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

F. O. B. Free on board. A term frequently inserted, in England, in contracts for the sale of goods to be conveyed by ship, meaning that the cost of shipping will be paid by the buyer. When goods are so sold in London the buyer is considered as the shipper, and the goods when shipped are at his risk. Wharton.

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

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

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

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

FABRICATION EVIDENCE. Evidence manufactured or arranged after the fact, and either wholly false or else warped and discolored by artifice and contrivance with a deceitful intent. See FABRICATE.

FABRICATED FACT. In the law of evidence. A fact existing only in statement, without any foundation in truth. An actual or genuine fact to which a false appearance has been designedly given; a physical object placed in a false connection with another, or with a person on whom it is designed to cast suspicion. See FABRICATE.

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

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

FAC SIMILE PROBATE. In England, where the construction of a will may be affected by the appearance of the original paper, the court will order the probate to pass in fac simile, as it may possibly help to show the meaning of the testator. 1 Williams, Ex's, (7th Ed.) 331, 336, 506.

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

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

FACERE. Lat. To do; to make. Thus, facere defaltam, to make default; facere duelum, to make the duel, or make or do battle; facere finem, to make or pay a fine; facere lagem, to make one's law; facere sacramentum, to make oath.

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

FACIENDO. In doing or paying; in some activity.

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

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

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

Facinus quo inquinat sequatur. Guilt makes equal those whom it stains.

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

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

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

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

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

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

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

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

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

As to the classification of facts, see Dispositive Facts.

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

Facts. Facta et casus, facts and cases. Bract. fol. 16.

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

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

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

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

FACTO. In fact; by an act; by the act or fact. Ipso facto, by the act itself; by the mere effect of a fact, without anything superadded, or any proceeding upon it to give it effect. 3 Kent, Comm. 55, 58.
FACTOR. A commercial agent, employed by a principal to sell merchandise consigned to him for that purpose, for and in behalf of the principal, but usually in his own name, being intrusted with the possession and control of the goods, and being remunerated by a commission, commonly called "factorage."

A factor is an agent who, in the pursuit of an independent calling, is employed by another to sell property for him, and is vested by the latter with the possession or control of the property, or authorized to receive payment therefor from the purchaser. Civil Code Cal. § 2026; Civil Code Dak. § 1165.

When the agent accompanies the ship, taking a cargo aboard, and it is consigned to him for sale, and he is to purchase a return cargo out of the proceeds, such agent is properly called a "factor." He is, however, usually known by the name of a "supercargo." Bow. Lex. Mor. 44, 47; Liverm. Ag. 69, 70; 1 Domat, b. 1, t. 16, § 3, art. 2.

Factors are called "domestic" or "foreign," according as they reside in the same country with the principal or in a different country.

A "factor" is distinguished from a "broker" by being intrusted with the possession, management, and control of the goods, and by being authorized to buy and sell in his own name, as well as in that of his principal. Russ. Fact. 4; Story, Ag. § 33; 2 Steph. Comm. 127; 2 Barn. & Ald. 137, 143; 2 Kent, Comm. 622, note.

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

FACTORAGE. The allowance or commission paid to a factor by his principal. Russ. Fact. 1; Tomlins.


FACTORS' ACTS. The name given to several English statutes (6 Geo. IV. c. 94: 5 & 6 Vict. c. 39; 40 & 41 Vict. c. 39) by which a factor is enabled to make a valid pledge of the goods, or of any part thereof, to one who believes him to be the bona fide owner of the goods.

FACTORY. In English law. The term includes all buildings and premises wherein, or within the close or curtilage of which, steam, water, or any mechanical pow-
FACTUM A JUDICE QUOD, ETC. 471  FAILING OF RECORD

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

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

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

FACTUM JURIDICUM. A juridical fact. Denotes one of the factors or elements constituting an obligation.

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

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

FACTUM PROBANDUM. Lat. In the law of evidence. The fact to be proved; a fact which is in issue, and to which evidence is to be directed. 1 Greenl. Ev. § 13.

FACTUM PROBANS. A probative or evidentiary fact; a subsidiary or connected fact tending to prove the principal fact in issue; a piece of circumstantial evidence.

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

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

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

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

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

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

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

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

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

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

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

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

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

FAIL. The difference between "fail" and "refuse" is that the latter involves an act of the will, while the former may be an act of inevitable necessity. 9 Wheat. 344.

FAILING OF RECORD. When an action is brought against a person who alleges
in his plea matter of record in bar of the action, and averse to prove it by the record, but the plaintiff saith *null titel record, viz., denies there is any such record, upon which the defendant has a day given him by the court to bring it in, if he fail to do it, then he is said to fail of his record, and the plaintiff is entitled to sign judgment. *Ternes de la Ley.

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

**FAILURE.** In legal parlance, the neglect of any duty may be described as "failure." But in the language of the business world this term, applied to a merchant or mercantile concern, means an inability to pay his or their debts, from insolvency, and the word must be regarded as synonymous with "insolvency." 1 Rice, 140.

According to other authorities, "failure," in this sense, means a failure to meet current obligations at maturity. Insolvency looks to the ability to pay; failure to the fact of payment. Failure is the outward act which stands for evidence of insolvency. 13 S. C. 226. See, also, 10 Blatchf. 256; 24 Conn. 310.

**FAILURE OF CONSIDERATION.** The want or failure of a consideration sufficient to support a note, contract, or conveyance. It may be either partial or entire.

**FAILURE OF EVIDENCE.** Judicially speaking, a total "failure of evidence" means not only the utter absence of all evidence, but it also means a failure to offer proof, either positive or inferential, to establish one or more of the many facts, the establishment of *all* of which is indispensable to the finding of the issue for the plaintiff. 7 Gill & J. 28.

**FAILURE OF ISSUE.** The failure at a fixed time, or the total extinction, of issue to take an estate limited over by an executory devise.

A definite failure of issue is when a precise time is fixed by the will for the failure of issue, as in the case where there is a devise to one, but if he dies without issue or lawful issue living at the time of his death, etc. An indefinite failure of issue is the period when the issue or descendants of the first taker shall become extinct, and when there is no longer any issue of the issue of the grantee, without reference to any particular time or any particular event. 30 Ind. 546.

An executory devise to take effect on an indefinite failure of issue is void for remoteness, and hence courts are at ease to devise some construction which shall restrain the failure of issue to the term of limitation allowed. 40 Pa. St. 19; 3 Relf. Wills, 276, note.

**FAILURE OF JUSTICE.** The defeat of a particular right, or the failure of reparation for a particular wrong, from the lack of a legal remedy for the enforcement of the one or the redress of the other.

**FAILURE OF RECORD.** Failure of the defendant to produce a record which he has alleged and relied on in his plea.

**FAILURE OF TITLE.** The inability or failure of a vendor to make good title to the whole or a part of the property which he has contracted to sell.

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

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

**FAIR, n.** In English law. A greater species of market; a privileged market. It is an incorporeal hereditament, granted by royal patent, or established by prescription presupposing a grant from the crown. In the earlier English law, the franchise to hold a fair conferred certain important privileges; and fairs, as legally recognized institutions, possessed distinctive legal characteristics. Most of these privileges and characteristics, however, are now obsolete. In America, fairs, in the ancient technical sense, are unknown, and, in the modern and popular sense, they are entirely voluntary and non-legal, and transactions arising in or in connection with them are subject to the ordinary rules governing sales, etc.

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

**FAIR-PLAY MEN.** A local irregular tribunal which existed in Pennsylvania about the year 1793, as to which see Serg. Land Laws Pa. 77; 2 Smith, Laws Pa. 195.

**FAIR PLEADER.** See BEAUPLEADER.
FAIRLY. Justly; rightly; equitably. With substantial correctness.

"Fairly" is not synonymous with "truly," and "truly" should not be substituted for it in a commissioner's oath to take testimony fairly. Language may be truly, yet unfairly, reported; that is, an answer may be truly written down, yet in a manner conveying a different meaning from that intended and conveyed. And language may be fairly reported, yet not in accordance with strict truth. 17 N. J. Ez. 294.

FAIT. L Fr. Anything done. A deed; act; fact.
A deed lawfully executed. Com. Dig.
Feme de fait. A wife de facto.

FAIT ENROLLE. A deed enrolled, as a bargain and sale of freeholds. 1 Keb. 568.

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

FAITH. 1. Confidence; credit; reliance. Thus, an act may be said to be done "on the faith" of certain representations.
2. Belief; credence; trust. Thus, the constitution provides that "full faith and credit" shall be given to the judgments of each state in the courts of the others.
3. Purpose; intent; sincerity; state of knowledge or design. This is the meaning of the word in the phrases "good faith" and "bad faith."

In Scotch law. A solemn pledge; an oath. "To make faith" is to swear, with the right hand uplifted, that one will declare the truth. 1 Forb. Inst. pt. 4, p. 235.

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

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

FALCARE. In old English law. To mow. Falcare prata, to mow or cut grass in meadows laid in for hay. A customary service to the lord by his inferior tenants. Jus falcandi, the right of cutting wood. Bract. fol. 231.

Falcata, grass fresh mown, and laid in swathes.
Faleatio, a mowing. Bract. fols. 35b, 230.
Falcator, a mower; a servile tenant who performed the labor of mowing.
Falcatura, a day's mowing.

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

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

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

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

FALDA. Span. In Spanish law. The slope or skirt of a hill. 2 Wall. 673.

FALDE CURSUS. In old English law. A fold-course; the course (going or taking about) of a fold. Spelman.
A sheep walk, or feed for sheep. 2 Vent. 139.

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

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

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

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

FALDSOCA. Sax. The liberty or privilege of foldage.

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

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

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

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

FALK-LAND. See FOLC-LAND.

FALL. In Scotch law. To lose. To fall from a right is to lose or forfeit it. 1 Kames, Eq. 223.

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

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

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

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

FALSA DEMONSTRATIO. In the civil law. False designation; erroneous description of a person or thing in a written instrument. Inst. 2, 20, 30.

Falsa demonstratio non nocet, cum de corpore (persona) constat. False description does not injure or vitiate, provided the thing or person intended has once been sufficiently described. Mere false description does not make an instrument inoperative. Broom, Max. 629; 6 Term, 676; 11 Mees. & W. 189; 2 Story, 291.

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

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

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

Falsa orthographia non vitiat chartam, [concessio-nem.] False spelling does not vitiate a deed. Shep. Touch. 55, 87; 9 Coke, 48a; Wing. Max. 19.

FALSARE. In old English law. To counterfeit. Quia falsarit sigillum, be-

cause he counterfeited the seal. Bract. fol. 276b.


FALSE. Untrue; erroneous; deceitful, contrived or calculated to deceive and injure. Unlawful.

In law, this word means something more than untrue; it means something designedly untrue and deceitful, and implies an intention to perpetrate some treachery or fraud. 18 U. C. C. P. 19; 7 Amer. & Eng. Enc. Law, 661.

FALSE ACTION. See FEIGNED A-

CTION.

FALSE CHARACTER. Personating the master or mistress of a servant, or any representative of such master or mistress, and giving a false character to the servant, is an offense punishable in England with a fine of £20. St. 32 Geo. III. c. 56.

FALSE CLAIM, in the forest law, was where a man claimed more than his due, and was amerced and punished for the same. Manw. c. 25; Tomlins.

FALSE FACT. In the law of evidence. A feigned, simulated, or fabricated fact; a fact not founded in truth, but existing only in assertion; the deceitful semblance of a fact.

FALSE IMPRISONMENT. The unlawful arrest or detention of a person without warrant, or by an illegal warrant, or a warrant illegally executed, and either in a prison or a place used temporarily for that purpose, or by force and constraint without confinement.

False imprisonment consists in the unlawful detention of the person of another, for any length of time, whereby he is deprived of his personal liberty. Code Ga. 1852, § 2900; Pen. Code Cal. § 236.

The term is also used as the name of the action which lies for this species of injury. 3 Bl. Comm. 138.

FALSE JUDGMENT. In old English law. A writ which lay when a false judgment had been pronounced in a court not of record, as a county court, court baron, etc. Fitzh. Nat. Brev. 17, 18.

In old French law. The defeated party in a suit had the privilege of accusing the judges of pronouncing a false or corrupt judgment, whereupon the issue was determined by his challenging them to the com-
bat or duellum. This was called the "appeal of false judgment." Montesq. Esprit des Lois, liv. 28, c. 27.

FALSE LATIN. When law proceedings were written in Latin, if a word were significant though not good Latin, yet an indictment, declaration, or fine should not be made void by it; but if the word were not Latin, nor allowed by the law, and it were in a material point, it made the whole vicious. (6 Coke, 121; 2 Nels. 539.) Wharton.

FALSE LIGHTS AND SIGNALS. Lights and signals falsely and maliciously displayed for the purpose of bringing a vessel into danger.

FALSE NEWS. Spreading false news, whereby discord may grow between the queen of England and her people, or the great men of the realm, or which may produce other mischiefs, still seems to be a misdemeanor, under St. 3 Edw. 1. c. 34. Steph. Cr. Dig. § 95.

FALSE OATH. See Perjury.

FALSE PERSONATION. The criminal offense of falsely representing some other person and acting in the character thus unlawfully assumed, in order to deceive others, and thereby gain some profit or advantage, or enjoy some right or privilege belonging to the one so personated, or subject him to some expense, charge, or liability. See 4 Steph. Comm. 181, 290.

FALSE PLEA. See Sham Plea.

FALSE PRETENSES. In criminal law. False representations and statements, made with a fraudulent design to obtain money, goods, wares, or merchandise, with intent to cheat. 2 Bouv. Inst. no. 2308.

A representation of some fact or circumstance, calculated to mislead, which is not true. 19 Pick. 184.

False statements or representations made with intent to defraud, for the purpose of obtaining money or property.

A pretense is the holding out or offering to others something false and feigned. This may be done either by words or actions, which amount to false representations. In fact, false representations are inseparable from the idea of a pretense. Without a representation which is false there can be no pretense. 48 Iowa, 182.

FALSE REPRESENTATION. See Fraud; Deceit.

FALSE RETURN. A return to a writ, in which the officer charged with it falsely reports that he served it, when he did not, or makes some other false or incorrect statement, whereby injury results to a person interested.

FALSE SWARING. The misdemeanor committed in English law by a person who swears falsely before any person authorized to administer an oath upon a matter of public concern, under such circumstances that the false swearing would have amounted to perjury if committed in a judicial proceeding; as where a person makes a false affidavit under the bills of sale acts. Steph. Cr. Dig. p. 84.

FALSE TOKEN. In criminal law. A false document or sign of the existence of a fact, used with intent to defraud, for the purpose of obtaining money or property.

FALSE VERDICT. An untrue verdict. Formerly, if a jury gave a false verdict, the party injured by it might sue out and prosecute a writ of attainder against them, either at common law or on the statute 11 Hen. VII. c. 24, at his election, for the purpose of reversing the judgment and punishing the jury for their verdict: but not where the jury erred merely in point of law, if they found according to the judge's direction. The practice of setting aside verdicts and granting new trials, however, so superseded the use of attaints that there is no instance of one to be found in the books of reports later than in the time of Elizabeth, and it was altogether abolished by 6 Geo. IV. c. 50, § 60. Wharton.

FALSE WEIGHTS. False weights and measures are such as do not comply with the standard prescribed by the state or government, or with the custom prevailing in the place and business in which they are used. 7 Amer. & Eng. Enc. Law, 796.

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

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

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

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

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

**Falsification.** In equity practice. The showing an item in the debit of an account to be either wholly false or in some part erroneous. 1 Story, Eq. Jur. § 525.

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

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

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

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


Making or proving false.

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

**Falso Retorno Breuium.** A writ which formerly lay against the sheriff who had execution of process for false returning of writs. Reg. Jud. 436.

**Falsonarius.** A forger; a counterfeiter. Hov. 424.

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

**Falsus.** False; fraudulent; erroneous. Deceitful; mistaken.

**Falsus in uno, falsus in omnibus.** False in one thing, false in everything. Where a party is clearly shown to have embezzled one article of property, it is a ground of presumption that he may have embezzled others also. 1 Sumn. 329, 356; 7 Wheat. 338.

**Fama.** Fame; character; reputation; report of common opinion.

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

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

**Famacide.** A killer of reputation; a slanderer.

**Familia.** In Roman law. A household; a family. On the composition of the Roman family, see Agnati; Cognati; and see Mackeld. Rom. Law, § 144.

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

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

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

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

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


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

A husband and wife living together may constitute a “family,” within the meaning of that word as used in a homestead law. (Fla.) 7 South. Rep. 140.

“Family,” in its origin, meant “servants;” but, in its more modern and comprehensive meaning, it signifies a collective body of persons living together in one house, or within the curtilage, in legal phrase. 31 Tex. 677.

“Family” may mean children, wife and children, blood-relatives, or the members of the domestic circle, according to the construction in which the word is used. 11 Paigo, 159.

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

FAMILY ARRANGEMENT. A term denoting an agreement between a father and his children, or between the heirs of a deceased father, to dispose of property, or to partition it in a different manner than that which would result if the law alone directed it, or to divide up property without administration.

In these cases, frequently, the mere relation of the parties will give effect to bargains otherwise without adequate consideration. 1 Chit. Pr. 67; 1 Turn. & R. 13

FAMILY BIBLE. A Bible containing a record of the births, marriages, and deaths of the members of a family.

FAMILY MEETING. An institution of the laws of Louisiana, being a council of the relatives (or, if there are no relatives, of the friends) of a minor, for the purpose of advising as to his affairs and the administration of his property. The family meeting is called by order of a judge, and presided over by a justice or notary, and must consist of at least five persons, who are put under oath.

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

FAMOUS LIBELLUS. A libelous writing. A term of the civil law denoting that species of injuria which corresponds nearly to libel or slander.

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

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

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

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

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

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

FARDELLA. In old English law. A bundle or pack; a farde. Fleta, lib. 1, c. 22, § 10.

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

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

The price of passage, or the sum paid or to be paid for carrying a passenger. 26 N. Y. 526.
FARINAGIUM. A mill; a toll of meal or flour. Jacob; Spelman.

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

FARLINGARII. Whoremongers and adulterers.

FARM. A certain amount of provision reserved as the rent of a message. Spelman.

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

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

A portion of land used for agricultural purposes, either wholly or in part. 18 Pick. 553; 2 Bin. 238.

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

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

In American law. "Farm" denotes a tract of land devoted in part, at least, to cultivation, for agricultural purposes, without reference to its extent, or to the tenure by which it is held. 2 Bin. 238.

FARM LET. Operative words in a lease, which strictly mean to let upon payment of a certain rent in farm; i.e., in agricultural produce.

FARM OUT. To let for a term at a stated rental. Among the Romans the collection of revenue was farmed out, and in England taxes and tolls sometimes are.

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

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

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

FARO. An unlawful game of cards, in which all the other players play against the banker or dealer, staking their money upon the order in which the cards will lie and be dealt from the pack. Webster.


FARRIER. One whose business is to shoe horses for all such as apply to him.

FARTHING. The fourth part of an English penny.

FARTHING OF GOLD. An ancient English coin, containing in value the fourth part of a noble.

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

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

FASIIUS. A faggot of wood.

FAST. In Georgia, a "fast" bill of exceptions is one which may be taken in injunction suits and similar cases, at such time and in such manner as to bring the case up for review with great expedition. It must be certified within twenty days from the rendering of the decision. 66 Ga. 333.

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

FAST ESTATE. Real property. A term sometimes used in wills. 6 Johns. 185; 9 N. Y. 502.

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

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

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

FATHER. The male parent. He by whom a child is begotten.
FATHER-IN-LAW. The father of one's wife or husband.

FATHOM. A nautical measure of six feet in length.

FATUA MULIER. A whore. Du Fresne.

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

FATUITY. Mental weakness; foolishness; imbecility; idiocy.

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

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

FATUUS. An idiot or fool. Bract. fol. 426b.

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

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

Fatuus presumitur qui in proprio nomine errat. A man is presumed to be simple who makes a mistake in his own name. Code, 6, 24, 14; 5 Johns. Ch. 148, 161.

FAUBOURG. In old English law, and in Louisiana. A district or part of a town adjoining the principal city; a suburb. See 18 La. 286.

FAUCES TERRÆ. (Jaws of the land.) Narrow headlands and promontories, inclosing a portion or arm of the sea within them. 1 Kent, Comm. 367, and note; Hale, De Jure Mar. 10; 1 Story, 251, 259.

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

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

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

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


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

"Faux may be understood in three ways. In its most extended sense it is the alteration of truth, with or without intention; it is nearly synonymous with "lying." In a less extended sense, it is the alteration of truth, accompanied with fraud, mutatio veritatis sum dolo facto. And Lastly, in a narrow, or rather the legal, sense of the word, when it is a question to know if the faux be a crime, it is the fraudulent alteration of the truth in those cases ascertained and punished by the law." Toullier, t. 9, n. 188.

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

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

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

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

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

Favores ampliandi sunt; odia restringenda. Jenk. Cent. 186. Favors are to be enlarged; things hateful restrained.
FEAL. Faithful. Tenants by knight service swore to their lords to be feal and leal; i.e., faithful and loyal.

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

FEALTY. In feudal law. Fidelity; allegiance to the feudal lord of the manor; the feudal obligation resting upon the tenant or vassal by which he was bound to be faithful and true to his lord, and render him obedience and service.

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

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

FEAR. Apprehension of harm.

Apprehension of harm or punishment, as exhibited by outward and visible marks of emotion. An evidence of guilt in certain cases. See Burris, Circ. Ev. 476.

FEASANCE. A doing; the doing of an act.

A making; the making of an indenture, release, or obligation. Litt. § 371; Dyer, (Fr. Ed.) 556. The making of a statute. Keilw. 16.

FEASANT. Doing, or making.

FEASOR. Doer; maker. Fessors del estatute, makers of the statute. Dyer, 3b.

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

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

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

In American law. Belonging to the general government or union of the states.

Founded on or organized under the constitution or laws of the United States.

The United States has been generally styled, in American political and judicial writings, a "federal government." The term has not been imposed by any specific constitutional authority, but only expresses the general sense and opinion upon the nature of the form of government. In recent years, there is observable a disposition to employ the term "national" in speaking of the government of the Union. Neither word settles anything as to the nature or powers of the government. "Federal" is somewhat more appropriate if the government is considered a union of the states; "national" is preferable if the view is adopted that the state governments and the Union are two distinct systems, each established by the people directly, one for local and the other for national purposes. See 92 U. S. 542; Abbott.

FEDERAL GOVERNMENT. The system of government administered in a state formed by the union or Confederation of several independent or quasi independent states; also the composite state so formed.

In strict usage, there is a distinction between a confederation and a federal government. The former term denotes a league or permanent alliance between several states, each of which is fully sovereign and independent, and each of which retains its full dignity, organization, and sovereignty, though yielding to the central authority a controlling power for a few limited purposes, such as external and diplomatic relations. In this case, the component states are the units, with respect to the confederation, and the central government acts upon them, not upon the individual citizens. In a federal government, on the other hand, the allied states form a union.—not, indeed, to such an extent as to destroy their separate organization or deprive them of quasi sovereignty with respect to the administration of their purely local concerns, but so that the central power is erected into a true state or nation, possessing sovereignty both external and in-
ternal,—while the administration of national affairs is directed, and its effects felt, not by the separate states deliberating as units, but by the people of all, in their collective capacity, as citizens of the nation. The distinction is expressed, by the German writers, by the use of the two words "Staatenbund" and "Bundesstaat," the former denoting a league or confederation of states, and the latter a federal government, or state formed by means of a league or confederation.

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

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

In modern English tenures, a fee signifies an estate of inheritance, and a fee-simple imports an absolute inheritance, clear of any condition or limitation whatever, and, when not disposed of by will, descends to the heirs generally. There are also limited fees: (1) Qualified or base fees; and (2) fees conditional at the common law. A base fee was confined to a person as tenant of a particular place. A conditional fee was restrained to particular heirs, as to the heirs of a man's body. 11 Wend. 290, 277.

A determinable fee is one which may possibly continue indefinitely, but which is liable to be determined. Plowd. 557.

A qualified (or base) fee is one which has a qualification subjoined thereto, and which must be determined whenever the qualification annexed to it is at an end. 2 Bl. Comm. 109.

A conditional fee, at the common law, was a fee restrained to some particular heirs exclusive of others. These afterwards became estates tail. 2 Bl. Comm. 110.

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

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

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4. In American law. A fee is an estate of inheritance without condition, belonging to the owner, and alienable by him, or transmissible to his heirs absolutely and simply. It is an absolute estate in perpetuity, and the largest possible estate a man can have, being, in fact, alodial in its nature.

5. A reward or wages given to one for the execution of his office, or for professional services, as those of a counsellor or physician. Cowell.

FEE-BILL. A schedule of the fees to be charged by clerks of courts, sheriffs, or other officers, for each particular service in the line of their duties.

FEE EXPECTANT. An estate where lands are given to a man and his wife, and the heirs of their bodies.

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

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

Fee-farms are lands held in fee to render for them annually the true value, or more or less; so called because a farm rent is reserved upon a grant in fee. Such estates are estates of inheritance. They are classed among estates in fee-simple. No reversionary interest remains in the lessor, and they are therefore subject to the operation of the legal principles which forbid restraints upon alienation in all cases where no feudal relation exists between grantor and grantee. 6 N. Y. 407, 497.

FEE-FARM RENT. The rent reserved on granting a fee-farm. It might be one-fourth the value of the land, according to Cowell; one-third, according to other authors. Spelman: Termes de la Ley; 2 Bl. Comm. 43.

Fee-farm rent is a rent-charge issuing out of an estate in fee; a perpetual rent reserved on a conveyance in fee-simple. 6 N. Y. 407, 495.

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

In American law. An absolute or fee-simple estate is one in which the owner is entitled to the entire property, with unconditional power of disposition during his life, and descending to his heirs and legal representatives upon his death intestate. Code Ga. 1882, § 2249.

Fee-simple signifies a pure fee; an absolute estate of inheritance; that which a person holds inheritable to him and his heirs general forever. It is called "fee-simple," that is, "pure," because clear of any condition or restriction to particular heirs, being descendible to the heirs general, whether male or female, lineal or collateral. It is the largest estate and most extensive interest that can be enjoyed in land, being the entire property therein, and it confers an unlimited power of alienation. 42 Vt. 666.

A fee-simple is the largest estate known to the law, and, where no words of qualification or limitation are added, it means an estate in possession, and owned in severalty. It is undoubtedly true that a person may own a remainder or reversion in fee. But such an estate is not a fee-simple; it is a fee qualified or limited. So, when a person owns in common with another, he does not own the entire fee,—a fee simple; it is a fee divided or shared with another. 51 Me. 436.

**FEE-SIMPLE CONDITIONAL.** This estate, at the common law, was a fee restrained to some particular heirs, exclusive of others. But the statute De Donis converted all such into estates tail. 2 Bl. Comm. 110.

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

**FEED.** To lend additional support; to strengthen *ex post facto*. "The interest when it accrues feeds the estoppel." 5 Mood. & R. 292.

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

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

**FEIGNED ACTION.** In practice. An action brought on a pretended right, when the plaintiff has no true cause of action, for some illegal purpose. In a feigned action the words of the writ are true. It differs from *false action*, in which case the words of the writ are false. Co. Litt. 361.

**FEIGNED DISEASES.** Simulated maladies. Diseases are generally feigned from one of three causes,—fear, shame, or the hope of gain.

**FEIGNED ISSUE.** An issue made up by the direction of a court of equity, (or by consent of parties,) and sent to a common-law court, for the purpose of obtaining the verdict of a jury on some disputed matter of fact which the court has not jurisdiction, or is unwilling, to decide. It rests upon a suppositional wager between the parties. See 3 Bl. Comm. 452.

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

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

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

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

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

**FELLOW-SERVANTS.** "The decided weight of authority is to the effect that all who serve the same master, work under the same control, derive authority and compensation from the same common source, and are engaged in the same general business, though it may be in different grades or departments of it, are fellow-servants, who take the risk of each other's negligence." 2 Thomp. Neg. p. 1026. § 31.
Persons who are employed under the same master, derive authority and compensation from the same common source, and are engaged in the same general business, although one is a foreman of the work and the other a common laborer, are fellow-servants. 76 Me. 143.

Where two servants are employed by the same master, labor under the same control, derive their authority and receive their compensation from a common source, and are engaged in the same business, though in different departments of the common service, they are fellow-servants. 62 Tex. 597.

FELO DE SE. A felon of himself; a suicide or murderer of himself. One who deliberately and intentionally puts an end to his own life, or who commits some unlawful or malicious act which results in his own death.

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

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


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

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

FELONIOUS HOMICIDE. In criminal law. The offense of killing a human creature, of any age or sex, without justification or excuse. There are two degrees of this offense, manslaughter and murder. 4 Bl. Comm. 188, 190; 4 Steph. Comm. 108, 111.

FELONIOUSLY. An indispensable word in modern indictments for felony, as felonice was in the Latin forms. 4 Bl. Comm. 307.

FELONY. In English law. This term meant originally the state of having forfeited lands and goods to the crown upon conviction for certain offenses, and then, by transition, any offense upon conviction for which such forfeiture followed, in addition to any other punishment prescribed by law; as distinguished from a "misdemeanor," upon conviction for which no forfeiture followed. All indictable offenses are either felonies or misdemeanors, but a material part of the distinction is taken away by St. 33 & 34 Vict. c. 23, which abolishes forfeiture for felony. Wharton.

In American law. The term has no very definite or precise meaning, except in some cases where it is defined by statute. For the most part, the state laws, in describing any particular offense, declare whether or not it shall be considered a felony. Apart from this, the word seems merely to imply a crime of a graver or more atrocious nature than those designated as "misdemeanors."

The statutes or codes of several of the states define felony as any public offense on conviction of which the offender is liable to be sentenced to death or to imprisonment in a penitentiary or state prison. Pub. St. Mass. 1882, p. 1290; Code Ala. 1886, § 3701; Code Ga. 1882, § 3404; 34 Ohio St. 301; 1 Wis. 188; 2 Rev. St. N. Y. p. 557, § 30; 1 Park. Crim. R. 39.

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

FELONY ACT. The statute 33 & 34 Vict. c. 23, abolishing forfeitures for felony, and sanctioning the appointment of interim curators and administrators of the property of felons. Mozley & Whitley; 4 Steph. Comm. 10, 459.

FELONY, COMPOUNDING OF. See COMPOUNDING FELONY.

FEMALE. The sex which conceives and gives birth to young. Also a member of such sex.

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

FEME COVERT. A married woman. Generally used in reference to the legal disabilities of a married woman, as compared with the condition of a feme sole.

FEME SOLE. A single woman, including those who have been married, but whose marriage has been dissolved by death or divorce, and, for most purposes, those women who are judicially separated from their hus-

**FEME SOLE TRADER.** In English law. A married woman, who, by the custom of London, trades on her own account, independently of her husband; so called because, with respect to her trading, she is the same as a *feme sole*. Jacob; Cro. Car. 68.

The term is applied also to women deserted by their husbands, who do business as *femae sole*. 1 Pet. 105.

**FEMICIDE.** The killing of a woman. Wharton.

**FEMININE.** Of or pertaining to females, or the female sex.

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

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

**FENCE, n.** A hedge, structure, or partition, erected for the purpose of inclosing a piece of land, or to divide a piece of land into distinct portions, or to separate two contiguous estates. See 63 Me. 308; 77 Ill. 169.

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

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

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

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

**FEOD.** The same as *feud* or *fief*, being the right which the vassal had in land, or some immovable property of his lord, to use the same and take the profits thereof, rendering unto the lord such duties and services as belonged to the particular tenure; the actual property in the soil always remaining in the lord. Spel. Feuds & Tenures.

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

**FEODAL ACTIONS.** Real actions; so called in the old books, as originally relating to *feoda*, *fees*, or estates in land. Mirr. c. 2, § 6; 3 Bl. Comm. 117.

**FEODAL SYSTEM.** See Feudal System.

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

**FEODARUM CONSuetudines.** The customs of feuds. The name of a compilation of feudal laws and customs made at Milan in the twelfth century. It is the most ancient work on the subject, and was always regarded, on the continent of Europe, as possessing the highest authority.

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

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

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

**FEODI FIRMARIUS.** The lessee of a fee-farm.

**FEODUM.** This word *(meaning a fee or fee)* is the one most commonly used by the older English law-writers, though its equivalent, “*feudum*,” is used generally by the more modern writers and by the *feodal* law-writers. Litt. § 1; Spelman. There were various classes of *feoda*, among which may be enumerated the following: *Feodum lacum*, a lay fee. *Feodum militare*, a knight’s
fee. *Feodum impropreum*, an improper or derivative fee. *Feodum proprium*, a proper and original fee, regulated by the strict rules of feudal succession and tenure. *Feodum simplex*, a simple or pure fee; fee-simple. *Feodum talliatum*, a fee-tail. See 2 Bl. Comm. 55, 62; Litt. §§ 1, 13; Bract. fol. 175; Glan. 13, 23.


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

**FEODUM ANTIQUUM.** A feud which devolved upon a vassal from his intestate ancestor.

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

**FEODUM NOBILE.** A fief for which the tenant did guard and owed homage. Spelman.

**FEODUM NOVUM.** A feud acquired by a vassal himself.

*Feodum simplex quia feodum idem est quod hereditas, et simplex idem est quod legitimum vel purum; et sic feodum simplex idem est quod hereditas legitima vel hereditas pura.* Litt. § 1.

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

*Feodum talliatum, i.e., hereditas in quandam certitudinem limitata.* Litt. § 13. Fee-tail, i.e., an inheritance limited in a definite descent.

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

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

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

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

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

**FEOFFEE TO USES.** A person to whom land was conveyed for the use of a third party. The latter was called "cestui que use."

**FEOFFMENT.** The gift of any corporeal hereditament to another, (2 Bl. Comm. 310,) operating by transmutation of possession, and requiring, as essential to its completion, that the seisin be passed, (Watk. Conv. 183,) which might be accomplished either by investiture or by livery of seisin. 1 Washb. Real Prop. 33.

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

A feoffment originally meant the grant of a *feud* or *fee*; that is, a barony or knight's fee, for which certain services were due from the feoffee to the feoffor. This was the proper sense of the word; but by custom it came afterwards to signify also a grant (with livery of seisin) of a free inheritance to a man and his heirs, referring rather to the perpetuity of the estate than to the feudal tenure. 1 Reeve, Eng. Law, 90, 91. It was for ages the only method (in ordinary use) for conveying the freehold of land in possession, but has now fallen in great measure into disuse, even in England, having been almost entirely supplanted by some of that class of conveyances founded on the statute law of the realm. 1 Steph. Comm. 497, 468.

**FEOFFMENT TO USES.** A feoffment of lands to one person to the use of another.

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

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

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

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

**FERÆ BESTIÆ.** Wild beasts.

**FERÆ NATURE.** Lat. Of a wild nature or disposition. Animals which are by nature wild are so designated, by way of distinction from such as are naturally tame, the latter being called "domita nature."

**FERCOSTA.** Ital. A kind of small vessel or boat. Mentioned in old Scotch law, and called "fercost." Skene.
FERDELLA TERRÆ. A fardel-land; ten acres; or perhaps a yard-land. Cowell.


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

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

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

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

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

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

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

FERLINGATA. A fourth part of a yardland.

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

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

FERME. A farm; a rent; a lease; a house or land, or both, taken by indenture or lease. Plowd. 196; Vitat. See FARM.

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

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

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

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

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

FERRATOR. A farrier, (q. c.)

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

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

Literally speaking, it is the price or fare fixed by law for the transportation of the traveling public, with such goods and chattels as they may have with them, across a river, bay, or lake. 50 Cal. 606.


FERRY. A liberty to have a boat upon a river for the transportation of men, horses, and carriages with their contents, for a reasonable toll. The term is also used to designate the place where such liberty is exercised. See 42 Me. 9; 4 Mart. (N. S.) 426.

"Ferry" properly means a place of transit across a river or arm of the sea; but in law it is treated as a franchise, and defined as the exclusive right to carry passengers across a river, or arm of the sea, from one vill to another, or to connect a continuous line of road leading from one township or vill to another. It is not a servitude or easement. It is wholly unconnected with the ownership or occupation of land, so much so that the owner of the ferry need not have any property in the soil adjacent on either side. (13 C. B., N. S., 83.) Brown.

FERRYMAN. One employed in taking persons across a river or other stream, in boats or other contrivances, at a ferry. 3 Ala. 160; 8 Dana, 158.

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

Festinatio justitiae est noverca infortunii. Hob. 97. Hasty justice is the stepmother of misfortune.

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

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

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

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

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

FEU. In Scotch law. A holding or tenure where the vassal, in place of military service, makes his return in grain or money. Distinguished from "wardholding," which is the military tenure of the country. Bell.

FEU ANNUALS. In Scotch law. The reddendo, or annual return from the vassal to a superior in a feu holding.


FEU HOLDING. In Scotch law. A holding by tenure of rendering grain or money in place of military service. Bell.

FEUAR. In Scotch law. The tenant of a feu; a feu-vassal. Bell.

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

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

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

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

FEUDA. Feuds or fees.

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

FEUDAL ACTIONS. An ancient name for real actions, or such as concern real property only. 3 Bl. Comm. 117.

FEUDAL LAW. The body of jurisprudence relating to feuds; the real-property law of the feudal system; the law anciently regulating the property relations of lord and vassal, and the creation, incidents, and transmission of feudal estates.

The body of laws and usages constituting the "feudal law" was originally customary and unwritten, but a compilation was made in the twelfth century, called "Feodarum Consuetudines," which has formed the basis of later digests. The feudal law prevailed over Europe from the twelfth to the fourteenth century, and was introduced into England at the Norman Conquest, where it formed the entire basis of the law of real property until comparatively modern times. Survivals of the feudal law, to the present day, so affect and color that branch of jurisprudence as to require a certain knowledge of the feudal law in order to the perfect comprehension of modern tenures and rules of real-property law.

FEUDAL POSSESSION. The equivalent of "seisin" under the feudal system.

FEUDAL SYSTEM. The system of feuds. A political and social system which prevailed throughout Europe during the eleventh, twelfth, and thirteenth centuries, and is supposed to have grown out of the peculiar usages and policy of the Teutonic nations who overran the continent after the fall of the Western Roman Empire, as developed by the exigencies of their military domination, and possibly furthered by notions taken from the Roman jurisprudence. It was introduced into England, in its completeness, by William I., A. D. 1085, though it may have existed in a rudimentary form among the Saxons before the Conquest. It formed the entire basis of the real-property law of England in medieval times; and survivals of the system, in modern days, so modify and color that branch of jurisprudence, both in England and America, that many of its principles require for their complete understanding a knowledge of the feudal system. The feudal system originated in the relations of a military chieftain and his followers, or king and nobles, or lord and vassals, and especially their relations as de-
terminated by the bond established by a grant
of land from the former to the latter. From
this it grew into a complete and intricate
complex of rules for the tenure and transmis-
sion of real estate, and of correlated duties
and services; while, by tying men to the
land and to those holding above and below
them, it created a close-knit hierarchy of per-
sons, and developed an aggregate of social
and political institutions.

For an account of the feudal system in its
juridical relations, see 2 Bl. Comm. 44; 1
Steph. Comm. 160; 3 Kent, Comm. 457; Spel.
Feuds; Litt. Ten.; Sull. Lect.; Spence, Eq.
Jur.; 1 Washb. Real Prop. 15; Dair. Feu.
Prop. For its political and social relations,
see Hall. Middle Ages; Maine, Anc. Law;
30; Guizot, Hist. Civilization.

FEUDAL TENURES. The tenures of
real estate under the feudal system, such as
knight-service, socage, villenage, etc.

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

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

FEUDARY. A tenant who holds by
feudal tenure. Held by feudal service. Re-
lating to fees or feudal tenures.

FEUDATORY. See FEUDATORY.

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

FEUDE, or DEADLY FEUDE. A
German word, signifying implacable hatred,
not to be satisfied but with the death of the
enemy. Such was that among the people in
Scotland and in the northern parts of Eng-
land, which was a combination of all the
kindred to revenge the death of any of the blood
upon the slayer and all his race. Termes de
la Ley.

FEUDIST. A writer on feuds, as Cuja-
cius, Spelman, etc.

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

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

FEUDUM ANTIQUUM. An ancient
feud or fief; a fief descended to the vassal
from his ancestors. 2 Bl. Comm. 212, 221.
A fief which ancestors had possessed for more
than four generations. Spelman.

FEUDUM APERTUM. An open feud
or fief; a fief resulting back to the lord, where
the blood of the person last seized was utterly
extinct and gone. 2 Bl. Comm. 245.

FEUDUM FRANCUM. A free feud.
One which was noble and free from tallage and
other subsidies to which the peculia
feuda (vulgar feuds) were subject. Spel-
man.

FEUDUM HAUBERTICUM. A fee
held on the military service of appearing fully
armed at the ban andarrière ban. Spelman.

FEUDUM IMPROPRIUM. An im-
proper or derivative feud or fief. 2 Bl.
Comm. 58.

FEUDUM INDIVIDUUM. An indivi-
isible or impartible feud or fief; descendible
to the eldest son alone. 2 Bl. Comm. 215.

FEUDUM LIGIUM. A liege feud or
fief; a fief held immediately of the sovereign;
one for which the vassal owed fealty to his
lord against all persons. 1 Bl. Comm. 367;
Spelman.

FEUDUM MATERNUM. A maternal
fief; a fief descended to the feudatory from
his mother. 2 Bl. Comm. 212.

FEUDUM NOBILE. A fee for which
the tenant did guard and owed fealty and
homage. Spelman.

FEUDUM NOVUM. A new feud or
fief; a fief which began in the person of the
feudatory, and did not come to him by suc-

FEUDUM NOVUM UT ANTIQUUM.
A new fee held with the qualities and inci-
dents of an ancient one. 2 Bl. Comm. 212.

FEUDUM PATERNUM. A fee which
the paternal ancestors had held for four gen-
erations. Calvin. One descendible to heirs
on the paternal side only. 2 Bl. Comm. 223.
One which might be held by males only. Du
Cange.

FEUDUM PROPRIUM. A proper,
genuine, and original feud or fief; being of a
purely military character, and held by mili-
tary service. 2 Bl. Comm. 57, 58.

FEUDUM TALLIATUM. A restricted
fee. One limited to descend to certain classes

FEW. An indefinite expression for a small or limited number. In cases where exact description is required, the use of this word will not answer. 53 Vt. 600; 2 Car. & P. 300.

FI. FA An abbreviation for flieris factas, (which see.)

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

FIANZA. In Spanish law. A surety or guarantor; the contract or engagement of a surety.

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

FIARS PRICES. The value of grain in the different counties of Scotland, fixed yearly by the respective sheriffs, in the month of February, with the assistance of juries. These regulate the prices of grain stipulated to be sold at the fiair prices, or when no price has been stipulated. Ersk. 1, 4, 6.

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

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

Fiat jus, ruat justitia. Let law prevail, though justice fail.

FIAT JUSTITIA. Let justice be done. On a petition to the king for his warrant to bring a writ of error in parliament, he writes on the top of the petition, "Fiat justitia," and then the writ of error is made out, etc. Jacob.

Fiat justitia, ruat cœlum. Let right be done, though the heavens should fail.

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

FIAT UT PETITUR. Let it be done as it is asked. A form of granting a petition.

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

"Fictio" in the old Roman law was properly a term of pleading, and signified a false averment on the part of the plaintiff which the defendant was not allowed to traverse; as that the plaintiff was a Roman citizen, when in truth he was a foreigner. The object of the fiction was to give the court jurisdiction. Maine, Anc. Law, 35.

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

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

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

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

Fictio legis neminem iœdit. A fiction of law injures no one. 2 Rolle, 502; 3 Bl. Comm. 43; 17 Johns. 348.

FICTION. An assumption or supposition of law that something which is or may be false is true, or that a state of facts exists which has never really taken place.

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

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

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

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

FICTITIOUS ACTION. An action brought for the sole purpose of obtaining the
opinion of the court on a point of law, not for the settlement of any actual controversy between the parties.

Courts of justice were constituted for the purpose of deciding really existing questions of right between parties; and they are not bound to answer impertinent questions which persons think proper to ask them in the form of an action on a wager. 12 East, 248.

**FICTITIOUS PLAINTIFF.** A person appearing in the writ or record as the plaintiff in a suit, but who in reality does not exist, or who is ignorant of the suit and of the use of his name in it. It is a contempt of court to sue in the name of a fictitious party. See 4 Bl. Comm. 134.

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

**FIDEI-COMMISSUM.** In the civil law. A species of trust; being a gift of property (usually by will) to a person, accompanied by a request or direction of the donor that the recipient will transfer the property to another, the latter being a person not capable of taking directly under the will or gift.

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

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

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

**FIDELIS.** Faithful; trustworthy.

**FIDELITAS.** Fealty; fidelity.

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

**FIDEM MENTRI.** When a tenant does not keep that fealty which he has sworn to the lord. Leg. Hen. I. c. 53.

**FIDE-PROMISSOR.** See Fide-Jussor.

**FIDES.** Faith; honesty; confidence; trust; veracity; honor. Occurring in the phrase “bona fides;” so, also, “mala fides.”

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

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

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

**FIDUCIA.** In the civil law. A contract, by which we sell a thing to some one—that is, transmit to him the property of the thing, with the solemn forms of emancipation—on condition that he will sell it back to us. This species of contract took place in the emanci­pation of children, in testaments, and in pledges. Poth. Pand. h. t.

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

**FIDUCIARY.** The term is derived from the Roman law, and means (as a noun) a person holding the character of a trustee, or a character analogous to that of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires. Thus, a person is a fidu­ciary who is invested with rights and powers to be exercised for the benefit of another per­son.

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

**FIDUCIARY CONTRACT.** An agree­ment by which a person delivers a thing to another on the condition that he will restore it to him.

**FIEF.** A fee, feeod, or feud.

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

FIEF-TENANT. In old English law. The holder of a fee or freehold, a freeholder or freeholder.

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

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

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

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

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

FIERDING COURTS. Ancient Gothic courts of an inferior jurisdiction, so called because four were instituted within every inferior district or hundred. 3 Bl. Comm. 34.

FIERI. Lat. To be made; to be done. See In Fieri.

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

FIERI FACIAS DE BONIS ECCLESIASTICIS. When a sheriff to a common ft. fa. returns nulla bona, and that the defendant is a benefited clerk, not having any lay fee, a plaintiff may issue a ft. fa. de bonis ecclesiasticis, addressed to the bishop of the diocese or to the archbishop, (during the vacancy of the bishop's see,) commanding him to make of the ecclesiastical goods and chattels belonging to the defendant within his diocese the sum therein mentioned. 2 Chit. Archb. Pr. (12th Ed.) 1062.

FIERI FACIAS DE BONIS TESTATORIS. The writ issued on an ordinary judgment against an executor when sued for a debt due by his testator. If the sheriff returns to this writ nulla bona, and a decas tacit, (q. v.), the plaintiff may sue out a fieri facias de bonis propriis, under which the goods of the executor himself are seized. Sweet.

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

Fiernon debet, (debit,) sed factum valet. It ought not to be done, but [if] done, it is valid. Shep. Touch, 6; 5 Coke, 93; T. Raym. 58; 1 Strange, 529. A maxim frequently applied in practice. 19 Johns. 84, 92.

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

FIGHT. An encounter, with blows or other personal violence, between two persons. See 73 N. C. 155.

FIGHTWIFE. Sax. A mullet or fine for making a quarrel to the disturbance of the peace. Called also by Cowell "forisfacitura pauma." The amount was one hundred and twenty shillings. Cowell.

FIGURES. The numerical characters by which numbers are expressed or written.

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

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

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

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

"To file" a paper, on the part of a party, is to place it in the official custody of the clerk. "To file," on the part of the clerk, is to indorse upon the paper the date of its reception, and retain it in his office, subject to inspection by whomsoever it may concern. 11 Tex. 339.

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

**FILE, n.** A thread, string, or wire upon which writs and other exhibits in courts and offices are fastened or filed for the more safe-keeping and ready turning to the same. Spelman; Cowell; Toulmin. Papers put together and tied in bundles. A paper is said also to be filed when it is delivered to the proper officer, and by him received to be kept on file. 13 Vin. Abr. 211; 1 Litt. 113; 1 Hawk. P. C. 7, 207. But, in general, "file," or "the files," is used loosely to denote the official custody of the court or the place in the offices of a court where the records and papers are kept.


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

Filiatio non potest probari. Co. Litt. 125. Filiation cannot be proved.

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

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

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

**FILICETUM.** In old English law. A ferny or bracky ground; a place where fern grows. Co. Litt. 46; Shep. Touch. 95.

**FILIOLUS.** In old records. A godson; Spelman.

**FILIUS.** Lat. A son; a child.

A distinction was sometimes made, in the civil law, between "filius" and "libert;" the latter word including grandchildren, (neptotes,) the former. Inst. 1,14,5. But, according to Paulus and Julianus, they were of equally extensive import. Dig. 50, 16, 84; Id. 50, 16, 201.

Filius est nomen naturae, sed hares nomen juris. 1 Std. 193. Son is a name of nature, but heir is a name of law.

**FILIUS FAMILIAS.** In the civil law. The son of a family; an unemancipated son. Inst. 2, 12, pr.; Id. 4, 5, 2; Story, Confl. Laws, § 61.

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

**FILIUS MULIERATUS.** In old English law. The eldest legitimate son of a woman, who previously had an illegitimate son by his father. Glanv. lib. 7, c. 1. Otherwise called "mulier." 2 Bl. Comm. 248.

**FILIUS NULLIUS.** The son of nobody; i. e., a bastard.

**FILIUS POPULL.** A son of the people; a natural child.

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

The election of a person to an office constitutes the essence of his appointment; but the office cannot be considered as actually filled until his acceptance, either express or implied. 2 N. H. 203.

Where one subscribes for shares in a corporation, agreeing to "take and fill" a certain number of shares, assumiptis will lie against him to recover an assessment on his shares; the word "fill," in this connection, amounting to a promise to pay assessments. 10 Me. 473.

To fill a prescription is to furnish, prepare, and combine the requisite materials in due proportion as prescribed. 61 Ga. 506.

**FILLY.** A young mare; a female colt. An indictment charging the theft of a "filly" is not sustained by proof of the larceny of a "mare." 1 Tex. App. 448.

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

An imaginary thread or line passing through the middle of a stream or road, as in the phrases "filum aqua," "filum viae;" or along the edge or border, as in "filum foresta."
FILUM AQUÆ. A thread of water; a line of water; the middle line of a stream of water, supposed to divide it into two equal parts, and constituting in many cases the boundary between the riparian proprietors on each side.

FILUM FORESTÆ. Lat. The border of the forest. 2 Bl. Comm. 419; 4 Inst. 303.

FILUM VIEÆ. The thread or middle line of a road. An imaginary line drawn through the middle of a road, and constituting the boundary between the owners of the land on each side. 2 Smith, Lead. Cas. (Am. Ed.) 98, note.

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

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

FINAL. Definitive; terminating; completed; last. In its use in jurisprudence, this word is generally contrasted with "interlocutory."

FINAL COSTS. Such costs as are to be paid at the end of the suit; costs, the liability for which depends upon the final result of the litigation.

FINAL DECISION. One from which no appeal or writ of error can be taken. 47 Ill. 167; 6 El. & Bl. 408.

FINAL DECREES. A decree in equity which fully and finally disposes of the whole litigation, determining all questions raised by the case, and leaving nothing that requires further judicial action.

FINAL DISPOSITION. When it is said to be essential to the validity of an award that it should make a "final disposition" of the matters embraced in the submission, this term means such a disposition that nothing further remains to fix the rights and obligations of the parties, and no further controversy or litigation is required or can arise on the matter. It is such an award that the party against whom it is made can perform or pay it without any further ascertainment of rights or duties. 50 Me. 401.

FINAL HEARING. This term designates the trial of an equity case upon the merits, as distinguished from the hearing of any preliminary questions arising in the cause, which are termed "interlocutory." 24 Wis. 165.

FINAL JUDGMENT. In practice. A judgment which puts an end to an action at law by declaring that the plaintiff either has or has not entitled himself to recover the remedy he sues for. 3 Bl. Comm. 398. So distinguished from interlocutory judgments, which merely establish the right of the plaintiff to recover, in general terms. Id. 397. A judgment which determines a particular cause.

A judgment which cannot be appealed from, which is perfectly conclusive upon the matter adjudicated. 24 Pick. 300. A judgment which terminates all litigation on the same right. The term "final judgment," in the judiciary act of 1789, § 25, includes both species of judgments as just defined. 2 Pet. 494; 1 Kent, Comm. 316; 6 How. 201, 209.

A judgment is final and conclusive between the parties, when rendered on a verdict on the merits, not only as to the facts actually litigated and decided, but also as to all facts necessarily involved in the issue. 26 Ala. 504.

FINAL PASSAGE. In parliamentary law. The final passage of a bill is the vote on its passage in either house of the legislature, after it has received the prescribed number of readings on as many different days in that house. 54 Ala. 613.

FINAL PROCESS. The last process in a suit; that is, writs of execution. Thus distinguished from mesne process, which includes all writs issued during the progress of a cause and before final judgment.

FINAL RECOVERY. The final judgment in an action. Also the final verdict in an action, as distinguished from the judgment entered upon it. 6 Allen, 248.

FINAL SENTENCE. One which puts an end to a case. Distinguished from interlocutory.

FINAL SETTLEMENT. This term, as applied to the administration of an estate, is usually understood to have reference to the order of court approving the account which closes the business of the estate, and which finally discharges the executor or administra-
tor from the duties of his trust. 13 N. E. Rep. 131. See, also, 65 Ala. 442.

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

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

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

FIND. To discover; to determine; to ascertain and declare. To announce a conclusion, as the result of judicial investigation, upon a disputed fact or state of facts; as a jury are said to "find a will." To determine a controversy in favor of one of the parties; as a jury "find for the plaintiff."

FINDER. One who discovers and takes possession of another's personal property, which was then lost.

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

FINDING. A decision upon a question of fact reached as the result of a judicial examination or investigation by a court, jury, referee, coroner, etc.

FINE, v. To impose a pecuniary punishment or mulct. To sentence a person convicted of an offense to pay a penalty in money.

FINE, n. In conveyancing. An amicable composition or agreement of a suit, either actual or fictitious, by leave of the court, by which the lands in question become, or are acknowledged to be, the right of one of the parties. 2 Bl. Comm. 349. Fines were abolished in England by St. 3 & 4 Wm. IV. c. 74, substituting a disentailing deed, (q. v.)

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

In the law of tenure. A fine is a money-payment made by a feudal tenant to his lord. The most usual fine is that payable on the admittance of a new tenant, but there are also due in some manors fines upon alienation, on a license to demise the lands, or on the death of the lord, or other events. Elton. Copyh. 159.

In criminal law. Pecuniary punishment imposed by a lawful tribunal upon a person convicted of crime or misdemeanor.

It means, among other things, "a sum of money paid at the end, to make an end of a transaction, suit, or prosecution; mulct; penalty." In ordinary legal language, however, it means a sum of money imposed by a court according to law, as a punishment for the breach of some penal statute. 32 Kan. 15.

It is not confined to a pecuniary punishment of an offense, inflicted by a court in the exercise of criminal jurisdiction. It has other meanings, and may include a forfeiture, or a penalty recoverable by civil action. 11 Gray, 873.

FINE AND RECOVERY ACT. The English statutes 3 & 4 Wm. IV. c. 74, for abolishing fines and recoveries. 1 Steph. Comm. 514, et seq.

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

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

FINE FOR ALIENATION. A fine anciently payable upon the alienation of a feudal estate and substitution of a new tenant. It was payable to the lord by all tenants holding by knight's service or tenants in capite by socage tenure. Abolished by 12 Car. II. c. 24. See 2 Bl. Comm. 71, 89.

FINE FOR ENDOWMENT. A fine anciently payable to the lord by the widow of a tenant, without which she could not be endowed of her husband's lands. Abolished under Henry I., and by Magna Charta. 2 Bl. Comm. 135; Mozley & Whitley.

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

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

FINE SUR COGNIZANCE DE DROIT COME CEO QUE IL AD DE SON DONE. A fine upon acknowledgment of the right of the cognizor as that which he hath of the gift of the cognizor. By this the defendant acknowledged in court a former fee or gift in possession to have been made by him to the plaintiff. 2 Bl. Comm. 352.

FINE SUR COGNIZANCE DE DROIT TANTUM. A fine upon acknowledgment of the right merely, and not with the circumstance of a preceding gift from the cognizor. This was commonly used to pass a reversionary interest which was in the cognizor, of which there could be no fee or supposed. 2 Bl. Comm. 353; 1 Steph. Comm. 519.

FINE SUR CONCESSIT. A fine upon concessit, (he hath granted.) A species of fine, where the cognizor, in order to make an end of disputes, though he acknowledged no precedent right, yet granted to the cognizor an estate de noco, usually for life or years, by way of supposed composition. 2 Bl. Comm. 353; 1 Steph. Comm. 519.

FINE SUR DONE GRANT ET RENDER. A double fine, comprehending the fine sur cognizance de droit come ceo and the fine sur concessit. It might be used to convey particular limitations of estates, whereas the fine sur cognizance de droit come ceo, etc., conveyed nothing but an absolute estate, either of inheritance, or at least freehold. In this last species of fines, the cognizor, after the right was acknowledged to be in him, granted back again or rendered to the cognizor, or perhaps to a stranger, some other estate in the premises. 2 Bl. Comm. 353.

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

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

FINES LE ROY. In old English law. The king's fines. Fines formerly payable to the king for any contempt or offense, as where one committed any trespass, or false-

ly denied his own deed, or did anything in contempt of law. Termes de la Ley.

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

FINIS. An end; a fine; a boundary or terminus; a limit.

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

Finisinem litibus imposit. A fine puts an end to litigation. 3 Inst. 78.

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

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

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

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

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

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

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


FIRDWITE. In old English law. A fine for refusing military service, (mulcta detrectantis militiam.) Spelman. A fine imposed for murder committed in the army; an acquittance of such fine. Fleta, lib. 1, c. 47.

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

In old Scotch law. Letters issued from the privy council in Scotland, addressed to the sheriff of the county, authorizing him to call for the assistance of the county to dispossess a tenant retaining possession, contrary to the order of a judge or the sentence of a court. Wharton.

FIRE-ARMS. This word comprises all sorts of guns, fowling-pieces, blunderbusses, pistols, etc.

FIREBARE. A beacon or high tower by the seaside, wherein are continual lights, either to direct sailors in the night, or to give warning of the approach of an enemy. Cowell.

FIRE-BOTE. An allowance of wood or estovers to maintain competent firing for the tenant. A sufficient allowance of wood to burn in a house. 1 Washb. Real Prop. 99.

FIRE INSURANCE. A contract of insurance by which the underwriter, in consideration of the premium, undertakes to indemnify the insured against all losses in his houses, buildings, furniture, ships in port, or merchandise, by means of accidental fire happening within a prescribed period. 3 Kent, Comm. 370.

FIRE ORDEAL. In Saxon and old English law. The ordeal by fire or red-hot iron, which was performed either by taking up in the hand a piece of red-hot iron, of one, two, or three pounds weight, or by walking barefoot and blindfolded over nine red-hot plowshares, laid lengthwise at unequal distances. 4 Bl. Comm. 343; Cowell.

FIRE POLICY. A contract of insurance, by which, in consideration of a single or periodical payment of premium, (as the case may be,) the company engages to pay to the assured such loss as may occur by fire to his property therein described, within the period or periods therein specified, to an amount not exceeding a particular sum fixed for that purpose by the policy. 2 Steph. Comm. 180.

FIRE-PROOF. To say of any article that it is "fire-proof" conveys no other idea than that the material out of which it is formed is incombustible. To say of a building that it is fire-proof excludes the idea that it is of wood, and necessarily implies that it is of some substance fitted for the erection of fire-proof buildings. To say of a certain portion of a building that it is fire-proof suggests a comparison between that portion and other parts of the building not so characterized, and warrants the conclusion that it is of a different material. 102 N. Y. 459, 7 N. E. Rep. 321.

FIRKIN. A measure containing nine gallons; also a weight of fifty-six pounds avoirdupois, used in weighing butter and cheese.

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

FIRM. A partnership; the group of persons constituting a partnership.
The name or title under which the members of a partnership transact business.

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

FIRMA FEODI. In old English law. A farm or lease of a fee; a fee-farm.

FIRMAN. An Asiatic word denoting a decree or grant of privileges, or passport to a traveler.

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

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

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

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

FIRME. In old records. A farm.

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

FIRMITAS. In old English law. An assurance of some privilege, by deed or charter.
FIRMURA. In old English law. Liberty to scour and repair a mill-dam, and carry away the soil, etc. Blount.

FIRST-CLASS MISDEMEANANT. In English law. Under the prisons act (28 & 29 Vict. c. 126, § 67) prisoners in the county, city, and borough prisons convicted of misdemeanor, and not sentenced to hard labor, are divided into two classes, one of which is called the "first division," and it is in the discretion of the court to order that such a prisoner be treated as a misdeemeanant of the first division, usually called "first-class misdeemeanant," and as such not to be deemed a criminal prisoner, i. e., a prisoner convicted of a crime. Bouvier.

FIRST FRUITS. In English ecclesiastical law. The first year's whole profits of every benefice or spiritual living, recently paid by the incumbent to the pope, but afterwards transferred to the fund called "Queen Anne's Bounty," for increasing the revenue from poor livings.

In feudal law. One year's profits of land which belonged to the king on the death of a tenant in capite; otherwise called "primer sesia." One of the incidents to the old feudal tenures. 2 Bl. Comm. 66, 67.

FIRST IMPRESSION. A case is said to be "of the first impression" when it presents an entirely novel question of law for the decision of the court, and cannot be governed by any existing precedent.

FIRST PURCHASER. In the law of descent, this term signifies the ancestor who first acquired (in any other manner than by inheritance) the estate which still remains in his family or descendants.

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

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

FISCAL AGENT. This term does not necessarily mean depositary of the public funds, so as, by the simple use of it in a statute, without any directions in this respect, to make it the duty of the state treasurer to deposit with him any moneys in the treasury. 27 La. Ann. 29.

FISCAL JUDGE. A public officer named in the laws of the Riparians and some other Germanic peoples, apparently the same as the "Grasf," "reece," "comes," or "count," and so called because charged with the collection of public revenues, either directly or by the imposition of fines. See Spelman, voc. "Grasf."

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

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

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

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

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

FISH COMMISSIONER. A public officer of the United States, created by act of congress of February 9, 1875, whose duties principally concern the preservation and increase throughout the country of fish suitable for food. Rev. St. § 4395.

FISH ROYAL. These were the whale and the sturgeon, which, when thrown ashore or caught near the coast of England, became the property of the king by virtue of his prerogative and in recompense for his protecting the shore from pirates and robbers. Brown; 1 Bl. Comm. 290.

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

A right or liberty of taking fish; a species of incorporeal hereditament, anciently termed "piscary," of which there are several kinds. 2 Bl. Comm. 34, 39; 3 Kent, Comm. 400-418.

A free fishery is said to be a franchise in the hands of a subject, existing by grant or prescription, distinct from an ownership in the soil. It is an exclusive right, and applies to a public navigable river, without any right in the soil. 3 Kent, Comm. 329.

A common of fishery is not an exclusive right, but one enjoyed in common with certain other persons. 3 Kent, Comm. 339.

A several fishery is one by which the party claiming it has the right of fishing, independently of all others, so that no person can have a co-extensive right with him in the object claimed; but a partial and independent right in another, or a limited liberty, does not derogate from the right of the owner. 5 Burrows, 841.

FISHERY LAWS. A series of statutes passed in England for the regulation of fishing, especially to prevent the destruction of fish during the breeding season, and of small
fish, spawn, etc., and the employment of improper modes of taking fish. 3 Steph. Comm. 165.

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

FISHING BILL. A term descriptive of a bill in equity which seeks a discovery upon general, loose, and vague allegations. Story, Eq. Pl. § 823; 32 Fed. Rep. 263.

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

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

FISTULA. In the civil law. A pipe for conveying water. Dig. 8, 2, 13.

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

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

FIX. To liquidate or render certain. To fasten a liability upon one. To transform a possible or contingent liability into a present and definite liability.

FIXING BAIL. In practice. Rendering absolute the liability of special bail.

FIXTURE. A fixture is a personal chattel substantially affixed to the land, but which may afterwards be lawfully removed therefrom by the party affixing it, or his representative, without the consent of the owner of the freehold. 3 Nev. 82; 18 Ind. 231; 8 Iowa. 544.

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

The word "fixtures" has acquired the peculiar meaning of chattels which have been annexed to the freehold, but which are removable at the will of the person who annexed them. 1 Crompt., M. & R. 396.

"Fixtures" does not necessarily import things affixed to the freehold. The word is a modern one, and is generally understood to comprehend any article which a tenant has the power to remove. 3 Mees. & W. 174; 30 Pa. St. 155, 159.

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

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

A thing is deemed to be affixed to land when it is attached to it by roots, as in the case of trees, vines, or shrubs; or imbedded in it, as in the case of walls; or permanently resting upon it, as in the case of buildings; or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts, or screws. Civil Code Cal. § 960.

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

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

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

FLACO. A place covered with standing water.

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

FLAG, DUTY OF THE. This was an ancient ceremony in acknowledgment of British sovereignty over the British seas, by which a foreign vessel struck her flag and lowered her top-sail on meeting the British flag.

FLAG OF THE UNITED STATES. By the act entitled "An act to establish the flag of the United States," (Rev. St. §§ 1791, 1792) it is provided "that, from and after the fourth day of July next, the flag of the United States be thirteen horizontal stripes, alternate red and white; that the union be twenty stars, white in a blue field; that, on the admission of every new state into the Union, one star be added to the union of the
FLEET. A place where the tide flows; a creek, or inlet of water; a company of ships or navy; a prison in London, (so called from a river or ditch formerly in its vicinity,) now abolished by 5 & 6 Vict. c. 22.

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

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

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

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

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

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

FLIGHT. In criminal law. The act of one under accusation, who evades the law by voluntarily withdrawing himself. It is presumptive evidence of guilt.

FLOAT. In American land law, especially in the western states. A certificate authorizing the entry, by the holder, of a certain quantity of land. 20 How. 501, 504.

FLOATABLE. Used for floating. A floatable stream is a stream used for floating logs, rafts, etc. 2 Mich. 519.
FLOATING CAPITAL, (or circulating capital.) The capital which is consumed at each operation of production and reappears transformed into new products. At each sale of these products the capital is represented in cash, and it is from its transformations that profit is derived. Floating capital includes raw materials destined for fabrication, such as wool and flax, products in the warehouses of manufacturers or merchants, such as cloth and linen, and money for wages, and stores. De Laveleye, Pol. Ec.

Capital retained for the purpose of meeting current expenditure.

FLOATING DEBT. By this term is meant that mass of lawful and valid claims against the corporation for the payment of which there is no money in the corporate treasury specifically designed, nor any taxation nor other means of providing money to pay particularly provided. 71 N. Y. 374.


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


A term used metaphorically, in parliamentary practice, to denote the exclusive right to address the body in session. A member who has been recognized by the chairman, and who is in order, is said to "have the floor," until his remarks are concluded. Similarly, the "floor of the house" means the main part of the hall where the members sit, as distinguished from the galleries, or from the corridors or lobbies.

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

FLORENTINE PANDECTS. A copy of the Pandects discovered accidentally about the year 1137, at Amalph, a town in Italy, near Salerno. From Amalph, the copy found its way to Pisa, and, Pisa having submitted to the Florentines in 1406, the copy was removed in great triumph to Florence. By direction of the magistrates of the town, it was immediately bound in a superb manner, and deposited in a costly chest. Formerly, these Pandects were shown only by torch-light, in the presence of two magistrates, and two Cistercian monks, with their heads uncovered. They have been successively collated by Politian, Bolognini, and Antonius Augustinus. An exact copy of them was published in 1553 by Franciscus Taurellus. For its accuracy and beauty, this edition ranks high among the ornaments of the press. Brenchman, who collated the manuscript about 1710, refers it to the sixth century. Butl. Hor. Jur. 50, 91.

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

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


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

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

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

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

FLUMEN. In Roman law. A servitude which consists in the right to conduct the rain-water, collected from the roof and carried off by the gutters, onto the house or ground of one's neighbor. Mackeld. Rom. Law, § 317; Ersk. Inst. 2, 9, 9. Also a river or stream.

In old English law. Flood; flood-tide.

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

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

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

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

FLYING SWITCH. In railroading, a flying switch is made by uncoupling the cars from the engine while in motion, and throwing the cars onto the side track, by turning the switch, after the engine has passed it upon the main track. 29 Iowa, 39. See, also, 32 N. Y. 597, note.

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

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

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

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

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

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

FODINIA. See FODER.

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

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

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

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

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

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

FECUS NAUTICUM. In the civil law. Nautical or maritime interest. An extraordinary rate of interest agreed to be paid for the loan of money on the hazard of a voyage; sometimes called "usura maritima." Dig. 22, 2; Code, 4, 33; 2 Bl. Comm. 458.

The extraordinary rate of interest, proportioned to the risk, demanded by a person lending money on a ship, or on "bottomry, "as it is termed. The agreement for such a rate of interest is also called "femus nauticum." (2 Bl. Comm. 458; 2 Steph. Comm. 93.) Mozley & Whitely.

FOESA. In old records. Grass; herbage. 2 Mon. Angl. 9066; Cowell.

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

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

FOETUS. In medical jurisprudence. An unborn child. An infant in ventre sa mere.

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


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

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


FOITERERS. Vagabonds. Blount.

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

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

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

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

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

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

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

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

FOLGARI. Menial servants; followers. Bract.

FOLGERE. In old English law. A freeman, who has no house or dwelling of his own, but is the follower or retainer of another, (hearthfrest,) for whom he performs certain preodial services.

FOLGOTH. Official dignity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FOR THAT. In pleading. Words used to introduce the allegations of a declaration. "For that" is a positive allegation; "For that whereas" is a recital. Ham. N. P. 9.
FOR THAT WHEREAS. In pleading. Formal words introducing the statement of the plaintiff's case, by way of recital, in his declaration, in all actions except trespass. 1 Instr. Cler. 170; 1 Burrill, Pr. 127. In trespass, where there was no recital, the expression used was, "For that." Id.; 1 Instr. Cler. 202.

FOR USE. 1. For the benefit or advantage of another. Thus, where an assignee is obliged to sue in the name of his assignor, the suit is entitled "A. for use of B. v. C."

2. For enjoyment or employment without destruction. A loan "for use" is one in which the bailee has the right to use and enjoy the article, but without consuming or destroying it, in which respect it differs from a loan "for consumption."

"FOR WHOM IT MAY CONCERN." In a policy of marine or fire insurance, this phrase indicates that the insurance is taken for the benefit of all persons (besides those named) who may have an insurable interest in the subject.

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

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

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

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

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

FORBANNITUS. A pirate; an outlaw; one banished.

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

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

FORBEARANCE. The act of abstaining from proceeding against a delinquent debtor; delay in exacting the enforcement of a right; indulgence granted to a debtor. Refraining from action. The term is used in this sense, in general jurisprudence, in contradistinction to "act."

FORCE. Power dynamically considered, that is, in motion or in action; constraining power; compulsion; strength directed to an end. Usually the word occurs in such connections as to show that unlawful or wrongful action is meant.

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

Power statically considered; that is, at rest, or latent, but capable of being called into activity upon occasion for its exercise. Efficacy; legal validity. This is the meaning when we say that a statute or a contract is "in force."

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

In Scotch law. Coercion; duress. Bell.

FORCE AND ARMS. A phrase used in declarations of trespass and in indictments, but now unnecessary in declarations, to denote that the act complained of was done with violence. 2 Chit. Pl. 846, 850.

FORCE AND FEAR, called also "ni metuque," means that any contract or act executed under the pressure of force (vis) or under the influence of fear (metus) is voidable on that ground, provided, of course, that the force or the fear was such as influenced the party. Brown.

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

FORCED HEIRS. In Louisiana. Those persons whom the testator or donor cannot deprive of the portion of his estate reserved for them by law, except in cases where he has a just cause to disinherit them. Civil Code La. art. 1495.

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

A forced sale is a sale against the consent of the owner. The term should not be deemed to embrace a sale under a power in a mortgage. 15 Fla. 333.

FORCES. The military and naval power of the country.

FORCHEAPUM. Pre-emption; forestalling the market. Jacob.
FORCIBLE DETAINER. The offense of violently keeping possession of lands and tenements, with menaces, force, and arms, and without the authority of law. 4 Bl. Comm. 14; 4 Steph. Comm. 290.

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

FORCIBLE ENTRY. An offense against the public peace, or private wrong, committed by violently taking possession of lands and tenements with menaces, force, and arms, against the will of those entitled to the possession, and without the authority of law. 4 Bl. Comm. 14; 4 Steph. Comm. 280; Code Ga. 1882, § 4524.

Every person is guilty of forcible entry who either (1) by breaking open doors, windows, or other parts of a house, or by any kind of violence or circumstance of terror, enters upon or into any real property; or (2) who, after entering peaceably upon real property, turns out by force, threats, or menacing conduct the party in possession. Code Civil Proc. Cal. § 1139.

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

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

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

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


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

FORECLOSURE. A process in chancery by which all further right existing in a mortgagor to redeem the estate is defeated and lost to him, and the estate becomes the absolute property of the mortgagee; being applicable when the mortgagor has forfeited his estate by non-payment of the money due on the mortgage at the time appointed, but still retains the equity of redemption. 2 Washb. Real Prop. 237.

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

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

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

FOREGIFT. A premium for a lease.

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

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

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

FOREIGN ADMINISTRATOR. One appointed or qualified under the laws of a foreign state or country, where the decedent was domiciled.

FOREIGN ANSWER. In old English practice. An answer which was not triable in the county where it was made. (St. 15 Hen. VI. c. 5.) Blount.

FOREIGN APPOSER. An officer in the exchequer who examines the sheriff's extract, comparing them with the records, and apposeth (interrogates) the sheriff what he says to each particular sum therein. 4 Inst. 107; Blount; Cowell.

FOREIGN ASSIGNMENT. An assignment made in a foreign country, or in another state. 2 Kent, Comm. 405, et seq.

FOREIGN ATTACHMENT. In American law. A process by which the property (lying within the jurisdiction of the court) of an absent or non-resident debtor is seized, in order to compel his appearance, or to satisfy the judgment that may be rendered, so far as the property goes.

In English law. A custom which prevails in the city of London, whereby a debt owing to a defendant sued in the court of the mayor or sheriff may be attached in the hands of the debtor.
FOREIGN BILL OF EXCHANGE. A bill of exchange drawn in one state or country, upon a foreign state or country.

A bill of exchange drawn in one country upon another country not governed by the same homogeneous laws, or not governed throughout by the same municipal laws.

A bill of exchange drawn in one of the United States upon a person residing in another state is a foreign bill. See Story, Bills, § 22; 2 Pet. 556; 3 Kent, Comm. 94, note.

FOREIGN BOUGHT AND SOLD. A custom in London which, being found prejudicial to sellers of cattle in Smithfield, was abolished. Wharton.

FOREIGN CHARITY. One created or endowed in a state or country foreign to that of the domicile of the benefactor. 34 N. J. Eq. 101.

FOREIGN COINS. Coins issued as money under the authority of a foreign government. As to their valuation in the United States, see Rev. St. U. S. §§ 3564, 3365.

FOREIGN COMMERCE. Commerce or trade between the United States and foreign countries. The term is sometimes applied to commerce between ports of two sister states not lying on the same coast, e.g., New York and San Francisco.

FOREIGN CORPORATION. A corporation created by or under the laws of another state, government, or country.

FOREIGN COUNTY. Any county having a judicial and municipal organization separate from that of the county where matters arising in the former county are called in question, though both may lie within the same state or country.

FOREIGN COURTS. The courts of a foreign state or nation. In the United States, this term is frequently applied to the courts of one of the states when their judgments or records are introduced in the courts of another.

FOREIGN CREDITOR. One who resides in a state or country foreign to that where the debtor has his domicile or his property.

FOREIGN DIVORCE. A divorce obtained out of the state or country where the marriage was solemnized. 2 Kent, Comm. 106, et seq.

FOREIGN DOCUMENT. One which was prepared or executed in, or which comes from, a foreign state or country.

FOREIGN DOMICILE. A domicile established by a citizen or subject of one sovereignty within the territory of another.

FOREIGN DOMINION. In English law this means a country which at one time formed part of the dominions of a foreign state or potestate, but which by conquest or cession has become a part of the dominions of the British crown. 5 Best & S. 290.

FOREIGN ENLISTMENT ACT. The statute 59 Geo. III. c. 69, prohibiting the enlistment, as a soldier or sailor, in any foreign service. 4 Steph. Comm. 226. A later and more stringent act is that of 33 & 34 Vict. c. 90.

FOREIGN EXCHANGE. Drafts drawn on a foreign state or country.

FOREIGN FACTOR. A factor who resides in a country foreign to that where his principal resides.

FOREIGN-GOING SHIP. By the English merchant shipping act, 1854 (17 & 18 Vict. c. 104.) § 2, any ship employed in trading, going between some place or places in the United Kingdom and some place or places situate beyond the following limits, that is to say: The coasts of the United Kingdom, the islands of Guernsey, Jersey, Sark, Alderney, and Man, and the continent of Europe, between the river Elbe and Brest, inclusive. Home-trade ship includes every ship employed in trading and going between places within the last-mentioned limits.

FOREIGN JUDGMENT OR DECREE. A judgment rendered by the courts of a state or country politically and judicially distinct from that where the judgment or its effect is brought in question. One pronounced by a tribunal of a foreign country, or of a sister state.

FOREIGN JURISDICTION. Any jurisdiction foreign to that of the forum. Also the exercise by a state or nation of jurisdiction beyond its own territory, the right being acquired by treaty or otherwise.

FOREIGN JURY. A jury obtained from a county other than that in which issue was joined.

FOREIGN LAWS. The laws of a foreign country, or of a sister state. Foreign laws are often the suggesting occasions of
changes In, or additions to, our own laws, and in that respect are called "jus recepitum."
Brown.

FOREIGN MATTER. In old practice, Matter triable or done in another county, Cowell.

FOREIGN MINISTER. An ambassador, minister, or envoy from a foreign government.

FOREIGN OFFICE. The department of state through which the English sovereign communicates with foreign powers. A secretary of state is at its head. Till the middle of the last century, the functions of a secretary of state as to foreign and home questions were not disunited.

FOREIGN PLEA. A plea objecting to the jurisdiction of a judge, on the ground that he had not cognizance of the subject-matter of the suit. Cowell.

FOREIGN PORT. A port exclusively within the sovereignty of a foreign nation. A foreign port or place is a port or place without the United States. 19 Johns. 375.

FOREIGN SERVICE, in feudal law, was that whereby a mesne lord held of another, without the compass of his own fee, or that which the tenant performed either to his own lord or to the lord paramount out of the fee. (Kitch. 299.) Foreign service seems also to be used for knight's service, or escunque uncertain. (Perk. 650.) Jacob.

FOREIGN STATE. A foreign country or nation. The several United States are considered "foreign" to each other except as regards their relations as common members of the Union.

FOREIGN VESSEL. A vessel owned by residents in, or sailing under the flag of, a foreign nation.

"Foreign vessel," under the embargo act of January, 1808, means a vessel under the flag of a foreign power, and not a vessel in which foreigners domiciled in the United States have an interest. 1 Gall. 53.

FOREIGN VOYAGE. A voyage to some port or place within the territory of a foreign nation. The terminus of a voyage determines its character. If it be within the limits of a foreign jurisdiction, it is a foreign voyage, and not otherwise. 1 Story, 1. See 3 Kent, Comm. 177, note; 1 Gall. 55.

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

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

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

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

To expel or banish.

FOREJUDGER. In English practice. A judgment by which a man is deprived or put out of a thing; a judgment of expulsion or banishment. See FOREJUDGE.

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

FORENSIC. Belonging to courts of justice.

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

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

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

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

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

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

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

FOREST COURTS. In English law. Courts instituted for the government of the king's forest in different parts of the kingdom, and for the punishment of all injuries done to the king's deer or venison, to the vert or greenward, and to the covert in which such deer were lodged. They consisted of the courts of attachments, of regard, of sworn-mote, and of justice-seat; but in later times these courts are no longer held. 3 Bl. Comm. 71.

FOREST LAW. The system or body of old law relating to the royal forests.

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

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

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

FORESTALLER. In old English law. Obstruction; hindrance; the offense of stopping the highway; the hindering a tenant from coming to his land; intercepting a deer before it can regain the forest. Also one who forestals; one who commits the offense of forestalling. 3 Bl. Comm. 170; Cowell.

FORESTALLING. Obstructing the highway. Intercepting a person on the highway.

FORESTALLING THE MARKET. The act of the buying or contracting for any merchandise or provision on its way to the market, with the intention of selling it again at a higher price; or the dissuading persons from bringing their goods or provisions there; or persuading them to enhance the price when there. 4 Bl. Comm. 158. This was formerly an indictable offense in England, but is now abolished by St. 7 & 8 Vict. c. 24. 4 Steph. Comm. 291, note.

FORESTARIUS. In English law. A forester. An officer who takes care of the woods and forests. De forestario opponendo, a writ which lay to appoint a forester to prevent further commission of waste when a tenant in dower had committed waste. Bract. 310; Du Cange.

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

FORESTER. A sworn officer of the forest, appointed by the king's letters patent to walk the forest, watching both the vert and the venison, attaching and presenting all trespassers against them within their own bailiwick or walk. These letters patent were generally granted during good behavior; but sometimes they held the office in fee. Blount.

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

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

FORFEIT. To lose an estate, a franchise, or other property belonging to one, by the act of the law, and as a consequence of some misfeasance, negligence, or omission. The further ideas connoted by this term are that it is a deprivation, (that is, against the
will of the losing party,) and that the property is either transferred to another or resumed by the original grantor.

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

FORFEITABLE. Liable to be forfeited; subject to forfeiture for non-user, neglect, crime, etc.

FORFEITURE. 1. A punishment annexed by law to some illegal act or negligence in the owner of lands, tenements, or hereditaments, whereby he loses all his interest therein, and they go to the party injured as a recompense for the wrong which he alone, or the public together with himself, hath sustained. 2 Bl. Comm. 267.

2. The loss of land by a tenant to his lord, as the consequence of some breach of fidelity. 1 Steph. Comm. 166.

3. The loss of lands and goods to the state, as the consequence of crime. 4 Bl. Comm. 381, 387; 4 Steph. Comm. 447, 452; 2 Kent, Comm. 335; 4 Kent, Comm. 426.

4. The loss of goods or chattels, as a punishment for some crime or misdemeanor in the party forfeiting, and as a compensation for the offense and injury committed against him to whom they are forfeited. 2 Bl. Comm. 420.

It should be noted that "forfeiture" is not an identical or convertible term with "confiscation." The latter is the consequence of the former. Forfeiture is the result which the law attaches as an immediate and necessary consequence to the illegal acts of the individual; but confiscation implies the action of the state; and property, although it may be forfeited, cannot be said to be confiscated until the government has formally claimed or taken possession of it.

5. The loss of office by abuser, non-user, or refusal to exercise it.

6. The loss of a corporate franchise or charter in consequence of some illegal act, or of malfeasance or non-feasance.

7. The loss of the right to life, as the consequence of the commission of some crime to which the law has affixed a capital penalty.

8. The incurring a liability to pay a definite sum of money as the consequence of violating the provisions of some statute, or refusal to comply with some requirement of law.

9. A thing or sum of money forfeited. Something imposed as a punishment for an offense or delinquency. The word in this sense is frequently associated with the word "penalty."

FORFEITURE OF A BOND. A failure to perform the condition on which the obligor was to be excused from the penalty in the bond.

FORFEITURE OF MARRIAGE. A penalty incurred by a ward in chivalry who married without the consent or against the will of the guardian. See Duplex Valor Maritagh.

FORFEITURE OF SILK, supposed to lie in the docks, used, in times when its importation was prohibited, to be proclaimed each term in the exchequer.

FORFEITURES ABOLITION ACT. Another name for the felony act of 1870, abolishing forfeitures for felony in England.

FORGABULUM, or FORGAVEL. A quit-rent; a small reserved rent in money. Jacob.

FORGE. To fabricate, construct, or prepare one thing in imitation of another thing, with the intention of substituting the false for the genuine, or otherwise deceiving and defrauding by the use of the spurious article. To counterfeit or make falsely. Especially to make a spurious written instrument with the intention of fraudulently substituting it for another, or of passing it off as genuine; or to fraudulently alter a genuine instrument to another's prejudice; or to sign another person's name to a document, with a deceitful and fraudulent intent.

To forge (a metaphorical expression, borrowed from the occupation of the smith) means, properly speaking, no more than to make or form, but in our law it is always taken in an evil sense. 2 East, P. C. p. 532, c. 19, § 1.

To forge is to make in the likeness of something else; to counterfeit is to make in imitation of something else, with a view to defraud by passing the false copy for genuine or original. Both words, "forged" and "counterfeited," convey the idea of similitude. 43 Me. 363.

In common usage, however, forgery is almost always predicated of some private instrument or writing, as a deed, note, will, or a signature; and counterfeiting denotes the fraudulent imitation of coined or paper money or some substance therefor.

FORGERY. In criminal law. The falsely making or materially altering, with intent to defraud, any writing which, if genuine, might apparently be of legal efficacy or the foundation of a legal liability. 2 Bish. Crim. Law, § 523.

The fraudulent making and alteration of a writing to the prejudice of another man's right. 4 Bl. Comm. 247. See Forge.

Forgery, at common law, denotes a false making, (which includes every alteration or addition to a true instrument;) a making, malo animo, of any
written instrument for the purpose of fraud and deceit. 2 East, P. C. 582.
The false making an instrument which purports on its face to be good and valid for the purposes for which it was created, with a design to defraud any person or persons. 1 Leach, 366.
The thing itself, so falsely made, imitated, or forged; especially a forged writing. A forged signature is frequently said to be "a forgery."

In the law of evidence. The fabrication or counterfeiting of evidence. The artful and fraudulent manipulation of physical objects, or the deceitful arrangement of genuine facts or things, in such a manner as to create an erroneous impression or a false inference in the minds of those who may observe them. See Burrell, Circ. Ev. 131, 420.

FORGERY ACT, 1870. The statute 33 & 34 Vict. c. 58, was passed for the punishment of forgers of stock certificates, and for extending to Scotland certain provisions of the forgery act of 1861. Mozley & Whitley.

FORHERDA. In old records. A herdland, headland, or foreland. Cowell.

FORI DISPUTATIONES. In the civil law. Discussions or arguments before a court. 1 Kent, Comm. 530.

FORINSECU MANERIUM. That part of a manor which lies without the walls, and is not included within the liberties of it. Paroch. Antiq. 351.

FORINSECU MERVITIUM. The payment of extraordinary aid. Kennett, Gloss.

FORINSECUS. Lat. Foreign; exterior; outside; extraordinary. Sericuim forinsecum, the payment of aid, seutage, and other extraordinary military services. Forinsecum manerium, the manor, or that part of it which lies outside the bars or town, and is not included within the liberties of it. Cowell; Blount; Jacob; 1 Reeve, Eng. Law, 273.

FORINSIC. In old English law. Exterior; foreign; extraordinary. In feudal law, the term "forinsic services" comprehended the payment of extraordinary aids or the rendition of extraordinary military services, and in this sense was opposed to "intrinsic services." 1 Reeve, Eng. Law, 273.

FORIS. Abroad; out of doors; on the outside of a place; without; extrinsic.

FORISBANITUS. In old English law. Banished.

FORISFACERE. Lat. To forfeit; to lose an estate or other property on account of some criminal or illegal act. To confiscate.

To act beyond the law, i. e., to transgress or infringe the law; to commit an offense or wrong; to do any act against or beyond the law. See Co. Litt. 59a; Du Cange; Spelman.

Forisfacere, i. e., extra legem seu consuetudinem facere. Co. Litt. 59. Forisfacere, i. e., to do something beyond law or custom.


FORISFACTURA. A crime or offense through which property is forfeited.

A fine or punishment in money. Forfeiture. The loss of property or life in consequence of crime. Forisfactura plena. A forfeiture of all a man's property. Things which were forfeited. Du Cange; Spelman.

FORISFACTUS. A criminal. One who has forfeited his life by commission of a capital offense. Spelman.

Forisfactus servus. A slave who has been a free man, but has forfeited his freedom by crime. Du Cange.

FORISFAMILIARE. In old English and Scotch law. Literally, to put out of a family. (Forisfamiliam ponere.) To portion off a son, so that he could have no further claim upon his father. Glanv. lib. 7, c. 3.

To emancipate, or free from paternal authority.

FORISFAMILIATED. In old English law. Portioned off. A son was said to be forisfamiliated (forisfamiliori) if his father assigned him part of his land, and gave him seisin thereof, and did this at the request or with the free consent of the son himself, who expressed himself satisfied with such portion. 1 Reeve, Eng. Law, 42, 110.

FORISFAMILIATUS. In old English law. Put out of a family; portioned off; emancipated; forisfamiliated. Bract. fol. 64.


FORISJUDICATUS. Forejudged; sent from court; banished. Deprived of a thing
by judgment of court. Bract. fol. 250b; Co. Litt. 100b; Du Cange.

FORISJURARE. To forswear; to abjure; to abandon. Forisjurare parentiam. To remove oneself from parental authority. The person who did this lost his rights as heir. Du Cange. 

Provinciam forisjurare. To forswear the country. Spelman.

FORJUDGE. See FORJUDGE.

FORJURER. L. Fr. In old English law. To forswear; to abjure. Forjurer royalme, to abjure the realm. Britt. cc. 1, 16.

FORLER-LAND. Land in the diocese of Hereford, which had a peculiar custom attached to it, but which has been long since disused, although the name is retained. But. Surv. 56.

FORM. 1. A model or skeleton of an instrument to be used in a judicial proceeding, containing the principal necessary matters, the proper technical terms or phrases, and whatever else is necessary to make it formally correct, arranged in proper and methodical order, and capable of being adapted to the circumstances of the specific case.

2. As distinguished from " substance," "form" means the legal or technical manner or order to be observed in legal instruments or juridical proceedings, or in the construction of legal documents or processes.

The distinction between "form" and "substance" is often important in reference to the validity or amendment of pleadings. If the matter of the plea is bad or insufficient, irrespective of the manner of setting it forth, the defect is one of substance. If the matter of the plea is good and sufficient, but is inartificially or defectively pleaded, the defect is one of form.

FORMA. Form; the prescribed form of judicial proceedings. Forma et figura judicii, the form and shape of judgment or judicial action. 3 Bl. Comm. 271.

Forma dat esse. Form gives being. Called "the old physical maxim." Lord Henley, Ch., 2 Eliz. 99.

Forma legalis forma essentialis. Legal form is essential form. 10 Coke, 100.

Forma non observata, infertur adnulatio actus. Where form is not observed, a nullity of the act is inferred. 12 Coke, 7. Where the law prescribes a form, the non-observance of it is fatal to the proceeding, and the whole becomes a nullity. Best, Ev. Introd. § 59.

FORMA PAUPERIS. See In FORMA PAUPERIS.

FORMALITIES. In England, robes worn by the magistrates of a city or corporation, etc., on solemn occasions. Enc. Lond.

FORMALITY. The conditions, in regard to method, order, arrangement, use of technical expressions, performance of specific acts, etc., which are required by the law in the making of contracts or conveyances, or in the taking of legal proceedings, to insure their validity and regularity.

FORMATA. In canon law. Canonical letters. Spelman.

FORMATA BREVIA. Formed writs; writs of form. See BREVIA FORMATA.

FORMED ACTION. An action for which a set form of words is prescribed, which must be strictly adhered to. 10 Mod. 140, 141.

FORMEDON. An ancient writ in English law which was available for one who had a right to lands or tenements by virtue of a gift in tail. It was in the nature of a writ of right, and was the highest action that a tenant in tail could have; for he could not have an absolute writ of right, that being confined to such as claimed in fee-simple, and for that reason this writ of formedon was granted to him by the statute de donis. Westm. 2, (13 Edw. I. c. 1,) and was emphatically called "his" writ of right. The writ was distinguished into three species, viz.: Formedon in the descender, in the remainder, and in the reverter. It was abolished in England by St. 3 & 4 Wm. IV. c. 27. See 3 Bl. Comm. 191; Co. Litt. 316; Fitzh. Nat. Brev. 255.

FORMEDON IN THE DESCENDER. A writ of formedon which lay where a gift was made in tail, and the tenant in tail aliened the lands or was disseised of them and died, for the heir in tail to recover them, against the actual tenant of the freehold. 3 Bl. Comm. 192.

FORMEDON IN THE REMAINDER. A writ of formedon which lay where a man gave lands to another for life or in tail, with remainder to a third person in tail or in fee, and he who had the particular estate died without issue inheritable, and a stranger intruded upon him in remainder, and kept him out of possession. In this case he in remainder, or his heir, was entitled to this writ. 3 Bl. Comm. 192.
FORMEDON IN THE REVERTER

A writ of formedon which lay where there was a gift in tail, and afterwards, by the death of the donee or his heirs without issue of his body, the reversion fell in upon the donor, his heirs or assigns. In such case, the reversioner had this writ to recover the lands. 3 Bl. Comm. 192.

FORMELLA. A certain weight of above 70 lbs., mentioned in 51 Hen. III. Cowell.

FORMER ADJUDICATION, or FORMER RECOVERY. An adjudication or recovery in a former action. See Res Judicata.

FORMIDO PERICULI. Lat. Fear of danger. 1 Kent, Comm. 23.

FORMS OF ACTION. The general designation of the various species or kinds of personal actions known to the common law, such as trover, trespass, debt, assumpsit, etc. These differ in their pleadings and evidence, as well as in the circumstances to which they are respectively applicable.

FORMULA. In common-law practice, a set form of words used in judicial proceedings. In the civil law, an action. Calvin.

FORMULÆ. In Roman law. When the legis actiones were proved to be inconvenient, a mode of procedure called "per formulas," (i.e., by means of formula,) was gradually introduced, and eventually the legis actiones were abolished by the Lex Albilia, B. C. 164, excepting in a very few exceptional matters. The formulae were four in number, namely: (1) The Demonstratio, wherein the plaintiff stated, i.e., showed, the facts out of which his claim arose; (2) the Intentio, where he made his claim against the defendant; (3) the Adjudicatio, wherein the judge was directed to assign or adjudicate the property or any portion or portions thereof according to the rights of the parties; and (4) the Contemnatio, in which the judge was authorized and directed to condemn or to acquit according as the facts were or were not proved. These formulae were obtained from the magistrate, (in iure,) and were thereafter proceeded with before the judge, (in iudicio.) Brown. See Mackeld. Rom. Law, § 204.

FORMULARIES. Collections of formula, or forms of forensic proceedings and instruments used among the Franks, and other early continental nations of Europe. Among these the formula of Marculphus may be mentioned as of considerable interest. Butl. Co. Litt. note 77, lib. 3.

FORNAGIUM. The feet taken by a lord of his tenant, who was bound to bake in the lord’s common oven, (in forno domini,) or for a commission to use his own.

FORNICATION. Unlawful sexual intercourse between two unmarried persons. Further, if one of the persons be married and the other not, it is fornication on the part of the latter, though adultery for the former. In some jurisdictions, however, by statute, it is adultery on the part of both persons if the woman is married, whether the man is married or not.

FORNIX. Lat. A brothel; fornication.


FORO. In Spanish law. The place where tribunals hear and determine causes,—exercendorum litium locus.


FORPRISE. An exception; reservation; excepted; reserved. Anciently, a term of frequent use in leases and conveyances. Cowell; Blount.

In another sense, the word is taken for any exaction.

FORSCHEL. A strip of land lying next to the highway.

FORSES. Waterfalls. Camden, Brit.

FORSPEAKER. An attorney or advocate in a cause. Blount; Whishaw.

FORSPECA. In old English law. Prolocutor; paranymphus.

FORSTAL. See FORESTALL.

Forstallarius est pauperum depressor et totius communitatis et patriae publicus inimicus. 3 Inst. 196. A forestaller is an oppressor of the poor, and a public enemy of the whole community.

FORSWEAR. In criminal law. To make oath to that which the deponent knows to be untrue. This term is wider in its scope than "perjury," for the latter, as a technical term, includes the idea of the oath being taken before a competent court or officer, and relating to a material issue, which is not implied by the word "forswear."
FORT. This term means "something more than a mere military camp, post, or station. The term implies a fortification, or a place protected from attack by some such means as a moat, wall, or parapet." 12 Fed. Rep. 424.

FORTALICE. A fortress or place of strength, which anciently did not pass without a special grant. 11 Hen. VII. c. 18.

FORTALITIUM. In old Scotch law. A fortalice; a castle. Properly a house or tower which has a battlement or a ditch or moat about it.

FORTHCOMING. In Scotch law. The action by which an arrestment (garnishment) is made effectual. It is a decree or process by which the creditor is given the right to demand that the sum arrested be applied for payment of his claim. 2 Kames, Eq. 288, 289; Bell.

FORTHCOMING BOND. A bond given to a sheriff who has levied on property, conditioned that the property shall be forthcoming, i.e., produced, when required. On the giving of such bond, the goods are allowed to remain in the possession of the debtor. 2 Wash. (Va.) 189; 11 Grat. 522; 61 Ga. 520.

The sheriff or other officer levying a writ of fieri facias, or distress warrant, may take from the debtor a bond, with sufficient security, payable to the creditor, reciting the service of such writ or warrant, and the amount due thereon, (including his fee for taking the bond, commissions, and other lawful charges, if any,) with condition that the property shall be forthcoming at the day and place of sale, whereupon such property may be permitted to remain in the possession and at the risk of the debtor. Code Va. 1887, § 5017.

FORTHWITH. As soon as, by reasonable exertion, confined to the object, a thing may be done. Thus, when a defendant is ordered to plead forthwith, he must plead within twenty-four hours. When a statute enacts that an act is to be done "forthwith," it means that the act is to be done within a reasonable time. 1 Chit. Archb. Pr. (12th Ed.) 194.

FORTIA. Force. In old English law. Force used by an accessory, to enable the principal to commit a crime, as by binding or holding a person while another killed him, or by aiding or counseling in any way, or commanding the act to be done. Bract. fols. 138, 138. According to Lord Coke, fortia was a word of art, and properly signified the furnishing of a weapon of force to do the fact, and by force whereof the fact was committed, and he that furnished it was not present when the fact was done. 2 Inst. 182.

FORTIA FRISCA. Fresh force, q. c.

FORTILITY. In old English law. A fortified place; a castle; a bulwark. Cowell; 11 Hen. VII. c. 18.

FORTIOR. Lat. Stronger. A term applied, in the law of evidence, to that species of presumption, arising from facts shown in evidence, which is strong enough to shift the burden of proof to the opposite party. Burrill, Circ. Ev. 64, 66.

Fortior est custodia legis quam hominis. 2 Rolle, 325. The custody of the law is stronger than that of man.

Fortior et potentior est dispositio legis quam hominis. The disposition of the law is of greater force and effect than that of man. Co. Litt. 234a; Shep. Touch. 302; 15 East, 178. The law in some cases overrides the will of the individual, and renders ineffective or futile his expressed intention or contract. Broom, Max. 697.

FORTIORI. See A FORTIORI.

FORTIS. Strong. Fortis et sana, strong and sound; staunch and strong; as a vessel. Townsh. Pl. 227.

FORTLETT. A place or port of some strength; a little fort. Old Nat. Brev. 45.

FORTUIT. In French law. Accidental; fortuitous. Cas fortuit, a fortuitous event. Fortuitament, accidentally; by chance.

FORTUITOUS. Accidental; undesigned; adventitious. Resulting from unavoidable physical causes.

FORTUITOUS COLLISION. In maritime law. The accidental running foul of vessels. 14 Pet. 112.

FORTUITOUS EVENT. In the civil law. That which happens by a cause which cannot be resisted. An unforeseen occurrence, not caused by either of the parties, nor such as they could prevent. In French it is called "cas fortuit." Civil Code La. art. 3556, no. 15.

There is a difference between a fortuitous event, or inevitable accident, and irresistible force. By the former, commonly called the "act of God," is meant any accident produced by physical causes which are irresistible; such as a loss by lightning or storms, by the perils of the seas, by inundations and earthquakes, or by sudden death or illness. By the latter is meant such an interposition of human agency as is, from its nature and power, absolutely uncontestable. Of this nature are losses
FORTUNA

Lat. Fortune; also treasure-trove. Jacob.

Fortunam faciunt judicem. They make fortune the judge. Co. Litt. 167. Spoken of the process of making partition among coparceners by drawing lots for the several purparts.

FORTUNE-TELLERS. Persons pretending or professing to tell fortunes, and punishable as rogues and vagabonds or dis­orderly persons.

FORTUNIUM. In old English law. A tournament or fighting with spears, and an appeal to fortune therein.

FORTY-DAYS COURT. The court of attachment in forests, or wood-mote court.

FORUM. Lat. A court of justice, or judicial tribunal; a place of jurisdiction; a place where a remedy is sought; a place of litigation. 3 Story, 347.

In Roman law. The market place, or public paved court, in the city of Rome, where such public business was transacted as the assemblies of the people and the judicial trial of causes, and where also elections, markets, and the public exchange were held.

FORUM ACTUS. The forum of the act. The forum of the place where the act was done which is now called in question.

FORUM CONSCIENTIÆ. The forum or tribunal of conscience.

FORUM CONTENTIOSUM. A contentious forum or court; a place of litigation; the ordinary court of justice, as distinguished from the tribunal of conscience. 3 Bl. Comm. 211.

FORUM CONTRACTUS. The forum of the contract; the court of the place where a contract is made; the place where a contract is made, considered as a place of jurisdiction. 2 Kent, Comm. 468.

FORUM DOMESTICUM. A domestic forum or tribunal. The visitatorial power is called a "forum domesticum," calculated to determine, sine strepitu, all disputes that arise within themselves. 1 W. Bl. 82.

FORUM DOMICILII. The forum or court of the domicile; the domicile of a defendant, considered as a place of jurisdiction. 2 Kent, Comm. 468.

FORUM ECCLESIASTICUM. An ecclesiasical court. The spiritual jurisdiction, as distinguished from the secular.

FORUM LIGEANTLÆ REI. The forum of defendant's allegiance. The court or jurisdiction of the country to which he owes allegiance.

FORUM ORIGINIS. The court of one's nativity. The place of a person's birth, considered as a place of jurisdiction.

FORUM REGIUM. The king's court. St. Westm. 2, c. 43.

FORUM REI. This term may mean either (1) the forum of the defendant, that is, of his residence or domicile; or (2) the forum of the res or thing in controversy, that is, of the place where the property is situated. The ambiguity springs from the fact that rei may be the genitive of either res or res.

FORUM REI GESTÆ. The forum or court of a res gesta, (thing done;) the place where an act is done, considered as a place of jurisdiction and remedy. 2 Kent, Comm. 463.

FORUM REI SITEÆ. The court where the thing in controversy is situated. The place where the subject-matter in controversy is situated, considered as a place of jurisdiction. 2 Kent, Comm. 463.

FORUM SECULARE. A secular, as distinguished from an ecclesiastical or spiritual, court.

FORURTH. In old records. A long slip of ground. Cowell.

FORWARDING MERCHANT, or FORWARDER. One who receives and forwards goods, taking upon himself the expenses of transportation, for which he receives a compensation from the owners, having no concern in the vessels or wagons by which they are transported, and no interest in the freight, and not being deemed a common carrier, but a mere warehouseman and agent. Story, Balim. §§ 502, 509.

FOSSA. In the civil law. A ditch; a receptacle of water, made by hand. Dig. 43, 14, 1, 5.

In old English law. A ditch. A pit full of water, in which women committing felony were drowned. A grave or sepulcher. Spelman.

FOSSAGIUM. In old English law. M

The duty levied on the inhabitants for re-
pairing the moat or ditch round a fortified town.

**FOSSATORUM OPERATIO.** In old English law. Fosse-work; or the service of laboring, done by inhabitants and adjoining tenants, for the repair and maintenance of the ditches round a city or town, for which some paid a contribution, called "fossa-gium." Cowell.

**FOSSATUM.** A dyke, ditch, or trench; a place inclosed by a ditch; a moat; a canal.

**FOSSE-WAY, or FOSSÉ.** One of the four ancient Roman ways through England. Spelman.

**FOSSELLUM.** A small ditch. Cowell.

**FOSTERING.** An ancient custom in Ireland, in which persons put away their children to fosterers. Fostering was held to be a stronger alliance than blood, and the foster children participated in the fortunes of their foster fathers. Mozley & Whitley.

**FOSTERLAND.** Land given, assigned, or allotted to the finding of food or victuals for any person or persons; as in monasteries for the monks, etc. Cowell; Blount.

**FOSTERLEAN.** The remuneration fixed for the rearing of a foster child; also the jointure of a wife. Jacob.

**FOUJ DAR.** In Hindu law. Under the Mogul government a magistrate of the police over a large district, who took cognizance of all criminal matters within his jurisdiction, and sometimes was employed as receiver general of the revenues. Wharton.

**FOUJ DARRY COURT.** In Hindu law. A tribunal for administering criminal law.

**FOUNDATION.** The founding or building of a college or hospital. The incorporation or endowment of a college or hospital is the foundation; and he who endows it with land or other property is the founder.

**FOUNDER.** The person who endows an eleemosynary corporation or institution, or supplies the funds for its establishment.

**FOUNDEROSA.** Founderous; out of repair, as a road. Cro. Car. 366.

**FOUNDLING.** A deserted or exposed infant; a child found without a parent or guardian, its relatives being unknown. It has a settlement in the district where found.

**FOUNDLING HOSPITALS.** Charitable institutions which exist in most countries for taking care of infants forsaken by their parents, such being generally the offspring of illegal connections. The founding hospital act in England is the 13 Geo. II. c. 29.

**FOUR.** In old French law. An oven or bake-house. *Four banal*, an oven, owned by the seignior of the estate, to which the tenants were obliged to bring their bread for baking. Also the proprietary right to maintain such an oven.

**FOUR CORNERS.** The face of a written instrument. That which is contained on the face of a deed (without any aid from the knowledge of the circumstances under which it is made) is said to be within its four corners, because every deed is still supposed to be written on one entire skin, and so to have but four corners.

To look at the *four corners* of an instrument is to examine the whole of it, so as to construe it as a whole, without reference to any one part more than another. 2 Smith, Lead. Cas. 295.

**FOUR SEAS.** The seas surrounding England. These were divided into the Western, including the Scotch and Irish; the Northern, or North sea; the Eastern, being the German ocean; the Southern, being the British channel.

**FOURCHER.** Fr. To fork. This was a method of delaying an action anciently resorted to by defendants when two of them were joined in the suit. Instead of appearing together, each would appear in turn and cast an essoin for the other, thus postponing the trial.

**FOURCHING.** The act of delaying legal proceedings. Termes de la Ley.


**FOWLS OF WARREN.** Such fowls as are preserved under the game laws in warrens. According to Manwood, these are partridges and pheasants. According to Coke, they are partridges, rails, quails, woodcocks, pheasants, mallards, and herons. Co. Litt. 233.

**FOX'S LIBEL ACT.** In English law. This was the statute 52 Geo. III. c. 60, which secured to juries, upon the trial of indictments for libel, the right of pronouncing a general verdict of guilty or not guilty upon the whole matter in issue, and no longer bound them to find a verdict of guilty on proof of the publication of the paper charged
to be a libel, and of the sense ascribed to it in the indictment. Wharton.

FOY. L. Fr. Faith; allegiance; fidelity.

FRACTIO. A breaking; division; fraction; a portion of a thing less than the whole.

FRACTION. A breaking, or breaking up; a fragment or broken part; a portion of a thing, less than the whole.

FRACTION OF A DAY. A portion of a day. The dividing a day. Generally, the law does not allow the fraction of a day. 2 Bl. Comm. 141.

Fractionem diem non recipit lex. Lofti, 572. The law does not take notice of a portion of a day.


FRACTURA NAVIUM. The breaking or wreck of ships; the same as naufragium, (q. v.)

FRAIS. Fr. Expense; charges; costs. Frais d'un procès, costs of a suit.

FRAIS DE JUSTICE. In French and Canadian law. Costs incurred incidentally to the action.

FRAIS JUSQU'A BORD. Fr. In French commercial law. Expenses to the board; expenses incurred on a shipment of goods, in packing, cartage, commissions, etc., up to the point where they are actually put on board the vessel. 16 Fed. Rep. 336.

FRANC. A French coin of the value of a little over eighteen cents.

FRANC ALEU. In French feudal law. An alod; a free inheritance; or an estate held free of any services except such as were due to the sovereign.


FRANCHISE. A special privilege conferred by government upon an individual, and which does not belong to the citizens of the country generally, of common right. It is essential to the character of a franchise that it should be a grant from the sovereign authority, and in this country no franchise can be held which is not derived from a law of the state. See Ang. & A. Corp. § 104: 3 Kent, Comm. 458; 2 Bl. Comm. 37.

In England, a franchise is defined to be a royal privilege in the hands of a subject. In this country, it is a privilege of a public nature, which cannot be exercised without a legislative grant. 45 Mo. 17.

A franchise is a privilege or immunity of a public nature, which cannot be legally exercised without legislative grant. To be a corporation is a franchise. The various powers conferred on corporations are franchises. The execution of a policy of insurance by an insurance company, and the issuing a bank-note by an incorporated bank, are franchises. 15 Johns. 387.

The word "franchise" has various significations, both in a legal and popular sense. A corporation is itself a franchise belonging to the members of the corporation, and the corporation, itself a franchise, may hold other franchises. So, also, the different powers of a corporation, such as the right to hold and dispose of property, are its franchises. In a popular sense, the political rights of subjects and citizens are franchises, such as the right of suffrage, etc. 32 N. H. 484.

The term "franchise" has several significations, and there is some confusion in its use. When used with reference to corporations, the better opinion, deduced from the authorities, seems to be that it consists of the entire privileges embraced in and constituting the grant. It does not embrace the property acquired by the exercise of the franchise. 36 Conn. 295.

The term is also used, in a popular sense, to denote a political right or privilege belonging to a free citizen; as the "elective franchise."


FRANCIGENA. A man born in France. A designation formerly given to aliens in England.

FRANCUS. Free; a freeman; a Frank. Spelman.

FRANCUS BANCUS. Free bench, (q. v.)

FRANCUS HOMO. In old European law. A free man. Domesday.

FRANCUS PLEGIUS. In old English law. A frank pledge, or free pledge. See FRANK-PLEDGE.

FRANCUS TENENS. A freeholder. See FRANK-TENEMENT.

FRANK, c. To send matter through the public mails free of postage, by a personal or official privilege.

FRANK, adj. In old English law. Free. Occurring in several compounds.

FRANK-ALMOIGNE. In English law. Free alms. A spiritual tenure whereby religious corporations, aggregate or sole, held lands of the donor to them and their successors forever. They were discharged of all other except religious services, and the tri­noda necessitas. It differs from tenure by
divine service, in that the latter required the performance of certain divine services, whereas the former, as its name imports, is free. This tenure is expressly excepted in the 12 Car. II. c. 24, § 7, and therefore still subsists in some few instances. 2 Broom & H. Comm. 203.

FRANK BANK. In old English law. Free bench. Litt. § 166; Co. Litt. 1106. See FREE-BENCH.

FRANK-CHASE. A liberty of free chase enjoyed by any one, whereby all other persons having ground within that compass are forbidden to cut down wood, etc., even in their own demesnes, to the prejudice of the owner of the liberty. Cowell. See CHASE.

FRANK-FEE. Freehold lands exempted from all services, but not from homage; lands held otherwise than in ancient demesne.

That which a man holds to himself and his heirs, and not by such service as is required in ancient demesne, according to the custom of the manor. Cowell.

FRANK FERM. In English law. A species of estate held in socage, said by Britton to be "lands and tenements whereof the nature of the fee is changed by feoffment out of chivalry for certain yearly services, and in respect whereof neither homage, ward, marriage, nor relief can be demanded." Britton, c. 66; 2 Bl. Comm. 80.

FRANK-FOLD. In old English law. Free-fold; a privilege for the lord to have all the sheep of his tenants and the inhabitants within his seigniory, in his fold, in his demesnes, to manure his land. Keill. 198.

FRANK-LAW. An obsolete expression signifying the rights and privileges of a citizen, or the liberties and civic rights of a freeman.

FRANK-MARRIAGE. A species of entailed estates, in English law, now grown out of use, but still capable of subsisting. When tenements are given by one to another, together with a wife, who is a daughter or cousin of the donor, to hold in frank-marriage, the donees shall have the tenements to them and the heirs of their two bodies begotten, & e., in special tail. For the word "frank-marriage," ex vi termini, both creates and limits an inheritance, not only supplying words of descent, but also terms of procreation. The donees are liable to no service except fealty, and a reserved rent would be void, until the fourth degree of consanguinity be passed between the issues of the donor and donee, when they were capable by the law of the church of intermarrying. Litt. § 19; 2 Bl. Comm. 115.

FRANK-PLEDGE. In old English law. A pledge or surety for freemen; that is, the pledge, or corporate responsibility, of all the inhabitants of a titling for the general good behavior of each free-born citizen above the age of fourteen, and for his being forthcoming to answer any infraction of the law. Terms de la Ley; Cowell.

FRANK-TENANT. A freeholder. Litt. § 91.

FRANK-TENEMENT. In English law. A free tenement, freeholding, or freehold. 2 Bl. Comm. 61, 62, 104; 1 Steph. Comm. 217; Bract. fol. 207. Used to denote both the tenure and the estate.

FRANKLING PRIVILEGE. The privilege of sending certain matter through the public mails without payment of postage, in pursuance of a personal or official privilege.

FRANKLEYN, (spelled, also, "Franc­ling" and "Franklin.") A freeman; a freeholder; a gentleman. Blount; Cowell.

FRASSETUM. In old English law. A wood or wood-ground where ash-trees grow. Co. Litt. 46.

FRATER. In the civil law. A brother. Frater consanguineus, a brother having the same father, but born of a different mother. Frater uterinus, a brother born of the same mother, but by a different father. Frater nutricieus, a bastard brother.

Frater fratri uterino non succedet in hæreditate paterna. A brother shall not succeed a uterine brother in the paternal inheritance, 2 Bl. Comm. 223; Fortes. de Land. c. 5. A maxim of the common law of England, now superseded by the statute 3 & 4 Wm. IV. c. 106, § 9. See Broome, Max. 530.

FRATERIA. In old records. A fraternity, brotherhood, or society of religious persons, who were mutually bound to pray for the good health and life, etc., of their living brethren, and the souls of those that were dead. Cowell.

FRATERNIA. A fraternity or brotherhood.
FRATERNITY. "Some people of a place united together, in respect of a mystery and business, into a company." 1 Salk. 193.

FRATRES CONJURATI. Sworn brothers or companions for the defense of their sovereign, or for other purposes. Hoved. 445.

FRATRES PYES. In old English law. Certain friars who wore white and black garments. Walsingham, 124.

FRATRIAGE. A younger brother's inheritance.

FRATRICIDE. One who has killed a brother or sister; also the killing of a brother or sister.

FRAUD. Fraud consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury. As distinguished from negligence, it is always positive, intentional. 3 Denio, 232.

Fraud, as applied to contracts, is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other. Civil Code La. art. 1347.

Fraud, in the sense of a court of equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another. 1 Story, Eq. Jur. § 157.

The unlawful appropriation of another's property, with knowledge, by design and without criminal intent. Bac. Abr.

Fraud may be actual or constructive. Actual fraud consists in any kind of artifice by which another is deceived. Constructive fraud consists in any act of omission or commission contrary to legal or equitable duty, trust, or confidence justly reposed, which is contrary to good conscience and operates to the injury of another. The former implies moral guilt; the latter may be consistent with innocence. Code Ga. 1852, § 3173. Actual fraud is otherwise called "fraud in fact." Constructive fraud is also called "fraud in law."

Actual or positive fraud includes cases of the intentional and successful employment of any cunning, deception, or artifice, used to circumvent, cheat, or deceive another. 1 Story, Eq. Jur. § 189. Actual fraud or fraud in fact consists in the intent to prevent creditors from recovering their just debts by an act which withdraws the property of a debtor from their reach. Fraud in law consists in acts which, though not fraudulently intended, yet, as their tendency is to defraud creditors if they vest the property of the debtor in his grantee, are void for legal fraud, and fraudulent in themselves, the policy of the law making the acts illegal. Actual fraud is always a question for the jury; legal fraud, where the facts are undisputed or are ascertained, is for the court. 64 Pa. St. 336.

The modes of fraud are infinite, and it has been said that courts of equity have never laid down what shall constitute fraud, or any general rule, beyond which they will not go, on the ground of fraud. Fraud is, however, usually divided into two large classes,—actual fraud and constructive fraud. An actual fraud may be defined to be something said, done, or omitted by a person with the design of perpetrating what he must have known to be a positive fraud. Constructive frauds are acts, statements, or omissions which operate as virtual frauds on individuals, or which, if generally permitted, would be prejudicial to the public welfare, and yet may have been unconnected with any selfish or evil design; as, for instance, bonds and agreements entered into as a reward for using influence over another, to induce him to make a will for the benefit of the obligor. For such contracts encourage a spirit of artifice and scheming, and tend to deceive and injure others. Smith, Man. Eq.

Synonyms. The term "fraud" is sometimes used as synonymous with "covin," "collusion," or "deceit." But distinctions are properly taken in the meanings of these words, for which reference may be had to the titles COVIN; COLLUSION; DECEIT.

FRAUD IN FACT. Actual, positive, intentional fraud. Fraud disclosed by matters of fact, as distinguished from constructive fraud or fraud in law.

FRAUD IN LAW. Fraud in contemplation of law; fraud implied or inferred by law; fraud made out by construction of law, as distinguished from fraud found by a jury from matter of fact; constructive fraud, (q. v.) See 2 Kent, Comm. 512-532.

FRAUDARE. In the civil law. To deceive, cheat, or impose upon; to defraud.

FRAUDS, STATUTE OF. This is the common designation of a very celebrated English statute, (29 Car. II. c. 3,) passed in 1677, and which has been adopted, in a more or less modified form, in nearly all of the United States. Its chief characteristic is the provision that no suit or action shall be maintained on certain classes of contracts or engagements unless there shall be a note or memorandum thereof in writing signed by the party to be charged or by his authorized agent. Its object was to close the door to
the numerous frauds which were believed to be perpetrated, and the perjuries which were believed to be committed, when such obligations could be enforced upon no other evidence than the mere recollection of witnesses. It is more fully named as the "statute of frauds and perjuries."

FRAUDULENT CONVEYANCE. A conveyance or transfer of property, the object of which is to defraud a creditor, or hinder or delay him, or to put such property beyond his reach.

Every transfer of property or charge thereon made, every obligation incurred, and every judicial proceeding taken with intent to delay or defraud any creditor or other person of his demands, is void against all creditors of the debtor, and their successors in interest, and against any person upon whom the estate of the debtor devolves in trust for the benefit of others than the debtor. Civil Code Cal. § 3439.

A transfer made by a person indebted or in embarrassed circumstances, which was intended or will necessarily operate to defeat the right of his creditors to have the property applied to the payment of their demands. Abbott.

FRAUDULENT CONVEYANCES, STATUTES OF, OR AGAINST. The name given to two celebrated English statutes,—the statute 13 Eliz. c. 5, made perpetual by 29 Eliz. c. 5; and the statute 27 Eliz. c. 4, made perpetual by 29 Eliz. c. 18.

FRAUDULENT PREFERENCES. In English law. Every conveyance or transfer of property or charge thereon made, every judgment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own moneys, in favor of any creditor, with a view of giving such creditor a preference over other creditors, shall be deemed fraudulent and void if the debtor become bankrupt within three months. 32 & 33 Vict. c. 71, § 92.

FRAUNC, FRAUNCHE, FRAUNKE. See Frank.

FRAUNCHISE. L. Fr. A franchise.

FRAUS. Lat. Fraud. More commonly called, in the civil law, "dolus" and "dolus malus;" (g. e.) A distinction, however, was sometimes made between "fraus" and "dolus;" the former being held to be of the most extensive import. Calvin.

FRAUS DANS LOCUM CONTRACTUL. Lat. A misrepresentation or concealment of some fact that is material to the contract, and had the truth regarding which been known the contract would not have been made as made, is called a "fraus dans locum contractul;" i. e., a fraud occasioning the contract, or giving place or occasion for the contract.

Fraus est celare fraudem. It is a fraud to conceal a fraud. 1 Vern. 240; 1 Story, Eq. Jur. §§ 389, 390.

Fraus est odiosa et non præsumenda. Fraud is odious, and not to be presumed. Cro. Car. 550.

Fraus et dolus nemiini patrocinari debent. Fraud and deceit should defend or excuse no man. 3 Coke, 78; Fleta, lib. 1, c. 13, § 15; id. lib. 6, c. 6, § 8.

Fraus et jus nunquam cohabitant. Wing. 680. Fraud and justice never dwell together.

Fraus latet in generalibus. Fraud lies hid in general expressions.

FRAUS LEGIS. Lat. In the civil law. Fraud of law; fraud upon law. See In FRAUDEM LEGIS.

Fraus meretur fraudem. Plowd. 100. Fraud merits fraud.

FRAXINETUM. In old English law. A wood of ashes; a place where ashes grow. Co. Litt. 4b; Shep. Touch. 95.

FRAY. See AFFRAY.

FRECTUM. In old English law. Freight. Quoad frectum nectium suarum, as to the freight of his vessels. Blount.

FREDNITE. In old English law. A liberty to hold courts and take up the fines for beating and wounding. To be free from fines. Cowell.

FREDSTOLE. Sanctuaries; seats of peace.

FREDUM. A fine paid for obtaining pardon when the peace had been broken. Spelman; Blount. A sum paid the magistrate for protection against the right of revenge.

FREE. 1. Unconstrained; having power to follow the dictates of his own will. Not subject to the dominion of another. Not compelled to voluntary servitude. Used in this sense as opposed to "slave."

2. Not bound to service for a fixed term of
years; in distinction to being bound as an apprentice.
3. Enjoying full civic rights.
4. Available to all citizens alike without charge; as a free school.
5. Available for public use without charge or toll; as a free bridge.
6. Not despotic; assuring liberty; defending individual rights against encroachment by any person or class; instituted by a free people; said of governments, institutions, etc. Webster.
7. Certain, and also consistent with an honorable degree in life; as free services, in the feudal law.
8. Confined to the person possessing, instead of being shared with others; as a free fishery.
9. Not engaged in a war as belligerent or ally; neutral; and in the maxim, "Free ships make free goods."

FREE ALMS. The name of a species of tenure. See Frank-Almoigne.

FREE-BENCH. A widow's dower out of copyholds to which she is entitled by the custom of some manors. It is regarded as an exrescence growing out of the husband's interest, and is indeed a continuance of his estate. Wharton.

FREE-BORD. In old records. An allowance of land over and above a certain limit or boundary, as so much beyond or without a fence. Cowell; Blount.
The right of claiming that quantity. Termes de la Ley.

FREE BOROUGH MEN. Such great men as did not engage, like the frank-pledge men, for their denncnier. Jacob.

FREE CHAPEL. In English ecclesiastical law. A place of worship, so called because not liable to the visitation of the ordinary. It is always of royal foundation, or founded at least by private persons to whom the crown has granted the privilege. 1 Burn, Ecc. Law, 298.

FREE COURSE. In admiralty law. A vessel having the wind from a favorable quarter is said to sail on a "free course."

FREE ENTRY, EGRESS, AND REGRESS. An expression used to denote that a person has the right to go on land again and again as often as may be reasonably necessary. Thus, in the case of a tenant entitled to emblements.

FREE FISHERY. A franchise in the hands of a subject, existing by grant or prescription, distinct from an ownership in the soil. It is an exclusive right, and applies to a public navigable river, without any right in the soil. 3 Kent, Comm. 410.

FREE ON BOARD. A sale of goods "free on board" imports that they are to be delivered on board the cars, vessel, etc., without expense to the buyer for packing, cartage, or other such charges.

In a contract for sale and delivery of goods "free on board" vessel, the seller is under no obligation to act until the buyer names the ship to which the delivery is to be made. 117 Pa. St. 508; 12 Att. Rep. 32.

FREE SERVICES. In feudal and old English law. Such feudal services as were not unbecoming the character of a soldier or a freeman to perform; as to serve under his lord in the wars, to pay a sum of money, and the like. 2 Bl. Comm. 60, 61.

FREE SHIPS. In international law. Ships of a neutral nation. The phrase "free ships shall make free goods" is often inserted in treaties, meaning that goods, even though belonging to an enemy, shall not be seized or confiscated, if found in neutral ships. Wheat. Int. Law, 501, et seq.

FREE SOCAGE. In English law. A tenure of lands by certain free and honorable services, (such as fealty and rent,) and which are liquidated and reduced to a certainty. It was called "free socage" because the services were not only free, but honorable; whereas in eallein socage the services, though certain, were of a baser nature. 2 Bl. Comm. 78, 79.


FREE TENURE. Tenure by free services; freehold tenure.

FREE WARREN. A franchise for the preserving and custody of beasts and fowls of warren. 2 Bl. Comm. 39, 417; Co. Litt. 233. This franchise gave the grantee sole right of killing, so far as his warren extended, on condition of excluding other persons. 2 Bl. Comm. 39.

FREEDMAN. In Roman law. One who was set free from a state of bondage; an emancipated slave. The word is used in the same sense in the United States, respecting negroes who were formerly slaves.
FREEDOM. The state of being free; liberty; self-determination; absence of restraint; the opposite of slavery.

The power of acting, in the character of a moral personality, according to the dictates of the will, without other check, hindrance, or prohibition than such as may be imposed by just and necessary laws and the duties of social life.

The prevalence, in the government and constitution of a country, of such a system of laws and institutions as secure civil liberty to the individual citizen.

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.)

Such an interest in lands of frank-tenement as may endure not only during the owner’s life, but which is cast after his death upon the persons who successively represent him, according to certain rules elsewhere explained. Such persons are called “heirs,” and he whom they thus represent, the “ancestor.” When the interest extends beyond the ancestor’s life, it is called a “freehold of inheritance,” and, when it only endures for the ancestor’s life, it is a freehold not of inheritance.

An estate to be a freehold must possess these two qualities: (1) Immobility, that is, the property must be either land or some interest, issuing out of or annexed to land; and (2) indeterminate duration, for, if the utmost period of time to which an estate can endure be fixed and determined, it cannot be a freehold. Wharton.

FREEHOLD IN LAW. A freehold which has descended to a man, upon which he may enter at pleasure, but which he has not entered on. Termines de la Ley.

FREEHOLD LAND SOCIETIES. Societies in England designed for the purpose of enabling mechanics, artisans, and other working-men to purchase at the least possible price a piece of freehold land of a sufficient yearly value to entitle the owner to the elective franchise for the county in which the land is situated. Wharton.

FREEHOLDER. A person who possesses a freehold estate.

FREEMAN. This word has had various meanings at different stages of history. In the Roman law, it denoted one who was either born free or emancipated, and was the opposite of “slave.” In feudal law, it designated an alodial proprietor, as distinguished from a vassal or feudal tenant. In old English law, the word described a freeholder or tenant by free services; one who was not a villein. In modern legal phraseology, it is the appellation of a member of a city or borough having the right of suffrage, or a member of any municipal corporation invested with full civic rights.

A person in the possession and enjoyment of all the civil and political rights accorded to the people under a free government.

FREEMAN’S ROLL. A list of persons admitted as burgesses or freemen for the purposes of the rights reserved by the municipal corporation act, (5 & 6 Wm. IV. c. 76.) Distinguished from the Burgess Roll. 3 Steph. Comm. 197. The term was used, in early colonial history, in some of the American colonies.

FREIGHT. Freight is properly the price or compensation paid for the transportation of goods by a carrier, at sea, from port to port. But the term is also used to denote the hire paid for the carriage of goods on land from place to place, (usually by a railroad company, not an express company,) or on inland streams or lakes. The name is also applied to the goods or merchandise transported by any of the above means.

Property carried is called “freight;” the reward, if any, to be paid for its carriage is called “freightage;” the person who delivers the freight to the carrier is called the “consignor;” and the person to whom it is to be delivered is called the “consignee.” Civil Code Cal. § 2110; Civil Code Dak. § 1220.

The term “freight” has several different meanings, as the price to be paid for the carriage of goods, or for the hire of a vessel under a charter-party or otherwise; and sometimes it designates goods carried, as “a freight of time,” or the like. But, as a subject of insurance, it is used in one of the two former senses. 10 Gray, 109.

The sum agreed on for the hire of a ship, entirely or in part, for the carriage of goods from one port to another. 13 East. 300. All rewards or compensation paid for the use of ships. 1 Pet. Adm. 306.

Freight is a compensation received for the transportation of goods and merchandise from port to port; and is never claimable by the owner of the vessel until the voyage has been performed and terminated. 7 Gill & J. 300.

“Dead freight” is money payable by a person who has chartered a ship and only partly loaded her, in respect of the loss of freight caused to the ship-owner by the deficiency of cargo. L. R. 2 H. L. Sc. 128.

Freight is the mother of wages. 2 Show. 293; 3 Kent, Comm. 196. Where a
vouage is broken up by *vis major*, and no
freight earned, no wages, *eo nomine*, are due.

**FREIGHTER.** In maritime law. The
party by whom a vessel is engaged or char-
tered; otherwise called the "charterer." 2
Steph. Comm. 148. In French law, the owner
of a vessel is called the "freighter." (frêteur;)
the merchant who hires it is called the "aff-
freighter," (effreteur.) Emerig. Tr. des Ass.
ch. 11, §3.

**FRENCHMAN.** In early times, in En-
GLISH law, this term was applied to every
stranger or "outlandish" man. Bract. lib. 3,
tr. 2, c. 15.

**FRENDLESMAN.** Sax. An outlaw.
So called because on his outlawry he was de-
nied all help of friends after certain days.
Cowell; Blount.

**FRENDEWITE.** In old English law. A
wicked or fierce exalted from him who harbored
an outlawed friend. Cowell; Tomlins.

**FRENETICUS.** In old English law.
A madman, or person in a frenzy. Fleta, lib.
c. 36.

**FREOBORGH.** A free-surety, or free-
pledge. Spelman. See FRANK-PLEDGE.

**FREQUENT, c.** To visit often; to res-
ort to often or habitually. 109 Ind. 176, 9

Frequentia actus multum operatur.
The frequency of an act effects much. 4
Coke, 78; Wing, Max. p. 719, max. 192. A
continual usage is of great effect to establish
a right.

**FRERE.** A brother. Frere *egyne*, elder
brother. Frere *puisne*, younger brother.
Britt. c. 75.

**FRESCA.** In old records. Fresh water,
or rain and land flood.

**FRESH DISSEISIN.** By the ancient
common law, where a man had been dispossessed,
he was allowed to right himself by force, by
jecting the dispossessor from the premises,
without resort to law, provided this was done
forthwith, while the dispossessor was *fresh*,
(flagrante disseisina.) Bract. fol. 1628.
No particular time was limited for doing this,
but Bracton suggested it should be fifteen
days. Id. fol. 163. See Britt. cc. 32, 43,
44, 65.

**FRESH FINE.** In old English law. A
fine that had been levied within a year past.
St. Westm. 2, c. 45; Cowell.

**FRESH FORCE.** Force done within
forty days. Fitzh. Nat. Brev. 7; Old Nat.
Brev. 4. The heir or reversioner in a case of
dissolution *by fresh force* was allowed a remedy
in chancery by bill before the mayor. Cowell.

**FRESH PURSUIT.** A pursuit insti-
tuted immediately, and with intent to reclaim
or recapture, after an animal escaped, a thief
flying with stolen goods, etc.

**FRESH SUIT.** In old English law.
Immediate and unremitting pursuit of an es-
caping thief. "Such a present and ear-
nest following of a robber as never ceases from
the time of the robbery until apprehension.
The party pursuing them had back again his
goods, which otherwise were forfeited to the
crown." Staunton. P. C. lib. 3, cc. 10, 12;
1 Bl. Comm. 297.

**FRESHET.** A flood, or overflowing of a
river, by means of rains or melted snow; an
inundation. 3 Phila. 42.

**FRET.** Fr. In French marine law.

**FRETER.** Fr. In French marine law.
To freight a ship; to let it. Emerig. Tr. des Ass.
c. 11, §3.

**FRETEUR.** Fr. In French marine law.
Freighter. The owner of a ship, who lets it
to the merchant. Emerig. Tr. des Ass. c. 11,
§3.

**FRETTUM, FRECTOR.** In old En-
GLISH law. The freight of a ship; freight
money. Cowell.

**FRETTUM.** A strait.

**FRETUM BRITANNICUM.** The
strait between Dover and Calais.

**FRIARS.** An order of religious persons,
of whom there were four principal branches,
viz.: (1) Minor, Grey Friars, or Franciscans;
(2) Augustines; (3) Dominicans, or Black Friars; (4) White Friars, or Carmel-
ites, from whom the rest descend. Wharton.

**FRIBUSCULUM.** In the civil law. A
temporary separation between husband and
wife, caused by a quarrel or estrangement,
but not amounting to a divorce, because not
accompanied with an intention to dissolve
the marriage.

**FRIDBORG, FRITHBORG.** Frank-
pledge. Cowell. Security for the peace. Spel-
man.

**FRIDHBURGUS.** In old English law.
A kind of frank-pledge, by which the lords or
principal men were made responsible for their dependents or servants. Bract. fol. 1246.

FRIEND OF THE COURT. See Amicus Curie.

FRIENDLESS MAN. In old English law. An outlaw; so called because he was denied all help of friends. Bract. lib. 3, tr. 2, c. 12.

FRIENDLY SOCIETIES. In English law. Associations supported by subscription, for the relief and maintenance of the members, or their wives, children, relatives, and nominees, in sickness, infancy, advanced age, widowhood, etc. The statutes regulating these societies were consolidated and amended by St. 38 & 39 Vict. c. 60. Wharton.

FRIENDLY SUIT. A suit brought by a creditor in chancery against an executor or administrator, being really a suit by the executor or administrator, in the name of a creditor, against himself, in order to compel the creditors to take an equal distribution of the assets. 2 Williams, Ex's, 1915.

Also any suit instituted by agreement between the parties to obtain the opinion of the court upon some doubtful question in which they are interested.

FRIGIDITY. Impotence. Johnson.

FRILLING. Persons of free descent, or freemen born; the middle class of persons among the Saxons. Spelman.


FRITHBORG. Frank-pledge. Cowell.

FRITHBOTE. A satisfaction or fine for a breach of the peace.

FRITHBREACH. The breaking of the peace. Cowell.

FRITHGAR. The year of jubilee, or of meeting for peace and friendship. Jacob.

FRITHGILDA. Guildhall; a company or fraternity for the maintenance of peace and security; also a fine for breach of the peace. Jacob.

FRITHMAN. A member of a company or fraternity. Blount.

FRITHSONE. Surety of defense. Jurisdiction of the peace. The franchise of preserving the peace. Cowell; Spelman.

FRITHSPLOT. A spot or plot of land, encircling some stone, tree, or well; considered sacred, and therefore affording sanctuary to criminals.

FRIVOLOUS. An answer or plea is called "frivolous" when it is clearly insufficient on its face, and does not controvert the material points of the opposite pleading, and is presumably interposed for mere purposes of delay or to embarrass the plaintiff.

A frivolous demurrer has been defined to be one which is so clearly untenable, or its insufficiency so manifest upon a bare inspection of the pleadings, that its character may be determined without argument or research. 40 Wis. 558.


FRONTAGE—FRONTAGER. In English law a frontager is a person owning or occupying land which abuts on a highway, river, sea-shore, or the like. The term is generally used with reference to the liability of frontagers on streets to contribute towards the expense of paving, draining, or other works on the highway carried out by a local authority, in proportion to the frontage of their respective tenements. Sweet.

FRUCTUARIO. Lat. In the civil law. One who had the usufruct of a thing; i.e., the use of the fruits, profits, or increase, as of land or animals. Inst. 2, 1, 35, 38. Bracton applies it to a lessee, farmer, or farmer of land, or one who held lands ad fermam, for a farm or term. Bract. fol. 291.

FRUCTUS. Lat. In the civil law. Fruit, fruits; produce; profit or increase; the organic productions of a thing. Fructus frondi, the fruits of land. Fructus pseudum, the produce of flocks.

The right to the fruits of a thing belonging to another.

The compensation which a man receives from another for the use or enjoyment of a thing, such as interest or rent. See Mackeld. Rom. Law, § 167; Inst. 2, 1, 35, 37; Dig. 7, 1, 33; Id. 5, 3, 29; Id. 22, 1, 34.

Fructus augent hereditatem. The yearly increase goes to enhance the inheritance. Dig. 5, 3, 20, 3.

FRUCTUS CIVILES. (Lat. Civil fruits.) All revenues and recompenses which, though not fruits, properly speaking, are recognized as such by the law.
FRUCTUS INDUSTRIALES. Industrial fruits, or fruits of industry. Those fruits of a thing, as of land, which are produced by the labor and industry of the occupant, as crops of grain; as distinguished from such as are produced solely by the powers of nature. Emblements are so called in the common law. *2 Steph. Comm. 253; 1 Chit. Gen. Pr. 92.*

FRUCTUS NATURALES. Those products which are produced by the powers of nature alone; as wool, metals, milk, the young of animals.

FRUCTUS PENDENTES. Hanging fruits; those not severed. The fruits united with the thing which produces them. These form a part of the principal thing.

Fructus pendentes pars fundi videntur. Hanging fruits make part of the land. *Dig. 6, 1, 44; 2 Bouv. Inst. no. 1578.*

Fructus perceptos villae non esse constat. Gathered fruits do not make a part of the farm. *Dig. 19, 1, 17, 1; 2 Bouv. Inst. no. 1578.*

FRUCTUS REI ALIENÆ. The fruits of another's property; fruits taken from another's estate.

FRUCTUS SEPARATI. In the civil law. Separate fruits; the fruits of a thing when they are separated from it. *Dig. 7, 4, 18.*

FRUGES. In the civil law. Anything produced from vines, underwood, chalk-pits, stone-quarries. *Dig. 50, 16, 77.*


FRUIT. The produce of a tree or plant which contains the seed or is used for food.

This term, in legal acceptation, is not confined to the produce of those trees which in popular language are called "fruit trees," but applies also to the produce of oak, elm, and walnut trees. *5 Barn. & C. 847.*

FRUIT FALLEN. The produce of any possession detached therefrom, and capable of being enjoyed by itself. Thus, a next presentation, when a vacancy has occurred, is a fruit fallen from the advowson. *Wharton.*

FRUITS OF CRIME. In the law of evidence. Material objects acquired by means and in consequence of the commission of crime, and sometimes constituting the sub-


Frumenta quæ sata sunt solo cedere intelligitur. Grain which is sown is understood to form a part of the soil. *Inst. 2, 1, 92.*

FRUMENTUM. In the civil law. Grain. That which grows in an ear. *Dig. 50, 16, 77.*

FRUMGYLD. Sax. The first payment made to the kindred of a slain person in compensation for his murder. *Briott.*

FRUMSTOLL. Sax. In Saxon law. A chief seat, or mansion house. *Cowell.*

FRUSCA TERRA. In old records. Uncultivated and desert ground. *2 Mon. Angl. 327; Cowell.*

FRUSSURA. A breaking; plowing. *Cowell.*

Frustra agit qui judicium prosequi nequit cum effectu. He sues to no purpose who cannot prosecute his judgment with effect. [who cannot have the fruits of his judgment.] *Fleta, lib. 6, c. 37, § 9.*

Frustra [vana] est potentia quæ nunquam venit in actum. That power is to no purpose which never comes into act, or which is never exercised. *2 Coke, 51.*

Frustra expectatur eventus cujus effectus nullus sequitur. An event is vainly expected from which no effect follows.

Frustra feruntur leges nisi subditi et obedientibus. Laws are made to no purpose, except for those that are subject and obedient. *Branch, Princ.*

Frustra fit per plura, quod fieri potest per pauciora. That is done to no purpose by many things which can be done by fewer. *Jenk. Cent. p. 68, case 28.* The employment of more means or instruments for effecting a thing than are necessary is to no purpose.

Frustra legis auxilium invocat [quaerit] qui in legem committit. He vainly invokes the aid of the law who transgresses the law. *Fleta, lib. 4, c. 2, § 3; 2 Hale, P. C. 386; Broom, Max. 279, 297.*

Frustra petis quod mox es restiturus. In vain you ask that which you will have immediately to restore. *2 Kames, Eq. 104; 5 Man. & G. 757.*

Frustra petis quod statim alteri red dere cogeris. *Jenk. Cent. 256.* You ask
in vain that which you might immediately be compelled to restore to another.

Frustra probatur, quod probatum non relevat. That is proved to no purpose which, when proved, does not help. Haik. Lat. Max. 50.

FRUSTRUM TERRÆ. A piece or parcel of land lying by itself. Co. Litt. 5b.

FRUTECTUM. In old records. A place overgrown with shrubs and bushes. Spelman; Blount.

FRUTOS. In Spanish law. Fruits; products; produce; grains; profits. White, New Recop. b. 1, tit. 7, c. 5. § 2

FRYMITH. In old English law. The affording harbor and entertainment to any one.


FUAGA, FOCAGE. Hearth money. A tax laid upon each fire-place or hearth. An imposition of a shilling for every hearth, levied by Edward III, in the dukedom of Aquitaine. Spelman; 1 Bl. Comm. 324.

FUER. In old English law. Flight. It is of two kinds: (1) Fuer in fait, or in facto, where a person does apparently and corporally flee; (2) fuer in leg, or in lege, when, being called in the county court, he does not appear, which legal interpretation makes flight. Wharton.

FUERO. In Spanish law. A law; a code.

A general usage or custom of a province, having the force of law. In contra fuero, to violate a received custom.

A grant of privileges and immunities. Conceder fueros, to grant exemptions.

A charter granted to a city or town. Also designated as "cartas pueblas."

An act of donation made to an individual, a church, or convent, on certain conditions.

A declaration of a magistrate, in relation to taxation, fines, etc.

A charter granted by the sovereign, or those having authority from him, establishing the franchises of towns, cities, etc.

A place where justice is administered.

A peculiar forum, before which a party is amenable.

The jurisdiction of a tribunal, which is entitled to take cognizance of a cause; as
FUGITATION. In Scotch law. When a criminal does not obey the citation to answer, the court pronounces sentence of fugitation against him, which induces a forfeiture of goods and chattels to the crown.

FUGITIVE FROM JUSTICE. A person who, having committed a crime, flies from the state or country where it transpired, in order to evade arrest and escape justice.

FUGITIVE OFFENDERS. In English law. Where a person accused of any offense punishable by imprisonment, with hard labor for twelve months or more, has left that part of her majesty's dominions where the offense is alleged to have been committed, he is liable, if found in any other part of her majesty's dominions, to be apprehended and returned in manner provided by the fugitive offenders' act, 1881, to the part from which he is a fugitive. Wharton.

FUGITIVE SLAVE. One who, held in bondage, flees from his master's power.

FUGITIVUS. In the civil law. A fugitive; a runaway slave. Dig. 11, 4; Cod. 6, 1. See the various definitions of this word in Dig. 21, 1, 17.

FULL. Complete; exhaustive; detailed. A "full" answer is as extensive a term, in describing one which is ample and sufficient, as though the term "complete" had been superadded. 22 Ala. 817

FULL AGE. In common law. The age of twenty-one years, in males and females. Litt. § 259; 1 Bl. Comm. 463.

In the civil law. The age of twenty-five years, in males and females. Inst. 1, 23, pr.

FULL BLOOD. A term of relation, denoting descent from the same couple. Brothers and sisters of full blood are those who are born of the same father and mother, or, as Justinian calls them, "ex utroque parente conjuncti." Nov. 118, cc. 2, 3; Mackeil. Rom. Law, § 145. The more usual term in modern law is "whole blood," (q. c.)

FULL COURT. In practice. A court in banc. A court duly organized with all the judges present.

FULL DEFENSE. In pleading. The formula of defense in a plea, stated at length and without abbreviation, thus: "And the said C. D., by E. F., his attorney, comes and defends the force (or wrong) and injury when and where it shall behoove him, and the damages, and whatsoever else he ought to defend, and says," etc. Steph. Pl. p. 481.

FULL LIFE. Life in fact and in law. See in Full Life.

FULL PROOF. In the civil law. Proof by two witnesses, or a public instrument. Halifax, Civil Law, b. 3, c. 9, nn. 25, 30; 3 Bl. Comm. 370.

Evidence which satisfies the minds of the jury of the truth of the fact in dispute, to the entire exclusion of every reasonable doubt. 38 N. J. Law, 450.

FULL RIGHT. The union of a good title with actual possession.

FULLUM AQUÆ. A stream or stream of water. Blount.

FUMAGE. In old English law. The same as fugage, or smoke farthings. 1 Bl. Comm. 324. See Fugage.

FUNCTION. Office; duty; fulfillment of a definite end or set of ends by the correct adjustment of means. The occupation of an office. By the performance of its duties, the officer is said to fill his function. Dig. 32, 65, 1.

FUNCTIONARY. A public officer or employee. An officer of a private corporation is also sometimes so called.

FUNCTUS OFFICIO. Lat. Having fulfilled the function, discharged the office, or accomplished the purpose, and therefore of no further force or authority. Applied to an officer whose term has expired, and who has consequently no further official authority; and also to an instrument, power, agency, etc., which has fulfilled the purpose of its creation, and is therefore of no further virtue or effect.

FUND. v. To capitalize, with a view to the production of interest. 24 N. J. Eq. 376.

To fund a debt is to pledge a specific fund to keep down interest and reduce the principal. When extinguishment of the debt is the object prominently contemplated, the provision is called a "sinking fund." The term "fund" was originally applied to a portion of the national revenue set apart or pledged to the payment of a particular debt. Hence a funded debt was a debt for the payment of the principal or interest of which some fund was appropriated. 14 N. Y. 356, 367, 377; 21 Barb. 294.

FUND, n. A sum of money set apart for a specific purpose, or available for the payment of debts or claims.
In its narrower and more usual sense, "fund" signifies "capital," as opposed to "interest" or "income;" as where we speak of a corporation funding the arrears of interest due on its bonds, or the like, meaning that the interest is capitalized and made to bear interest in its turn until it is repaid. Sweet.

FUNDAMENTAL LAW. The law which determines the constitution of government in a state, and prescribes and regulates the manner of its exercise; the organic law of a state; the constitution.

FUNDAMUS. We found. One of the words by which a corporation may be created in England. 1 Bl. Comm. 478; 3 Steph. Comm. 173.

FUNDATIO. A founding or foundation.

FUNDATOR. A founder, (q. v.)

FUNDI PATRIMONIALES. Lands of inheritance.

FUNDING SYSTEM. The practice of borrowing money to defray the expenses of government, and creating a "sinking fund," designed to keep down interest, and to effect the gradual reduction of the principal debt.

FUNDITORES. Pioneers. Jacob.

FUNDS. 1. Money in hand; cash; money available for the payment of a debt, legacy, etc.
2. The proceeds of sales of real and personal estate, or the proceeds of any other assets converted into money. 43 N.J. Eq. 533.
3. Corporate stocks or government securities; in this sense usually spoken as of the "funds."
4. Assets, securities, bonds, or revenue of a state or government appropriated for the discharge of its debts.

FUNDUS. In the civil and old English law. Land; land or ground generally; land, without considering its specific use; land, including buildings generally; a farm.

FUNERAL EXPENSES. Money expended in procuring the interment of a corpse.

FUNGIBLES RES. Lat. A term applied in the civil law to things of such a nature as that they could be replaced by equal quantities and qualities, because, mutua vice funguntur, they replace and represent each other; thus, a bushel of wheat. A particular horse would not be fungibilis res. Sandars, Just. Inst. (5th Ed.) 322.

FUNGIBLE THINGS. Moveable goods which may be estimated and replaced accord-
FURIOUS NULLUM, ETC.

Furiosus nullum negotium contrahere potest. A madman can contract nothing, [can make no contract.] Dig. 50, 17, 5.

Furiosus solo furore punitur. A madman is punished by his madness alone; that is, he is not answerable or punishable for his actions. Co. Litt. 217b; 4 Bl. Comm. 24, 396; Broom, Max. 15.

Furiosus stipulare non potest nec aliquid negotium agere, qui non intelligit quid agit. 4 Coke, 126. A madman who knows not what he does cannot make a bargain, nor transact any business.

FURLINGUS. A furlong, or a furrow one-eighth part of a mile long. Co. Litt. 56.

FURLONG. A measure of length, being forty poles, or one-eighth of a mile.

FURLOUGH. Leave of absence; especially, leave given to a military or naval officer, or soldier or seaman, to be absent from service for a certain time. Also the document granting leave of absence.

FURNAGE. See FORNAGIUM; FOUR.

FURNITURE. This term includes that which furnishes, or with which anything is furnished or supplied; whatever must be supplied to a house, a room, or the like, to make it habitable, convenient, or agreeable; goods, vessels, utensils, and other appendages necessary or convenient for housekeeping; whatever is added to the interior of a house or apartment, for use or convenience. 27 Ind. 173.

The term "furniture" embraces everything about the house that has been usually enjoyed therewith, including plate, linen, china, and pictures. 41 N. J. Eq. 96.

The word "furniture" made use of in the disposition of the law, or in the conventions or acts of persons, comprehends only such furniture as is intended for use and ornament of apartments, but not libraries which happen to be there, nor plate. Civil Code La. art. 477.

FURNITURE OF A SHIP. This term includes everything with which a ship requires to be furnished or equipped to make her seaworthy; it comprehends all articles furnished by ship-chandlers, which are almost innumerable. 1 Wall. Jr. 369.

FURNIVAL'S INN. Formerly an inn of chancery. See INNS OF CHANCERY.

Furor contrahi matrimonium non sinit, quia consensus opus est. Insanity prevents marriage from being contracted, because consent is needed. Dig. 23, 2, 16, 2; 1 Ves. & B. 140; 1 Bl. Comm. 439; 4 Johns. Ch. 343, 345.

FURT AND FONDUNG. In old English law. Time to advise or take counsel. Jacob.

FURTHER ADVANCE. A second or subsequent loan of money to a mortgagee by a mortgagor, either upon the same security as the original loan was advanced upon, or an additional security. Equity considers the arrears of interest on a mortgage security converted into principal, by agreement between the parties, as a further advance. Wharton.

FURTHER ASSURANCE, COVENANT FOR. One of the usual agreements entered into by a vendor for the protection of the vendor's interest in the subject of purchase. It seems to be confined to an agreement that the grantor will execute any further instruments of conveyance that may be lawfully required, and not to extend to further obligations to be imposed on the coven­antor by way of covenant. Sugd. Vend. 500.

FURTHER CONSIDERATION. In English practice, upon a motion for judgment or application for a new trial, the court may, if it shall be of opinion that it has not sufficient materials before it to enable it to give judgment, direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made, as it may think fit. Rules Sup. Ct. xl., 10.

FURTHER DIRECTIONS. When a master ordinary in chancery made a report in pursuance of a decree or decreral order, the cause was again set down before the judge who made the decree or order, to be proceeded with. Where a master made a separate report, or one not in pursuance of a decree or decreral order, a petition for consequential directions had to be presented, since the cause could not be set down for further directions under such circumstances. See 2 Danieli, Ch. Pr. (5th Ed.) 1233, note.

FURTHER HEARING. In practice. Hearing at another time.

FURTHER MAINTENANCE OF ACTION, PLEA TO. A plea grounded upon some fact or facts which have arisen since the commencement of the suit, and which the defendant puts forward for the purpose of showing that the plaintiff should not further maintain his action. Brown.
FURTIVE. In old English law. Stealthily; by stealth. Fleta, lib. 1, c. 38, § 3.

FURTUM. Lat. Theft. The fraudulent appropriation to one's self of the property of another, with an intention to commit theft without the consent of the owner. Fleta, 1, 1, c. 36; Bract. fol. 150; 3 Inst. 107.

The thing which has been stolen. Bract. fol. 151.

FURTUM CONCEPTUM. In Roman law. The theft which was disclosed where, upon searching any one in the presence of witnesses in due form, the thing stolen was discovered in his possession.

Furtum est contraeatio rei alienae fraudulentae, cum animo furandi, invito illo domino cujus res illa fuerat. 3 Inst. 107. Theft is the fraudulent handling of another's property, with an intention of stealing against the will of the proprietor, whose property it was.

FURTUM GRAVE. In Scotch law. An aggravated degree of theft, andently punished with death. It still remains an open point what amount of value raises the theft to this serious denomination. 1 Broun. 352, note. See 1 Swint. 467.

FURTUM MANIFESTUM. Open theft. Theft where a thief is caught with the property in his possession. Bract. fol. 150b.

Furtum non est ubi initium habet detentionis per dominium rei. 3 Inst. 107. There is no theft where the foundation of the detention is based upon ownership of the thing.

FURTUM OBLATUM. In the civil law. Offered theft. Oblatum furtum dicitur cum res furtica ab aliquo tibi oblata sit, eaque apud te concepta sit. Theft is called "oblatum" when a thing stolen is offered to you by any one, and found upon you. Inst. 4, 1, 4.

FUSTIGATIO. In old English law. A beating with sticks or clubs; one of the ancient kinds of punishment of malefactors. Bract. fol. 104b, lib. 3, tr. 1, c. 6.

FUSTIS. In old English law. A staff, used in making livery of seisin. Bract. fol. 40.

A baton, club, or cudgel.

FUTURE DEBT. In Scotch law. A debt which is created, but which will not become due till a future day. 1 Bell, Comm. 315.

FUTURE ESTATE. An estate which is not now vested in the grantee, but is to commence in possession at some future time. It includes remainders, reversions, and estates limited to commence in futuro without a particular estate to support them, which last are not good at common law, except in the case of chattel interests. See 2 Bl. Comm. 155.

An estate limited to commence in possession at a future day, either without the intervention of a precedent estate, or on the determination by lapse of time, or otherwise, of a precedent estate created at the same time. 11 Rev. St. N. Y. (3d Ed.) § 10.

"FUTURES." This term has grown out of those purely speculative transactions, in which there is a nominal contract of sale for future delivery, but where in fact none is ever intended or executed. The nominal seller does not have or expect to have the stock or merchandise he purports to sell, nor does the nominal buyer expect to receive it or to pay the price. Instead of that, a percentage or margin is paid, which is increased or diminished as the market rates go up or down, and accounted for to the buyer. 14 R. I. 138.

FUTURI. Those who are to be. Part of the commencement of old deeds. "Seiant presentes et futuri, quod ego tales, deli et concessi," etc. (Let all men now living and to come know that I, A. B., have, etc.) Bract. fol. 34b.

FUZ, or FUST. A Celtic word, meaning a wood or forest.

FYHTWITE. One of the fines incurred for homicide.


FYLE. In old Scotch law. To defile; to declare foul or defiled. Hence, to find a prisoner guilty.

FYLIT. In old Scotch practice. Fyled; found guilty. See Fyle.

FYNDERINGA. Sax. An offense or trespass for which the fine or compensation was reserved to the king's pleasure. Its nature is not known.

FYRD. The military array or land force of the whole country. Contribution to the fyrd was one of the impost forming the trinoda necessitas.

FYRD-WITE. The fine incurred by neglecting to join the fyrd; one of the rights of the crown.
G.

GAGER DEL LEY. Wager of law, (q. v.)

GAIN. Profits; winnings; increment of value.

GAINAGE. The gain or profit of tilled or planted land, raised by cultivating it; and the draught, plow, and furniture for carrying on the work of tillage by the baser kind of sokemen or villeins. Bract. l. i. c. 9.

GAINERY. Tillage, or the profit arising from it, or from the beasts employed therein.


GAJUM. A thick wood. Spelman.

GALE. The payment of a rent, tax, duty, or annuity.

A gale is the right to open and work a mine within the Hundred of St. Bravel’s, or a stone quarry within the open lands of the Forest of Dean. The right is a license or interest in the nature of real estate, conditional on the due payment of rent and observance of the obligations imposed on the galee. It follows the ordinary rules as to the devolution and conveyance of real estate. The galee pays the crown a rent known as a “galeage rent,” “royalty,” or some similar name, proportionate to the quantity of minerals got from the mine or quarry. Sweet.

GALEA. In old records. A piratical vessel; a galley.

GALENES. In old Scotch law. Amends or compensation for slaughter. Bell.

GALLI-HALFPENCE. A kind of coin which, with suskins and doitkins, was forbidden by St. 3 Hen. V. c. 1.

GALLIVOLATUM. A cock-shoot, or cock-glade.

GALLON. A liquid measure, containing 231 cubic inches, or four quarts. The imperial gallon contains about 277, and the ale gallon 282, cubic inches.

GALLOWS. A scaffold; a beam laid over either one or two posts, from which malefactors are hanged.

GAMACTA. In old European law. A stroke or blow. Spelman.
GAMALIS. A child born in lawful wedlock; also one born to betrothed but unmarried parents. Spelman.

GAMBLE. The word "gamble" is perhaps the most apt and substantial to convey the idea of unlawful play that our language affords. It is inclusive of hazarding and betting as well as playing. 2 Yerg. 474.

GAMBLER. One who follows or practices games of chance or skill, with the expectation and purpose of thereby winning money or other property. 113 Mass. 193.

GAMBLING. See GAMING.

GAMBLING DEVICE. A machine or contrivance of any kind for the playing of an unlawful game of chance or hazard.

GAMBLING POLICY. In life insurance. One issued to a person, as beneficiary, who has no pecuniary interest in the life insured. Otherwise called a "wager policy." 50 Mo. 47.

GAME. Birds and beasts of a wild nature, obtained by fowling and hunting. Bacon, Abr. See 11 Metc. (Mass.) 79. The term is said to include (in England) hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards. Brown. See 1 & 2 Wm. IV. c. 32.

A sport or pastime played with cards, dice, or other contrivance. See GAMING.

GAME-KEEPER. One who has the care of keeping and preserving the game on an estate, being appointed thereto by a lord of a manor.

GAME-LAWS. Laws passed for the preservation of game. They usually forbid the killing of specified game during certain seasons or by certain described means. As to English game-laws, see 2 Steph. Comm. 82; 1 & 2 Wm. IV. c. 32.

GAMING. The act or practice of playing games for stakes or wagers; gambling; the playing at any game of hazard. An agreement between two or more persons to play together at a game of chance for a stake or wager which is to become the property of the winner, and to which all contribute. Gaming is an agreement between two or more to risk money on a contest or chance of any kind, where one must be loser and the other gainer. 5 Sneed, 507.

In general, the words "gaming" and "gambling," in statutes, are similar in meaning, and either one comprehends the idea that, by a bet, by chance, by some exercise of skill, or by the transpiring of some event unknown until it occurs, something of value is, as the conclusion of premises agreed, to be transferred from a loser to a winner, without which latter element there is no gaming or gambling. Bish. St. Crimes, § 858.

"Gaming" implies, when used as describing a condition, an element of illegality; and, when people are said to be "gaming," this generally supposes that the "games" have been games in which money comes to the victor or his backers. When the terms "game" or "gambling" are used in statutes, it is almost always in connection with words giving them the latter sense, and in such case it is only by averring and proving the differ­entia that the prosecution can be sustained. But when "gambling" is spoken of in a statute as indi­cable, it is to be regarded as convertible with "gam­bling." 2 Whart. Crim. Law, § 1465b.

"Gaming" is properly the act or engagement of the players. If bystanders or other third persons put up a stake or wager among themselves, to go to one or the other according to the result of the game, this is more correctly termed "betting."

GAMING CONTRACTS. See WAGER.

GAMING-HOUSES. In criminal law. Houses in which gambling is carried on as the business of the occupants, and which are frequented by persons for that purpose. They are nuisances, in the eyes of the law, being detrimental to the public, as they promote cheating and other corrupt practices. 1 Russ. Crimes, 299; Rosc. Crim. Ev. 663; 3 Deno, 101.

GANANCIAL PROPERTY. In Spanish law. A species of community in property enjoyed by husband and wife, the property being divisible between them equally on a dissolution of the marriage. 1 Burge, Conti. Law, 418. See 18 Tex. 634; 22 Mo. 254.

GANANCIAS. In Spanish law. Gains or profits resulting from the employment of property held by husband and wife in common. White, New Recop. b. 1, tit. 7, c. 5.

GANG-WEEK. The time when the bounds of the parish are illustrated or gone over by the parish officers,—rotation week. Enc. Lond.

GANGIATORI. Officers in ancient times whose business it was to examine weights and measures. Skene.

GANTELOPE, (pronounced "gaunt-leflcr.") A military punishment, in which the criminal running between the ranks receives a lash from each man. Enc. Lond. This was called "running the gauntlett."

GAOL. A prison for temporary confinement; a jail; a place for the confinement of offenders against the law.
GAOL DELIVERY. In criminal law. The delivery or clearing of a gaol of the prisoners confined therein, by trying them. A commission of general gaol delivery is one of the four commissions under which the judges in England sit at the assizes; and it empowers them to try and delibe every prisoner who shall be in the gaol, (that is, either in actual custody, or on out bail,) when the judges arrive at the circuit town. 4 Chit. Bl. 270, and notes; 4 Steph. Comm. 333; 1 Chit. Crim. Law, 145, 146.

GAOL LIBERTIES, GAOL LIMITS. A district around a gaol, defined by limits, within which prisoners are allowed to go at large on giving security to return. It is considered a part of the gaol.

GAOLER. The master or keeper of a prison; one who has the custody of a place where prisoners are confined.

GARANDIA, or GARANTIA. A warranty. Spelman.

GARANTIE. In French law. This word corresponds to warranty or covenants for title in English law. In the case of a sale this garantie extends to two things: (1) Peaceful possession of the thing sold; and (2) absence of undisclosed defects, (défauts cachés). Brown.

GARTHINX. In old Lombardic law. A gift; a free or absolute gift; a gift of the whole of a thing. Spelman.

GARAUNTOR. L. Fr. In old English law. A warrantor of land; a vouchee; one bound by a warrant to defend the title and seisin of his alleeine, or, on default thereof, and on eviction of the tenant, to give him other lands of equal value. Britt. c. 75.

GARBA. In old English law. A bundle or sheaf. Blada in garbis, corn or grain in sheaves. Reg. Orig. 96; Bract. fol. 209.

GARBA SAGITTARUM. A sheaf of arrows, containing twenty-four. Otherwise called "schoffa sagittarum." Skene.

GARBALES DECIMÆ. In Scotch law. Tithes of corn, (grain.) Bell.

GARBLE. In English statutes. To sort or cull out the good from the bad in spices, drugs, etc. Cowell.

GARBLER OF SPICES. An ancient officer in the city of London, who might enter into any shop, warehouse, etc., to view and search drugs and spices, and garble and make clean the same, or see that it be done. Mozley & Whitley.

GARCIO STOLÆ. Groom of the stole.

GARCIONES. Servants who follow a camp. Wals. 242.

GARD, or GARDE. Wardship; care; custody; also the ward of a city.

GARDEIN. A keeper; a guardian.

GARDEN. A small piece of land, appropriated to the cultivation of herbs, fruits, flowers, or vegetables.

GARDIA. Custody; wardship.

GARDIANUS. In old English law. A guardian, defender, or protector. In feudal law, gardo. Spelman.


GARDINUM. In old English law. A garden. Reg. Orig. 1b, 2.

GARENE. L. Fr. A warren; a privileged place for keeping animals.

GARNESTURA. In old English law. Victuals, arms, and other implements of war, necessary for the defense of a town or castle. Mat. Par. 1250.

GARNISH, n. In English law. Money paid by a prisoner to his fellow-prisoners on his entrance into prison.

GARNISH, v. To warn or summon. To issue process of garnishment against a person.

GARNISHEE. One garnished; a person against whom process of garnishment is issued; one who has money or property in his possession belonging to a defendant, or who owes the defendant a debt, which money, property, or debt is attached in his hands, with notice to him not to deliver or pay it over until the result of the suit be ascertained.

GARNISHMENT. In the process of attachment. A warning to a person in whose hands the effects of another are attached not
to pay the money or deliver the property of the defendant in his hands to him, but to appear and answer the plaintiff's suit. Drake, Attachm. § 451.

A "garnishment," as the word is employed in this Code, is process to reach and subject money or effects of a defendant in attachment, or in a judgment or decree, or in a pending suit commenced in the ordinary form, in the possession or under the control of a third person, or debts owing such defendant, or liabilities to him on contracts for the delivery of personal property, or on contracts for the payment of money which may be discharged by the delivery of personal property, or on a contract payable in personal property; and such third person is called the "garnishee." Code Ala. 1886, § 2934.

Garnishment is a proceeding to apply the debt due by a third person to a judgment defendant, to the extinguishment of that judgment, or to appropriate effects belonging to a defendant, in the hands of a third person, to its payment. 4 Ga. 308.

Also a warning to any one for his appearance, in a cause in which he is not a party, for the information of the court and explaining a cause. Cowell.

GARNISTURA. In old English law. Garniture; whatever is necessary for the fortification of a city or camp, or for the ornament of a thing. 8 Rymer, 328; Du Cange; Cowell; Blount.

GARSUMME. In old English law. An amerciament or fine. Cowell.

GARTER. A string or ribbon by which the stocking is held upon the leg. The mark of the highest order of English knighthood, ranking next after the nobility. This military order of knighthood is said to have been first instituted by Richard I, at the siege of Acre, where he caused twenty-six knights who firmly stood by him to wear thongs of blue leather about their legs. It is also said to have been perfected by Edward III, and to have received some alterations, which were afterwards laid aside, from Edward VI. The badge of the order is the image of St. George, called the "George," and the motto is "Homé soit qui mal y pense." Wharton.

GARTH. In English law. A yard; a little close or homestead in the north of England. Cowell; Blount. A dam or wear in a river, for the catching of fish.


GASTEL. L. Fr. Wastel; wastel bread; the finest sort of wheat bread. Britt. c. 30; Kelham.

GASTINE. L. Fr. Waste or uncultivated ground. Britt. c. 57.

GAUDIES. A term used in the English universities to denote double commons.

GAUGE. The measure of width of a railroad, fixed, with some exceptions, at 4 feet 8½ inches in Great Britain and America, and 5 feet 3 inches in Ireland.

GAUGETOR. A gager. Lowell.

GAUGER. A surveying officer under the customs, excise, and internal revenue laws, appointed to examine all tuns, pipes, hogsheads, barrels and tiers of wine, oil, and other liquids, and to give them a mark of allowance, as containing lawful measure. There are also private gaugers in large seaport towns, who are licensed by government to perform the same duties. Rapal. & L.

GAUGETUM. A gauge or gauging; a measure of the contents of any vessel.

GAVEL. In English law. Custom; tribute; toll; yearly rent; payment of revenue; of which there were anciently several sorts; as gavel-corn, gavel-malt, oat-gavel, gavel-fold, etc. Terms de la Ley; Cowell; Co. Litt. 142a.

GAVELBRED. In English law. Rent reserved in bread, corn, or provision; rent payable in kind. Cowell.

GAVELCESTER. A certain measure of rent-ale. Cowell.

GAVELET. An ancient and special kind of cessavit, used in Kent and London for the recovery of rent. Obsolete. The statute of gavelot is 10 Edw. II. 2 Reeve, Eng. Law, c. 12, p. 298.

GAVELGELD. That which yields annual profit or toll. The tribute or toll itself. Cowell; Du Cange.

GAVELHERTE. A service of plowing performed by a customary tenant. Cowell; Du Cange.

GAVELING MEN. Tenants who paid a reserved rent, besides some customary duties to be done by them. Cowell.
GAVELKIND. A species of socage tenure common in Kent, in England, where the lands descend to all the sons, or heirs of the nearest degree, together; may be disposed of by will; do not escheat for felony; may be aliened by the heir at the age of fifteen; and dower and curtesy is given of half the land. Somn. Gavelkind. 22; Swain. Gavelkind, 23.

GAVELMED. A customary service of mowing meadow-land or cutting grass, (consuetudo fulcandi.) Blount.

GAVELREP. In old English law. Bed-ray; or bid-ray; the duty of reaping at the bid or command of the lord. Somn. Gavelkind, 19, 21; Cowell.

GAVELWERK. A customary service, either manuopera, by the person of the tenant, or carropera, by his carts or carriages. Blount; Somn. Gavelkind, 24; Du Cange.

GAZETTE. The official publication of the English government, also called the "London Gazette." It is evidence of acts of state, and of everything done by the queen in her political capacity. Orders of adjudication in bankruptcy are required to be published therein; and the production of a copy of the "Gazette," containing a copy of the order of adjudication, is evidence of the fact. Money & Whitley.

GEOBCHED. An Anglo-Saxon term, meaning "conveyed."

GEOBCLIAN. In Saxon law. To convey; to transfer bloc land, (book-land or land held by charter.) The grantor was said to geobclian the allience. See 1 Reeve, Eng. Law, 10.

GEBURSCRIPT. Neighborhood or adjoining district. Cowell.

GEBURUS. In old English law. A country neighbor; an inhabitant of the same geburscript, or village. Cowell.

GELD. In Saxon law. Money or tribute. A mulet, compensation, value, price. Angeld was the single value of a thing; tewigel, double value, etc. So, wergeld was the value of a man slain; orfsfeld, that of a beast. Brown.

GELDABILIS. In old English law. Taxable; gableable.

GELDABLE. LIABLE to pay geld; liable to be taxed. Kelham.

GELDING. A horse that has been castrated, and which is thus distinguished from the horse in his natural and unaltered condition. A "ridging" (a half-castrated horse) is not a gelding, but a horse, within the denomination of animals in the statutes. 4 Tex. App. 219.

GEMMA. Lat. In the civil law. A gem; a precious stone. Gems were distinguished by their transparency; such as emeralds, chrysolites, amethyests. Dig. 34, 2, 19, 17.

GEMOT. In Saxon law. A meeting or moot; a convention; a public assemblage. These were of several sorts, such as the vitena-gemot, or meeting of the wise men; the folo-gemot, or general assembly of the people; the shire-gemot, or county court; the burg-gemot, or borough court; the hundred-gemot, or hundred court; the haligemot, or court-baron; the hal-mote, a convention of citizens in their public hall; the holy-mote, or holy court; the svein-gemot, or forest court; the ward-mote, or ward court. Wharton; Cunningham.

GENEALOGY. An account or history of the descent of a person or family from an ancestor; enumeration of ancestors and their children in the natural order of succession, Webst.

GENEARCH. The head of a family.

GENEARTH. In Saxon law. A villein, or agricultural tenant, (vilianus illicius;) a hind or farmer, (firmarius rusticus.) Spelman.

GENER. Lat. In the civil law. A son-in-law; a daughter's husband. (Filius vir.) Dig. 38, 10, 4, 6.

GENERAL. Pertaining to, or designating, the genus or class, as distinguished from that which characterizes the species or individual. Universal, not particularized; as opposed to special. Principal or central, as opposed to local. Open or available to all.
as opposed to select. Obtaining commonly, or recognized universally; as opposed to particular. Universal or unbounded; as opposed to limited. Comprehending the whole, or directed to the whole; as distinguished from anything applying to or designed for a portion only.

As a noun, the word is the title of a principal officer in the army, usually one who commands a whole army, division, corps, or brigade. In the United States army, the rank of "general" is the highest possible, next to the commander in chief, and is only occasionally created. The officers next in rank are lieutenant general, major general, and brigadier general.

**GENERAL AGENT.** A person who is authorized by his principal to execute all deeds, sign all contracts, or purchase all goods, required in a particular trade, business, or employment. Story, Ag. § 17.

In another sense, a person who has a general authority in regard to a particular object or thing. Id. § 18.

A general agent is one appointed to act in the affairs of his principal generally; a special agent is one appointed to act concerning some particular object. 7 Ala. 800, 804.

**GENERAL APPEARANCE.** An unqualified or unrestricted submission to the jurisdiction of the court. See Appearance.

**GENERAL ASSEMBLY.** A name given in some of the United States to the senate and house of representatives, which compose the legislative body.

**GENERAL ASSIGNMENT.** An assignment made for the benefit of all the assignor's creditors, instead of a few only; or one which transfers the whole of his estate to the assignee, instead of a part only.

**GENERAL AVERAGE.** In commercial law. A contribution made by the proprietors in general of a ship or cargo, towards the loss sustained by any individual of their number, whose property has been voluntarily sacrificed for the common safety; as where, in a storm, jettison is made of any goods, or sails or masts are cut away levandus navis causae, (to lighten the vessel.) 2 Steph. Comm. 179.

The term expresses that contribution to a loss or expense voluntarily incurred for the preservation of the whole, in which all who are concerned in ship, freight, and cargo are to bear an equal part, proportionable to their respective interests. And for the loss incurred by this contribution, however small in amount, the respective owners are to be indemnified by their insurers. 6 Mass. 548.

**GENERAL CHALLENGE.** A species of challenge for cause, being an objection to a particular juror, to the effect that the juror is disqualified from serving in any case. Pen. Code Cal. § 1071.

**GENERAL CHARACTER.** See Character.

**GENERAL CHARGE.** A charge or instruction by the court to the jury upon the case as a whole, or upon its general features or characteristics.

**GENERAL COUNCIL.** (1) A council consisting of members of the Roman Catholic Church from most parts of the world, but not from every part, as an ecumenical council. (2) One of the names of the English parliament.

**GENERAL COVENANT.** One which relates to lands generally, and places the covenantee in the position of a specialty creditor. Brown.

**GENERAL CREDIT.** The character of a witness as one generally worthy of credit. According to Bouvier, there is a distinction between this and "particular credit," which may be affected by proof of particular facts relating to the particular action.

**GENERAL CUSTOM.** General customs are such as prevail throughout a country and become the law of that country, and their existence is to be determined by the court. Particular customs are such as prevail in some county, city, town, parish, or place; their existence is to be determined by a jury upon proof. 23 Me. 95.

**GENERAL DAMAGES.** In pleading and practice. Such damages as necessarily result from the injury complained of, and which may be shown under the *ad damnum*, or general allegation of damages at the end of the declaration. 2 Greenl. Ev. § 254.

**GENERAL DEMURRER.** In pleading. A demurrer framed in general terms, without showing specifically the nature of the objection, and which is usually resorted to where the objection is to matter of substance. Steph. Pl. 140-142; 1 Chit. Pl. 663. See Demurrer.

**GENERAL DEPOSIT.** A general deposit is where the money deposited is not itself to be returned, but an equivalent in
money (that is, a like sum) is to be returned. It is equivalent to a loan, and the money deposited becomes the property of the depositary. 43 Ala. 138.

**GENERAL ELECTION.** 1. One at which the officers to be elected are such as belong to the general government—that is, the general and central political organization of the whole state; as distinguished from an election of officers for a particular locality only.

2. One held for the selection of an officer after the expiration of the full term of the former officer; thus distinguished from a special election, which is one held to supply a vacancy in office occurring before the expiration of the full term for which the incumbent was elected. 52 Cal. 164.

**GENERAL EXECUTOR.** One whose power is not limited either territorially or as to the duration or subject of his trust.

**GENERAL FIELD.** Several distinct lots or pieces of land inclosed and fenced in as one common field. 14 Mass. 440.

**GENERAL FUND.** This phrase, in New York, is a collective designation of all the assets of the state which furnish the means for the support of government and for defraying the discretionary appropriations of the legislature. 27 Barb. 575, 588.

**GENERAL GAOL DELIVERY.** In English law. At the assizes (g. v.) the judges sit by virtue of five several authorities, one of which is the commission of "general gaol delivery." This empowers them to try and deliverance make of every prisoner who shall be in the gaol when the judges arrive at the circuit town, whether an indictment has been preferred at any previous assize or not. 4 Bl. Comm. 270.

**GENERAL GUARDIAN.** One who has the general care and control of the person and estate of his ward.

**GENERAL IMPARLANCE.** In pleading. One granted upon a prayer in which the defendant reserves to himself no exceptions.

**GENERAL INCLOSURE ACT.** The statute 41 Geo. III. c. 103, which consolidates a number of regulations as to the inclosure of common fields and waste lands.

**GENERAL INTENT.** An intention, purpose, or design, either without specific plan or particular object, or without reference to such plan or object.

**GENERAL INTEREST.** In speaking of matters of public and general interest, the terms "public" and "general" are sometimes used as synonyms. But in regard to the admissibility of hearsay evidence, a distinction has been taken between them, the term "public" being strictly applied to that which concerns every member of the state, and the term "general" being confined to a lesser, though still a considerable, portion of the community. Tayl. Ev. § 609.

**GENERAL ISSUE.** In pleading. A plea which traverses and denies, briefly and in general and summary terms, the whole declaration, indictment, or complaint, without tendering new or special matter. See Steph. Pl. 155. Examples of the general issue are "not guilty," "*non assumptis," "*nil debet," "*non est factum."

**GENERAL JURISDICTION.** Such as extends to all controversies that may be brought before a court within the legal bounds of rights and remedies; as opposed to special or limited jurisdiction, which covers only a particular class of cases, or cases where the amount in controversy is below a prescribed sum, or which is subject to specific exceptions.

The terms "general" and "special," applied to jurisdiction, indicate the difference between a legal authority extending to the whole of a particular subject and one limited to a part; and, when applied to the terms of court, the occasion upon which these powers can be respectively exercised. 1 N. Y. 232.

**GENERAL LAND-OFFICE.** In the United States, one of the bureaus of the interior department, which has charge of the survey, sale, granting of patents, and other matters relating to the public lands.

**GENERAL LAW.** A general law, as contradistinguished from one that is special or local, is a law that embraces a class of subjects or places, and does not omit any subject or place naturally belonging to such class. 40 N. J. Law, 1.

A law, framed in general terms, restricted to no locality, and operating equally upon all of a group of objects, which, having regard to the purposes of the legislation, are distinguished by characteristics sufficiently marked and important to make them a class by themselves, is not a special or local law, but a general law. 40 N. J. Law, 123.
GENERAL LEGACY. A pecuniary legacy, payable out of the general assets of a testator. 2 Bl. Comm. 512; Ward, Leg. 1, 16.

GENERAL LIEN. A right to detain a chattel, etc., until payment be made, not only of any debt due in respect of the particular chattel, but of any balance that may be due on general account in the same line of business. A general lien, being against the ordinary rule of law, depends entirely upon contract, express or implied, from the special usage of dealing between the parties. Wharton.

GENERAL MALICE. General malice is wickedness, a disposition to do wrong, a "black and diabolical heart, regardless of social duty and fatally bent on mischief." 11 Ired. 261.

GENERAL MEETING. A meeting of all the stockholders of a corporation, all the creditors of a bankrupt, etc.

GENERAL MONITION. In civil law and admiralty practice. A monition or summons to all parties in interest to appear and show cause against the decree prayed for.

GENERAL OCCUPANT. At common law where a man was tenant pur ater vie, or had an estate granted to himself only (without mentioning his heirs) for the life of another man, and died without alienation during the life of cestui que vie, or him by whose life it was held, he that could first enter on the land might lawfully retain the possession, so long as cestui que vie lived, by right of occupancy, and was hence termed a "general" or common "occupant." 1 Steph. Comm. 415.

GENERAL ORDERS. Orders or rules of court, promulgated for the guidance of practitioners and the regulation of procedure in general, or in some general branch of its jurisdiction; as opposed to a rule or an order made in an individual case; the rules of court.

GENERAL OWNER. The general owner of a thing is he who has the primary or residuary title to it; as distinguished from a special owner, who has a special interest in the same thing, amounting to a qualified ownership, such, for example, as a bailee's lien.

GENERAL PARTNERSHIP. A partnership in which the parties carry on all their trade and business, whatever it may be, for the joint benefit and profit of all the parties concerned, whether the capital stock be limited or not, or the contributions thereto be equal or unequal. Story, Partn. § 74.

GENERAL PROPERTY. The right and property in a thing enjoyed by the general owner. (q. v.)

GENERAL RESTRAINT OF TRADE. One which forbids the person to employ his talents, industry, or capital in any undertaking within the limits of the state or country. 9 How. Pr. 337.

GENERAL RETAINER. A general retainer of an attorney or solicitor "merely gives a right to expect professional service when requested, but none which is not requested. It binds the person retained not to take a fee from another against his retainer, but to do nothing except what he is asked to do, and for this he is to be distinctly paid." 6 R. I. 206.

GENERAL RETURN-DAY. The day for the general return of all writs of summons, subpoena, etc., running to a particular term of the court.

GENERAL RULES. General or standing orders of a court, in relation to practice, etc. See General Orders.

GENERAL SESSIONS. A court of record, in England, held by two or more justices of the peace, for the execution of the authority given them by the commission of the peace and certain statutes. General sessions held at certain times in the four quarters of the year pursuant to St. 2 Hen. V, are properly called "quarter sessions," (q. e.) but intermediate general sessions may also be held. Sweet.

GENERAL SHIP. Where a ship is not chartered wholly to one person, but the owner offers her generally to carry the goods of all comers, or where, if chartered to one person, he offers her to several subfreighters for the conveyance of their goods, she is called a "general" ship, as opposed to a "chartered" one. Brown.

A vessel in which the master or owners engage separately with a number of persons unconnected with each other to convey their respective goods to the place of the ship's destination. 6 Cow. 173.

GENERAL SPECIAL IMPARLANCE. An imparlance (q. e.) granted upon a prayer in which the defendant reserves to himself "all advantages and exceptions whatsoever." 2 Chit. Pl. 408.
GENERAL STATUTE

GENERAL STATUTE. A statute relating to the whole community, or concerning all persons generally, as distinguished from a private or special statute. 4 Coke, 75a; 1 Bl. Comm. 85, 86.

GENERAL TAIL. An estate tail where one parent only is specified, whence the issue must be derived, as to A. and the heirs of his body.

GENERAL TENANCY. A tenancy which is not fixed and made certain in point of duration by the agreement of the parties. 22 Ind. 122.

GENERAL TERM. A phrase used in some jurisdictions to denote the ordinary session of a court, for the trial and determination of causes, as distinguished from a special term, for the hearing of motions or arguments or the despatch of various kinds of formal business, or the trial of a special list or class of cases. Or it may denote a sitting of the court in banc.

GENERAL TRAVERSE. One preceded by a general inducement, and denying in general terms all that is last before alleged on the opposite side, instead of pursuing the words of the allegations which it denies. Gould, Pl. vii. 5.

GENERAL USAGE. One which prevails generally throughout the country, or is followed generally by a given profession or trade, and is not local in its nature or observance.

GENERAL VERDICT. A verdict whereby the jury find either for the plaintiff or for the defendant in general terms; the ordinary form of a verdict; distinguished from a special verdict, (q. v.)

GENERAL WARRANT. A process which formerly issued from the state secretary's office in England to take up (without naming any persons) the author, printer, and publisher of such obscene and seditious libels as were specified in it. It was declared illegal and void for uncertainty by a vote of the house of commons on the 22d April, 1765. Wharton.

GENERAL WARRANTY. The name of a covenant of warranty inserted in deeds, by which the grantor binds himself, his heirs, etc., to "warrant and forever defend" to the grantee, his heirs, etc., the title thereby conveyed, against the lawful claims of all persons whatsoever. Where the warranty is only against the claims of persons claiming "by, through, or under" the grantor or his heirs, it is called a "special warranty."

GENERALE. The usual commons in a religious house, distinguished from pieta-, tia-, which on extraordinary occasions were allowed beyond the commons. Cowell.

Generale dictum generaliter est interpretandum. A general expression is to be interpreted generally. 8 Coke, 116a.


Generale tantum valet in generalibus, quantum singulari in singularis. What is general is of as much force among general things as what is particular among things particular. 11 Coke, 59b.


Generalia sunt praeponenda singularibus. Branch, Princ. General things are to precede particular things.

Generalia verba sunt generaliter intelligenda. General words are to be understood generally, or in a general sense. 3 Inst. 76; Broom, Max. 647.


Generalis clausula non porrigitur adversa anteae specialiter sunt comprehensa. A general clause does not extend to those things which are previously provided for specially. 8 Coke, 154b. Therefore, where a deed at the first contains special words, and afterwards concludes in general words, both words, as well general as special, shall stand.

Generalis regula generaliter est intelligenda. A general rule is to be understood generally. 6 Coke, 65.

GENERALS OF ORDERS. Chiefs of the several orders of monks, friars, and other religious societies.

GENERATIO. The issue or offspring of a mother-monastery. Cowell.
GENEROSA. Gentlewoman. Cowell; 2 Inst. 668.


GENICULUM. A degree of consanguinity. Spelman.

GENS. In Roman law. A tribe or clan; a group of families, connected by common descent and bearing the same name, being all free-born and of free ancestors, and in possession of full civic rights.

GENTES. People. Contra omnes gentes, against all people. Bract. fol. 37b. Words used in the clause of warranty in old deeds.

GENTILES. In Roman law. The members of a gens or common tribe.

GENTLEMAN. In English law. A person of superior birth.

GENTLEWOMAN. A woman of birth above the common, or equal to that of a gentleman; an addition of a woman's state or degree.

GENTLEMAN USHER. One who holds a post at court to usher others to the presence, etc.

GENTLEWOMAN. A woman of birth above the common, or equal to that of a gentleman; an addition of a woman's state or degree.

GENTOO LAW. See HINDU LAW.

GENUINE. This term, when used with reference to a note, imports nothing in regard to the collectibility of the note, or in regard to its legal effect or operation, other than that the note is not false, fictitious, simulated, spurious, counterfeit, or, in short, that the apparent maker did make and deliver the note offered for sale. 37 N. Y. 487.

GENUS. In the civil law. A general class or division, comprising several species. In toto juris generi per speciem derogatur, et illud potissimum habetur quod ad speciem directum est, throughout the law, the species takes from the genus, and that is most particularly regarded which refers to the species. Dig. 50, 17, 80.

A man's lineage, or direct descendants.

In logic, it is the first of the universal ideas, and is when the idea is so common that it extends to other ideas which are also universal; e. g., incorporeal hereditament is genus with respect to a rent, which is species. Woolley, Introd. Log. 45; 1 Mill, Log. 133.

GEOPONICS. The science of cultivating the ground; agriculture.

GEORGE-NOBLE. A gold coin, value 6s. 8d.

GERECHTSBODE. In old New York law. A court messenger or constable. O'Callaghan, New Neth. 322.

GEREFA. In Saxon law. Greve, reve, or reeve; a ministerial officer of high antiquity in England; answering to the grave or graf (графо) of the early continental nations. The term was applied to various grades of officers, from the suo populo gerefa, shire-gref, or shire-reeve, who had charge of the county, (and whose title and office have been perpetuated in the modern "sheriff") down to the town-grefa, or town-reeve, and lower. Burill.

GERENS. Bearing. Gerens datum, bearing date. 1 Ld. Raym. 336; Rob. 19.

GERMAN. Whole, full, or own, in respect to relationship or descent. Brothers, as opposed to half-brothers, are those who have both the same father and mother. Cousins-german are "first" cousins; that is, children of brothers or sisters.

GERMANUS. Descended of the same stock, or from the same couple of ancestors; of the whole or full blood. Mackeld. Rom. Law, § 145.

GERMEN TERRÆ. A sprout of the earth. A young tree, so called.

GERONTOCOMI. In the civil law. Officers appointed to manage hospitals for the aged poor.

GERONTOCOMIUM. In the civil law. An institution or hospital for taking care of the old. Cod. 1, 3, 46, 1; Calvin.

GERSUMARIUS. Finaible; liable to be amerced at the discretion of the lord of a manor. Cowell.

GERSUME. In old English law. Expense; reward; compensation; wealth. It is also used for a fine or compensation for an offense. 2 Mon. Angl. 973.

GEST. In Saxon law. A guest. A name given to a stranger on the second night
of his entertainment in another's house. *Twa-night gest.*

**GESTATION, UTERO-GESTATION.** In medical jurisprudence. The time during which a female, who has conceived, carries the embryo or *fœtus* in her uterus.

**GESTIO.** In the civil law. Behavior or conduct. Management or transaction. *Negotiorum gestio*, the doing of another's business; an interference in the affairs of another in his absence, from benevolence or friendship, and without authority. Dig. 3, 5, 45; Id. 46, 3, 12, 4; 2 Kent, Comm. 616, note.

**GESTIO PRO HÆREDE.** Behavior as heir. This expression was used in the Roman law, and adopted in the civil law and Scotch law, to denote conduct on the part of a person appointed heir to a deceased person, or otherwise entitled to succeed as heir, which indicates an intention to enter upon the inheritance, and to hold himself out as heir to creditors of the deceased; as by receiving the rents due to the deceased, or by taking possession of his title-deeds, etc. Such acts will render the heir liable to the debts of his ancestor. Mozley & Whitley.

**GESTOR.** In the civil law. One who acts for another, or transacts another’s business. Calvin.

**GESTU ET FAMA.** An ancient and obsolete writ resorted to when a person’s good behavior was impeached. Lamb. Eir. l. 4, c. 14.

**GESTUM.** Lat. In Roman law. A deed or act; a thing done. Some writers affected to make a distinction between “ges-tum” and “factum.” But the best authorities pronounced this subtile and indefensible. Dig. 50, 16, 58.


**GEWINEDA.** In Saxon law. The ancient council of the people to decide a cause.

**GEWITNESSA.** In Saxon and old English law. The giving of evidence.

**GEWRITE.** In Saxon law. Deeds or charters; writings. 1 Reeve, Eng. Law, 10.

**GIBBET.** A gallows; the post on which malefactors are hanged, or on which their bodies are exposed. It differs from a common gallows, in that it consists of one perpendicular post, from the top of which proceeds one arm, except it be a double gibbet, which is formed in the shape of the Roman capital T. Enc. Lond.

**GIFT.** A voluntary conveyance of land, or transfer of goods, from one person to another, made gratuitously, and not upon any consideration of blood or money. 2 Bl. Comm. 410; 2 Steph. Comm. 102; 2 Kent, Comm. 437.

A gift is a transfer of personal property, made voluntarily and without consideration. Civil Code Cal. § 1146.

In popular language, a voluntary conveyance or assignment is called a “deed of gift.” “Gift” and “advancement” are sometimes used interchangeably as expressive of the same operation. But, while an advancement is always a gift, a gift is very frequently not an advancement. 3 Brewst. 814.

In English law. A conveyance of lands in tail; a conveyance of an estate tail in which the operative words are “I give,” or “I have given.” 2 Bl. Comm. 316; 1 Steph. Comm. 473.

**GIFT ENTERPRISE.** A scheme for the division or distribution of certain articles of property, to be determined by chance, among those who have taken shares in the scheme. The phrase has attained such a notoriety as to justify a court in taking judicial notice of what is meant and understood by it. 81 Ind. 17; 106 Mass. 422.

**GIFTA AQUE.** The stream of water to a mill. Mon. Angl. tom. 3.

**GIFTOMAN.** In Swedish law. The right to dispose of a woman in marriage; or the person possessing such right,—her father, if living, or, if he be dead, the mother.

**GILD.** In Saxon law. A tax or tribute. Spelman.

A fine, mulct, or amerciament; a satisfaction or compensation for an injury.

A fraternity, society, or company of persons combined together, under certain regulations, and with the king’s license, and so called because its expenses were defrayed by the contributions (geld, gild) of its members. Spelman. In other words, a corporation; called, in Latin, “societas,” “collegium,” “fratria,” “fraternitas,” “sodalitium,” “adunatio,” and, in foreign law, “gildonia.” Spelman. There were various kinds of these gilds, as merchant or commercial gilds, religious gilds, and others. 3 Turn. Anglo
GILD

Sax. 98; 3 Steph. Comm. 173, note u. See GILDA MERCATORIA.

A frieborg, or decennary; called, by the Saxons, "gil得isipers," and its members, "gil得ones" and "congil得ones." Spelman.

GILD-HALL. See GUILDHALL.

GILD-RENT. Certain payments to the crown from any gild or fraternity.

GILDA MERCATORIA. A gild merchant; or merchant gild; a gild, corporation, or company of merchants. 10 Coke, 30.

GILDABLE. In old English law. Taxable, tributary, or contributory; liable to pay tax or tribute. Cowell; Blount.

GILDO, GILD. In Saxon law. Members of a gild or decennary. Often spelled "congilido." Du Cange; Spelman.

GILL. A liquid measure, containing one-fourth of a pint.

GILOUR. L. Fr. A cheat or deceiver. Applied in Britton to those who sold false or spurious things for good, as pewter for silver or laten for gold. Britt. c. 15.

GIRANTE. An Italian word, which signifies the drawer of a bill. It is derived from "girare," to draw.

GIRTH. In Saxon and old English law. A measure of length, equal to one yard, derived from the girth or circumference of a man's body.

Girth and Sanctuary. In old Scotch law. An asylum given to murderers, where the murder was committed without any previous design, and in chau de mella, or heat of passion. Bell.

GISEMENT. Agistment; cattle taken in to graze at a certain price; also the money received for grazing cattle.

GISER. L. Fr. To lie. Gist en le bouche, it lies in the mouth. Le action bien gist, the action well lies. Gisant, lying.

GISETAKER. An agister; a person who takes cattle to graze.

GISLE. A pledge. Fredgiste, a pledge of peace. Gistebert, an illustrious pledge.

GIST. In pleading. The essential ground or object of the action in point of law, without which there would be no cause of action. Gould, Pl. c. 4, § 12; 19 Vt. 102.

The gist of an action is the cause for which an action will lie; the ground or foundation of a suit, without which it would not be maintainable; the essential ground or object of a suit, and without which there is not a cause of action. 101 Ill. 394.

GIVE. A term used in deeds of conveyance. At common law, it implied a covenant for quiet enjoyment. 2 Hil. Real Prop. 366.

In their ordinary and familiar signification, the words "sell" and "give" have not the same meaning, but are commonly used to express different modes of transferring the right to property from one person to another. "To sell" means to transfer for a valuable consideration, while "to give" signifies to transfer gratuitously, without any equivalent. 14 Md. 184.

"GIVE AND BEQUEATH." These words, in a will, import a benefit in point of right, to take effect upon the decease of the testator and proof of the will, unless it is made in terms to depend upon some contingency or condition precedent. 9 Cush. 519; 33 Conn. 297; 8 Wheat. 538.

GIVE BAIL. To furnish or put in bail or security for one's appearance.

GIVE COLOR. To admit an apparent or colorable right in the opposite party. See Color.

GIVER. A donor; he who makes a gift.

GIVING IN PAYMENT. In Louisiana law. A phrase (translating the Fr. "dation en payement") which signifies the delivery and acceptance of real or personal property in satisfaction of a debt, instead of a payment in money. See Civil Code La. art. 2555.

GIVING RINGS. A ceremony anciently performed in England by serjeants at law at the time of their appointment. The rings were inscribed with a motto, generally in Latin.

GIVING TIME. The act of a creditor in extending the time for the payment or satisfaction of a claim beyond the time stipulated in the original contract. If done without the consent of the surety, indorser, or guarantor, it discharges him.

GLADIOLUS. A little sword or dagger; a kind of sedge. Mat. Paris.

GLADIUS. Lat. A sword. An ancient emblem of defense. Hence the ancient earls or comites (the king's attendants, advisers, and associates in his government) were made by being girt with swords, (gladio sucineti.)

The emblem of the executory power of the law in punishing crimes. 4 Bl. Comm. 177.
In old Latin authors, and in the Norman laws, this word was used to signify supreme jurisdiction, (jus gladii.)

GLAIVE. A sword, lance, or horseman’s staff. One of the weapons allowed in a trial by combat.

GLANS. In the civil law. Acorns or nuts of the oak or other trees. In a larger sense, all fruits of trees.

GLASS-MEN. A term used in St. 1 Jac. 1. c. 7, for wandering rogues or vagrants.

GLAVEA. A hand dart. Cowell.

GLEANING. The gathering of grain after reapers, or of grain left ungathered by reapers. Held not to be a right at common law. 1 H. Bl. 51.

GLEBA. A turf, sod, or clod of earth. The soil or ground; cultivated land in general. Church land, (solum et dos ecclesiae.) Spelman. See GLEBE.

GLEBE ASCRIPTITII. Villein-somers, who could not be removed from the land while they did the service due. Bract. c. 7; 1 Reeve, Eng. Law, 269.

GLEBARIE. Turfs dug out of the ground. Cowell.

GLEBE. In ecclesiastical law. The land possessed as a part of the endowment or revenue of a church or ecclesiastical benefice.

In Roman law. A clod; turf; soil. Hence, the soil of an inheritance; an agrarian estate. Servi additoti glebe were serfs attached to and passing with the estate. Cod. 11, 47, 7, 21; Nov. 54, 1.

GLISCYWA. In Saxon law. A fraternity.

GLOMERELLS. Commissioners appointed to determine differences between scholars in a school or university and the townsmen of the place. Jacob.

GLOS. Lat. In the civil law. A husband’s sister. Dig. 38, 10, 4, 6.

GLOSS. An interpretation, consisting of one or more words, interlinear or marginal; an annotation, explanation, or comment on any passage in the text of a work, for purposes of elucidation or amplification. Particularly applied to the comments on the Corpus Juris.

GLOSSA. A gloss, explanation, or interpretation. The glossa of the Roman law are brief illustrative comments or annotations on the text of Justinian’s collections, made by the professors who taught or lectured on them about the twelfth century, (especially at the law school of Bologna,) and were hence called “glossators.” These glosses were at first inserted in the text with the words to which they referred, and were called “glossa interlinearis;” but afterwards they were placed in the margin, partly at the side, and partly under the text, and called “glossa marginales.” A selection of them was made by Accursius, between A. D. 1220 and 1260, under the title of “Glossa Ordinaria,” which is of the greatest authority. Mackeld. Rom. Law, § 90.

Glossa viperina est quæ corrodit viscosa textus. 11 Coke, 34. It is a poisonous gloss which corrupts the essence of the text.

GLOSSATOR. In the civil law. A commentator or annotator. A term applied to the professors and teachers of the Roman law in the twelfth century, at the head of whom was Isnerius. Mackeld. Rom. Law, § 90.

GLOUCESTER, STATUTE OF. The statute is the 6 Edw. I. c. 1, A. D. 1278. It takes its name from the place of its enactment, and was the first statute giving costs in actions.

GLOVE SILVER. Extraordinary rewards formerly given to officers of courts, etc.; money formerly given by the sheriff of a county in which no offenders are left for execution to the clerk of assize and judges’ officers. Jacob.

GLOVES. It was an ancient custom on a maiden assize, when there was no offender to be tried, for the sheriff to present the judge with a pair of white gloves. It is an immemorial custom to remove the glove from the right hand on taking oath. Wharton.

GLYN. A hollow between two mountains; a valley or glen. Co. Litt. 5b.


This word, in a statutory provision that property “shall go to the survivor,” etc., is to be construed as equivalent to vest.

GO BAIL. To assume the responsibility of a surety on a bail-bond.
GO TO PROTEST. Commercial paper is said to "go to protest" when it is dishonored by non-payment or non-acceptance and is handed to a notary for protest.

GO WITHOUT DAY. Words used to denote that a party is dismissed the court. He is said to go without day, because there is no day appointed for him to appear again.

GOAT, GOTE. In old English law. A contrivance or structure for draining waters out of the land into the sea. Callis describes goats as "usual engines erected and built with portcullises and doors of timber and stone or brick, invented first in Lower Germany." Callis, Sewers, (91,) 112, 113. Cowell defines "gote," a ditch, sewer, or gutter.

GOD AND MY COUNTRY. The answer made by a prisoner, when arraigned, in answer to the question, "How will you be tried?" In the ancient practice he had the choice (as appears by the question) whether to submit to the trial by ordeal (by God) or to be tried by a jury, (by the country;) and it is probable that the original form of the answer was, "By God or my country," whereby the prisoner avowed his innocence by declining neither of the modes of trial.

GOD-BOTE. An ecclesiastical or church fine paid for crimes and offenses committed against God. Cowell.

GOD-GILD. That which is offered to God or his service. Jacob.

GOD'S ACRE. A churchyard.

GOD'S PENNY. In old English law. Earnest-money; money given as evidence of the completion of a bargain. This name is probably derived from the fact that such money was given to the church or distributed in alms.

GOING-STOLE. An old form of the word "cucking-stool," (q. e.) Cowell.

GOING CONCERN. A firm or corporation which, though embarrassed or even insolvent, continues to transact its ordinary business. 30 Fed. Rep. 865.

GOING OFF LARGE. This is a nautical phrase, and signifies having the wind free on either tack. 1 Newb. Adm. 8, 26; 6 McLean, 152, 170.

A vessel, in nautical technicality, "is going off large" when the wind blows from some point "aback the beam;" is going "before the wind" when the wind is "free," comes over the stern, and the yards of the ship are braced square across. 1 Newb. Adm. 115.

GOING THROUGH THE BAR. The act of the chief of an English common-law court in demanding of every member of the bar, in order of seniority, if he has anything to move. This was done at the sitting of the court each day in term, except special paper days, crown paper days in the queen's bench, and revenue paper days in the exchequer. On the last day of term this order is reversed, the first and second time round. In the exchequer the postman and tabman are first called on. Wharton.

GOING TO THE COUNTRY. When a party, under the common-law system of pleading, finished his pleading by the words "and of this he puts himself upon the country," this was called "going to the country." It was the essential termination to a pleading which took issue upon a material fact in the preceding pleading. Wharton.

GOING WITNESS. One who is about to take his departure from the jurisdiction of the court, although only into a state or country under the general sovereignty; as from one to another of the United States, or from England to Scotland.


GOLDSMITHS' NOTES. Bankers' cash notes (i. e., promissory notes given by a banker to his customers as acknowledgments of the receipt of money) were originally called in London "goldsmiths' notes," from the circumstance that all the banking business in England was originally transacted by goldsmiths. Wharton.

GOLDWIT. A mulct or fine in gold.

GOLIARDUS. L. Lat. A jester, buffoon, or juggler. Spelman, voc. "Goliardensis."

GOMASHTA. In Hindu law. An agent; a steward; a confidential factor; a representative.

GOOD. 1. Valid; sufficient in law; effectual; unobjectionable.

2. Responsible; solvent; able to pay an amount specified.

3. Of a value corresponding with its terms; collectible. A note is said to be "good" when the payment of it at maturity may be relied on.

Writing the word "Good" across the face of a check is the customary mode in which bankers at
the present day certify that the drawer has funds to meet it, and that it will be paid on presentation for that purpose.

GOOD ABEARING. See ABEARANCE.

GOOD AND LAWFUL MEN. Those who are not disqualified for service on juries by non-age, alienage, infamy, or lunacy, and who reside in the county of the venue.

GOOD AND VALID. Reliable, sufficient, and impeachable in law; adequate; responsible. See GOOD.

GOOD BEHAVIOR. Orderly and lawful conduct; behavior such as is proper for a peaceable and law-abiding citizen. Surety of good behavior may be exacted from anyone who manifests an intention to commit crime or is otherwise reasonably suspected of a criminal design.

GOOD CONSIDERATION. As distinguished from valuable consideration, a consideration founded on motives of generosity, prudence, and natural duty; such as natural love and affection.

GOOD COUNTRY. In Scotch law. Good men of the country. A name given to a jury.

GOOD FAITH. Good faith consists in an honest intention to abstain from taking any unconscientious advantage of another, even through the forms or technicalities of law, together with an absence of all information or belief of facts which would render the transaction unconscientious. Civil Code Dak. § 2105; 1 Dak. 399, 46 N. W. Rep. 1132.

As to a purchaser in good faith, see Bona Fide Purchaser.

GOOD JURY. A jury of which the members are selected from the list of special jurors. See L. R. 5 C. P. 155.

GOOD TITLE. This means such a title as a court of chancery would adopt as a sufficient ground for compelling specific performance, and such a title as would be a good answer to an action of ejectment by any claimant. 6 Exch. 873. See, also, 23 Barb. 370.

GOOD-WILL. The custom or patronage of any established trade or business; the benefit or advantage of having established a business and secured its patronage by the public.

The advantage or benefit which is acquired by an establishment, beyond the mere value of the capital, stocks, funds, or property employed therein, in consequence of the general public patronage and encouragement which it receives from constant or habitual customers, on account of its local position, or common celebrity, or reputation for skill or influence or punctuality, or from other accidental circumstances or necessities, or even from ancient partialities or prejudices. Story, Partn. § 93; 33 Cal. 624.

The good-will of a business is the expectation of continued public patronage, but it does not include a right to use the name of any person from whom it was acquired. Civil Code Cal. § 992; Civil Code Dak. § 577.

The term "good-will" does not mean simply the advantage of occupying particular premises which have been occupied by a manufacturer, etc. It means every advantage, every positive advantage, that has been acquired by a proprietor in carrying on his business, whether connected with the premises in which the business is conducted, or with the name under which it is managed, or with any other matter carrying with it the benefit of the business. 61 N. Y. 226.

GOODRIGHT, GoOLDTITLE. The fictitious plaintiff in the old action of ejectment, most frequently called "John Doe," was sometimes called "Goodright" or "Goodtitle."

GOODS. In contracts. The term "goods" is not so wide as "chattels," for it applies to inanimate objects, and does not include animals or chattels real, as a lease for years of house or land, which "chattels" does include. Co. Litt. 118; 1 Russ. 376.

In wills. In wills "goods" is nomen generalissimum, and, if there is nothing to limit it, will comprehend all the personal estate of the testator, as stocks, bonds, notes, money, plate, furniture, etc. 1 Atk. 180-182.

GOODS AND CHATTELS. This phrase is a general denomination of personal property, as distinguished from real property; the term "chattels" having the effect of extending its scope to any objects of that nature which would not properly be included by the term "goods" alone, e. g., living animals, emblements, and fruits, and terms under leases for years. The general phrase also embraces choses in action, as well as personally in possession.

In wills. The term "goods and chattels" will, unless restrained by the context, pass all the personal estate, including leases for years, cattle, corn, debts, and the like. Ward, Leg. 208, 211.

GOODS SOLD AND DELIVERED. A phrase frequently used in the action of as-
sumpsit, when the sale and delivery of goods furnish the cause.

"GOODS, WARES, AND MERCHANDISE." A general and comprehensive designation of such chattels as are ordinarily the subject of traffic and sale. The phrase is used in the statute of frauds, and is frequently found in pleadings and other instruments. As to its scope, see 20 Pick. 9; 118 Mass. 255; 2 Mason. 407; 2 Sum. 362; 4 Blatchf. 136; 20 Mich. 357; 6 Wend. 355; 40 Ind. 593; Dudley, 28; 55 Iowa, 520, 8 N. W. Rep. 334; 2 Pars. Cont. 330; Benj. Sales, 11; 2 Kent, Comm. 510, note.

GOOLE. In old English law. A breach in a bank or sea wall, or a passage worn by the flux and reflux of the sea. St. 16 & 17 Car. II. c. 11.

GORCE, or GORS. A wear, pool, or pit of water. Termes de la Ley.

GORE. A small, narrow slip of ground. Cowell.

GOSSIPRED. In canon law. Compatrioty; spiritual affinity.

GOUT. In medical jurisprudence. An inflammation of the fibrous and ligamentous parts of the joints.

GOVERNMENT. 1. The regulation, restraint, supervision, or control which is exercised upon the individual members of an organized jural society by those invested with the supreme political authority, for the good and welfare of the body politic; or the act of exercising supreme political power or control.

2. The system of polity in a state; that form of fundamental rules and principles by which a nation or state is governed, or by which individual members of a body politic are to regulate their social actions; a constitution, either written or unwritten, by which the rights and duties of citizens and public officers are prescribed and defined, as a monarchical government, a republican government, etc. Webster.

3. An empire, kingdom, state, or independent political community; as in the phrase, "Compacts between independent governments."

4. The sovereign or supreme power in a state or nation.

5. The machinery by which the sovereign power in a state expresses its will and exercises its functions; or the framework of political institutions, departments, and offices, by means of which the executive, judicial, legislative, and administrative business of the state is carried on.

6. The whole class or body of office-holders or functionaries considered in the aggregate, upon whom devolves the executive, judicial, legislative, and administrative business of the state.

7. In a colloquial sense, the United States, or its representatives, considered as the prosecutor in a criminal action; as in the phrase, "the government objects to the witness."

We understand, in modern political science, by "state," in its widest sense, an independent society, acknowledging no superior, and by the term "government," that institution or aggregate of institutions by which that society makes and carries out those rules of action which are necessary to enable men to live in a social state, or which are imposed upon the people forming that society by those who possess the power or authority of prescribing them. "Government" is the aggregate of authorities which rule a society. By "administration," again, we understand in modern times, and especially in more or less free countries, the aggregate of those persons in whose hands the reins of government are for the time being, (the chief ministers or heads of departments.) But the terms "state," "government," and "administration," are not always used in their strictness. The government of a state being its most prominent feature, which is most readily perceived, "government" has frequently been used for "state;" and the publicists of the last century almost always used the term "government," or "form of government," when they discussed the different political societies or states. On the other hand, "government" is often used, to this day, for "administration," in the sense in which it has been explained. Bouvier

GOVERNMENT ANNUITIES SOCIETIES. These societies are formed in England under 3 & 4 Wm. IV. c. 14, to enable the industrious classes to make provisions for themselves by purchasing, on advantageous terms, a government annuity for life or term of years. By 16 & 17 Vict. c. 45, this act, as well as 7 & 8 Vict. c. 83, amending it, were repealed, and the whole law in relation to the purchase of government annuities, through the medium of savings banks, was consolidated. And by 27 & 28 Vict. c. 45, additional facilities were afforded for the purchase of such annuities, and for assuring payments of money on death. Wharton.
has nevertheless supplanted or displaced the government de jure.

A government deemed unlawful, or deemed wrongful or unjust, which, nevertheless, receives presently habitual obedience from the bulk of the community.  


There are several degrees of what is called "de facto government."

Such a government, in its highest degree, assumes a character very closely resembling that of a lawful government. This is when the usurping government expels the regular authorities from their customary seats and functions, and establishes itself in their place, and so becomes the actual government of a country. The distinguishing characteristic of such a government is that adherents to it in war against the government de jure do not incur the penalties of treason; and, under certain limitations, obligations assumed by it in behalf of the country or otherwise will, in general, be respected by the government de jure when restored.

But there is another description of government, called also by publicists a "government de facto," but which might, perhaps, be more aptly denominated a "government of paramount force." Its distinguishing characteristics are (1) that its existence is maintained by active military power, within the territories, and against the rightful authority, of an established and lawful government; and (2) that, while it exists, it must necessarily be obeyed in civil matters by private citizens who, by acts of obedience, rendered in submission to such force, do not become responsible, as wrong-doers, for those acts, though not warranted by the laws of the rightful government. Actual governments of this sort are established over districts differing greatly in extent and conditions. They are usually administered directly by military authority, but they may be administered, also, by civil authority, supported more or less by military force. 8 Wall. 8, 9.

The term "de facto," as descriptive of a government, has no well-fixed and definite sense. It is, perhaps, most correctly used as signifying a government completely, though only temporarily, established in the place of the lawful or regular government, occupying its capitol, and exercising its power, and which is ultimately overthrown, and the authority of the government de jure re-established. 42 Miss. 601, 703.

A government de facto is a government that unlawfully gets the possession and control of the rightful legal government, and maintains itself there, by force and arms, against the will of such legal government, and claims to exercise the powers thereof. 46 Ala. 304.

GOVERNMENT DE JURE.  A government of right; the true and lawful government; a government established according to the constitution of the state, and lawfully entitled to recognition and supremacy and the administration of the state, but which is actually cut off from power or control.

A government deemed lawful, or deemed rightful or just, which, nevertheless, has been supplanted or displaced; that is to say, which receives not presently (although it received formerly) habitual obedience from the bulk of the community.  


GOVERNOR.  The title of the chief executive in each of the states and territories of the United States; and also of the chief magistrate of some colonies, provinces, and dependencies of other nations.

GRACE.  This word is commonly used in contradistinction to "right." Thus, in St. 22 Edw. III., the lord chancellor was instructed to take cognizance of matters of grace, being such subjects of equity jurisdiction as were exclusively matters of equity.  

Brown.

A faculty, license, or dispensation; also general and free pardon by act of parliament.  

See Act of Grace.

GRACE, DAYS OF.  Time of indulgence granted to an acceptor or maker for the payment of his bill of exchange or note. It was originally a gratuitous favor, (hence the name,) but custom has rendered it a legal right.

GRADATUM.  In old English law.  By degrees or steps; step by step; from one degree to another.  Bract. fol. 64.

GRADIENT.  Moving step by step; a grade; the deviation of railways from a level surface to an inclined plane.

GRADUATES.  Scholars who have taken a degree in a college or university.

GRADUS.  In the civil and old English law.  A measure of space.  A degree of relationship.

A step or degree generally; e. g., gradus honorum, degrees of honor.  Vicat. A pulpit; a year; a generation.  Du Cange.

A port; any place where a vessel can be brought to land.  Du Cange.

GRADUS PARENTELE.  A pedigree; a table of relationship.

GRAFFARIUS.  In old English law.  A graffer, notary, or scrivener.  St. 5 Hen. VIII. c. 1.

GRAFFER.  A notary or scrivener.  See St. 5 Hen. VIII. c. 1.  The word is a corruption of the French "greffer," (q. e.)


GRAFIO.  A baron, inferior to a count.  A fiscal judge.  An advocate.  Spelman; Cowell.
GRAFT. A term used in equity to denote the confirmation, by relation back, of the right of a mortgagee in premises to which, at the making of the mortgage, the mortgagor had only an imperfect title, but to which the latter has since acquired a good title.

GRAIL. A gradual, or book containing some of the offices of the Romish Church.

A chalice; a broad dish or vessel. The holy grail was the vessel out of which our Lord was believed to have eaten at the Last Supper. Cowell.

GRAIN. In Troy weight, the twenty-fourth part of a pennyweight. Any kind of corn sown in the ground.

GRAINAGE. An ancient duty in London under which the twentieth part of salt imported by aliens was taken.

GRAMMAR SCHOOL. In England, this term designates a school in which such instruction is given as will prepare the student to enter a college or university, and in this sense the phrase was used in the Massachusetts colonial act of 1647, requiring every town containing a hundred householders to set up a "grammar school." See 103 Mass. 97. But in modern American usage the term denotes a school, intermediate between the primary school and the high school, in which English grammar and other studies of that grade are taught.

Grammatica falsa non vitiat chartam. 9 Coke, 48. False grammar does not vitiate a deed.

GRAMMATOPHYLACIUM. (Graco-Lat.) In the civil law. A place for keeping writings or records. Dig. 48, 19, 9, 6.

GRAMME. The unit of weight in the metric system. The gramme is the weight of a cubic centimeter of distilled water at the temperature of 4° C. It is equal to 15.4341 grains troy, or 5.6481 drachms avoirdupois.

GRANATARIUS. In old English law, an officer having charge of a granary. Fleta, lib. 2, c. 82, § 1; Id. c. 84.

GRAND ASSIZE. A peculiar species of trial by jury, introduced in the time of Henry II., giving the tenant or defendant in a writ of right the alternative of a trial by battle, or by his peers. Abolished by 3 & 4 Wm. IV. c. 42, § 13. See 3 Bl. Comm. 341.

GRAND BILL OF SALE. In English law. The name of an instrument used for the transfer of a ship while she is at sea.

An expression which is understood to refer to the instrument whereby a ship was originally transferred from the builder to the owner, or first purchaser. 3 Kent, Comm. 138.

GRAND CAPE. In practice. A judicial writ in the old real actions, which issued for the demandant where the tenant, after being duly summoned, neglected to appear on the return of the writ, or to cast an essoin, or, in case of an essoin being cast, neglected to appear on the adjournment day of the essoin: its object being to compel an appearance. Resc. Real Act. 165, et seq. It was called a "cape," from the word with which it commenced, and a "grand cape" (or cape magnum) to distinguish it from the petit cape, which lay after appearance.

GRAND COUTUMIER. A collection of customs, laws, and forms of procedure in use in early times in France. See Coutumier.

GRAND DAYS. In English practice. Certain days in the terms, which are solemnly kept in the inns of court and chancery, viz., Candlemas day in Hilary term, Ascension day in Easter, St. John the Baptist's day in Trinity, and All Saints in Michaelmas; which are dies non juridici. Termes de la Ley; Cowell; Blount. They are days set apart for peculiar festivity; the members of the respective inns being on such occasions regaled at their dinner in the hall, with more than usual sumptuousness. Holthouse.

GRAND DISTRESS, WRIT OF. A writ formerly issued in the real action of quare impedit, when no appearance had been entered after the attachment; it commanded the sheriff to distrain the defendant's lands and chattels in order to compel appearance. It is no longer used, 23 & 24 Vict. c. 126, § 26, having abolished the action of quare impedit, and substituted for it the procedure in an ordinary action. Wharton.

GRAND JURY. A jury of inquiry, consisting of from twelve to twenty-three men, who are summoned and returned by the sheriff to each session of the criminal courts, and whose duty is to receive complaints and accusations in criminal cases, hear the evidence adduced on the part of the state, and find bills of indictment in cases where they are satisfied a trial ought to be had. They are first sworn, and instructed by the court. This is called a "grand jury" because it com-
prizes a greater number of jurors than the ordinary trial jury or "petit jury."

**GRAND LARCENY.** In criminal law. In England, simple larceny was originally divided into two sorts,—*grand* larceny, where the value of the goods stolen was above twelve pence, and *petit* larceny, where their value was equal to or below that sum. 4 Bl. Comm. 229. The distinction was abolished in England by St. 7 & 8 Geo. IV. c. 29, and is not generally recognized in the United States.

**GRAND SERJEANTY.** A species of tenure in *capite*, resembling knight-service, as the service or render was of a free and honorable nature and military in its character. But the tenant by grand serjeancy was bound, instead of attending the king generally in his wars, to do some special honorary service to the king in person, as to carry his banner or sword, or to be his butler or champion at his coronation. Litt. § 153; 2 Bl. Comm. 73; 1 Steph. Comm. 188.

**GRANDCHILD.** The child of one's child.

**GRANDFATHER.** The father of either of one's parents.

**GRANDMOTHER.** The mother of either of one's parents.

**GRANGE.** A farm furnished with barns, granaries, stables, and all conveniences for husbandry. Co. Litt. 5a.

**GRANGEARIUS.** A keeper of a grange or farm.

**GRANGIA.** A grange. Co. Litt. 5a.

**GRANT.** A generic term applicable to all transfers of real property. 3 Washb. Real Prop. 181, 353.

A transfer by deed of that which cannot be passed by livery. Williams, Real Prop. 147, 149.

An act evidenced by letters patent under the great seal, granting something from the king to a subject. Cruise, Dig. tit. 33, 34.

A technical term made use of in deeds of conveyance of lands to import a transfer. 3 Washb. Real Prop. 375–380.

Though the word "grant" was originally made use of, in treating of conveyances of interests in lands, to denote a transfer by deed of that which could not be passed by livery, and, of course, was applied only to incorporeal hereditaments, it has now become a generic term, applicable to the transfer of all classes of real property. 3 Washb. Real Prop. 181.

As distinguished from a mere license, a grant passes some estate or interest, corporeal or incorporeal, in the lands which it embraces; can only be made by an instrument in writing; under seal; and is irrevocable, when made, unless an express power of revocation is reserved. A license is a mere authority; passes no estate or interest whatever; may be made by parol; is revocable at will; and, when revoked, the protection which it gave ceases to exist. 3 Duer 355, 238.

The term "grant," in Scotland, is used in reference (1) to original dispositions of land, as when a lord makes grants of land among tenants; (2) to gratuitious deeds. Paterson. In such case, the superior or donor is said to grant the deed; an expression totally unknown in English law. Mozley & Whitley. By the word "grant," in a treaty, is meant not only a formal grant, but any concession, warrant, order, or permission to survey, possess, or settle, whether written or parol, express, or presumed from possession. Such a grant may be made by law, as well as by a patent pursuant to a law. 12 Pet. 410. See 9 Adol. & E. 532; 5 Mass. 472; 9 Pick. 89.

"GRANT, BARGAIN, AND SELL." Operative words in conveyances of real estate.

**GRANT OF PERSONAL PROPERTY.** A method of transferring personal property, distinguished from a gift by being always founded on some consideration or equivalent. 2 Bl. Comm. 440, 441. Its proper legal designation is an "assignment," or "bargain and sale." 2 Steph. Comm. 102.

**GRANT TO USES.** The common grant with uses superadded, which has become the favorite mode of transferring realty in England. Wharton.

**GRANTEE.** The person to whom a grant is made.

**GRANTOR.** The person by whom a grant is made.

**GRANTZ.** In old English law. Noblemen or grandees. Jacob.

**GRASS HEARTH.** In old records. The grazing or turning up the earth with a plow. The name of a customary service for inferior tenants to bring their plows, and do one day's work for their lords. Cowell.

**GRASS WEEK.** Rogation week, so called anciently in the inns of court and chancery.
GRASS WIDOW. A slang term for a woman separated from her husband by abandonment or 'prolonged absence; a woman living apart from her husband. Webster.

GRASSON, or GRASSUM. A fine paid upon the transfer of a copyhold estate.

GRATIFICATION. A gratuity; a recommendation or reward for services or benefits, given voluntarily, without solicitation or promise.

GRATIS. Freely; gratuitously; without reward or consideration.

GRATIS DICTUM. A voluntary assertion; a statement which a party is not legally bound to make, or in which he is not held to precise accuracy. 2 Kent, Comm. 486; 6 Metc. (Mass.) 260.

GRATUITOUS. Without valuable or legal consideration. A term applied to deeds of conveyance.

In old English law. Voluntary; without force, fear, or favor. Bract. fols. 11, 17.

GRATUITOUS CONTRACT. In the civil law. One which tends wholly to the benefit or advantage of one of the parties, without any compensation, profit, or gain moving to the other.

GRATUITOUS DEEDS. Instruments made without binding consideration.

GRAVA. In old English law. A grove; a small wood; a coppice or thicket. Co. Litt. 4b.

A thick wood of high trees. Blount.

GRAVAMEN. The burden or gist of a charge; the grievance or injury specially complained of.

In English ecclesiastical law. A grievance complained of by the clergy before the bishops in convocation.

GRAVATIO. An accusation or impeachment. Leg. Ethel. c. 13.

GRAVE. A sepulcher. A place where a dead body is interred.

GRAVIS. Grievous; great. Ad grave damnum, to the grievous damage. 11 Coke, 40.

GRAVIUS. A graf; a chief magistrate or officer. A term derived from the more ancient "gratia," and used in combination with various other words, as an official title in Germany; as Margravius, Rheingravius, Landgravius, etc. Speelman.

Gravius est divinam quam temporalem iudicem majestatem. It is more serious to hurt divine than temporal majesty. 11 Coke, 29.

GRAY'S INN. An inn of court. See INNS OF COURT.

GREAT CATTLE. All manner of beasts except sheep and yearlings. 2 Rolle, 173.

GREAT CHARTER. Magna Charta, (q. v.)

GREAT LAW, THE, or "The Body of Laws of the Province of Pennsylvania and Territories thereunto belonging, Past at an Assembly held at Chester, alias Upland, the 7th day of the tenth month, called 'December,' 1682." This was the first code of laws established in Pennsylvania, and is justly celebrated for the provision in its first chapter for liberty of conscience. Bouvier.

GREAT SEAL. In English law. A seal by virtue of which a great part of the royal authority is exercised. The office of the lord chancellor, or lord keeper, is created by the delivery of the great seal into his custody. There is one great seal for all public acts of state which concern the United Kingdom. Mozley & Whitley.


GREE. Satisfaction for an offense committed or injury done. Cowell.

GREEK KALENDS. A colloquial expression to signify a time indefinitely remote, there being no such division of time known to the Greeks.

GREEN CLOTH. In English law. A board or court of justice held in the counting-house of the king's (or queen's) household, and composed of the lord steward and inferior officers. It takes its name from the green cloth spread over the board at which it is held. Wharton; Cowell.

GREEN SILVER. A feudal custom in the manor of Writtle, in Essex, where every tenant whose front door opens to Greenbury shall pay a half-penny yearly to the lord, by the name of "green silver" or "rent." Cowell.

GREEN WAX. In English law. The name of the estreats in the exchequer, deliv-
GROSS NEGLIGENCE. In the law of bailment. The want of slight diligence. The want of that care which every man of common sense, how inattentive soever, takes of his own property. The omission of that wished to marry clandestinely to go to Gretna Green, the nearest part of Scotland, and marry according to the Scotch law; so a sort of chapel was built at Gretna Green, in which the English marriage service was performed by the village blacksmith. Wharton.

GREGA. In old records. The seashore, sand, or beach. 2 Mon. Angl. 625; Cowell.

GRIEVED. Aggrieved. 3 East, 22.

GRITH. Peace; protection. Termes de la Ley.

GRITHBRECH. Sax. Breach of the king's peace, as opposed to frithbrech, a breach of the nation's peace with other nations.

GRITHSTONE. Sax. In Saxon law. A seat, chair, or place of peace; a sanctuary; a stone within a church-gate, to which an offender might flee.

GROCER. In old English law. A merchant or trader who engrossed all vendible merchandise; an engrosser. St. 37 Edw. III. c. 5. See Engrosser.

GRONNA. In old records. A deep hollow or pit; a bog or miry place. Cowell.

GROOM OF THE STOLE. In England. An officer of the royal household, who has charge of the king's wardrobe.

GROOM PORTER. Formerly an officer belonging to the royal household. Jacob.

GROSS. Great; culpable. General. Absolute or entire. A thing in gross exists in its own right, and not as an appendage to another thing.

GROSS ADVENTURE. In maritime law. A loan on bottomry. So named because the lender, in case of a loss, or expense incurred for the common safety, must contribute to the gross or general average.

GROSS AVERAGE. In maritime law. A contribution made by the owners of a ship, its cargo, and the freight, towards the loss sustained by the voluntary and necessary sacrifice of property for the common safety, in proportion to their respective interests. More commonly called "general average." (q. v.) See 3 Kent, Comm. 232; 2 Steph. Comm. 179.

GROSS NEGLIGENCE. In law. The act or age, without any further authority. When the marriage act (26 Geo. II. c. 33) rendered the publication of banns, or a license, necessary in England, it became usual for persons who...
care which even inattentive and thoughtless men never fail to take of their own property.

GROSS WEIGHT. The whole weight of goods and merchandise, including the dust and dross, and also the chest or bag, etc., upon which tare and tret are allowed.


GROSSE BOIS. Timber. Cowell.

GROSSEMENT. L. Fr. Largely. Grossement ensuite, big with child. Plowd. 76.

GROSSOME. In old English law. A fine, or sum of money paid for a lease. Plowd. 270, 271. Supposed to be a corruption of gersuma, (q. v.) See GRESSUME.

GROUND ANNUAL. In Scotch law. An annual rent of two kinds: First, the feu duties payable to the lords of erection and their successors; second, the rents reserved for building lots in a city, where sub-feus are prohibited. This rent is in the nature of a perpetual annuity. Bell.; Ersk. Inst. ii. 3, 52.

GROUND LANDLORD. The grantor of an estate on which a ground-rent is reserved.

GROUND-RENT. A perpetual rent reserved to himself and his heirs, by the grantor of land in fee-simple, out of the land conveyed. It is in the nature of an emphyteus rent. Also, in English law, rent paid on a building lease.

GROUND WRIT. By the English common-law procedure act, 1852, c. 121, "it shall not be necessary to issue any writ directed to the sheriff of the county in which the venue is laid, but writs of execution may issue at once into any county, and be directed to and executed by the sheriff of any county, whether a county palatine or not, without reference to the county in which the venue is laid, and without any suggestion of the issuing of a prior writ into such county." Before this enactment, a ca. sa. or fl. fa. could not be issued into a county different from that in which the venue in the action was laid, without first issuing a writ, called a "ground writ," into the latter county, and then another writ, which was called a "testatum writ," into the former. The above enactment abolished this useless process. Wharton.

GROUNDAGE. A custom or tribute paid for the standing of shipping in port. Jacob.

GROWING CROP. A crop must be considered and treated as a growing crop from the time the seed is deposited in the ground, as at that time the seed loses the qualities of a chattel, and becomes a part of the freehold, and passes with a sale of it. 69 Ala. 435.

Growing crops of grain, and other annual productions raised by cultivation of the earth and industry of man, are personal chattels. Growing trees, fruit, or grass, and other natural products of the earth, are parcel of the land. 1 Denio, 550.

GROWTH HALF-PENNY. A rate paid in some places for the tithe of every fat beast, ox, or other unfruitful cattle. Clayt. 92.

GRUARI. The principal officers of a forest.

GUADIA. In old European law. A pledge. Spelman; Calvin. A custom. Spelman. Spelled also "wadia."

GUARANTEE. He to whom a guaranty is made. This word is also used, as a noun, to denote the contract of guaranty or the obligation of a guarantor, and, as a verb, to denote the action of assuming the responsibilities of a guarantor. But on the general principle of legal orthography,—that the title of the person to whom the action passes over should end in "ee," as "donee," "grantee," "payee," "bailee," "drawee," etc.—it seems better to use this word only as the correlative of "guarantor," and to spell the verb, and also the name of the contract, "guaranty."

GUARENTIGIO. In Spanish law. A written authorization to a court to enforce the performance of an agreement in the same manner as if it had been decreed upon regular legal proceedings.

GUARANTOR. He who makes a guaranty.

GUARANTY. v. To undertake collaterally to answer for the payment of another's debt or the performance of another's duty, liability, or obligation; to assume the responsibility of a guarantor; to warrant. See Guaranty, n.

GUARANTY, n. A promise to answer for the payment of some debt, or the performance of some duty, in case of the failure of another person, who, in the first instance,
is liable to such payment or performance. Fell, Guar. 1; 3 Kent, Comm. 121; 60 N. Y. 438; 1 Miles, 277.

A guaranty is an undertaking by one person to be answerable for the payment of some debt, or the due performance of some contract or duty, by another person, who himself remains liable to pay or perform the same. Story, Prom. Notes, § 457.

A guaranty is a promise to answer for the debt, default, or miscarriage of another person. Civil Code Cal. § 2787.

A guaranty is a contract that some particular thing shall be done exactly as it is agreed to be done, whether it is to be done by one person or another, and whether there be a prior or principal contractor or not. 27 Conn. 31.

The definition of a "guaranty," by text-writers, is an undertaking by one person that another shall perform his contract or fulfill his obligation, or that, if he does not, the guarantor will do it for him. A guarantor of a bill or note is said to be one who engages that the note shall be paid, but is not an indorser or surety. 73 Ill. 13.

The terms "guaranty" and "suretyship" are sometimes used interchangeably; but they should not be confounded. The contract of a surety corresponds with that of a guarantor in many respects; yet important differences exist. The surety is bound with his principal as an original promisor. He is a debtor from the beginning, and must see that the debt is paid, and is held ordinarily to know every default of his principal, and cannot protect himself by the mere indulgence of the creditor, nor by want of notice of the default of the principal, however such indulgence or want of notice may in fact injure him. On the other hand, the contract of a guarantor is his own separate contract. It is in the nature of a warranty by him that the thing guaranteed to be done by the principal shall be done, not merely an engagement jointly with the principal to do the thing. The original contract of the principal is not his contract, and he is not bound to take notice of its non-performance. Therefore the creditor should give him notice; and it is universally held that, if the guarantor can prove that he has suffered damage by the failure to give such notice, he will be discharged to the extent of the damage thus sustained. It is not so with a surety. 32 Ind. 11; 2 N. Y. 563.

A guaranty relating to a future liability of the principal, under successive transactions, which either continue his liability, or from time to time renew it after it has been satisfied, is called a "continuing guaranty." Civil Code Cal. § 2814.

GUARANTY INSURANCE. A guaranty or insurance against loss in case a person named shall make a designated default or be guilty of specified conduct. It is usually against the misconduct or dishonesty of an employee or officer, though sometimes against the breach of a contract. 9 Amer. & Eng. Enc. Law, 65.

GUARDIAN BY NATURE. A state of wardship.

GUARDIAN. A guardian is a person lawfully invested with the power, and charged with the duty, of taking care of the person and managing the property and rights of another person, who, for some peculiarity of status, or defect of age, understanding, or self-control, is considered incapable of administering his own affairs.

A guardian is a person appointed to take care of the person or property of another. Civil Code Cal. § 286.

One who legally has the care and management of the person, or the estate, or both, of a child during its minority. Reeve, Dom. Rel. 311.

This term might be appropriately used to designate the person charged with the care and control of idiots, lunatics, habitual drunkards, spendthrifts, and the like; but such person is, under many of the statutory systems authorizing the appointment, styled "committee," and in common usage the name "guardian" is applied only to one having the care and management of a minor.

The name "curator" is given in some of the states to a person having the control of a minor's estate, without that of his person; and this is also the usage of the civil law.

A testamentary guardian is one appointed by the deed or last will of the child's father; while a guardian by election is one chosen by the infant himself, in a case where he would otherwise be without one.

GUARDIAN AD LITEM. A guardian appointed by a court of justice to prosecute or defend for an infant in any suit to which he may be a party. 2 Steph. Comm. 342. Most commonly appointed for infant defendants; infant plaintiffs generally suing by next friend. This kind of guardian has no right to interfere with the infant's person or property. 2 Steph. Comm. 343.

GUARDIAN BY APPOINTMENT OF COURT. The most important species of guardian in modern law, having custody of the infant until the attainment of full age. It has in England in a manner superseded the guardian in socage, and in the United States the guardian by nature also. The appointment is made by a court of chancery, or by probate or orphans' court. 2 Steph. Comm. 341; 2 Kent, Comm. 226.

GUARDIAN BY NATURE. The father, and, on his death, the mother, of a child. 1 Bl. Comm. 461; 2 Kent, Comm. 219. This guardianship extends only to the custody of
the person of the child to the age of twenty-one years. Sometimes called "natural guardian," but this is rather a popular than a technical mode of expression. 2 Steph. Comm. 337.

GUARDIAN BY STATUTE. A guardian appointed for a child by the deed or last will of the father, and who has the custody both of his person and estate until the attainment of full age. This kind of guardianship is founded on the statute of 12 Car. II. c. 24, and has been pretty extensively adopted in this country. 1 Bl. Comm. 462; 2 Steph. Comm. 339, 340; 2 Kent, Comm. 224-225.

GUARDIAN DE L'ÉGLISE. A church-warden.

GUARDIAN DE L'ESTEMARY. The warden of the stannaries or mines in Cornwall, etc.

GUARDIAN FOR NURTURE. The father, or, at his decease, the mother, of a child. This kind of guardianship extends only to the person, and determines when the infant arrives at the age of fourteen. 2 Kent, Comm. 221; 1 Bl. Comm. 461; 2 Steph. Comm. 338.

GUARDIAN IN CHIVALRY. In the tenure by knight's service, in the feudal law, if the heir of the feud was under the age of twenty-one, being a male, or fourteen, being a female, the lord was entitled to the wardship (and marriage) of the heir, and was called the "guardian in chivalry." This wardship consisted in having the custody of the body and lands of such heir, without any account of the profits. 2 Bl. Comm. 67.

GUARDIAN IN SOCAGE. At the common law, this was a species of guardian who had the custody of lands coming to the infant by descent, as also of the infant's person, until the latter reached the age of fourteen. Such guardian was always "the next of kin to whom the inheritance cannot possibly descend." 1 Bl. Comm. 461; 2 Steph. Comm. 338.

GUARDIAN OF THE PEACE. A warden or conservator of the peace.

GUARDIAN OF THE POOR. In English law. A person elected by the ratepayers of a parish to have the charge and management of the parish work-house or union. See 3 Steph. Comm. 203, 215.

GUARDIAN OF THE SPIRITUALITIES. The person to whom the spiritual jurisdiction of any diocese is committed during the vacancy of the see.

GUARDIAN OF THE TEMPORALITIES. The person to whose custody a vacant see or abbey was committed by the crown.

GUARDIAN, or WARDEN, OF THE CINQUE PORTS. A magistrate who has the jurisdiction of the ports or havens which are called the "Cinque Ports," (q. v.) This office was first created in England, in imitation of the Roman policy, to strengthen the sea-coasts against enemies, etc.

GUARDIANSHIP. The office, duty, or authority of a guardian. Also the relation subsisting between guardian and ward.

GUARDIANUS. A guardian, warden, or keeper. Spelman.

GUARNIMENTUM. In old European law. A provision of necessary things. Spelman. A furnishing or garnishment.

GUASTALD. One who had the custody of the royal mansions.

GUBERNATOR. Lat. In Roman law. The pilot or steersman of a ship.

GUERPI, GUERPY. L. Fr. Abandoned; left; deserted. Brit. c. 33.

GUERRA, GUERRE. War. Spelman.

GUERRILLA PARTY. In military law. An independent body of marauders or armed men, not regularly or organically connected with the armies of either belligerent, who carry on a species of irregular war, chiefly by depredation and massacre.

GUEST. A traveler who lodges at an inn or tavern with the consent of the keeper. Bac. Abr. "Inns," C, 5; 8 Coke, 92.

A guest, as distinguished from a boarder, is bound for no stipulated time. He stops at the inn for as short or as long time as he pleases, paying, while he remains, the customary charge. 24 How. Pr. 62.

GUEST-TAKER. An agister; one who took cattle in to feed in the royal forests. Cowell.


GUÍA. In Spanish law. A right of way for narrow carts. White, New Recop. 1. 2, c. 5, § 1.

GUIDAGE. In old English law. That which was given for safe conduct through a strange territory, or another's territory. Cowell.

The office of guiding of travelers through dangerous and unknown ways. 2 Inst. 326.
GUIDE-PLATE. An iron or steel plate to be attached to a rail for the purpose of guiding to their place on the rail wheels thrown off the track. Pub. St. Mass. 1882, p. 1291.

GUIDON DE LA MER. The name of a treatise on maritime law, by an unknown author, supposed to have been written about 1671 at Rouen, and considered, in continental Europe, as a work of high authority.

GUILD. A voluntary association of persons pursuing the same trade, art, profession, or business, such as printers, goldsmiths, wool merchants, etc., united under a distinct organization of their own, analogous to that of a corporation, regulating the affairs of their trade or business by their own laws and rules, and aiming, by co-operation and organization, to protect and promote the interests of their common vocation. In medieval history these fraternities or guilds played an important part in the government of some states; as at Florence, in the thirteenth and following centuries, where they chose the council of government of the city. But with the growth of cities and the advance in the organization of municipal government, their importance and prestige has declined. The place of meeting of a guild, or association of guilds, was called the "Guildhall." The word is said to be derived from the Anglo-Saxon "gild" or "geld," a tax or tribute, because each member of the society was required to pay a tax towards its support.

GUILD RENTS. Rents payable to the crown by any guild, or such as formerly belonged to religious guilds, and came to the crown at the general dissolution of the monasteries. Tomlins.

GUILDHALL. The hall or place of meeting of a guild, or geld.

The place of meeting of a municipal corporation. 3 Steph. Comm. 173, note. The mercantile or commercial geld of the Saxons are supposed to have given rise to the present municipal corporations of England, whose place of meeting is still called the "Guildhall."

GUILDHALL Sittings. The sittings held in the Guildhall of the city of London for city of London causes.

GUILT. In criminal law. That quality which imparts criminality to a motive or act, and renders the person amenable to punishment by the law.

That disposition to violate the law which has manifested itself by some act already done. The opposite of innocence. See Ruth. Inst. b. 1, c. 18, § 10.

GUITY. Having committed a crime or tort; the word used by a prisoner in pleading to an indictment when he confesses the crime of which he is charged, and by the jury in convicting.

GUINEA. A coin formerly issued by the English mint, but all these coins were called in in the time of Wm. IV. The word now means only the sum of £1. 1s., in which denomination the fees of counsel are always given.

GULE OF AUGUST. The first of August, being the day of St. Peter ad Vincula.

GULES. The heraldic name of the color usually called "red." The word is derived from the Arabic word "gule," a rose, and was probably introduced by the Crusaders. Gules is denoted in engravings by numerous perpendicular lines. Heralds who blazoned by planets and jewels called it "Mars," and "ruby." Wharton.

GURGITI. Wears. Jacob.

GUTI. Jutes; one of the three nations who migrated from Germany to Britain at an early period. According to Speelman, they established themselves chiefly in Kent and the Isle of Wight.

GUTTER. The diminutive of a sewer. Calis, Sew. (50,) 100.

GWABR MERCHED. Maid's fee. A British word signifying a customary fine payable to lords of some manors on marriage of the tenant's daughters, or otherwise on their committing incontinence. Cowell.

GWALSTOW. A place of execution. Jacob.

GWAYF. Waif, or waived; that which has been stolen and afterwards dropped in the highway for fear of a discovery. Cowell.

GYLPUT. The name of a court which was held every three weeks in the liberty or hundred of Pathbiew in Warwick. Jacob.

GYLTWITE. Sax. Compensation for fraud or trespass. Cowell.

GYNARY, or GYMNOCRACY. Government by a woman; a state in which women are legally capable of the supreme command; e.g., in Great Britain and Spain.

GYROVAGI. Wandering monks.

GYVES. Fetters or shackles for the legs.
H. This letter, as an abbreviation, stands for Henry (a king of that name) in the citation of English statutes. In the Year Books, it is used as an abbreviation for Hilary term.

H. A. An abbreviation for hoc anno, this year, in this year.

H. B. An abbreviation for house bill, i. e., a bill in the house of representatives, as distinguished from a senate bill.

H. C. An abbreviation for house of commons, or for habeas corpus.

H. L. An abbreviation for house of lords.

H. R. An abbreviation for house of representatives.

H. T. An abbreviation for hoc titulo, this title, under this title; used in references to books.

H. V. An abbreviation for hoc verbo or hoc voce, this word, under this word; used in references to dictionaries and other works alphabetically arranged.

HABE, or HAVE. Lat. A form of the salutatory expression "Ave," (hail,) in the titles of the constitutions of the Theodosian and Justinianian Codes. Calvin; Spelman.

HABEAS CORPORA JURATORUM. A writ commanding the sheriff to bring up the persons of jurors, and, if need were, to distrain them of their lands and goods, in order to insure or compel their attendance in court on the day of trial of a cause. It issued from the Common Pleas, and served the same purpose as a distingiiias juratores in the King's Bench. It was abolished by the C. L. P. Act, 1852, § 104. Brown.

HABEAS CORPUS. (You have the body.) The name given to a variety of writs, (of which these were anciently the emphatic words,) having for their object to bring a party before a court or judge. In common usage, and whenever these words are used alone, they are understood to mean the habeas corpus ad subjiciendum, (q. v.)

HABEAS CORPUS ACT. The English statute of 31 Car. II. c. 2, is the original and prominent habeas corpus act. It was amended and supplemented by St. 56 Geo. III. c. 100. And similar statutes have been enacted in all the United States. This act is justly regarded as the great constitutional guaranty of personal liberty.

HABEAS CORPUS AD DELIBERANDUM ET RECEPIENDUM. A writ which is issued to remove, for trial, a person confined in one county to the county or place where the offense of which he is accused was committed. Bac. Abr. "Habeas Corpus," A; 1 Chit. Crim. Law, 132. Thus, it has been granted to remove a person in custody for contempt to take his trial for perjury in another county. 1 Tyrw. 185.

HABEAS CORPUS AD FACIENDUM ET RECEPIENDUM. A writ issuing in civil cases, to remove the cause, as also the body of the defendant, from an inferior court to a superior court having jurisdiction, there to be disposed of. It is also called "habeas corpus cum causa."

HABEAS CORPUS AD PROSECUTUENDUM. A writ which issues when it is necessary to remove a prisoner in order to prosecute in the proper jurisdiction wherein the fact was committed. 3 Bl. Comm. 130

HABEAS CORPUS AD RESPONDENUM. A writ which is usually employed in civil cases to remove a person out of the custody of one court into that of another, in order that he may be sued and answer the action in the latter. 2 Sel. Pr. 259; 2 Mod. 198; 3 Bl. Comm. 129; 1 Tidd, Pr. 300.

HABEAS CORPUS AD SATISFACIENDUM. In English practice. A writ which issues when a prisoner has had judgment against him in an action, and the plaintiff is desirous to bring him up to some superior court, to charge him with process of execution. 3 Bl. Comm. 129, 130; 3 Steph. Comm. 693; 1 Tidd, Pr. 350.

HABEAS CORPUS AD SUBJICIENDUM. In practice. A writ directed to the person detaining another, and commanding him to produce the body of the prisoner, (or person detained,) with the day and cause of his citation and detention, ad faciendum, subjiciendum et recipiendum, to do, submit to, and receive whatsoever the judge or court awarding the writ shall consider in that behalf. 3 Bl. Comm. 131; 3 Steph. Comm. 695. This is the well-known remedy for deliverance from illegal confinement, called by
Sir William Blackstone the most celebrated writ in the English law, and the great and efficacious writ in all manner of illegal confinement. 3 Bl. Comm. 129.

HABEAS CORPUS AD TESTIFICANDUM. In practice. A writ to bring a witness into court, when he is in custody at the time of a trial, commanding the sheriff to have his body before the court, to testify in the cause. 3 Bl. Comm. 130; 2 Tidd, Pr. 809.

HABEAS CORPUS CUM CAUSA. (You have the body, with the cause.) In practice. Another name for the writ of habeas corpus ad faciendum et recipiendum, (q. e.) 1 Tidd, Pr. 348, 349.

Habemus optimum testem, confitentem reum. 1 Phil. Ev. 397. We have the best witness, a confessing defendant. "What is taken pro confesso is taken as indubitable truth. The plea of guilty by the party accused shuts out all further inquiry. Habemus confitentem reum is demonstration, unless indirect motives can be assigned to it." 2 Hagg. Eccl. 315.

HABENDUM. In conveyancing. The clause usually following the granting part of the premises of a deed, which defines the extent of the ownership in the thing granted to be held and enjoyed by the grantee. 3 Washb. Real Prop. 437.

HABENDUM ET TENENDUM. In old conveyancing. To have and to hold. Formal words in deeds of land from a very early period. Bract. fol. 176.

HABENTES HOMINES. In old English law. Rich men; literally, having men. The same with fasting-men, (q. e.) Cowell.

HABENTIA. Riches. Mon. Angl. t. 1, 100.

HABERE. Lat. In the civil law. To have. Sometimes distinguished from tenere, (to hold,) and possidere, (to possess;) habere referring to the right, tenere to the fact, and possidere to both. Calvin.

HABERE FACIAS POSSESSIONEM. That you cause to have possession. The name of the process commonly resorted to by the successful party in an action of ejectment, for the purpose of being placed by the sheriff in the actual possession of the land recovered. It is commonly termed simply "habere facias," or "hab. fa."

HABERE FACIAS SEISINAM. That you cause to have seisin. The writ of execution in real actions, directing the sheriff to cause the demandant to have seisin of the lands recovered. It was the proper process for giving seisin of a freehold, as distinguished from a chattel interest in lands.

HABERE FACIAS VISUM. That you cause to have a view. A writ to cause the sheriff to take a view of lands or tenements.

HABERE LICERE. Lat. In Roman law. To allow [one] to have [possession.] This phrase denoted the duty of the seller of property to allow the purchaser to have the possession and enjoyment. For a breach of this duty, an actio ex empto might be maintained.

HABERGEON. A diminutive of hau­berk, a short coat of mail without sleeves. Blount.

HABERJECTS. A cloth of a mixed color. Magna Charta, c. 26.

HABETO TIBI RES TUAS. Have or take your effects to yourself. One of the old Roman forms of divorcing a wife. Calvin.

HABILIS. Lat. Fit; suitable; active; useful, (of a servant.) Proved; authentic, (of Book of Saints.) Fixed; stable, (of authority of the king.) Du Cange.

HABIT. A disposition or condition of the body or mind acquired by custom or a usual repetition of the same act or function.

HABIT AND REPUTE. By the law of Scotland, marriage may be established by "habit and repute" where the parties cohabit and are at the same time held and reputed as man and wife. See Bell. The same rule obtains in some of the United States.

HABITABLE REPAIR. A covenant by a lessee to "put the premises into habitable repair" binds him to put them into such a state that they may be occupied, not only with safety, but with reasonable comfort, for the purposes for which they are taken. 2 Moody & R. 186.

HABITANCY. It is difficult to give an exact definition of "habitancy." In general terms, one may be designated as an "inhabitant" of that place which constitutes the principal seat of his residence, of his business, pursuits, connections, attachments, and of his political and municipal relations. The term, therefore, embraces the fact of residence at a place, together with the intent
to regard it and make it a home. The act and intent must concur. 17 Pick. 291.

HABITANT. Fr. In French and Canadian law. A resident tenant; a settler; a tenant who kept hearth and home on the seigniory.

HABITATIO. In the civil law. The right of dwelling; the right of free residence in another's house. Inst. 2, 5; Dig. 7, 8.

HABITATION. In the civil law. The right of a person to live in the house of another without prejudice to the property. It differed from a usufruct, in this: that the usufructuary might apply the house to any purpose, as of a store or manufactory; whereas the party having the right of habitation could only use it for the residence of himself and family. 1 Browne, Civil Law, 184.


HABITUAL CRIMINALS ACT. The statute 32 & 33 Vict. c. 99. By this act power was given to apprehend on suspicion convicted persons holding license under the penal servitude acts, 1853, 1857, and 1864. The act was repealed and replaced by the prevention of crimes act, 1871, (34 & 35 Vict. c. 112.)

HABITUAL DRUNKARD. A person given to intemperance or the excessive use of intoxicating drink, who has lost the power or the will, by frequent indulgence, to control his appetite for it. 18 Pa. St. 172.

One who has the habit of indulging in intoxicating liquors so firmly fixed that he becomes intoxicated as often as the temptation is presented by his being in the vicinity where liquors are sold is an "habitual drunkard," within the meaning of the divorce law. 35 Mich. 210.

In England, it is defined by the habitual drunkards' act, 1879, (42 & 43 Vict. c. 19,) which authorizes confinement in a retreat, upon the party's own application, as "a person who, not being amenable to any jurisdiction in lunacy, is, notwithstanding, by reason of habitual intemperate drinking of intoxicating liquor, at times dangerous to himself, or herself, or others, or incapable of managing himself or herself, or his or her affairs."

HABLE. L. Fr. In old English law. A port or harbor; a station for ships. St. 27 Hen. VI. c. 3.

HACIENDA. In Spanish law. The public domain; the royal estate; the aggregate wealth of the state. The science of administering the national wealth; public economy. Also an estate or farm belonging to a private person.

HACKNEY CARRIAGES. Carriages plying for hire in the street. The driver is liable for negligently losing baggage.

HADBOTE. In Saxon law. A recompense or satisfaction for the violation of holy orders, or violence offered to persons in holy orders. Cowell; Blount.

HADD. In Hindu law. A boundary or limit. A statutory punishment defined by law, and not arbitrary. Mozley & Whitley.

HADERUNGA. Hatred; ill will; prejudice, or partiality. Spelman; Cowell.

HADGONEL. A tax or mulet. Jacob.

HÆC EST CONVENTIO. Lat. This is an agreement. Words with which agreements anciently commenced. Yearb. H. 6 Edw. II. 191.

HÆC EST FINALIS CONCORDIA. L. Lat. This is the final agreement. The words with which the foot of a fine commenced. 2 Bl. Comm. 331.

HÆREDA. In Gothic law. A tribunal answering to the English court-leet.

HÆREDE ABDUCTO. An ancient writ that lay for the lord, who, having by right the wardship of his tenant under age, could not obtain his person, the same being carried away by another person. Old Nat. Brev. 93.

HÆREDE DELIBERANDO ALTERI QUI HABET CUSTODIUM TERRE. An ancient writ, directed to the sheriff, to require one that had the body of an heir, being in ward, to deliver him to the person whose ward he was by reason of his land. Reg. Orig. 161.

HÆREDE RAPTO. An ancient writ that lay for the ravishment of the lord's ward. Reg. Orig. 163.

Hæredem Deus facit, non homo. God makes the heir, not man. Co. Litt. 7b.

HÆREDES. Lat. In the civil law. Heirs. The plural of _harens_, (q. v.)

HÆREDES EXTRANEI. In the civil law. Extraneous, strange, or foreign heirs; those who were not subject to the power of the testator. Inst. 2, 19, 3.

HÆREDES NECESSARI. In Roman law. Necessary heirs; those who, being named heirs in the will, had no election whether to accept or decline the inheritance, but were compelled to take it. This was the case with a slave who was made heir. Upon
HÆREDES PROXIMI

the testator's death, he at once became free, but was also obliged to take the succession.

HÆREDES PROXIMI. Nearest or next heirs. The children or descendants of the deceased.

HÆREDES REMOTIORES. More remote heirs. The kinsmen other than children or descendants.

HÆREDES SUI ET NECESSARIT. In Roman law. Own and necessary heirs; i.e., the lineal descendants of the estate-leaver. They were called “necessary” heirs, because it was the law that made them heirs, and not the choice of either the decedent or themselves. But since this was also true of slaves (when named “heirs” in the will) the former class were designated “sui et necessarit,” by way of distinction, the word “sui” denoting that the necessity arose from their relationship to the decedent. Mackeld. Rom. Law, § 733.

HÆREDIPETA. Lat. In old English law. A seeker of an inheritance; hence, the next heir to lands.

Heredipetae suo propinquuo vel extra neo periculosos sane custodi nullus com mittatur. To the next heir, whether a relation or a stranger, certainly a dangerous guardian, let no one be committed. Co. Litt. 88b.

HÆREDITAS. In Roman law. The hereditas was a universal succession by law to any deceased person, whether such person had died testate or intestate, and whether in trust (ex fideicommisso) for another or not. The like succession according to Praetorian law was bonorum possessio. The hereditas was called “jaeurn,” until the harena took it up, i.e., made his aditio hereditatis; and such harena, if a suus harena, had the right to abstain, (potestas abstinendi;) and, if an extravena harena, had the right to consider whether he would accept or decline, (potestas deliberandi;) the reason for this precaution being that (prior to Justinian's enactment to the contrary) a harena after his aditio was liable to the full extent of the debts of the deceased person, and could have no relief therefrom, except in the case of a damnnum emergens or damnosa hereditas, i.e., an hereditas which disclosed (after the aditio) some enormous unsuspected liability. Brown.

In old English law. An estate transmissible by descent; an inheritance. Co. Litt. 9.

HÆREDITAS, alia corporalis, alia incor poralis; corporalis est, que tangi potest et videri; incorporalis que tangi non potest nec videri. Co. Litt. 9. An inheritance is either corporeal or incorporeal. Corporeal is that which can be touched and seen; incorporeal, that which can neither be touched nor seen.

HÆREDITAS DAMNOSA. A burdensome inheritance. See Damnosa Hæreditas.

Hæreditas est successio in universum jus quod defunctus habuerit. Co. Litt. 237. Inheritance is the succession to every right which the deceased had.

HÆREDITAS JACENS. In the civil law. A vacant inheritance. So long as no one had acquired the inheritance, it was termed “hæreditas jacens;” and this, by a legal fiction, represented the person of the decedent. Mackeld. Rom. Law, § 737.

The estate of a person deceased, where the owner left no heirs or legatee to take it, called also "caduca;” an escheated estate. Cod. 10, 10, 1; 4 Kent, Comm. 425.

In English law. An estate in abeyance; that is, after the ancestor's death, and before assumption of heir. Co. Litt. 542b. An inheritance without legal owner, and therefore open to the first occupant. 2 Bl. Comm. 259.

HÆREDITAS LUCTUOSA. In the civil law. A sad or mournful inheritance or succession; as that of a parent to the estate of a child, which was regarded as disturbing the natural order of mortality, (turbae ordine mortalitatis.) Cod. 6, 25, 9; 4 Kent, Comm. 397.

Hæreditas nihil alnud est, quam successio in universum jus, quod defunctus habuerit. The right of inheritance is nothing else than the faculty of succeeding to all the rights of the deceased. Dig. 50, 17, 62.

Hæreditas nunquam ascendit. An inheritance never ascends. Glanv. lib. 7, c. 1; 2 Bl. Comm. 211. A maxim of feudal origin, and which invariably prevailed in the law of England down to the passage of the statute 3 & 4 Wm. IV. c. 105, § 6, by which it was abrogated. 1 Steph. Comm. 378. See Broom, Max. 527, 528.

Hæredum appellatione veniunt hæredes heredum in infinitum. By the title of heirs, come the heirs of heirs to infinity. Co. Litt. 9.
HÆRES. In Roman law. The heir, or universal successor in the event of death. The heir is he who actively or passively succeeds to the entire property of the estate-leaver. He is not only the successor to the rights and claims, but also to the estate-leaver’s debts, and in relation to his estate is to be regarded as the identical person of the estate-leaver, inasmuch as he represents him in all his active and passive relations to his estate. Mackeld. Rom. Law, § 651.

It should be remarked that the office, powers, and duties of the hæres, in Roman law, were much more closely assimilated to those of a modern executor than to those of an heir at law. Hence “heir” is not at all an accurate translation of “hæres,” unless it be understood in a special, technical sense.

In common law. An heir; he to whom lands, tenements, or hereditaments by the act of God and right of blood do descend, of some estate of inheritance. Co. Litt. 7b.

HÆRES ASTRARIIUS. In old English law. An heir in actual possession.

HÆRES DE FACTO. In old English law. Heir from fact; that is, from the deed or act of his ancestor, without or against right. An heir in fact, as distinguished from an heir de jure, or by law.

Hæres est alter ipse, et filius est pars patris. An heir is another self, and a son is part of the father. 3 Coke, 125.

Hæres est aut jure proprietatis aut jure representationis. An heir is either by right of property, or right of representation. 3 Coke, 406.

Hæres est eadem persona cum antecessore. An heir is the same person with his ancestor. Co. Litt. 22; Branch, Princ. See Nov. 48, c. 1, § 1.

Hæres est nomen collectivum. “Heir” is a collective name or noun. 1 Vent. 215.

Hæres est nomen juris; filius est nomen naturæ. “Heir” is a name or term of law; “son” is a name of nature. Bac. Max. 52, in reg. 11.

Hæres est pars antecessoris. An heir is a part of the ancestor. So said because the ancestor, during his life, bears in his body (in judgment of law) all his heirs.

HÆRES EX ASSE. In the civil law. An heir to the whole estate; a sole heir. Inst. 2, 23, 9.

HÆRES EXTRANEUS. In the civil law. A strange or foreign heir; one who was not subject to the power of the testator, or person who made him heir. Qui testamentoris juri subjecti non sunt, extranei hæredes appelluntur. Inst. 2, 19, 3.

HÆRES FACTUS. In the civil law. An heir made by will; a testamentary heir; the person created universal successor by will. Story, Confl. Laws, § 507; 3 Bl. Comm. 224. Otherwise called “hæres ex testamento,” and “hæres institutus.” Inst. 2, 9, 7; Id. 2, 14.

HÆRES FIDEICOMMISSARIUS. In the civil law. The person for whose benefit an estate was given to another (termed “hæres fiduciarius,” q. v.) by will. Inst. 2, 23, 6, 7, 9. Answering nearly to the custui que trust of the English law.

HÆRES FIDUCIARIUS. A fiduciary heir, or heir in trust; a person constituted heir by will, in trust for the benefit of another, called the “fideicommissarius.”

Hæres hæredis mei est meus hæres. The heir of my heir is my heir.

HÆRES LEGITIMUS. A lawful heir; one pointed out as such by the marriage of his parents.

Hæres legitimus est quem nuptiae demonstrant. He is a lawful heir whom marriage points out as such; who is born in wedlock. Co. Litt. 7b; Bract. fol. 83; Fleta, lib. 6, c. 1; Broom, Max. 515.

Hæres minor uno et viginti annis non respondebit, nisi in casu dotis. Moore, 348. An heir under twenty-one years of age is not answerable, except in the matter of dower.

HÆRES NATUS. In the civil law. An heir born; one born heir, as distinguished from one made heir, (hæres factus, q. v.) an heir at law, or by intestacy, (ab intestato) the next of kin by blood, in cases of intestacy. Story, Confl. Laws, § 507; 3 Bl. Comm. 224.

HÆRES NECESSARIUS. In the civil law. A necessary or compulsory heir. This name was given to the heir when, being a slave, he was named “heir” in the testament, because on the death of the testator, whether he would or not, he at once became free, and was compelled to assume the heirship. Inst. 2, 19, 1.

Hæres non tenetur in Anglia ad debita antecessoris redenda, nisi per antecessorem ad hoc fuerit obligatus, praeterquam debita regis tantum. Co. Litt.
HÆRES RECTUS. In old English law. A right heir. Fleta, lib. 6, c. 1, § 11.

HÆRES SUUS. In the civil law. A man's own heir; a decedent's proper or natural heir. This name was given to the lineal descendants of the deceased. Inst. 3, 1, 4–5.

HÆRETARE. In old English law. To give a right of inheritance, or make the donation hereditary to the grantee and his heirs. Cowell.

HÆRETICO COMBURENDO. The statute 2 Hen. IV. c. 15, de heretico comburendo, was the first penal law enacted against heresy, and imposed the penalty of death by burning against all heretics who relapsed or who refused to abjure their opinions. It was repealed by the statute 29 Car. II. c. 9. Brown. This was also the name of a writ for the purpose indicated.

HAFNE. A haven or port. Cowell.

HAFNE COURTS. Haven courts; courts anciently held in certain ports in England. Spelman.

HAGA. A house in a city or borough. Scott.


HAGNE. A little hand-gun. St. 33 Hen. VIII. c. 6.

HAGNEBUT. A hand-gun of a larger description than the hagne. St. 2 & 3 Edw. VI. c. 14; 4 & 5 P. & M. c. 2.

HAIA. A park inclosed. Cowell.

HAIEBOTE. In old English law. A permission or liberty to take thorns, etc., to make or repair hedges. Blount.

HAILL. In Scotch law. Whole; the whole. "All and haill" are common words in conveyances. 1 Bell, App. Cas. 499.

HAILWORKFOLK, (i. e., holyworkfolk.) Those who formerly held lands by the service of defending or repairing a church or monument.

HAIMHALDARE. In old Scotch law. To seek restitution of one's own goods and gear, and bring the same home again. Skene de Verbl. Sign.

HAIMSUCKEN. In Scotch law. The crime of assaulting a person in his own house. Bell.

HAKETON. A military coat of defense.

HALF-BLOOD. A term denoting the degree of relationship which exists between those who have the same father or the same mother, but not both parents in common. See Brother.

HALF-BROTHER, HALF-SISTER. Persons who have the same father, but different mothers; or the same mother, but different fathers.

HALF-CENT. A copper coin of the United States, of the value of five mills, and of the weight of ninety-four grains. The coinage of these was discontinued in 1857.

HALF-DEFENSE. In common-law pleading. The technical name of the common clause at the commencement of a defendant's plea: "And the said defendant, by ——, his attorney, comes and defends the wrong, (or force,) and injury, when," etc. Called "half-defense" from its abbreviated form.

HALF-DIME. A silver (now nickel) coin of the United States, of the value of five cents.

HALF-DOLLAR. A silver coin of the United States, of the value of fifty cents, or one-half the value of a dollar.

HALF-EAGLE. A gold coin of the United States, of the value of five dollars.

HALF-ENDEAL. A moiety, or half of a thing.


HALF-MARK. A noble, or six shillings and eight pence in English money.

HALF-PROOF. In the civil law. Proof by one witness, or a private instrument. Halifax, Civil Law, b. 3, c. 9, no. 25; 3 Bl. Comm. 370. Or prima facie proof, which yet was not sufficient to found a sentence or decree.

HALF-SEAL. That which was formerly used in the English chancery for sealing of commissions to delegates, upon any appeal.
to the court of delegates, either in ecclesiastical or marine causes.

HALF-TIMER. A child who, by the operation of the English factory and education acts, is employed for less than the full time in a factory or workshop, in order that he may attend some "recognized efficient school." See factory and workshop act, 1878, § 23; elementary education act, 1876, § 11.

HALF-TONGUE. A jury half of one tongue or nationality and half of another. See De Medietate Linguae.

HALF-YEAR. In legal computation. The period of one hundred and eighty-two days; the odd hours being rejected. Co. Litt. 135 b; Cro. Jac. 166; Yel. 100; 1 Steph. Comm. 265.

HALICEMOT. In Saxon law. The meeting of a hall, (conventus aulae,) that is, a lord's court; a court of a manor, or court-baron. Spelman. So called from the hall, where the tenants or freemen met, and justice was administered. Crabb, Eng. Law, 26.

HALIMAS. In English law. The feast of All Saints, on the 1st of November; one of the cross-quarters of the year, was computed from Halimas to Candlemas. Wharton.

HALL. A building or room of considerable size, used as a place for the meeting of public assemblies, conventions, courts, etc.

In English law. A name given to many manor-houses because the magistrate's court was held in the hall of his mansion; a chief mansion-house. Cowell.

HALLAGE. In old English law. A fee or toll due for goods or merchandise vended in a hall. Jacob.

A toll due to the lord of a fair or market, for such commodities as were vended in the common hall of the place. Cowell; Blount.

HALLAZCO. In Spanish law. The finding and taking possession of something which previously had no owner, and which thus becomes the property of the first occupant. Las Partidas, 3, 5, 23; 5, 48, 49; 5, 20, 50.

HALLE-GEMOT. Hall assembly. A species of court-baron.

HALLUCINATION. In medical jurisprudence. A species of mania; the perception of objects which have no reality, or of sensations which have no corresponding external cause, arising from disorder of the nervous system; delusion. Webster.

HALMOT. See HALLE-GEMOT.

HALYMOTE. A holy or ecclesiastical court.

A court held in London before the lord mayor and sheriffs, for regulating the bakers. It was anciently held on Sunday next before St. Thomas' day, and therefore called the "holymote," or holy court. Cowell.

HALYWERCOLF. Sax. In old English law. Tenants who held land by the service of repairing or defending a church or monument, whereby they were exempted from feudal and military services.

HAMA. In old English law. A hook; an engine with which a house on fire is pulled down. Yel. 60.

A piece of land.

HAMBLING. In forest law. The boxing or hock-sinewing of dogs; an old mode of laming or disabling dogs. Termes de la Ley.

HAMESECEN. In Scotch law. The violent entering into a man's house without license or against the peace, and the seeking and assaulting him there. Skene de Verb. Sign.; 2 Forb. Inst. 139.

The crime of housebreaking or burglary. 4 Bl. Comm. 223.

HAMPARE. (Sax. From ham, a house.) In Saxon law. An assault made in a house; a breach of the peace in a private house.

HAMLET. A small village; a part or member of a vill. It is the diminutive of "ham," a village. Cowell.

HAMMA. A close joining to a house; a croft; a little meadow. Cowell.

HAMMER. Metaphorically, a forced sale or sale at public auction. "To bring to the hammer," to put up for sale at auction. "Sold under the hammer," sold by an officer of the law or by an auctioneer.

HAMSOCNE. The right of security and privacy in a man's house. Du Cange. The breach of this privilege by a forcible entry of a house is breach of the peace. Du Cange.

HANAPER. A hamper or basket in which were kept the writs of the court of chancery relating to the business of a subject, and their returns. 3 Bl. Comm. 49. According to others, the fees accruing on
writes, etc., were there kept. Spelman; Du Cange.

HANAPER-OFFICE. An office belonging to the common-law jurisdiction of the court of chancery, so called because all writs relating to the business of a subject, and their returns, were formerly kept in a hamper, in hanaperio. 5 & 6 Vict. c. 103.

HAND. A measure of length equal to four inches, used in measuring the height of horses. A person's signature.

In old English law. An oath.

HAND DOWN. An appellate court is said to "hand down" its decision in a case, when the opinion is prepared and filed for transmission to the court below.

HAND-FASTING. Betrothment.

HAND-GRITH. Peace or protection given by the king with his own hand.

HAND MONEY. Money paid in hand to bind a bargain; earnest money.

HANDBILL. A written or printed notice displayed to inform those concerned of something to be done.

HANDBOROW. In Saxon law. A hand pledge; a name given to the nine pledges in a decennary or friborg; the tenth or chief, being called "headborouw." (q. v.) So called as being an inferior pledge to the chief. Spelman.

HANDHABEND. In Saxon law. One having a thing in his hand; that is, a thief found having the stolen goods in his possession. Jurisdiction to try such thief.

HANDSALE. Anciently, among all the northern nations, shaking of hands was held necessary to bind a bargain,—a custom still retained in verbal contracts. A sale thus made was called "handsale," (venditio per mutuum monum completionem.) In process of time the same word was used to signify the price or earnest which was given immediately after the shaking of hands, or instead thereof. 2 Bl. Comm. 448.

HANDSEL. Handsale, or earnest money.

HANDWRITING. The chirography of a person; the cast or form of writing peculiar to a person, including the size, shape, and style of letters, tricks of penmanship, and whatever gives individuality to his writing, distinguishing it from that of other persons.

HANSE TOWNS.

Anything written by hand; an instrument written by the hand of a person, or a specimen of his writing.

Handwriting, considered under the law of evidence, includes not only the ordinary writing of one able to write, but also writing done in a disguised hand, or in cipher, and a mark made by one able or unable to write. 9 Amer. & Eng. Enc. Law, 264.

HANG. In old practice. To remain undetermined. "It has hang long enough; it is time it were made an end of." Holt, C. J., 1 Show. 77.

Thus, the present participle means pending; during the pendency. "If the tenant alien, hanging the præcipe." Co. Litt. 266a.

HANGING. In criminal law. Suspension by the neck; the mode of capital punishment used in England from time immemorial, and generally adopted in the United States. 4 Bl. Comm. 403.

HANGING IN CHAINS. In atrocious cases it was at one time usual, in England, for the court to direct a murderer, after execution, to be hanged upon a gibbet in chains near the place where the murder was committed, a practice quite contrary to the Mosaic law. (Deut. xxi. 23.) Abolished by 4 & 5 Wm. IV. c. 26. Wharton.

HANGMAN. An executioner. One who executes condemned criminals by hanging.

HANGWITE. In Saxon law. A fine for illegal hanging of a thief, or for allowing him to escape. Immunity from such fine. Du Cange.

HANG. Customary labor.

HANSE. An alliance or confederation among merchants or cities, for the good ordering and protection of the commerce of its members. An imposition upon merchandise. Du Cange.

HANSE TOWNS. LAWS OF THE. The maritime ordinances of the Hanseatic towns, first published in German at Lubeck, in 1597, and in May, 1614, revised and enlarged.

HANSE TOWNS. The collective name of certain German cities, including Lubeck, Hamburg, and Bremen, which formed an alliance for the mutual protection and furtherance of their commercial interests, in the twelfth century. The powerful confederacy thus formed was called the "Hanseatic League." The league framed and promul-
gated a code of maritime law, which was known as the "Laws of the Hanse Towns," or *Jus Hanseaticum Maritimum.*

**HANSEATIC.** Pertaining to a hanse or commercial alliance; but, generally, the union of the Hanse towns is the one referred to, as in the expression the "Hanseatic League."

**HANSGRAVE.** The chief of a company; the head man of a corporation.

**HANTELOD.** In old European law. An arrest, or attachment. Spelman.

**HAP.** To catch. Thus, "hap the rent," "hap the deed-poll," were formerly used.

**HAPPINESS.** The constitutional right of men to pursue their "happiness" means the right to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their prosperity, or develop their faculties, so as to give to them their highest enjoyment. 111 U. S. 757, 4 Sup. Ct. Rep. 652; 1 Bl. Comm. 41.

**HAQUE.** In old statutes. A hand-gun, about three-quarters of a yard long.

**HARACIUM.** In old English law. A race of horses and mares kept for breed; a stud. Spelman.

**HARBINGER.** In England, an officer of the royal household.

**HARBOR, v.** To receive clandestinely and without lawful authority a person for the purpose of so concealing him that another having a right to the lawful custody of such person shall be deprived of the same. 5 How. 215, 227. A distinction has been taken, in some decisions, between "harbor" and "conceal." A person may be convicted of harboring a slave, although he may not have concealed her. 24 Ala. 71.

**HARBOR, n.** A haven, or a space of deep water so sheltered by the adjacent land as to afford a safe anchorage for ships.

"Port" is a word of larger import than "harbor," since it implies the presence of wharves, or at any rate the means and opportunity of receiving and discharging cargo.

**HARBOR AUTHORITY.** In England a harbor authority is a body of persons, corporate or unincorporate, being proprietors of, or intrusted with the duty of constructing, improving, managing, or lighting, any harbor. St. 24 & 25 Vict. c. 47.

**HARD LABOR.** A punishment, additional to mere imprisonment, sometimes imposed upon convicts sentenced to a penitentiary. But the labor is not, as a rule, any harder than ordinary mechanical labor.

**HARDHEIDIS.** In old Scotch law. Lions; coins formerly of the value of three half-pence. 1 Pitc. Crim. Tr. pt. 1, p. 64, note.

**HARDSHIP.** The severity with which a proposed construction of the law would bear upon a particular case, founding, sometimes, an argument against such construction, which is otherwise termed the "argument ab inconvenienti."

**HARNASCA.** In old European law. The defensive armor of a man; harness. Spelman.

**HARNESS.** All warlike instruments; also the tackle or furniture of a ship.

**HARO, HARBON.** Fr. In Norman and early English law. An outcry, or hue and cry after felons and malefactors. Cowell.

**HARRIOTT.** The old form of "heriot," (q. d.) Williams, Seis. 203.

**HART.** A stag or male deer of the forest five years old complete.

**HASP AND STAPLE.** In old Scotch law. The form of entering an heir in a subject situated within a royal borough. It consisted of the heir's taking hold of the hasp and staple of the door, (which was the symbol of possession,) with other formalities. Bell; Burrill.

**HASPA.** In old English law. The hasp of a door; by which livery of seisin might anciently be made, where there was a house on the premises.

**HASTA.** Lat. A spear. In the Roman law, a spear was the sign of a public sale of goods or sale by auction. Hence the phrase "hastæ subiectæ" (to put under the spear) meant to put up at auction. Calvin.

In feudal law. A spear. The symbol used in making investiture of a fief. Feud. lib. 2, tit. 2.

**HAT MONEY.** In maritime law. Prize; a small duty paid to the captain and mariners of a ship.

**HAUBER.** O. Fr. A high lord; a great baron. Spelman.

**HAUGH, or HOWGH.** A green plot in a valley.
HAUL. The use of this word, instead of the statutory word "carry," in an indictment charging that the defendant "did feloniously steal, take, and haul away" certain personality, will not render the indictment bad, the words being in one sense equivalent. 108 Ind. 171, 8 N. E. Rep. 911.

HAUR. In old English law. Hatred. Leg. Win. I. c. 16; Blount.

HAUSTUS. Lat. In the civil law. A species of servitude, consisting in the right to draw water from another's well or spring, in which the iter, (right of way to the well or spring,) so far as it is necessary, is tacitly included. Dig. 8, 3, 1; Mackeld. Rom. Law, § 318.


HAUTHONER. A man armed with a coat of mail. Jacob.

HAVE. Lat. A form of the salutary expression "Ave," used in the titles of some of the constitutions of the Theodosian and Justinianean codes. See Cod. 7, 62, 9; Id. 3, 2, 11.

HAVE. To possess corporally. "No one, at common law, was said to have or to be in possession of land, unless it were conveyed to him by the livery of selsin, which gave him the corporal investiture and bodily occupation thereof." Bl. Law Tracts, 113.

HAVE AND HOLD. A common phrase in conveyancing, derived from the habendum et tenendum of the old common law. See HABENDUM ET TENENDUM.

HAVEN. A place of a large receipt and safe riding of ships, so situate and secured by the land circumjacent that the vessels thereby ride and anchor safely, and are protected by the adjacent land from dangerous or violent winds; as Milford Haven, Plymouth Haven, and the like. Hale de Jure Mar. par. 2, c. 2.

HAW. A small parcel of land so called in Kent; houses. Co. Litt. 5.

HAWBERK. He who held land in France, by finding a coat or shirt of mail, with which he was to be ready when called upon. Wharton.


HAUKER. A trader who goes from place to place, or along the streets of a town, selling the goods which he carries with him.

It is perhaps not essential to the idea, but is generally understood from the word, that a hawkers is to be one who not only carries goods for sale, but seeks for purchasers, either by outcry, which some lexicographers conceive as intimated by the derivation of the word, or by attracting notice and attention to them, as goods for sale, by an actual exhibition or exposure of them, by placards or labels, or by a conventional signal, like the sound of a horn for the sale of fish. 12 Cush. 486.

HAWKING. The business of one who sells or offers goods for sale on the streets, by outcry, or by attracting the attention of persons by exposing his goods in a public place, or by placards, labels, or signals. 107 Ind. 505, 8 N. E. Rep. 609.

HAY-BOTE. Another name for "hedge-bote," being one of the estovers allowed to a tenant for life or years, namely, material for repairing the necessary hedges or fences of his grounds. 2 Bl. Comm. 35; 1 Washb. Real Prop. 139.

HAYWARD. In old English law. An officer appointed in the lord’s court to keep a common herd of cattle of a town; so called because he was to see that they did not break or injure the hedges of inclosed grounds. His duty was also to impound trespassing cattle, and to guard against pound-breaches. Kitch. 46; Cowell.

HAZARD. An unlawful game at dice, and those who play at it are called "hazardors." Jacob.

HAZARDOUS. Exposed to or involving danger; perilous; risky.

The terms "hazardous," "extra-hazardous," "specially hazardous," and "not hazardous" are well-understood technical terms in the business of insurance, having distinct and separate meanings. Although what goods are included in each designation may not be so known as to dispense with actual proof, the terms themselves are distinct and known to be so. 38 N. Y. 364; 47 N. Y. 597.

HAZARDOUS CONTRACT. A contract in which the performance of that which is one of its objects depends on an uncertain event. Civil Code La. art. 1769. See 1 J. J. Marsh. 596.

HE. The use of this pronoun in a written instrument, in referring to a person whose Christian name is designated therein by a mere initial, is not conclusive that the person referred to is a male; it may be shown
by parol that the person intended is a female. 71 Cal. 38, 11 Pac. Rep. 802.

He who has committed iniquity shall not have equity. Francis, Max.

He who seeks equity must do equity. It is in pursuance of this maxim that equity enforces the right of the wife's equity to a settlement. Snell, Eq. (5th Ed.) 374.

HEAD. Chief; leading; principal; the upper part or principal source of a stream.

HEAD OF A CREEK. This term means the source of the longest branch, unless general reputation has given the appellation to another. 2 Bibb, 110.

HEAD OF A FAMILY. A term used in homestead and exemption laws to designate a person who maintains a family; a household.

HEADBOROUGH. In Saxon law. The head or chief officer of a borough; chief of the frankpledge tithing or decennary. This office was afterwards, when the petty constabulary was created, united with that office.

HEAD-COURTS. Certain tribunals in Scotland, abolished by 20 Geo. II. c. 50. Ersk. 1, 4, 5.

HEADLAND. In old English law. A narrow piece of unplowed land left at the end of a plowed field for the turning of the plow. Called, also, "butt."

HEAD-NOTE. A syllabus to a reported case; a summary of the points decided in the case, which is placed at the head or beginning of the report.

HEAD-PENCE. An exaction of 40d. or more, collected by the sheriff of Northumberland from the people of that county twice in every seven years, without account to the king. Abolished in 1444. Cowell.

HEAFODWEARD. In old English law. One of the services to be rendered by a thane, but in what it consisted seems uncertain.

HEALGEMOTE. In Saxon law. A court-baron; an ecclesiastical court.

HEALSFANG. In Saxon law. A sort of pillory, by which the head of the culprit was caught between two boards, as feet are caught in a pair of stocks. Cowell.

HEALTH. Freedom from sickness or suffering. The right to the enjoyment of health is a subdivision of the right of personal security, one of the absolute rights of persons. 1 Bl. Comm. 129, 134. As to injuries affecting health, see 3 Bl. Comm. 122.

HEALTH LAWS. Laws prescribing sanitary measures, and designed to promote or preserve the health of the community.

HEALTH OFFICER. The officer charged with the execution and enforcement of health laws. The powers and duties of health officers are regulated by local laws.

HEALTHY. Free from disease or bodily ailment, or any state of the system peculiarly susceptible or liable to disease or bodily ailment. 13 Ired. Law, 356.

HEARING. In equity practice. The hearing of the arguments of the counsel for the parties upon the pleadings, or pleadings and proofs; corresponding to the trial of an action at law.

The word "hearing" has an established meaning as applicable to equity cases. It means the same thing in these cases that the word "trial" does in cases at law. And the words "final hearing" have long been used to designate the trial of an equity case upon the merits, as distinguished from the hearing of any preliminary questions arising in the cause, and which are termed "interlocutory." 24 Wis. 171.

In criminal law. The examination of a prisoner charged with a crime or misdemeanor, and of the witnesses for the accused.

HEARSAY. A term applied to that species of testimony given by a witness who relates, not what he knows personally, but what others have told him, or what he has heard said by others.

Hearsay evidence is that which does not derive its value solely from the credit of the witness, but rests mainly on the veracity and competency of other persons. The very nature of the evidence shows its weakness, and it is admitted only in specified cases from necessity. Code Ga. 1882, § 3770; 1 Phil. Ev. 185.

Hearsay evidence is second-hand evidence, as distinguished from original evidence; it is the repetition at second-hand of what would be original evidence if given by the person who originally made the statement.

HEARTH MONEY. A tax levied in England by St. 14 Car. II. c. 10, consisting of two shillings on every hearth or stove in the kingdom. It was extremely unpopular, and was abolished by 1 W. & M. St. 1, c. 10. This tax was otherwise called "chimney money."
HEARTH SILVER. In English law, a species of modus or composition for tithes. Astr. 323, 326.

HEAT OF PASSION. In criminal law. A state of violent and uncontrollable rage engendered by a blow or certain other provocation given, which will reduce a homicide from the grade of murder to that of manslaughter. A state of mind contradistinguished from a cool state of the blood. 66 Mo. 13; 74 Mo. 250.

HEBBERMAN. An unlawful fisher in the Thames below London bridge; so called because they generally fished at ebbing tide or water. 4 Hen. VII. c. 15: Jacob.

HEBBERTHEF. In Saxon law. The privilege of having the goods of a thief, and the trial of him, within a certain liberty. Cowell.

HEBBING-WEARS. A device for catching fish in ebbing water. St. 23 Hen. VIII. c. 5.

HEBDOMAD. A week; a space of seven days.

HERDOMADIUS. A week's man; the canon or prebendary in a cathedral church, who had the peculiar care of the choir and the offices of it for his own week. Cowell.

HECCAGIUM. In feudal law. Rent paid to a lord of the fee for a liberty to use the engines called "hecks."

HECK. An engine to take fish in the river Ouse. 23 Hen. VIII. c. 18.

HEDA. A small haven, wharf, or landing place.

HEDAGIUM. Toll or customary dues at the hithe or wharf, for landing goods, etc., from which exemption was granted by the crown to some particular persons and societies. Wharton.

HEDGE-BOTE. An allowance of wood for repairing hedges or fences, which a tenant or lessee has a right to take off the land let or demise to him. 2 Bl. Comm. 35.

HEDGE-PRIEST. A vagabond priest in olden time.

HEGEMONY. The leadership of one among several independent confederate states.

HEGIRA. The epoch or account of time used by the Arabians and the Turks, who begin their computation from the day that Mahomet was compelled to escape from Mecca, which happened on Friday, July 16, A. D. 622, under the reign of the Emperor Heraclius. Wharton.

HEGUMENOS. The leader of the monks in the Greek Church.

HEIFER. A young cow which has not had a calf. 2 East, P. C. 616.

HEIR. At common law. A person who succeeds, by the rules of law, to an estate in lands, tenements, or hereditaments, upon the death of his ancestor, by descent and right of relationship.

The term "heir" has a very different signification at common law from what it has in those states and countries which have adopted the civil law. In the latter, the term is indiscriminately applied to all persons who are called to the succession, whether by the act of the party or by operation of law. The person who is created universal successor by a will is called the "testamentary heir;" and the next of kin by blood is, in cases of intestacy, called the "heir at law," or "heir by intestacy." The executor of the common law in many respects corresponds to the testamentary heir of the civil law. Again, the administrator in many respects corresponds with the heir by intestacy. By the common law, executors and administrators have no right except to the personal estate of the deceased; whereas the heir by the civil law is authorized to administer both the personal and real estate. Story, Confl. Laws, §§ 507, 508.

In the civil law. A universal successor in the event of death. He who actively or passively succeeds to the entire property or estate, rights and obligations, of a decedent, and occupies his place.

The term "heir" has several significations. Sometimes it refers to one who has formally accepted a succession and taken possession thereof; sometimes to one who is called to succeed, but still retains the faculty of accepting or renouncing, and it is frequently used as applied to one who has formally renounced. 26 La. Ann. 417.

In Scotch law. The person who succeeds to the heritage or heritable rights of one deceased. 1 Forth Inst. pt. 3, p. 75. The word has a more extended signification than in English law, comprehending not only those who succeed to lands, but successors to personal property also. Wharton.

HEIR APPARENT. An heir whose right of inheritance is indefeasible, provided he outlive the ancestor; as in England the eldest son, or his issue, who must, by the course of the common law, be heir to the father whenever he happens to die. 2 Bl. Comm. 208; 1 Steph. Comm. 358.

HEIR AT LAW. He who, after his ancestor's death intestate, has a right to in-
HEIR BENEFICIARY. In the civil law. One who has accepted the succession under the benefit of an inventory regularly made.

Heirs are divided into two classes, according to the manner in which they accept the successions left to them, to-wit, unconditional and beneficiary heirs. Unconditional heirs are those who inherit without any reservation, or without making an inventory, whether their acceptance be express or tacit. Beneficiary heirs are those who have accepted the succession under the benefit of an inventory regularly made. Civil Code La. art. 881.

HEIR BY CUSTOM. In English law. One whose right of inheritance depends upon a particular and local custom, such as gavel-kind, or borough English. Co. Litt. 140.

HEIR BY DEVISE. One to whom lands are devised by will; a devisee of lands. Answering to the hares factus (q. e.) of the civil law.

HEIR COLATERAL. One who is not lineally related to the decedent, but is of collateral kin; e.g., his uncle, cousin, brother, nephew.

HEIR CONVENTIONAL. In the civil law. One who takes a succession by virtue of a contract or settlement entitling him thereto.

HEIR, FORCED. One who cannot be disinherited. See Forced Heirs.

HEIR GENERAL. An heir at law. The ordinary heir by blood, succeeding to all the lands.

HEIR INSTITUTE. In Scotch law. One to whom the right of succession is ascertained by disposition or express deed of the deceased. 1 Forb. Inst. pt. 3, p. 75.

HEIR, IRREGULAR. In Louisiana. Irregular heirs are those who are neither testamentary nor legal, and who have been established by law to take the succession. See Civil Code La. art. 874. When there are no direct or collateral relatives surviving the decedent, and the succession consequently devolves upon the surviving husband or wife, or illegitimate children, or the state, it is called an "irregular succession."

HEIR, LEGAL. In the civil law. A legal heir is one who takes the succession by relationship to the decedent and by force of law. This is different from a testamentary or conventional heir, who takes the succession in virtue of the disposition of man. See Civil Code La. arts. 873, 875.

HEIR-LOOMS. Such goods and chattels as, contrary to the nature of chattels, shall go by special custom to the heir along with the inheritance, and not to the executor. The termination "loom" (Sax.) signifies a limb or member; so that an heir-loom is nothing else but a limb or member of the inheritance. They are generally such things as cannot be taken away without damaging or dismembering the freehold; such as deer in a park, doves in a cote, deeds and charters, etc. 2 Bl. Comm. 427.

HEIR MALE. In Scotch law. An heir institute, who, though not next in blood to the deceased, is his nearest male relation that can succeed to him. 1 Forb. Inst. pt. 3, p. 76.

HEIR OF CONQUEST. In Scotch law. One who succeeds to the deceased in conquest, i.e., lands or other heritable rights to which the deceased neither did nor could succeed as heir to his predecessor.

HEIR OF LINE. In Scotch law. One who succeeds lineally by right of blood; one who succeeds to the deceased in his heritage; i.e., lands and other heritable rights derived to him by succession as heir to his predecessor. 1 Forb. Inst. pt. 3, p. 77.

HEIR OF PROVISION. In Scotch law. One who succeeds as heir by virtue of a particular provision in a deed or instrument.

HEIR OF TAILZIE. In Scotch law. He on whom an estate is settled that would not have fallen to him by legal succession. 1 Forb. Inst. pt. 3, p. 75.

HEIR PRESumptIVE. The person who, if the ancestor should die immediately, would, in the present circumstances of things, be his heir, but whose right of inheritance may be defeated by the contingency of some nearer heir being born; as a brother or nephew, whose presumptive succession may be destroyed by the birth of a child. 2 Bl. Comm. 208; 1 Steph. Comm. 358.

HEIR SPECIAL. In English law. The issue in tail, who claims per formam doni; by the form of the gift.

HEIR SUBSTITUTE, IN A BOND. In Scotch law. He to whom a bond is payable expressly in case of the creditor's decease, or after his death. 1 Forb. Inst. pt. 3, p. 76.
HEIR TESTAMENTARY. In the civil law. One who is named and appointed heir in the testament of the decedent. This name distinguishes him from a legal heir, (one upon whom the law casts the succession,) and from a conventional heir, (one who takes it by virtue of a previous contract or settlement.)

HEIR UNCONDITIONAL. In the civil law. One who inherits without any reservation, or without making an inventory, whether his acceptance be express or tacit. Distinguished from heir beneficiary, (q. e.)

HEIRDOM. Succession by inheritance.

HEIRESS. A female heir to a person having an estate of inheritance. When there are more than one, they are called "co-heiresses," or "co-heirs."

HEIRS. A word used in deeds of conveyance, (either solely, or in connection with others,) where it is intended to pass a fee.

HEIRS OF THE BODY. An heir begotten or borne by the person referred to; a lineal descendant. The terms "natural heirs" and "heirs of the body," in a will, and by way of executory devise, are considered as of the same legal import. 19 Conn. 112.

HEIRSHIP. The quality or condition of being heir, or the relation between the heir and his ancestor.

HEIRSHIP MOVABLES. In Scotch law. The movables which go to the heir, and not to the executor, that the land may not go to the heir completely dismantled, such as the best of furniture, horses, cows, etc., but not fungibles. Bell.

HELL. The name given to a place under the exchequer chamber, where the king's debtors were confined. Rich. Dict.

HELM. Thatch or straw; a covering for the head in war; a coat of arms bearing a crest; the tiller or handle of the rudder of a ship.

HELOE-WALL. The end-wall closing and defending the rest of the building. Paroch. Antiq. 573.

HELSING. A Saxson brass coin, of the value of a half-penny.

HEMOLDORH, or HELMELBORTH. A title to possession. The admission of this old Norse term into the laws of the Conqueror is difficult to be accounted for; it is not found in any Anglo-Saxon law extant. Wharton.

HENCHMAN. A page; an attendant; a herald.

HENEDPENNY. A customary payment of money instead of hens at Christmas; a composition for eggs. Cowell.

HENFARE. A fine for flight on account of murder. Domesday Book.

HENCHEN. In Saxon law. A prison, a gaol, or house of correction.

HENGWYTE. Sax. In old English law. An acquaintance from a fine for hanging a thief. Fleta, lib. 1, c. 47, § 17.

HENRICUS VETUS. Henry the Old, or Elder. King Henry I. is so called in ancient English chronicles and charters, to distinguish him from the subsequent kings of that name. Spelman.

HEORDFÆTE, or HUDEFÆST. In Saxon law. A master of a family, keeping house, distinguished from a lower class of freemen, viz., folgeres, (folgaris,) who had no habitations of their own, but were house-retainers of their lords.

HEORDPENNY. Peter-pence, (q. e.)

HEORDWERCH. In Saxon law. The service of herdsmen, done at the will of their lord.

HEPTARCHY. A government exercised by seven persons, or a nation divided into seven governments. In the year 560, seven different monarchies had been formed in England by the German tribes, namely, that of Kent by the Jutes; those of Sussex, Wessex, and Essex by the Saxons; and those of East Anglia, Bernicia, and Deira by the Angles. To these were added, about the year 586, an eighth, called the "Kingdom of Mercia," also founded by the Angles, and comprehending nearly the whole of the heart of the kingdom. These states formed what has been designated the "Anglo-Saxon Octarchy." or more commonly, though not so correctly, the "Anglo-Saxon Heptarchy," from the custom of speaking of Deira and Bernicia under the single appellation of the "Kingdom of Northumberland." Wharton.

HERALD. In ancient law, a herald was a diplomatic messenger who carried messages between kings or states, and especially proclamations of war, peace, or truce. In English law, a herald is an officer whose duty is to keep genealogical lists and tables, ad-
just armorial bearings, and regulate the ceremonies at royal coronations and funerals.

HERALDRY. The art, office, or science of heralds. Also an old and obsolete abuse of buying and selling precedence in the paper of causes for hearing.

HERALDS' COLLEGE. In England, an ancient royal corporation, first instituted by Richard III. in 1483. It comprises three kings of arms, six heralds, and four marshals or pursuivants of arms, together with the earl marshal and a secretary. The heralds' books, compiled when progresses were solemnly and regularly made into every part of the kingdom, to inquire into the state of families, and to register such marriages and descents as were verified to them upon oath, are allowed to be good evidence of pedigrees. The heralds' office is still allowed to make grants of arms and to permit change of names. 3 Starkie, Ev. 849; Wharton.

HERBAGE. In English law. An easement or liberty, which consists in the right to pasture cattle on another's ground. Feed for cattle in fields and pastures. Bract. fol. 222; Co. Litt. 46; Shep. Touch. 97. A right to herbage does not include a right to cut grass, or dig potatoes, or pick apples. 4 N. H. 303.

HERBAGIUM ANTERIUS. The first crop of grass or hay, in opposition to aftermath or second cutting. Paroch. Antiq. 459.

HERBENER, or HARBINGER. An officer in the royal house, who goes before and allots the noblemen and those of the household their lodgings; also an innkeeper.

HERBERGAGIUM. Lodgings to receive guests in the way of hospitality. Cowell.

HERBERGARE. To harbor; to entertain.

HERBERGATUS. Harbored or entertained in an inn. Cowell.

HERBERY, or HERBURY. An inn. Cowell.

HERCIA. A harrow. Fleta, lib. 2, c. 77.

HERCIARE. To harrow. 4 Inst. 270.

HERCIATURA. In old English law. Harrowing; work with a harrow. Fleta, lib. 2, c. 82, § 2.

HERCISCUNDA. In the civil law. To be divided. *Familia herciscunda, an inheritance to be divided. Actio familia herciscunda, an action for dividing an inheritance. Eroiscunda is more commonly used in the civil law. Dig. 10, 2; Inst. 3, 28, 4; 1d. 4, 6, 20.

HERDEWICH. A grange or place for cattle or husbandry. Mon. Angl. pt. 3.

HERDVERCH, HERDVERCH. Herdsmen's work, or customary labor, done by shepherds and inferior tenants, at the will of the lord. Cowell.

HEREBANNUM. In old English law. A proclamation summoning the army into the field.

A mulet or fine for not joining the army when summoned. Spelman.

A tax or tribute for the support of the army. Du Cange.

HEREBOTE. The royal edict summoning the people to the field. Cowell.

HEREDAD. In Spanish law. A piece of land under cultivation; a cultivated farm, real estate.


HEREDERO. In Spanish law. Heir; he who, by legal or testamentary disposition, succeeds to the property of a deceased person. "Heres consuatur cum defuncto una eademque persona." Las Partidas, 7, 9, 13.

HEREDITAGIUM. In Sicilian and Neapolitan law. That which is held by hereditary right; the same with hereditamentum (hereditament) in English law. Spelman.

HEREDITAMENTS. Things capable of being inherited, be it corporeal or incorporeal, real, personal, or mixed, and including not only lands and everything thereon, but also heir-loom, and certain furniture which, by custom, may descend to the heir together with the land. Co. Litt. 5b; 2 Bl. Comm. 17.

The two kinds of hereditaments are corporeal, which are tangible, (in fact, they mean the same thing as land,) and incorporeal, which are not tangible, and are the rights and profits annexed to or issuing out of land. Wharton.

The term includes a few rights unconnected with land, but it is generally used as the widest
HEREDITARY

That which is the subject of inheritance.

HEREDITARY RIGHT TO THE CROWN. The crown of England, by the positive constitution of the kingdom, has ever been descendible, and so continues, in a course peculiar to itself, yet subject to limitation by parliament; but, notwithstanding such limitation, the crown retains its descendible quality, and becomes hereditary in the prince to whom it is limited. 1 Bl. Comm. 191.

HEREFARE. Sax. A going into or with an army; a going out to war, (profectio militaris;) an expedition. Spelman.

HEREGEAT. A heriot, (q. v.)

HEREGED. Sax. In old English law. A tribute or tax levied for the maintenance of an army. Spelman.


HEREMONES. Followers of an army.

HERENNACH. An archdeacon. Cowell.

HERES. Heir; an heir. A form of hares, very common in the civil law. See HARES.

HERESCHIP. In old Scotch law. Theft or robbery. 1 Pitc. Crim. Tr. pt. 2, pp. 20, 89.

HERESLITA, HERESSA, HERESSIZ. A hired soldier who departs without license. 4 Inst. 128.

HERESY. In English law. An offense against religion, consisting not in a total denial of Christianity, but of some of its essential doctrines, publicly and obstinately avowed. 4 Bl. Comm. 44, 45. An opinion on divine subjects devised by human reason, openly taught, and obstinately maintained. 1 Hale, P. C. 384. This offense is now subject only to ecclesiastical correction, and is no longer punishable by the secular law. 4 Steph. Comm. 233.

HERETOCH. A general, leader, or commander; also a baron of the realm. Du Fresne.

HERETOFORE. This word simply denotes time past, in distinction from time present or time future, and has no definite and precise signification beyond this. 40 Conn. 157.

HERETUM. In old records. A court or yard for drawing up guards or military retainers. Cowell.

HEREZELD. In Scotch law. A gift or present made or left by a tenant to his lord as a token of reverence. Skene.

HERGE. In Saxon law. Offenders who joined in a body of more than thirty-five to commit depredations.

HERIGALDS. In old English law. A sort of garment. Cowell.

HERIOT. In English law. A customary tribute of goods and chattels, payable to the lord of the fee on the decease of the owner of the land.

Heriots are divided into heriot service and heriot customs. The former expression denotes such as were due upon a special reservation in a grant or lease of lands, and therefore amount to little more than a mere rent; the latter arise upon no special reservation whatever, but depend solely upon immemorial usage and custom. 2 Bl. Comm. 432.

HERISCHILD. A species of military service, or knight’s fee. Cowell.

HERISCHULDA. In old Scotch law. A fine or penalty for not obeying the proclamation made for warfare. Skene.

HERISCINDIUM. A division of household goods. Blount.


HERISTAL. The station of an army; the place where a camp is pitched. Spelman.

HERITABLE. Capable of being taken by descent. A term chiefly used in Scotch law, where it enters into several phrases.

HERITABLE BOND. In Scotch law. A bond for a sum of money to which is added, for further security of the creditor, a conveyance of land or heritage to be held by the creditor as pledge. 1 Ross, Conv. 76; 2 Ross, Conv. 324.

HERITABLE JURISDICTIONS. In Scotch law. Grants of criminal jurisdiction formerly bestowed on great families in Scotland, to facilitate the administration of justice. Whishaw. Abolished in effect by St. 20 Geo. II. c. 50. Tomlins.
HERITABLE OBLIGATION. In Louisiana. An obligation is heritable when the heirs and assigns of one party may enforce the performance against the heirs of the other. Civil Code La. art. 1997.

HERITABLE RIGHTS. In Scotch law. Rights of the heir; all rights to land or whatever is connected with land, as mills, fisheries, tithes, etc.

HERITAGE. In the civil law. Every species of immovable which can be the subject of property; such as lands, houses, orchards, woods, marshes, ponds, etc., in whatever mode they may have been acquired, either by descent or purchase. 3 Toullier, no. 472.

In Scotch law. Land, and all property connected with land; real estate, as distinguished from movables, or personal estate. Bell.

HERITOR. In Scotch law. A proprietor of land. 1 Kames, Eq. Pref.

HERMANDAD. In Spanish law. A fraternity formed among different towns and villages to prevent the commission of crimes, and to prevent the abuses and vexations to which they were subjected by men in power. Bouvier.

HERMAPHRODITE. An animal or human being so malformed as to have the organs of generation of both sexes.

Hermaphroditus tam masculo quam femineo comparatur, secundum praevaleuntiam sexus incalescentis. An hermaphrodite is to be considered male or female according to the predominance of the exciting sex. Co. Litt. 8; Bract. fol. 5.

HERMENEUTICS. The science or art of construction and interpretation. By the phrase "legal hermeneutics" is understood the systematic body of rules which are recognized as applicable to the construction and interpretation of legal writings.

HERMER. A great lord. Jacob.

HERMOGENIAN CODE. See Codex Hermogenianus.

HERNESCUS. A heron. Cowell.

HERNESIUM, or HERNASIUM. Household goods; implements of trade or husbandry; the rigging or tackle of a ship. Cowell.

HEROUX, HERAUD. L. Fr. A herald.

HERFEX. A harrow. Spelman.

HERPICATIO. In old English law. A day's work with a harrow. Spelman.

HERRING SILVER. This was a composition in money for the custom of supplying herrings for the provision of a religious house. Wharton.

HERUS. A master. Serus facit ut herus det, the servant does [the work] in order that the master may give [him the wages agreed on.] Herus dat ut serus facit, the master gives [or agrees to give, the wages,] in consideration of, or with a view to, the servant's doing [the work.] 2 Bl. Comm. 445.

HESIA. An easement. Du Cange.

HEST CORN. In old records. Corn or grain given or devoted to religious persons or purposes. 2 Mon. Angl. 367b; Cowell.

HESTÀ, or HESTHA. A little loaf of bread.

HETÆRARCHIA. The head of a religious house; the head of a college; the warden of a corporation.

HETÆRIA. In Roman law. A company, society, or college.

HEUVELBORH. Sax. In old English law. A surety, (warrantus.)

HEYLODE. In old records. A customary burden upon inferior tenants, for mending or repairing hays or hedges.

HEYMECTUS. A hay-net; a net for catching coynes. Cowell.

HIBERNAGIUM. The season for sowing winter corn. Cowell.

HIDAGE. An extraordinary tax formerly payable to the crown for every hide of land. This taxation was levied, not in money, but provision of armor, etc. Cowell.

HIDALGO. In Spanish law. A noble; a person entitled to the rights of nobility. By hidalgos are understood men chosen from good situations in life, (de buenos lugues,) and possessed of property, (algo,) White. New Recop. b. 1, tit. 1, c. 1.

HIDALGULÀ. In Spanish law. Nobility by descent or lineage. White, New Recop. b. 1, tit. 5, c. 8, § 4.

HIDE. In old English law. A measure of land, being as much as could be worked with one plow. It is variously estimated at
from 60 to 100 acres, but was probably determined by local usage. Another meaning was as much land as would support one family or the dwellers in a mansion-house. Also a house; a dwelling-house.

**HIDE AND GAIN.** In English law. A term anciently applied to arable land.

Co. Litt. 85b.

**HIDE LANDS.** In Saxon law. Lands belonging to a hide; that is, a house or mansion. Spelman.

**HIDEL.** In old English law. A place of protection; a sanctuary. St. 1 Hen. VII. cc. 5, 6; Cowell.

**HIDGILD.** A sum of money paid by a villein or servant to save himself from a whipping. Fleta, l. 1, c. 47, § 20.

**HIERARCHY.** Originally, government by a body of priests. Now, the body of officers in any church or ecclesiastical institution, considered as forming an ascending series of ranks or degrees of power and authority, with the correlative subjection, each to the one next above. Derivatively, any body of men, taken in their public capacity, and considered as forming a chain of powers, as above described.

**HIGH BAILIFF.** An officer attached to an English county court. His duties are to attend the court when sitting; to serve summonses; and to execute orders, warrants, writs, etc. St. 9 & 10 Vict. c. 95, § 33; Poll. C. C. Pr. 16. He also has similar duties under the bankruptcy jurisdiction of the county courts.

**HIGH COMMISSION COURT.** In English law. An ecclesiastical court of very formidable jurisdiction, for the vindication of the peace and dignity of the church, by reforming, ordering, and correcting the ecclesiastical state and persons, and all manner of errors, heresies, schisms, abuses, offenses, contempt, and enormities. 3 Bl. Comm. 67. It was erected by St. 1 Eliz. c. 1, and abolished by 16 Car. I. c. 11.

**HIGH CONSTABLE.** In English law. An officer of public justice, otherwise called "chief constable" and "constable of the hundred," whose proper duty is to keep the king's peace within the hundred, as the petty constable does within the parish or township. 3 Steph. Comm. 46, 47. See Constable.

An officer appointed in some cities with powers generally limited to matters of police.

**HIGH CONSTABLE OF ENGLAND, LORD.** His office has been disused (except only upon great and solemn occasions, as the coronation, or the like) since the attainder of Stafford, Duke of Buckingham, in the reign of Henry VII.

**HIGH COURT OF ADMIRALTY.** In English law. This was a court which exercised jurisdiction in prize cases, and had general jurisdiction in maritime causes, on the instance side. Its proceedings were usually in rem, and its practice and principles derived in large measure from the civil law. The judicature acts of 1873 transferred all the powers and jurisdiction of this tribunal to the probate, divorce, and admiralty division of the high court of justice.

**HIGH COURT OF DELEGATES.** In English law. A tribunal which formerly exercised appellate jurisdiction over cases brought from the ecclesiastical and admiralty courts. 3 Bl. Comm. 66.

It was a court of great dignity, erected by the statute 25 Hen. VII. c. 19. It was abolished, and its jurisdiction transferred to the judicial committee of the privy council.

**HIGH COURT OF ERRORS AND APPEALS.** The court of last resort in the state of Mississippi.

**HIGH COURT OF JUSTICE.** That branch of the English supreme court of judicature (q. v.) which exercises (1) the original jurisdiction formerly exercised by the court of chancery, the courts of queen's bench, common pleas, and exchequer, the courts of probate, divorce, and admiralty, the court of common pleas at Lancaster, the court of pleas at Durham, and the courts of the judges or commissioners of assize; and (2) the appellate jurisdiction of such of those courts as heard appeals from inferior courts. Judicature act, 1873, § 15.

**HIGH COURT OF JUSTICIARY.** See Court of Justiciary.

**HIGH COURT OF PARLIAMENT.** In English law. The English parliament, as composed of the house of peers and house of commons; or the house of lords sitting in its judicial capacity.

**HIGH CRIMES.** High crimes and misdemeanors are such immoral and unlawful acts as are nearly allied and equal in guilt to felony, yet, owing to some technical circumstance, do not fall within the definition of "felony." 6 Conn. 417.
HIGH JUSTICE. In feudal law. The jurisdiction or right of trying crimes of every kind, even the highest. This was a privilege claimed and exercised by the great lords or barons of the middle ages. 1 Robertson's Car. V., appendix, note 23.


HIGH MISDEMEANORS. See MISPRISON; HIGH CRIMES.

HIGH SCHOOL. A school in which higher branches of learning are taught than in the common schools. 123 Mass. 306. A school in which such instruction is given as will prepare the students to enter a college or university.

HIGH SEAS. The ocean; public waters. According to the English doctrine, the high sea begins at the distance of three miles from the coast of any country; according to the American view, at low-water mark, except in the case of small harbors and roadsteads inclosed within the "foues terro.

The open ocean outside of the "foues terro, as distinguished from arms of the sea; the waters of the ocean without the boundary of any county.

Any waters on the sea-coast which are without the boundaries of low-water mark.

HIGH STEWARD, COURT OF THE LORD. In English law. A tribunal instituted for the trial of peers indicted for treason or felony, or for misprision of either, but not for any other offense. The office is very ancient, and was formerly hereditary, or held for life, or dum bene se gesserit; but it has been for many centuries granted pro hac vice only, and always to a lord of parliament. When, therefore, such an indictment is found by a grand jury of freeholders in the queen's bench, or at the assizes before a judge of oyer and terminer, it is removed by a writ of certiorari into the court of the lord high steward, which alone has power to determine it. A peer may plead a pardon before the queen's bench, in order to prevent the trouble of appointing a high steward, merely to receive the plea, but he cannot plead any other plea, because it is possible that, in consequence of such plea, judgment of death might be pronounced upon him. Wharton.

HIGH TREASON. In English law. Treason against the king or sovereign, as distinguished from petit or petty treason, which might formerly be committed against a subject. 4 Bl. Comm. 74, 75; 4 Steph. Comm. 183, 184, note.

HIGH-WATER MARK. This term is properly applicable only to tidal waters, and designates the line on the shore reached by the water at the high or flood tide. But it is sometimes also used with reference to the waters of artificial ponds or lakes, created by dams in un navigable streams, and then denotes the highest point on the shores to which the dams can raise the water in ordinary circumstances.

HIGH WOOD. Timber.

HIGHER AND LOWER SCALE. In the practice of the English supreme court of judicature there are two scales regulating the fees of the court and the fees which solicitors are entitled to charge. The lower scale applies (unless the court otherwise orders) to the following cases: All causes and matters assigned by the judicature acts to the queen's bench, or the probate, divorce, and admiralty divisions; all actions of debt, contract, or tort; and in almost all cases and matters assigned by the acts to the chancery division in which the amount in litigation is under £1,000. The higher scale applies in all other causes and matters, and also in actions falling under one of the above classes, but in which the principal relief sought to be obtained is an injunction. Sweet.

HIGHERNESS. A title of honor given to princes. The kings of England, before the time of James I., were not usually saluted with the title of "Majesty," but with that of "Highness." The children of crowned heads generally receive the style of "Highness." Wharton.

HIGHWAY. A free and public road, way, or street; one which every person has the right to use.

"In all counties of this state, public highways are roads, streets, alleys, lanes, courts, places, trails, and bridges, laid out or erected as such by the public, or, if laid out and erected by others, dedicated or abandoned to the public, or made such in actions for the partition of real property." Pol. Code Cal. § 2618.

There is a difference in the shade of meaning conveyed by two uses of the word. Sometimes it signifies right of free passage, in the abstract, not importing anything about the character or construction of the way. Thus, a river is called a "highway;" and it has been not unusual for so-
gress, in granting a privilege of building a bridge, to declare that it shall be a public highway. Again, it has reference to some system of law authorizing the taking a strip of land, and preparing and devoting it to the use of travelers. In this use it imports a road-way upon the soil, constructed under the authority of these laws. Abbott.

HIGHWAY ACTS, or LAWS. The body or system of laws governing the laying out, repair, and use of highways.

HIGHWAY CROSSING. A place where the track of a railroad crosses the line of a highway.

HIGHWAY-RATE. In English law. A tax for the maintenance and repair of highways, chargeable upon the same property that is liable to the poor-rate.

HIGHWAY ROBBERY. In criminal law. The crime of robbery committed upon or near a public highway. In England, by St. 23 Hen. VIII. c. 1, this was made felony without benefit of clergy, while robbery committed elsewhere was less severely punished. The distinction was abolished by St. 3 & 4 W. & M. c. 9, and in this country it has never prevailed generally.

HIGHWAY TAX. A tax for and applicable to the making and repairing of highways.

HIGHWAYMAN. A bandit; one who robs travelers upon the highway.

HIGLER. In English law. A hawker or peddler. A person who carries from door to door, and sells by retail, small articles of provisions, and the like.

HIGUELA. In Spanish law. A receipt given by an heir of a decedent, setting forth what property he has received from the estate.

HIKENILD STREET. One of the four great Roman roads of Britain. More commonly called "Ikenild Street."

HILARY RULES. A collection of orders and forms extensively modifying the pleading and practice in the English superior courts of common law, established in Hilary term, 1834. Stimson.

HILARY TERM. In English law. A term of court, beginning on the 11th and ending on the 31st of January in each year. Superseded (1875) by Hilary sittings, which begin January 11th, and end on the Wednesday before Easter.

HINDENI HOMINES. A society of men. The Saxons ranked men into three classes, and valued them, as to satisfaction for injuries, etc., according to their class. The highest class were valued at 1,200s., and were called "twelf hindmen;" the middle class at 600s., and called "sexhindmen;" the lowest at 200s., called "tonghindmen." Their wives were termed "hindas." Brompt. Leg. Alfred. c. 12.

HINDER AND DELAY. To hinder and delay is to do something which is an attempt to defraud, rather than a successful fraud; to put some obstacle in the path, or interpose some time, unjustifiably, before the creditor can realize what is owed out of his debtor's property. 42 N. Y. Super. Ct. 63.

HINDU LAW. The system of native law prevailing among the Gentoos, and administered by the government of British India.

HINE, or HIND. A husbandry servant.

HINEFARE. The loss or departure of a servant from his master. Domesday.

HIPOTECA. In Spanish law. A mortgage of real property.

HIRCISCUNDA. See HERCISCUNDA.

HIRE, v. To purchase the temporary use of a thing, or to stipulate for the labor or services of another. See HIRING.

To engage in service for a stipulated reward, as to hire a servant for a year, or laborers by the day or month; to engage a man to temporary service for wages. To "employ" is a word of more enlarged signification. A man hired to labor is employed, but a man may be employed in a work who is not hired. 11 N. Y. 605.

For definitions of the various species of this class of contracts, under their Latin names, see LOCATIO and following titles.

HIRE, n. Compensation for the use of a thing, or for labor or services.

HIREMAN. A subject. Du Cange.

HIRER. One who hires a thing, or the labor or services of another person.

HIRING. Hiring is a contract by which one person grants to another either the enjoyment of a thing or the use of the labor and industry, either of himself or his servant, during a certain time, for a stipulated compensation, or where one contracts for the labor or services of another about a thing bailed to him for a specified purpose. Code Ga. 1882, § 2085.
Hiring is a contract by which one gives to another the temporary possession and use of property, other than money, for reward, and the latter agrees to return the same to the former at a future time. Civil Code Cal. § 1925; Civil Code Dak. § 1103.

HIRST, HURST. In old English law. A wood. Co. Litt. 45.

HIS. The use of this pronoun in a written instrument, in referring to a person whose Christian name is designated therein by a mere initial, is not conclusive that the person referred to is a male; it may be shown by parol that the person intended is a female. 71 Cal. 38, 11 Pac. Rep. 802.

HIS EXCELLENCY. In English law. The title of a viceroy, governor general, ambassador, or commander in chief.

In American law. This title is given to the governor of Massachusetts by the constitution of that state; and it is commonly given, as a title of honor and courtesy, to the governors of the other states and to the president of the United States. It is also customarily used by foreign ministers in addressing the secretary of state in written communications.

HIS HONOR. A title given by the constitution of Massachusetts to the lieutenant-governor of that commonwealth. Const. Mass. pt. 2, c. 2, § 2, art. 1.

HIS TESTIBUS. Lat. These being witnesses. The attestation clause in old deeds and charters.

HIWISC. A hide of land.

HLAF ETA. Sax. A servant fed at his master's cost.

HLAFORD. Sax. A lord. 1 Spence, Ch. 36.


HLOTHE. In Saxon law. A fine for being present at an unlawful assembly. Spelman.

HLOTHE. In Saxon law. An unlawful assembly from eight to thirty-five, inclusive. Cowell.

HOASTMEN. In English law. An ancient guild or fraternity at Newcastle-upon-Tyne, who dealt in sea coal. St. 21 Jac. I. c. 3.

HOBBLERS. In old English law. Light horsemen or bowmen; also certain tenants, bound by their tenure to maintain a little light horse for giving notice of any invasion, or such like peril, towards the seaside. Camden, Brit.

HOC. Lat. This. Hoc intuitu, with this expectation. Hoc loco, in this place. Hoc nomine, in this name. Hoc titulo, under this title. Hoc voce, under this word.

HOC QUIDEM PERQUAM DURUM EST, SED ITA LEX SCRIPTA EST. Lat. (This indeed is exceedingly hard, but so the law is written; such is the written or positive law.) An observation quoted by Blackstone as used by Ulpian in the civil law; and applied to cases where courts of equity have no power to abate the rigor of the law. Dig. 49, 9, 12, 1; 3 Bl. Comm. 430.

HOC PARATUS EST VERIFICARE. Lat. This he is ready to verify.

Hoc servabitur quod initio convenit. This shall be preserved which is useful in the beginning. Dig. 50, 17, 23; Bract. 735.

HOCCUS SALTIS. A hole, hole, or lesser pit of salt. Cowell.

HOCK - TUESDAY MONEY. This was a duty given to the landlord that his tenants and bondmen might solemnize the day on which the English conquered the Danes, being the second Tuesday after Easter week. Cowell.

HOCKETTOR, or HOCQUETEUR. A knight of the post; a decayed man; a basket carrier. Cowell.

HODGE - PODE ACT. A name applied to a statute which comprises a medley of incongruous subjects.

HOGA. In old English law. A hill or mountain. In old English, a how. Gene hogo, Grenehow. Domesday; Spelman.


HOOGUS, or HOGIETUS. A hog or swine. Cowell.

HOGHENHYNE. In Saxon law. A house-servant. Any stranger who lodged three nights or more at a man's house in a
decennary was called "hoggenlyme," and his host became responsible for his acts as for those of his servant.

HOGSHEAD. A measure of a capacity containing the fourth part of a tun, or sixty-three gallons. Cowell. A large cask, of indefinite contents, but usually containing from one hundred to one hundred and forty gallons. Webster.

HOLD, v. 1. To possess in virtue of a lawful title; as in the expression, common in grants, "to have and to hold," or in that applied to notes, "the owner and holder."
2. To be the grantee or tenant of another; to take or have an estate from another. Properly, to have an estate on condition of paying rent, or performing service.
3. To adjudge or decree, spoken of a court, particularly to declare the conclusion of law reached by the court as to the legal effect of the facts disclosed.
4. To maintain or sustain; to be under the necessity or duty of sustaining or proving; as when it is said that a party "holds the affirmative" or negative of an issue in a cause.
5. To bind or obligate; to restrain or constrain; to keep in custody or under an obligation; as in the phrases "hold to bail," "hold for court," "held and firmly bound," etc.
6. To administer; to conduct or preside at; to convocate, open, and direct the operations of; as to hold a court, hold pleas, etc.
7. To prosecute; to direct and bring about officially; to conduct according to law; as to hold an election.
8. To possess; to occupy; to be in possession and administration of; as to hold office.

HOLD, n. In old law. Tenure. A word constantly occurring in conjunction with others, as freehold, leasehold, copyhold, etc., but rarely met with in the separate form.

HOLD OVER. To hold possession after the expiration of a term or lease. To retain possession of property leased, after the end of the term. To continue in possession of an office, and continue to exercise its functions, after the end of the officer's lawful term.

HOLD PLEAS. To bear or try causes. 3 Bl. Comm. 35, 298.

HOLDER. The holder of a bill of exchange, promissory note, or check is the person who has legally acquired the possession of the same, from a person capable of transferring it, by indorsement or delivery, and who is entitled to receive payment of the instrument from the party or parties liable to meet it.

HOLDER IN DUE COURSE. In English law, is "a holder who has taken a bill of exchange (check or note) complete and regular on the face of it, under the following conditions, namely: (a) That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact. (b) That he took the bill (check or note) in good faith and for value, and that at the time it was negotiated to him he had no notice of any defect in the title of the person who negotiated it." Bills of exchange act, 1882, (45 & 46 Vict. c. 61, § 29.)


HOLDING. In English law. A piece of land held under a lease or similar tenancy for agricultural, pastoral, or similar purposes.

In Scotch law. The tenure or nature of the right given by the superior to the vassal. Bell.

HOLDING OVER. A holding beyond a term; a continuing in possession after the expiration of a term. The act of keeping possession of premises leased, after the expiration of the term of the lease, without the consent of the landlord; or of an office after the expiration of the incumbent's legal term.

HOLDING UP THE HAND. In criminal practice. A formality observed in the arraignment of prisoners. Held to be not absolutely necessary. 1 W. Bl. 3, 4.

HOLIDAY. A religious festival; a day set apart for commemorating some important event in history; a day of exemption from labor. Webster. A day upon which the usual operations of business are suspended and the courts closed, and, generally, no legal process is served.

HOLM. An island in a river or the sea. Spelman.

Plain grassy ground upon water sides or in the water. Blount. Low ground intersected with streams. Spelman.

HOLOGRAFO. In Spanish law. A holograph. An instrument (particularly a will) wholly in the handwriting of the person executing it; or which, to be valid, must be so written by his own hand.
HOLOGRAPH. A will or deed written entirely by the testator or grantor with his own hand.

HOLT. Sax. In Old English law. A wood or grove. Spelman; Cowell; Co. Litt. 46.

HOLY ORDERS. In ecclesiastical law. The orders of bishops, (including archbishops,) priests, and deacons in the Church of England. The Roman canonists had the orders of bishop, (in which the pope and archbishops were included,) priest, deacon, sub-deacon, psalmist, acolyte, exorcist, reader, ostiarius. 3 Steph. Comm. 55, and note a.

HOMAGE. In feudal law. A service (or the ceremony of rendering it) which a tenant was bound to perform to his lord on receiving investiture of a fee, or succeeding to it as heir, in acknowledgment of the tenure. It is described by Littleton as the most honorable service of reverence that a free tenant might do to his lord. The ceremony was as follows: The tenant, being ungirt and with bare head, knelt before the lord, the latter sitting, and held his hands extended and joined between the hands of the lord, and said: "I become your man [home] from this day forward, of life and limb and earthly honor, and to you will be faithful and loyal, and bear you faith, for the tenements that I claim to hold of you, saving the faith that I owe unto our sovereign lord the king, so help me God." The tenant then received a kiss from the lord. Homage could be done only to the lord himself. Litt. § 85; Glanv. lib. 9, c. 1; Bract. fols. 77b, 78–80; Wharton.

"Homage" is to be distinguished from "fealty," another incident of feudalism, and which consisted in the solemn oath of fidelity made by the vassal to the lord, whereas homage was merely an acknowledgment of tenure. If the homage was intended to include fealty, it was called "liege homage," but otherwise it was called "simple homage." Brown.

HOMAGE ANCESTRAL. In feudal law. Homage was called by this name where a man and his ancestors had immemorially held of another and his ancestors by the service of homage, which bound the lord to warrant the title, and also to hold the tenant clear of all services to superior lords. If the tenant aliened in fee, his alienee was a tenant by homage, but not by homage ancestral. Litt. § 143; 2 Bl. Comm. 300.

HOMAGE JURY. A jury in a court-baron, consisting of tenants that do homage, who are to inquire and make presentments of the death of tenants, surrenders, admissions, and the like.

HOMAGE LIEGE. That kind of homage which was due to the sovereign alone as supreme lord, and which was done without any saving or exception of the rights of other lords. Spelman.

HOMAGER. One who does or is bound to do homage. Cowell.

HOMAGIO RESPECTUANDO. A writ to the escheator commanding him to deliver seisin of lands to the heir of the king's tenant, notwithstanding his homage not done. Fitzh. Nat. Brev. 269.

HOMAGIUM. Homage, (q. v.)

HOMAGIUM LIGIUM. Liege homage; that kind of homage which was due to the sovereign alone as supreme lord, and which was done without any saving or exception of the rights of other lords. Spelman. So called from ligando, (binding,) because it could not be renounced like other kinds of homage.

Homagium, non per procuratores nec per literas fieri potuit, sed in propria persona tam domini quam tenantis capi debet et fieri. Co. Litt. 63. Homage cannot be done by proxy, nor by letters, but must be paid and received in the proper person, as well of the lord as the tenant.

HOMAGIUM PLANUM. In feudal law. Plain homage; a species of homage which bound him who did it to nothing more than fidelity, without any obligation either of military service or attendance in the courts of his superior. 1 Robertson's Car. V., Appendix, note 8.

HOMAGIUM REDDERE. To renounce homage. This was when a vassal made a solemn declaration of disowning and defying his lord; for which there was a set form and method prescribed by the feudal laws. Bract. l. 2, c. 35, § 35.

HOMAGIUM SIMPLEX. In feudal law. Simple homage; that kind of homage which was merely an acknowledgment of tenure, with a saving of the rights of other lords. Harg. Co. Litt. note 18, lib. 2.

HOMBRE BUENO. In Spanish law. The judge of a district. Also an arbitrator chosen by the parties to a suit. Also a man
HOME

in good standing; one who is competent to testify in a suit.

HOMICIDE. When a person voluntarily takes up his abode in a given place, with intention to remain permanently, or for an indefinite period of time, or without any present intention to remove therefrom, such place of abode becomes his residence or home. 43 Me. 418. This word has not the same technical meaning as "domicile." 19 Me. 301.

HOMESOLEN, HOMSOLEN. See HAMSOLEN.

HOMESTALL. A mansion-house.

HOMESTEAD. The home place; the place where the home is. It is the home, the house and the adjoining land, where the head of the family dwells; the home farm. 36 N. H. 166.

The fixed residence of the head of a family, with the land and buildings surrounding the main house.

HOMESTEAD CORPORATIONS. Corporations organized for the purpose of acquiring lands in large tracts, paying off incumbrances thereon, improving and subdividing them into homestead lots or parcels, and distributing them among the shareholders, and for the accumulation of a fund for such purposes, are known as "homestead corporations," and must not have a corporate existence for a longer period than ten years. Civil Code Cal. § 557.

HOMESTEAD EXEMPTION LAWS. Laws passed in most of the states allowing a householder or head of a family to designate a house and land as his homestead, and exempting the same homestead from execution for his general debts.

HOMICIDAL. Pertaining to homicide; relating to homicide; impelling to homicide; as a homicidal mania.

HOMICIDE. The killing any human creature. 4 Bl. Comm. 177. The act of a human being in killing another human being.

"Homicide," as a term, does not import crime. It includes crimes, such, for instance, as murder and manslaughter. But a homicide may be innocent; may even be in the performance of a duty. The execution of the sentence of death upon a criminal by the officer of the law is a homicide. The term "homicide" embraces all man-killing. 1 Park. Crim. R. 182, 186.

Justifiable homicide is such as is committed intentionally, but without any evil design, and under such circumstances of necessity or duty as render the act proper, and relieve the party from any shadow of blame; as where a sheriff lawfully executes a sentence of death upon a malefactor, or where the killing takes place in the endeavor to prevent the commission of a felony which could not be otherwise avoided.

Excusable homicide is such as is committed through misadventure or accident, without any willful or malicious intention; or by necessity, in self-defense.

Felonsious homicide (which may be either murder or manslaughter) is that committed without justification or excuse in law, i. e., with malice and intention, and under such circumstances as to make it punishable.

HOMICIDE PER INFORTUNIUM. In criminal law. Homicide by misfortune, or accidental homicide; as where a man doing a lawful act, without any intention of hurt, unfortunately kills another; a species of excusable homicide. 4 Bl. Comm. 182; 4 Steph. Comm. 101.

HOMICIDE PER MISADVENTURE. See Homicide Per Infortunium.

HOMICIDE SE DEFENDENDO. In criminal law. Homicide in self-defense; the killing of a person in self-defense upon an sudden affray, where the slayer had no other possible (or, at least, probable) means of escaping from his assailant. 4 Bl. Comm. 183-186; 4 Steph. Comm. 103-105. A species of excusable homicide. Id.; 1 Russ. Crimes, 660.

HOMICIDIUM. Lat. Homicide, (q. v.) Homicidiun ex justitia, homicide in the administration of justice, or in the execution of the sentence of the law.

Homicidiun ex necessitate, homicide from inevitable necessity, as for the protection of one's person or property.
HOMICIDIO

Homicidium ex causu, homicide by accident.

Homicidium ex voluntate, voluntary or willful homicide. Bract. fol. 120 b, 121.

HOMINATIO. The mustering of men; the doing of homage.

HOMINE CAPTO IN WITHERNAM- IUM. A writ to take him that had taken any bond man or woman, and led him or her out of the country, so that he or she could not be repleved according to law. Reg. Orig. 79.

HOMINE ELIGENDO. In old English law. A writ directed to a corporation, requiring the members to make choice of a man to keep one part of the seal appointed for statutes merchant, when a former is dead, according to the statute of Acton Burnell. Reg. Orig. 178; Wharton.

HOMINE REPLEGIANDO. In English law. A writ which lay to replevy a man out of prison, or out of the custody of any private person, in the same manner that chattels taken in distress may be repleved. Brown.

HOMINES. Lat. In feudal law. Men; feudatory tenants who claimed a privilege of having their causes, etc., tried only in their lord's court. Paroch. Antiq. 15.

HOMINES LIGIL. In feudal law. Liege men; feudal tenants or vassals, especially those who held immediately of the sovereign. 1 Bl. Comm. 367.

Hominum causa jus constitutum est. Law is established for the benefit of man.

HOMIPLANAGIUM. In old English law. The maiming of a man. Blount.

HOMME. Fr. Man; a man. This term is defined by the Civil Code of Louisiana to include a woman. Article 3522, nn. 1, 2.

HOMMES DE FIEF. Fr. In feudal law. Men of the fief; feudal tenants; the peers in the lords' courts. Montesq.. Esprit des Lois, liv. 28, c. 27.

HOMMES FEODAUX. Fr. In feudal law. Feudal tenants; the same with hom- mes de fief, (g. c.) Montesq.. Esprit des Lois, liv. 28, c. 30.

HOMO. Lat. A man; a human being; male or female; a vassal, or feudal tenant; a retainer, dependent, or servant.

HOMO CHARTULARIUS. A slave manumitted by charter.

HOMO COMMENDATUS. In feudal law. One who surrendered himself into the power of another for the sake of protection or support. See COMMENDATION.

HOMO ECCLESIASTICUS. A church vassal; one who was bound to serve a church, especially to do service of an agricultural character. Spelman.

HOMO EXERCITALIS. A man of the army, (exercitus;) a soldier.

HOMO FEODALIS. A vassal or tenant; one who held a fee, (feodum,) or part of a fee. Spelman.

HOMO FISICALIS, or FISCALINUS. A servant or vassal belonging to the treasury or fiscus.

HOMO FRANCUS. In old English law. A Freeman. A Frenchman.


HOMO LIBER. A freeman.

HOMO LIGIUS. A liege man; a subject; a king's vassal. The vassal of a subject.

HOMO NOVUS. In feudal law. A new tenant or vassal; one who was invested with a new fee. Spelman.

HOMO PERTINENS. In feudal law. A feudal bondman or vassal; one who belonged to the soil, (qui gleba adsorbitur.)

Homo potest esse habilis et inhabilis diversis temporibus. 5 Coke, 98. A man may be capable and incapable at different times.

HOMO REGIUS. A king's vassal.

HOMO ROMANUS. A Roman. An appellation given to the old inhabitants of Gaul and other Roman provinces, and retained in the laws of the barbarous nations. Spelman.

HOMO TRIUM LITTERARUM. A man of the three letters; that is, the three letters, "f," "u," "r," the Latin word fur meaning "thief."

Homo vocabulum est naturæ; persona juris civilis. Man (homo) is a term of nature; person (persona) of civil law. Calvin.

HOMOLOGACION. In Spanish law. The tacit consent and approval inferred by law from the omission of the parties, for the
space of ten days, to complain of the sentences of arbitrators, appointment of syndics, or assignees of insolvents, settlements of successions, etc. Also the approval given by the judge of certain acts and agreements for the purpose of rendering them more binding and executory. Escriehe.

HOMOLOGARE. In the civil law. To confirm or approve; to consent or assent; to confess. Calvin.

HOMOLOGATE. In modern civil law. To approve; to confirm; as a court homologates a proceeding. See HOMOLOGATION. Literally, to use the same words with another; to say the like. 9 Mart. (La.) 324. To assent to what another says or writes.

HOMOLOGATION. In the civil law. Approval; confirmation by a court of justice; a judgment which orders the execution of some act. Merl. Répért. The term is also used in Louisiana.


In Scotch law. An act by which a person approves of a deed, the effect of which is to render that deed, though in itself defective, binding upon the person by whom it is homologated. Bell. Confirmation of a voidable deed.

HOMONYMIAE. A term applied in the civil law to cases where a law was repeated, or laid down in the same terms or to the same effect, more than once. Cases of iteration and repetition. 2 Kent, Comm. 489, note.

HONDHABEND. Sax. Having in hand. See Handhabend.

HONESTE VIVERE. Lat. To live honorably, creditably, or virtuously. One of the three general precepts to which Justinian reduced the whole doctrine of the law, (Inst. 1, 1, 3; Bract. fols. 3, 36,) the others being alterum non ladenre, (not to injure others,) and suum cuique tribuere, (to render to every man his due.)

HONESTUS. Of good character or standing. Coram duobus vel pluribus viris legatis et honestis, before two or more lawful and good men. Bract. fol. 61.

HONOR, n. To accept a bill of exchange, or to pay a note, check, or accepted bill, at maturity and according to its tenor.

HONOR, n. In English law. A seigniory of several manors held under one baron or lord paramount. Also those dignities or privileges, degrees of nobility, knighthood, and other titles, which flow from the crown as the fountain of honor. Wharton.

In American law. The customary title of courtesy given to judges of the higher courts, and occasionally to some other officers; as "his honor," "your honor."

HONOR COURTS. Tribunals held within honors or seignories.

HONORABLE. A title of courtesy given in England to the younger children of earls, and the children of viscounts and barons; and, collectively, to the house of commons. In America, the word is used as a title of courtesy for various classes of officials, but without any clear lines of distinction.

HONORARIUM. In the civil law. An honorary or free gift; a gratuitous payment, as distinguished from hire or compensation for service; a lawyer's or counsellor's fee. Dig. 50, 13, 1, 10-12.

An honorarium is a voluntary donation, in consideration of services which admit of no compensation in money; in particular, to advocates at law, deemed to practice for honor or influence, and not for fees. 14 Ga. 69.

HONORARIUM JUS. In Roman law. The law of the praetors and the edicts of the emperors.

HONORARY CANONS. Those without emolument. 3 & 4 Vict. c. 113, § 23.

HONORARY FEUDS. Titles of nobility, descendible to the eldest son, in exclusion of all the rest. 2 Bi. Comm. 56.

HONORARY SERVICES. In feudal law. Special services to be rendered to the king in person, characteristic of the tenure by grand serjeanty; such as to carry his banner, his sword, or the like, or to be his butler, champion, or other officer, at his coronation. Litt. § 153; 2 Bi. Comm. 73.

HONORARY TRUSTEES. Trustees to preserve contingent remainders, so called because they are bound, in honor only, to decide on the most proper and prudential course. Lewin, Trusts, 408.

HONORIS RESPECTUM. By reason of honor or privilege. See CHALLENGE.

HONTFONGENETHEF. In Saxon law. A thief taken with hondhabend; i.e., having the thing stolen in his hand. Cowell.
HONY. L. Fr. Shame; evil; disgrace. *Hony soit qui mal y pense*, evil be to him who evil thinks.

HOO. A hill. Co. Litt. 56.

HOOKLAND. Land plowed and sown every year.

HOPCON. A valley. Cowell.

HOPE. In old English law. A valley. Co. Litt. 45.

HOPPO. A Chinese term for a collector; an overseer of commerce.

HORA AURORÆ. In old English law. The morning bell, as cognitum or curfew (curfew) was the evening bell.

Hora non est multum de substantia negotii, licet in appello de ea aliquando fiat mentio. The hour is not of much consequence as to the substance of business, although in appeal it is sometimes mentioned. 1 Bulst. 82.

HORÆ JURIDICE, or JUDICLÆ. Hours during which the judges sat in court to attend to judicial business.

HORCA. In Spanish law. A gallows; the punishment of hanging. White, New Recop. b. 2, tit. 19, c. 4. § 1.

HORDA. In old records. A cow in calf.

HORDERA. A treasurer. Du Cange.

HORDERIUM. In old English law. A hoard; a treasure, or repository. Cowell.

HORDEUM. In old records. Barley. *Hordeum palmale*, beer barley, as distinguished from common barley, which was called "hordeum quadragesimale." Blount.

HORN. In old Scotch practice. A kind of trumpet used in denouncing contumacious persons rebels and outlaws, which was done with three blasts of the horn by the king's sergeant. This was called "putting to the horn;" and the party so denounced was said to be "at the horn." Bell.

HORN-BOOK. A primer; a book explaining the rudiments of any science or branch of knowledge. The phrase "horn-book law" is a colloquial designation of the rudiments or most familiar principles of law.

HORN TENURE. In old English law. Tenure by cornage; that is, by the service of winding a horn when the Scots or other enemies entered the land, in order to warn the king's subjects. This was a species of grand serjeancy. Litt. § 156; 2 Bl. Comm. 74.

HORN WITH HORN, or HORN UNDER HORN. The promiscuous feeding of bulls and cows or all horned beasts that are allowed to run together upon the same common. Spelman.

HORNIEL. Sax. In old English law. A tax within a forest, paid for horned beasts. Cowell; Blount.

HORNING. In Scotch law. "Letters of horning" is the name given to a judicial process issuing on the decree of a court, by which the debtor is summoned to perform his obligation in terms of the decree, the consequence of his failure to do so being liability to arrest and imprisonment. It was anciently the custom to proclaim a debtor who had failed to obey such process a rebel or outlaw, which was done by three blasts of the horn by the king's sergeant in a public place. This was called "putting to the horn," whence the name.

HORREUM. Lat. A place for keeping grain; a granary. A place for keeping fruits, wines, and goods generally; a store-house. Calvin; Bract. fol. 48.

HORS. L. Fr. Out; out of; without.

HORS DE SON FEE. L. Fr. Out of his fee. In old pleading, this was the name of a plea in an action for rent or services, by which the defendant alleged that the land in question was out of the compass of the plaintiff's fee.

HORS PRIS. L. Fr. Except. Literally translated by the Scotch "out taken."

HORS WEALE. In old English law. The wealth, or Briton who had care of the king's horses.

HORS WEARD. In old English law. A service or curée, consisting in watching the horses of the lord. Anc. Inst. Eng.

HORSE. Until a horse has attained the age of four years, he is called a colt. 1 Russ. & R. 416.

The word "horse" is used in a quasi generic sense, to include every description of the male, in contradistinction to the female or mare, whether stallion or gelding. 38 Tex. 555.

HORSE GUARDS. The directing power of the military forces of the kingdom of Great Britain. The commander in chief, or general commanding the forces, is at the head of this department. It is subordinate to the
war office, but the relations between them are complicated. Wharton.

HORTUS. Lat. In the civil law. A garden. Dig. 32, 91, 5.

HOSPES. Lat. A guest. 8 Coke, 32.

HOSPES GENERALIS. A great chamberlain.

HOSPITAL. An institution for the reception and care of sick, wounded, infirm, or aged persons; generally incorporated, and then of the class of corporations called "eleemosinary" or "charitable."

HOSPITALLERS. The knights of a religious order, so called because they built a hospital at Jerusalem, wherein pilgrims were received. All their lands and goods in England were given to the sovereign by 32 Hen. VIII. c. 24.

HOSPITATOR. A host or entertainer. Hospitator communis. An innkeeper. 8 Coke, 32.

HOSPITATOR magnus. The marshal of a camp.


HOSPITICIDE. One that kills his guest or host.

HOSPITIUM. An inn; a household.

HOSPODAR. A Turkish governor in Moldavia or Wallachia.

HOST. L. Fr. An army. Brit. c. 22.

A military expedition; war. Kelham.

HOSTAGE. A person who is given into the possession of the enemy, in a public war, his freedom (or life) to stand as security for the performance of some contract or promise made by the belligerent power giving the hostage with the other.

HOSTELAGIUM. In old records. A right to receive lodging and entertainment, anciently reserved by lords in the houses of their tenants. Cowell.

HOSTELER. An innkeeper. Now applied, under the form "ostler," to those who look to a guest's horses. Cowell.

HOSTES. Enemies. Hostes humani generis, enemies of the human race; i.e., pirates.

Hostes sunt qui nobis vel quibus nos bellum decernimus; cæteri proidores vel prædones sunt. 7 Coke, 24. Enemies are those with whom we declare war, or who declare it against us; all others are traitors or pirates.

HOSTIA. In old records. The host-bread, or consecrated wafer, in the eucharist. Cowell.

HOSTICIDE. One who kills an enemy.

HOSTILARIA, HOSPITALARIA. A place or room in religious houses used for the reception of guests and strangers.

HOSTILE. Having the character of an enemy; standing in the relation of an enemy. See 1 Kent, Comm. c. 4.

HOSTILE EMBARGO. One laid upon the vessels of an actual or prospective enemy.

HOSTILE WITNESS. A witness who manifests so much hostility or prejudice under examination in chief that the party who has called him, or his representative, is allowed to cross-examine him, i.e., to treat him as though he had been called by the opposite party. Wharton.

HOSTILITY. In the law of nations. A state of open war. "At the breaking out of hostility." 1 Kent, Comm. 60.

An act of open war. "When hostilities have commenced." Id. 56.

A hostile character. "Hostility may attach only to the person." Id.

HOT-WATER ORDEAL. In old English law. This was a test, in cases of accusation, by hot water; the party accused and suspected being appointed by the judge to put his arms up to the elbows in seething hot water, which, after sundry prayers and invocations, he did, and was, by the effect which followed, judged guilty or innocent. Wharton.

HOTCHPOT. The blending and mixing property belonging to different persons, in order to divide it equally. 2 Bl. Comm. 190.

Anciently applied to the mixing and blending of lands given to one daughter in frank marriage, with those descending to her and her sisters in fee-simple, for the purpose of dividing the whole equally among them: without which the daughter who held in frank marriage could have no share in the lands in fee-simple. Litt. §§ 267, 268; Co. Litt. 177a; 2 Bl. Comm. 190.

Hothpot, or the putting in hotchpot, is ap-
piled in modern law to the throwing the amount of an advancement made to a particular child, in real or personal estate, into the common stock, for the purpose of a more equal division, or of equalizing the shares of all the children. 2 Kent, Comm. 421, 422. This answers to or resembles the *collatio honorum*, or *collation* of the civil law.

**HOTEL.** An inn; a public house or tavern; a house for entertaining strangers or travelers. 54 Barb. 316; 2 Daly, 15; 46 Mo. 594.

**HOUR.** The twenty-fourth part of a natural day; sixty minutes of time.

**HOUR OF CAUSE.** In Scotch practice. The hour when a court is met. 3 How. State Tr. 603.

**HOUSE.** 1. A dwelling; a building designed for the habitation and residence of men. "House" means, presumptively, a dwelling-house; a building divided into floors and apartments, with four walls, a roof, and doors and chimneys; but it does not necessarily mean precisely this. 14 Mees. & W. 181; 7 Man. & G. 132.

"House" is not synonymous with "dwelling-house." While the former is used in a broader and more comprehensive sense than the latter, it has a narrower and more restricted meaning than the word "building." 46 N. H. 61.

In the devise of a house, the word "house" is synonymous with "messuage," and conveys all that comes within the curtilage. 4 Pa. St. 98.

2. A legislative assembly, or (where the bicameral system obtains) one of the two branches of the legislature; as the "house of lords," "house of representatives." Also a quorum of a legislative body. See 2 Mich. 287.

3. The name "house" is also given to some collections of men other than legislative bodies, to some public institutions, and (colloquially) to mercantile firms or joint-stock companies.

**HOUSE-BOTE.** A species of estovers, belonging to a tenant for life or years, consisting in the right to take from the woods of the lessor or owner such timber as may be necessary for making repairs upon the house. See Co. Litt. 41b.

**HOUSE-BURNING.** See ARSON.

**HOUSE-DUTY.** A tax on inhabited houses imposed by 14 & 15 Vict. c. 36, in lieu of window-duty, which was abolished.

**HOUSE OF COMMONS.** One of the constituent houses of the British parliament, composed of representatives of the counties, cities, and boroughs.

**HOUSE OF CORRECTION.** A reformatory. A place for the imprisonment of juvenile offenders, or those who have committed crimes of lesser magnitude.

**HOUSE OF ILL FAME.** A bawdy-house; a brothel; a dwelling allowed by its chief occupant to be used as a resort of persons desiring unlawful sexual intercourse. 33 Conn. 91.

**HOUSE OF LORDS.** The upper chamber of the British parliament. It comprises the archbishops and bishops, (called "Lords Spiritual," ) the English peers sitting by virtue of hereditary right, sixteen Scotch peers elected to represent the Scotch peerage under the act of union, and twenty-eight Irish peers elected under similar provisions. The house of lords, as a judicial body, has ultimate appellate jurisdiction, and may sit as a court for the trial of impeachments.

**HOUSE OF REFUGE.** A prison for juvenile delinquents. A house of correction or reformatory.

**HOUSE OF REPRESENTATIVES.** The name of the body forming the more popular and numerous branch of the congress of the United States; also of the similar branch in many of the state legislatures.

**HOUSEAGE.** A fee paid for housing goods by a carrier, or at a wharf, etc.

**HOUSEBREAKING.** In criminal law. Breaking and entering a dwelling-house with intent to commit any felony therein. If done by night, it comes under the definition of "burglary."

**HOUSEHOLD.** A family living together. 18 Johns. 400, 402. Those who dwell under the same roof and compose a family. Webster. A man's family living together constitutes his household, though he may have gone to another state. Belonging to the house and family; domestic. Webster.

**HOUSEHOLD FURNITURE.** This term, in a will, includes all personal chattels that may contribute to the use or convenience of the householder, or the ornament of the house; as plate, linen, China, both useful and ornamental, and pictures. But goods in trade, books, and wines will not pass by a bequest of household furniture. 1 Rop. Leg. 203.

**HOUSEHOLD GOODS.** These words, in a will, include everything of a permanent nature (i. e., articles of household which are
not consumed in their enjoyment) that are used in or purchased or otherwise acquired by a testator for his house. 1 Rom. Leg. 191.

HOUSEHOLD STUFF. This phrase, in a will, includes everything which may be used for the convenience of the house, as tables, chairs, bedding, and the like. But apparel, books, weapons, tools for artificers, cattle, victuals, and choses in action will not pass by those words, unless the context of the will clearly show a contrary intention. 1 Rom. Leg. 206.

HOUSEHOLDER. The occupier of a house. Brande. More correctly, one who keeps house with his family; the head or master of a family. Webster; 18 Johns. 302. One who has a household; the head of a household.

HOUSEKEEPER. One who is in actual possession of and who occupies a house, as distinguished from a "boarder," "lodger," or "guest."

HOVEL. A place used by husbandmen to set their plows, carts, and other farming utensils out of the rain and sun. A shed; a cottage; a mean house.


HOY. A small coasting vessel, usually sloop-rigged, used in conveying passengers and goods from place to place, or as a tender to larger vessels in port. Webster.

HOYMAN. The master or captain of a hoy.

HUCUSQUE. In old pleading. Hitherto. 2 Mod. 24.

HUDE-GELD. In old English law. An acquittance for an assault upon a trespassing servant. Supposed to be a mistake or misprint in Fleta for "hinegeld." Fleta, lib. 1, c. 47, § 20. Also the price of one's skin, or the money paid by a servant to save himself from a whipping. Du Cange.

HUE AND CRY. In old English law. A loud outcry with which felons (such as robbers, burglars, and murderers) were anciently pursued, and which all who heard it were bound to take up, and join in the pursuit, until the malefactor was taken. Bract. fol. 115b, 124; 4 Bl. Comm. 293.

A written proclamation issued on the escape of a felon from prison, requiring all officers and people to assist in retaking him. 3 How. State Tr. 886.

HUEBRAS. In Spanish law. A measure of land equal to as much as a yoke of oxen can plow in one day. 2 White, Recop. (38), 49; 12 Pet. 443.

HUISSERIUM. A ship used to transport horses. Also termed "affer."

HUISSIERS. In French law. Marshals; ushers; process-servers; sheriffs' officers. Ministerial officers attached to the courts, to effect legal service of process required by law in actions, to issue executions, etc., and to maintain order during the sitting of the courts.

HULKA. In old records. A hulk or small vessel. Cowell.

HULLUS. In old records. A hill. 2 Mon. Angl. 292; Cowell.

HUMAGIUM. A moist place. Mon. Angl.

HUNDRED. Under the Saxon organization of England, each county or shire comprised an indefinite number of hundreds, each hundred containing ten titlings, or groups of ten families of freeholders or frank-pledges. The hundred was governed by a high constable, and had its own court; but its most remarkable feature was the corporate responsibility of the whole for the crimes or defaults of the individual members. The introduction of this plan of organization into England is commonly ascribed to Alfred, but the idea, as well of the collective liability as of the division, was probably known to the ancient German peoples, as we find the same thing established in the Frankish kingdom under Clothaire, and in Denmark. See 1 Bl. Comm. 115; 4 Bl. Comm. 411.

HUNDRED COURT. In English law. A larger court-baron, being held for all the inhabitants of a particular hundred, instead of a manor. The free suitors are the judges, and the steward the registrar, as in the case of a court-baron. It is not a court of record, and resembles a court-baron in all respects except that in point of territory it is of greater jurisdiction. These courts have long since fallen into desuetude. 3 Bl. Comm. 34, 35; 3 Steph. Comm. 394, 395.

HUNDRED GEMOTE. Among the Saxons, a meeting or court of the freeholders of a hundred, which assembled, originally, twelve times a year, and possessed civil and criminal jurisdiction and ecclesiastical powers. 1 Reeve, Eng. Law, 7.
HUNDRED LAGH. The law of the hundred, or hundred court; liability to attend the hundred court. Spelman.

HUNDRED PENNY. In old English law. A tax collected from the hundred, by the sheriff or lord of the hundred. Spel. voc. "Hundredus."

HUNDRED SECTA. The performance of suit and service at the hundred court.

HUNDRED SETENA. In Saxon law. The dwellers or inhabitants of a hundred. Cowell; Blount. Spelman suggests the reading of sceatena from Sax. "sceat," a tax.

HUNDRED-WEIGHT. A denomination of weight containing, according to the English system, 112 pounds; but in this country, generally, it consists of 100 pounds avoirdupois.

HUNDREDARIUS. In old English law. A hundredary or hundredor. A name given to the chief officer of a hundred, as well as to the freeholders who composed it. Spel. voc. "Hundredus."

HUNDREDARY. The chief or presiding officer of a hundred.

HUNDREDES EARLDOR, or HUNDREDES MAN. The presiding officer in the hundred court. Anc. Inst. Eng.

HUNDREDORS. In English law. The inhabitants or freeholders of a hundred, anciently the suitors or judges of the hundred court. Persons impaneled or fit to be impaneled upon juries, dwelling within the hundred where the cause of action arose. Croom. Jur. 217. It was formerly necessary to have some of these upon every panel of jurors. 3 Bl. Comm. 359, 360; 4 Steph. Comm. 370.

The term "hundredor" was also used to signify the officer who had the jurisdiction of a hundred, and held the hundred court, and sometimes the bailiff of a hundred. Termes de la Fée; Cowell.

HURDEREFERST. A domestic; one of a family.

HURDLE. In English criminal law. A kind of sledge, on which convicted felons were drawn to the place of execution.

HURST, HYRST, HERST, or HIRST. A wood or grove of trees. Co. Litt. 46.

HURTARDUS, or HURTUS. A ram or wether.


HUSBAND. A married man; one who has a lawful wife living. The correlative of "wife."

Etymologically, the word signified the "house bond;" the man who, according to Saxon ideas and institutions, held around him the family, for whom he was in law responsible.

HUSBAND AND WIFE. One of the great domestic relationships; being that of a man and woman lawfully joined in marriage, by which, at common law, the legal existence of a wife is incorporated with that of her husband.

HUSBAND LAND. In old Scotch law. A quantity of land containing commonly six acres. Skene.

HUSBAND OF A SHIP. See Ship's Husband.

HUSBANDMAN. A farmer; a cultivator or tiller of the ground. The word "farmer" is colloquially used as synonymous with "husbandman," but originally meant a tenant who cultivates leased ground.


HUSBANDRY. Agriculture; cultivation of the soil for food; farming, in the sense of operating land to raise provisions.

HUSBREC. In Saxon law. The crime of housebreaking or burglary. Crabb, Eng. Law, 59, 308.

HUSCARLE. In old English law. A house servant or domestic; a man of the household. Spelman.

A king's vassal, thane, or baron; an earl's man or vassal. A term of frequent occurrence in Domesday Book.

HUSFASTNE. He who holds house and land. Bract. l. 3, t. 2, c. 10.

HUSGABLUM. In old records. House rent; or a tax or tribute laid upon a house. Cowell; Blount.

HUSH-MONEY. A colloquial expression to designate a bribe to hinder information; pay to secure silence.

HUSTINGS. Council; court; tribunal. Apparently so called from being held within a building, at a time when other courts were held in the open air. It was a local court. The county court in the city of London bore this name. There were hustings at York.
HUSTINGS

Winchester, Lincoln, and in other places similar to the London hustings. Also the raised place from which candidates for seats in parliament address the constituency, on the occasion of their nomination. Wharton.

In Virginia, some of the local courts are called "hustings," as in the city of Richmond. 6 Grat. 696.

HUTESIUM ET CLAMOR. Hue and cry. See HUE AND CRY.


HWATA, HWATUNG. In old English law. Augury; divination.

HYBERNAGIUM. In old English law. The season for sowing winter grain, between Michaelmas and Christmas. The land on which such grain was sown. The grain itself; winter grain or winter corn. Cowell.

HYBRID. A mongrel; an animal formed of the union of different species, or different genera; also (metaphorically) a human being born of the union of persons of different races.

HYD. In old English law. Hide; skin. A measure of land, containing, according to some, a hundred acres, which quantity is also assigned to it in the Dialogus de Soccoria. It seems, however, that the hide varied in different parts of the kingdom.

HYDAGE. See HIDAGE.

HYDROMETER. An instrument for measuring the density of fluids. Being immersed in fluids, as in water, brine, beer, brandy, etc., it determines the proportion of their density, or their specific gravity, and thence their quality. See 3 Story, U. S. Laws, 1976.

HYEMS, HIEMS. Lat. In the civil law. Winter. Dig. 43, 20, 4, 34. Written, in some of the old books, "yems." Fleta, lib. 2, c. 73, §§ 16, 18.

HYPOBOLUM. In the civil law. The name of the bequest or legacy given by the husband to his wife, at his death, above her dowry.

HYPOTHEC. In Scotland, the term "hypothec" is used to signify the landlord's right which, independently of any stipulation, he has over the crop and stocking of his tenant. It gives a security to the landlord over the crop of each year for the rent of that year, and over the cattle and stocking on the farm for the current year's rent, which last continues for three months after the last convenational term for the payment of the rent. Bell.

HYPOTHECA. "Hypothec" was a term of the Roman law, and denoted a pledge or mortgage. As distinguished from the term "pignus," in the same law, it denoted a mortgage, whether of lands or of goods, in which the subject in pledge remained in the possession of the mortgagor or debtor; whereas in the pignus the mortgagee or creditor was in the possession. Such an hypotheca might be either express or implied; express, where the parties upon the occasion of a loan entered into express agreement to that effect; or implied, as, e.g., in the case of the stock and utensils of a farmer, which were subject to the landlord's right as a creditor for rent; whence the Scotch law of hypothec.

The word has suggested the term "hypothecate," as used in the mercantile and maritime law of England. Thus, under the factor's act, goods are frequently said to be "hypothecated;" and a captain is said to have a right to hypothecate his vessel for necessary repairs. Brown. See Mackeld. Rom. Law, §§ 334-339.

HYPOTHECARIA ACTIO. In the civil law. An hypothecary action; an action for the enforcement of an hypotheca, or right of mortgage; or to obtain the surrender of the thing mortgaged. Inst. 4, 6, 7; Mackeld. Rom. Law, § 356. Adopted in the Civil Code of Louisiana, under the name of "l'action hypothecarie," (translated, "action of mortgage.") Article 3361.

HYPOTHECARII CREDITORES. In the civil law. Hypothecary creditors; those who loaned money on the security of an hypotheca. (q. e.) Calvin.

HYPOTHECARY ACTION. The name of an action allowed under the civil law for the enforcement of the claims of a creditor by the contract of hypotheca.

HYPOTHECAT. To pledge a thing without delivering the possession of it to the pledgee. "The master, when abroad, and in the absence of the owner, may hypothecate the ship, freight, and cargo, to raise money requisite for the completion of the voyage." 3 Kent, Comm. 171.

HYPOTHECATION. A term borrowed from the civil law. In so far as it is naturalized in English and American law, it means a contract of mortgage or pledge in which the subject-matter is not delivered.
into the possession of the pledgee or pawnnee; or, conversely, a conventional right existing in one person over, specific property of another, which consists in the power to cause a sale of the same, though it be not in his possession, in order that a specific claim of the creditor may be satisfied out of the proceeds.

The term is frequently used in our textbooks and reports, particularly upon the law of bottomry and maritime liens; thus a vessel is said to be hypothecated for the demand of one who has advanced money for supplies.

In the common law, there are but few, if any, cases of hypothecation, in the strict sense of the civil law; that is, a pledge without possession by the pledgee. The nearest approaches, perhaps, are cases of bottomry bonds and claims of materialmen, and of seamen for wages; but these are liens and privileges, rather than hypothecations. Story, Bailm. § 288.

"Hypothecation" is a term of the civil law, and is that kind of pledge in which the possession of the thing pledged remains with the debtor, (the obligation resting in mere contract without delivery;) and in this respect distinguished from "pignus," in which possession is delivered to the creditor or pawnnee. 24 Ark. 27. See 2 Bell, Comm. 23.

HYPOTECATION BOND. A bond given in the contract of bottomry or respondeatia.

HYPOTHÈQUE. In French law. Hypothecation; a mortgage on real property; the right vested in a creditor by the assignment to him of real estate as security for the payment of his debt, whether or not it be accompanied by possession. See Civil Code L. a. art. 3360.

It corresponds to the mortgage of real property in English law, and is a real charge, following the property into whoseover hands it comes. It may be légale, as in the case of the charge which the state has over the lands of its accountants, or which a married woman has over those of her husband: judiciaire, when it is the result of a judg-