nothing is required but that the lessor should have the right to enter. A proceeding precisely analogous obtained in the civil law. 1 Ala. 600.

2. In criminal law. Entry is the unlawful making one's way into a dwelling or other house, for the purpose of committing a crime therein.

In cases of burglary, the least entry with the whole or any part of the body, hand, or foot, or with any instrument or weapon, introduced for the purpose of committing a felony, is sufficient to complete the offense. 3 Inst. 64.

Without reference to burglary, a breaking into a house or going upon lands with violence and circumstances of aggression is termed "forcible entry," and was a breach of the peace at common law. "Forcible entry and detainer" is made an offense by statute in many of the states.

3. In practice. Entry denotes the formal inscription upon the rolls or records of a court of a note or minute of any of the proceedings in an action; and it is frequently applied to the filing of a proceeding in writing, such as a notice of appearance by a defendant, and, very generally, to the filing of the judgment roll as a record in the office of the court.

4. In commercial law. Entry denotes the act of a merchant, trader, or other business man in recording in his account-books the facts and circumstances of a sale, loan, or other transaction. Also the note or record so made. The books in which such memoranda are first (or originally) inscribed are called "books of original entry," and are prima facie evidence for certain purposes.

5. In revenue law. The entry of imported goods at the custom house consists in submitting them to the inspection of the revenue officers, together with a statement or description of such goods, and the original invoices of the same, for the purpose of estimating the duties to be paid thereon.

6. Under the provisions of the land laws of the United States, the term "entry" denotes the filing at the land-office, or inscription upon its records, of the documents required to found a claim for a homestead or pre-emption right, and as preliminary to the issuing of a patent for the land.

7. In Scotch law. The term refers to the acknowledgment of the title of the heir, etc., to be admitted by the superior.

ENTRY AD COMMUNEM LEGEM. Entry at common law. The name of a writ of entry which lay for a reversioner after the alienation and death of the particular tenant for life, against him who was in possession of the land. Brown.

ENTRY AD TERMINUM QUI PRAETERIT. The writ of entry ad terminum qui praterit lies where a man leases land to another for a term of years, and the tenant holds over his term. And if lands be leased to a man for the term of another's life, and he for whose life the lands are leased dies, and the lessee holds over, then the lessor shall have this writ. Terms de la Ley.

ENTRY FOR MARRIAGE IN SPEECH. A writ of entry causa matrimonii pratoquitti lies where lands or tenements are given to a man upon condition that he shall take the donor to be his wife within a certain time, and he does not espouse her within the said term, or espouses another woman, or makes himself priest. Terms de la Ley.

ENTRY IN CASU CONSIMILI. A writ of entry in casu consimili lies where a tenant for life or by the curtesy aliens in fee. Terms de la Ley.

ENTRY IN THE CASE PROVIDED. A writ of entry in casu proviso lies if a tenant in dower alien in fee, or for life, or for another's life, living the tenant in dower. Terms de la Ley.

ENTRY OF CAUSE FOR TRIAL. In English practice. The proceeding by a plaintiff in an action who had given notice of trial, depositing with the proper officer of the court the nisi prius record, with the panel of jurors annexed, and thus bringing the issue before the court for trial.

ENTRY ON THE ROLL. In former times, the parties to an action, personally or
by their counsel, used to appear in open court and make their mutual statements audibly, instead of as at the present day delivering their mutual pleadings, until they arrived at the issue or precise point in dispute between them. During the progress of this oral statement, a minute of the various proceedings was made on parchment by an officer of the court appointed for that purpose. The parchment then became the record; in other words, the official history of the suit. Long after the practice of oral pleading had fallen into disuse, it continued necessary to enter the proceedings in like manner upon the parchment roll, and this was called "entry on the roll," or making up the "issue roll." But by a rule of H. T. 4 Wm. IV., the practice of making up the issue roll was abolished; and it was only necessary to make up the issue in the form prescribed for the purpose by a rule of H. T. 1563, and to deliver the same to the court and to the opposite party. The issue which was delivered to the court was called the "nisi prius record;" and that was regarded as the official history of the suit, in like manner as the issue roll formerly was. Under the present practice, the issue roll or nisi prius record consists of the papers delivered to the court, to facilitate the trial of the action, these papers consisting of the pleadings simply, with the notice of trial. Brown.

ENTRY WITHOUT ASSENT OF THE CHAPTER. A writ of entry sine assentu capituli lies where an abbot, prior, or such as hath covert or common seal, aliens lands or tenements of the right of his church, without the assent of the covert or chapter, and dies. Termes de la Ley.

ENTRY, WRIT OF. In old English practice. This was a writ made use of in a form of real action brought to recover the possession of lands from one who wrongfully withheld the same from the demandant.

Its object was to regain the possession of lands of which the demandant, or his ancestors, had been unjustly deprived by the tenant of the frehold, or those under whom he claimed, and hence it belonged to the possessory division of real actions. It decided nothing with respect to the right of property, but only restored the demandant to that situation in which he was (or by law ought to have been) before the dispossession committed. 3 Bl. Comm. 180.

It was usual to specify in such writs the degree or degrees within which the writ was brought, and it was said to be "in the per" or "in the per and cut," according as there had been one or two descents or alienations from the original wrong-doer. If more than two such transfers had intervened, the writ was said to be "in the post." See 3 Bl. Comm. 181.

Enumeratio infirmat regulam in casibus non enumeratis. Enumeration disaffirms the rule in cases not enumerated. Bac. Aph. 17.

Enumeratio unius est exclusio alterius. The specification of one thing is the exclusion of a different thing. A maxim more generally expressed in the form "expressio unius est exclusio alterius." (q. v.)

ENUMERATORS. Persons appointed to collect census papers or schedules. 33 & 34 Vict. c. 108, § 4.

ENURE. To operate or take effect. To serve to the use, benefit, or advantage of a person. A release to the tenant for life enures to him in reversion; that is, it has the same effect for him as for the tenant for life. Often written "inure."

ENVOY. In international law. A public minister of the second class, ranking next after an ambassador.

Envoyes are either ordinary or extraordinary; by custom the latter is held in greater consideration.

EO INSTANTE. At that instant; at the very or same instant; immediately. 1 Bl. Comm. 196, 249; 2 Bl. Comm. 168; Co. Litt. 298a; 1 Coke, 138.

EO INTUITU. With or in that view; with that intent or object. Hale, Anal. § 2.

EO LOCI. In the civil law. In that state or condition; in that place, (eo loco.) Calvin.

EO NOMINE. Under that name; by that appellation. Perinde ac et eo nomine tibi tradita fuisset, just as if it had been delivered to you by that name. Inst. 2, 1, 43. A common phrase in the books.

Eodem ligamine quo ligatum est dissolvitur. A bond is released by the same formalities with which it is contracted. Co. Litt. 212b; Broom, Max. 891.

Eodem modo quo quid constituitur, dissolvitur. In the manner in which [by the same means by which] a thing is constituted, is it dissolved. 6 Coke, 535.

EORLE. In Saxon law. An earl.

EOTH. In Saxon law. An oath.

EPIDEMIC. This term, in its ordinary and popular meaning, applies to any disease which is widely spread or generally prevail-
ing at a given place and time. 36 N. Y. Su-
per. Ct. 234.

**EPILEPSY.** In medical jurisprudence,
A disease of the brain, which occurs in par-
oxysms with uncertain intervals between
them.

**EPIMENIA.** Expenses or gifts. Blount.

**EPIMENIA.** Expenses or gifts. Blount.

**EPHINITY.** A Christian festival, oth-
erwise called the "Manifestation of Christ to
the Gentiles," observed on the 6th of Janu-
ary, in honor of the appearance of the star to
the three magi, or wise men, who came to
adore the Messiah, and bring him presents.
It is commonly called "Twelfth Day." Enc.
Lond.

**EPIQUEYA.** In Spanish law. A term
synonymous with "equity" in one of its
senses, and defined as "the benignant and
prudent interpretation of the law according
to the circumstances of the time, place, and
person."

**EPISCOPACY.** The office of overlook-
ing or overseeing; the office of a bishop, who
is to overlook and oversee the concerns of
the church. A form of church government
by diocesan bishops.

**EPISCOPALIA.** In ecclesiastical law.
Synodals, pentecostals, and other customary
payments from the clergy to their diocesan
bishop, formerly collected by the rural deans.
Cowell.

**EPISCOPALIAN.** Of or pertaining to
episcopacy, or to the Episcopal Church.

**EPISCOPATE.** A bishopric. The digni-
ity or office of a bishop.

**EPISCOPUS.** In the civil law. An
overseer; an inspector. A municipal officer
who had the charge and oversight of the bread
and other provisions which served the citi-
zens for their daily food. Vicat.

In medieval history. A bishop; a
bishop of the Christian church.

Episcopus alterius mandato quam regis
non tenetur obtemperare. Co. Litt.
134. A bishop needs not obey any mandate
save the king's.

**EPISCOPUS PURERORUM.** It was an
old custom that upon certain feasts some lay
person should plait his hair, and put on the
garments of a bishop, and in them pretend
to exercise episcopal jurisdiction, and do sev-
eral ludicrous actions, for which reason he
was called "bishop of the boys;" and this
custom obtained in England long after sev-
eral constitutions were made to abolish it.
Blount.

Episcopus teneat placitum, in curia
christianitatis, de ipsis merae sunt
spiritualia. 12 Coke, 44. A bishop may
hold plea in a Court Christian of things
merely spiritual.

**EPISTOLA.** A letter; a charter; an in-
strument in writing for conveyance of lands
or assurance of contracts. Calvin; Spel-
man.

**EPISTOLE.** In the civil law. Re-
scripts; opinions given by the emperors in
cases submitted to them for decision.

Answers of the emperors to petitions.
The answers of counsellors, (juris-consul-
ti,) as Ulpian and others, to questions of
law proposed to them, were also called "epis-
tole."

Opinions written out. The term origi-
nally signified the same as littera. Vicat.

**EPOCH.** The time at which a new com-
putation is begun; the time whence dates
are numbered. Enc. Lond.

**EQUALITY.** The condition of possess-
ing the same rights, privileges, and immuni-
ties, and being liable to the same duties.

Equality is equity. Fran. Max. 9. max. 3.
Thus, where an heir buys in an incumbrance
for less than is due upon it, (except it be
to protect an incumbrance to which he himself
is entitled,) he shall be allowed no more than
what he really paid for it, as against other
incumbrancers upon the estate. 2 Vent.
353; 1 Vern. 49; 1 Salk. 155.

**EQUERRY.** An officer of state under
the master of the horse.

**EQUES.** Lat. In Roman and old En-
lish law. A knight.

**EQUILOCUS.** An equal. It is men-
tioned in Simeon Dunelm, A. D. 882. Jacob.

**EQUINOXES.** The two periods of the
year (vernal equinox about March 21st, and
autumnal equinox about September 22d)
when the time from the rising of the sun to
its setting is equal to the time from its set-
ing to its rising. See Dig. 43, 13, 1, 8.

**EQUITABLE.** Just; conformable to the
principles of natural justice and right.

Just, fair, and right, in consideration of
the facts and circumstances of the individual
case.
EQUITABLE

Existing in equity; available or sustainable only in equity, or only upon the rules and principles of equity.

EQUITABLE ASSETS. Equitable assets are all assets which are chargeable with the payment of debts or legacies in equity, and which do not fall under the description of legal assets. 1 Story, Eq. Jur. § 552.

Those portions of the property which by the ordinary rules of law are exempt from debts, but which the testator has voluntarily charged as assets, or which, being non-existent at law, have been created in equity. Adams, Eq. 254, et seq.

They are so called because they can be reached only by the aid and instrumentality of a court of equity, and because their distribution is governed by a different rule from that which governs the distribution of legal assets. 2 Fonbl. Eq. b. 4, pt. 2, c. 2, § 1, and notes; Story, Eq. Jur. § 552.

EQUITABLE ASSIGNMENT. An assignment which, though invalid at law, will be recognized and enforced in equity; e. g., an assignment of a chose in action, or of future acquisitions of the assignor.

EQUITABLE CONSTRUCTION. A construction of a law, rule, or remedy which has regard more to the equities of the particular transaction or state of affairs involved than to the strict application of the rule or remedy; that is, a liberal and extensive construction, as opposed to a literal and restrictive.

EQUITABLE CONVERSION. The transformation, by a doctrine of equity, of personality into reality, in respect to its qualities and disposition, and of real estate into personality. By this doctrine, money which, by will or agreement, is to be invested in land, is considered and treated as reality, and land which is to be turned into money is considered and treated as money. 8 Wall. 214; 45 Pa. St. 87; 61 Wis. 477, 21 N. W. Rep. 615.

EQUITABLE DEFENSE. In English practice. A defense to an action on grounds which, prior to the passing of the common-law procedure act, (17 & 18 Vict. c. 125,) would have been cognizable only in a court of equity. Mozley & Whitley.

In American practice. A defense which is available only in equity, except under the reformed codes of practice, where it may be interposed in a legal action.

EQUITABLE ESTATE. An equitable estate is an interest in which can only be enforced in a court of chancery. 9 Ohio, 145.

That is properly an equitable estate or interest for which a court of equity affords the only remedy; and of this nature, especially, is the benefit of every trust, express or implied, which is not converted into a legal estate by the statute of uses. The rest are equities of redemption, constructive trusts, and all equitable charges. Burt. Comp. c. 8.

EQUITABLE MORTGAGE. A mortgage arising in equity, out of the transactions of the parties, without any deed or express contract for that special purpose. 4 Kent, Comm. 150.

A lien upon realty, which is of such a character that a court of equity will recognize it as a security for the payment of money loaned or due. 2 Story, Eq. Jur. § 1018.

A mortgage upon a purely equitable estate or interest.

In English law. The following mortgages are equitable: (1) Where the subject of a mortgage is trust property, which security is effected either by a formal deed or a written memorandum, notice being given to the trustees in order to preserve the priority. (2) Where it is an equity of redemption, which is merely a right to bring an action in the chancery division to redeem the estate. (3) Where there is a written agreement only to make a mortgage, which creates an equitable lien on the land. (4) Where a debtor deposits the title-deeds of his estate with his creditor or some person on his behalf, without even a verbal communication. The deposit itself is deemed evidence of an executed agreement or contract for a mortgage for such estate. Wharton.

EQUITABLE WASTE. Injury to a reversion or remainder in real estate, which is not recognized by the courts of law as waste, but which equity will interpose to prevent or remedy.

EQUITATURA. In old English law. Traveling furniture, or riding equipments, including horses, horse harness, etc. Reg. Orig. 100b; St. Westm. 2, c. 39.

EQUITY. 1. In its broadest and most general signification, this term denotes the spirit and the habit of fairness, justness, and right dealing which should regulate the intercourse of men with men,—the rule of doing to all others as we desire them to do to us; or, as it is expressed by Justinian, "to live honestly, to harm nobody, to render to every man his
due." Inst. I, 1, 3. It is therefore the synonym of natural right or justice. But in this sense its obligation is ethical rather than juridical, and its discussion belongs to the sphere of morals. It is grounded in the precepts of the conscience, not in any sanction of positive law.

2. In a more restricted sense, the word denotes equal and impartial justice as between two persons whose rights or claims are in conflict; justice, that is, as ascertained by natural reason or ethical insight, but independent of the formulated body of law. This is not a technical meaning of the term, except in so far as courts which administer equity seek to discover it by the agencies above mentioned, or apply it beyond the strict lines of positive law.

3. In one of its technical meanings, equity is a body of jurisprudence, or field of jurisdiction, differing in its origin, theory, and methods from the common law.

It is a body of rules existing by the side of the original civil law, founded on distinct principles, and claiming incidentally to supersede the civil law in virtue of a superior sanctity inherent in those principles. Maine, Anc. Law, 27.

"As old rules become too narrow, or are felt to be out of harmony with advancing civilization, a machinery is needed for their gradual enlargement and adaptation to new views of society. One mode of accomplishing this object on a large scale, without appearing to disregard existing law, is the introduction, by the prerogative of some high functionary, of a more perfect body of rules, discoverable in his judicial conscience, which is to stand by side with the law of the land, overriding in case of conflict, as on some title of inherent superiority, but not purporting to repeal it. Such a body of rules has been called 'Equity.'" R. J. Jur. 39.

"Equity," in its technical sense, contradistinguished from natural and universal equity or justice, may well be described as a "portion of justice" or natural equity, not embodied in legislative enactments, or in the rules of common law, yet modified by a due regard thereto and to the complex relations and conveniences of an artificial state of society, and administered in regard to cases where the particular rights, in respect of which relief is sought, come within some general class of rights enforced at law, or may be enforced without detriment or inconvenience to the community; but where, by to such particular rights, the ordinary courts of law cannot, or originally did not, clearly afford relief. Rob. Eq.

4. In a still more restricted sense, it is a system of jurisprudence, or branch of remedial justice, administered by certain tribunals, distinct from the common-law courts, and empowered to decree "equity" in the sense last above given. Here it becomes a complex of well-settled and well-understood rules, principles, and precedents.

"The meaning of the word 'equity,' as used in its technical sense in English jurisprudence, comes back to this: that it is simply a term descriptive of a certain field of jurisdiction exercised, in the English system, by certain courts, and of which the extent and boundaries are not marked by lines founded upon principle so much as by the features of the original constitution of the English scheme of remedial law, and the accidents of its development." Bisph. Eq. § 11.

A system of jurisprudence collateral to, and in some respects independent of, "law," properly so called; the object of which is to render the administration of justice more complete, by affording relief where the courts of law are incompetent to give it, or to give it with effect, or by exercising certain branches of jurisdiction independently of them. This is equity in its proper modern sense; an elaborate system of rules and process, administered in many cases by distinct tribunals, (termed "courts of chancery," and with exclusive jurisdiction over certain subjects. It is "still distinguished by its original and animating principle that no right should be without an adequate remedy," and its doctrines are founded upon the same basis of natural justice; but its action has become systematized, deprived of any loose and arbitrary character which might once have belonged to it, and as carefully regulated by fixed rules and precedents as the law itself. Burrill.

Equity, in its technical and scientific legal use, means neither natural justice nor even all that portion of natural justice which is susceptible of being judicially enforced. It has a precise, limited, and definite signification, and is used to denote a system of justice which was administered in a particular court,—the English high court of chancery,—which system can only be understood and explained by studying the history of that court, and how it came to exercise what is known as its extraordinary jurisdiction. Bisph. Eq. § 1.

That part of the law which, having power to enforce discovery, (1) administers trusts, mortgages, and other fiduciary obligations; (2) administers and adjusts common-law rights where the courts of common law have no machinery; (3) supplies a specific and preventive remedy for common-law wrongs where courts of common law only give subsequent damages. Chute, Eq. 4.

Equity is not the chancellor's sense of moral right, or his sense of what is equal and just, but a complex system of established law; and an equitable maxim—as equality is equity—can only be applied according to established rules. 23 Me. 360.

5. Equity also signifies an equitable right, i.e., a right enforceable in a court of equity; hence, a bill of complaint which did not show that the plaintiff had a right entitled him to relief was said to be demurrable for want of equity; and certain rights now recognized in all the courts are still known as "equities," from having been originally recognized only in the court of chancery. Sweet.

EQUITY, COURTS OF. Courts which administer justice according to the system of equity, and according to a peculiar course of procedure or practice. See Equity. Pre-
quently termed "courts of chancery." See 1 Bl. Comm. 92.

Equity delights to do justice, and that not by halves. 5 Barb. 277, 280; Story, Eq. Pl. § 72.

Equity follows the law. Talb. 52. Equity adopts and follows the rules of law in all cases to which those rules may, in terms, be applicable. Equity, in dealing with cases of an equitable nature, adopts and follows the analogies furnished by the rules of law. A leading maxim of equity jurisprudence, which, however, is not of universal application, but liable to many exceptions. Story, Eq. Jur. § 64.

Equity looks upon that as done which ought to have been done. 1 Story, Eq. Jur. § 64g. Equity will treat the subject-matter, as to collateral consequences and incidents, in the same manner as if the final acts contemplated by the parties had been executed exactly as they ought to have been; not as the parties might have executed them. Id.

EQUITY OF A STATUTE. By this phrase is intended the rule of statutory construction which admits within the operation of a statute a class of cases which are neither expressly named nor excluded, but which, from their analogy to the cases that are named, are clearly and justly within the spirit and general meaning of the law; such cases are said to be "within the equity of the statute."

EQUITY OF REDEMPTION. The right of the mortgagor of an estate to redeem the same after it has been forfeited, at law, by a breach of the condition of the mortgage, upon paying the amount of debt, interest, and costs.

Equity suffers not a right without a remedy. 4 Bouv. Inst. no. 3726.

EQUITY TO A SETTLEMENT. The equitable right of a wife, when her husband sues in equity for the reduction of her equitable estate to his own possession, to have the whole or a portion of such estate settled upon herself and her children. Also a similar right now recognized by the equity courts as directly to be asserted against the husband. Also called the "wife's equity."

EQUIVALENT. In patent law. The term "equivalent," when used of machines, has a certain definite meaning; but, when used with regard to the chemical actions of such fluids as can be discovered only by experiment, it means equally good. 7 Wall. 327.

EQUIVOCAL. Having a double or several meanings or senses. See AMBIGUITY.

EQUULEUS. A kind of rack for extorting confessions.

EQUUS COOPERI TUS. A horse equipped with saddle and furniture.

ERABILIS. A maple tree. Not to be confounded with arabilis, (arable land.)

ERASTIANS. The followers of Erastus. The sect obtained much influence in England, particularly among common lawyers in the time of Selden. They held that offenses against religion and morality should be punished by the civil power, and not by the censures of the church or by excommunication. Wharton.

ERASURE. The obliteration of words or marks from a written instrument by rubbing, scraping, or scratching them out. Also the place in a document where a word or words have been so removed. The term is sometimes used for the removal of parts of a writing by any means whatever, as by cancellation; but this is not an accurate use.

ERCISCUNDUS. In the civil law. To be divided. Judicium familia eriscundus, a suit for the partition of an inheritance. Inst. 4, 17, 4. An ancient phrase derived from the Twelve Tables. Calvin.

"ERECT." One of the formal words of incorporation in royal charters. "We do, incorporate, erect, ordain, name, constitute, and establish."

ERCTION. Raising up; building; a completed building. In a statute on the "erection" of wooden buildings, this term does not include repairing, alteration, enlarging, or removal. See 45 N. Y. 153; 27 Conn. 332; 2 Rawle, 262; 119 Mass. 254; 51 Ill. 422.

ERGO. Lat. Therefore; hence; because.

ERGOLABI. In the civil law. Undertakers of work; contractors. Cod. 4, 59.

ERIACH. A term of the Irish Brehon law, denoting a pecuniary mulet or recompense which a murderer was judicially condemned to pay to the family or relatives of his victim. It corresponded to the Saxon "wergild." See 4 Bl. Comm. 313.
ERIGIMUS. We erect. One of the words by which a corporation may be created in England by the king's charter. 1 Bl. Comm. 473.

ERMINE. By metonymy, this term is used to describe the office or functions of a judge, whose state robe, lined with ermine, is emblematical of purity and honor without stain. Webster.

ERNES. In old English law. The loose scattered ears of corn that are left on the ground after the binding.

EROSION. The gradual eating away of the soil by the operation of currents or tides. Distinguished from submergence, which is the disappearance of the soil under the water and the formation of a navigable body over it. 100 N. Y. 433, 3 N. E. Rep. 584.

EROTOMANIA. Sometimes also called "Erotico-Mania," a disease of the brain on sexual subjects. The distinction between it and nymphomania is that in the latter, although the condition of mind is similar, the disease is caused by a local disorder of the sexual organs reacting on the brain. Wharton.

ERRANT. Wandering; itinerant; applied to justices on circuit, and bailiffs at large, etc.

ERRATICUM. In old law. A waif or stray; a wandering beast. Cowell.

ERROREOUS. Involving error; deviating from the law. This term is never used by courts or law-writers as designating a corrupt or evil act. 72 Ind. 338.

ERRORIC. Lat. Errorneously; through error or mistake.

ERROR. A mistaken judgment or incorrect belief as to the existence or effect of matters of fact, or a false or mistaken conception or application of the law.

Such a mistaken or false conception or application of the law to the facts of a case as will furnish ground for a review of the proceedings upon a writ of error; a mistake of law, or false or irregular application of it, such as vitiates the proceedings and warrants the reversal of the judgment.

Error is also used as an elliptical expression for "writ of error;" as in saying that error lies; that a judgment may be reversed on error.

ERROR, WRIT OF. See WRIT OF ERROR.

ERROR, NOMIC. Involving error; deviating from the law. This term is never used by courts or law-writers as designating a corrupt or evil act. 72 Ind. 338.

ERROR OF FACT. That is called "error of fact" which proceeds either from ignorance of that which really exists or from a mistaken belief in the existence of that which has none. Civil Code La. art. 1821.

ERROR OF LAW. He is under an error of law who is truly informed of the existence of facts, but who draws from them erroneous conclusions of law. Civil Code La. art. 1822.

Error qui non resistitur approbatur. An error which is not resisted or opposed is approved. Doct. & Stud. c. 40.

Errores ad sua principia referre, est refellere. To refer errors to their sources is to refute them. 3 Inst. 15. To bring errors to their beginning is to see their last.

Errores scribentis nocere non debent. The mistakes of the writer ought not to harm. Jenk. Cent. 324.

ERRORS EXCEPTED. A phrase appended to an account stated, in order to excuse slight mistakes or oversights.

ERTHMIOTUM. In old English law. A meeting of the neighborhood to compromise differences among themselves; a court held on the boundary of two lands.
It is... of the ancient tenures in serjeanty. Wharton.

ESCAMBIO. In old English law. A writ of exchange. A license in the shape of a writ, formerly granted to an English merchant to draw a bill of exchange on another in foreign parts. Reg. Orig. 194.

ESCAMBIUM. An old English law term, signifying exchange.

ESCAPE. The departure or deliverance out of custody of a person who was lawfully imprisoned, before he is entitled to his liberty by the process of law.

The voluntarily or negligently allowing any person lawfully in confinement to leave the place. 2 Bish. Crim. Law, § 917.

Escapes are either voluntary or negligent. The former is the case when the keeper voluntarily concedes to the prisoner any liberty not authorized by law. The latter is the case when the prisoner contrives to leave his prison by forcing his way out, or any other means, without the knowledge or against the will of the keeper, but through the latter's carelessness or the insecurity of the building.

ESCAPE WARRANT. In English practice. This was a warrant granted to retake a prisoner committed to the custody of the queen's prison who had escaped therefrom. It was obtained on affidavit from the judge of the court in which the action had been brought, and was directed to all the sheriffs throughout England, commanding them to retake the prisoner and commit him to gaol when and where taken, there to remain until the debt was satisfied. Jacob; Brown.

ESCAPIO QUIETUS. In old English law. Delivered from that punishment which by the laws of the forest lay upon those whose beasts were found upon forbidden land. Jacob.

ESCAPIUM. That which comes by chance or accident. Cowell.

ESCEPPA. A measure of corn. Cowell.

Escheat derivatur a verbo Gallico excohir, quod est accidere, quia accidit domino ex eventu et ex insperato. Co. Litt. 93. Escheat is derived from the French word "eschoir," which signifies to happen, because it falls to the lord from an event and from an unforeseen circumstance.

Escheat vulgo dicuntur quae descedentibus iis quae de rege tenent, cum non existit ratione sanguinis haeres, ad fiscum relabuntur. Co. Litt. 13. Those things are commonly called "escheats" which revert to the exchequer from a failure of issue in those who hold of the king, when there does not exist any heir by consanguinity.

ESCHEAT. In feudal law. Escheat is an obstruction of the course of descent, and consequent determination of the tenure, by some unforeseen contingency, in which case the land naturally resuits back, by a kind of reversion, to the original grantor, or lord of the fee. 2 Bl. Comm. 15.

It is the casual descent, in the nature of forfeiture, of lands and tenements within his manor, to a lord, either on failure of issue of the tenant dying seised or on account of the felony of such tenant. Jacob.

Also the land or fees itself, which thus fell back to the lord. Such lands were called "excadentia," or "terre excadentiales." Fleta, lib. 6, c. 1; Co. Litt. 13a.

In American law. Escheat signifies a reversion of property to the state in consequence of a want of any individual competent to inherit. The state is deemed to occupy the place and hold the rights of the feudal lord. See 4 Kent, Comm. 423, 424.

"Escheat at feudal law was the right of the lord of a fee to re-enter upon the same when it became vacant by the extinction of the blood of the tenant. This extinction might either be per defectum sanguinis or else per delictum tenentis, where the course of descent was broken by the corruption of the blood of the tenant. As a fee might be held either of the crown or from some inferior lord, the escheat was not always to the crown. The word 'escheat,' in this country, at the present time, merely indicates the preferable right of the state to an estate left vacant, and without there being any one in existence able to make claim thereto." 29 Amer. Dec. 232, note.

ESCHEAT, WRIT OF. A writ which anciently lay for a lord, to recover possession of lands that had escheated to him. Reg. Orig. 1648; Fitzh. Nat. Brev. 143.

ESCHEATOR. In English law. The name of an officer who was appointed in every county to look after the escheats which fell due to the king in that particular county, and to certify the same into the exchequer. An escheator could continue in office for one
year only, and was not re-eligible until three years. There does not appear to exist any such officer at the present day. Brown. See 10 Vin.Abr. 163; Co. Litt. 138.

ESCHECCUM. In old English law. A jury or inquisition.

ESCHIPARE. To build or equip. Du Cange.

ESCOT. A tax formerly paid in boroughs and corporations towards the support of the community, which is called "scot and lot."

ESCRIBANO. In Spanish law. An officer, resembling a notary in French law, who has authority to set down in writing, and verify by his attestation, transactions and contracts between private persons, and also judicial acts and proceedings.

ESCRITURA. In Spanish law. A written instrument. Every deed that is made by the hand of a public escribano, or notary of a corporation or council (concejo,) or sealed with the seal of the king or other authorized persons. White, New Recop. b. 3, tit. 7, c. 5.

ESCROQUERIE. Fr. Fraud, swindling, cheating.

ESCROW. A scroll; a writing; a deed. Particularly a deed delivered by the grantor into the hands of a third person, to be held by the latter until the happening of a contingency or performance of a condition, and then by him delivered to the grantee.

A grant may be deposited by the grantor with a third person, to be delivered on the performance of a condition, and on delivery by the depositary it will take effect. While in the possession of the third person, and subject to condition, it is called an "escrow." Civil Code Cal. § 1057; Civil Code Dak. § 609.

The state or condition of a deed which is conditionally held by a third person, or the possession and retention of a deed by a third person pending a condition; as when an instrument is said to be delivered "in escrow." This use of the term, however, is a perversion of its meaning.

ESCROWL. In old English law. An escrow; a scroll. "And deliver the deed to a stranger, as an escrowl." Perk. c. 1, § 9; Id. c. 2, §§ 137, 138.

ESCUAGE. Service of the shield. One of the varieties of tenure in knight's service, the duty imposed being that of accompanying the king to the wars for forty days, at the tenant's own charge, or sending a substitute. In later times, this service was commuted for a certain payment in money, which was then called "escuage certain." See 2 Bl. Comm. 74, 75.

ESCURARE. To scour or cleanse. Cowell.

ESGLISE, or EGLISE. A church. Jacob.

ESKETORES. Robbers, or destroyers of other men's lands and fortunes. Cowell.

ESKIPPAMENTUM. Tackle or furniture; outfit. Certain towns in England were bound to furnish certain ships at their own expense and with double skippage or tackle. Cowell.

ESKIPPER, ESKIPPARE. To ship.

ESKIPPESON. Shippage, or passage by sea. Spelled also, "skippeson." Cowell.

ESLISORS. See Elisors.

ESNE. In old law. A hireling of servile condition.

ESNECY. Seniority; the condition or right of the eldest; the privilege of the eldest-born. Particularly used of the privilege of the eldest among coparceners to make a first choice of purparts upon a voluntary partition.

ESPERA. A period of time fixed by law or by a court within which certain acts are to be performed, e. g., the production of papers, payment of debts, etc.

ESPERONS. L. Fr. Spurs.

ESPLEES. An old term for the products which the ground or land yields; as the hay of the meadows, the herbage of the pasture, corn of arable fields, rent and services, etc. The word has been anciently applied to the land itself. Jacob.

ESPOUSALS. A mutual promise between a man and a woman to marry each other at some other time. It differs from a marriage, because then the contract is completed. Wood, Inst. 57.

ESPURIO. Span. In Spanish law. A spurious child; one begotten on a woman who has promiscuous intercourse with many men. White, New Recop. b. 1, tit. 5, c. 2, § 1.
ESQUIRE. In English law. A title of dignity next above gentleman, and below knight. Also a title of office given to sheriffs, serjeants, and barristers at law, justices of the peace, and others. 1 Bl. Comm. 406; 3 Steph. Comm. 15, note; Tomlins.

ESSARTER. L. Fr. To cut down woods, to clear land of trees and underwood; properly to thin woods, by cutting trees, etc., at intervals. Spelman.

ESSARTUM. Woodlands turned into tillage by uprooting the trees and removing the underwood.

ESSENCE. That which is indispensable to that of which it is the essence.

ESSENCE OF THE CONTRACT. Any condition or stipulation in a contract which is mutually understood and agreed by the parties to be of such vital importance that a sufficient performance of the contract cannot be had without exact compliance with it is said to be "of the essence of the contract."

ESSENDI QUIETUM DE TOLONIO. A writ to be quit of toll; it lies for citizens and burgesses of any city or town who, by charter or prescription, ought to be exempted from toll, where the same is exacted of them. Reg. Orig. 253.

ESSOIN, n. In old English practice. To present or offer an excuse for not appearing in court on an appointed day in obedience to a summons; to cast an essoin. Spelman. This was anciently done by a person whom the party sent for that purpose, called an "essonier."

ESSOIN, v. In old English law. An excuse for not appearing in court at the return of the process. Presentation of such excuse. Spelman; 1 Sel. Pr. 4; Com. Dig. "Exoine," B 1. Essoin is not now allowed at all in personal actions. 2 Term 16; 16 East, 7a; 3 Bl. Comm. 278, note.

ESSOIN DAY. Formerly the first general return-day of the term, on which the courts sat to receive essoins, i.e., excuses for parties who did not appear in court, according to the summons of writs. 3 Bl. Comm. 278; Boote, Suit at Law, 130; Gibb. Com. Pl. 13; 1 Tidd, Pr. 107. But, by St. 11 Geo. IV. and 1 Wm. IV. c. 70, § 6, these days were done away with, as a part of the term.

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ESSOIN DE MALO VILLE is when the defendant is in court the first day; but gone without pleading, and being afterwards surprised by sickness, etc., cannot attend, but sends two esoiners, who openly protest in court that he is detained by sickness in such a village, that he cannot come pro lucrari and pro perdere; and this will be admitted, for it lieth on the plaintiff to prove whether the essoin is true or not. Jacob.

ESSOIN ROLL. A roll upon which essoins were formerly entered, together with the day to which they were adjourned. Boote, Suit at Law, 130; Rosc. Real Act. 162, 163; Gibb. Com. Pl. 13.

ESSOINIATOR. A person who made an essoin.

Est aliquid quod non oportet etiam sit licet; qui quidem vero non licet certe non oportet. Hob. 159. There is that which is not proper, even though permitted; but whatever is not permitted is certainly not proper.

EST ASCAVOR. It is to be understood or known; "it is to-wit." Litt. §§ 9, 45, 46, 57, 59. A very common expression in Littleton, especially at the commencement of a section; and, according to Lord Coke, "it ever teacheth us some rule of law, or general or sure leading point." Co. Litt. 16.

Est autem jus publicum et privatum, quod ex naturalibus praecipit aut genium, aut cibilibius est collectum; et quod in jure scripto jus appellatur, id in legem Angliae rectum esse dicitur. Public and private law is that which is collected from natural precepts, on the one hand of nations, on the other of citizens; and that which in the civil law is called "jus," that, in the law of England, is said to be right. Co. Litt. 558.

Est autem vis legem simulans. Violence may also put on the mask of law.

Est ipsorum legislatorum tanquam viva vox. The voice of the legislators themselves is like the living voice; that is, the language of a statute is to be understood and interpreted like ordinary spoken language. 10 Coke, 103b.

Est quidam perfectius in rebus licitis. Hob. 159. There is something more perfect in things allowed.

ESTABLISH. This word occurs frequently in the constitution of the United
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States, and it is there used in different meanings: (1) To settle firmly, to fix unalterably; as to establish justice, which is the avowed object of the constitution. (2) To make or form; as to establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies, which evidently does not mean that those laws shall be unalterably established as justice. (3) To found, to create, to regulate; as: “Congress shall have power to establish post-roads and post-offices.” (4) To found, recognize, confirm, or admit; as: “Congress shall make no law respecting an establishment of religion.” (5) To create, to ratify, or confirm; as: “We, the people,” etc., “do ordain and establish this constitution.” 1 Story, Const. § 454.

Establish ordinarily means to settle certainly, or fix permanently, what was before uncertain, doubtful, or disputed. 49 N. H. 230.

ESTABLISHMENT. An ordinance or statute. Especially used of those ordinances or statutes passed in the reign of Edw. I. 2 Inst. 166; Britt. c. 21.

ESTABLISHMENT OF DOWER. The assurance of dower made by the husband, or his friends, before or at the time of the marriage. Britt. cc. 102, 103.

ESTACHE. A bridge or stank of stone or timber. Cowell.

ESTADAL. In Spanish law. In Spanish America this was a measure of land of sixteen square varas, or yards. 2 White, Recop. 193.

ESTADIA. In Spanish law. Delay in a voyage, or in the delivery of cargo, caused by the charterer or consignee, for which demurrage is payable.

ESTANDARD. L. Fr. A standard, (of weights and measures.) So called because it stands constant and immovable, and hath all other measures coming towards it for their conformity. Termes de la Ley.

ESTANQUES. Wears or kiddles in rivers.

ESTATE. 1. The interest which any one has in lands, or in any other subject of property. 1 Prest. Est. 20. An estate in lands, tenements, and hereditaments signifies such interest as the tenant has therein. 2 Bl. Comm. 108. The condition or circumstance in which the owner stands with regard to his property. 2 Crabb, Real Prop. p. 2, § 942. In this sense, “estate” is constantly used in conveyances in connection with the words “right,” “title,” and “interest,” and is, in a great degree, synonymous with all of them. See Co. Litt. 345.

“Estate in land” means the kind and quantum of one’s interest therein. The term is susceptible of every possible variation in which man can be related to the soil. 2 Mass. 384.

“Estate” is a very comprehensive word, and signifies the quantity of interest which a person has, from absolute ownership down to naked possession; and the quantity of interest is determined by the duration and extent of the right of possession. 9 Cow. 73, 51.

2. In another sense, the term denotes the property (real or personal) in which one has a right or interest; the subject-matter of ownership; the corpus of property. Thus, we speak of a “valuable estate,” “all my estate,” “separate estate,” “trust estate,” etc. This, also, is its meaning in the classification of property into “real estate” and “personal estate.”

The word “estate” is a word of the greatest extension, and comprehends every species of property, real and personal. It describes both the corpus and the extent of interest. 56 Me. 284.

“Estate” comprehends everything a man owns, real and personal, and ought not to be limited in its construction, unless connected with some other word which must necessarily have that effect. Can. & N. 203.

It means, ordinarily, the whole of the property owned by any one, the reality as well as the personalty. Busb. Eq. 141.

3. In a wider sense, the term “estate” denotes a man’s whole financial status or condition—the aggregate of his interests and concerns, so far as regards his situation with reference to wealth or its objects, including debts and obligations, as well as possessions and rights.

Here not only property, but indebtedness, is part of the idea. The estate does not consist of the assets only. If it did, such expressions as “insolvent estate” would be misnomers. Debts and assets, taken together, constitute the estate. It is only by regarding the demands against the original proprietor as constituting, together with his resources available to defray them, one entirety, that the phraseology of the law governing what is called “settlement of estates” can be justified. Abbott.

4. The word is also used to denote the aggregate of a man’s financial concerns (as above) personified. Thus, we speak of “debts due the estate,” or say that “A.’s estate is a stockholder in the bank.” In this sense it is a fictitious or juridical person, the idea being that a man’s business status continues his existence, for its special purposes, until its final settlement and dissolution.

5. In its broadest sense, “estate” signifies the social, civic, or political condition or standing of a person; or a class of persons
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considered as grouped for social, civic, or political purposes; as in the phrases, "the third estate," "the estates of the realm." See 1 Bl. Comm. 153.

"Estate" and "degree," when used in the sense of an individual's personal status, are synonymous, and indicate the individual's rank in life. 15 Mo. 122.

ESTATE AD REMANENTIAM. An estate in fee-simple. Glan. 1. 7, c. 1.

ESTATE AT SUFFERANCE. The interest of a tenant who has come rightfully into possession of lands by permission of the owner, and continues to occupy the same after the period for which he is entitled to hold by such permission. 1 Waslb. Real Prop. 392; 2 Bl. Comm. 150; Co. Litt. 57b.

ESTATE AT WILL. A species of estate less than freehold, where lands and tenements are let by one man to another, to have and to hold at the will of the lessor; and the tenant by force of this lease obtains possession. 2 Bl. Comm. 145; 4 Kent, Comm. 110; Litt. § 63. Or it is where lands are let without limiting any certain and determinate estate. 2 Crabb, Real Prop. p. 403, § 1543.

ESTATE BY ELEGIT. See ELEGIT.

ESTATE BY STATUTE MERCHANT. An estate whereby the creditor, under the custom of London, retained the possession of all his debtor's lands until his debts were paid. 1 Greenl. Cruise, Dig. 515. See Statute Merchant.

ESTATE BY THE CURTESY. Tenant by the curtesy of England is where a man survives a wife who was seised in fee-simple or fee-tail of lands or tenements, and has had issue male or female by her born alive and capable of inheriting the wife's estate as heir to her; in which case he will, on the decease of his wife, hold the estate during his life as tenant by the curtesy of England. 2 Crabb, Real Prop. § 1074.

ESTATE FOR LIFE. A freehold estate, not of inheritance, but which is held by the tenant for his own life or the life or lives of one or more other persons, or for an indefinite period, which may endure for the life or lives of persons in being, and not beyond the period of a life. 1 Washb. Real Prop. 88.

ESTATE FOR YEARS. A species of estate less than freehold, where a man has an interest in lands and tenements, and a possession thereof, by virtue of such interest, for some fixed and determinate period of time; as in the case where lands are let for the term of a certain number of years, agreed upon between the lessor and the lessee, and the lessee enters thereon. 1 Steph. Comm. 263, 264. Blackstone calls this estate a "contract" for the possession of lands or tenements for some determinate period. 2 Bl. Comm. 140.

ESTATE IN COMMON. An estate in lands held by two or more persons, with interests accruing under different titles; or accruing under the same title, but at different periods; or conferred by words of limitation importing that the grantees are to take in distinct shares. 1 Steph. Comm. 323. See TENANCY IN COMMON.

ESTATE IN COPARCENARY. An estate which several persons hold as one heir, whether male or female. This estate has the three unities of time, title, and possession; but the interests of the coparceners may be unequal. 1 Washb. Real Prop. 414; 2 Bl. Comm. 188. See COPARCENARY.

ESTATE IN DOWER. A species of life-estate which a woman is, by law, entitled to claim on the death of her husband, in the lands and tenements of which he was seised in fee during the marriage, and which her issue, if any, might by possibility have inherited. 1 Steph. Comm. 249; 2 Bl. Comm. 129; Cruise, Dig. tit. 6; 2 Crabb, Real Prop. p. 124, § 1117; 4 Kent, Comm. 35. See DOWER.

ESTATE IN EXPECTANCY. One which is not yet in possession, but the enjoyment of which is to begin at a future time; a present or vested contingent right of future enjoyment. These are remainders and reversions.

ESTATE IN FEE-SIMPLE. The estate which a man has where lands are given to him and to his heirs absolutely without any end or limit put to his estate. 2 Bl. Comm. 106; Plowd. 557; 1 Prest. Est. 425; Litt. § 1.

The word "fee," used alone, is a sufficient designation of this species of estate, and hence "simple" is not a necessary part of the title, but it is added as a means of clearly distinguishing this estate from a fee-tail or from any variety of conditional estates.

ESTATE IN FEE-TAIL, generally termed an "estate tail." An estate of inheritance which a man has, to hold to him and the heirs of his body, or to him and par-
particular heirs of his body. 1 Steph. Comm. 228. An estate of inheritance by force of the statute De Donis, limited and restrained to some particular heirs of the donee, in exclusion of others. 2 Crabb, Real Prop. pp. 22, 23, § 971; Cruise, Dig. tit. 2, c. 1, § 12. See TAIL; Fee-TAIL.

ESTATE IN JOINT TENANCY. An estate in lands or tenements granted to two or more persons, to hold in fee-simple, fee-tail, for life, for years, or at will. 2 Bl. Comm. 189; 2 Crabb, Real Prop. 937. An estate acquired by two or more persons in the same land, by the same title, (not being a title by descent,) and at the same period; and without any limitation by words importing that they are to take in distinct shares. 1 Steph. Comm. 312. The most remarkable incident or consequence of this kind of estate is that it is subject to survivorship.

ESTATE IN POSSESSION. An estate whereby a present interest passes to and resides in the tenant, not depending on any subsequent circumstance or contingency. 2 Bl. Comm. 163. An estate where the tenant is in actual possession, or receipt of the rents and other advantages arising therefrom. 2 Crabb, Real Prop. p. 958, § 2322.

ESTATE IN REMAINDER. An estate limited to take effect in possession, or in enjoyment, or in both, subject only to any term of years or contingent interest that may intervene, immediately after the regular expiration of a particular estate of freehold previously created together with it, by the same instrument, out of the same subject of property. 2 Fearne, Rem. § 159; 2 Bl. Comm. 163; 1 Greenal. Cruise, Dig. 701.

ESTATE IN REVERSION. A species of estate in expectancy, created by operation of law, being the residue of an estate left in the grantor, to commence in possession after the determination of some particular estate granted out by him. 2 Bl. Comm. 175; 2 Crabb, Real Prop. p. 978, § 2345. The residue of an estate left in the grantor or his heirs, or in the heirs of a testator, commencing in possession on the determination of a particular estate granted or devised. 1 Rev. St. N. Y. p. 718, (723,) § 12. An estate in reversion is where any estate is derived, by grant or otherwise, out of a larger one, leaving in the original owner an ulterior estate immediately expectant on that which is so derived; the latter interest being called the "particular estate," (as being only a small part or particular of the original one,) and the ulterior interest, the "reversion." 1 Steph. Comm. 230. See REVERSION.

ESTATE IN SEVERALTY. An estate held by a person in his own right only, without any other person being joined or connected with him in point of interest, during his estate. This is the most common and usual way of holding an estate. 2 Bl. Comm. 179; Cruise, Dig. tit. 18, c. 1, § 1.

ESTATE IN VADO. An estate in gage or pledge. 2 Bl. Comm. 157; 1 Steph. Comm. 282.

ESTATE OF 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.)

ESTATE OF INHERITANCE. A species of freehold estate in lands, otherwise called a "fee," where the tenant is not only entitled to enjoy the land for his own life, but where, after his death, it is cast by the law upon the persons who successively represent him in perpetuum, in right of blood, according to a certain established order of descent. 1 Steph. Comm. 218; Litt. § 1; 1 Rev. St. N. Y. p. 717, (722,) § 2.

ESTATE PUR AUTRE VIE. Estate for another's life. An estate in lands which a man holds for the life of another person. 2 Bl. Comm. 120; Litt. § 56.

ESTATE TAIL. See ESTATE IN FEETAIL.

ESTATE TAIL, QUASI. When a tenant for life grants his estate to a man and his heirs, as these words, though apt and proper to create an estate tail, cannot do so, because the grantor, being only tenant for life, cannot grant in perpetuum, therefore they are said to create an estate tail quasi, or improper. Brown.

ESTATE UPON CONDITION. An estate in lands, the existence of which depends upon the happening or not happening of some uncertain event, whereby the estate may be either originally created, or enlarged, or finally defeated. 2 Bl. Comm. 151; 1 Steph. Comm. 276; Co. Litt. 201a.

An estate having a qualification annexed to it, by which it may, upon the happening of a particular event, be created, or enlarged, or destroyed. 4 Kent, Comm. 121.
ESTATE, ETC.

ESTATE UPON CONDITION EXPRESSED. An estate granted, either in fee-simple or otherwise, with an express qualification annexed, whereby the estate granted shall either commence, be enlarged, or be defeated upon performance or breach of such qualification or condition. 2 Bl. Comm. 154.

An estate which is so expressly defined and limited by the words of its creation that it cannot endure for any longer time than till the contingency happens upon which the estate is to fail. 1 Steph. Comm. 278.

ESTATE UPON CONDITION IMPLIED. An estate having a condition annexed to it inseparably from its essence and constitution, although no condition be expressed in words. 2 Bl. Comm. 152; 4 Kent, Comm. 121.

ESTATES OF THE REALM. The lords spiritual, the lords temporal, and the commons of Great Britain. 1 Bl. Comm. 153. Sometimes called the "three estates."

ESTEWARD, ESTEWARD, or STANDARD. An ensign for horsemen in war.

ESTER IN JUDGMENT. To appear before a tribunal either as plaintiff or defendant. Kelham.

ESTIMATE. This word is used to express the mind or judgment of the speaker or writer on the particular subject under consideration. It implies a calculation or computation, as to estimate the gain or loss of an enterprise. 37 Hun, 203.

STOP. To stop, bar, or impede; to prevent; to preclude. Co. Litt. 352a. See EstoPPELL.

ESTOPPEL. A bar or impediment raised by the law, which precludes a man from alleging or from denying a certain fact or state of facts, in consequence of his previous allegation or denial or conduct or admission, or in consequence of a final adjudication of the matter in a court of law.

A preclusion, in law, which prevents a man from alleging or denying a fact, in consequence of his own previous act, allegation, or denial of a contrary tenor. Steph. Pl. 239.

An admission of so conclusive a nature that the party whom it affects is not permitted to aver against it or offer evidence to controvert it. 2 Smith, Lead. Cas. 778.

Estoppel is that which concludes and "shuts a man's mouth from speaking the truth." When a fact has been agreed on, or decided in a court of record, neither of the parties shall be allowed to call it in question, and have it tried over again at any time thereafter, so long as the judgment or decree stands unreversed; and when parties, by deed or solemn act in pais, agree on a state of facts, and act on it, neither shall ever afterwards be allowed to gainsay a fact so agreed on, or be heard to dispute it; in other words, his mouth is shut, and he shall not say that is not true which he had before in a solemn manner asserted to be true. Busb. 157.

Equitable estoppel (or estoppel by conduct, or in pais) is the species of estoppel which equity puts upon a person who has made a false representation or a concealment of material facts, with knowledge of the facts, to a party ignorant of the truth of the matter, with the intention that the other party should act upon it, and with the result that such party is actually induced to act upon it, to his damage. Bigelow, Estop. 484.

In pleading. A plea, replication, or other pleading, which, without confessing or denying the matter of fact adversely alleged, relies merely on some matter of estoppel as a ground for excluding the opposite party from the allegation of the fact. Steph. Pl. 219; 3 Bl. Comm. 308.

A plea which neither admits nor denies the facts alleged by the plaintiff, but denies his right to allege them. Gould, Pl. c. 2, § 39.

A special plea in bar, which happens where a man has done some act or executed some deed which precludes him from averring anything to the contrary. 3 Bl. Comm. 308.

ESTOPPEL BY DEED is where a party has executed a deed, that is, a writing under seal (as a bond) reciting a certain fact, and is thereby precluded from afterwards denying, in any action brought upon that instrument, the fact so recited. Steph. Pl. 197. A man shall always be estopped by his own deed, or not permitted to aver or prove anything in contradiction to what he has once so solemnly and deliberately avowed. 2 Bl. Comm. 295; Plowd. 434.

ESTOPPEL BY MATTER IN PAIS. An estoppel by the conduct or admissions of the party; an estoppel not arising from deed or matter of record. Thus, where one man has accepted rent of another, he will be estopped from afterwards denying, in any action with that person, that he was, at the time of such acceptance, his tenant. Steph. Pl. 197.

The doctrine of estoppels in pais is one which, so far at least as that term is concerned, has grown up chiefly within the last few years. But it is, and always was, a fa-
ESTOPPEL, ETC.  438  ET ALIUS

ESTOPPEL. The collateral principle in the law of contracts. It lies at the foundation of morals, and is a cardinal point in the exposition of promises, that one shall be bound by the state of facts which he has induced another to act upon. Redfield, C. J., 26 Vt. 366, 373.

ESTOPPEL BY MATTER OF RECORD. An estoppel founded upon matter of record; as a confession or admission made in pleading in a court of record, which precludes the party from afterwards contesting the same fact in the same suit. Steph. Pl. 197.

ESTOPPEL, COLLATERAL. The collateral determination of a question by a court having general jurisdiction of the subject.

Estoveria sunt ardentii, arandi, cons. ad.  et claudendi. 13 Coke, 68. Estovers are of fire-bote, plow-bote, house-bote, and hedge-bote.

ESTOVERIUS HABENDIS. A writ for a wife judicially separated to recover her alimony or estovers. Obsolete.

ESTOVERS. An allowance made to a person out of an estate or other thing for his or her support, as for food and raiment.

An allowance (more commonly called "alimony") granted to a woman divorced a mensa et thoro, for her support out of her husband's estate. 1 Bl. Comm. 441.

The right or privilege which a tenant has to furnish himself with so much wood from the demised premises as may be sufficient or necessary for his fuel, fences, and other agricultural operations. 2 Bl. Comm. 35; Woodf. Landl. & Ten. 232; 10 Wend. 639.

ESTRAY. Cattle whose owner is unknown. 2 Kent, Comm. 359; Spelman; 29 Iowa, 437. Any beast, not wild, found within any lordship, and not owned by any man. Cowell; 1 Bl. Comm. 237.

Estray must be understood as denoting a wandering beast whose owner is unknown to the person who takes it up. 27 Wis. 422; 29 Iowa, 437.

An estray is an animal that has escaped from its owner, and wanders or strays about; usually defined, at common law, as a wandering animal whose owner is unknown. An animal cannot be an estray when on the range where it was raised, and permitted by its owner to run, and especially when the owner is known to the party who takes it up. The fact of its being bony or vicious does not make it an estray. 4 Or. 205.

ESTREAT, v. To take out a forfeited recognizance from the records of a court, and return it to the court of exchequer, to be prosecuted. See Estreat, n.

ESTREAT, n. (From Lat. extrahunt.) In English law. A copy or extract from the book of estreets, that is, the rolls of any court, in which the amercements or fines, recognizances, etc., imposed or taken by that court upon or from the accused, are set down, and which are to be levied by the bailiff or other officer of the court. Cowell; Brown.

A forfeited recognizance taken out from among the other records for the purpose of being sent up to the exchequer, that the parties might be sued thereon, was said to be estreated. 4 Bl. Comm. 253.

ESTRECIAIUS. Straightened, as applied to roads. Cowell.

ESTREPE. To strip; to despoil; to lay waste; to commit waste upon an estate, as by cutting down trees, removing buildings, etc. To injure the value of a reversionary interest by stripping or spoiling the estate.

ESTREPEMENT. A species of aggravated waste, by stripping or devastating the land, to the injury of the reversioner, and especially pending a suit for possession.

ESTREPEMENT, WRIT OF. This was a common-law writ of waste, which lay in particular for the reversioner against the tenant for life, in respect of damage or injury to the land committed by the latter. As it was only auxiliary to a real action for recovery of the land, and as equity afforded the same relief by injunction, the writ fell into disuse.

ET. And. The introductory word of several Latin and law French phrases formerly in common use.

ET ADJURNATUR. And it is adjourned. A phrase used in the old reports, where the argument of a cause was adjourned to another day, or where a second argument was had. 1 Kebr. 692, 754, 773.

ET AL. An abbreviation for et alii, "and others."

ET ALII È CONTRA. And others on the other side. A phrase constantly used in the Year Books, in describing a joinder in issue. P. 1 Edw. II. Prist; et alii è contra, et sic ad patriam: ready; and others, è contra, and so to the country. T. 3 Edw. III. 4.

ET ALIUS. And another. The abbreviation et al. (sometimes in the plural written et alis) is affixed to the name of the person first mentioned, where there are several plaintiffs, grantors, persons addressed, etc.
ET ALLOCATUR. And it is allowed.

ET CETERA. And others; and other things; and so on. In its abbreviated form (etc.) this phrase is frequently affixed to one of a series of articles or names to show that others are intended to follow or understood to be included. So, after reciting the initiating words of a set formula, or a clause already given in full, etc. is added, as an abbreviation, for the sake of convenience.

ET DE CEO SE METTENT EN LE PAYS. L. Fr. And of this they put themselves upon the country.

ET DE HOC PONIT SE SUPER PATRIAM. And of this he puts himself upon the country. The formal conclusion of a common-law plea in bar by way of traverse. The literal translation is retained in the modern form.

ET EI LEGITUR IN HEC VERBA. L. Lat. And it is read to him in these words. Words formerly used in entering the prayer of oyer on record.

ET HABEAS IBI TUNC HOC BREVE. And have you then there this writ. The formal words directing the return of a writ. The literal translation is retained in the modern form of a considerable number of writs.

ET HABUIT. And he had it. A common phrase in the Year Books, expressive of the allowance of an application or demand by a party. Parn. demanda la view. Et habuit, etc. M. 6 Edw. III. 49.

ET HOC PARATUS EST VERIFICARE. And this he is prepared to verify. The Latin form of concluding a plea in confession and avoidance.

These words were used, when the pleadings were in Latin, at the conclusion of any pleading which contained new affirmative matter. They expressed the willingness or readiness of the party so pleading to establish by proof the matter alleged in his pleading. A pleading which concluded in that manner was technically said to “conclude with a verification,” in contradistinction to a pleading which simply denied matter alleged by the opposite party, and which for that reason was said to “conclude to the country,” because the party merely put himself upon the country, or left the matter to the jury. Brown.

ET HOC PETIT QUOD INQUIRATUR PER PATRIAM. And this he prays may be inquired of by the country. The conclusion of a plaintiff’s pleading, tendering an issue to the country. 1 Salk. 6. Literally translated in the modern forms.

ET INDE PETIT JUDICIAM. And thereupon [or thereof] he prays judgment. A clause at the end of pleadings, praying the judgment of the court in favor of the party pleading. It occurs as early as the time of Bracton, and is literally translated in the modern forms. Bract. fol. 57b; Crabb, Eng. Law, 217.

ET INDE PRODUCIT SECTAM. And thereupon he brings suit. The Latin conclusion of a declaration, except against attorneys and other officers of the court. 3 Bl. Comm. 235.

ET MODO AD HUNC DIEM. Lat. And now at this day. This phrase was the formal beginning of an entry of appearance or of a continuance. The equivalent English words are still used in this connection.

ET NON. Lat. And not. A technical phrase in pleading, which introduces the negative averments of a special traverse. It has the same force and effect as the words “absque hoc,” and is occasionally used instead of the latter.

ET SEQ. An abbreviation for et sequentia, “and the following.” Thus a reference to “p. 1, et seq.” means “page first and the following pages.”

ET SIC. And so. In the Latin forms of pleading these were the introductory words of a special conclusion to a plea in bar, the object being to render it positive and not argumentative; as et sic nil debet.

ET SIC AD JUDICIAM. And so to judgment. Yearb. T. 1 Edw. II. 10.

ET SIC AD PATRIAM. And so to the country. A phrase used in the Year Books, to record an issue to the country.

ET SIC FECIT. And he did so. Yearb. P. 9 Hen. VI. 17.

ET SIC PENDET. And so it hangs. A term used in the old reports to signify that a point was left undetermined. T. Raym. 165.

ET SIC ULTERIUS. And so on; and so further; and so forth. Fleta, lib. 2, c. 50, § 27.

ET UX. An abbreviation for et uxor,—“and wife.” Where a grantor’s wife joins him in the conveyance, it is sometimes expressed (in abstracts, etc.) to be by “A. B. et ux.”
ETIQUETTE OF THE PROFESSION. The code of honor agreed on by mutual understanding and tacitly accepted by members of the legal profession, especially by the bar. Wharton.

Eum qui nocentem infamat, non est aequum et bonum ob eam rem condemnari; delicata enim nocentium nota esse oportet et expedire. It is not just and proper that he who speaks ill of a bad man should be condemned on that account; for it is fitting and expedient that the crimes of bad men should be known. Dig. 47, 10, 17; 1 Bl. Comm. 125.


EUNDO, MORANDO, ET REEUNDO. Lat. Going, remaining, and returning. A person who is privileged from arrest (as a witness, legislator, etc.) is generally so privileged eundo, morando, et redeundo; that is, on his way to the place where his duties are to be performed, while he remains there, and on his return journey.

EUNOMY. Equal laws and a well-adjusted constitution of government.

EUNUCH. A male of the human species who has been castrated. See Donat, liv. prd. tit. 2, § 1, n. 10.


EVASION. A subtle endeavoring to set aside truth or to escape the punishment of the law. This will not be allowed. If one person says to another that he will not strike him, but will give him a pot of ale to strike first, and, accordingly, the latter strikes, the returning the blow is punishable; and, if the person first striking is killed, it is murder, for no man shall evade the justice of the law by such a pretense. 1 Hawk. P. C. 81. So no one may plead ignorance of the law to evade it. Jacob.

EVASIVE. Tending or seeking to evade; elusive; shifting; as an evasive argument or plea.

EVENINGS. In old English law. The delivery at even or night of a certain portion of grass, or corn, etc., to a customary tenant, who performs the service of cutting, mowing, or reaping for his lord, given him as a gratuity or encouragement. Kennett, Gloss.

Eventus est qui ex causâ sequitur; et dicitur eventus quia ex causis eventi. 9 Coke, 81. An event is that which follows from the cause, and is called an "event" because it eventuates from causes.


Every man must be taken to contemplate the probable consequences of the act he does. Lord Ellenborough, 9 East. 277. A fundamental maxim in the law of evidence. Best, P. es. § 16; 1 Phil. Ev. 444.

EVES-DROPPERS. See EAVES-DROPPERS.

EVICT. In the civil law. To recover anything from a person by virtue of the judgment of a court or judicial sentence.

At common law. To dispossess, or turn out of the possession of lands by process of law. Also to recover land by judgment at law. "If the land is evicted, no rent shall be paid." 10 Coke, 128a.

EVICATION. Disposition by process of law; the act of depriving a person of the possession of lands which he has held, in pursuance of the judgment of a court.

Technically, the disposition must be by judgment of law; if otherwise, it is an ouster. Eviction implies an entry under paramount title, so as to interfere with the rights of the grantee. The object of the party making the entry is immaterial, whether he be to take all or a part of the land itself or merely an incorporeal right. Phrases equivalent in meaning are "ouster by paramount title," "entry and disturbance," "possession under an elder title," and the like. 5 Conn. 497.

Eviction is an actual expulsion of the lessee out of all or some part of the demised premises. 4 Cow. 581, 585.

In a more popular sense, the term denotes turning a tenant of land out of possession, either by re-entry or by legal proceedings, such as an action of ejectment. Sweet.

By a loose extension, the term is sometimes applied to the ousting of a person from the possession of chattels; but, properly, it applies only to realty.

In the civil law. The abandonment which one is obliged to make of a thing, in pursuance of a sentence by which he is condemned to do so. Poth. Contr. Sale, pt. 2, c. 1, § 2, art. 1, no. 83. The abandonment which a buyer is compelled to make of a thing purchased, in pursuance of a judicial sentence.
Eviction is the loss suffered by the buyer of the totality of the thing sold, or of a part thereof, occasioned by the right or claims of a third person. Civil Code La. art. 2500.

EVIDENCE. Any species of proof, or probative matter, legally presented at the trial of an issue, by the act of the parties and through the medium of witnesses, records, documents, concrete objects, etc., for the purpose of inducing belief in the minds of the court or jury as to their contention.

The word "evidence," in legal acceptance, includes all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved. 1 Greenl. Ev. e. 1, § 1.

That which is legally submitted to a jury, to enable them to decide upon the questions in dispute or issue, as pointed out by the pleadings, and distinguished from all comment and argument, is termed "evidence." 1 Starkie, Ev. pt. 1, § 3.

Synonym distinguishes. The term "evidence" is to be carefully distinguished from its synonyms "proof" and "testimony." "Proof" is the logically sufficient reason for ascertaining to the truth of a proposition advanced. In its juridical sense it is a term of wide import, and comprehends everything that may be adduced at a trial, within the legal rules, for the purpose of producing conviction in the mind of judge or jury, aside from mere argument; that is, everything that has a probative force intrinsically, and not merely as a deduction from, or combination of, original probative facts. But "evidence" is a narrower term, and includes only such kinds of proof as may be legally presented at a trial, by the act of the parties, and through the aid of such concrete facts as witnesses, records, or other documents. Thus, to urge a presumption of law in support of one's case is adducing proof, but it is not offering evidence. "Testimony," again, is a still more restricted term. It properly means only such evidence as is delivered by a witness on the trial of a cause, either orally or in the form of affidavits or depositions. Thus, an ancient deed, when offered under proper circumstances, is evidence, but it could not strictly be called "testimony." "Belief" is a subjective condition resulting from proof. It is a conviction of the truth of a proposition, existing in the mind, and induced by persuasion, proof, or argument addressed to the judgment.

The bill of exceptions states that all the "testimony" is in the record; but this is not equivalent to a statement that all the "evidence" is in the record. Testimony is one species of evidence. But the word "evidence" is a generic term which includes every species of it. And, in a bill of exceptions, the general term covering all species should be used in the statement as to its embracing the evidence, not the term "testimony," which is satisfied if the bill only contains all of that species of evidence. The statement that all the testimony is in the record may, with reference to judicial records, properly be termed an "affirmative evidence." 60 Ind. 157.

The word "proof" seems properly to mean anything which serves, either immediately or mediately, to convince the mind of the truth or falsehood of a fact or proposition. It is also applied to the conviction generated in the mind by proof properly so called. The word "evidence" signifies, in its original sense, the state of being evident, i.e., plain, apparent, or notorious. But by an almost peculiar inflection of our language, it is applied to that which tends to render evident or to generate proof. Best, Ev. §§ 10, 11.

Classification. There are many species of evidence, and it is susceptible of being classified on several different principles. The more usual divisions are here subjoined.

Evidence is either judicial or extrajudicial. Judicial evidence is the means, sanctioned by law, of ascertaining in a judicial proceeding the truth respecting a question of fact, (Code Civil Proc. Cal. § 1823;) while extrajudicial evidence is that which is used to satisfy private persons as to facts requiring proof.

Evidence is either primary or secondary. Primary evidence is that kind of evidence which, under every possible circumstance, affords the greatest certainty of the fact in question. Thus, a written instrument is itself the best possible evidence of its existence and contents. Secondary evidence is that which is inferior to primary. Thus, a copy of an instrument, or oral evidence of its contents, is secondary evidence of the instrument and contents. Code Civil Proc. Cal. §§ 1828, 1829, 1830.

Primary evidence is such as in itself does not indicate the existence of other and better proof. Secondary evidence is such as from necessity in some cases is substituted for stronger and better proof. Code Ga. 1828, § 5761.

Primary evidence is that particular means of proof which is indicated by the nature of the fact under investigation, as the most natural and satisfactory; the best evidence the nature of the case admits; such evidence as may be called for in the first instance, upon the principle that its non-production gives rise to a reasonable suspicion that if produced it would tend against the fact alleged. Abbott.

Evidence is either direct or indirect. Direct evidence is that which proves the fact in dispute directly, without an inference or presumption, and which in itself, if true, conclusively establishes that fact; for example, if the fact in dispute be an agreement, the evidence of a witness who was present and witnessed the making of it is direct. Indi-
rect evidence is that which tends to establish the fact in dispute by proving another, and which, though true, does not of itself conclusively establish that fact, but which affords an inference or presumption of its existence; for example, a witness proves an admission of the party to the fact in dispute. This proves a fact, from which the fact in dispute is inferred. Code Civil Proc. Cal. §§ 1831, 1832.

Evidence is either intrinsic or extrinsic. Intrinsic evidence is that which is derived from a document without anything to explain it. Extrinsic evidence is external evidence, or that which is not contained in the body of an agreement, contract, and the like.

In respect to its nature, evidence is also of the following several kinds:

Circumstantial evidence. This is proof of various facts or circumstances which usually attend the main fact in dispute, and therefore tend to prove its existence, or to sustain, by their consistency, the hypothesis claimed.

Circumstantial evidence consists in reasoning from facts which are known or proved, to establish such as are conjectured to exist. 32 N. Y. 141.

Presumptive evidence. This consists of inferences drawn by human experience from the connection of cause and effect, and observations of human conduct. Code Ga. 1882, § 3748.

Prima facie evidence. It is that which suffices for the proof of a particular fact, until contradicted and overcome by other evidence; for example, the certificate of a recording officer is prima facie evidence of a record, but it may afterwards be rejected upon proof that there is no such record. Code Civil Proc. Cal. § 1833.

Prima facie evidence is evidence which, standing alone and unexplained, would maintain the proposition and warrant the conclusion to support which it is introduced. 97 Mass. 230.

Partial evidence, is that which goes to establish a detached fact, in a series tending to the fact in dispute. It may be received, subject to be rejected as incompetent, unless connected with the fact in dispute by proof of other facts; for example, on an issue of title to real property, evidence of the continued possession of a remote occupant is partial, for it is of a detached fact, which may or may not be afterwards connected with the fact in dispute. Code Civil Proc. Cal. § 1834.

Satisfactory evidence. That evidence is deemed satisfactory which ordinarily produces moral certainty or conviction in an unprejudiced mind. Such evidence alone will justify a verdict. Evidence less than this is denominated "slight evidence." Code Civil Proc. Cal. § 1835.

Conclusive evidence. Conclusive or unanswerable evidence is that which the law does not permit to be contradicted; for example, the record of a court of competent jurisdiction cannot be contradicted by the parties to it. Code Civil Proc. Cal. § 1837.

Indispensable evidence is that without which a particular fact cannot be proved. Code Civil Proc. Cal. § 1838.

Documentary evidence is that derived from conventional symbols (such as letters) by which ideas are represented on material substances.

Hearsay evidence is the evidence, not of what the witness knows himself, but of what he has heard from others.

In respect to its object, evidence is of the following several kinds:

Substantive evidence is that added for the purpose of proving a fact in issue, as opposed to evidence given for the purpose of discrediting a witness, (i.e., showing that he is unworthy of belief,) or of corroborating his testimony. Best, Ev. 246, 773, 893.

Corroborative evidence is additional evidence of a different character to the same point. Code Civil Proc. Cal. § 1839.

Cumulative evidence is additional evidence of the same character to the same point. Civil Code Proc. Cal. § 1838.

EVIDENCE OF DEBT. A term applied to written instruments or securities for the payment of money, importing on their face the existence of a debt. 1 Rev. St. N. Y. p. 599, § 55.

EVIDENCE OF TITLE. A deed or other document establishing the title to property, especially real estate.

EVIDENTIAL. Having the quality of evidence; constituting evidence; evidencing. A term introduced by Bentham, and, from its convenience, adopted by other writers.

EVOCATION. In French law. The withdrawal of a cause from the cognizance of an inferior court, and bringing it before another court or judge. In some respects this process resembles the proceedings upon certiorari.

EWAGE. (L. Fr. Evc, water.) In old English law. Toll paid for water passage. The same as aquage. Tomlins.

EWBRICE. Adultery; spouse breach; marriage breach. Cowell; Tomlins.
EWRY. An office in the royal household where the table linen, etc., is taken care of. Wharton.

EX. 1. A Latin preposition meaning from, out of, by, on, on account of, or according to.

2. A prefix, denoting removal or cessation. Prefixed to the name of an office, relation, status, etc., it denotes that the person spoken of once occupied that office or relation, but does so no longer, or that he is now out of it. Thus, ex-mayor, ex-partner, ex-judge.

3. A prefix which is equivalent to "without," "reserving," or "excepting." In this use, probably an abbreviation of "except." Thus, ex-interest, ex-coupons.

"A sale of bonds 'ex. July coupons' means a sale reserving the coupons; that is, a sale in which the seller receives, in addition to the purchase price, the benefit of the coupons, which benefit he may realize either by detaching them or receiving from the buyer an equivalent consideration." 94 N. Y. 418.

EX ABUNDANTI. Out of abundance; abundantly; superfluously; more than sufficient. Calvin.

EX ABUNDANTI CAUTELA. Lat. Out of abundant caution. "The practice has arisen abundanti cautela." 8 East, 326; Lord Ellenborough, 4 Maule & S. 544.

EX ADVERSO. On the other side. 2 Show. 461. Applied to counsel.

EX EQUITATE. According to equity; in equity. Fleta, lib. 3, c. 10, § 3.

EX EQUO ET BONO. A phrase derived from the civil law, meaning, in justice and fairness; according to what is just and good; according to equity and conscience. 3 Bl. Comm. 163.

EX ALTERA PARTE. Of the other part.

Ex antecedentibus et consequentibus fit optima interpretatio. The best interpretation [of a part of an instrument] is made from the antecedents and the consequents, [from the preceding and following parts.] 2 Inst. 317. The law will judge of a deed or other instrument, consisting of divers parts or clauses, by looking at the whole; and will give to each part its proper office, so as to ascertain and carry out the intention of the parties. Broom, Max. § 577. The whole instrument is to be viewed and compared in all its parts, so that every part of it may be made consistent and effectual. 2 Kent, Comm. 555.

EX ARBITRIO JUDICIS. At, in, or upon the discretion of the judge. 4 Bl. Comm. 394. A term of the civil law. Inst. 4, 6, 31.

EX ASSSENSU CURIÆ. By or with the consent of the court.

EX ASSSENSU PATRIS. By or with the consent of the father. A species of dowry ad ostium ecclesie, during the life of the father of the husband; the son, by the father's consent expressly given, endowing his wife with parcel of his father's lands. Abolished by 5 & 4 Wm. IV. c. 105, § 13.

EX ASSSENSU SUO. With his assent. Formal words in judgments for damages by default. Comb. 220.

EX BONIS. Of the goods or property. A term of the civil law; distinguished from in bonis, as being descriptive of or applicable to property not in actual possession. Calvin.

EX CATHEDRA. From the chair. Originally applied to the decisions of the popes from their cathedra, or chair. Hence, authoritative; having the weight of authority.

EX CAUSA. L. Lat. By title.

EX CERTA SCIENTIA. Of certain or sure knowledge. These words were anciently used in patents, and imported full knowledge of the subject-matter on the part of the king. See 1 Coke, 40b.

EX COLORE. By color; under color of; under pretense, show, or protection of. Thus, ex colore officii, under color of office.

EX COMITATE. Out of comity or courtesy.

EX COMMODO. From or out of loan. A term applied in the old law of England to a right of action arising out of a loan, (commodatum.) Glanv. lib. 10, c. 13; 1 Reeve, Eng. Law, 166.

EX COMPARATIONE SCRIPTORUM. By a comparison of writings or handwritings. A term in the law of evidence. Best, Pres. 218.

EX CONCESSIS. From the premises granted. According to what has been already allowed.

EX CONSULTO. With consultation or deliberation.

EX CONTINENTI. Immediately; without any interval or delay: incontinently. A term of the civil law. Calvin.
EX CONTRACTU. From or out of a contract. In both the civil and the common law, rights and causes of action are divided into two classes,—those arising ex contractu, (from a contract,) and those arising ex delicto, (from a delict or tort.) See 3 Bl. Comm. 117; Mackeld. Rom. Law, § 384.

EX CURIA. Out of court; away from the court.

EX DEBITO JUStITiæ. From or as a debt of justice; in accordance with the requirement of justice; of right; as a matter of right. The opposite of ex gratia, (q. e.) 3 Bl. Comm. 48, 67.

EX DEFECTU SANGUINIS. From failure of blood; for want of issue.

EX DELICTO. From a delict, tort, fault, crime, or malfeasance. In both the civil and the common law, obligations and causes of action are divided into two great classes,—those arising ex contractu, (out of a contract,) and those ex delicto. The latter are such as grow out of or are founded upon a wrong or tort, e. g., trespass, trover, replevin. These terms were known in English law at a very early period. See Inst. 4, 1, pr.; Mackeld. Rom. Law, § 384; 3 Bl. Comm. 117; Bract. fol. 101b.

Ex delicto non ex supplicio emergit infamia. Infamy arises from the crime, not from the punishment.

EX DEMISSIONE; (commonly abbreviated ex dem.) Upon the demise. A phrase forming part of the title of the old action of ejectment.

EX DIRECTO. Directly; immediately. Story, Bills, § 199.

Ex diuturnitate temporis, omnia presumuntur solemniter esse acta. From length of time [after lapse of time] all things are presumed to have been done in due form. Co. Litt. 6b; Best, Ev. Introd. § 43; 1 Greenl. Ev. § 20.

EX DOLO MALO. Out of fraud; out of deceitful or tortious conduct. A phrase applied to obligations and causes of action violated by fraud or deceit.

Ex dolo malo non oritur actio. Out of fraud no action arises; fraud never gives a right of action. No court will lend its aid to a man who founds his cause of action upon an immoral or illegal act. Cown. 343; Broom, Max. 729.

EX donatioibus autem foeda militaria vel magnun servientium non continentibus oritur nobis quoddam nomen generale, quod est socagium. Co. Litt. 86. From grants not containing military fees or grand servienty, a kind of general name is used by us, which is "socage."

EX EMPITO. Out of purchase; founded on purchase. A term of the civil law, adopted by Bracton. Inst. 4, 6, 28; Bract. fol. 102. See Actio ex Empito.

EX FACIE. From the face; apparently; evidently. A term applied to what appears on the face of a writing.

EX FACTO. From or in consequence of a fact or action; actually. Usually applied to an unlawful or tortious act as the foundation of a title, etc. Sometimes used as equivalent to "de facto." Bract. fol. 172.

Ex facto jus oritur. The law arises out of the fact. Broom, Max. 102. A rule of law continues in abstraction and theory, until an act is done on which it can attach and assume as it were a body and shape. Best, Ev. Introd. § I.

EX FICTIONE JURIS. By a fiction of law.

Ex frequenti delicto augetur pena. 2 Inst. 479. Punishment increases with increasing crime.

EX GRATIA. Out of grace; as a matter of grace, favor, or indulgence; gratuitous. A term applied to anything accorded as a favor; as distinguished from that which may be demanded ex debito, as a matter of right.

EX GRAVI QUERELA. (From or on the grievous complaint.) In old English practice. The name of a writ (so called from its initial words) which lay for a person to whom any lands or tenements in fee were devised by will, (within any city, town, or borough wherein lands were devisable by custom,) and the heir of the devisor entered and detained them from him. Fitzh. Nat. Brev. 138, L, et seq.; 3 Reeve, Eng. Law, 49. Abolished by St. 3 & 4 Wm. IV. c. 27, § 36.

EX HYPOTHESI. By the hypothesis; upon the supposition; upon the theory or facts assumed.

EX INDUSTRIA. With contrivance or deliberation; designedly; on purpose. See I Kent, Comm. 318; 1 Wheat. 394.

EX INTEGRO. Anew; afresh.
EX JUSTA CAUSA. From a just or lawful cause; by a just or legal title.

EX LEGE. By the law; by force of law; as a matter of law.

EX LEGIBUS. According to the laws. A phrase of the civil law, which means according to the intent or spirit of the law, as well as according to the words or letter. Dig. 50. 16. 6. See Calvin.

EX LICENTIA REGIS. By the king's license. 1 Bl. Comm. 168, note.

EX LOCATO. From or out of lease or letting. A term of the civil law, applied to actions or rights of action arising out of the contract of locatum, (q. v.) Inst. 4, 6. 28. Adopted at an early period in the law of England. Bract. fol. 102; 1 Reeve, Eng. Law, 168.

EX MALEFICIO. Growing out of, or founded upon, misdoing or tort. This term is frequently used in the civil law as the synonym of "ex delito," (q. v,) and is thus contrasted with "ex contractu." In this sense it is of more rare occurrence in the common law, though found in Bracton, (fols. 93, 101, 102.)

Ex maleficio non oritur contractus. A contract cannot arise out of an act radically vicious and illegal. 1 Term 734; 3 Term 422; Broom. Max. 734.

Ex malis moribus bona leges natae sunt. 2 Inst. 161. Good laws arise from evil morals, i. e., are necessitated by the evil behavior of men.

EX MERO MOTU. Of his own mere motion; of his own accord; voluntarily and without prompting or request. Royal letters patent which are granted at the crown's own instance, and without request made, are said to be granted ex mero motu. When a court interferes, of its own motion, to object to an irregularity, or to do something which the parties are not strictly entitled to, but which will prevent injustice, it is said to act ex mero motu, or ex proprio motu, or sua sponte, all these terms being here equivalent.

EX MORA. From or in consequence of delay. Interest is allowed ex maura; that is, where there has been delay in returning a sum borrowed. A term of the civil law. Story, Bailm. § 84.

EX MORE. According to custom. Calvin.

EX MULTIDUINE SIGNORUM, colligitur identitas vera. From a great number of signs or marks, true identity is gathered or made up. Bac. Max. 103, in regula 25. A thing described by a great number of marks is easily identified, though, as to some, the description may not be strictly correct. Id.

EX MUTUO. From or out of loan. In the old law of England, a debt was said to arise ex mutuo when one lent another anything which consisted in number, weight, or measure. 1 Reeve, Eng. Law, 159; Bract. fol. 99.

EX NECESSITATE. Of necessity. 3 Rep. Ch. 123.

EX NECESSITATE LEGIS. From or by necessity of law. 4 Bl. Comm. 394.

EX NECESSITATE REI. From the necessity or urgency of the thing or case. 2 Pow. Dev. (by Jurman,) 308.

Ex nihilo nihil fit. From nothing nothing comes. 13 Wend. 178, 221; 18 Wend. 257, 301.

Ex nudo pacto non oritur [nascitur] actio. Out of a nude or naked pact [that is, a bare parol agreement without consideration] no action arises. Bract. fol. 99; Fleta, lib. 2, c. 56. § 3; Plowd. 305. Out of a promise neither attended with particular solemnity (such as belongs to a specialty) nor with any consideration no legal liability can arise. 2 Steph. Comm. 113. A parol agreement, without a valid consideration, cannot be made the foundation of an action. A leading maxim both of the civil and common law. Cod. 2, 3, 10; Id. 5, 14, 1; 2 Bl. Comm. 445; Smith, Cont. 85, 86.

EX OFFICIO. From office; by virtue of the office; without any other warrant or appointment than that resulting from the holding of a particular office. Powers may be exercised by an officer which are not specifically conferred upon him, but are necessarily implied in his office; these are ex officio. Thus, a judge has ex officio the powers of a conservator of the peace. Courts are bound to notice public statutes judicially and ex officio.

EX OFFICIO INFORMATION. In English law. A criminal information filed by the attorney general ex officio on behalf of the crown, in the court of queen's bench, for offenses more immediately affecting the government, and to be distinguished from informations in which the crown is the nominal
EX OFFICIO OATH

An oath taken by offending priests; abolished by 13 Car. II. St. 1, c. 12.

EX ECCLESIA. An oath taken by offending priests; abolished by 13 Car. II. St. 1, c. 12.

EX EX PARTE. On one side only; by or for one party; done for, in behalf of, or on the application of, one party only. A judicial proceeding, order, injunction, etc., is said to be ex parte when it is taken or granted at the instance and for the benefit of one party only, and without notice to, or contestation by, any person adversely interested.

"Ex parte," in the heading of a reported case, signifies that the name following is that of the party upon whose application the case is heard.

In its primary sense, ex parte, as applied to an application in a judicial proceeding, means that it is made by a person who is not a party to the proceeding, but who has an interest in the matter which entitles him to make the application. Thus, in a bankruptcy proceeding or an administration action, an application by A. B., a creditor, or the like, would be described as made "ex parte A. B."

§ 261. In its more usual sense, ex parte means that an application is made by one party to a proceeding in the absence of the other. Thus, an ex parte injunction is one granted without the opposite party having had notice of the application. It would not be called "ex parte" if he had proper notice of it, and chose not to appear to oppose it.

EX PARTE MATerna. On the mother's side; of the maternal line.

EX PARTE PATERNA. On the father's side; of the paternal line.

§ 262. The phrases "ex parte materna" and "ex parte paterna" denote the line or blood of the mother or father, and have no such restricted or limited sense as from the mother or father exclusively.

§ 263. N. J. Law, 431.

EX PARTE TALIS. A writ that lay for a bailiff or receiver, who, having auditors appointed to take his accounts, cannot obtain of them reasonable allowance, but is cast into prison.


Ex paucis dictis intendere plurima possit. Litt. § 384. You can imply many things from few expressions.

Ex paucis plurima concipit ingenium. Litt. § 550. From a few words or hints the understanding conceives many things.

EX POST FACTO. After the fact; by an act or fact occurring after some previous act or fact, and relating thereto; by subsequent matter; the opposite of ab initio. Thus, a deed may be good ab initio, or, if invalid at its inception, may be confirmed by matter ex post facto.

EX POST FACTO LAW. A law passed after the occurrence of a fact or commission of an act, which retrospectively changes the legal consequences or relations of such fact or deed. By Const. U. S. art. 1, § 10, the states are forbidden to pass "any ex post facto law." In this connection the phrase has a much narrower meaning than its literal translation would justify, as will appear from the extracts given below.

The phrase "ex post facto," in the constitution, extends to criminal and not to civil cases. And under this head is included: (1) Every law that makes an act, done before the passing of the law, and which was innocent when done, criminal, and punishes such action. (2) Every law that aggravates a crime, or makes it greater than it was when committed. (3) Every law that changes the punishment, and inflicts a greater punishment than the law annexed to the crime when committed. (4) Every law that alters the legal rules of evidence, and receives less or different testimony than the law required at the time of the commission of the offense, in order to convict the offender. All these, and similar laws, are prohibited by the constitution. But a law may be ex post facto, and still not amenable to this constitutional inhibition; that is, provided it mollifies, instead of aggravating, the rigor of the criminal law. 16 Ga. 109; 2 Wash. C. C. 390; 3 N. H. 678; 3 Dall. 979; 3 Story, Const. 212.

An ex post facto law is one which renders an act punishable, in a manner in which it was not punishable when committed. Such a law may inflict penalties on the person, or pecuniary penalties which swell the public treasury. The legislature is therefore prohibited from passing a law by which a man's estate, or any part of it, shall be seized for a crime, which was not declared, by some previous law, to render him liable to such punishment.

6 Cranch, 87. 139.

The plain and obvious meaning of this prohibition is that the legislature shall not pass any law, after a fact done by any citizen, which shall have relation to that fact, so as to punish that which was innocent when done; or to add to the punishment of that which was criminal; or to increase the magnitude of a crime; or to refer the rules of evidence, so as to make conviction more easy. This definition of an ex post facto law is sanctioned by long usage.

1 Blackf. 196.

The term "ex post facto law," in the United States constitution, cannot be construed to include and to prohibit the enacting any law after a fact, nor even to prohibit the depriving a citizen of a vested right to property.

§ 558. "Ex post facto" and "retrospective" are not convertible terms. The latter is a term of wider significance than the former and includes it. All ex post facto laws are necessarily retrospective, but not e contrario. A curative or confirmatory stat-
ute is retrospective, but not ex post facto. Constitutions of nearly all the states contain prohibitions against ex post facto laws, but only a few forbid retrospective legislation in specific terms. Black, Const. Prohib. §§ 170, 172, 222.

Retrospective laws divesting vested rights are impolitic and unjust; but they are not "ex post facto laws." within the meaning of the constitution of the United States, nor repugnant to any other of its provisions; and, if not repugnant to the state constitution, a court cannot pronounce them to be void, merely because in their judgment they are contrary to the principles of natural justice. 2 Paine, 74.

Every retrospective act is not necessarily an ex post facto law. That phrase embraces only such laws as impose or affect penalties or forfeitures. 4 Wall. 172.

Retrospective laws which do not impair the obligation of contracts, or affect vested rights, or partake of the character of ex post facto laws, are not prohibited by the constitution. 36 Barb. 447.

Ex precedentibus et consequentibus optima fit interpretatio. 1 Roll. 374. The best interpretation is made from the context.

EX PRÆCIGITATA MALICIA. Of malice aforethought. Reg. Orig. 102.

EX PROPRIO MOTU. Of his own accord.

EX PROPRIO VIGORE. By their or its own force. 2 Kent, Comm. 457.

EX PROVIVONE HOMINIS. By the provision of man. By the limitation of the party, as distinguished from the disposition of the law. 11 Coke, 80b.

EX PROVIVONE MARITI. From the provision of the husband.

EX QUASI CONTRACTU. From quasi contract. Fleta, lib. 2, c. 60.

EX RELATIONE. Upon relation or information. Legal proceedings which are instituted by the attorney general (or other proper person) in the name and behalf of the state, but on the information and at the instigation of an individual who has a private interest in the matter, are said to be taken "on the relation" (ex relatione) of such person, who is called the "relator." Such a cause is usually entitled thus: "State ex rel. Doe v. Roe."

In the books of reports, when a case is said to be reported ex relatione, it is meant that the reporter derives his account of it, not from personal knowledge, but from the relation or narrative of some person who was present at the argument.

EX RIGORE JURIS. According to the rigor or strictness of law; in strictness of law. Fleta, lib 3, c. 10, § 9.

EX SCRIPTIS OLM VISIS. From writings formerly seen. A term used as descriptive of that kind of proof of handwriting where the knowledge has been acquired by the witness having seen letters or other documents professing to be the handwriting of the party, and having afterwards communicated personally with the party upon the contents of those letters or documents, or having otherwise acted upon them by written answers, producing further correspondence or acquiescence by the party in some matter to which they relate, or by the witness transacting with the party some business to which they relate, or by any other mode of communication between the party and the witness which, in the ordinary course of the transactions of life, induces a reasonable presumption that the letters or documents were the handwriting of the party. 5 Adol. & E. 730.

EX STATUTO. According to the statute. Fleta, lib. 5, c. 11, § 1.

EX STIPULATU ACTIO. In the civil law. An action of stipulation. An action given to recover marriage portions. Inst. 4, 6, 29.

EX TEMPORE. From or in consequence of time; by lapse of time. Bract. fols. 51, 52. Ex diurno tempore, from length of time. 1d. fol. 51b.

Without preparation or premeditation.

EX TESTAMENTO. From, by, or under a will. The opposite of ab intestato, (q. v.)

Ex tota materia emergat resolutio. The explanation should arise out of the whole subject-matter; the exposition of a statute should be made from all its parts together. Wing. Max. 238.

Ex turpi causa non oritur actio. Out of a base [illegal, or immoral] consideration, an action does [can] not arise. 1 Selw. N. P. 63; Broom, Max. 730, 732; Story, Ag. § 195.

Ex turpi contractu actio non oritur. From an immoral or iniquitous contract an action does not arise. A contract founded upon an illegal or immoral consideration cannot be enforced by action. 2 Kent, Comm. 466; Dig. 2, 14, 27, 4.

EX UNA PARTE. Of one part or side; on one side.

Ex uno disce omnes. From one thing you can discern all.
EX UTTRAQUE PARTE. On both sides. Dyer, 1265.

EX TRISQUE PARENTIBUS CONJUNCTI. Related on the side of both parents; of the whole blood. Hale, Com. Law, c. 11.

EX VI TERMINI. From or by the force of the term. From the very meaning of the expression used. 2 Bl. Comm. 109, 115.

EX VISERIBUS. From the bowels. From the vital part, the very essence of the thing. 10 Coke, 246; 2 Mete. (Mass.) 213. Ex viseribus verborum, from the mere words and nothing else. 10 Johns. 494; 1 Story, Eq. Jur. § 980.

EX VISITATIONE DEI. By the dispensation of God; by reason of physical incapacity. Anciently, when a prisoner, being arraigned, stood silent instead of pleading, a jury was impaneled to inquire whether he obstinately stood mute or was dumb ex visitatione Dei. 4 Steph. Comm. 394.

Also by natural, as distinguished from violent, causes. When a coroner’s inquest finds that the death was due to disease or other natural cause, it is frequently phrased “ex visitatione Dei.”

EX VISU SRIPTIONIS. From sight of the writing; from having seen a person write. A term employed to describe one of the modes of proof of handwriting. Best, Pres. 218.

EX VOLUNTATE. Voluntarily; from free-will or choice.

EXACTION. The wrongful act of an officer or other person in compelling payment of a fee or reward for his services, under color of his official authority, where no payment is due.

Between “extortion” and “exaction” there is this difference: that in the former case the officer extorts more than his due, when something is due to him; in the latter, he exacts what is not his due, when there is nothing due to him. Co. Litt. 965.

EXACTOR. In the civil law. A gatherer or receiver of money; a collector of taxes. Cod. 10, 19.

In old English law. A collector of the public moneys; a tax gatherer. Thus, exactor regis was the name of the king’s tax collector, who took up the taxes and other debts due the treasury.

EXACTOR REGIS. The king’s collector of taxes; also a sheriff.

EXALTARE. In old English law. To raise; to elevate. Frequently spoken of water, i. e., to raise the surface of a pond or pool.


EXAMINATION. An investigation; search; interrogating.

In trial practice. The examination of a witness consists of the series of questions put to him by a party to the action, or his counsel, for the purpose of bringing before the court and jury in legal form the knowledge which the witness has of the facts and matters in dispute, or of probing and sifting his evidence previously given.

The examination of a witness by the party producing him is denominated the “direct examination;” the examination of the same witness, upon the same matter, by the adverse party, the “cross-examination.” The direct examination must be completed before the cross-examination begins, unless the court otherwise direct. Code Civil Proc. Cal. § 2045.

In criminal practice. An investigation by a magistrate of a person who has been charged with crime and arrested, or of the facts and circumstances which are alleged to have attended the crime and to fasten suspicion upon the party so charged, in order to ascertain whether there is sufficient ground to hold him to bail for his trial by the proper court.

EXAMINATION DE BENE ESSE. A provisional examination of a witness; an examination of a witness whose testimony is important and might otherwise be lost, held out of court and before the trial, with the proviso that the deposition so taken may be used on the trial in case the witness is unable to attend in person at that time or cannot be produced.

EXAMINATION OF A LONG ACCOUNT. This phrase does not mean the examination of the account to ascertain the result or effect of it, but the proof by testimony of the correctness of the items composing it. 5 Daly, 63.

EXAMINATION OF BANKRUPT. This is the interrogation of a bankrupt, in the course of proceedings in bankruptcy, touching the state of his property. This is authorized in the United States by Rev. St.
EXAMINATION OF INVENTION. An inquiry made at the patent-office, upon application for a patent, into the novelty and utility of the alleged invention, and as to its interfering with any other patented invention. Rev. St. U. S. § 4893.

EXAMINATION OF TITLE. An investigation made by or for a person who intends to purchase real estate, in the offices where the public records are kept, to ascertain the history and present condition of the title to such land, and its status with reference to liens, incumbrances, clouds, etc.

EXAMINED COPY. A copy of a record, public book, or register, and which has been compared with the original. 1 Campb. 469.

EXAMINER. In English law. A person appointed by a court to take the examination of witnesses in an action, i.e., to take down the result of their interrogation by the parties or their counsel, either by written interrogatories or istic voce. An examiner is generally appointed where a witness is in a foreign country, or is too ill or infirm to attend before the court, and is either an officer of the court, or a person specially appointed for the purpose. Sweet.

In New Jersey. An examiner is an officer appointed by the court of chancery to take testimony in causes depending in that court. His powers are similar to those of the English examiner in chancery. In the patent-office. An officer in the patent-office charged with the duty of examining the patentability of inventions for which patents are asked.

EXAMINER IN CHANCERY. An officer of the court of chancery, before whom witnesses are examined, and their testimony reduced to writing, for the purpose of being read on the hearing of the cause. Cowell.

EXAMINERS. Persons appointed to question students of law in order to ascertain their qualifications before they are admitted to practice.

EXANNUAL ROLL. In old English practice. A roll into which (in the old way of exhibiting sheriffs' accounts) the illegible fines and desperate debts were transcribed, and which was annually read to the sheriff upon his accounting, to see what might be gotten. Cowell.

EXCEPTION. In Scotch law. To exchange.

EXCAMB. In Scotch law. To exchange.

EXCAMBIATOR. An exchanger of lands; a broker. Obsolete.


EXCAMBIUM. An exchange; a place where merchants meet to transact their business; also an equivalent in recompense; a recompense in lieu of dower ad ostium ecclesia.

EXCELLENcy. In English law. The title of a viceroy, governor general, ambassador, or commander in chief.

In America. The title is sometimes given to the chief executive of a state or of the nation.

EXCEPTANT. One who excepts; one who makes or files exceptions; one who objects to a ruling, instruction, or anything proposed or ordered.

EXCEPTIO. In Roman law. An exception. In a general sense, a judicial allegation opposed by a defendant to the plaintiff's action. Calvin.

A stop or stay to an action opposed by the defendant. Cowell.

Answering to the "defense" or "plea" of the common law. An allegation and defense of a defendant by which the plaintiff's claim or complaint is defeated, either according to strict law or upon grounds of equity.

In a stricter sense, the exclusion of an action that lay in strict law, on grounds of equity. (actionis jure stricto competentis ob equestrem exclusion.) Heinecc. A kind of limitation of an action, by which it was shown that the action, though otherwise just, did not lie in the particular case. Calvin.

A species of defense allowed in cases where, though the action as brought by the plaintiff was in itself just, yet it was unjust as against the particular party sued. Inst. 4, 13, pr.

In modern civil law. A plea by which the defendant admits the cause of action, but alleges new facts which, provided they be true, totally or partially answer the allegations put forward on the other side; thus distinguished from a mere traverse of the plaintiff's averments. Tomkins & J. Mod. Rom. Law, 90. In this use, the term corresponds to the common-law plea in confession and avoidance.

EXCEPTIO DILATORIA. In the civil law. A dilatory exception; called also "tem-
EXCEPTIO DOLI MALI. In the civil law. An exception or plea of fraud. Inst. 4, 13, 1, 9; Bract. fol. 100b.

Exceptio ejus rei cujus petitur dissolution nulla est. A plea of that matter the dissolution of which is sought [by the action] is null, [or of no effect.] Jenk. Cent. 37, case 71.

Exceptio falsi omnium ultima. A plea denying a fact is the last of all.

EXCEPTIO IN FACTUM. In the civil law. An exception on the fact. An exception or plea founded on the peculiar circumstances of the case. Inst. 4, 13, 1.

EXCEPTIO JURISJURANDI. In the civil law. An exception of oath; an exception or plea that the matter had been sworn to. Inst. 4, 13, 4. This kind of exception was allowed where a debtor, at the instance of his creditor, (creditoire deferente,) had sworn that nothing was due the latter, and had notwithstanding been sued by him. Id.

EXCEPTIO METUS. In the civil law. An exception or plea of fear or compulsion. Inst. 4, 13, 1, 9; Bract. fol. 100b. Answering to the modern plea of dures.

Exceptio nulla est versus actionem quæ exceptionem permitit. There is [can be] no plea against an action which destroys [the matter of] the plea. Jenk. Cent. 106, case 2.

EXCEPTIO PACTI CONVENTI. In the civil law. An exception of compact; an exception or plea that the plaintiff had agreed not to sue. Inst. 4, 13, 5.

EXCEPTIO PECUNIÆ NON NUMERATÆ. An exception or plea of money not paid; a defense which might be set up by a party who was sued on a promise to repay money which he had never received. Inst. 4, 13, 2.

EXCEPTIO PEREMPTORIA. In the civil law. A peremptory exception; called also "perpetua," (perpetual;) one which forever destroyed the subject-matter or ground of the action. (quæ semper rem de qua agitur permitt;) such as the exceptio doli mali, the exceptio metus, etc. Inst. 4, 13, 3. See Dig. 44, 1, 3.


Exceptio probat regulam. The exception proves the rule. 11 Coke, 41; 3 Term, 722. Sometimes quoted with the addition "de rebus non exceptis," ("so far as concerns the matters not excepted.")

Exceptio quæ firmat legem, exponit legem. An exception which confirms the law explains the law. 2 Bulst. 189.

EXCEPTIO REI JUDICATÆ. In the civil law. An exception or plea of matter adjudged; a plea that the subject-matter of the action had been determined in a previous action. Inst. 4, 13, 5.

This term is adopted by Bracton, and is constantly used in modern law to denote a defense founded upon a previous adjudication of the same matter. Bract. fols. 100b, 177; 2 Kent, Comm. 120. A plea of a former recovery or judgment.

EXCEPTIO REI VENDITÆ ET TRADITÆ. In the civil law. An exception or plea of the sale and delivery of the thing. This exception presumes that there was a valid sale and a proper tradition; but though, in consequence of the rule that no one can transfer to another a greater right than he himself has, no property was transferred, yet because of some particular circumstance the real owner is estopped from contesting it. Mackeld. Rom. Law, § 299.

Exceptio semper ultimo ponenda est. An exception should always be put last. 9 Coke, 53.

EXCEPTIO TEMPORIS. In the civil law. An exception or plea analogous to that of the statute of limitations in our law; viz., that the time prescribed by law for bringing such actions has expired. Mackeld. Rom. Law, § 213.

EXCEPTION. In practice. A formal objection to the action of the court, during the trial of a cause, in refusing a request or overruling an objection; implying that the party excepting does not acquiesce in the decision of the court, but will seek to procure its reversal, and that he means to save the benefit of his request or objection in some future proceeding.

It is also somewhat used to signify other objections in the course of a suit; for example, exception to bail is a formal objection.
that special bail offered by defendant are insufficient. 1 Tidd, Pr. 255.

An exception is an objection upon a matter of law to a decision made, either before or after judgment, by a court, tribunal, judge, or other judicial officer, in an action or proceeding. The exception must be taken at the time the decision is made. Code Civil Proc. Cal. § 646; 32 Cal. 307.

In admiralty and equity practice. An exception is a formal allegation tendered by a party that some previous pleading or proceeding taken by the adverse party is insufficient.

In statutory law. An exception in a statute is a clause designed to reserve or exempt some individuals from the general class of persons or things to which the language of the act in general attaches.

An exception differs from an explanation, which, by the use of a *utelicit, provision, etc., is allowed only to explain doubtful clauses precedent, or to separate and distribute generals into particulars.

3 Pick. 372.

In contracts. A clause in a deed or other conveyance by which the grantor excepts something out of that which he granted before the deed.

The distinction between an exception and a reservation is that an exception is always of part of the thing granted, and of a thing in esse; a reservation is always of a thing not in esse, but newly created or reserved out of the land or tenement demised. Co. Litt. 47a; 4 Kent, Comm. 405. It has been also said that there is a diversity between an exception and a saving, for an exception exempts clearly, but a saving goes to the matters touched, and does not exempt. Plowd. 301.

In the civil law. An exceptio or plea. Used in this sense in Louisiana.

Declatory exceptions are such dilatory exceptions as merely decline the jurisdiction of the judge before whom the action is brought. Code Proc. La. 334.

Dilatory exceptions are such as do not tend to defeat the action, but only to retard its progress.

Peremptory exceptions are those which tend to the dismissal of the action.

EXCEPTION TO BAIL. An objection to the special bail put in by the defendant to an action at law made by the plaintiff on grounds of the insufficiency of the bail. 1 Tidd, Pr. 255.

EXCEPTIS EXCIPIENDIS. With all necessary exceptions.

EXCEPTOR. In old English law. A party who entered an exception or plea.

EXCEPTA, or EXCERPTS. Extracts.

EXCESS. When a defendant pleaded to an action of assault that the plaintiff trespassed on his land, and he would not depart when ordered, whereupon he, *molliter manus imposuit, gently laid hands on him, the replication of excess was to the effect that the defendant used more force than necessary. Wharton.

EXCESSIVE. In order that bail required (or punishment inflicted) should be described as "excessive," it must be, *per se, unreasonably great and clearly disproportionate to the offense involved, or the peculiar circumstances appearing must show it to be so in the particular case. 44 Cal. 553; 53 Cal. 410; 39 Conn. 484.

EXCESSIVE DAMAGES. Damages awarded by a jury which are grossly in excess of the amount warranted by law on the facts and circumstances of the case; unreasonable or outrageous damages. A verdict giving excessive damages is ground for a new trial.

Excessivum in jure reprouatur. Excessus in re qualibet jure reprouatur commun. Co. Litt. 44. Excess in law is reprehended. Excess in anything is reprehended at common law.

EXCHANGE. In conveyancing. A mutual grant of equal interests, (in lands or tenem-nts,) the one in consideration of the other. 2 Bl. Comm. 323. In the United States, it appears, exchange does not differ from bargain and sale. See 2 Bouv. Inst. 2055.

In commercial law. A negotiation by which one person transfers to another funds which he has in a certain place, either at a price agreed upon or which is fixed by commercial usage.

The profit which arises from a maritime loan, when such profit is a percentage on the money lent, considering it in the light of money lent in one place to be returned in another, with a difference in amount in the sum borrowed and that paid, arising from the difference of time and place. The term is commonly used in this sense by French writers. Hall, Emerig. Mar. Loans, 56a.

A public place where merchants, brokers, factors, etc., meet to transact their business.

EXCHANGE, BILL OF. See Bill of Exchange.
EXCHANGE OF GOODS. A commutation, transmutation, or transfer of goods for other goods, as distinguished from sale, which is a transfer of goods for money. 2 Bl. Comm. 446; 2 Steph. Comm. 120.

Exchange is a contract by which the parties mutually give, or agree to give, one thing for another, neither thing, or both things, being money only. Civil Code Cal. § 1804; Civil Code Dak. § 1029; Civil Code La. art. 2660.

The distinction between a sale and exchange of property is rather one of shadow than of substance. In both cases the title to property is absolutely transferred; and the same rules of law are applicable to the transaction, whether the consideration of the contract is money or by way of barter. It can make no essential difference in the rights and obligations of parties that goods and merchandise are transferred and paid for by other goods and merchandise instead of by money, which is but the representative of value or property. 14 Gray, 367.

EXCHANGE OF LIVINGS. In ecclesiastical law. This is effected by resigning them into the bishop's hands, and each party being inducted into the other's benefice. If either die before both are inducted, the exchange is void.

EXCHEQUER. That department of the English government which has charge of the collection of the national revenue; the treasury department.

It is said to have been so named from the chequered cloth, resembling a chess-board, which anciently covered the table there, and on which, when certain of the king's accounts were made up, the sums were marked and scored with counters. 8 Bl. Comm. 44.

EXCHEQUER BILLS. Bills of credit issued in England by authority of parliament. Brande. Instruments issued at the exchequer, under the authority, for the most part, of acts of parliament passed for the purpose, and containing an engagement on the part of the government for repayment of the principal sums advanced with interest. 2 Steph. Comm. 586.

EXCHEQUER CHAMBER, COURT OF. In English law. A tribunal of error and appeal.

First, it existed in former times as a court of mere debate, such causes from the other courts being sometimes adjourned into it as the judges, upon argument, found to be of great weight and difficulty, before any judgment was given upon them in the court below. It then consisted of all the judges of the three superior courts of common law, and at times the lord chancellor also.

Second, it existed as a court of error, where the judgments of each of the superior courts of common law, in all actions whatever, were subject to revision by the judges of the other two sitting collectively. The composition of this court consequently admitted of three different combinations, consisting of any two of the courts below which were not parties to the judgment appealed against. There was no given number required to constitute the exchequer chamber, but the court never consisted of less than five. One counsel only was heard on each side. Error lay from this court to the house of lords. The court is abolished, and its jurisdiction in appeals (proceedings in error in civil cases and bills of exceptions being abolished) is transferred to the court of appeal. Jud. Act 1875, § 18. Wharton.

EXCHEQUER, COURT OF. See COURT OF EXCHEQUER.

EXCHEQUER DIVISION. A division of the English high court of justice, to which the special business of the court of exchequer was specially assigned by section 34 of the judicature act of 1873. Merged in the queen's bench division from and after 1881, by order in council under section 31 of that act. Wharton.

EXCISE. An inland imposition, paid sometimes upon the consumption of the commodity, and frequently upon the retail sale. 1 Bl. Comm. 318; Story, Const. § 950.

The words “tax” and “excise,” although often used as synonymous, are to be considered as having entirely distinct and separate significations, under Const. Mass. c. 1, § 1, art. 4. The former is a charge apportioned either among the whole people of the state or those residing within certain districts, municipalities, or sections. It is required to be imposed, so that, if levied for the public charges of government, it shall be shared according to the estate, real and personal, which each person may possess; or, if raised to defray the cost of some local improvement of a public nature, it shall be borne by those who will receive some special and peculiar benefit or advantage which an expenditure of money for a public object may cause to those on whom the tax is assessed. An excuse, on the other hand, is of a different character. It is based on no rule of apportionment or equality whatever. It is a fixed, absolute, and direct charge laid on merchandise, products, or commodities, without any regard to the amount of property belonging to those on whom it may fall, or to any supposed relation between money expended for a public object and a special benefit occasioned to those by whom the charge is to be paid. 11 Allen, 268.

In English law. The name given to the duties or taxes laid on certain articles produced and consumed at home, among which
spirits have always been the most important; but, exclusive of these, the duties on the licenses of auctioneers, brewers, etc., and on the licenses to keep dogs, kill game, etc., are included in the excise duties. Wharton.

EXCISE LAW. A law imposing excise duties on specified commodities, and providing for the collection of revenue therefrom. In a more restricted and more popular sense, a law regulating, restricting, or taxing the manufacture or sale of intoxicating liquors.

EXCLUSA. In old English law. A sluice to carry off water; the payment to the lord for the benefit of such a sluice. Cowell.

EXCLUSIVE. Shutting out; debarring from interference or participation; vested in one person alone. An exclusive right is one which only the grantee thereof can exercise, and from which all others are prohibited or shut out. A statute does not grant an "exclusive" privilege or franchise, unless it shuts out or excludes others from enjoying a similar privilege or franchise. 98 N. Y. 151.

EXCOMMUNICATION. Excommunication, (q. v.) Co. Litt. 131a.

EXCOMMUNICATION. A sentence of censure pronounced by one of the spiritual courts for offenses falling under ecclesiastical cognizance. It is described in the books as twofold: (1) The lesser excommunication, which is an ecclesiastical censure, excluding the party from the sacraments; (2) the greater, which excludes him from the company of all Christians. Formerly, too, an excommunicated man was under various civil disabilities. He could not serve upon juries, or be a witness in any court; neither could he bring an action to recover lands or money due to him. These penalties are abolished by St. 53 Geo. III. c. 127. 3 Steph. Comm. 721.

EXCOMMUNICATIO CPIANDO. In ecclesiastical law. A writ issuing out of chancery, founded on a bishop's certificate that the defendant had been excommunicated, and requiring the sheriff to arrest and imprison him, returnable to the king's bench. 4 Bl. Comm. 415; Bac. Abr. "Excommunication," E.

EXCOMMUNICATO DELIBERANDO. A writ to the sheriff for delivery of an excommunicated person out of prison, upon certificate from the ordinary of his conformity to the ecclesiastical jurisdiction. Fitzh. Nat. Brev. 63.

Excommunicato interdictur omnis actus legitimus, ita quod agere non potest, nec aliquem convenire, licet ipse ab aliis possit conveniri. Co. Litt. 133. Every legal act is forbidden an excommunicated person, so that he cannot act, nor sue any person, but he may be sued by others.

EXCOMMUNICATO RECAPIENDO. A writ commanding that persons excommunicated, who for their obstinacy had been committed to prison, but were unlawfully set free before they had given caution to obey the authority of the church, should be sought after, retaken, and imprisoned again. Reg. Orig. 67.

EXCULPATION, LETTERS OF. In Scotch law. A warrant granted at the suit of a prisoner for citing witnesses in his own defense.

EXCUSABLE HOMICIDE. In criminal law. The killing of a human being, either by misadventure or in self-defense. The name itself imports some fault, error, or omission, so trivial, however, that the law excuses it from the guilt of felony, though in strictness it regards it deserving of some little degree of punishment. 4 Bl. Comm. 182.

It is of two sorts,—either per infortunium, by misadventure, or se defendendo, upon a sudden affray. Homicide per infortunium is where a man, doing a lawful act, without any intention of hurt, unfortunately kills another; but, if death ensue from any unlawful act, the offense is manslaughter; and not misadventure. Homicide se defendendo is where a man kills another upon a sudden af fray, merely in his own defense, or in defense of his wife, child, parent, or servant, and not from any vindictive feeling. 4 Bl. Comm. 182.

Excusat aut extenuat delictum in capitalibus quod non operatur idem in civilibus. Bac. Max. r. 15. That may excuse or palliate a wrongful act in capital cases which would not have the same effect in civil injuries. See Broom, Max. 324.

EXCUSATIO. In the civil law. An excuse or reason which exempts from some duty or obligation.

EXCUSATOR. In English law. An excuser.
In old German law. A defendant; he who utterly denies the plaintiff’s claim. Du Cange.

Excusatur quis quod clamatum non opposuerit, ut si toto tempore litigii fuit ultra mare quacunque occasione. Co. Litt. 260. He is excused who does not bring his claim, if, during the whole period in which it ought to have been brought, he has been beyond sea for any reason.

EXCUSE. A reason alleged for doing or not doing a thing. Worcester.

A matter alleged as a reason for relief or exemption from some duty or obligation.

EXCUSS. To seize and detain by law.

EXCUSSIO. In the civil law. A diligent prosecution of a remedy against a debtor; the exhausting of a remedy against a principal debtor, before resorting to his sureties. Translated “discussion,” (q. v.)

In old English law. Rescue or rescous. Spelman.

EXEAT. A permission which a bishop grants to a priest to go out of his diocese; also leave to go out generally.

EXECUTE. To finish, accomplish, make complete, fulfill. To perform; obey the injunctions of.

To make; as to execute a deed, which includes signing, sealing, and delivery.

To perform; carry out according to its terms; as to execute a contract.

To fulfill the purpose of; to obey; to perform the commands of; as to execute a writ.

To fulfill the sentence of the law upon a person judicially condemned to suffer death.

A statute is said to execute a use where it transmutes the equitable interest of the cestui que use into a legal estate of the same nature, and makes him tenant of the land accordingly, in lieu of the feoffee to use or trustee, whose estate, on the other hand, is at the same moment annihilated. 1 Steph. Comm. 339.

EXECUTED. Completed; carried into full effect; already done or performed; taking effect immediately; now in existence or in possession; conveying an immediate right or possession. The opposite of executory.

EXECUTED CONSIDERATION. A consideration which is wholly past. 1 Pars. Cont. 391. An act done or value given before the making of the agreement.

EXECUTED CONTRACT. One where nothing remains to be done by either party, and where the transaction is completed at the moment that the agreement is made, as where an article is sold and delivered, and payment therefor is made on the spot. A contract is said to be executory where some future act is to be done, as where an agreement is made to build a house in six months, or to do an act on or before some future day, or to lend money upon a certain interest, payable at a future time. Story, Cont. 8.

EXECUTED ESTATE. An estate whereby a present interest passes to and resides in the tenant, not dependent upon any subsequent circumstance or contingency. They are more commonly called “estates in possession.” 2 Bl. Comm. 162.

An estate where there is vested in the grantee a present and immediate right of present or future enjoyment.

EXECUTED FINE. The fine sur cognizance de droit, come ceo que il ad de son done; or a fine upon acknowledgment of the right of the cognizee, as that which he has of the gift of the cognizor. Abolished by 3 & 4 Wm. IV. c. 74.

EXECUTED REMAINDER. A remainder which vests a present interest in the tenant, though the enjoyment is postponed to the future. 2 Bl. Comm. 168; Fearne, Rem. 31.

EXECUTED TRUST. A trust of which the scheme has in the outset been completely declared. Adams, Eq. 151. A trust in which the estates and interest in the subject-matter of the trust are completely limited and defined by the instrument creating the trust, and require no further instruments to complete them. Bisp. Eq. 20.

As all trusts are executory in this sense, that the trustee is bound to dispose of the estate according to the tenure of his trust, whether active or passive, it would be more accurate and precise to substitute the terms, “perfect” and “imperfect” for “executed” and “executory” trusts. 1 Hayes, Conv. 55.

EXECUTED USE. The first use in a conveyance upon which the statute of uses operates by bringing the possession to it, the combination of which, i. e., the use and the possession, form the legal estate, and thus the statute is said to execute the use. Wharton.

EXECUTED WRIT. In practice. A writ carried into effect by the officer to whom it is directed. The term “executed,” applied to a writ, has been held to mean “used.” Amb. 61.
EXECUTIO. Lat. The doing or following up of a thing; the doing a thing completely or thoroughly; management or administration.

In old practice. Execution; the final process in an action.

EXECUTIO BONORUM. In old English law. Management or administration of goods. *Ad ecclesiam et ad amicos pertinentiit execution bonorum,* the execution of the goods shall belong to the church and to the friends of the deceased. Bract. fol. 60b.

*EXECutio est executio juris secundum judicium.* 3 Inst. 212. Execution is the execution of the law according to the judgment.

*EXECutio juris non habet injuriam.* 2 Roll. 301. The execution of law does no injury.

EXECUTION. The completion, fulfillment, or perfecting of anything, or carrying it into operation and effect. The signing, sealing, and delivery of a deed. The signing and publication of a will. The performance of a contract according to its terms.

In practice. The last stage of a suit, whereby possession is obtained of anything recovered. It is styled "final process," and consists in putting the sentence of the law in force. 3 Bl. Comm. 412. The carrying into effect of the sentence or judgment of a court.

Also the name of a writ issued to a sheriff, constable, or marshal, authorizing and requiring him to execute the judgment of the court.

At common law, executions are said to be either *final or quousque;* the former, where complete satisfaction of the debt is intended to be procured by this process; the latter, where the execution is only a means to an end, as where the defendant is arrested on *ca. sa.*

In criminal law. The carrying into effect the sentence of the law by the infliction of capital punishment. 4 Bl. Comm. 403; 4 Steph. Comm. 470.

EXECUTION OF DECREES. Sometimes from the neglect of parties, or some other cause, it became impossible to carry a decree into execution without the further decree of the court upon a bill filed for that purpose. This happened generally in cases where, parties having neglected to proceed upon the decree, their rights under it became so embarrassed by a variety of subsequent events that it was necessary to have the decree of the court to settle and ascertain them. Such a bill might also be brought to carry into execution the judgment of an inferior court of equity, if the jurisdiction of that court was not equal to the purpose; as in the case of a decree in Wales, which the defendant avoided by fleeing into England. This species of bill was generally partly an original bill, and partly a bill in the nature of an original bill, though not strictly original. Story, Eq. Pl. 342; Daniell, Ch. Pr. 1429.

EXECUTION OF DEEDS. The signing, sealing, and delivery of them by the parties, as their own acts and deeds, in the presence of witnesses.

EXECUTION PAREE. In French law. A right founded on an act passed before a notary, by which the creditor may immediately, without citation or summons, seize and cause to be sold the property of his debtor, out of the proceeds of which to receive his payment. It imports a confession of judgment, and is not unlike a warrant of attorney. Code Proc. La. art. 732; 6 Toullier, no. 208; 7 Toullier, no. 99.


EXECUTIONE FACIENDA IN WITHERNIUM. A writ that lay for taking cattle of one who has conveyed the cattle of another out of the county, so that the sheriff cannot reply them. Reg. Orig. 82.

EXECUTIONE JUDICII. A writ directed to the judge of an inferior court to do execution upon a judgment therein, or to return some reasonable cause wherefore he delays the execution. Fitzh. Nat. Brev. 29.

EXECUTIONER. The name given to him who puts criminals to death, according to their sentence; a hangman.

EXECUTIVE. As distinguished from the legislative and judicial departments of government, the executive department is that which is charged with the detail of carrying the laws into effect and securing their due observance. The word "executive" is also
used as an impersonal designation of the chief executive officer of a state or nation.

Executive officer means an officer in whom resides the power to execute the laws. 4 Cal. 127, 146.

EXECUTIVE ADMINISTRATION, or MINISTRY. A political term in England, applicable to the higher and responsible class of public officials by whom the chief departments of the government of the kingdom are administered. The number of these amounts to fifty or sixty persons. Their tenure of office depends on the confidence of a majority of the house of commons, and they are supposed to be agreed on all matters of general policy except such as are specifically left open questions. Cab. Lawy.

EXECUTOR. A person appointed by a testator to carry out the directions and requests in his will, and to dispose of the property according to his testamentary provisions after his decease.

One to whom another man commits his last will the execution of that will and testament. 2 Bl. Comm. 523.

A person to whom a testator by his will commits the execution, or putting in force, of that instrument and its codicils. Fonbl. 307.

Executors are classified according to the following several methods:

They are either general or special. The former term denotes an executor who is to have charge of the whole estate, wherever found, and administer it to a final settlement; while a special executor is only empowered by the will to take charge of a limited portion of the estate, or such part as may lie in one place, or to carry on the administration only to a prescribed point.

They are either instituted or substituted. An instituted executor is one who is appointed by the testator without any condition; while a substituted executor is one named to fill the office in case the person first nominated should refuse to act.

In the phraseology of ecclesiastical law, they are of the following kinds:

Executor à lege constitutus, an executor appointed by law; the ordinary of the diocese.

Executor ab episcopo constitutus, or executor datus, an executor appointed by the bishop; an administrator to an intestate.

Executor à testatore constitutus, an executor appointed by a testator. Otherwise termed “executor testamentarius;” a testamentary executor.

An executor to the tenor is one who, though not directly constituted executor by the will, is therein charged with duties in relation to the estate which can only be performed by the executor.

In the civil law. A ministerial officer who executed or carried into effect the judgment or sentence in a cause. Calvin.

EXECUTOR DE SON TORT. Executor of his own wrong. A person who assumes to act as executor of an estate without any lawful warrant or authority, but who, by his intermeddling, makes himself liable as an executor to a certain extent.

If a stranger takes upon him to act as executor without any just authority, (as by intermeddling with the goods of the deceased, and many other transactions,) he is called in law an “executor of his own wrong,” de son tort. 2 Bl. Comm. 507.

EXECUTOR LUCRATUS. An executor who has assets of his testator who in his life-time made himself liable by a wrongful interference with the property of another. 6 Jur. (N. S.) 543.

EXECUTORY. That which is yet to be executed or performed; that which remains to be carried into operation or effect; incomplete; depending upon a future performance or event. The opposite of executed.

EXECUTORY BEQUEST. See Bequest.

EXECUTORY CONSIDERATION. A consideration which is to be performed after the contract for which it is a consideration is made.

EXECUTORY CONTRACT. A contract which is to be executed at some future time, and which conveys only a chose in action. 2 Bl. Comm. 443; 2 Kent, Comm. 511, 512, note. See Executed Contract.

EXECUTORY DEVISE. In a general sense, a devise of a future interest in lands, not to take effect at the testator’s death, but limited to arise and vest upon some future contingency. 1 Fearne, Rem. 382. A disposition of lands by will, by which no estate vests at the death of the deviser, but only on some future contingency. 2 Bl. Comm. 172.

In a stricter sense, a limitation by will of a future contingent interest in lands, contrary to the rules of the common law. 4 Kent, Comm. 268; 1 Steph. Comm. 564. A limitation by will of a future estate or interest in land, which cannot, consistently with the rules of law, take effect as a remainder. 2 Pow. Dev. (by Jarman,) 237.

By the executory devise no estate vests at the death of the deviser or testator, but only on the
EXECUTORY ESTATE

future contingency. It is only an indulgence to the last will and testament which is supposed to be made by one *testa consuetid. When the limitation by devise is such that the future interest falls within the rules of contingent remainders, it is a contingent remainder, and not an executory devise. 2 Bl. Comm. 172; 4 Kent, 257; 3 Term. 768.

EXECUTORY ESTATE. An estate or interest in lands, the vesting or enjoyment of which depends upon some future contingency. Such estate may be an executory devise, or an executory remainder, which is the same as a contingent remainder, because no present interest passes.

EXECUTORY FINES. These are the fines *sur cognizance de droit tautum; sur concussit; and sur don, grant et render. Abolished by 3 & 4 Wm. IV. c. 74.

EXECUTORY INTERESTS. A general term, comprising all future estates and interests in land or personally, other than reversions and remainders.

EXECUTORY LIMITATION. A limitation of a future interest by deed or will; if by will, it is also called an "executory devise."

EXECUTORY PROCESS. A process which can be resorted to in the following cases, namely: (1) When the right of the creditor arises from an act importing confession of judgment, and which contains a privilege or mortgage in his favor; (2) when the creditor demands the execution of a judgment which has been rendered by a tribunal different from that within whose jurisdiction the execution is sought. Code Prac. La. art. 792.

EXECUTORY TRUST. One which requires the execution of some further instrument, or the doing of some further act, on the part of the creator of the trust or of the trustee, towards its complete creation or full effect. An executed trust is one fully created and of immediate effect. These terms do not relate to the execution of the trust as regards the beneficiary.

EXECUTORY USES. These are springing uses, which confer a legal title answering to an executory devise; as when a limitation to the use of A. in fee is defeasible by a limitation to the use of B., to arise at a future period, or on a given event.

EXECUTRESS. A female executor. Hartr. 165, 473. See Executrix.

EXECUTRIX. A woman who has been appointed by will to execute such will or testament.

EXECUTRY. In Scotch law. The movable estate of a person dying, which goes to his nearest of kin. So called as falling under the distribution of an executor. Bell.

Exempla illustrant non restringunt legem. Co. Litt. 240. Examples illustrate, but do not restrain, the law.

EXEMPLARY DAMAGES. Damages on a punitive scale, given in respect of tortious acts, committed through malice or other circumstances of aggravation; damages designed not only as a compensation to the injured party, but also as a punishment to the wrong-doer for his violence, oppression, malice, or fraud.

EXEMPLI GRATIA. For the purpose of example, or for instance. Often abbreviated "ex. gr." or "e. g."

EXEMPLIFICATION. An official transcript of a document from public records, made in form to be used as evidence, and authenticated as a true copy.

EXEMPLIFICATIONE. A writ granted for the exemplification or transcript of an original record. Reg. Orig. 290.

EXEMPLUM. In the civil law. Copy; a written authorized copy. This word is also used in the modern sense of "example."—ad exemplum constituti singulares non trahit, exceptional things must not be taken for examples. Calvin.

EXEMPT, v. To relieve, excuse, or set free from a duty or service imposed upon the general class to which the individual exempted belongs; as to exempt from militia service. See 1 St. at Large, 273. To relieve certain classes of property from liability to sale on execution.

EXEMPT, n. One who is free from liability to military service; as distinguished from a detail, who is one belonging to the army, but detached or set apart for the time to some particular duty or service, and liable, at any time, to be recalled to his place in the ranks. 39 Ala. 379.

EXEMPTION. Freedom from a general duty or service; immunity from a general burden, tax, or charge. A privilege allowed by law to a judgment
debtor, by which he may hold property to a certain amount, or certain classes of property, free from all liability to levy and sale on execution or attachment.

EXEMPTION LAWS. Laws which provide that a certain amount or proportion of a debtor's property shall be exempt from execution.

EXEMPTION, WORDS OF. It is a maxim of law that words of exemption are not to be construed to import any liability; the maxim *expresso unitis exclusio alterius*, or its converse, *exclusio unitis inclusio alterius*, not applying to such a case. For example, an exemption of the crown from the bankruptcy act 1869, in one specified particular, would not inferentially subject the crown to that act in any other particular.

Brown.

EXEMPTS. Persons who are not bound by law, but excluded from the performance of duties imposed upon others.

EXENNIUM. In old English law. A gift; a new year's gift. Cowell.

EXEQUATOR. Lat. Let it be executed. In French practice, this term is subscribed by judicial authority upon a transcript of a judgment from a foreign country, or from another part of France, and authorizes the execution of the judgment within the jurisdiction where it is so indorsed.

In international law. A certificate issued by the foreign department of a state to a consul or commercial agent of another state, recognizing his official character, and authorizing him to fulfill his duties.

EXERCISE. To make use of. Thus, to exercise a right or power is to do something which it enables the holder to do.

EXERCITALIS. A soldier; vassal. Spelman.

EXERCITOR NAVIS. The temporary owner or charterer of a ship.

EXERCITORIA ACTIO. In the civil law An action which lay against the employer of a vessel (exercitor navis) for the contracts made by the master. Inst. 4, 7, 2; 3 Kent, Comm. 161.

EXERCITORIAL POWER. The trust given to a ship-master.

EXERCITAL. In old English law. A heriot paid only in arms, horses, or military accouterments.

EXERCITUS. In old European law. An army; an armed force. A collection of thirty-five men and upwards.

A gathering of forty-two armed men.

A meeting of four men. Spelman.

EXETER DOMESDAY. The name given to a record preserved among the manuscripts and charters belonging to the dean and chapter of Exeter Cathedral, which contains a description of the western parts of the kingdom, comprising the counties of Wilts, Dorset, Somerset, Devon, and Cornwall. The Exeter Domesday was published with several other surveys nearly contemporary, by order of the commissioners of the public records, under the direction of Sir Henry Ellis, in a volume supplementary to the Great Domesday, folio, London, 1816. Wharton.

EXFESTUCARE. To abdicate or resign; to resign or surrender an estate, office, or dignity, by the symbolical delivery of a staff or rod to the alienee.

EXFREDIARE. To break the peace; to commit open violence. Jacob.

EXHÆREDATIO. In the civil law. Disinheriting; disherison. The formal method of excluding an indigence (or forced) heir from the entire inheritance, by the testator's express declaration in the will that such person shall be *exhaires*. Mackeld. Rom. Law, § 711.

EXHÆRES. In the civil law. One disinherited. Vicat; Du Cange.

EXHÆREDATE. In Scotch law. To disinherit; to exclude from an inheritance.

EXHIBERE. To present a thing corporeally, so that it may be handled. Vicat. To appear personally to conduct the defense of an action at law.

EXHIBIT, v. To show or display; to offer or present for inspection. To produce anything in public, so that it may be taken into possession. Dig. 10, 4, 2.

To present; to offer publicly or officially; to file of record. Thus we speak of exhibiting a charge of treason, exhibiting a bill against an officer of the king's bench by way of proceeding against him in that court.

To administer; to cause to be taken; as medicines.

EXHIBIT, n. A paper or document produced and exhibited to a court during a trial or hearing, or to a commissioner taking depositions, or to auditors, arbitrators, etc.
as a voucher, or in proof of facts, or as otherwise connected with the subject-matter, and which, on being accepted, is marked for identification and annexed to the deposition, report, or other principal document, or filed of record, or otherwise made a part of the case.

A paper referred to in and filed with the bill, answer, or petition in a suit in equity, or with a deposition. 16 Ga. 68.

EXHIBITANT. A complainant in articles of the peace. 12 Adol. & E. 599.

EXHIBITIO BILLÆ. Lat. Exhibition of a bill. In old English practice, actions were instituted by presenting or exhibiting a bill to the court, in cases where the proceedings were by bill; hence this phrase is equivalent to "commencement of the suit."

EXHIBITION. In Scotch law. An action for compelling the production of writings.

In ecclesiastical law. An allowance for meat and drink, usually made by religious appropriators of churches to the vicar. Also the benefaction settled for the maintaining of scholars in the universities, not depending on the foundation. Paroch. Antiq. 304.

EXIGENCE. Demand, want, need, imperativeness.

EXIGENCY OF A BOND. That which the bond demands or exacts, i.e., the act, performance, or event upon which it is conditioned.

EXIGENCE OF A WRIT. The command or imperativeness of a writ: the directing part of a writ; the act or performance which it commands.

EXIGENDARY. In English law. An officer who makes out exignents.

EXIGENT, or EXIGI FACIAS. L. Lat. In English practice. A judicial writ made use of in the process of outlawry, commanding the sheriff to demand the defendant, (or cause him to be demanded, exigii faciat,) from county court to county court, until he be outlawed; or, if he appear, then to take and have him before the court on a day certain in term, to answer to the plaintiff's action. 1 Thld. Pr. 132; 3 Bl. Comm. 283, 284; Archb. N. Pr. 455. Now regulated by St. 2 Wm. IV. c. 39.

EXIGENTER. An officer of the English court of common pleas, whose duty it was to make out the exigents and proclamations in the process of outlawry. Cowell. Abolished by St. 7 Wm. IV. and 1 Vict. c. 30. Holthouse.

EXIGI FACIAS. That you cause to be demanded. The emphatic words of the Latin form of the writ of exigent. They are sometimes used as the name of that writ.

EXIGIBLE. Demandable; requirable.

EXILE. Banishment; the person banished.

EXILII. Lat. In old English law.

1. Exile; banishment from one's country.

2. Driving away; despoiling. The name of a species of waste, which consisted in driving away tenants or vassals from the estate: as by demolishing buildings, and compelling the tenants to leave, or by enfranchising the bond-servants, and unlawfully turning them out of their tenements. Fleta, L. 1, c. 9.

Exilium est patræ privatio, natalis soli mutatio, legum nativarum amissio. 7 Coke, 20. Exile is a privation of country, a change of natal soil, a loss of native laws.

EXISTIMATIO. In the civil law. The civil reputation which belonged to the Roman citizen, as such. Mackeld. Rom. Law, § 135. Called a state or condition of unimpeached dignity or character, (dignilatia inlusse status;) the highest standing of a Roman citizen. Dig. 50, 13, 5, 1.

Also the decision or award of an arbiter.

EXIT. Lat. It goes forth. This word is used in docket entries as a brief mention of the issue of process. Thus, "exit fl. fa." denotes that a writ of fleri facias has been issued in the particular case. The "exit of a writ" is the fact of its issuance.

EXIT WOUND. A term used in medical jurisprudence to denote the wound made by a weapon on the side where it emerges, after it has passed completely through the body, or through any part of it.

EXITUS. Children; offspring. The rents, issues, and profits of lands and tenements. An export duty. The conclusion of the pleadings.

EXLEGALITAS. In old English law. Outlawry. Spelman.

EXLEGALITAS. He who is prosecuted as an outlaw. Jacob.

EXLEGARE. In old English law. To outlaw; to deprive one of the benefit and
protection of the law, (exuere aliquem beneficio legis.) Spelman.


EXOINE. In French law. An act or instrument in writing which contains the reasons why a party in a civil suit, or a person accused, who has been summoned, agreeably to the requisitions of a decree, does not appear. Poth. Proc. Crim. § 3, art. 3. The same as "Essoin," (q. v.)

EXONERATION. The removal of a burden, charge, or duty. Particularly, the act of relieving a person or estate from a charge or liability by casting the same upon another person or estate.

A right or equity which exists between those who are successively liable for the same debt. "A surety who discharges an obligation is entitled to look to the principal for reimbursement, and to invoke the aid of a court of equity for this purpose, and a subsequent surety who, by the terms of the contract, is responsible only in case of the default of the principal and a prior surety, may claim exoneration at the hands of either." Bisp. Eq. § 331.

In Scotch law. A discharge; or the act of being legally disburdened of, or liberated from, the performance of a duty or obligation. Bell.

EXONERATIONE SECTÆ. A writ that lay for the crown's ward, to be free from all suit to the county court, hundred court, leet, etc., during wardship. Fitzh. Nat. Brev. 153.

EXONERATIONE SECTÆ AD CURIAM BARON. A writ of the same nature as that last above described, issued by the guardian of the crown's ward, and addressed to the sheriffs or stewards of the court, forbidding them to distress him, etc., for not doing suit of court, etc. New Nat. Brev. 352.

EXONERETUR. Lat. Let him be relieved or discharged. An entry made on a bail-piece, whereby the surety is relieved or discharged from further obligation, when the condition is fulfilled by the surrender of the principal or otherwise.

EXORDIUM. The beginning or introductory part of a speech.

EXPATRIATION. The voluntary act of abandoning one's country, and becoming the citizen or subject of another. See Emigration.

EXPECT. To await; to look forward to something intended, promised, or likely to happen.

EXPECTANCY. The condition of being deferred to a future time, or of dependence upon an expected event; contingency as to possession or enjoyment.

With respect to the time of their enjoyment, estates may either be in possession or in expectancy; and of expectancies there are two sorts,—one created by the act of the parties, called a "remainder;" the other by act of law, called a "reversion." 2 Bl. Comm. 163.

EXPECTANT. Having relation to, or dependent upon, a contingency.

EXPECTANT ESTATES. Interests to come into possession and be enjoyed in futuro. They are of two sorts at common law,—reversions and remainders. 2 Bl. Comm. 163.

EXPECTANT HEIR. A person who has the expectation of inheriting property or an estate, but small present means. The term is chiefly used in equity, where relief is afforded to such persons against the enforcement of "catching bargains," (q. v.)

EXPECTATION OF LIFE, in the doctrine of life annuities, is the share or number of years of life which a person of a given age may, upon an equality of chance, expect to enjoy. Wharton.

EXPEDIMENT. The whole of a person's goods and chattels, bag and baggage. Wharton.

Expedit reipublicae ne sua re quis maius utatur. It is for the interest of the state that a man should not enjoy his own property improperly, (to the injury of others.) Inst. 1, 8, 2.

Expedit reipublicae ut sit finis litium. It is for the advantage of the state that there be an end of suits; it is for the public good that actions be brought to a close. Co. Litt. 303b.

EXPEDITÆ ARBORES. Trees rooted up or cut down to the roots. Fleta, 1, 2, c. 41.
EXPEDITE. In forest law. To cut out the boll of a dog's forefoot, for the preservation of the royal game.

EXPEDITION. A cutting off the claws or boll of the forefeet of mastiffs, to prevent their running after deer. Spelman; Cowell.

EXPEDITIO. An expedition; an irregular kind of army. Spelman.

EXPEDITIO BREVIS. In old practice. The service of a writ. Townsh. Pl. 43.

EXPENDITORS. Paymasters. Those who expend or disburse certain taxes. Especially the sworn officer who supervised the repairs of the banks of the canals in Romney Marsh. Cowell.

EXPENSES LITIS. Costs or expenses of the suit, which are generally allowed to the successful party.

EXPENSIS MILITUM NON LEVANDIS. An ancient writ to prohibit the sheriff from levying any allowance for knights of the shire upon those who held lands in ancient demesne. Reg. Orig. 261.

Experiéménta per varios actus legem factis. Magistra rerum experimentia. Co. Litt. 60. Experience by various acts makes law. Experience is the mistress of things.

EXPERTS. Persons examined as witnesses in a case, who testify in regard to some professional or technical matter arising in the case, and who are permitted to give their opinions as to such matter on account of their special training, skill, or familiarity with it.

Persons selected by the court or parties in a case on account of their knowledge or skill, to examine, estimate, and ascertain things and make a report of their opinions. Merl. Repert.

Persons professionally acquainted with the science or practice in question. Strick. Ev. 408. Persons conversant with the subject-matter on questions of science, skill, trade, and others of like kind. Best, Ev. § 346.

An expert is a person who possesses peculiar skill and knowledge upon the subject-matter that he is required to give an opinion upon. 44 Vt. 266.

An expert is a skillful or experienced person; a person having skill or experience, or peculiar knowledge on certain subjects, or in certain professions; a scientific witness. 45 Me. 392; 52 Me. 68.

EXPILARE. In the civil law. To spoil; to rob or plunder. Applied to inheritances. Dig. 47, 19; Cod. 9, 32.

EXPILATION. In the civil law. The offense of unlawfully appropriating goods belonging to a succession. It is not technically theft (furtum) because such property no longer belongs to the decedent, nor to the heir, since the latter has not yet taken possession.

EXPILATOR. In the civil law. A robber; a spoiler or plunderer. Expilatores sunt atrociros fures. Dig. 47, 18, 1, 1.

EXPIRATION. Cessation; termination from mere lapse of time; as the expiration of a lease, or statute, and the like.

EXPIRY OF THE LEGAL. In Scotch law and practice. Expiration of the period within which an adjudication may be redeemed, by paying the debt in the decree of adjudication. Bell.

EXPLEES. See ESPLEES.

EXPLETA, EXPLETIA, or EXPLECIA. In old records. The rents and profits of an estate.

EXPLICATIO. In the civil law. The fourth pleading; equivalent to the surrejoinder of the common law. Calvin.

EXPLORATOR. A scout, huntsman, or chaser.

EXPLOSION. A sudden and rapid combustion, causing violent expansion of the air, and accompanied by a report.

The word "explosion" is variously used in ordinary speech, and is not one that admits of exact definition. Every combustion of an explosive substance, whereby another property is ignited and consumed, would not be an "explosion," within the ordinary meaning of the term. It is not used as a synonym of "combustion." An explosion may be described generally as a sudden and rapid combustion, causing violent expansion of the air, and accompanied by a report. But the rapidity of the combustion, the violence of the expansion, and the vehemence of the report vary in intensity as often as the occurrences multiply. Hence an explosion is an idea of degrees; and the true meaning of the word, in each particular case, must be settled, not by any fixed standard or accurate measurement, but by the common experience and notions of men in matters of that sort. 22 Ohio St. 340.

EXPORT, n. To send, take, or carry an article of trade or commerce out of the country. To transport merchandise from one country to another in the course of trade. To carry out or convey goods by sea. Vaughan, 171, 172; 5 Harr. 501.

EXPORT, n. A thing or commodity exported. More commonly used in the plural.
EXPORTATION. The act of sending or carrying goods and merchandise from one country to another.

EXPOSE, v. To show publicly; to exhibit.

EXPOSÉ, n. Fr. A statement; account; recital; explanation. The term is used in diplomatic language as descriptive of a written explanation of the reasons for a certain act or course of conduct.

EXPOSITIO. Explanation; exposition; interpretation.

Expositio que ex visceribus cause nascitur, est aptissima et fortissima in lege. That kind of interpretation which is born [or drawn] from the bowels of a cause is the ablest and most forcible in the law. 10 Coke, 246.

EXPOSITION. Explanation; interpretation.

EXPOSITION DE PART. In French law. The abandonment of a child, unable to take care of itself, either in a public or private place.

EXPOSURE OF PERSON. In criminal law. Such an intentional exposure, in a public place, of the naked body or the private parts as is calculated to shock the feelings of chastity or to corrupt the morals of the community.

EXPRESS. Made known distinctly and explicitly, and not left to inference or implication. Declared in terms; set forth in words. Manifested by direct and appropriate language, as distinguished from that which is inferred from conduct. The word is usually contrasted with "implied."

EXPRESS ABROGATION. Abrogation by express provision or enactment; the repeal of a law or provision by a subsequent one, referring directly to it.

EXPRESS ASSUMPSIT. An undertaking to do some act, or to pay a sum of money to another, manifested by express terms.

EXPRESS COLOR. An evasive form of special pleading in a case where the defendant ought to plead the general issue. Abolished by the common-law procedure act, 1852, (15 & 16 Vict. c. 76, § 64.)

EXPRESS COMPANY. A firm or corporation engaged in the business of transporting parcels or other movable property, in the capacity of common carriers.

EXPRESS CONSIDERATION. A consideration which is distinctly and specifically named in the written contract or in the oral agreement of the parties.

EXPRESS CONTRACT. A contract the terms of which are openly uttered or declared at the time of making it. 2 Bl. Comm. 413; 2 Steph. Comm. 110. A contract made in distinct and explicit language, or by writing; as distinguished from an implied contract. 2 Kent, Comm. 450.

EXPRESS MALICE. Actual malice; malice in fact; a deliberate intention to commit an injury, evidenced by external circumstances.

EXPRESS TRUST. A trust created or declared in express terms, and usually in writing, as distinguished from one inferred by the law from the conduct or dealings of the parties.

Express trusts are those which are created in express terms in the deed, writing, or will, while implied trusts are those which, without being expressed, are deductible from the nature of the transaction, as matters of intent, or which are superinduced upon the transactions by operation of law, as matters of equity, independently of the particular intention of the parties. 56 Barb. 633.

EXPRESS WARRANTY. One expressed by particular words. 2 Bl. Comm. 300.

In the law of insurance. An agreement expressed in a policy, whereby the assured stipulates that certain facts relating to the risk are or shall be true, or certain acts relating to the same subject have or shall be done. 1 Phil. Ins. (4th Ed.) p. 425.

Expressa nocent, non expressa non nocent. Things expressed are [may be] prejudicial; things not expressed are not. Express words are sometimes prejudicial, which, if omitted, had done no harm. Dig. 35, 1, 52; Id. 50, 17, 195. See Calvin.

Expressa non prosunt quae non expressa proderunt. 4 Coke, 73. The expression of things of which, if unexpressed, one would have the benefit, is useless.

Expressio eorum quae tacite insunt nihil operatur. The expression or express mention of those things which are tacitly implied avails nothing. 2 Inst. 365. A man's own words are void, when the law speaketh as much. Finch, Law. b. 1, c. 3, no. 26. Words used to express what the law will im-
 ply without them are mere words of abundance. 5 Coke, 11.

Expresio uniun est exclusio alterius. The expression of one thing is the exclusion of another. Co. Litt. 210a. The express mention of one thing [person or place] implies the exclusion of another.

Expresio uniun personae est exclusio alterius. Co. Litt. 210. The mention of one person is the exclusion of another. See Broom, Max. 651.

Expressum factum cessare tacitum. That which is expressed makes that which is implied to cease, [that is, supersedes it, or controls its effect.] Thus, an implied covenant in a deed is in all cases controlled by an express covenant. 4 Coke, 80; Broom, Max. 651.

Expressum servitium regat vel declarat tacitum. Let service expressed rule or declare what is silent.

EXPROMISSIO. In the civil law. The species of novation by which a creditor accepts a new debtor, who becomes bound instead of the old, the latter being released. 1 Bouv. Inst. no. 802.

EXPROMISSOR. In the civil law. A person who assumes the debt of another, and becomes solely liable for it, by a stipulation with the creditor. He differs from a surety, inasmuch as this contract is one of novation, while a surety is jointly liable with his principal. Mackeld. Rom. Law, § 538.

EXPROMITTERE. In the civil law. To undertake for another, with the view of becoming liable in his place. Calvin.

EXPROPRIATION. This word properly denotes a voluntary surrender of rights or claims; the act of divesting oneself of that which was previously claimed as one's own, or renouncing it. In this sense it is the opposite of "appropriation." But a meaning has been attached to the term, imported from its use in foreign jurisprudence, which makes it synonymous with the exercise of the power of eminent domain, i. e., the compulsory taking from a person, on compensation made, of his private property for the use of a railroad, canal, or other public work.

In French law. Expropriation is the compulsory realization of a debt by the creditor out of the lands of his debtor, or the usufruct thereof. When the debtor is co-tenant with others, it is necessary that a partition should first be made. It is confined, in the first place, to the lands (if any) that are in hypothéque, but afterwards extends to the lands not in hypothéque. Moreover, the debt must be of a liquidated amount. Brown.

EXPULSION. A putting or driving out. The act of depriving a member of a corporation, legislative body, assembly, society, commercial organization, etc., of his membership in the same, by a legal vote of the body itself, for breach of duty, improper conduct, or other sufficient cause.

EXPUNGЕ. To blot out; to efface designedly; to obliterate; to strike out wholly. Webster.

EXPURGATION. The act of purging or cleansing, as where a book is published without its obscene passages.

EXPURGATOR. One who corrects by expurgating.

EXQUESTOR. In Roman law. One who had filled the office of questor. A title given to Tribonian. Inst. proem. § 3. Used only in the ablative case, (exquestore.)

EXROGARE. (From ex, from, and rogare, to pass a law.) In Roman law. To take something from an old law by a new law. Tayl. Civil Law, 155.

EXTEND. In English practice. To value the lands or tenements of a person bound by a statute or recognizance which has become forfeited, to their full extended value. 3 Bl. Comm. 420; Fitzh. Nat. Brev. 131. To execute the writ of extend or extendi facias, (q. v.) 2 Tidd, Pr. 1043, 1044.

In taxation. Extending a tax consists in adding to the assessment roll the precise amount due from each person whose name appears thereon. "The subjects for taxation having been properly listed, and a basis for apportionment established, nothing will remain to fix a definite liability but to extend upon the list or roll the several proportionate amounts, as a charge against the several taxables." Cooley, Tax'n, (2d Ed.) 423.

EXTENDI FACIAS. Lat. You cause to be extended. In English practice. The name of a writ of execution, (derived from its two emphatic words) more commonly called an "extend." 2 Tidd, Pr. 1043; 4 Steph. Comm. 43.

EXTENSION. In mercantile law. An allowance of additional time for the payment of debts. An agreement between a debtor and his creditors, by which they allow him
EXTENSION OF PATENT. An extension of the life of a patent for an additional period of seven years, formerly allowed by law in the United States, upon proof being made that the inventor had not succeeded in obtaining a reasonable remuneration from his patent-right. This is no longer allowed, except as to designs. See Rev. St. U. S. § 4924.

EXTENSORES. In old English law. Extenders or appraisers. The name of certain officers appointed to appraise and divide or apportion lands. It was their duty to make a survey, schedule, or inventory of the lands, to lay them out under certain heads, and then to ascertain the value of each, as preparatory to the division or partition. Bract. fols. 726, 75; Britt. c. 71.

EXTENT. In English practice. A writ of execution issuing from the exchequer upon a debt due the crown, or upon a debt due a private person, if upon recognizance or statute merchant or staple, by which the sheriff is directed to appraise the debtor's lands, and, instead of selling them, to set them off to the creditor for a term during which the rental will satisfy the judgment.

In Scotch practice. The value or valuation of lands. Bell.

The rents, profits, and issues of lands. Skene.

EXTENT IN AID. In English practice. That kind of extent which issues at the instance and for the benefit of a debtor to the crown, for the recovery of a debt due to himself. 2 Tidd, Pr. 1045; 4 Steph. Comm. 47.

EXTENT IN CHIEF. In English practice. The principal kind of extent, issuing at the suit of the crown, for the recovery of the crown's debt, 4 Steph. Comm. 47. An adverse proceeding by the king, for the recovery of his own debt. 2 Tidd, Pr. 1045.

EXTENTA MANERII. (The extent or survey of a manor.) The title of a statute passed 4 Eliz. I. St. 1; being a sort of direction for making a survey or terrier of a manor, and all its appendages. 2 Reeve, Eng. Law, 140.

EXTENUATE. To lessen; to palliate; to mitigate.

EXTENUATING CIRCUMSTANCES. Such as render a delict or crime less aggravated, heinous, or reprehensible than it would otherwise be, or tend to palliate or lessen its guilt. Such circumstances may ordinarily be shown in order to reduce the punishment or damages.

EXTERRITORIALITY. The privilege of those persons (such as foreign ministers) who, though temporarily resident within a state, are not subject to the operation of its laws.

EXTERUS. Lat. A foreigner or alien; one born abroad. The opposite of civis.

Externus non habet jussa. An alien holds no lands. Tray. Lat. Max. 203.

EXTINCT. Extinguished. A rent is said to be extinguished when it is destroyed and put out. Co. Litt. 1478. See Extinguishment.

Extincto subjecto, tollitur adjunctum. When the subject is extinguished, the incident ceases. Thus, when the business for which a partnership has been formed is completed, or brought to an end, the partnership itself ceases. Inst. 3, 26, 6; 3 Kent, Comm. 52, note.

EXTINGUISHMENT. The destruction or cancellation of a right, power, contract, or estate. The annihilation of a collateral thing or subject in the subject itself out of which it is derived. Prest. Merq. 9. For the distinction between an extinguishment and passing a right, see 2 Shars. Bl. Comm. 325, note.

"Extinguishment" is sometimes confounded with "merger," though there is a clear distinction between them. "Merger" is only a mode of extinguishment, and applies to estates only under particular circumstances; but "extinguishment" is a term of general application to rights, as well as estates. 2 Crabb, Real Prop. p. 307, § 1857.

EXTINGUISHMENT OF COMMON. Loss of the right to have common. This may happen from various causes.

EXTINGUISHMENT OF COPY-HOLD. In English law. A copyhold is said to be extinguished when the freehold and copyhold interests unite in the same person and in the same right, which may be either by the copyhold interest coming to the freehold or by the freehold interest coming to the copyhold. 1 Crabb, Real Prop. p. 670, § 864.

EXTINGUISHMENT OF DEBTS. This takes place by payment; by accord and satisfaction; by novation, or the substitution of a new debtor; by merger, when the creditor recovers a judgment or accepts a
security of a higher nature than the original obligation; by a release; by the marriage of a *feme sole* creditor with the debtor, or of an obligee with one of two joint obligors; and where one of the parties, debtor or creditor, makes the other his executor.

**EXTINGUISHMENT OF RENT.** If a person have a yearly rent of lands, and afterwards purchase those lands, so that he has as good an estate in the land as in the rent, the rent is extinguished. Termes de la Ley; Cowell: Co. Litt. 147. Rent may also be extinguished by conjunction of estates, by confirmation, by grant, by release, and by surrender. 1 Crabb, Real Prop. pp. 210-213, § 299.

**EXTINGUISHMENT OF WAYS.** This is usually effected by unity of possession. As if a man have a way over the close of another, and he purchase that close, the way is extinguished. 1 Crabb, Real Prop. p. 341, § 384.

**EXTIRPATION.** In English law. A species of destruction or waste, analogous to estrepment. See Estrepment.

**EXTIRPATIONE.** A judicial writ, either before or after judgment, that lay against a person who, when a verdict was found against him for land, etc., maliciously overthrew any house or extirpated any trees upon it. Reg. Jud. 13, 56.

**EXTOCRARE.** In old records. To grub woodland, and reduce it to arable or meadow; “to stock up.” Cowell.

**EXTORSIVELY.** A technical word used in indictments for extortion.

It is a sufficient averment of a corrupt intent, in an indictment for extortion, to allege that the defendant “extorsively” took the unlawful fee. 35 Ark. 438.

**EXTORT.** The natural meaning of the word “extort” is to obtain money or other valuable thing either by compulsion, by actual force, or by the force of motives applied to the will, and often more overpowering and irresistible than physical force. 12 Cush. 90.

Extortio est crimen quando quis colore officii extorquet quod non est debitum, vel supra debitum, vel ante tempus quod est debitum. 10 Coke, 102. Extortion is a crime when, by color of office, any person extorts that which is not due, or more than is due, or before the time when it is due.

**EXTORTION.** Any oppression by color or pretense of right, and particularly the exactio by an officer of money, by color of his office, either when none at all is due, or not so much is due, or when it is not yet due. 4 Conn. 450.

Extortion consists in any public officer unlawfully taking, by color of his office, from any person any money or thing of value that is not due to him, or more than his due. Code Ga. 1882, § 4507.

Extortion is the obtaining of property from another, with his consent, induced by wrongful use of force or fear, or under color of official right. Pen. Code Cal. § 518; Pen. Code Dak. § 608.

Extortion is an abuse of public justice, which consists in any officer unlawfully taking, by color of his office, from any man any money or thing of value that is not due to him, or before it is due. 4 Bl. Comm. 141.

Extortion is any oppression under color of right. In a stricter sense, the taking of money by any officer, by color of his office, when none, or not so much, is due, or it is not yet due. 1 Hawk P. C. (Curw. Ed.) 418.

It is the corrupt demanding or receiving by a person in office of a fee for services which should be performed gratuitously; or, where compensation is permissible, of a larger fee than the law justifies, or a fee not due. 2 Bish. Crim. Law, § 990.

The distinction between “bribery” and “extortion” seems to be this: the former offense consists in the offering a present, or receiving one, if offered; the latter, in demanding a fee or present, by color of office. Jacob.

For the distinction between “extortion” and “exactio,” see EXACTION.

**EXTRA.** A Latin preposition, occurring in many legal phrases; it means beyond, except, without, out of, outside.

**EXTRA COSTS.** In English practice. Those charges which do not appear upon the face of the proceedings, such as witnesses’ expenses, fees to counsel, attendances, court fees, etc., an affidavit of which must be made, to warrant the master in allowing them upon taxation of costs. Wharton.

**EXTRA-DOTAL PROPERTY.** In Louisiana this term is used to designate that property which forms no part of the dowry of a woman, and which is also called “paraphernal property.” Civil Code La. art. 2315.

**EXTRA FEODUM.** Out of his fee; out of the seigniory, or not holden of him that claims it. Co. Litt. 19; Reg. Orig. 976.

**EXTRA-JUDICLUM.** Extrajudicial; out of the proper cause; out of court; beyond the jurisdiction. See EXTRA-JUDICIAL.
EXTRA JUS. Beyond the law; more than the law requires. In jure, vel extra jus. Bract. fol. 169b.

EXTRA LEGEM. Out of the law; out of the protection of the law.

Extra legem postitus est civiliter mortuus. Co. Litt. 130. He who is placed out of the law is civilly dead.

EXTRA PRESENTIAM MARITI. Out of her husband's presence.

EXTRA QUATUOR MARIA. Beyond the four seas; out of the kingdom of England. 1 Bl. Comm. 457.

EXTRA REGNUM. Out of the realm. 7 Coke, 16a; 2 Kent, Comm. 42, note.

EXTRA SERVICES, when used with reference to officers, means services incident to the office in question, but for which compensation has not been provided by law. 21 Ind. 32.

EXTRA-TERRITORIALITY. The extra-territorial operation of laws; that is, their operation upon persons, rights, or jural relations, existing beyond the limits of the enacting state, but still amenable to its laws.

EXTRA TERRITORIUM. Beyond or without the territory. 6 Bin. 353; 2 Kent, Comm. 407.

Extra territorium jus dicenti impune non paretur. One who exercises jurisdiction out of his territory is not obeyed with impunity. Dig. 2, 1, 20; Branch, Princ.; 10 Coke, 77. He who exercises judicial authority beyond his proper limits cannot be obeyed with safety.

EXTRA VIAM. Outside the way. Where the defendant in trespass pleaded a right of way in justification, and the replication alleged that the trespass was committed outside the limits of the way claimed, these were the technical words to be used.

EXTRA VIRES. Beyond powers. See Ultra Vires.

EXTRACT. A portion or fragment of a writing. In Scotch law, the certified copy, by a clerk of a court, of the proceedings in an action carried on before the court, and of the judgment pronounced; containing also an order for execution or proceedings thereupon. Jacob; Whishaw.

EXTRACTA CURIE. In old English law. The issues or profits of holding a court, arising from the customary fees, etc.

EXTRADITION. The surrender of a criminal by a foreign state to which he has fled for refuge from prosecution to the state within whose jurisdiction the crime was committed, upon the demand of the latter state, in order that he may be dealt with according to its laws. Extradition may be accorded as a mere matter of comity, or may take place under treaty stipulations between the two nations. It also obtains as between the different states of the American Union.

Extradition between the states must be considered and defined to be a political duty of imperfect obligation, founded upon compact, and requiring each state to surrender one who, having violated the criminal laws of another state, has fled from its justice, and is found in the state from which he is demanded, on demand of the executive authority of the state from which he fled. Abbott.

EXTRAHURA. In old English law. An animal wandering or straying about, without an owner; an estray. Spelman.

EXTRAJUDICIAL. That which is done, given, or effected outside the course of regular judicial proceedings; not founded upon, or unconnected with, the action of a court of law; as extrajudicial evidence, an extrajudicial oath.

That which, though done in the course of regular judicial proceedings, is unnecessary to such proceedings, or interpolated, or beyond their scope; as an extrajudicial opinion, (dictum.) That which does not belong to the judge or his jurisdiction, notwithstanding which he takes cognizance of it.

EXTRANEUS. In old English law. One foreign born; a foreigner. 7 Coke, 16.

In Roman law. An heir not born in the family of the testator. Those of a foreign state. The same as alienus. Viscount; Du Cange.

Extraneus est subditus qui extra terram, i.e., potestatem regis natus est. 7 Coke, 16. A foreigner is a subject who is born out of the territory, i.e., government of the king.

EXTRAORDINARY. The write of mandamus, quo warranto, habeas corpus, and some others are sometimes called "extraordinary remedies," in contradistinction to the ordinary remedy by action.

EXTRAORDINARY CARE is synonymous with greatest care, utmost care, highest degree of care. 54 Ill. 19. See CARE, DILIGENCE; NEGLIGENCE.
EXTRAPAROCHIAL. Out of a parish; not within the bounds or limits of any parish. 1 Bl. Comm. 113, 284.

EXTRAVAGANTES. In canon law. Those decretal epistles which were published after the Clementines. They were so called because at first they were not digested or arranged with the other papal constitutions, but seemed to be, as it were, detached from the canon law. They continued to be called by the same name when they were afterwards inserted in the body of the canon law. The first extravagantes are those of Pope John XXII., successor of Clement V. The last collection was brought down to the year 1483, and was called "Common Extravagantes," notwithstanding they were likewise incorporated with the rest of the canon law. Enc. Lond.

EXTREME HAZARD. To constitute extreme hazard, the situation of a vessel must be such that there is imminent danger of her being lost, notwithstanding all the means that can be applied to get her off. 1 Conn. 421.

EXTREMIS. When a person is sick beyond the hope of recovery, and near death, he is said to be in extremis.

Extremis probatis, præsumuntur media. Extremes being proved, intermediate things are presumed. Tray. Lat. Max. 207.

EXTRINSIC. Foreign; from outside sources; dehors.

EXTUMÆ. In old records. Relics. Cowell.

EXUERE PATRIAM. To throw off or renounce one's country or native allegiance; to expatriate one's self. Philim. Dom. 18.

EXULARE. In old English law. To exile or banish. Nullus liber homo, exuletur, nisi, etc., no freeman shall be exiled, unless, etc. Magna Charta, c. 29; 2 Inst. 47.

EXUPERARE. To overcome; to apprehend or take. Leg. Edm. c. 2.

EYDE. A watery place; water. Co. Litt. 6.

EYDE. Aid; assistance; relief. A subsidy.

EYE-WITNESS. One who saw the act, fact, or transaction to which he testifies. Distinguished from an ear-witness, (auritus.)

EYO. A small island arising in a river. Fleta, 1. 3, c. 2, § b; Bract. 1. 2, c. 2.

EYRE. Justices in eyre were judges commissioned in Anglo-Norman times in England to travel systematically through the kingdom, once in seven years, holding courts in specified places for the trial of certain descriptions of causes.

EYRER. L. Fr. To travel or journey; to go about or itinerate. Britt. c. 2.

EZARDAR. In Hindu law. A farmer or renter of land in the districts of Hindoo-stan.