A NEW LAW DICTIONARY,

CONTAINING EXPLANATIONS OF SUCH TECHNICAL TERMS AND PHRASES AS OCCUR IN THE WORKS OF THE VARIOUS LAW-WRITERS OF GREAT BRITAIN;

TO WHICH IS ADDED

AN OUTLINE OF AN ACTION AT LAW,

AND OF

A SUIT IN EQUITY.

DESIGNED EXPRESSLY FOR THE USE OF STUDENTS.

BY

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A NEW LAW DICTIONARY,

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BY

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PREFACE.

On commencing the study of any art or science, one of the first and most important objects to be attained is an accurate understanding of the technical language peculiar to it. In every art or science there are certain words which, from being employed in an exclusive sense to particularize some visible object, or some abstract idea, have assumed a technical character. The science of the law, if it may be called a science, is extremely prolific in words of this description, and the student, on commencing the pursuit of this branch of knowledge, soon discovers that, in order to understand the law itself, he must first become acquainted with the language of the law. To assist him in the attainment of this object, is the purpose of the present work, and it is sincerely hoped that it will answer the end for which it was designed.

Having thus shortly stated the object of the
work, it may be as well to explain the grounds on which the author has presumed to offer to the profession a new Law Dictionary.

The dictionaries now in use, are those of Dr. Cowel, Mr. Blount, and Mr. Whishaw, and a small work entitled *Les Termes de la Ley*. There are also other works of a more comprehensive nature, published under the denomination of dictionaries, but as these partake more of the character of cyclopaedias than of dictionaries, it will be unnecessary further to mention them. The works of Cowel and Blount, although of high authority, are of little use to the student of the present day, owing to the quantity of obsolete matter with which they abound, and the entire absence of many of our modern law terms. The little work entitled *Les Termes de la Ley* contains a very limited number of words, and is not exclusively confined to definitions and explanations; in addition to which, a great portion of it has become obsolete. The work which bears the nearest resemblance to the present, is the Law Dictionary of Mr. Whishaw, which, although a useful book, and compiled with much care, contains a large number of useless words, which in the present publication have been altogether omitted, and their places supplied by others of more obvious utility. By
useless words is here meant such as are of no use to the student in reference to his legal studies, and which have no connection whatever with the law. The words harbour, hovel, harriers, and monk's clothes, may be instanced as examples. Dr. Cowel appears to have been the first among our law lexicographers who sanctioned the admission of such words into a Law Dictionary, and he seems to have been followed in this step by all his successors. Independently of the number of useless words which incumber Mr. Whishaw's pages, the definitions given in that work are, in the author's opinion, generally too short to convey the full meaning of the words intended to be defined; added to which, the language in which those definitions are framed, is frequently of so quaint and antiquated a character, as, in some cases, to render the definitions themselves almost unintelligible.

If the foregoing remarks are just, it is manifest that there is room for a new law dictionary; and it is under this impression that the present work is offered to the profession. It will be seen that in many cases the author's definitions have almost assumed the shape of essays; this it was difficult to avoid, owing to the necessity of introducing prepa-
ratory observations, in order to lead the mind progressively to the comprehension of the subject. Thus the words *Use, Estate, Executed*, and many others, could not possibly be rendered intelligible without the previous introduction of much explanatory matter.

At the end of the dictionary is an appendix, containing an outline of an action at law and of a suit in equity. These were introduced for the purpose not only of *explaining* the words which occur in those proceedings, but also with the view of shewing the *relationship* which exists between them. Thus, the word *Plea*, although defined in the dictionary, cannot fully be understood without seeing the relationship that exists between *it* and the *declaration*, and between the declaration and the previous proceedings in an action; or in other words, a precise and definite idea of a *part* cannot be obtained without viewing it in connection with the *whole*. These views suggested to the author the above plan, which it is confidently hoped will not be found altogether useless.

To conclude in the language of Cowel, "whoever will charge these my travels with many oversights he shall need no solemn pains to prove
them, for I will easily confess them: and upon my view taken of this book since the impression, I dare assure them that shall observe most faults therein, that I by gleaning after him, will gather as many omitted by him, as he shall shew committed by me. No man, no book is void of imperfections; and therefore reprehend who will, in God’s name, that is with meekness and without reproach; so shall he reap hearty thanks at my hands.”

London,
25th June, 1839.
A NEW

LAW DICTIONARY.

A.

ABACTORS (abactores, from abigendo). Those who drove away or stole cattle or beasts in great numbers at a time.—Cowel.

ABANDONMENT. This word, as used in reference to marine insurances, signifies the exercise of a right, which a party, having insured goods, has to call upon the insurers to accept of what is saved (when the property insured has by some perils of the sea become of little value), and to pay the full amount of the insurance, the same as if the whole of the property had been lost.—Park on Insurance.

ABANDUM (abandonum). Any thing sequestered, proscribed, or abandoned.—Cowel.

ABARNARE (from Sax. abarian, to disclose, &c.). To detect, discover, or disclose any secret crime.—Wilkins’ Glossary; Cowel.

ABATAMENTUM. An entry by interposition.—1 Inst. 277. See tit. Abate.

ABATE (from the Fr. abattre, to beat down). This word has several meanings. In its ordinary sense it signifies to break down or destroy. Thus, to abate a castle or fort, signifies to beat it down or to destroy it. So, to abate a writ, means to defeat or overthrow it, by showing some error or exception therein. This word abate is also used in contradistinction to disseise. Thus, he who puts a person seised of the freehold out of possession is said to disseise such person; the act itself is called a disseisin, and he who so commits the act is called a disseisor. But he who enters into a house or land void by the death of the last possessor before the heir takes possession, and so keeps him out, is said to abate; the act itself is called an abatement, and he who so commits the act is called an abator. The word abatement may be properly considered under this title, because in all its various applications it still maintains a close connection with the word abate, and, in every sense in which it is used, signifies the act of abating; that is, of beating down, destroying, defeating, putting an end to,
&c. The principal instances in which the word is used are the following:—1. Abatement of freehold; 2. Abatement of nuisance; 3. Abatement amongst leaguetes; 4. Plea of abatement; 5. Abatement by the death of parties in a suit, &c. It will be seen that in all the above applications of the word, the original meaning is more or less discernible. Thus, abatement of freehold is the act of keeping out the heir from his lawful possessions, by entering upon them after the death of the last possessor, and before the heir has taken possession of them. Abatement of nuisance means the remedy which the law allows the party injured by a nuisance, of destroying or removing it at pleasure, and by his own act, so long as he does not commit any riot in effecting its removal. Abatement amongst leaguetes means the proportionate reduction or abatement which leaguetes are subject to have made in the pecuniary legacies bequeathed to them, when the funds out of which such legacies are payable are not sufficient to pay them in full. Plea of abatement means such a plea as shows some ground for abating, putting an end to, or quashing the writ in a real or mixed action, or the declaration in a personal action. Abatement by death of parties means the ending or abatement of a suit, in consequence of the death of either plaintiff or defendant before judgment. —Co. Litt. 277; Les Termes de la Ley; Stephen on Pleading.

ABATOR. See tit. Abate.

ABDUCTION. The taking away of any one. Thus, the abduction of a man's wife is the taking her away either by fraud, persuasion, or open violence. So, the taking away a child from its parent, a ward from the guardian, or an heiress from her home, against their will, either by fraud, persuasion, or open violence, are all denominated abduction.—1 Bl. 443; 4 Bl. 208.

ABEARANCE. A word frequently used for behaviour. Thus, a recognizance to be of good abearance signifies to be of good behaviour.—4 Bl. 251, 256.

ABERMURDER (abermurdrum). Plain or downright murder, as distinguished from the less heinous crimes of manslaughter and chancemmedley. The word is derived from the Saxon aber, i.e. apparent, notorious, &c., and mord, murder.—Cowel.

ABET (abettare). To encourage, set on, stir up, or excite; and hence, he who commands or instigates another to perpetrate a crime is called an abettor.—Stau. Pl. Cor.; Cowel.

ABEYANCE, or ABBAYANCE, (from the Fr. beér, or bayer, to expect). Expectation, remembrance, waiting, &c. It is a principle of law that the absolute property, or as it is termed, the fee-simple or inheritance of lands and tenements, is either vested in some person or other, or that it will vest at some future period; when it is not actually vested, but is waiting until the time shall arrive for it to vest in the proper owner, it is said
to be in *abeyance*. Thus supposing A. to grant an estate to B. for life, and afterwards to the heirs of C.; the inheritance being granted neither to B. nor to C., and not being able to vest in the heirs of C. till his death, on account of the principle of law *nemo est heres viventis*, must therefore be in waiting, or in *abeyance*, as it is termed, during the life of C.—2 Bl. 107; Co. Lit. 342.

**ABIGEVERUS.** See tit. *Abactor*.

**ABISHERING.** This word is sometimes called *mishersing, mishering,* or *miskering,* and signifies the privilege of being free and quit from forfeitures and amercements. It is sometimes termed a liberty or freedom, because, when this word is used in a grant or charter, the persons to whom it applies are entitled to the forfeitures and amercements of others, but are themselves free from the control of any within their fee.—Cowel; Les Termes de la Ley.

**ABJURATION (abjuratio).** A renouncing by oath; and is applied in our old law to a sworn banishment, or forswearing of the realm.—Stauncl. Pl. Cor. lib. 2, c. 40.

**ABOLITION.** In its legal sense, signifies the leave given by the king or judges to a criminal accuser to desist from further prosecuting a criminal.—Cowel.

**ABRIDGE (abbreviare).** This word has nearly the same signification in law as it has in ordinary and popular language, viz., to make shorter. Thus, a man is said to *abridge* his plaint in assize, or a woman her demand in an action of dower, when any land is put into the plaint or demand which is not in the tenure of the defendant; for if the tenant pleads non-tenure, joint-tenancy, or the like, in abatement of the writ, the plaintiff may *abridge* his plaint; that is, he may leave out that part, and pray that the tenant may answer to the rest.—Les Termes de la Ley; Cowel.

**ABROACHMENT (abrocamementum).** The buying up goods by wholesale before they are brought to market, and selling them again by retail.—Cowel.

**ABROCAMENTUM.** See title *Abroachment*.

**ABSENTEES, or DES ABSENTEES.** A parliament so called, held at Dublin 10th May, 28 Hen. 8, and mentioned in letters patent, dated 29 Hen. 8.—4 Inst. 354.

**ABSOLUTE WARRANT.** A warrant against all mortals.—Scotch Dict.

**ABSONIARE.** A word used in the oath of fealty among the English Saxons, signifying to shun or avoid.—Cowel.

**ABSCUE HOC.** Formal words, made use of in the conclusion of a special traverse; and the traverse itself is sometimes thence called a *traverse with an absque hoc*. These words are now usually substituted.
by a translation, viz., "without this, that, &c."—Stephen on Pleading, 189.

**Absque Impetitione Vasti**
(without impeachment of waste). A clause frequently inserted in deeds, signifying that the party to whom the estate is conveyed shall not be sued for committing waste thereon.—2 Bl. 283.

**Abuttals (abutter).** The butttings and bounding of land east, west, north, or south, showing on what other lands or places they border or abut.—Cowen.

**Accapitare, Accapitum.** A relief. Thus *capitali domino accapitare* is to pay a *relief* to the chief lord.—Blount, Cowen.

**Accedas ad Curiam.** A writ which lies for a man when he has received a false judgment in a hundred court or court baron. It is in the nature of a writ *de falso judicio*, which lies for him who had received false judgment in the county court. It is said that this writ lies as well for justice delayed, as for a judgment falsely given.—F. N. B. 18; Reg. Orig. 56.

**Accedas ad Vice Comitem.** A writ directed to the coroner, commanding him to deliver a writ to the sheriff, who, having a *pone* delivered to him, suppresses it.—Reg. Orig. 83.

**Acceptance (acceptatio),** signifies the accepting or taking any thing in good part; and is a sort of tacit agreement to some act which has been previously done by another, which might have been undone and avoided if such *acceptance* had not been made. Thus, if a tenant for life grant a lease to a man, and then dies, this lease will be determined by such death, unless the remainderman accepts rent under such lease, in which case such *acceptance* will render the lease made by the tenant for life valid and binding against such remainderman.—Co. Litt. 211.

**Accessary.** A person guilty of a felonious offence, not principally but by participation, having been concerned therein either before or after the fact committed. An accessary before the fact is defined to be one, who being absent at the time the crime is committed, yet procures, counsels, or commands another to commit a crime; and, in this case, absence is necessary to constitute him an accessary; for if he be present, he is guilty of the crime as principal. Thus, if A. advises B. to kill another, and B. does it in the absence of A., in this case B. is principal, and A. is accessary in the murder. An accessary after the fact is one, who, knowing a felony to have been committed, receives, relieves, comforts, or assists the felon; and generally, any assistance whatever given to a felon, to hinder his being apprehended, tried, or suffering punishment, makes such assist an accessary: as furnishing him with a horse to escape his pursuers, money or victuals to support him, a house or other shelter to conceal him, or open force and violence to rescue or protect him,
ACCESSION (property by). See tit. Occupancy.

ACCOMPT or ACCOUNT. A writ or action which lies against a man, who by reason of his office or business, should render an account to another, but refuses to do so; as a bailiff to his master, a guardian to a ward, &c.—F. N. B. 116.

ACCORD. A satisfaction agreed upon between two parties, when one is injured, and which is mutually agreed to be a recompense for the injury; and such an accord or satisfaction, when executed and performed, is a good bar in law to any action which may be brought for the same offence.—Les Termes de la Ley.

ACCOUNT. See tit. Accompt.

ACCOUNTANT-GENERAL. An officer of the Court of Chancery, appointed by 12 Geo. 1, c. 32, to perform all matters relating to the delivery of the suitors’ money and effects into the bank, and taking them out again. This officer does not receive any of the money or effects of the suitors of the court, but they are placed in his name in the Bank of England, and he keeps an account with the bank according to the several causes and accounts to which such money and effects severally belong.—Smith’s Ch. Prac. 12.

ACCREDULITARE. To purge oneself of an offence by oath.—Blount.

ACROCHE (from the Fr. accrocher, to hook, clasp, or grapple unto). This word, as used anno 25 Ed. 3, stat. 3, c. 8, signifies to encroach; as the accroaching to exercise royal power, &c.—4 Ch. Bl. Com. 76.

ACEPHALI. The levellers in the reign of Hen. 1, who would acknowledge no superior.—Du Cange; Cowel.

AC ETIAM BILLÆ. Words which were formerly inserted in bailable writs, but now no longer in use.—3 Bl. Com. 288, 471.

ACCHAT (Fr. achet). A contract, or a bargain; whence purveyors in 36 Edw. 3, are termed achators, from their frequent bargain-making.—Cowel.

ACKNOWLEDGMENT MONEY. A sum of money paid by copyhold tenants in some parts of England on the death of their landlords as an acknowledgment of their new lords.—Cowel.

ACQUIETANTIA DE SHIRIS ET HUNDREDIS signifies to be free from suit and service in shires and hundreds.—Cowel.

ACQUIETANDIS PLEGII. A writ of justicies, which lies for a surety against a creditor who refuses to discharge or acquit him after the debt is paid.—Cowel.

ACQUIETARE. To acquit, to pay, &c.—Cowel; Witkins’ Gloss.

ACQUITTANCE (acquietantia). A release or discharge in writing
of a debt or duty which previously was to have been paid or performed. —Cunningham.

Acre, or Acre Fight. An ancient duel fought by single combattants, English and Scotch, between the frontiers of their respective kingdoms, with sword and lance. And it is conjectured by some writers that this sort of judicial duelling was also called camp-fight, and the combattants champions, from the open field which was the place of trial. —Cowen.

Action (actio). An action is the formal means prescribed by law for the recovery of one's rights. Actions are divided into civil and criminal: the former being such as have relation to civil matters, and are litigated between individuals in their individual capacity; the latter being such as have relation to criminal matters, and which are of a public nature, affecting the community as a body, and are litigated between the king and the criminal. Hence civil actions are said to relate to common pleas, and criminal actions to pleas of the crown. Civil actions are divided into real, personal, and mixed. Real actions are such as are brought for the recovery of real property; that is of lands, tenements, or hereditaments. Personal actions are such as are brought for recovery of goods and chattels, or for a debt, or for damages for some injury done to his person or property. Mixed actions are such as partake of the nature of both the two former kinds, and yet are not reducible to either one exclusively: having for their object the recovery of lands or tenements, and also damages for the injury sustained by their being withheld. —Boote's Suit at Law; Stephen on Pleading, 3. The various kinds of actions will be found under their appropriate titles. The student who is desirous to understand the nature of the proceedings in an action, and to see the relation which one part bears to another, is referred to the outline of an action at law, at the end of this dictionary.

Action prejudicial (otherwise called preparatory or principal). Such an action as arises from some doubt in the principal; as when a man sues his younger brother for land descended from his father, and it is objected that he is a bastard; now as this point of bastardy must be tried before the cause can proceed further, it is termed prejudiciale quia prior judicanda. —Cowen.

Action of a writ. Is a phrase used when one pleads some matter tending to show that the plaintiff had no cause to have the writ he brought, although it may be that he may have another writ or action for the same matter. Such a plea is called a plea to the action of the writ; but should it appear from the plea that the plaintiff has no cause to have an action for the thing demanded, then it is called a plea to the action. —Les Termes de la Ley; Cowen.

Action of abstracted multures. An action to compel persons to grind their corn at
a certain mill, according to their
tenure. The word *malture* signifies a toll taken by the miller for
grinding corn; and hence, if the
persons did not grind their corn at
the mill they were bound to do,
they evaded the toll, that is *ab-
stracted* it, or took it away, and
thus the miller became an injured
party, and for the redress of such
injury brought this action.

**ACTION FOR POYNDING OF
THE GROUND.** An action so
called because it is founded on
some infeftment for an annuity
(whether annual rent, life rent, or
feu duty, &c.) that affects the
ground; and the ground being thus
debtor is called *debitum fundi*, for
which both moveables found upon
the ground may be *poynded*, (i.e.
distrained) and these failing, the
property affected may be apprised
or adjudged, even in prejudice of
intervening singular successors.
—Scotch Dict.

**ACTIONARE.** To prosecute
one in a suit at law. —Thorn’s
Chron.

**Acton Burnel.** The statute
of 13 Edw. I, anno 1285, ordain-
ing the statute merchant for recov-
ery of debts; it was so called
from a place named Acton Burnel,
where it was made, being a
castle sometime belonging to the
family of Burnel.—Cowel.

**Actor, the proctor or advocate
in civil courts or causes.** *Actor
dominicus* was often used for the
lord’s bailiff or attorney: *actor ec-
clesiae* for the advocate or plead-
ing patron of a church: *actor villa*
for the steward or head bailiff of a
town or village.—Cowel.

**Acts of Parliament.** See
Tit. Statute.

**Actuary (actuarius).** A clerk
or scribe that registers the canons
and constitutions of the convoca-
tion; also an officer in the court-
christian, in the nature of registrar.
—Cowel.

**AD CREDULITARE.** To purge
oneself by oath.—Cowel.

**Addition (additio).** The
name or title of a man’s rank
or condition in life; as yeoman,
gentleman, esquire, which are
termed *additions of estate*; or
knight, earl, marquis, &c. which
are termed *additions of degree*; or
painter, carpenter, &c. which are
termed *additions of trade*. The
place of abode also of a person is
frequently included in the term
addition.—Cowel.

**ADELING or ETLING (from
the Saxon adelan, noble, excel-
 lent).** A title of honour among the
Anglo-Saxons, properly belonging
to the king’s children and succes-
sors to the crown.—Cowel; Spelm.

**ADEPTION OF A LEGACY.**
The taking away of a legacy.
This arises from a supposed altera-
tion in the testator’s intention. For
instance, if a man who has a sum of
money due to him on a bond, ex-
pressly bequeaths it to some person
named in his will, and after having
done so calls in the money him-
selves, the party to whom it was be-
which case the heir shall be restored to the overplus. In the second case it lies between those who have common of pasture appendant to their freeholds, or common by vicinage, when any one or more surcharges the common with more cattle than they ought. — *F. N. B. 148; Les Termes de la Ley.*

**ADMINICULE** (*adminiculum*). Aid or support. — *1 Edw. 4, c. 1.*

**ADMINICULATOR.** An officer in the Roman church who administered to the widows, the fatherless, and the afflicted. — *Spelm.*

**ADMINISTRATION.** The act of administering, or disposing of according to law, the goods and chattels and personal property in general of a person dying intestate: and the person who so administers or disposes of an intestate's property is termed an *administrator*; unless such person be a female, and then she is termed an *administratrix.* An administration *durante minore atate* is such an administration as is granted to some person during the minority of some other person who would otherwise have administered. So administrations *durante absentia* or *pendente lite* are such as are granted to a person when the executor is out of the realm, or when a suit is commenced in the ecclesiastical court touching the validity of the will. Administration *cum testamento annexo* is an administration which the ordinary grants to some person *with the will annexed,* when the testator makes an incomplete will without naming any executors, or when he names incapable persons,
or when the executors named refuse to act. An administration de bonis non is an administration granted by the ordinary to some person for the purpose of administering such of the goods of the deceased as were not administered by the former executor or administrator.—Toller’s Executors; 2 Bl. 502, 503.

**ADMINISTRATOR.** See tit. Administration.

**ADMINISTRATRIX.** See tit. Administration.

**ADMIRALTY, COURT OF.** A court wherein are tried all matters arising on the high seas, or on those parts of the coasts which are not within the limits of an English county.—4 Bl. Com. 268.

**ADMISSION**(admissio). As used in ecclesiastical matters this word signifies the ordinary’s admitting a clerk or parson to the church or benefice to which he is presented by the patron. The word admission is also applied to an attorney’s being admitted to the privileges of his profession after having conformed to the various regulations and usages required of him for that purpose. As to Admission to copyholds, see title Admittance.—Co. Litt. 344; 1. Bl. 390.

**ADMITTANCE.** This word, as used in reference to copyholds, signifies the admission of the tenant into the possession of the copyhold estate; the same as livery of seisin was the formal mode of delivering the possession of a freehold estate. It is of three kinds—1. Upon a voluntary grant from the lord, when the lands have escheated or reverted to him; 2. Upon surrender by the former tenant; 3. Upon a descent from the ancestor.—2 Bl. Com. 369.

**ADMITTENDO CLERICO.** A writ granted to him who has recovered his right of presentation against the bishop in the common pleas, empowering him to admit his clerk.—Cowel.

**ADMITTENDO IN SOCIUM.** A writ for associating certain persons to justices of assize, who had been previously appointed.—Cowel.

**AD QUOD DAMNUM.** A species of writ of inquiry, which the king should sue out before he grants liberties which may be prejudicial to others; as the liberty of holding a fair, or a market, or for changing an ancient road or highway, and such like.—Les Termes de la Ley.

**ADRECTARE.** To satisfy, or to make amends.—Cowel.

**AD TERMINUM QUI PRETERIT.** A writ of entry that lay for the lessor and his heirs when a lease has been made of lands or tenements for the term of life or years, and after the term is expired the lands are withheld from the lessor by the tenant or other person possessing the same.—Cunningham; F. N. B. 201.

**ADULTERY OR ADVOWTRY.** (adulterium). The sin of incontinence between two married persons. The crime of adultery is sometimes distinguished into single and double adultery. Single adultery is the crime of illicit intercourse be-
tween two persons, one only of whom is married. Double adultery is the crime of illicit intercourse between two persons, both of whom are married.—Cowel; 4 Bl. 64, 65.

AD VENTREM INSPECIONIUM. A writ for the search or examination of a woman who saith she is with child, with a view of withholding land from him who is the next heir at law.—Reg. Orig. 227; Cowel.

AD VITAM AUT CULPAM. When an office is to determine or be vacated only upon the death or delinquency of the possessor, it is said to be held ad vitam aut culpam, or in other words, quam diu se bene gesserit.—Tomlins.

ADVOCATE. A person learned in the law who assists his client with advice, and pleads for him in open court. The barristers in the ecclesiastical courts are so termed; as are also the barristers in Scotland.—Cowel; 3 Bl. 26.

ADVOCATI. Those persons whom we now call patrons of churches, and who reserved to themselves and their heirs a liberty to present on any avoidance.
—Cunningham.

ADVOCATIONE DECIMARUM. A writ that lies for the claim of the fourth part or upwards of tithes that belong to any church.—Les Termes de la Ley.

ADVOW or AVOW (advocare). Signifies to justify an act formerly done. It also signifies to produce or bring forward anything; as when stolen goods were bought by one, and sold to another, it was lawful for the right owner to take them wherever they were found, and he in whose possession they were found was bound advocare, i.e. to produce the seller to justify the sale, and so on till they found the thief.
—Cowel; Les Termes de la Ley.

ADVOWEE or AVOWEE (advocatus). He who hath a right to present to a benefice. Thus the king is spoken of as advowee paramount, he being considered as the highest patron.—F. N. B. 39.

ADVOWSON (advocatio). The right of presentation to a church or benefice; and he who has this right to present is called a patron; they are also sometimes termed patroni, sometimes advocati, and sometimes defensores. Advowsons are of two kinds—appendant and in gross. An advowson appendant means an advowson which is appended or annexed to a manor, so that if the manor were granted to any one, the advowson would go with it as a matter of course, and as incident to the estate. An advowson in gross signifies an advowson that belongs to a person, but is not annexed to a manor; so that an advowson appendant may be made an advowson in gross by severing it by deed or grant from the manor to which it was appendant. Advowsons are also either presentative, collative, or donative. An advowson is termed presentative, when the patron has the right of presentation to the bishop or ordinary, and also to require of him to institute his clerk, if he finds him qualified.
An advowson is termed **collative** when the bishop and patron happen to be the same person, so that the bishop not being able to present to himself, performs by one act (which is termed *collation*) all that is usually done by the separate acts of presentation and institution. An advowson is termed **donative** when the king or a subject founds a church or chapel, and does by a single *donation* in writing place the clerk into possession, without presentation, institution, or induction.—2 Bl. Com. 21; Cowel.

**ADVOWSON OF THE MOIETY OF THE CHURCH** (*advocatio medietatis ecclesia*), means that the same church has two several patrons, and two several incumbents; the one having the one moiety, and the other having the other moiety. *Medietas advocationis*, i.e. a moiety of the advowson, means when two must join in the presentation and there is but one incumbent; and though they agree to present by turns, yet each of them has but the moiety of the church.—Co. Litt. 17; 7 Anne, c. 18.

**ADVOWSON OF RELIGIOUS HOUSES.** The patronage which persons acquired of any house of religion of which they were the founders; the same as those who built and endowed a parish church were by that title made patrons of it.—Cowell.

**ÆSTIMATIO CAPITIS** (*pretium hominis*). It was ordained by king Athelstan, that for offences committed against several persons, fines should be paid according to their rank, by estimation of their heads.—Leg. Hen. 1; Cowel.

**ÆSTATE PROBANDA.** A writ that used formerly to be directed to the escheator of a county, to inquire whether or not the king’s tenant holding in chief by chivalry was of full age to receive his lands into his own hands.—Cowell.

**AFFEERERS** (from *affier*, to affirm). Persons in court-leets and courts-baron, who settle and moderate the fines and amercements imposed on offenders.—Cowel.

**AFFIDARE.** To plight one’s faith, or swear fealty; whence *affiance.*—Cowell.

**AFFIDATIO DOMINORUM.** An oath taken by the lords in parliament.—Anno 3 Hen. 6, Rot. Parl. Cowel.

**AFFIDATUS.** A tenant by fealty; it also signifies a retainer.—Cowell.

**AFFIDAVIT** (*affido*). An oath in writing, sworn before some one who is legally authorised to administer such oath. To make *affidavit* of anything, means to testify it upon oath.—3 Bl. 304.

**AFFINITY.** The relationship which marriage occasions between the husband and the blood-relations of the wife; and between the wife and the blood-relations of the husband.—Tomlins; 1 Bl. 434.

**AFFIRM** (*affirmare*). To ra-
tify or confirm a former law or judgment. The word *affirmance* has much the same meaning.—Cowel; Crompt. Juris.

**AFFIRMATION.** The testifying to the truth or falseness of any thing by the sect called Quakers is called their *affirmation*; because they are permitted to give their evidence without having an oath administered to them, as is the case with other persons; and only simply *affirm* the truth or falseness of any thing.

**AFFORCIARE.** To increase or make stronger.—Cowel.

**AFFOREST (afforestare).** To turn ground into a forest.—Cowel.

**AFFRAY (from the Fr. effrayer, to affright).** The fighting of two or more persons in some public place to the terror of others; and there must be a stroke given or offered, otherwise it is no affray; and the fighting must also be in public; for, if it be in private, it is no affray, but an assault.—4 Bl. 145.

**AFFREIGHTMENT (affretamentum).** The freight of a ship.—Cowel.

**AGE (Fr. age),** signifies in law those periods in the lives of persons of both sexes, which enable them to do certain acts which before they had arrived at those periods they were prohibited from doing. As for example; a male at the age of twelve years may take the oath of allegiance; at fourteen, which is his age of discretion, he may consent to marriage, or choose his guardian; and, at twenty-one, he may alien his lands, goods, and chattels. A female at nine years of age is dowable; at twelve may consent to marriage; at fourteen is at years of discretion, and may choose a guardian; and at twenty-one may alien her lands, &c. But the full age of either male or female is twenty-one, until which they are considered as infants. 1 Bl. 463; Co. Litt. 78; Cowel.

**AGE PRIER (actatis precatio),** signifies to pray age. Thus, when an action is brought against a person under age for lands which he hath by descent, he, by petition or motion, shows the matter to the court, and prays that the action may stay till his full age.—Cowel.

**AGENFRIDA.** The true lord or owner of anything.—Cowel.

**AGENT AND PATIENT.** The same person who is the doer of a thing, and the party to whom done; as when a woman endows herself of part of her husband’s possessions, this being the act of herself to herself makes her agent and patient.—Co. lib. 8, 138; Cowel.

**AGILD.** Not subject to penalties, fines, or impositions.—Cowel.

**AGILER (from the Sax. A and gelt, culpa).** An observer or informer.—Cowel.

**AGIST (from the Fr. giste),** signifies to take in and feed the cattle.
of strangers in the king’s forest, and to gather up the money due for the same. It is frequently used in our common law pleadings to signify the taking in and feeding of cattle for a certain remuneration.—Crompt. Jur; 2 Bl. 452.

Agisters. Persons appointed by the king’s letters patent to agist cattle. See tit. Agist and Agistment.

Agistment. The taking of other men’s cattle into any ground for the purpose of feeding them at a certain rate per week. Agistment also signifies the profit of such feeding in a ground or field. There is also agistment of sea-banks, where lands are charged with a tribute to keep out the sea. Terre agistatae are lands whose owners are bound to keep up the sea-banks.—Cowel; 2 Bl. 452.

Agitatio Animalium in Foresta. The drift of beasts in the forest.—Cowel.

Agnates (agnati). Relations by the father; as cognates (cognati) are relations by the mother.—2 Bl. 235.

Aid (auxilium), is generally understood as a subsidy granted to the king. Anciently the king and any lord of the realm might lay an aid on their tenants, for knightling an eldest son; for marrying an eldest daughter, by giving her a suitable portion; and for ransoming their persons if taken prisoner.—Les Termes de la Ley; Du Cange.

Aid of the King. When a tenant of the king has an action brought against him, or has a demand made upon him on account of rent, &c., he may pray aid of the king; and, whenever the king is likely to be prejudiced by such action or demand, aid will be granted to his tenant.—Les Termes de la Ley; Cowel.

Aid Prayer. A phrase formerly used in pleading, signifying a petition in court to call in the help of another person who has an interest in the thing contested; as where the inheritance was in question, the petition would have prayed the aid of the reversioner or remainderman.—3 Bl. 300; Cowel.

Aiders, Aydowers. Abettors, &c.—25 Hen. 8, c. 22 s. 8.

Atel (from the Fr. aicul). A writ which lay when a man’s grandfather was seised of lands in fee-simple on the day of his death, and a stranger entered on that day and dispossessed the heir of his inheritance.—Cowel; Les Termes de la Ley.

Alba Firma. White rents, i.e., rents reserved in silver, or white money, as contradistinguished from those that were reserved in work, corn, &c.—2 Inst. 19. See tit. White Rents.

Albinatus Jus (alibi natus). A right which formerly existed in France, entitling the king on the death of an alien to all he was worth, unless he had a peculiar exemption.—Spelman; 1 Bl. 372.
ALBUM. See tit. Alba firma.

ALDER, signifies the first; as alder best, the best of all; alder liefest, the most dear.—Cowell.

ALDERMAN (Sax. earldorman). A civil magistrate in a city or town corporate, subordinate to the mayor.—1 Bl. 116; Cowel.

ALE CONNER. An officer appointed in courts leet, whose sworn duty it was to look to the quality of the ale and beer within the precincts of the lordship.—Kitchen, 46.

ALLER SANS JOUR. To go without day; meaning, to be finally dismissed the court, because there is no further day assigned for appearance.—Cowell.

ALE SILVER. A rent annually paid to the Lord Mayor of London, by those who sell ale within the liberty of the city.—Cowell.

ALE TASTER.—See tit. Ale-Conner.

ALFET (Saxon alfeth). A cauldron, wherein boiling water used to be put, for a criminal to hold his arm in up to the elbow.—Cowell.

ALIAS. This word is usually applied to writs; as an alias writ of summons, an alias writ of capias, &c., signifying another writ of summons, or another capias; alias writs are commonly resorted to when those which have been issued before them have not taken effect. 3 Bl. 283; 1 Arch. Pr. 173.

ALIAS DICTUS (otherwise called). The style or manner of a defendant's description when sued on a specialty, as on a bond for instance; in which case, after he has been described by his name, and common addition, comes the alias dictus, which describes him again in the identical manner that he is described in the bond.—Dyer, 50.

ALIBI (elsewhere). This word signifies that mode of defence in a criminal prosecution, which the accused party resorts to, in order to prove that he could not have committed the crime with which he is charged, because he was in a different place at the time.—Tomlins.

ALIEN. A person born in a foreign country, out of the allegiance of the king. To alien lands, &c. signifies to convey or transfer them, &c.—1 Bl. 366.

ALIENATION (from alienare). The act of transferring the property in lands and tenements, or other things, to another. Alienation in mortmain, is the making over of lands or tenements to a religious house, or body politic.—2 Bl. 287.

ALIMONY (alimonia). That allowance which a married woman is entitled to by law, after having separated from her husband.—1 Bl. 441; Cowel.

ALLEGIANCE (allegiantia). The natural, lawful, and faithful obedience which every subject owes to his prince or liege lord.—1 Bl. 366; Les Termes de la Ley.
ALLEGIARE. To defend or justify by due course of law.—Cowel.

ALLER. This word when added to another conveys to it the superlative degree; as aller good, the greatest good.—Cowel.

ALLEVIARE. To levy or pay an unaccustomed fine.—Cowel.

ALLOCATION (allocatio). An allowance made upon account in the exchequer, or more properly, a placing or adding to a thing.—Cowel.

ALLOCATIONE FACIENDA. A writ directed to the lord treasurer and barons of the exchequer, for allowing an accountant such sums of money as he has expended in his office.—Cowel.

ALLOCATO COMITATU. A new writ of exigent allowed before any other county court holden, on the former not being fully served or complied with.—Fit. Exig.

ALLOCATUR (it is allowed). After an attorney's bill has been examined or taxed by one of the masters, and the items which he disallows have been deducted, the remaining sum, certified by the master to be the proper amount to be allowed, is termed the allocatur. See also tit. Taxing Costs.

ALLOCATUR EXIGENT. A writ used in the process of outlawry, and directed to the sheriff, commanding him to cause the defendant to be required at five successive county courts, or in London at five successive hustings, till he be outlawed for non-appearance, or taken if he appear.—Archbold's Practice.

ALLODIAL. A free manor; an inheritance that is not held of any superior. Allodial lands are such as are free from any rent or service.—2 Bl. 47, 60; Cowel.

ALLUVION. Land that is gained from the retiring of the sea, and which becomes in time terra firma.—2 Bl. Com. 261.

ALMARIA, for Armaria. The archives of a church or library.—Cowel.

ALMONER or ALMNER (eleemosynarius). An officer in the king's household, whose duly it is to distribute the king's alms daily.—Cowel; Les Termes de la Ley.

ALODIUM or ALLODIUM. A free manor, not subject to any rent or service.—Cowel; see also tit. Alodial.

ALTO ET BASSO, means the absolute submission of all differences.—Du Fresne.

AMABYR or AMVABYR. A custom in the honor of Clun, belonging to the earls of Arundel.—Cowel.

AMBACTUS. A servant or client.

AMBIDEXTER. A juror or embracer who receives money from both parties for giving his verdict.—Les Termes de la Ley.

AMENABLE (from Fr. amener,
to lead, &c.). This word as used in old law-books is applied to a woman who is governable by her husband.—Cowel.

AMENDMENT. The correction of an error.

AMERCIAMEN-TUM). A pecuniary punishment which an offender against the king or a lord in his court is subject to. —Kitchen, 214; Cowel.

AMI. See tit. Amy.

AMICUS CURIAE (a friend of the court). When a judge is doubtful or mistaken in matter of law, a stranger by may inform the court thereof as amicus curiae.—2 Keb. 548.

AMITERE LEGEM TERRÆ or liberam legem. To lose the liberty of swearing in any court; or to become infamous, and thus be ineligible as a witness.—Glan. lib. 2, c. 3.

AMNESTY (amnestia). An act of pardon or oblivion.—Cowel.

AMORTIZATION (amortisatio). An alienation of lands or tenements in mortmain, i.e. to any corporation or fraternity and their successors. —Cowel.

AMORITIZE (from the French amortir). To alienate lands in mortmain.—Cowel; see also tit. Mortmain.

AMPLICATION (amplicatio). The referring of judgment till the cause is further examined.—Cowel.

AMY (amicus). A friend. Thus infants are said to sue by prochein amy, i.e. by their next friend. Alien amy, is a foreigner here, subject to some prince in friendship with us.—Cowel; Tomlins.

AN JOUR ET WASTE (year, day, and waste). The forfeiture of lands to the king for the period of a year and a day which a tenant incurred by committing felony, and afterwards the lands escheated to the lord.—See tit. Year, day and waste.

ANCESTOR (antecessor). The distinction made between an ancestor and a predecessor, in law, is that the former is applied to an individual in his natural capacity, as J. S. and his ancestors, and the latter to a company, body politic, or corporation, as a bishop and his predecessors.—Cowel; Co. Litt.

ANCESTREL. Relating to ancestors. Thus homage ancestrel, is what relates to or hath been done by one's ancestors.—Cowel.

ANCHORAGE. The duty to which ships are liable for the use of the haven where they cast anchor.—Cowel.

ANCIENT DEMESNE or Domain (vetus patrimonium domini). A tenure whereby all manors belonging to the crown in the days of Edward the Confessor and William the Conqueror were held. The numbers and names of which manors, as of all others belonging to common persons, William the Conqueror caused to be set down in a book called Domesday; and those which appear by that book
to have belonged to the crown, and are there denominated Terra Regis, are called ancient demesne. Lands in ancient demesne are of a mixed nature, i.e. they partake of the properties both of copyhold and freehold; they differ from ordinary copyholds in certain privileges; and from freehold, by one peculiar feature of villenage; viz., that they cannot be conveyed by the usual common law conveyance, but pass by surrender to the lord, or his steward, in the manner of copyholds, with the exception, that in the surrender, the words "to hold at the will of the lord" are not used, but simply the words "to hold according to the custom of the manor." There are three kinds of tenants in ancient demesne, 1, those whose lands are held freely by grant of the king; 2, those who do not hold at the will of the lord, but yet hold of a manor which is ancient demesne, and whose estates pass by surrender, or deed and admittance, and who are styled customary freeholders; 3, those who hold of a manor which is ancient demesne, by copy of court roll, at the will of the lord, and are styled copyholders of base tenure. —Cowell; Scriven on Copyholds; 1 Cruise Dig. 44.

Ancients are gentlemen of the inns of court, &c. In the Middle Temple such as are past their reading, and never read, are ancients. In Gray's Inn, the society consists of benchers, ancients, barristers, and students under the bar. The inns of chancery consist of ancients, and students or clerks, and from the ancients one is yearly the principal or treasurer. —Cowell.

Anciency (from the Fr. ancienté), signifies eldership or seniority. —Cowell.

Anfeldtyhde or Anfealthile, signifies in the Saxon law a simple accusation. —Cowell.

Angaria (from the Fr. angarie). A personal service, which tenants were obliged to pay to their lords. —Cowell.

Angild (angildum). The bare single valuation or compensation of a criminal; from the Sax. an, one, and gild, payment, mule, or fine. —Cowell.

Anholte. A single tribute or tax. As the word is used in the laws of William the Conqueror, it signifies that every one should pay according to the custom of the country his part and share, as scot and lot. —Spelman.


Anient (Fr. anienté). Made void. —3 Inst. 40.

Ann, Annat. Half a year's stipend over and above what is owing for the incumbency due to a minister's relict, child, or nearest of kin, after his decease. —Tomlins.

Annats (annates). This word has the same signification as first fruits; it is so called because the rate of the first fruits paid for spiritual livings is after the value of one year's profit. —Co. 12, Rep. 45.
ANNI NUBILES. The marriageable age of woman; when a woman is said to be *infra annos nubiles* it means under the age of twelve years, or unmarried. — *Co. Litt.* 434.

ANNO DOMINI (in the year of our Lord). The Romans computed time from the building of Rome; the Grecians by *Olympiads*; and Christians from the birth of Christ; hence *anno domini 1838*, signifies in the eighteen hundred and thirty-eighth year from the birth of Christ. — *2 Inst.* 675.

ANNOISANCE, ANNOYANCE. These words, which are thus written in 22 Hen. 8, c. 5, signify *nuisance*.

ANNUA PENSIONE. A writ (now disused for providing the king’s chaplain unpreferred with a pension). — *Reg. Orig.* 165; *F. N.* B, 231.

ANNUITY (*annus redditus*). An annual payment of a certain sum of money, chargeable upon the *person* of the grantor. — *2 Bl.* 40.

ANNUITIES OF TEINDS (or tithes). Ten shillings out of the boll of *teind* wheat, eight shillings out of the boll of beer, six shillings out of the boll of rye, oats, and peas, yearly allowed to the king out of the teinds not paid to bishops, or set apart for other pious uses. — *Tomlins; Scotch Dict.*

ANSWER. The most usual form of defence made to a plaintiff’s bill in chancery; in short, it is simply the defendant’s answer to the charges which the plaintiff has made against him in his bill. — *Smith’s Ch. Pract.*; *Lübé’s Equity Pleading*.

ANNULUM ET BACULUM (*a ring and a staff*). The ancient method of granting the investitures, or bishoprics, was *per annulum et baculum*, i.e. by the prince delivering to the prelate *a ring and a staff* or *crosier*. — *1 Bl. Com.* 378.

ANTEJURAMENTUM and PRÆJURAMENTUM, called by our ancestors *juramentum calunniæ*. It is an oath which both the accused and the accused are obliged to make before any trial or purgation, viz. the accused swore that he would prosecute the criminal, and the accused made oath on the day that he underwent the ordeal, that he was innocent of the fact with which he was charged; if the accused failed the criminal was discharged; if the accused, he was intended to be guilty, and was not admitted to purge himself by the ordeal. — *Leg. Athel.* ap.; *Lamb*.

ANTIENT DEMESNE. See tit. *Ancient Demesne*.

ANTISTITIUM. A word used in our old histories, signifying *a monastery*. — *Cowel*.

ANTITHETARIUS. The en-
deavour to discharge one's self of a fact with which one is accused, by recriminating or charging the accuser with the same fact.—Cowel.

APATISATIO. A compact or an agreement made with another. —Upton, lib. 2, c. 12.

APORIARE. To be reduced to poverty. It sometimes means to shun, or avoid.—Cowel.

APOSTARE. To violate; apos-tare leges, wilfully to break or transgress the laws.—Leg. Edw. Conf.

APOSTATA CAPIENDO. A writ that formerly lay against one who having entered and professed some order of religion, transgressed the rules of the same. This writ was directed to the sheriff, for the apprehension of the offender, and delivery of him again to his abbot or prior.—Reg. Orig. 71.

APPARATOR or APPARITOR. A messenger who cites offende-rs to appear in the spiritual court. —Cowel.

APPARATOR COMITATUS. There was an allowance to the sheriffs of Bucks of a yearly sum, apparatori comitatus; it seems hence that there was an officer formerly so called.—Cowel.

APPARENT HEIR. See tit. Heir.

APPARLEMENT (from the Fr. pareillement). Resemblance or likelihood, as apparlement of war. —Cowel.

APPEAL (from the Fr. appeller). This word has two significations; it signifies in one sense a complaint or an appeal to a superior court, when justice is supposed not to have been done by an inferior court. It also signifies, when spoken of with reference to a criminal prosecution, an accusation by one subject against another for some heinous crime, demanding punishment for the injury sustained by himself, rather than for the offence com-mitted against the public. To enumerate the various species of crimes which were the subject of appeal, would be of little or no practical utility, as criminal appeals were abolished by 59 Geo. 3, c. 46. —3 Bl. 55.; Cowel.

APPEARANCE. In an action at law there are various formalities which are necessary to be observed, the reasons of which are rather obscure to the uninitiated. An appearance is one of these formalities. When a defendant is served with a writ of summons, which is a judicial mandate issuing out of and under the authority of the court in which the defendant is sued, he is bound by a command which is contained in this writ to enter an appearance thereto within eight days; this appearance is a memorandum in writing, according to a prescribed form, signifying that the defendant has appeared, according to the command of the writ; this memorandum is delivered to the proper officer of the court, and by him it is entered in a book kept for that purpose; and this is what is technically called entering an appearance.—Arch. Pract.; Tidd.
Apparand Heir. Any person who has a right to succeed in a heritable subject, but is not actually entered; in the more modern acceptation of the word it is understood only of descendants.—Scotch Dict.

Appellant, Appellor. The party by whom an appeal is made, the opposite party is termed respondent.—Tomlins; Cowel.

Appendant (appendens), signifies annexed or appended to; as an advowson, a right of common, or a court, may be appendant to a manor, i.e. they are a kind of appellation to a manor, so that in a grant of the manor they would go with it, as a part and parcel of it. —2 Bl. 22; Co. Lit. 121.

Appenditia. The appendages or pertinences of an estate.—Cowel.

Appennage or Apennage (appendendo). A portion. It is used for a child's part or portion; and is properly the portion of the king's younger children in France. —Cowel.

Appointment. A deed, or common law conveyance, so called from its appointing something. The power of appointing which the person thus exercises, is usually conferred upon him by some preceding deed, which in this case is said to contain a power of appointment.—Cruise Dig.; 2 Bl. 376.

Apportionment (apportio-mentum). The dividing of rent into parts, according as the land from which it issues is divided among two or more; as if a man let lands, and afterwards part of them are recovered by a stranger, the lessee shall pay rent having regard to that recovered and what remains in his hands.—Les Termes de la Ley; Co. lib. 8, 79.

Apportum (from the Fr. appor-). The revenue or profit which a thing brings in to the owner. It has also been used for an augmentation given to an abbot out of the profits of a manor for his better support.—Cowel.

Apposal of Sheriffs. The charging them with money received upon their account in the exchequer.—Cowel.

Apprendre. A fee or profit. Apprendre means a fee or profit to be taken or received.—Cowel.

Approbate and Reprobate. Terms used in the Scotch law when a person takes advantage of one part of a deed, but rejects the rest.—Scotch Dict.; Tomlins.

Appropriation. The annexing of a benefice to the use of some religious house, or spiritual corporation, whether sole or aggregate, to enjoy for ever; the same as an impropration is the annexing a benefice to the use of a lay person or corporation.—1 Bl. 385. See also tit. Impropration.

Appropriare Communiam. To enclose or appropriate any parcel of land that was before open common, and thus to discom- mon it.—Cowel.
APPROVE (approbare). To augment or improve. To approve land, is to make the best use of it by increasing the rent, &c.—2 Inst. 472.

APPROVEMENT. The same as improvement, but is more particularly used for the enclosing part of a common by the lord of a manor, leaving sufficient nevertheless for the commoners. It also signifies the profits of a farm.—Cowel.

APPROVER or PROVER (approbator). When a person indicted of treason or felony, and arraigned for the same, confesses the fact before plea pleaded, and accuses others, his accomplices in the same crime, in order to obtain his pardon, he is called an approver or prover.—4 Bl. 330.

APPROVERS. Bailiffs of lords in their franchises are so termed, and in the stat. I Edw. 3, c. 8, sheriffs are called the king’s approvers.—Cowel.

APPRUAERE. To take to his own use or profit.—Cowel.

APPURTENANCES (pertinentia). Those things appertaining to another thing as principal; as where a conveyance is made of a house "with the appurtenances," the garden, curtilage, and close adjoining to the house and on which the house is built, will pass with it, as being included in the word appurtenances.—2 Bl. 17, n. 3.

AGUAGE (aguagium). A water-course.—Cowel.

ARABANT. A term applied to those who held by the tenure of ploughing and tilling the lords lands within the manor.—Spelm.

ARACE (arracher) signifies to erase.—Cowel.

ARAHO. To make oath in a church or some other holy place.—Cowel.

ARATIA. Arable lands.—Cowel.

ARATRUM TERRÆ. As much land as can be tilled with one plough. Araturas terrae is the service which the tenant is to do for his lord in ploughing his land.—Cowel.

ARBITRAMENT (arbitrium). The award or decision of arbitrators upon the matter of dispute which has been submitted to them.—3 Bl. 16.

ARBITRATION. The submitting of matters in dispute to the judgment of two or more persons called arbitrators.—3 Bl. 16.

ARBITRATOR. A disinterested person to whose judgment and decision matters in dispute are referred.

ARCA CYROGRAPHICA was a common chest with three locks and keys, kept by certain Christians and Jews, wherein the contracts, mortgages, and obligations belonging to the Jews were kept, in order to prevent fraud.—Cowel.

ARCHERY was a service of keeping a bow for the use of the lord,
to defend his castle.—Co. Lit. sec. 157.

Arches Court (curia de ar-cubus). A court of appeal belonging to the Archbishop of Canterbury, the judge of which is called the dean of the arches, from the circumstance of his having anciently held his court in the church of St. Mary le Bow (Sancta Maria de Arcubus) so called from the steeple being raised by pillars built arch-wise, like so many bent bows. The office of the judge of this court is to hear and determine appeals from the sentences of all inferior ecclesiastical courts within the province; this court is now holden at Doctors' Commons.—3 Bl. 65.

Archives (archiva from arca a chest). A place where ancient records and writings are kept; it sometimes signifies the records or writings themselves.—Cowell.

Arentare. To let at a certain rent.—Consuetud. Domus de Farendon. MS. fo. 53.

Areriesment. Surprise, affrightment.—Cowell.

Argentum album. Silver coin, current money, white rent, &c. See tit. White Rent.

Argentum Dei. God's money; money given by way of earnest on the making of any bargain.—Cowell.

Arma mutare. An ancient ceremony used to confirm a league or friendship.—Cowell.

Arma reversata. The name of a punishment which a man was subject to when convicted of treason or felony.—Cowell.

Armarea. See tit. Almaria.

Armiscara. Was an ancient species of punishment imposed on an offender by the judge. At first it was to carry a saddle at his back as a mark of subjection; thus Brumpton tells us, that in the year 1176 the king of the Scots promised Hen. 2, at York, Lanceam et sellam suam super altare Sancti Petri ad perpetuam hujus subjec-tionis memoriam offerre.—Cowell.


Aromatarius. A word frequently used for a grocer, but is not held good in law proceedings.—1 Vent. 142.

Arpen or Arpent. An acre or furlong of ground. According to Domesday Book it is 100 perches.

Arpentator. A measurer of lands.—Cowell.

Arraign, Arraignment (ad rationem ponere). To arraign a prisoner is to call him to the bar of the court to answer the matter charged against him in an indictment.—4 Bl. 322.

Array (from the Fr. arraye) signifies the ranking or setting forth in order. Challenges to the array, as applied to juries, signifies an exception or objection against all
the persons arrayed or impaneled on a jury, on account of partiality or some default of the sheriff or his under-officer who arrayed the panel.—3 Bl. 259.

**Array, commission of.** During the reigns of Hen. 2, and Edw. 1, in pursuance of certain statutes then in force, it was usual from time to time for our princes to issue commissions of array, and send into every county officers in whom they could confide, to muster and array (or set in military order) the inhabitants of every district, in order to provide against domestic insurrections or foreign invasions.—1 Bl. 411.

**Arrearages or Arrears (arreragia).** Money not paid when it is due; as arrearages of rent, &c. —Cowel.

**Arrectatus.** One suspected of any crime.—Cowel.

**Arrested.** Reckoned or considered.—1 Ins. 173 b. and n.

**Arrenatus.** Arraigned, accused.—Rot. Parl. 1 Ed. 21.

**Arrentation (from the Span. arrendar).** The licensing an owner of lands in the forest to inclose them with a low hedge and small ditch, according to the assize of the forest, under a yearly rent. Saving the arrentations, is a saving power to give such licenses.—Ord. Foresta, 34 Edw. 1, cap. 5.

**Arrest (from the Fr. arrêter, to stop or stay).** The legal seizure, caption, or taking of a man's person.

**Arrest of Judgment.** The staying of judgment notwithstanding a verdict has been given.—3 Bl. 393.

**Arrest of Inquest.** To plead in arrest of taking the inquest upon a former issue, is to shew cause why an inquest should not be taken, &c.—Brook. tit. Repleader.

**Arrestandis Bonis, ne dissipentur.** A writ which lay for a man whose cattle or goods were taken by another, who was likely, during the controversy to make away with them, and would hardly have been able to make satisfaction for them afterwards.—Reg. of Writs, 126; Cowel.

**Arrestando ipsum qui pecuniam recepit.** A writ which anciently lay for the apprehension of him who had taken prest-money for the king's wars, and afterwards hid himself, when he should have been ready to go.—Reg. Orig. 24; Cowel.

**Arrestment.** The command of a judge discharging a person in whose hands the debtor's moveables are, to pay or deliver up the same till the creditor who has procured the arrestment to be laid on be satisfied either by caution or payment, according to the respective grounds of arrestment.

**Arrestment Jurisdictionis Fundamentæ causa.** This arrestment is used to bring a foreigner within the jurisdiction of the courts of Scotland.—Scotch Dict.; Tomlins.
Arristo facto super Bonis Mercatorum alienigenorum. A writ that lay for a denizen against the goods of aliens found in this kingdom, as a recompense for goods taken from him in a foreign country after a refusal to restore them. — Reg. Orig. 129; Cowel.

Arreted (arrectatus). The convening a man before a judge, and charging him with a crime; it sometimes signifies imputed, or laid unto; as no folly may be arreted to one under age. — Littleton, cap. Remitter; Cowel.


Arrigation and Carriage were indefinite services formerly demandable from tenants, but prohibited by 20 Geo. 2, c. 50, § 21, 22.

Arrura. In the black book of Hereford, de operationibus arrurae means day’s works of ploughing; for of old customary tenants were bound to plough certain days for their lord. — Cowel.

Arsen in le Main. Burning in the hand; a punishment formerly inflicted upon certain criminals.

Arson (ab ardendo). The crime of wilfully and maliciously burning the house or outhouse of another man. — 4 Bl. 220.

Art and Part. In Scotland and the north of England, when one is charged with a crime, they say he was art and part in committing the same, i.e., that he was both a contriver of and actor in it. — Cowel.

Artel. To avouch. This word is sometimes written ardelu, and by the south Welsh arhel, and is thus used: if a man be taken with stolen goods he must be allowed a lawful ardelu (or vouchee) to clear him of the felony. — Blount; Cowel.

Articles. Conditions, stipulations, rules, &c.; as articles of war are a code of laws for the regulation of the army; articles of the navy, rules for the government of the navy; articles of religion, rules or articles relating to religion. The word article has sometimes, however, a particular signification; thus, it is used for a complaint exhibited in the Ecclesiastical Court by way of libel. Articles of peace also signify a complaint exhibited in the courts at Westminster, in order to compel a defendant to find sureties of the peace. — 1 Bl. 415, 420.

Articuli cleri. Articles of the clergy, statutes containing certain articles relating to the church and clergy and causes ecclesiastical. — Cowel.

Asportation. Stealing; the carrying away of goods. — 4 Bl. 231.

Assach or Assath. A kind of purgation formerly used in Wales, by which the accused party did clear himself by the oaths of 300 men. — Les Termes de la Ley.

Assart (from the Fr. assartir,
to make plain). An offence committed in the forest by pulling up the trees and thickets by the roots, and so making the forest plain like arable land.—*Les Termes de la Ley.*

**Assault and Battery.** An attempt or offer with force and violence to do a corporal hurt to another, as by striking at him with or without a weapon. An injury actually done to the person of a man in an angry, revengeful, or insolent manner, be it ever so small, as by spitting in his face, or any way touching him in anger, is a battery in the eye of the law; thus, every battery includes an assault; but every assault does not include a battery.—Cowell; 3 Bl. 120.

**Assay of weights and measures,** (from the Fr. essay, a proof or trial), is the examination of weights and measures by the constituted authorities.—Reg. Orig. 279.

**Assayer of the King**(assayator regis). In the present day, sometimes termed assay master, is an officer in the king’s mint, for the trial of silver and bullion.—Cowell.

**Assayiere.** To take as fellow-judges; a term used in old charters.—Cowell.

**Assecurare**(adsecurarare). To secure by pledges or any solemn interposition of faith.—Cowell.

**Assedation.** Possession by a tack or lease, &c.—Scotch Dict.; Tomlins.

**Assembly, unlawful,** is defined to be the meeting of three or more persons with the intention of doing an unlawful act.—4 Bl. 146. See also *tit. Riot.*

**Assessors.** Persons who assess public taxes, by rating every person according to his estate.—1 Bl. 312.

**Assets** (from the Fr. assez, enough). Personal property of a saleable nature in the hands of the executor or administrator, sufficient or enough to make him chargeable to a creditor or legatee, so far as that personal property will extend. *Assets by descent or real,* are lands which are in the hands of the heir, charged with the payment of debts contracted by the ancestor, so far as such lands can go in the discharge of those debts; thus, when a man has bound himself and his heirs in any obligation in writing with the payment of a certain sum, and he dies seised of lands in fee-simple, which descend to his heir, these lands, when in the hands of the heir, will be liable to the payment of that sum.—2 Bl. 510; Toller’s Ex.

**Assidere or Assedare,** signifies to tax equally. Sometimes it signifies to assign an annual rent to be paid out of a particular farm.—Cowell.

**Assign**(assignare). Assign has two significations; one general, as to make or assign over something to another, or appoint a deputy, &c.; the other special, as to set forth, or point at, as to assign error, to assign false judg-
ment, &c. Our judges are also said to be assigned to take the assizes, meaning, appointed to take them.

 ASSIGNATION. The act of having ceded, yielded, or assigned anything to another.—Scotch Dict.

 Assign or Assignee (assignatus). This word, in its general signification, means a person who is appointed or deputed by another to do any act, or to transact any business. When any right, title, or property is assigned or made over to another, the party who assigns or makes it over is termed the assignor, and he to whom it is assigned is termed the assignee; and this is the meaning which the word assigns has in deeds and instruments; for instance, when A. in a deed covenants for himself, his executors, administrators, and assigns, this word assigns means any person to whom the property or interest contained in the deed may happen at any future time to be assigned. Assignee or assignees also signify those persons in whom the personal estate and effects of a bankrupt become vested by virtue of their appointment.—2 Bl. 480; Arch. Bankruptcy, 149.

 Assignment (assignatio). The making or transferring anything over to another; also the name of the deed or instrument by which such transfer is effected.

 ASSIMULARE. To put together.—Cowel.

 ASSISA CADERE. When there is some defect or insufficiency in a suit which prevents the complainant from proceeding further in it. To be non-suited.—Cowel.

 ASSISA CONTINUANDA. A writ directed to the justices of assize for the continuation of a cause, when certain records alleged could not be produced in time by the party who had occasion for them. Reg Orig.; Cowel.

 ASSISA PANIS ET CEREVERISÆ. The power of assizing or adjusting the weight and measures of bread and beer.—Cowel. The old stat. 51 Hen. 3, for setting the price of bread and ale is so called.—Tomlins.

 ASSISA PROROGANDA. An obsolete writ, directed to the justices assigned to take the assizes, for the stay of proceedings on account of the party's being employed in the king's business.—Reg. Orig. 208; Cowel.

 ASSISE (Fr. assis). This word is derived from assideo, to sit together; and is usually taken for the court, place, or time where the judges of the three superior courts at Westminster try all questions of fact issuing out of those courts that are ready for trial by jury.—3 Bl. 59. These assises are indeed neither more nor less than the sittings of the judges at the various places where they visit on their circuits, and which they usually make twice in every year in the respective vacations after Hilary and Trinity terms. The term assise is also used for a jury, and for a writ for recovery of possession of
lands of which the party has been disseised or put out of possession.—3 Bl. 58, 60.

Assise of Novel Disseisin. A remedy for the recovery of lands or tenements of which the party has been disseised or put out of possession.—3 Bl. 186.

Assise of Mort d'Ancestor (assisa mortis antecessoris). A writ that lay when a man's father, sister, mother, brother, &c. died seised of lands, tenements, rents, &c. that were held in fee, and after their death a stranger abated.—Reg. Orig. 223; Tomlins.

Assise of Darrein Presentment (assisa ultima presentationis). This was a writ which lay when a man or his ancestor had presented a clerk to a church, and after the church had become void by his death or otherwise, a stranger presented his clerk to the same in disturbance of the patron.—Reg. Orig.; Cowel.

Assise de utrum, or Assisa Juris utrum. A writ which lay for a parson against a layman, or a layman against a parson, for lands or tenements, when it was doubtful whether they were lay-fees or free-alms.—Cowel.

Assise of the Forest (assisa de foresta). A statute or condition concerning orders to be observed in the king's forests.—Manwood; Cowel.

Assisors (assisores), sunt qui assisus condunt aut taxiones impo-nunt. In Scotland (according to Skene) they are the same with our jurors.—Cowel.

Assisus. Farmed or rented out for such an assise, or certain assessed rent in money or provisions.—Cowel.

Assithment. A weregeld or compensation by a pecuniary mulet.—Cowel.

Association (associatio). A writ or patent, sent by the king, either at his own motion, or at the suit of a plaintiff, to the justices appointed to take the assises, or of oyer and terminer, &c. to have others associated with them. This is usual when a justice of assise dies, and a writ is issued to the other justices to admit the person associated; and when a justice is from any circumstance disabled, this is practised.—Reg. Orig. 201.

Assoile (absolvere). To deliver or set free from excommunication.—Cowel.

Assumpsit (assumo). A promise in the nature of a verbal covenant, as if a builder promises, undertakes, or assumes to Caius that he will build and cover his house within a limited time; this is an assumpsit; and if he fails to do so, Caius has an action against the builder, for this breach of his promise, undertaking, or assumpsit; and shall recover a pecuniary satisfaction for the injury sustained by such delay; hence is derived the action of assumpsit, or, as it is commonly called, on promises.—3 Bl. 158.
ASSUMPTION. The day of the death of a saint, so called, quia eujus anima in caelum assumitur.—Cowel; Du Cange.

ASSURANCE. This word, as applied to lands, signifies a deed of conveyance. All deeds that are used for the purpose of conveying property from one party to another are termed assurances, because they are the means of assuring or making sure the property so conveyed. For the other signification of this word, see tit. Insurance.

ASSYERS (jurors). Those who in an inquest serve a man, heir, or judge, the probation in criminal cases.—Scotch Dict.; Tomlins.

ASSYTHMENT. The reparation made for mutilation and slaughter. —Scotch Dict.

ASTER and HOMO ASTER. A man who is resident.—Britton, 151.

ASTRATRIXUS HÆRÆS (from astre), is where an ancestor, by conveyance, has placed his heir-apparent and his family in a house in his lifetime.—Cowel.

ATHE (adda). The privilege of administering an oath in some cases of right and property; from the Saxon ath (juramentum).—Cowel.

ATAIA. See tit. Odio et Atia.

ATTACH (attacher). To attach means to take, or apprehend by command of a judicial writ termed an attachment. It is a mode of punishment usually resorted to in cases of contempt of Court; as when a man openly insults or resists the process of the courts, or the judges who preside there; or when a man does any act, or omits to do any act, which shows his disregard of the authority of the courts.—4 Bl. 283.

ATTACHIAMENTA BONORUM. A distress taken upon the goods or chattels of any one, sued for personal estate or debt, by the legal attachiators or bailiffs, as a security to answer the action.—Cowel. Attachamenta despinis et bosco was a privilege granted to the officers of a forest to take to their own use thorns, brush, and windfall within their precincts.—Paroch. Ant. 209.

ATTACHMENT. A writ or process issuing from the courts at Westminster against a person for some contempt which he has committed. See tit. Attach. Attachment foreign, by the custom of London and other ancient cities, is the attachment or seizure of the goods or money of the defendant found within the liberty of the city, for the purpose of securing a plaintiff's debt; and by the custom of some places, a man may attach goods in the hands of a third party: as if A. owe B. ten pounds, and C. owes A. another sum of money, B. may attach the goods of A. in the hands of C., to satisfy himself. There is also attachment of the forest, which is a court held there every forty days, in which the verderors have not any authority but to receive and inroll the attachment of offenders against vert and venison taken by
the other officers, that they may be presented at the next justice in eyre’s seat. There is also an attachment of privilege, which is either the giving power to apprehend a man in a privileged place, or by virtue of an office or privilege; as to call another to that court to which he himself belongs, and in respect of which he is privileged.—Les Termes de la Ley.

ATTAINER. The taint, stain, or corruption of blood, which the law attaches to a criminal who is capitally condemned. He is then called attaint, (attinctus,) stained, or blackened, and is no longer of any credit or reputation, and is considered already dead in law, and incapable of performing the functions of another man.—4 Bl. 380.

ATTAIN'T (attincta). A writ that lies to inquire whether a jury has given a false verdict, in order that the judgment thereon may be reversed.—F. N. B. 105.

ATTENDANT. One that owes a duty or service to another, or in some way depends upon another; as where a wife is endowed of lands by a guardian, she shall be attendant on the guardian, and on the heir at his full age.—Les Termes de la Ley.

AnTERMINING (from the Fr. aterminer). The purchasing or gaining longer time for payment of a debt.—Cowel.

ATTESTATION. The attestation of a deed signifies the testifying to the signing or execution of it. Thus the signature to a will requires to be attested or witnessed by two persons.

ATTORNARE REM. To attorn or turn over money and goods, i.e. to assign or appropriate them to some particular use.—Cowel.

ATTORNATO FACIENDO VEL RECIPIENDO. An ancient writ, commanding a sheriff or steward of a county court, or hundred court, to receive an attorney for the person so taking out the writ, and to admit his appearance by him.—Cowel.

ATTORNEY. A person authorized by another man to act in his place and stead; this authority is usually conferred upon him by a deed or instrument termed a power of attorney.

ATTORNEY-AT-LAW. An officer of the king’s courts, whose duty consists in transacting and superintending the legal business of his employer or client.—3 Bl. 25.

ATTORNEY OF THE DUCHY COURT OF LANCASTER. The second officer in that court, who seems from his skill in law to be placed there as assessor to the chancellor of that court, being generally some honourable person, who is chosen rather for his probity than his learning, to deal between the king and his tenants.—Cowel.

ATTORNEY-GENERAL. A law officer of the state, made by letters
patent, and selected from his majesty's counsel learned in the law; his office is to prosecute criminal matters for the crown, exhibit informations, and transact general business, for which he receives a standing salary. —3 Bl. 27.

Attornment (attornamentum). A tenant's acknowledgment of a new lord on the alienation of lands by the former lord. It is of feudal origin, for by the feudal law the feudatory could not alien or dispose of the feud without the consent of the lord, nor the lord alien or transfer his seignory without the consent of his feudatory. —2 Bl. 288, 290.

A vague or Avisage. A rent or payment exacted of every tenant of the manor of Writtle, in Essex, upon St. Leonard's day, for the privilege of pannage in the lord's woods. —Cowel.

Audience Court (curia auditia Cantuariensis). A court belonging to the Archbishop of Canterbury, having the same authority with the Court of Arches, but inferior to it in dignity and antiquity. —Les Termes de la Ley.

Audiendo et Terminando. A commission directed to certain persons to appease and punish the offenders in any riotous assembly or insurrection. —Cowel.

Audita querela. A writ which lies for a defendant against whom judgment is recovered, and who is therefore in danger of execution; whereby he may be relieved or discharged, upon showing good matter of discharge, which has arisen since judgment. —3 Bl. 406; Cowel.

Auditor (Lat.) According to our law is an officer of the king, or some other great person, who, by yearly examining the accounts of all under officers accountable, makes up a general book that shows the difference between their receipts and payments, and their allowances, commonly termed allocations; as the auditors of the exchequer take the accounts of those receivers who collect the revenues, and set them down and arrange them. —Cowel.

Auditor of the Receipts. An officer of the exchequer who files the tellers' bills, makes an entry of them, and gives the lord treasurer a certificate of the money received the week before. —Cowel.

Auditors of the Imprest. Officers of the exchequer who audit or make up the great accounts of Ireland, Berwick, the Mint, and of any money impressed to any man for the king's service. —Cowel.

Avenage (from Lat. avena). A certain quantity of oats paid to a landlord in lieu of some other duties, or as a rent from the tenant. —Cowel.

Aventure or adventure. An accident by which the death of a man is occasioned without felony. —Britton, c. 7.

Average (averagium). A contribution made by the owners of a ship, and the proprietors of goods
on board, to those persons who, for the preservation of the ship, and for the goods and lives on board, have sacrificed their own property by casting it into the sea. It is called average because the contribution is proportioned and allotted after the rate and according to the value of each man's goods so preserved on board. Petty, small, or accustomed average is a duty paid to masters of ships when goods are sent in another man's ship, for their care of the goods, over and above the freight. The word average also signifies service which the tenant owes to the king, or other lord, by horse or by carriage.—Cowel. Average of corn fields signifies the stubble, or remainder of straw or grass left in the corn fields after the harvest is carried in. In Kent this is called grattten, in other parts eddish, in Wales adlugh, and in some counties roughings.—Cowel.

AVER CORN. A reserved rent in corn, paid to religious houses by their farmers or tenants.—Cowel.

AVER LAND. It seems to have been such lands as the tenants ploughed and manured cum averiis suis for the use of a monastery or lord of the soil.—Cowel.

AVER SILVER. A subscription, or customary payment so called.—Cowel.

AVERIIS CAPTIS IN WITHERNAM. A writ for the taking of cattle to a person's use, who has had his own cattle taken by another, and driven out of the county where they were taken, so that they can not be replevied.—Reg. Orig. 82; Cowel.

AVERIUM. An heriot, consisting of the best live beast the tenant dies possessed of.—2 Bl. 424.

AVERMENT (verificatio) means an offer of the defendant to make good or justify an exception pleaded in abatement or bar of the plaintiff's action: and it signifies the act, as well as the offer of justifying the exception, and not only the form, but the matter thereof. In an action also, when either side in any state of the pleadings advances or affirms any new matter he (as it is said) avers it to be true, which is thence termed an averment.—3 Bl. 312.

AVERRARE. To carry goods in a waggon, or upon horses; a duty required of some customary tenants.—Cowel.

AVETTING. Abetting, helping, or assisting.—Scotch Dict.; Tomlins.

AUGMENTATION was the name of a court erected 27 Hen. 8, for the purpose that the king might be justly dealt with concerning the profits of such religious houses and their lands as were given to him by act of parliament the same year. The court was so called because the revenues of the crown were so much augmented by the suppression of the said religious houses as the king reserved to the crown.—Les Termes de la Ley.

AVISAMENTUM. Advice or
counsel; de avisamento et consensus concilii nostri concessimus was the common form of our kings' grants.
—Cowen.

AULA. A court baron; it signifies generally a hall, or court, and sometimes a mansion house; aula ecclesiae is that which is now termed navis ecclesiae, or the nave or body of the church. Aula regis was a court which William the Conqueror established in his own hall, consisting of the great officers of state who resided in his palace.—Cowell; 3 Bl. 37.

AULNEGER (or alnager, alneger, &c.). An ancient officer of the king's, who by himself or deputy looked to the assise and measurement of cloth throughout the land.
—Cowell.

AUMONE (from the Fr. aumosne, alms.) Tenure in aumone is where lands are given in alms to some church or religious house, upon condition that some service or prayers shall be offered up at given times for the good of the donor's soul.—Cowell.

AVOIDANCE. Has two significations, the one signifying when a benefice becomes void of an incumbent; the other when it is said in pleadings that a party confessed, or avoided, traversed or denied, &c.

AVOW. See tit. Advow.

AVOWER. See Advowee.

AVOWRY. When a person takes distress for rent or other thing, and the party on whom the distress is taken sues a replevin, then the taker of the distress shall justify in his plea the taking of it, and if he took it in his own right, he ought to show it, and avow the taking, which is called his avowry.
—Les Termes de la Ley.

AVOWTERER. An adulterer; the crime is hence termed avowtry.

AURES. The cutting off the ears; it was a punishment inflicted by the Saxon laws on those who robbed churches, and afterwards on theives in general.—Cowell.

AURUM REGINÆ. Queen's gold; a revenue formerly belonging to queen consorts during their marriage.—Bl. Com.

AUTER DROIT (another's right). Hence the expression of suing auter droit; meaning that the person sues in the right of another; as an executor, in the right of the testator who appointed him, or a guardian for or in right of and infant.

AUTERFOITS ACQUIT. The name of a plea pleaded by a criminal; signifying that he has been formerly acquitted on an indictment for the same offence; it being a maxim of the common law of England, that no man's life is to be put in jeopardy more than once for the same offence.—Co. Inst.

AUTERFOITS ATTAINT. A plea by a criminal, that he has been
before attainted of the same offence. And see last title.—4 Bl. 335.

Auterfoits convict. A plea by a criminal that he has been before convicted of the same identical crime; it is similar in its nature to that mentioned in the last title but one.—4 Bl. 336.

Auter Vie (the life of another). When a person holds an estate during another man's life, or so long as such a man shall live, he is called a tenant pur auter vie.—2 Bl. 120; See also tit. Pur auter vie.

Auxilium ad filium militem faciendum et filiam maritandam. A writ directed to the sheriff of every county where the king or other lord had tenants, to levy of them reasonable aid towards the knighting of his son and marriage of his eldest daughter.—Cowel.

Auxilium CURLE. An order of court, or precept, for the citing or convening of one party at the suit of another.—Paroch. Antig.

Auxilium facere aliqui in curia regis. A fiduciary office undertaken by some courtiers for their dependents in the country, to be another's friend or solicitor in the king's court.—Paroch. Ant.

Auxilium Regis. Money levied for the king's aid and for the public service.—Cowel.

Auxilium Vice-comiti. The aid or customary dues formerly paid to sheriffs for the better support of their offices.—Cowel.

Awaity. As used in 13 Rich. 2. c. 1, it signifies way-laying or lying in wait.—Cowen.

Award. The judgment or decision of one or more arbitrators. See tit. Arbitrator.

Ayle. See Aiel.

B.

Backberinde. Bearing upon the back, or about a man. It is used by Bracton as a sign or circumstance of theft apparent, which the civilians called furtium manifestum.—Bract.

Backing of Warrants. When a warrant of a justice of the peace in one county is to be executed in another county, it must be signed by the justice in such other county, which is termed backing it.—4 Bl. 391.

Bail (ballium). The setting at liberty of a person who is arrested, in any action, civil or criminal, on his finding sureties for his reappearance. It is however usually understood for the sureties themselves; as if A. is arrested and puts in bail, this means neither more nor less than that he has found persons who have become sureties for his reappearance; and who take upon themselves the responsibility of his returning or not returning when required. Bail above or special bail. When a person is arrested on a writ of capias, the sheriff's officer is bound to liberate him on his finding two responsible persons to sign a bond
(termed a bail bond); in this bond there is a condition, that if the defendant puts in special bail (or bail above) as required by the said writ (that is within eight days), then that the bond shall be void and of no force. If the defendant at the end of the eight days procures either the same or other persons to enter into a recognizance, by which they undertake to pay the debt for which the defendant was arrested, together with the costs of the action, or render the defendant to prison, then the defendant is liberated until the end of the suit, and these second bail are called bail above or special bail. The first bail, i.e., those who become sureties for the defendant immediately on his being arrested, and through whom the defendant procures his discharge, are termed bail below, in contradistinction to the secondary bail, or bail above. Common bail is the same as an appearance, for a description of which see that title.

Bail Bond. See tit. Bail.

Bailable Action. An action in which a defendant is obliged either to find bail or go to prison until the demand for which the action is brought be satisfied, or he be otherwise discharged from custody.

Bailiff (ballivus). There are various sorts of bailiffs; as bailiffs of liberties; sheriff's bailiffs; bailiffs of lords of manors, &c. &c. Sheriffs are also called the king's bailiffs, and the counties wherein it is their duty to preserve the rights of the king are frequently called their bailiwicks; a word introduced by the Norman princes in imitation of the French, whose territory is divided into bailiwicks, as that of England into counties. The word bailiff, however, usually signifies sheriffs' officers who are either bailiffs of hundreds or special bailiffs. Bailiffs of hundreds are officers appointed over those respective districts, by the sheriffs, to collect fines therein, to summon juries, to attend the judges and justices at the assizes and quarter sessions, and also to execute writs and process in the several hundreds. Special bailiffs is that lower class of persons employed by the sheriffs for the express purpose of serving writs, and making arrests and executions, &c.—I Bl. 344. Those persons also who have the custody of the king's castles are called bailiffs, as the bailiff of Dover castle. The chief magistrates of particular jurisdictions are also called bailiffs, as the bailiff of Westminster, for example. There are also bailiffs of courts baron; bailiffs of the forest, &c.—Cowel; Termes de la Ley.

Bailiwick (balliva). A county of which the sheriff is the bailiff; it also formerly signified that liberty or exclusive jurisdiction exempted from the sheriff over which the lord of the liberty appointed a bailiff.

Bailment (fr. the Fr. bailler). A delivery of goods in trust, upon an express or an implied contract, that the trust shall be faithfully performed on the part of the bailee (or the person to whom
the goods are delivered), as if cloth be delivered, (or in legal language) bailed to a tailor to make a suit of clothes, he has it on an implied contract to render it again when made, and that in a workmanlike manner.—2 Bl. 451.

Bairman. An insolvent debtor, left destitute, bare, and naked.—Cowel.

Balinga. A teritory or precinct.—Cowel.

Baliya, or balliva. A bailiwick or jurisdiction.—Cowel.

Balivo Amovendo. A writ to remove a bailiff from his office for want of sufficient living in his bailiwick.—Cowel.

Ban or Bans. A public notice given of any thing. In England this word is more especially used in publishing matrimonial contracts in the church before marriage, in order that if any person has any thing to say against the marriage, he may be enabled to make his objection before it is consummated.—Les Termes de la Ley.

Bane (fr. Sax. band, a murderer). The destruction or overthrow of any thing; as he who is the cause of another man's death is said to be le bane, i.e. a malefactor.—Bract. lib. 2, tract 8.

Baneret (Bannerettus, miles vexillatorius). A baneret is said to be a knight made in the field, with the ceremony of cutting off the point of his standard and so making it like a banner. They are accounted so honourable that they are permitted to display their arms in a banner in the field, as barons do. See Selden’s Tit. of Hon.

Banishment (fr. the Fr. banissement). A punishment inflicted on an offender by compelling him to quit the realm. There are two kinds of it, one voluntary and upon oath, termed abjuration; the other by compulsion for some offence or crime.—Cowel.

Bank (Lat. bancus, Fr. banque). Signifies bench, and is commonly used for the bench or seat of judgment; as bancus regis, or in French banc le roy, means the king's bench; bancus communium placitorum, or banc le common pleas, the bench of common pleas.—Cromp. Inst. fol. 67. 91; Cowel.

Bankrupt. A person in trade or business who from misfortunes, or other circumstances, is unable to meet the demands of his creditors; and has signified his inability to do so, by having done some act which the law defines to be an act of bankruptcy. The word is said to be derived from bancus, a bench or counter, and ruptus, broken; signifying that his shop or place of business is broken or gone.

Bannimus. The form of expulsion of any member from the university of Oxford, by affixing the sentence in some public places, as a promulgation of it.—Cowel.

Bannitus or Banniatus. An outlaw or banished man.—Cowel.
**Bannum or Banleuga.** The limits or bounds of a manor or town; as Banleuga de Arundel is used for all comprehended within the limits or lands adjoining, and so belonging to the castle or town. — *Cowel.*

**Bar or Barr.** When a defendant in any action pleads a plea which is a sufficient answer to the plaintiff, and which at once destroys his action, it is termed a plea in *bar.* In the above sense, as well as in others, it signifies to prevent or to destroy; as when it is said that jointures have been introduced as a *bar* to the claim of dower, it means as a *prevention* to that claim. *Bar* also signifies the place where the barristers stand in court to plead the causes of their clients, whence the term *barrister.* A trial at *bar* means a trial had before the court itself, in contrast to bar here had at nisi prius. — *Smith's Action at Law; 3 Bl. 352; Les Termes de la Ley.*

**Bar Fee.** A fee of twenty pence which every prisoner acquitted of felony pays to the gaoler. — *Cowel.*

**Bargain and Sale.** The name of an instrument or conveyance by which freehold property is granted or transferred from one person to another. This species of conveyance was introduced by the operation of the stat. 27 Hen. 8, c. 10, called the statute of uses, and is a kind of real contract, whereby one man for some pecuniary consideration bargains and sells, that is, contracts to convey the land to some other man; and becomes by such bargain, a trustee for, or (as the law terms it) seised to the use of such other man, and then the statute completes the purchase. But as it was foreseen that conveyances thus made would want that notoriety which the old common law conveyances were calculated to give, it was therefore enacted by 27 Hen. 8, c. 16, that such bargains and sales should not pass a freehold, unless the same were made by *indenture,* and *enrolled* within six months in one of the courts of Westminster Hall, or with the custos rotulorum of the county wherein the lands which are the subject of conveyance lie. This was enacted in order to compel the parties to reduce their contract into writing, and to prevent the frauds of secret conveyances, which *enrolment* would effectually do by affording the public an inspection of every such conveyance. — 2 Bl. 339.

**Baron.** A title of nobility one degree below a viscount. — 1 Bl. Com. 398.

**Barons of the Exchequer.** The judges of the court of exchequer are so called; the same as the judges of the courts of king's bench and common pleas are called *justices.*

**Barony (baronia).** That honour and territory which give title to a baron, comprehending his lands, fees, and other baronial rights and dues. — *Blount.*

**Baronet.** An hereditary dig-
nity created by letters patent, and descendible to the male heirs of the grantee.—1 Bl. 403.

BARON AND FEME. Husband and wife.—1 Bl. 433.

BARRATOR or BARRETOR. An exciter or promoter of suits and quarrels between his majesty's subjects, either at law or otherwise.—4 Bl. 134.

BARRATRY. The act or offence of a barrator. See last title for a definition of barrator. This word, as used in marine insurance, signifies the commission of any fraud upon the owners or insurers of a ship by the captain or crew, deserting her, sinking her, or doing any act which may subject her to forfeiture, &c.—4 Bl. 134.

BARRISTER or BARRASTER (barrasterius). A counsellor learned in the law who pleads at the bar of the courts, and takes upon himself the advocacy or the defence of causes given him by those who retain or employ him.

BARTON or BURTON. A term used in Devonshire and other parts for the demesne lands of a manor; sometimes for the manor-house itself; and sometimes for out-houses and fold-yards.—Cowel.

BAS CHEVALIERS. Low or inferior knights, by tenure of a base military fee, as distinguished from baronets and banerets, who were the chief or superior knights.—Cowel.

BASE COURT (from cour basse). Any inferior court, not of record, as the court baron, &c.—Hitchin, fol. 95, 96; Cowel.

BASE ESTATE (from bas estat.) That estate which base tenants have in their land; and base tenants are those who perform the lords services in villenage.—Cowel. And see next title.

BASE FEE. A base or qualified fee, is an estate which hath some qualification subjoined thereto, and which must cease or be determined whenever such qualification is at an end. As in the case of a grant to A and his heirs, tenants of the manor of Dale; in this instance, whenever the heirs of A cease to be tenants of that manor, the grant is entirely defeated. So when Henry the Sixth granted to John Talbot, lord of the manor of Kingston-Lisle, in Berks, that he and his heirs, lords of the said manor, should be peers of the realm, by the title of barons of Lisle; here John Talbot had a base or qualified fee in that dignity, and the instant he or his heirs quitted the seigniory of this manor, the dignity was at an end. These estates are fees, because it is possible that they may endure for ever in a man and his heirs; yet as that duration depends on certain collateral circumstances, which qualify and debase the purity of the donation, it is therefore called a base or qualified fee.—2 Bl. 109, 110.

BASKET TENURE of lands.—See tit. Canestellus.

BASTARD. A person not born
in lawful wedlock. The English law does not require that the child should be "begotten" after lawful wedlock, but it is an indispensable condition to make it legitimate that it should be "born" after that period.

**Bastardy.** A defect of birth objected to one born out of lawful wedlock.—*Bracton.*

**Bastard-eigne.** See tit. *Eigne.*

**Baston.** A French word signifying a staff or club. By some of the statutes it also signifies one of the wardens of the *Fleet's servants* or officers, who attends the king's court with a painted staff, for the taking into custody such as are committed by the court.—*Cowel.*

**Basseville.** The suburbs of a town.—*Blount.*

**Batable Ground.** The land lying between England and Scotland when the two kingdoms were distinct, and which land was a question or a subject of *debate* to which it belonged.—*Cowel.* See *Lamb. Brit. tit. Cumberland.*

**Battel (from battaile).** The trial by wager of *battel,* was a species of trial introduced into England, among other Norman customs, by William the Conqueror, in which the person accused fought with his accuser, under the apprehension that heaven would give the victory to him who was in the right. For a full and interesting account of this superstitious cere-

mony, the student is referred to 3 *Bl. 337.*

**Battery.** See tit. *Assault.*

**Bearer.** Persons who oppress or bear down others.

**Beasts of Chase (feræ campestres).** Are the buck, the doe, the fox, the marten, and roe.—*Manwood's Forest Law; Cowel.*

**Beasts of the Forest (feræ sylvestres).** Also called *beasts of venery,* are the hart, the hind, the hare, the boar, and the wolf.—*Manwood.*

**Beasts and Fowl of Warren.** Are the hare, the coney, the pheasant, the partridge, the rail, the quail, the woodcock, mallard, and heron.—*Manwood.*

**Beau-pleader (from beau-plaider).** Signifies, at common law, a writ upon the statute of Marlbridge, 52 H. 3, c. 11, whereby it is provided that neither in the circuits of the justices, nor in counties, hundreds, or courts-baron, any fines shall be taken of any man for what is termed *fair pleading,* i.e. for not pleading fairly or aptly to the purpose; upon which statute this writ was ordained against those who violate the law herein.—*Cowel.*

**Bedel or Beadle (Sax. bydel).** A messenger, crier, or apparitor of a court, who cites men to appear and answer therein. Many other kinds of subordinate officers are so called.—*Cowel.*
Bedelary (bedelaria). The same in reference to a bedel as the word bailiwick is to a bailiff; which see under those titles.

Bederepe or Biderepe (fr. Sax. biddan, to intreat or pay, and repe, to reap corn). A service which some tenants were anciently bound to perform, as to reap their landlord's corn in harvest.—Cowel.

Benefice (beneficium). Generally taken for any ecclesiastical living, or church preferment, whether a dignity or other; and it must be given for life not for years or at will.—4 Bl. 107.

Beneficio Primo Ecclesiastico Habendo. A writ directed from the king to the chancellor or lord keeper to bestow the benefice that shall first fall to the king's gift above or under such a value, upon this or that man.—Cowel.

Benefit of Clergy. See Clergy.

Benereth. A service which the tenant rendered to his lord with his plough and cart; sometimes called benyrden and benyrden.—Cowel; Lamb. Itin. p. 412.

Benevolence. As used in history and in the chronicles, signifies a voluntary gratuity given by the subjects to the king.—1 Bl. 140.

Benevolentia Regis Habenda. The form in ancient fines and submissions of purchasing the king's pardon and favour, in order to be restored to place, title, or estate.—Cowel.

Bergmaster (fr. Sax. berg a hill). A bailiff or chief officer among the Derbyshire miners, who among other parts of his office also executes that of coroner.—Cowel.

Berghmoth or Berghmote (fr. the Sax. berg a hill, and gemote an assembly.) A court held upon a hill for deciding pleas and controversies among the Derbyshire miners.—Blount.

Bernet (fr. the Sax. byran to burn). It sometimes signifies any capital offence, but more particularly that of house-burning.—Cowel.

Berton. See tit. Barton.

Berwica or Berwicha. A hamlet or village appurtenant to some town or manor.

Besaile or Besayle (fr. bisayeul). A writ that lay when a great grandfather died seised of lands and tenements in fee simple, and on the day of his death a stranger entered and kept out his heir.—Cowel.

Beverches. Customary services performed at the lord's request by his inferior tenants.—Cowel.

Bigamus. A person guilty of the crime of bigamy.
BIGAMY (bigamia). Properly signifies being twice married: but as it is generally understood now, it signifies the crime of polygamy, or having a plurality of wives at once.—4 Bl. 163.

BILAGINES. Bye laws of corporations, &c. See Bye Laws.

BILANCIIS DEPERENDIS. A writ formerly in use, directed to a corporation for the carrying of weights to any haven, there to weigh the woolls that any man is licensed to transport.—Reg. Orig. fol. 270; Cowel.

BILINGUIS. It is used in a legal sense for a jury composed partly of Englishmen and partly of foreigners, because the cause to be tried by them is between an Englishman and a foreigner.—Cowel.

BILL (billa) has various significations in law proceedings. It is commonly taken for a declaration in writing expressing either the wrong the complainant has suffered by the defendant, or else some fault that the party complained of has committed against some law or statute of the realm. Such bill is sometimes addressed or exhibited to the lord chancellor, especially where the wrongs done to the complainant are matters of conscience; and sometimes they are addressed and preferred to others having jurisdiction in the matter; according as the law whereon they are grounded directs. This bill contains the fact complained of, the damages thereby suffered, and a petition that process may issue against the defendant for redress. In criminal matters, when a grand jury upon any presentment or indictment, consider the same to be probably true, they write on it two words, billa vera, and thereupon the accused party is said to stand indicted of the crime and is bound to make answer to it; and if the crime concern the life of the person indicted, it is then referred to another inquest, called the jury of life and death, by whom, should he be found guilty, he stands convicted of the crime, and is by the judge condemned accordingly.—Cowel; Les Termes de la Ley.

Bill is also a common engagement for money given by one man to another; and is sometimes with a penalty called penal bill, and sometimes without a penalty, then termed a single bill. By a bill was commonly understood a single bond without a condition; and it was formerly the same as an obligation, save that it was called bill when in English, and an obligation when in Latin. As these kinds of bills are now superseded by the introduction of bills of exchange and bonds, it would be of little use to enter into detail upon this subject.—Cunningham's Law Dictionary.

BILL IN EQUITY OR CHANCERY. The method of instituting a suit in the Court of Chancery is by addressing a bill to the Lord Chancellor in the nature of a petition. This bill is neither more nor less than a statement of all the circumstances which gave rise to the complaint, and a prayer or peti-
tion for relief, according as the nature of the case may require. When this bill is drawn up or prepared, it is left with the proper officer of the court in order to be filed; and this is what is termed filing a bill in equity.—Gray’s Chan. Prac. p. 3; 3 Bl. 442.

**BILL OF EXCEPTIONS.** If during a trial, the judge in his directions to the jury, or in his decision, mistakes the law, either through ignorance, inadver tence, or design, the counsel on either side may require him publicly to seal a bill of exceptions, which is a statement in writing of the point wherein he has committed the error, and which statement, by fixing his seal to, he thus acknowledges.—Smith’s Action at Law, p. 82; 3 Bl. 372. This statement should be put in writing while the court is sitting, and in the presence of the judge who tried the cause, and signed by the counsel on each side; after which it is formally drawn up, and tendered to the judge to be sealed.

**BILL OF EXCHANGE.** A bill of exchange is defined by Blackstone to be an “open letter of request from one man to another, desiring him to pay a sum named therein to a third person on his account.” The person who draws or makes the bill is called the drawer; the person to whom it is addressed is called the drawee; and when the drawee has undertaken to pay the amount (which undertaking he signifies by writing across the bill of exchange the word “ac-

cepted” together with his name and the place where the money is to be paid) then he is called the acceptor; the person to whom the money is ordered to be paid is called the payee; and if he transfers it over to another (which he does by simply writing his name across the back) he is then called the indorser, and the person to whom he thus transfers it is called the indorsee, which latter person may also, if he pleases in his turn, transfer it to another party (by the same process of signing his name on the back, or indorsing it as it is termed), and thus it may be transferred from one person to another ad infinitum, the party transferring it, always being called the indorser, and the party to whom transferred, the indorsee. To illustrate the subject further, a common form of a bill of exchange is here given:

**£100.**

London, June 1, 1838.

One month after date please to pay to George Montague or order the sum of one hundred pounds, and place the same to my account.

John Smith.

To Mr. John Harrison,
Merchant,
50, Broad Street.

Now, in the above form “John Smith” is the drawer of the bill, “John Harrison” is the drawee, (and when he has signed his acceptance of the bill by writing across the face of it

Accepted,

John Harrison,
he is then also termed the acceptor), and "George Montague" is the payee.
When the acceptor of a bill of exchange is a man of substance and of good credit, it renders it easily negotiable, and, consequently, almost as valuable as a bank note.—Chitty on Bills of Exchange.

BILL OF LADING. A bill of lading is a memorandum signed by the captain or master of a ship, acknowledging the receipt of goods on board, and undertaking to deliver them in good order and condition at the port for which they are destined. One of these bills is usually kept by the captain, one by the person who ships the goods, and one is sent to the party abroad to whom the goods are going, who, on the arrival of the vessel at port, is enabled to claim his goods on presenting to the captain his bill of lading.—McCulloch's Com. Dict.

BILL OF MIDDLESEX. Before the 2 Will. 4, c. 39, called the uniformity of process act, the usual method of proceeding in the court of king's bench was by a species of process termed a Bill of Middlesex. It was by the above act abolished.

BILL OF RIGHTS. The statute 1 Will. and Mary, stat. 2, c. 2, is so termed, because it declares the true rights of British subjects.—Tomlins.

BILL OF SALE. A contract, under seal, by which a man transfers the right or interest which he has in goods and chattels.—Cunningham.

BILL OF STORE. A kind of license granted at the custom-house to merchants, to carry such stores and provisions as are necessary for their voyage custom free.—Cunningham.

BILL OF SUPPERANCE. A license granted at the custom-house to a merchant, to suffer him to trade from one English port to another without paying custom.—Cunningham.

BIRETTUM. The cap or coif of a judge or serjeant-at-law.—Covel.

BISCOT. At a sessions of sewers held at Wigenhale, in Norfolk, it was decreed, that if any one in those parts should not repair his proportion of the banks, ditches, and causeys, by a day assigned, twelve pence for every perch un-repaired (which is called a bilaw) should be levied upon him; and if he should not by a second day given him accomplish the same, then he should pay for every perch two shillings, which is called biscot.—Hist. of Embanking and Draining, fol. 254; Covel.

BLACK ACT. The stat. 9 Geo. 1, c. 22, since repealed by 7 and 8 Geo. 4, c. 27, was so termed from the circumstance of its having been occasioned by devastations committed near Waltham, in Hampshire, by persons in disguise, with their faces blacked.

BLACK MAIL (fr. the Fr. maille).
It denotes in the northern counties a certain rate of money, or other consideration, paid unto certain persons inhabiting near the borders, who are allied with robbers within those counties, in order to be protected by them from the robbers who frequent those parts.—Cowel.

**Blanch Firmes.** In old times the crown rents were many times reserved in *libris albis*, or *blanche firmes*, in which case the buyer was held *dealbare firmam*; that is to say, his base money or coin worse than standard, was melted down in the exchequer, and reduced to the fineness of standard silver; or instead thereof, he paid to the king twelve pence in the pound, by way of addition.—Lowndes’s Essay on Coins; Cowel.

**Black Bar.** The same as common bar, and is the name of a plea in bar, which in an action of trespass is put in to compel the plaintiff to assign the specific place where the trespass was committed. —2 Cro. 594; Cowel.

**Blench, Blanch-holding.** See tit. Alba Firma.

**Bloodwit or Bloodwite (from Sax. blod, and the old English white, signifying misericordia).** A word often used in ancient charters for an amerciament for bloodshed. Skene, de Verbor. Signif., spells it bluidweit, which he says in English is the same as *injuria* or *misericordia* in Latin; it being as the Scotchmen call it an *unlaw* for a wrong or injury, as is the effusion of blood; for he who hath bloodwit granted him, has liberty to take all amerciaments of courts for the shedding of blood. It evidently appears, from the highest authorities, that it signified a sort of fine or penalty, paid as an atonement for the shedding of blood, and for which, if the criminal party himself could not be discovered, the place where the blood was shed was considered to be answerable.—Fleta; Paroch. Antiq. 114.

**Bloody-hand** signifies the apprehension of a trespasser in the forest against venison, with his hands or other parts bloody, which, although he was not found in the act of chasing or hunting, was considered as circumstantial evidence of his having killed deer.—Manwood.

**Bock-hord or Book-hoard.** A place where books, evidences, or writings are kept.—Cowel.

**Bockland (Sax. quasi, bookland).** An inheritance or possession held by the evidence of written instruments. It was one of the titles by which the English Saxons held their lands, and being always in writing, was hence called bockland, which signified *terram codicillarium* or *liberarium*, deed land or charter land. It was the same as *allodium*, being descpicable according to the common course of nature and nations, and devisable by will. This species of inheritance was usually possessed by the Thanes or nobles.—Spelman on Feuds.

**Bois.** See tit. Boscus.

**Bolting.** A term formerly
used in our inns of court, but more particularly in Gray's inn, signifying the private arguing of cases. It was carried on thus: an ancient and two barristers sat as judges, three students brought each a case, out of which the judges chose one to be argued, which done, the students began the argument, and after them the barristers. It was inferior to mootings, and may perhaps be derived from the Sax. bolt, a house; because carried on privately in a house for instruction.

**Bona Confiscata.** The forfeiture of lands and goods for offences committed.

**Bona Fide.** We say that such a thing is done bona fide, i.e. really, honestly, with good faith, without fraud, &c.

**Bona Gestura.** Good bearing, or good behaviour.—Cunningham.

**Bona Notabilia.** Such goods as a party dying has in another diocese than that wherein he dies, amounting at least to 5l., which whoever has, must have his will proved before the archbishop of that province, unless by composition or custom, other dioceses are authorised to do it, where bona notabilia are rated at a greater sum. If, however, a person happens to die in another diocese than that wherein he lives, while on a journey, what he has about him of the value of 5l. is not bona notabilia.—Book of Canons, 1 Jac. can. 92, 93; Cunningham.

**Bona Patria.** An assize of countrymen, or good neighbours, sometimes called assiza bona patria, when twelve or more are chosen out of the country to pass upon an assize; and they are called juratores, because they swear judicially in the presence of the party.—Skene de Verb. Sig.

**Bona Peritura.** Perishable goods.

**Bona Vacantia.** Goods in which no one can claim a property but the king; such as royal fish, shipwrecks, treasure trove, waifs, strays, &c.—1 Bl. 298, 299.

**Bonaght or Bonaghty.** An exaction in Ireland, imposed at the will of the lord, for relief of the knights called bonaghti, who served in the wars. Camden in his Brit. tit. Desmond, says, that James Earl of Desmond imposed upon the people these most grievous tributes of coin, livery, coherings, bonaghty, &c.

**Bond.** A bond or obligation is a deed whereby a person binds or obliges himself, his heirs, executors, and administrators, to pay a sum of money, or to do any other act within a certain time. The person who enters into a bond, and thus binds or obliges himself to do a certain act, is termed the obligor; and the terms of a bond are generally such that the obligor must either perform the act specified therein, or submit to pay a penalty for non-performance of it; the amount of which penalty is always specified in the bond. There is usually, also, added what is termed
a condition, which is simply a statement of the conditions which the obligor subjects himself to in the bond to which it is annexed. A bond is sealed the same as any other deed of importance, and hence it is called a specialty, meaning an instrument of special or peculiar importance.

**BOND POST OBIT.** A bond, the terms of which are to be performed after the death of a person therein named.

**BOND TENANTS.** Copyholders and customary tenants are sometimes so called.—2 Bl. 148.

**BONO ET MALO.** Special writs of gaol delivery, which it was formerly the course to issue for each particular prisoner, were termed writs de bono et malo.—4 Bl. 270.

**BONIS NON AMOVENDIS.** A writ directed to the sheriffs of London, &c., to charge them, that one condemned by judgment in an action, and prosecuting a writ of error, be not suffered to remove his goods until the cause of error be tried.—Reg. Orig. 4o. 131.

**BOOK-LAND.** See Book-land.

**BOOK OF RATES.** A small book declaring the value of goods that pay poundage, and the duties of customs, &c.—1 Bl. 317.

**BOOTING OR BOTING CORN.** Certain rent-corn anciently so called. The tenants in the manor of H. in Com. B. heretofore paid the booting corn to the prior of Rochester.—Cowel.

**BOON DAYS OR DUE DAYS.** A certain number of days in the year in which the tenants of copyhold lords performed base or corporal services for their lord, as ploughing, reaping, &c.—Scriven on Cop., 2, 413, as cited in Wishaw.

**BORDAGIUM.** The tenure of Bordlands; it was a sort of tenure which subjected a man to the meanest services; not being able even to sell his house without leave of the lord.—Cowel.

**BORD-HALFPENNY** (Sax. bord and halfpenny). Money paid to the lord of the town in fairs and markets, for the liberty of setting up tables, boards, and stalls, for sale of wares.—Cowel.

**BORDLANDS.** The lands which lords kept in their own hands for the maintenance of their board or table.—Cowel.

**BORDLODE.** The quantity of food or provision which the bordarii or bord-men payed for their bordlands. It was also a service required of the tenant to carry timber out of the woods of the lord to his house.—Cowel.

**BORD-SERVICE.** A tenure of bordlands; by which some lands in the manor of Fulham, in the county of Middlesex, and elsewhere, are held of the bishop of London.—Cowel.

**BORG-BRIGCH, OR BURGH-BRYCH.** The breach or violation of suretiship, or pledge, or mutual fidelity.
BOROUGH (Lat. burgus, Fr. burg). Borough, or burgh, signifies an ancient corporate town that sends members to parliament, and at the same time is not a city. Skene says that burg or burgh, whence we take our borough, metaphorically signifies a town having a wall or some kind of enclosure. All places that in old time had amongst our ancestors the name of borough, were one way or other fenced or fortified.—1 Bl. 115.

BOROUGH-HOLDER, or borsholders, or burse-holders. — See tit. Headborough.

BOROUGH-ENGLISH (Sax. borhoes englise). The custom which prevails in certain ancient boroughs and copyhold manors, of lands descending to the youngest son instead of to the eldest. The reason of this custom seems to be, that in these boroughs people chiefly maintain and support themselves by trade and industry; and the elder children, being provided for out of their father's goods, and introduced into his trade in his lifetime, were able to subsist of themselves without any land provision, and therefore the lands descend to the youngest son, he being in most danger of being left destitute. It is called borough English, because, as some hold, it first prevailed in England.—1 Bl. 75.

BOROUGH-HEAD. See tit. Headborough.

BORSHOLDERS. See tit. Headborough.

BOSCAGE (boscagium). It means that food which wood and trees yield to cattle; from the Ital. bosco, sylva. To be quite de boscagio, means, says Manwood, to be discharged from paying any duty of wind-fall-wood in the forest.—Manwood.

BOSCUS. An ancient word used in the law of England to signify all manner of wood.—Blount.

BOET. Compensation, recompense, satisfaction, or amends. Thence comes manbote, that is, compensation or amends for a man slain.—2 Bl. 35.

BOTELESS. In the charter of Hen. 1. to Thomas archbishop of York, it is said, that no judgment, or sum of money shall acquit him that commits sacrilege; but he is in English called boteless, i.e. without emendation.—Cowell.

BOTHAGIUM. Boothage or customary dues paid to the lord of the manor or soil, for the pitching and standing of booths in a market or fair.—Cowell.

BOTTOMRY. Is in the nature of a mortgage of a ship, when the owner takes up money to enable him to carry on his voyage, and pledges the keel or bottom of the ship (partem pro toto), as a security for the repayment. In which case it is understood, that if the ship be lost, the lender loses also his whole money; but, if it return in safety, then he shall receive back his principal, and also the premium or interest agreed
upon, however it may exceed the legal rate of interest. And this is allowed to be a valid contract in all trading nations, for the benefit of commerce, and by reason of the extraordinary hazard run by the lender, and in this case, the ship and tackle, if brought home, are answerable (as well as the person of the borrower) for money lent.—Park on Insurance.

Bouche of Court, or as it is commonly called budge of court, was a certain allowance of provision from the king to his knights and servants that attended him in any military expedition. The French avoir bouche a la court, means to have an allowance at court of meat and drink; but sometimes it is only extended to bread, beer, and wine, and this was acently in use, as well in the houses of nobleman as in the king's court.—Cowel.

Bound Bailiffs. Sheriff's officers, who serve writs, make arrests, &c. The sheriff being answerable for the misdeemors of these bailiffs, they are therefore usually bound in an obligation with sureties for the due execution of their office, and are thence called bound bailiffs.—1 Bl. 345, 346.

Bow-bearer. An under officer of the forest, whose duty it is to oversee and make inquisition in every bailiwick of the forest of all manner of trespasses committed either against vert or venison; and to attach or cause such trespassers to be attached in the next court of attachment, there to be presented.—Cromp. Jurisd. fol. 201; Cowel.

Breach. The breaking or violating of any thing, either by commission or omission; thus breach of close is the unlawful entry on another person's soil or land, or close; breach of covenant is the non-performance of any covenant agreed to be performed, or the doing of any act covenanted not to be done; breach of duty, the breaking or violating any duty; breach of peace; the breaking or disturbing of public peace; breach of pound, the breaking any pound or place where cattle or goods are deposited; breach of promise, the breaking or non-performance of one's promise.

Brecc (from the Fr. breche). A breach or decay, or any other want of repair.—Cowel.

Brede, signifies broad. Bracton uses this word thus, too large and too brede, i.e. too long and too broad. It is also a Saxon word, signifying deceit.—Bracton.

Bredwite (Sax. bread and wite). The imposition of a fine or penalty or aperciment, for default in the assize of bread.—Cunningham.

Brehon. The judges and lawyers in Ireland were formerly called brehons; and thence the Irish law was called brehon law.—1 Bl. 100.

Brenagium. The payment in bran, which tenants formerly made to feed the lord's hounds.—Cowel.

Bretoyse or Bretoise. Britains or Welshmen. Legem de Breytoyse is supposed to signify
legem Marchiarum, or the law of the Britains or Welshmen.—Blount.

Breve. Any writ or precept from the king was called Breve, which we still retain in the name of Brief; the king’s letters patent to poor sufferers for collection.—Cowel.

Breve perquirere. To purchase a writ or license of trial in the king’s court by the plaintiff, qui breve perquisuit. Hence the usage of paying ten shillings where the debt was 100l and so upwards, in suits of money due upon bond.—Blount.

Breve de Recto. A writ of right, or license for a person ejected to sue for the possession of an estate detained from him.—Cowel.

Brevia testata. Sort of deeds or memorandums made use of by our feudal ancestors, after verbal grants had given rise to disputes and uncertainties.—2 Bl. 307.

Brevibus et rotulis liberandis. A writ or mandate to a sheriff, to deliver unto the new sheriff, chosen in his room, the county, with the appurtenances, una cum rotulis brevibus, and other things belonging to that office.—Reg. Orig. fol. 295, a.

Bribery. The crime of offering any undue reward or remuneration to any public officer of the crown with a view to influence his behaviour. The taking such reward is as much bribery as the offering it. It also sometimes signifies the taking or giving a reward for public offence. The offence is not confined as some have supposed to judicial officers.—4 Bl. 140, and Chitty’s note thereon.

Bribour or Bribor (from the Fr. bribeur). Seems, in its legal significance, to mean a man who pilfers other men’s goods, as clothes out of a window or the like.—Stat. Ed. 2, cap. 1.

Brief (brevis). An abridgment of a plaintiff’s or a defendant’s case written out for the instruction of council on a trial at law. When a plaintiff in an action has made up his mind to try it, he must prepare his briefs and evidence. The brief contains a statement of the proceedings in the action (called the pleadings), a brief history of the cause of the action, and the evidence that he has to support it; and this is delivered to the counsel whom the party intends to employ.—Smith’s Action at Law, 73.

Brief a L’Evesque. The name of a writ directed to a bishop which in quare impedit shall go to remove an incumbent, unless he recover or be presented pendente lite.—1 Kebr. 386; Tomlins.

Brigbote or Brugbote (from brig a bridge, and bote a compensation or amends). To be freed from the reparation of bridges.—Cowel.

Buggery or Sodomy (from the Italian bugarone). A carnal copulation against nature; and this
of the species, as a man or woman with any animal; or of sexes, as a man with a man, or a man unnaturally with a woman. This infamous crime is said to have been introduced into England by the Lombards.—3 Inst. 58.

Burgage Tenure. Tenure in burgage is described by Glanvil, and is expressly laid down by Littleton, to be but tenure in socage: and it is where the king or other person is lord of an ancient borough, in which the tenements are held by a rent certain. It is, indeed, only a kind of town socage; as common socage, by which other lands are holden, is usually of a rural nature. A borough is usually distinguished from other towns, by the right of sending members to parliament; and where the right of election is by burgage tenure, that alone is a proof of the antiquity of the borough. It is therefore a tenure proper to boroughs, whereby the inhabitants by ancient custom hold their lands or tenements of the king, or other lord of the borough, at a certain yearly rent.—2 Bl. 82.


Burg-Bote (from burg, i.e. castellum, and bote, i.e. compensatio). A tribute or contribution towards the building or repairing of castles or walls of defence; or towards the building of a borough or city.—Cowel.

Burgesses (burgarii). Properly the inhabitants or persons in trade within a borough; but now those are usually called burgesses who serve in parliament for any such borough or corporation.—1 Bl. 174.

Burgh-breche (fidejussionis violatio, i.e. a breach of pledge). A fine imposed on the community of a town for a breach of the peace. —Leg. Canute, cap. 55.

Burgheristhe or Burgberiche, as used in Domesday, signifies a breach of the peace in a city. —Cowel.

Burglary (burgi latrocinium). The breaking and entering into a house or dwelling of another in the night, with the intention of committing a felony.—4 Bl. 223.

Burghmote. The court of a borough.—Cowel.

Burghwarl. A burgess or citizen.—Cowel.

Bursholders. See tit. Headborough.

By-Laws. Private laws or statutes made for the government of any corporation, which are binding upon themselves, unless contrary to the laws of the land, and then they are void. The laws which regulate the internal government of our universities are by-laws.—1 Bl. 475.

Byrlaws or Birlaws. According to Skent leges rusticorum, laws made by husbandmen or townships concerning neighbour- hood amongst themselves.—Cowel.
C.

CABLISH (cabricium). According to the writers on the forest laws signifies brushwood.—Cowel.

CÆP GILDUM. The restoring of goods or cattle.—Cowel.

CÆLANGIUM and CÆLANGIA. Challenge, claim, or dispute.—Blount.

CÆLEFAGIUM. A right to take fuel yearly.—Cowel.

CALENDAR OF PRISONERS. A list of all the prisoners' names with their several judgments in the margin, in the custody of each respective sheriff.—4 Bl. 403.

CALLING THE PLAINTIFF. It is usual for a plaintiff, when he or his counsel perceives that he has not given evidence sufficient to maintain his issue, to be voluntarily nonsuited, or to withdraw himself; whereupon the crier is ordered to call the plaintiff; and if neither he, nor any body for him appears, he is nonsuited, the jurors are discharged, the action is at an end, and the defendant shall recover his costs.—3 Bl. 376.

CAMERA (from the old German cam, cammer, crooked). It formerly signified any winding or crooked piece of ground; but afterwards the word was used for any vaulted or arched building; and in Latin law proceedings for judges' chambers.—Cowel.

CAMPUS MAII or MARTII. An assembly held every year upon May day, where the members confederated together to defend the kingdom against enemies.—Blount.

CANFARA. A trial by hot iron, formerly used in this kingdom.—Cowel.

CANON. A law, rule, or ordinance.

CANON LAW. It consists partly of certain rules taken out of the scripture; partly of the writings of the ancient fathers of our church; partly of the ordinances of the general and provincial councils; and partly of the decrees of the popes in former ages.—Cunningham.

CANONS OF INHERITANCE. The legal rules by which inheritances are regulated.—2 Bl. 208.

CANTRED or CANTREF (from cant, i.e. a hundred, and tret, a town or village). A hundred villages. In Wales the counties are divided into cantreds, as in England into hundreds.—Cowel.

CAPACITY. The ability which a man or body politic has to give or take lands or other things, or to bring actions.—2 Bl. 290.

CAPE. A judicial writ concerning lands or tenements. It is divided into cape magnum, and cape...
parvum; the former or grand cape lies before appearance, and cape parvum afterwards.—Blount.

CAPE AD VALENTIAM. A species of cape magnum, and lies when I am impledged of certain lands and I vouch to warrant another against whom a summons ad warrantizandum has been awarded and he comes not at the day given; then, if the demandant recover against me, I shall have this writ against the vouchee, and shall recover so much in value of the land of the vouchee if he has so much; and, if he has not so much, then I shall have execution of such lands and tenements as descend to him in fee simple; or, if he purchase afterwards I shall have against him a re-summons; and if he can say nothing, I shall recover the value. This writ lies before appearance.—Cowel.

CAPIAS. By the 2 William 4, c. 39, called the Uniformity of Process Act, it was enacted that in the commencement of all personal actions where the plaintiff intended to arrest the defendant and hold him to bail, it should be done by a writ of capias. This is a writ directed to the sheriff of the county wherein the defendant resides, commanding him to take the defendant, and safely keep him until he shall have given bail, or made a deposit of the amount for which he was arrested, together with such further charges as the law prescribes, &c. The writ of capias however is now no longer used for commencing an action; for by the 1 & 2 Vict. cap. 110, being the act for abolishing arrest for debt, it is enacted (sec. 2) that all personal actions in her Majesty’s superior courts of law at Westminster shall be commenced by writ of summons. This act, after reciting that the present power of arrest is unnecessarily extensive and severe, enacts that the plaintiff previously to arresting the defendant upon a writ of capias shall show to the satisfaction of one of the judges that he has good cause for making such an arrest, as by showing that unless he is immediately apprehended he will quit the kingdom, &c.; a writ of capias therefore is now only resorted to after the action has been actually commenced by a writ of summons.

CAPIAS AD RESPONDENDUM. A writ formerly in use, where an original was sued out, &c. to take the defendant and make him answer the plaintiff.—3 Bl. 281.

CAPIAS AD AUDIENDUM JUDICIVM. In case a defendant be found guilty of a misdemeanour (the trial of which may, and usually does happen in his absence) a writ, so called, is awarded and issued, to bring him to receive his judgment.—4 Bl. 375.

CAPIAS AD SATISfacIENDUM, (in practice frequently called shortly a Ca. Sa.). A writ of execution which a plaintiff takes out after having recovered judgment against the defendant; it is directed to the sheriff and commands him to take the defendant and safely keep him in order that he may have his body at Westminster on a day
mentioned in the writ to make the plaintiff satisfaction for his demand. —3 Bl. 415.

**Capias pro Fine.** Formerly when judgment was given for a plaintiff in an action it was considered that the defendant should be either amerced for his wilful delay of justice in not immediately obeying the king’s writ by rendering to the plaintiff his due, or be taken up, capiatur, till he paid a fine to the king for the public misdemeanour which was considered to be coupled with the private injury in such a case.—3 Bl. 398.

**Capias utlagatum.** A writ that is used for the purpose of arresting a man who has been outlawed; it is directed to the sheriff and commands him to apprehend the person outlawed for not appearing, and to keep him in safe custody until the day mentioned in the writ, in order that he may be presented before the court to be dealt with for his contempt.—3 Bl. 284.

**Capias in withernam.** A writ which lies where a distress taken is driven out of the county, so that the sheriff cannot make delivery in replevin, commanding the sheriff to take as many beasts of the distrainer, &c.—Tomlins.

**Capiatur.** See Capias pro Fine.

**Capita** (distribution per). In the distribution of the personal estate of a person dying intestate the claimants, or the persons who by law are entitled to such personal estate, are said to take per capita when they claim in their own rights as in equal degree of kindred, in contradistinction to claiming by right of representation, or per stirpes, as it is termed. As if the next of kin be the intestate’s three brothers A, B and C; here his effects are divided into three equal portions and distributed per capita, one to each: but if A (one of these brothers) had been dead and had left three children, and B (another of these brothers) had been dead, and had left two; then the distribution would have been by representation or per stirpes, as it is termed, and one third of the property would have gone to A’s three children, another third to B’s two children, and the remaining third to C, the surviving brother. 2 Bl. 517.

**Capita (succession per).** When the claimants are the next in degree to the ancestor in their own right and not by right of representation. And see the last title.—2 Bl. 218.

**Capitale.** A thing which is stolen, or the value of it.

**Capite** (from caput a head or king; unde tenere in capite, est tenere de rege, omnium terrarum capite). All tenures were either derived, or supposed to be derived from the king as lord paramount; such as were held immediately under him in right of his crown and dignity were called his tenants in capite, or in chief; and the tenure by which they held was called tenure in capite.—2 Bl. 59, 60.
CAPITILITIUM. Poll money. —Blount.

CAPITULA RURALIA, Clerical assemblies or chapters held by the rural dean and parochial clergy within the precinct of every distinct deanery; at first every three weeks, then once a month, and more solemnly once a quarter. —Paroch. Antiq. 640; Cowel.

CAPTION (captio). When a commission is executed, and the commissioners' names subscribed to a certificate, declaring when and where it was executed, this is called the caption. The act of arresting a man is also termed a caption. —Cunningham.

CAPTURE (captura). An arrest, or seizure; but is applied more particularly to prizes taken by privateers in time of war, which are divided between the captors. —Ibid.

CAPUTAGIUM. Some define it to be head or poll money, or the payment of it; others say it is the same as chevagium. —Cowel.

CAPUT BARONLÆ. The castle or chief seat of a nobleman, which, if there be no son, must not be divided amongst the daughters as in the case of lands, but descends to the eldest daughter. —Cowel.

CAPUT JEJUNII. Used in our records for Ash Wednesday, being the head, beginning, or first day of the Lent fast. —Paroch. Antiq. 132; Cowel.

CAPUT LUPINUM. Formerly an outlawed felon was said to have caput lupinum, (the head of a wolf,) and might, like that animal, be knocked on the head by any one who might meet him. —Cowel.

CARCAN. By some defined to be a pillory. —Cowel.

CARCUO. An immunity or privilege. —Cowel.

CART-BOTE. Wood employed in the making and repairing implements of husbandry. —2 Bl. 35.

CARUCAGE (carucagium). A tax or tribute formerly imposed on every plough for the public service. —Cowel.

CARUCATARIUS. He who held land in caravage, in socage, or plough tenure. —Ibid.

CARUCATA OR CARVE OF LAND (carucata terræ). A ploughland. It was a certain quantity of land (by some said to be 100 acres) by which the king's subjects have been sometimes taxed; whence the tribute levied upon a carve of land was called carucagium. —Bracton.

CASE, ACTION UPON. See the outline of an action at law at the end of this Dictionary.

CASHLITE. A Saxon word signifying a mulct. —Cowel.
Castellain (castellanus). The owner or proprietor of a castle; also the constable of a fortress.—Bract.; Cowel.

Castellarium, Castellarium. The jurisdiction of a castle.—Ibid.

Castellorum Operatio. Service, labour, or tribute, required by lords of their inferior tenants for the building or repairing of their castles.—Ibid.

Castigatory for Scolds. If a woman is indicted and convicted for being a common scold she shall be sentenced to be placed in a certain engine of correction called the trebucket, castigatory, or cucking stool, which, in the Saxon language, signifies scolding stool, though now corrupted into ducking stool, because the judgment is, that when she is placed thereon she shall be plunged in the water for her punishment.—4 Bl. 168.

Castle Guard Rents. The same as Castle-ward, which see next tit.

Castle-Ward (castlegardum vel wardum castri). Was an imposition laid upon those persons who lived within a certain distance of any castle towards the support and maintenance of such as watch and ward the castle.—Cowel.

Castration (mayhem by). An offence which defines itself, and which, by our old writers, was held to be felony.—4 Bl. 206.

Casu consimili. A writ of entry granted where a tenant by the curtesy or tenant for life aliens in fee or in tail, or for another's life; and is brought by the person entitled to the reversion against the party to whom such tenant has so aliened to his prejudice. It derives its name from the circumstance of the clerks in Chancery having by common consent framed it after the likeness of a writ termed casu proviso, in pursuance of the authority given them by statute, and which also empowers them to frame new forms of writs (as much like the former as possible) whenever any new case arises in Chancery resembling a previous one, yet not adapted to any of the writs then in existence.—Les Termes de la Ley.

Casu proviso. See Entry in casu proviso.

Casual Ejector. Formerly, in the action of ejectment to try the right to certain lands, there was a person supposed casually or by accident to come upon the land and turn out the lawful possessor, and this person was thence called the casual ejector. See also tit. Ejectment.

Casus omissus. Signifies that some particular thing is omitted, or not provided for by statute, &c.

Catallis captis nomine
DISTRICTIOinis. A writ that lay against a house within a borough, for the rent of the same, and authorises a man to take the doors, windows, or gates by way of distress for the rent.—Old Nat. Brev. 66.; Cowel.

CataLLis reddendis. A sort of writ of detinue which lay against a man for detaining goods which were delivered to him to keep until a certain day, and he does not deliver them after demand made for them when such day arrives.—Reg. Orig.; Cowel.


Catch-lands. Lands in Norfolk apparently belonging to no parish, so that the minister who first seizes the tithe, does, by that right of pre-occupation, enjoy it for that year.—Cowel.

Causa Matrimonii præ-locuti. A writ that formerly lay where a woman had given lands to a man in fee simple with the intent that he should marry her, and he refused to do so within a reasonable time after having been required to do so by the woman. —3 B.l. 183; Reg. Orig. 233.

Causam nobis signifícis. A writ which formerly lay to a mayor of a town or city, who, after having been commanded by the king’s writ to give seisin unto the king’s grantee of any lands or tenements, had delayed to do so, commanding him to show cause why he so delayed the performance of his charge.—Cowel.

Cautione admittenda. A writ which lies against a bishop for holding an excommunicated person in prison for his contempt, notwithstanding his having offered sufficient pledges to obey the orders of the holy church for the future.—Cowel.

Caveat. A process used in the spiritual court to prevent the proving of a will, or the granting of administration, or the institution of a parson. When a caveat is entered against proving a will, or granting administration, a suit usually follows to determine either the validity of the testament, or who has a right to administer; this claim or obstruction by the adverse party is an injury to the party entitled, and as such is remedied by the sentence of the spiritual court, either by establishing the will or granting the administration.—3 B.l. 98, 246.

Cavers. The miners in Derbyshire who are given to pilfering and stealing and such like crimes are so termed.—Cunningham.

Cayagium. A duty or toll paid to the king for landing goods at some quay or wharf.—Cowel.

Cenegild. A mulct or fine paid by one who kills another to the relatives of the deceased by way of expiation.—Spelman.

Cenninga. Notice given by a buyer to a seller that the thing sold was claimed by another, in
order that he might appear to justify the sale.—Cowen.

Censuales. Those persons who to procure the protection of the church bound themselves to pay an annual tax or quit rent out of their estates to a church or monas-
tery. A species of the oblati.—Rob. Cha. 5; Tomlins.

Censor Mortuus. A dead rent; the same as what we call mortmain.—Cowen.

Censure (Lat. census). Is a custom which prevails in divers manors in Cornwall and Devon, of calling all residents therein above the age of sixteen years to swear fealty to the lord, to pay 11d. per poll, and 1d. per an. ever after as cert-money or common fine, and these thus sworn were called censors.—Survey of the Duchy of Cornwall; Cunningham.

Cenetarii. Officers, petty judges, or bailiffs, who exercised their jurisdiction over ten tithings or a hundred.—1 Bl. 115, 116.

Cepi Corpus. When a writ of capias is directed to the sheriff to execute, he is commanded to return it within a certain time together with the manner in which he has executed it; if the sheriff has taken the defendant and has him in custody, he returns the writ together with an indorsement on the back, stating that he has taken him, which is technically called a return of cepi corpus.—3 Bl. 283.

Certificando de Recognitione Stapule. A writ formerly in use directed to the mayor of the staple, commanding him to certify to the Lord Chancellor a statute staple taken before him in a case where the party himself detained it, and refused to bring it in.—Reg. Orig. 152; Cowen.

Certification of Assise of Novelle Disseisin (certificatio assise novae disseisinae). A writ which was formerly in use, and was granted for the re-examination or review of a matter passed by assise before any justices. It was directed to the sheriff, and called both the party for whom the assise passed, and the jury that was impaneled upon the same before the said justices at a certain day and place.—Bract. lib. 4, c. 19; Horne's Mirror of Just. lib. 3; Cowen.

Certiorari. An original writ, issuing sometimes out of the Court of King's Bench, and sometimes out of Chancery. It is usually resorted to shortly before the trial, to certify and remove any matter or cause with all the proceedings thereon from some inferior court into the Court of King's Bench, when it is surmised that a partial or insufficient trial will probably be had in the court below.—Vin. Abridgment, v. 4, p. 329; Bl. v. 4, p. 320.

Cert-Money. Head money, or a common fine paid annually by the resiants of several manors to the lords thereof, pro certo leae, for the certain keeping of the leet; and sometimes to the hundred, as is the case with the manor of Hook, in Dorsetshire, which pays cert-
money to the hundred of Egerton. In ancient records this is called certum letae.—Cowell.

CERVISARIUS. Certain tenants were so called among the Saxons who were liable to the payment of a duty called drinclean; it is said they were so called from cervisia, ale, that being their chief drink.—Cowell.

CESSAT EXECUTIO. The suspending or stopping of execution. If in an action of trespass against two persons judgment be given against one, and the plaintiff takes out execution against him, the writ will abate as to the other, because there must be a cessat executio until it is tried against the other defendant.—Tomlins.

CESSAVIT. A writ that formerly lay in various cases. It was generally sued out against a person for having neglected for two years performing such service or paying such rent as he was bound to by his tenure, and at the same time had not upon his premises sufficient goods or cattle to be distrained.—Cowell. It also lay where a religious house had lands given it on condition of performing some certain spiritual service, as reading prayers, giving alms, and neglected it; and in either of the above cases if the cesser or neglect had continued for two years, the lord or donor and his heirs had a writ of cessavit to recover the land itself, eo quod tenens in faciendis servititis per biennium jam cessavit.—3 Bl. 231.

Cesse. In 22 Hen. 8, cap. 3, it seems to signify an assessment or tax.—Cunningham.

CESSER. See Cessure.

CESSIO BONORUM. The yielding up or ceding of goods or property. The law of cession introduced by the Christian emperors, provided that if a debtor ceded or yielded up all his fortune to his creditors he should be secured from being dragged to a goal, "omni quoque corporali cruciati semoto."—2 Bl. 473.

CESSION. Ceding or yielding up. By stat. 21 Hen. 8, c. 13, if any one having a benefice of 8l. per annum or upwards according to the then present valuation in the king's books, accepts any other, the first shall be adjudged void unless he obtains a dispensation, which no one is entitled to have but the chaplains of the king and others therein mentioned, the brethren and sons of lords and knights, and doctors and bachelors of divinity and law admitted by the universities of this realm; and a vacancy thus made, for want of a dispensation, is called cession.—1 Bl. 392.


CESSOR. He who neglects or ceases so long to perform a duty that he thereby incurs the danger of the law.—Old. Nat. Brev.; Cowel.

CESSURE or CESSER. The act of ceasing, giving over, finishing, or departing from, &c.
CESTUI QUE TRUST. He for whose use or benefit another is invested or seised of lands or tenements; or in other words, he who is the real, substantial, and beneficial owner of lands which are held in trust.—See 1 Cruise Dig. 411; Tay Law. Gloss.

CESTUI QUE USE. Uses before the stat. 27 Hen. 8 were of the same nature as trusts are now; and the cestui que use was then what the cestui que trust is now, as if a feoffment were made to A. and his heirs to the use of (or in trust for) B. and his heirs; here, at the common law, A. had the legal property and possession of the land; but B., who is the cestui que use, was in conscience and equity to have the profits and disposal of it.—2 Bl. 328, and see title Cestui que Trust.

CESTUI QUE VIE. He for whose life lands or tenements are granted. Thus, if A. grants lands to B. during the life of C., here C. is termed the cestui que vie.—2 Bl. 123.

CHACEA. The road or way through which cattle are driven to pasture, in some places called a droveway. It is also sometimes used for a chase or station of game more extended than a park, and yet less than a forest. It also sometimes means the liberty of chasing or hunting within such district.—Cartular. Abbat. Glaston. MS. fol. 70; Cowel.

CHAFERWAX. An officer in Chancery, who fits the wax for the seal-

ing of writs and other instruments. —Cowel.

CHALKING. An impost so called. It is thus used. The merchants of the staple require to be eased of divers new impositions, as chalking, ironage, wharfage, &c. Rot. Parl. 50 Ed. 3; Cowel.

CHALLENGE (Fr. chalenger). An exception taken either against persons or things. Persons, as jurors, either one or more of them; things, as a declaration, &c. There are two kinds of challenge; either to the array, by which is meant the whole jury as it stands arrayed in the panel, or little square pane of parchment on which the jurors names are written; or to the polls, by which are meant the several particular persons or heads in the array.—Tomlins. A challenge to the array is at once an exception to the whole panel, in which the jury are arrayed; and it may be made upon account of partiality, or some default in the sheriff or his under-officer, who arrayed the panel; as where the panel was arrayed at the nomination or under the direction of either the plaintiff or defendant in the cause, &c. this would be good ground for a challenge to the array. Challenges to the polls are exceptions to particular jurors; and seem to answer the recusatio judicii in the civil and canon laws. Challenges to the polls of the jury (who are judges of fact) are by Sir Edward Coke reduced to four heads: viz. propter honoris respectum; propter defectum; propter affectum; and propter delictum.—For further in-
formation on this head, see 3 Bl. 359 to 363.

CHAMBERLAIN (Camerarius). A high officer of state. Various great officers are so called; as the Lord Great Chamberlain of England, Lord Chamberlain of the Household, Chamberlain of the Exchequer, &c. To the Lord Chamberlain the keys of Westminster Hall, and the Court of Requests are delivered upon all solemn occasions. He disposes of the sword of state, to be carried before the king when he comes to the parliament, and goes on the right hand of the sword, next to the king’s person. He has the care of providing all things in the House of Lords in the time of parliament. To him belongs livery and lodgings in the king’s court, &c. and the gentleman usher of the black rod, yeoman usher, &c. are under his authority. He has the oversight and government of artificers retained in the king’s service, messengers, comedians, revels, music, &c. The serjeants at arms are likewise under his inspection, and the king’s chaplains, physicians, surgeons, barbers, &c. And he hath under him a vice-chamberlain, both being always privy councillors. There were formerly chamberlains of the kings courts, 7 Ed. 6, 1, Chamberlain of the Exchequer, 51 H. 3, stat. 5; Chamberlain of North Wales, Chamberlain of Chester, Chamberlain of London. This officer is commonly the receiver of all rents and revenues belonging to that city whereeto he is chamberlain. There are two officers of this name in the king’s exchequer, who were wont to keep a controlment of the pells of receipt, and exits, and certain keys of the treasury and records: they kept also the keys of that treasury where the leagues of the king’s predecessors and divers ancient books, as Domesday, Black Book of the Exchequer, remain. There is mention of this officer in the statute 34 & 35 H. 8, cap. 16. There are also under chamberlains of the exchequer.—Cunningham.

CHAMBERS OF THE KING (Regie camerae). The ports and harbours of our kingdom were formerly so called.—Cowel.

CHAMPION. He who, in the trial by battle, fought either for the tenant or demandant.—3 Bl. 339. Those were also called champions who fought personally their own cause.—Bract.

CHAMPION OF THE KING (campio regis). An officer whose office it was at the coronation of our kings to ride into Westminster Hall armed cap-a-pie, when the king was at dinner there, and throw down his gauntlet by way of challenge, pro-
nounced by a herald, that if any man shall deny or gainsay the king's title to the crown, he is there ready to defend it in single combat, &c. which being done, the king drinks to him, and sends him a gift cup, with a cover, full of wine, which the champion drinks, and has the cup for his fee. —Cowen.

**CHANCELLOR (Cancellarius).** There are many officers bearing this title; those however which it will be necessary to mention here, are, 1st. The Lord Chancellor; 2d, the Chancellor of the Duchy of Lancaster; 3d, the Chancellor of a diocese; 4th, the Chancellor of the Exchequer. The Lord Chancellor is the presiding judge in the Court of Chancery; he is created by the mere delivery of the king's great seal into his custody, whereby he becomes, without writ or patent, an officer of the greatest weight and power of any now subsisting in the kingdom, and superior in point of precedence to every temporal lord. He is a privy councillor by his office, and prolocutor of the House of Lords by prescription. To him belongs the appointment of all justices of the peace throughout the kingdom. Being formerly usually an ecclesiastic (for none else were then capable of an office so conversant in writings) and presiding over the royal chapel, he became keeper of the king's conscience, visitor in right of the king of all hospitals and colleges of the king's foundation, and patron of all the king's livings under the value of twenty marks per annum in the king's books. He is the general guardian of all infants, idiots, and lunatics; and has the general superintendence of all charitable uses in the kingdom. And all this over and above the vast and extensive jurisdiction which he exercises in his judicial capacity in the Court of Chancery. The Chancellor of the Duchy of Lancaster is the chief judge of the duchy court, who in difficult points of law is usually assisted by two judges of the common law to decide the matter in question. This court is held in Westminster Hall, and was formerly much used in relation to suits between tenants of duchy lands, and against accountants and others for the rents and profits of the said lands.—Cunningham. The Chancellor of a Diocese or of a Bishop, is an officer appointed to hold the bishop's courts for him, and to assist him in matters of ecclesiastical law; who, as well as all other ecclesiastical officers, if lay or married, must be a doctor of the civil law, so created in some university.—1 Bl. 382. The Chancellor of the Exchequer is also a high officer of the crown, who sometimes sits in court and in the exchequer chamber; and together with the regular judges of the court, sees that things are conducted to the king's benefit. His principal duties, however, are not of a judicial character, but concern the management of the royal revenue, he commonly being first commissioner of the treasury.—3 Bl. 44.

**CHANCE-MEDLEY.** The accidentally killing a man in self-defence is so termed; as if, in the course of a sudden broil or quar-
rel, I, in the endeavour to defend myself from the person who assaults me, accidentally kill him.—4 Bl. 184.

CHANCERY (Cancellaria). The High Court of Chancery is the highest court of judicature in this kingdom next to the parliament, and of a very ancient institution. The jurisdiction of this court is of two kinds—ordinary and extraordinary. The ordinary jurisdiction is that wherein the lord chancellor, lord keeper, &c., in his proceedings and judgments is bound to observe the order and method of the common law; and the extraordinary jurisdiction is that which this court exercises in cases of equity.

The Ordinary Court holds plea of recognizances acknowledged in the chancery, writs of scire facias for repeal of letters patent, writs of partition, &c., and also of all personal actions by or against any officer of the court; and by acts of parliament of several offences and causes. All original writs, commissions of bankrupt, of charitable uses, and other commissions, as idiots, lunacy, &c. issue out of this court, for which it is always open; and sometimes a supersedeas or writ of privilege hath been here granted, to discharge a person out of prison. An habeas corpus, prohibition, &c. may be had from this court in the vacation, and here a subpœna may be had to force witnesses to appear in other courts, where they have no power to call them.—4 Inst. 79; 1 Danv. Abr. 776.

The Extraordinary Court, or Court of Equity, proceeds by the rules of equity and conscience, and moderates the rigour of the common law, considering the intention rather than the words of the law. Equity being the correction of that wherein the law, by reason of its universality, is deficient. On this ground, therefore, to maintain a suit in chancery, it is always alleged that the plaintiff is incapable of obtaining relief at common law; and this must be without any fault of his own, as by having lost his bond, &c. chancery never acting against, but in assistance of the common law, supplying its deficiencies, not contradicting its rules.—Tomlins; 3 Bl. 47.

CHANGER. An officer belonging to the king’s mint, mentioned in the statute of 2 H. 6, c. 12, where it is also written after the old way, changour, whose business was chiefly to exchange coin for bullion, brought in by merchants or others.—Cowel.

CHAPELRY (capellaria). The same thing to a chapel as a parish is to a church, i.e. the precinct and limits of it.—Les Termes de la Ley; Cowel.

CHAPITERS or CHAPITRES (Lat. capitala, Fr. chapitres). In our ancient common law signify a summary of such matters as are to be inquired of or presented before justices in eyre, justices of assize or of peace, in their sessions. Britton, cap. 3, uses the word in this signification, and chapters are now most commonly called articles delivered by the mouth of the justice in his charge to the inquest;
whereas in ancient times (as appears by Bracton and Britton), they were, after an exhortation given by the justices for the good observation of the laws and the king's peace, first read in open court, and then delivered in writing to the grand inquest for their better observance.—Cowel.

CHAPMAN. A dealer, a person who gains his livelihood by buying and selling.

CHAPTER. An assembly of clerks in a church cathedral, and in another signification, a place wherein the members of that community treat of their common affairs. It may be said that this collegiate company is termed chapter metaphorically, the word originally implying a little head; for this company or corporation is, as a head, not only to rule and govern the diocese in the vacation of the bishoprick, but also in many things to advise the bishop when the see is full.—Les Termes de la Ley.

CHARGE and DISCHARGE. A charge is defined to be an act done, binding on the party who does it: and a discharge is the undoing or removal of such charge. Lands are said to be charged when they are incumbered with any debt, rent, &c., as when they are conveyed to a mortgagee as security for the repayment of money by him advanced to the mortgagor. A rent charge is where a man grants a rent to issue out of certain lands, and with a condition that if the rent be behind, it shall be law-

ful for the grantee, his heirs, and assigns, to distrain for the same.—Les Termes de la Ley.

CHARTA. This word not only signifies an instrument or deed in writing, containing the evidence of things done between man and man, but also any signal or token by which some estates are held.—See Magna Charta.

CHARTEL. When controversies in law used to be submitted to the decision of a trial by battel, a letter of challenge (called a chartel) used to be sent by one of the combatants to the other.—Cowel.

CHARTER (Fr. chartres). A written instrument containing the evidence of things done between man and man. This word bears the same meaning as the word charta. They have been divided by Britton into charters of the king, and charters of private persons; the former signifying those by which the king passes any grant to any person or persons, or body politic; the latter, simply deeds and instruments for the conveyance of lands from one party to another.—Bract. lib. 2, cap. 16; Kitchin, 114, 117; Cowel.

CHARTERER. A freeholder is so termed in Cheshire.—Pet. leg. Antiq. 356.

CHARTER OF THE FOREST. A charter containing the laws of the forest; as the charter of Canutus.—Fleta; Manwood; Cowel.

CHARTER OF PARDON. That
whereby a man is forgiven a felony, or other offence, committed against the king.—Cowel.

Charters-land. Land held by charter, or written evidence; as freehold land is at the present day. —2 Bl. 90.

Charters-party (Lat. charta partita, i.e. a deed or writing divided). An instrument commonly called among merchants and seafaring men a pair of indentures, and contains the covenants and agreements made between them concerning their merchandise and maritime affairs. Charter-parties of affreightment settle agreements as to the cargo of ships, and bind the masters to deliver the goods in good condition at the place of discharge, according to agreement.—2 Inst. 673; Cunningham.

Chartis reddendis. A writ which formerly lay against him who had charters of feoffment delivered him to be kept, and refused to deliver them up again. —Les Termes de la Ley.

Chase (Fr. chasser). This word has two significations in the common law. 1st, it signifies a driving of cattle to or from any place, as to chase a distress to a castle or fortlet. 2nd, it signifies a place for the reception of deer and wild beasts of the chase generally, as the buck, doe, fox, marten, and roe, &c. A chase is not the same as a forest, or a park, but is of a nature between the two, being commonly less than a forest, and not having so many liberties and privileges incident to it, and yet of larger extent than a park, and stored with a greater diversity of game, and having more keepers to superintend it. And it is said by Crompton in his Jurisdiction, 148, that a forest is no sooner in the hands of a subject than it loses its name, and at once becomes a chase: so that one of the essential differences between a forest and a chase, is that the former cannot be in the hands of a subject, and the latter may; and from a park, inasmuch as it is not inclosed, and has not only a larger compass and more game, but also a greater number of keepers and officers.—Manwood’s Forest Laws; 4 Inst. 314; 2 Bl. 38.

Chattels or Cattals (cattala). All things which are usually comprehended under the name of goods come under the general name of chattels. Chattels are divided into two kinds, real and personal. Chattels real are such as concern real estates, or landed property, and are so called because they are interests issuing out of such kind of property; as the next presentation to a church, terms for years, estates by statute merchant, statute staple, elegit, &c. Chattels personal are such as are moveable and may be carried about the person of the owner wherever he pleases to go; such as money, jewels, garments, animals, household furniture, and almost every description of property of a moveable nature.—2 Bl. 385, 386.

Chaud-medley. The killing of a man in an affray in the heat of blood, and while under the in-
fluence of passion; and is thus distinguished from chance-medley which is the killing a man in a casual affair in self defence.—4 Bl. 184.

CHAUMPERT. A species of tenure mentioned in 35 Ed. 3.

CHAUNTRY. A church or chapel endowed with lands or other yearly revenues, for the maintenance of one or more priests to sing mass daily for the souls of the donors, and such others as they appoint.—Les Termes de la Ley.

CHAUNTRY RENTS. Such rents as the tenants or purchasers of chauntry lands paid to the crown. —Cowel.

CHECK-ROLL. A book or roll wherein are written the names of those who are attendants and in pay to the king or other great personages.—Cowel.

CHERISANCE. An unlawful bargain or contract.—37 Hen. 8, c. 9, as cited in Wishaw.

CHEVAGE or CHERAGE. A sum of money paid by those who held their lands in villenage to their lord, as an acknowledgement of their dependence. It is also sometimes used for a sum of money given by one man to another of power and authority, for his maintenance and protection. —Les Termes de la Ley.

CHEVANTIA (Fr. chevarice). A loan or an advance of money upon credit.—Mon. Ang., tom. 1, p. 629; Cowel.

CHEVISANCE (from the Fr. chevir). An agreement or composition made between a debtor and a creditor. But in our statutes it is more frequently used for an unlawful bargain or contract.—Cowel.

CHIEF-RENTS (reditus capitales). Those of the freeholders of manors are frequently so called, and they are also sometimes denominated quit rents, quieti redditus; because thereby the tenant goes quit and free of all other services. —2 Bl. 42.

CHIEF, Teants in. All the land in the kingdom was supposed to be held mediately or immediately of the king, who was styled the lord paramount, or above all; and those that held immediately under him in right of his crown and dignity, were called his tenants in capite or in chief, which was the most honourable species of tenure, but at the same time subjected the tenant to greater and more burdensome services than inferior tenures did.—2 Bl. 59.

CHILDWIT. The custom of taking a fine or penalty of a bondwoman unlawfully begotten with child; some writers say that it is the fine itself and not the custom of taking it. Every reputed father of an illegitimate child begotten within the manor of Writtle in Essex pays to the lord for a fine 3s. 4d., and it seems in that part to extend as well to free as to bond-women.—Cowel.

CHIMIN (Fr. chemin). A way; which is of two kinds, the king's highway, and a private way.—Cowel; see tit. Way.
CHIMINAGE (from the Fr. chemin). A customary toll for having a road or way through a forest. Crompt. Jurisd.; Cowel.

CHIMNEY MONEY or HEARTH MONEY. A duty imposed by 14 Car. 2, c. 2, of 2s. upon every hearth in a house.—Cowel.

CHIPPINGAVEL or CHEAPINGAVEL. A toll for buying and selling.—Cowel.

CHIRGEMOTE, CHIRCHGEMOTE (forum ecclesiasticum). An ecclesiastical meeting, a synod, or a meeting in a church or vestry.—Cowel.

CHIROGRAPH (chirographum). An instrument of gift or conveyance attested by the subscription and crosses of the witnesses, and was in the Saxon times called Chirographum, which being somewhat changed in form and manner by the Normans, was by them styled charta. Anciently, when they made a Chirograph, or deed which required a counterpart, as we call it, they engrossed it twice upon one piece of parchment contrarywise, leaving a space between, in which they wrote in great letters the word Chirograph, and then cut the parchment in two, sometimes even, and sometimes with indenture through the middle of the word, concluding the deed with, In cujus rei testimonium utraque pars mutuo scriptis presenubis fide media sigillum suum fecit apponi. This was afterwards called dividenda, because the parchment was so divided or cut. And the first use of these Chiro-

graphs was in Henry the Third's time. Chirograph was also of old used for a fine. And the manner of engrossing the fines and cutting the parchment in two pieces, is still observed; whence the origin of the Chirographer's office.—Cowel.

CHIROGRAPHER OF FINES. Chirographus finium et concordiarum, (from the Greek χειρόγραφος, which is a compound of χεῖρ, a hand, and γράφω, I write). It signifies in the law the officer of the Common Pleas who engrosses fines in that court, acknowledged into a perpetual record; after they have been acknowledged and fully passed by those officers by whom they were previously examined.—Cowel.

CHIVALRY (servitium militare). This word comes from the French chevalier; and signifies that peculiar species of tenure by which lands were formerly held, called tenure by knight's service. It is of a martial and military nature, and obliges the tenant to perform some noble or military office unto his lord.—2 Bl. 62.

CHIVALRY, COURT OF. See tit. Court of Chivalry.

CHOP-CHURCH. A nick-name given to those who used to change benefices. It is sometimes written Church-chopper.—9 H. 6. cap. 65; Cowel.

CHOSE (Fr., a thing). This word is often used in combination with others, as chose local, meaning such a thing as is annexed to a place; thus a mill is a chose local.
Chose transitory, is a thing which is moveable and may be taken away and carried from one place to another. Chose in action is of an incorporeal nature; and does not signify the thing itself; but the right which a man has to demand the same by an action at law. Thus upon all contracts or promises, either express or implied, the law provides an action of some sort or other for the security of the party injured in case of non-performance of such contract or promise, to compel the wrong-doer to do justice to the party with whom he has so contracted; and on failure of performing the identical thing he engaged to do, to render a satisfaction equivalent to the damage sustained. But while the thing or its equivalent remains in suspense, and the injured party has only the right, and not the possession, it is called a chose in action; being a thing rather in potentia than in esse: although the owner may have as absolute a property in and be as well entitled to such things in action, as to things in possession.—9 Bl. 397.

Christianitatis Curia. See Court Christian.

Church. A place of worship, to be adjudged a church in law, must have administration of the sacraments and sepulture annexed to it, which formerly every man on St. Martin's day gave to the holy church.—Cowell; Flota.

Churle, ceorle, earl. Among the Anglo Saxons a tenant at will of free condition, who held land from the Thanes, on condition of rent, or services. They were of two sorts; one who hired the lord's outland or tenementary land, as our farmers do now; the other, who tilled and manured the inland or demesnes (yielding work and not rent), and were thence called his sockmen or ploughmen.—Spelman on Feuds; Cowel.

Cinque Ports (quinque portus). Five important havens, formerly esteemed the most important in the kingdom. They are Dover, Sandwich, Romney, Hastings, and Hythe; Winchelsea and Rye have since been added. They have similar franchises in many respects with the counties palatine, and particularly an exclusive jurisdiction (before the mayor and jurats of the ports), in which the king's ordinary writ does not run. These ports have a governor, called the Lord Warden of the Cinque Ports, who has the authority of an admiral amongst them, and sends out writs in his own name.—3 Bl. 79.

Circada. A tribute which was formerly paid to the bishop or archdeacon for visiting the churches.—Du Fresne; Cowel.

Circuits. In order that suitors may not be put to the inconvenience of coming from the most distant parts of the country to the courts in London, the kingdom is divided into six divisions, called circuits; each circuit embracing several counties, and into which the judges twice a year (viz. after Hilary and Easter Terms) go, for the purpose of hearing such causes as are ready for trial.
CIRCUITY OF ACTION (circuito actionis). An action that is rightfully brought for a thing, but yet a longer course of proceeding has been adopted for recovering it than was needful: as if a man grant a rent-charge of 10l. out of his manor of Dale, and afterwards the grantee disposses the grantor of the same manor, who brings an assize, and recovers the land with 20l. damages, which being paid, the grantee brings his action for 10l. of the rent due during the time of his disposses, which he must have had had no disposses taken place. This is called circuity of action, because as the grantor was to receive 20l. damages, and pay 10l. rent, he might have received only 10l. damages, and the grantee might have kept the other 10l. in his hands by way of retainer, for his rent, and thus have saved the expense and delay occasioned by bringing the action. —Les Termes de la Ley; Tomlins.

CIRCUMSPECTE AGATIS. The title of a statute made 13 Ed. 1, A.D. 1285, concerning prohibitions, prescribing some cases to the judges wherein the king’s prohibition did not lie.—Cowel.

CIRCUMSTANTIAL EVIDENCE. That evidence which may be afforded by particular circumstances. It is called circumstantial evidence in contradistinction to that species of evidence which is of a more positive and unequivocal nature. It is also called the doctrine of presumptions; because when the fact itself cannot be proved, it may be presumed, by the proof of such circumstances as either necessarily or usually attend such facts.—3 Bl. 371.

CIRCUMSTANTIIBUS, Tales de. Such as are present or standing by. This phrase is applied to the making up the number of persons on a jury, by taking some of the casual by-standers, who happen to be qualified for serving on a jury. This takes place when the jurors who are impanneled, from some cause or other, do not appear, or, if appearing, are challenged by either party, and so disqualified.—1 Arch. Pract. 419.

CITATIO AD INSTANTIAM PARTIS (22 & 23 Car. 2. for laying impositions on proceedings at law).—Cowel.

CITATION (citatio). The process used in the Ecclesiastical Courts to call the party injuring before them. It is the first step which is taken in an ecclesiastical cause, and is somewhat analogous to the writ of summons in the common law, or the subpoena in chancery.—3 Bl. 100.

CITY (civitas). A town corporate, which has usually a bishop and a cathedral church.—Cowel.

CIVIL LAW. In its general signification is the established law of every particular nation, commonwealth, or city; and is the same with that which is commonly called municipal law. In its particular signification, however, it usually means the Roman law, as comprised in the institutes, code, and digest of the emperor Justinian.—1 Bl.; Tomlins.
CIV

CLAIM OF LIBERTY. A petition or suit to the king in the Court of Exchequer, to have liberties and franchises confirmed there by his attorney-general. — Co. Lnt. 93; Tomlins.

CLAIMA ADMITTENDA IN ITINERE PER ATTORNATUM. A writ formerly in use whereby the king commanded the justices in eyre to admit a man's claim by attorney, who was employed in the king's services, and therefore could not come in his own person. — Reg. of Writs, fol. 19; Cowel.

CLARENDON, Constitutions of. In the reign of Henry the 2nd, A.D. 1164, Blackstone states that there are four things which peculiarly merit the attention of the legal antiquarian, one of which is the constitutions of the parliament at Clarendon, whereby the king checked the power of the pope and his clergy, and narrowed the exemption they claimed from the secular jurisdiction. — 4 Bl. 422.

CLASIARIUS. A seaman or soldier serving at sea. — Cowel.

CLAUSE ROLLS. Rolls preserved in the Tower, containing all such matters of record as were committed to close writs. — Cowel.

CLAUSUM PREGIT (he broke the close). Every unwarrantable entry on another's soil, the law entitles a trespass, by breaking his close. The words of the writ of trespass command the defendant to show cause quare clausum querentis fregit. — 3 Bl. 209.
Clausum Paschæ. Stat. of Westm. 1. Lendemain de la cluse de Pascha; i.e. in crastino clausi Paschæ, which is the morrow of the octas (or eight days) of Easter. —Cowel.

Claves Insulae. In the Isle of Man ambiguous and weighty cases are referred to twelve persons called claves insulae.—Cowel.

Clavia. An ancient species of tenure, per serjeantiam clavil, by the serjeantry of the club or mace. —Bray's Append. Introduct. to Eng. Hist. 22; Cowel.

Clawa. A close nook or small enclosure of land.—Cowel.

Clergy, Benefit of, or privilege of clergy, (privilegium clericale), formerly signified certain privileges which the clergy alone enjoyed. It had its original from the pious regard paid by Christian princes to the church in its infant state; and the ill use which the Popish ecclesiastics soon made of that pious regard. The exemptions which they granted to the church were principally of two kinds: 1. Exemption of places consecrated to religious duties, from criminal arrests; which was the foundation of sanctuaries; 2. Exemption of the persons of clergymen from criminal process before the secular judge in a few particular cases, which was the true original and meaning of the privilegium clericale, or benefit of clergy. In England, however, although the usurpations of the Pope were very many and grievous, till Henry the Eighth enti...
Clerico admitting. A writ of execution so called, directed to the bishop or archbishop, upon a person's being presented to a benefice recovered in a quare impedit, or assize of darren presentment, requiring him to admit and institute such person.—4 Bl. 365, 366, 371.

Clerico capto per Statutum Mercatorum, &c. A writ directed to the bishop for the delivery of a clerk out of prison, who was in custody upon the breach of a statute merchant.—Reg. Orig. 147; Cowel.

Clerico conviceto commisso gaolæ in defectu ordinarii deliverando. A writ formerly in use for the delivery of a clerk to his ordinary, who formerly was convicted of felony because his ordinary did not challenge him according to the privilege of clerks.—Reg. Orig. 69.

Clerico infra sacros divines constituto non eligendo in officium. A writ directed to the bailiffs who have thrust a bailiwick or beadleship upon one in holy orders, commanding them to release him again.—Reg. Orig. 143; Cowel.

Clerk (clericus). All clergy-men who have not taken the degree of doctor are in the law, and in all law proceedings, styled clerks. They are so called because in the earlier ages all the clerks in the inferior law offices were selected from the clergy.

Clerk of the Acts. An officer in the Navy Office, who receives and records all orders, contracts, bills, warrants, and other business transacted by the lord admiral and commissioners of the navy.—Cowell.

Clerk of the Affidavits. An officer whose duty it is to file all affidavits made use of in the Court of Chancery.—Cunningham.

Clerk of the Assise (clericus assisarum). A clerk whose duty it is to record all things judicially done by the justices of assise in their circuits;—Cromp. Jurisd. 227; Cunningham;—abolished by 7 Will. 4. and 1 Vict. cap. 30.

Clerk of the Bails. An officer of the Court of King's Bench, whose duty it was to file the bail-pieces taken in that court. This office was abolished by the 7 Will. 4. and 1 Vict. cap. 30.

Clerk of the Check. An officer of the king's court, who has the check or controlment of the yeomen belonging either to the king, queen, or prince; either giving them leave, or permitting their absence, or non-attendance, or diminishing their wages for the same. He has also the regulating of the nightly watch in court.—33 Hen. 8, cap. 12; Cunningham.
Clerk of the Deliveries. An officer in the Tower, whose duty it was to take indentures for stores, ammunition, &c. that were issued thence.—Cowel.

Clerk of the Enrolments. An officer of the Common Pleas who enrolled and exemplified fines and recoveries, and returned writs of entry, summons, and seisin, &c.

Clerk of the Errors. An officer of the Court of Common Pleas, whose duty it was to certify and transcribe into the King’s Bench the tenor of the records of the cause of action upon which the writ of error was brought. There was a similar officer in the Court of King’s Bench, and also in the Exchequer. All these offices were abolished by 7 Wm. 4. and 1 Vict. cap. 30.

Clerk of the Essoins. An officer of the Court of Common Pleas, who kept the essoin rolls. His duty it was to provide the essoin rolls. His duty it was to provide the essoin rolls. His duty it was to provide the essoin rolls. His duty it was to provide the essoin rolls. His duty it was to provide the essoin rolls. His duty it was to provide the essoin rolls. His duty it was to provide the essoin rolls. His duty it was to provide the essoin rolls. His duty it was to provide the essoin rolls. His duty it was to provide the essoin rolls. His duty it was to provide the essoin rolls. His duty it was to provide the essoin rolls. His duty it was to provide the essoin rolls. His duty it was to provide the essoin rolls. His duty it was to provide the essoin rolls. His duty it was to provide the essoin rolls. His duty it was to provide the essoin rolls. His duty it was to provide the essoin rolls. His duty it was to provide the essoin rolls. His duty it was to provide the essoin rolls. 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of Chancery, whose duty it was to receive all the money due to the king for the seals of charters, patents, commissions, and writs; and also fees due to the officers for enrolling and examining the same. He was bound to attend the Lord Chancellor or Lord Keeper daily in term time and at all times of sealing; when he had with him leather bags, wherein were put all charters after they had been sealed; these bags were then sealed up by the Lord Chancellor's private seal, and delivered to the controller of the hamper.—Cowel; 2 Edw. 4, cap. 1.

CLERK OF THE JURIES. An officer of the Court of Common Pleas, whose duty it was to make up the writs of habeas corpora and distringas, for compelling the attendance of jurors after the jury or panel had been returned upon the venire facias. This office was abolished by 7 Wm. 4. and 1 Vict. cap. 30.

CLERK OF THE KING'S SILVER. An officer of the Court of Common Pleas, to whom every fine was brought, after it had been with the custos brevium, and by whom the effect of the writ of covenant was entered into a paper book, &c.—Cowel.

CLERK MARSHAL OF THE KING'S HOUSE. An officer who attends the marshal in his court and records all his proceedings.—33 H. 8, cap. 12.—Cowel.

CLERK OF THE MARKET. An officer of the king, whose duty it is to look after the king's measures, and to keep the standards of them, and to see that all those used in the various parts of England correspond with those standards.—Cowel.

CLERK OF THE NIHILS OR NICHILS. An officer in the Exchequer, who makes a roll of all such sums as are nihiled by the sheriffs upon their estreats of green wax, and delivers the same into the Lord Treasurer's Remembrancer's Office to have execution done upon it for the king.—5 R. 2, cap. 13; Cowel.

CLERK OF THE ORDINANCE. An officer in the Tower, whose duty it is to register all orders concerning the king's ordinance.—Cowel.

CLERK OF THE OUTLAWRIES. An officer of the Court of Common Pleas, whose duty it was to make out writs of capias utlaga-tum after outlawry. Abolished by 7 Wm. 4. and 1 Vict. cap. 30.

CLERK OF THE PAPER OFFICE. An officer of the King's Bench, whose duty it was to make up the paper books of special pleadings and demurrers. Abolished by 7 Wm. 4. and 1 Vict. cap. 30.

CLERK OF THE PAPERS. An officer of the Court of Common Pleas, whose duty it is to have the custody of the papers of the warden of the Fleet Prison, and to enter commitments and discharges of prisoners, and deliver out day-rules, &c.—Cunningham.

CLERK OF THE PARLIAMENT ROLLS. An officer in the high court
of Parliament, who records all things done therein, and engrosses them fairly on parchment rolls, for their better preservation to posterity. There is one of these officers to each house of parliament.—Cowel.

Clerk of the Peace. An officer belonging to the sessions of the peace, whose duty it is to read indictments, to enrol the acts, draw the process, and perform various other duties connected with the administration of justice at the sessions.—Cowel.

Clerk of the Pells. An officer belonging to the Exchequer, whose duty it is to enter every teller’s bill into a parchment roll (called pellis receptorum), and also to make another roll of payments (called pellis exitium), in which he puts down by what warrant the money was paid. In ancient records this officer is called clericus domini thesaurarii.—22 and 23 Car. 2; Cunningham.

Clerk of the Petty Bag. An officer of the Court of Chancery, whose duty it is to record the return of all inquisitions out of every shire; to make out patents of customers, gaugers, controllers, and aulnegers; all congé d’élires for bishops; the summons of the nobility, clergy, and burgesses to parliament, &c.—33 Hen. 8, cap. 22; Cowel.

Clerk of the Pyle. An officer in the Court of Exchequer, who having all accounts and debts due to the king delivered and drawn out of the Remembrancer’s offices, charges them down in the great roll. He is called clerk of the pipe from the shape of that roll, which is put together like a pipe.—Cowel.

Clerk of the Pleas. An officer in the Court of Exchequer, in whose office all the officers of the court (upon especial privilege belonging to them), should sue or be sued in any action.—Cowel. Abolished by 7 Wm. 4, and 1 Vict. cap. 30.

Clerk of the Privy Seal. There are four of these officers, who attend the lord privy seal, or in the absence of a lord privy seal, the principal secretary, and whose duty it is to write and make out all things that are sent by warrant from the signet to the privy seal, and are to be passed to the great seal; and also to make out privy seals (as they are termed) upon any special occasion of his majesty’s affairs, as for the loan of money and such like purposes.—27 Hen. 8, c. 11; Cowel.

Clerk of the Rolls. An officer of the Court of Chancery, whose duty it is to search for, and copy deeds, offices, &c.—Tomlins.

Clerk of the Rules. An officer in the Court of King’s Bench, who drew up and entered all rules and orders made in court, &c. Abolished by 7 Wm. 4, and 1 Vict. cap. 30.

Clerk of the Sewers. An officer who attends the commissioners of sewers, and records all things they do by virtue of their commission.—Cowel.
CLERK OF THE SIGNET. An officer whose duty it is to attend on his majesty’s principal secretary, who always has the custody of the privy signet, as well for the purpose of sealing his majesty’s private letters, as also grants which pass his majesty’s hand by bill signed. There are four of these officers.—27 Hen. 8, c. 11; Cowel.

CLERK OF THE SUPERSEDEAS. An officer belonging to the Court of Common Pleas, who made out writs of supersedeas (upon defendants appearing to the exigent), whereby the sheriff was forbidden to return the exigent.—Cowel.

CLERK OF THE TREASURY. An officer of the Court of Common Pleas, whose duty it was to keep the records of the court, and to make out the records of nisi prius; he was also entitled to the fees due for all searches; and had the certifying of all records into the King’s Bench when a writ of error was brought. Abolished by 7 Wm. 4. and 1 Vict. cap. 30.

CLERK OF THE KING’S GREAT WARDROBE. An officer of the king’s household, whose duty it is to keep an inventory of all things belonging to the royal wardrobe. 1 Ed. 4, c. 1; Tomlius.

CLERK OF THE WARRANTS. An officer of the Court of Common Pleas, who entered all warrants of attorney for plaintiffs and defendants in suits; and enrolled all deeds of indenture of bargain and sale which were acknowledged in court or before any of the judges out of court, &c. This office was abolished by 7 Wm. 4. and 1 Vict. cap. 30.

CLERONIMUS. An heir.—Mon. Angl. tom. 3, p. 129; Cowel.

CLITONES. Not only the eldest, but all the sons of kings.—Cowel.

CLOERE. A prison or dungeon. The dungeon or inner prison of Wallingford castle in Henry the Second’s time was called Cloere Brien.—Cowel.

CLOSE. This word in common acceptance means an enclosed field, but in law it rather signifies the separate interest of the party in a particular spot of land, whether enclosed or not.—2 Chitty’s Bl. p. 17, note 3; 7 East, 207.

CLOSE ROLLS and CLOSE WRITS. Certain letters of the king sealed with his great seal and directed to particular persons, and for particular purposes, and not being proper for public inspection, are closed up and sealed on the outside, and are thence called writs close (literæ clausæ), and are recorded in the close rolls in the same manner as others are in the patent rolls (literæ patentes), or open letters.—2 Bl. 346.

CLOSH. A game supposed by some to be the same as our nine pins, and forbidden by stat. 17 Ed. 4, c. 3 and 33 H. 8, c. 9.

CLOUGH. As used in Domesday, signifies valley; but with merchants, it signifies an allowance
for the turn of the scale on buying goods wholesale by weight. — Cowel; Lex Mercat.

**CLOVE.** The two and thirtieth part of a weigh of cheese, i.e. eight pounds.—9 H. 6, c. 8; Cowel.

**CLYPEUS.** One of a noble family; clypei prostrati, one of a noble family extinct.—Cowel.

**COCHERINGS.** An exaction or tribute in Ireland, now reduced to a chief rent.—Cowel.

**OCKET.** A piece of parchment sealed and delivered by the officers of the custom-house to merchants, as a warrant that their merchandizes are customed. It is sometimes used for the custom-house seal.—Reg. of Writs, 192; Cowel.

**CODICIL (codicillus, a little book or writing).** A supplement to a will, or an addition made by the testator and annexed to the will, being written for its explanation, alteration, or for the purpose of making some addition to, or some subtraction from the dispositions of the testator as contained in his will.—2 Bl. 500.

**COFFERER OF THE KING’S HOUSEHOLD.** One of the principal officers of the king’s household, next in rank to the comptroller; he has the charge and superintendence of the other officers of the household, to whom also he pays their wages.—39 Eliz. c. 7; Cowel.

**COGNATI.** Relations by the mother’s side; the same as agnati are relations by the father.—2 Bl. 235.

**COGNATIONE.** See Cousenage.

**COGNISANCE or CONUSANCE.** This word has various significations in the law. When used in reference to a fine, it signifies acknowledgment. Thus, a fine “sur cognizance de droit,” &c. signifies a fine upon acknowledgment of the right, &c. Cognisance also sometimes signifies an answer given by a defendant who has acted as bailiff to another in making a distress. Its most usual meaning, however, has relation to cognisance of pleas, which is a privilege granted by the king to any person or body corporate not only to hold pleas within a particular limited jurisdiction, but also to take cognisance of them, and that either without any words exclusive of other courts, which entitles the lord of the franchise, whenever any suit that belongs to his jurisdiction is commenced in the courts at Westminster, to demand the cognisance thereof; or with such exclusive words which also entitles the defendant to plead to the jurisdiction of the court. If such cognisance of the suit be claimed or demanded by such person or body corporate, and be allowed, all proceedings in the suit shall cease in the superior court, and the plaintiff is then at liberty to pursue his remedy in the special jurisdiction. As when a scholar or other privileged person of the Universities of Oxford or Cambridge is impleaded in the courts of Westminster, for any cause of action whatsoever
(unless upon a question of freehold); in these cases, by the charter of those learned bodies, confirmed by act of parliament, the chancellor or vice-chancellor may put in a claim or cognizance, which, if in due time and form, and with due proof of the facts alleged, is regularly allowed by the courts.

**Cognitionibus mittendis.** A writ to one of the justices of the Common Pleas, or other who had power to take a fine, and who, having taken acknowledgment thereof, deferred to certify it, commanding him to certify it.—Reg. Orig. 68; Cowel.

**Cognizor.** He who levied a fine was called the cognizor.—2 Bl. 350.

**Cognizee.** He to whom a fine was levied was called a cognizee.—2 Bl. 351.

**Cognovit Actionem.** An instrument signed by a defendant in an action, confessing the plaintiff’s demand to be just. The defendant, who signs this cognovit, thereby empowers the plaintiff to sign judgment against him, in default of his paying the plaintiff the sum due to him within the time mentioned in the cognovit.—2 Bl. 304.

**Cohuagium.** A tribute that formerly used to be paid by those who met in a market or fair.—Du Fresne; Cowel.

**Coif.** Our serjeants at law are called serjeants of the coif, from the circumstance of the lawn coif which they wear on their heads, under their caps, when they are elevated to that rank. It was originally used to cover the crown of the head, which was closely shaved, and a border of hair left round the lower part, which made it look like a crown, and was thence called corona clericalis, or tonsuram clericalem.—Cowel.

**Coliberts (coliberti).** Those freemen who had been manumitted by their lord or patron. Coke says that they were the same as a sokeman, or one who held in free socage, and yet was obliged to do customary services for the lord.—Domesday; Cowel.

**Collateral (collateralis),** from the Lat. laterale, that which hangs by the side. Its legal significance does not differ from its common acceptation. Thus, a collateral assurance signifies an assurance besides the principal one. So when a man mortgages his estates as security to a party lending him a sum of money, he also may enter into a bond, as an additional or collateral security. A collateral security is, therefore, something in addition to the direct security, and in its nature usually subordinate to it; and it is in the nature of a double security, so that when one fails, the other may be resorted to.

**Collateral Consanguinity, or Collateral Kindred.** That which exists between persons who are derived from the same stock, or ancestors, however remote. Every person who is de-
scended or propagated from the same stem, (i.e. from the same male or female lineal ancestor,) from which any other particular person is descended or propagated, and who is neither the immediate parent or progenitor, nor the progeny of such particular person, is properly and aptly denominated or defined to be a collateral relative. And when any person is the collateral relative of any other person, all the descendants from such persons, reciprocally and respectively, are collateral relations.—2 Chitty’s Bl. 204, note 5.

COLLATERAL ISSUE. When a prisoner has been tried and convicted, and he then pleads in bar of execution diversity of person, i.e. that he is not the same person who was attained, and the like; this question of fact, whether or not he is the same person, is called a collateral issue, and a jury is then impanneled to try this issue, viz. the identity of his person.—4 Bl. 396.

COLLATERAL WARRANTY. In alienating property by deed there was usually a clause in it called the clause of warranty, whereby the grantor, for himself and his heirs, warranted and secured to the grantee the estate so granted. This warranty was either lineal or collateral. Lineal warranty was where the heir derived, or might by possibility have derived, his title to the land warranted, either from or through the ancestor who made the warranty; as where a father, or an elder son in the life of the father, released to the disseisor of either themselves or the grandfather, with warranty, this was lineal to the younger son. Collateral warranty was where the heir’s title to the land neither was nor could have been derived from the warranting ancestor; as where a younger brother, released to his father’s disseisor, with warranty, this was collateral to the elder brother.—2 Bl. 300, 301.

COLLATIO BONORUM. The bringing of any portion or sum of money advanced by a father to a son or daughter into hotch-pot, in order to have an equal share with the other children of his personal estate, when he dies, in pursuance of the statutes of distribution.—Tomlins.

COLLATION TO A BENEFICE (collatio beneficci). Advowsons are either presentative, collative, or donative; an advowson presentative is where the patron has a right of presentation to the bishop or ordinary, and moreover to demand of him to institute his clerk, if he finds him canonically qualified, and this is the most usual advowson. An advowson collative is where the bishop and patron are one and the same person, in which case the bishop cannot present to himself, but he does in the one act of collation, or conferring the benefice, the whole that is done in common cases by both presentation and institution.—2 Bl. 22.

COLLATION OF SEALS. The setting of one seal on the back or reverse of the other upon the same label.—Cowel.

COLLIATIONE FACTA UNI POST MORTEM ALTERIUS. A
writ directed to the justices of the Common Pleas, commanding them to issue their writ to a bishop for the admission of a clerk in the place of another presented by the king, who had died during the suit between the king and the bishop's clerk; for judgment having once passed for the king's clerk, and he dying before admission, the king might bestow his presentation on another.—Reg. of Writs; Cowel.

Collatione heremetagii. A writ by which the king conferred the keeping of a hermitage upon a clerk.—Reg. Orig. 303, 308; Cowel.

Collative advowson. See Collation to a benefice.

Collegiate church. A church built and endowed for a society or body corporate, of a dean or other president and secular priests, as canons or prebendaries.—Cowel.

Colligendum bona defuncti (Letters ad). When a person dies intestate and leaves no representatives or creditors to administer; or, leaving such representatives and creditors, they refuse to take out administration, &c., the ordinary may commit administration to such discreet person as he approves of, or grant him these letters ad colligendum bona defuncti (to collect the goods of the deceased), which neither constitutes him executor or administrator, his only business being to take care of the goods, and to do other acts for the benefit of those who are en-
titled to the property of the deceased.—2 Bl. 505.

Colloquium (a colloquendo). Discourse, talking together, or the affirming of any thing; laid in declarations for words in actions of slander.—Mod. Cas. 203; Cunningham.

Colonus. A husbandman or villager who was bound to pay yearly a certain tribute, or at certain times of the year to plough some part of the lord's land. Hence the word clown.—Cowel.

Colour. When a defendant in an assise or action of trespass is desirous to refer the validity of his title to the court, rather than to the jury, he may state his title specially, and at the same time give colour to the plaintiff, or suppose him to have an appearance or colour of title, bad indeed in point of law, but of which the jury are not competent judges. In its general signification it means feigned matter.—3 Bl. 309.

Colour of Office (color officii). An act evilly done by the countenance of an office; it is always taken in the worst sense, being grounded on corruption and vice, to which the office is as a shadow or colour or veil to the falsehood.—Cowel; Plowden.

Combarones. The fellow-members, fellow-barons, or commonalty of the cinque ports. The title of barons has since been withdrawn from the commonalty to distinguish their representatives in parliament.—Cowel.
COMBAT. See Battel.

COMBUSTIO DOMORUM. See Arson.

COMBUSTIO PECUNIÆ. The method formerly in use for trying mixed and corrupt money, by melting it down upon payments of it into the exchequer. It differed little or nothing from the present method of assaying silver.—Loundes’ Essay on Coins; Cowel.

COMITATU COMMISSO. A writ or commission by which a sheriff is authorized to take upon himself the command of his county.—Reg. Orig. 295; Cowel.

COMITATU ET CASTRO COMMISSO. A writ whereby the charge of a county, together with the keeping of a castle, is committed to the sheriff.—Reg. Orig. 295; Cowel.

COMITATUS. A county; a train of followers.—Taylor’s Law Gloss.

COMMANDERY (preceptoria). A manor or chief messuage with lands and tenements appertaining thereto, belonging to the priory of St. John of Jerusalem in England; and he who had the government of any such manor or house was called the commander.—Cowel; Camden.

COMMANDMENT (preceptum). This word is variously used; as the commandment of the king, when upon his motion or from his own mouth he sends any man to prison. Commandment of the justices, which is either absolute or ordinary; absolute, when upon their own authority they commit a man to prison for punishment; ordinary when they commit one rather for safe custody than for punishment. Commandment is also used for the offence of him who wills another man to transgress the law, as to commit theft, murder, &c.—Staunf. Pl. Cor. 72; Cunningham.

COMMARCHIO. The boundaries or confines of the land.—Du Fresne; Cowel.

COMMENDAM (ecclesia commendata vel custodia ecclesie alicui commissa). The holding a living or benefice in commendam is (where a vacancy occurs) holding such a living commended by the crown until a proper pastor is provided for it. This may be temporary for one, two, or three years; or perpetual, being a kind of dispensation to avoid the vacancy of the living, and is called a commendam retinere. These commendams are now seldom granted except to bishops.—1 Chitty’s Bl. 393, and note 46.

COMMENDA RECIPERE. To take a benefice de novo in the bishop’s own gift, or the gift of some other patron consenting to the same; and this is the same to him as institution and induction are in another clerk.—Hob. 144; 1 Bl. 393.

COMMANDARY or COMMENDATORY. He who holds a benefice or church living in commendam.—Cowel.
COMMENDATORS. Secular persons on whom benefices or church livings are bestowed. They are so called because the benefices were commended and intrusted to their oversight; they are not proprietors, but only a kind of trustees. — Tomlin.

COMMENDATORY LETTERS. Letters of recommendation written by one bishop to another in behalf of any of his clergy who may have occasion to travel into another diocese, in order that they may be well received by their brethren, or that they may be promoted, or that necessaries may be administered to them. — Bede, lib. 2, c. 18; Cowel.

COMMENDATUS. One who lives under the protection of a great man. — Spelman; Cowel.

COMMERCE. The distinction made between commerce and trade is, that the former relates to our dealings with foreign nations, or our colonies, &c., the latter to our own traffic and dealings at home. — Lex Mercat.; Tomlin.

COMMISSARY (commissarius). In the ecclesiastical law is a title applied to those who exercise spiritual jurisdiction in those parts of the diocese, which are too far distant from the chief city for the chancellor to call the people to the bishop's principal court without occasioning them great inconvenience. These officers were ordained to supply the bishop's office in the distant places of his diocese, or in such parishes as were peculiar to the bishop and were exempted from the jurisdiction of the archdeacon. — Lyndewold's Provia; Cowel.

COMMISSION (commissio). In our law much the same as delegatio with the civilians, and is commonly understood to signify the warrant, authority, or letters patent which empower men to perform certain acts, or to exercise jurisdiction either ordinary or extraordinary. In its popular sense it frequently signifies the persons who act by virtue of such an authority. There are various sorts of commissions, which will be mentioned in their order.

COMMISSION OF ARRAY. See Array.

COMMISSIONS OF ASSIZE. Commissions empowering the judges to sit on the circuit.

COMMISSION OF ASSOCIATION. A commission empowering two or more learned persons to be added to, or to associate with the justices in the circuits and counties in Wales.

COMMISSION OF CHARITABLE USES. A commission issuing out of the Court of Chancery to the bishop and others, when lands which are given to charitable uses have been misemployed, or there is any fraud or dispute concerning them, to inquire of and redress the same.

COMMISSION OF DELEGATES. When any sentence was given in any ecclesiastical cause by the
archbishop, this commission under the great seal was directed to certain persons, usually lords, bishops, and judges of the law, to sit and hear an appeal of the same to the king in the Court of Chancery.

**Commission of Bankrupt.**
A commission or authority granted by the Lord Chancellor to such discreet persons as he shall think proper, to examine the bankrupt in all matters relating to his trade and effects, and to perform various other important duties connected with bankruptcy matters; these persons are thence called commissioners of bankrupt, and have in most respects the rights and privileges of judges in their own courts.

**Commission to examine Witnesses.** When a cause of action arises in a foreign country, and the witnesses reside there, or in a cause of action arising in England, and the witnesses are abroad or are shortly to leave the kingdom; or if witnesses residing at home are aged and infirm, and therefore cannot come to court; in any of these cases a court of equity will grant a commission to certain persons to attend these witnesses wherever they may reside, and to examine them and take down their depositions in writing upon the spot, and these depositions are then received in court as valid evidence in the cause.

**Commission to enquire of Faults against the Law.** An ancient commission issued on extraordinary occasions and corruptions.

**Commission of Lunacy.** A commission issuing out of chancery authorizing certain persons to enquire whether a person represented to be a lunatic is so or not, in order that if he is a lunatic, the king may have the care of his estate.

**Commission of the Peace.** A commission from the king under the great seal, appointing certain persons therein named jointly and separately justices of the peace.

**Commission of Oyer and Terminer.** See Commission of Assize.

**Commission of Rebellion,** or, as it is otherwise called, a *Writ of Rebellion.* Where a party to a suit in chancery has disobeyed any command of the court properly signified to him, he is said to be in contempt, upon which certain proceedings take place which are known by the name of process of contempt. One of the formula in this process of contempt is a *commission of rebellion,* which is a commission directed to four or more commissioners (named by the plaintiff in the suit, or his solicitor) directing them to take the defendant if they can; and if when taken he still refuses to perform the command of the court, they bring him before the bar of the court, and if he then persists in his disobedience he is committed to the Fleet prison. —*Gray's Chan. Pract.*

**Commission of Sewers.** A commission or authority to certain persons, directing them to see drains and ditches, &c. well kept
and maintained in various parts of England.—23 H. 8, c. 5.

Commission to take Answers in Equity. When a defendant in a suit lives more than twenty miles from London, there may be a commission granted to take his answer in the country, where the commissioners administer to him the usual oath, and then the answer being sealed up, either one of the commissioners carries it up to court, or it is sent by a messenger, who swears that he received it from one of the commissioners, and that the same has not been opened or altered since he received it.—3 Bl. 447.

Commissioner. He to whom a commission is directed, and who has to perform the duties therein directed to be done.

Commitment. The sending or committing a person who has been guilty of any crime to prison or gaol by warrant or order.—4 Bl. 296.

Committee. An assembly of persons to whom matters are referred. A committee of the House of Commons is a committee to whom a bill after the second reading is committed, that is, referred; and is either selected by the house in matters of small importance, or else upon a bill of consequence the house resolves itself into a committee of the whole house. A committee of the whole house is formed of every member; and to form it, the speaker quits the chair (another member being appointed chairman), and may sit and debate as a private member. In these committees the bill is debated clause by clause, amendments made, the blanks filled up, and sometimes the bill almost entirely remodelled. After it has gone through this committee it is again brought before the house for reconsideration, after which it is read a third time, and then passed or not passed, as the case may be. A committee also signifies the person or friend to whom the Lord Chancellor commits the care of an idiot or lunatic.—1 Bl. 183, 305.

Commonalty (populus). In its general signification means the commoners of England, though some writers seem to suppose that it applies more to the middle class of society, i.e. to the better and more influential sort of commoners. The commonalty is also one of the component parts of an incorporated company; which usually consists of the masters, wardens, and commonalty; the two first being the chief officers or members, and the latter those who are usually called of the livery.—1 Bl. 402.

Common or Right of Common. An incorporeal hereditament: being a profit which a man hath in the land of another, as to feed his beasts, to catch fish, to dig turf, to cut wood, or the like. And hence common is chiefly of four sorts; common of pasture, of piscary, of turbary, and of estovers. Common of pasture is a right of feeding one's beasts on another's land, for in those waste grounds which are usually called commons, the property of the soil is generally in the lord of the manor, as in
common fields it is in the particular tenants. This kind of common is either appendant, appurtenant, because of vicinage or in gross. Common appendant is a right belonging to the owners or occupiers of arable land to put commonable beasts upon the lord's waste, and upon the lands of other persons within the same manor, which are either beasts of plough, or such as manure the ground. Common appurtenant ariseth from no connexion of tenure, nor from any absolute necessity, but may be annexed to lands in other lordships, or extend to other beasts besides such as are generally commonable, as hogs, goats, or the like, which neither plough nor manure the ground. This not arising from any natural propriety or necessity like common appendant, is therefore not of general right, but can only be claimed by immemorial usage and prescription, which the law esteems sufficient proof of a special grant or agreement for this purpose. Common because of vicinage or neighbourhood is where the inhabitants of two townships which lie contiguous to each other, have usually intercommuned with one another, the beasts of the one straying mutually into the other's field without molestation from either. Common in gross or at large is such as is neither appendant nor appurtenant to land, but is annexed to a man's person, being granted to him and his heirs by deed, or it may be claimed by prescriptive right, as by a parson of a church, or the like corporation sole. This is a separate inheritance, entirely distinct from any landed property, and may be vested in one who has not a foot of ground in the manor. All these species of pasturable common may be and usually are limited as to number and time, but there is also common without stint, and which lasts all the year. Common of piscary is a liberty of fishing in another man's water, as common of turbary is a liberty of digging turf upon another man's ground. There is also a common of digging for coals, minerals, stones, and the like. All these bear a resemblance to common of pasture in many respects, though in one point they go much further, common of pasture being only a right of feeding on the herbage and vesture of the soil which renews annually; but common of turbary and those aforementioned are a right of carrying away the very soil itself. Common of estovers or estouviers, that is, necessaries, (from estoffer, to furnish,) is a liberty of taking necessary wood for the use or furniture of a house or farm from off another's estate. The Saxon word bote is used by us as synonymous to the French estovers, and therefore house-bote is a sufficient allowance of wood to be employed in making all instruments of husbandry; and haybote or hedgebote is wood for repairing of hays, hedges, or fences. These several species of commons do all originally result from the same necessity as common of pasture, viz., for the maintenance and carrying on of husbandry; common of piscary being given for the sustenance of the tenant's family; common of turbary and fire-bote for his fuel, and house-bote, plough-bote, cart-bote, and hedge-bote, for repairing his house, his instru-
ments of tillage, and the necessary fences of his grounds.—2 Bl. 32 to 35.

Common Bench (bancus communis). The Court of Common Pleas was formerly so called, because the causes of common persons were tried and determined in that court.—Cowel.

Common Day in Plea of Land.—In 1 Rich. 2, c. 17, is an ordinary day in court, as Octabis Hilarii Quindena Paschæ, &c., mentioned in 51 H. 3, concerning general days in the Bench.—Cowel.

Common Fine (finis communis). A certain sum of money which the residents within the liberty of some leets pay to the lords; in some places called head-silver, head-pence, and in other places cert-money.—Cowel.

Common Intendment. The plain common meaning of any writing as apparent on the face of it, without straining or distorting the meaning of the writer. Bar to common intendment is an ordinary or general bar to the declaration of a plaintiff.—Co. Lit. 78; Cowel.

Common Law (lex communis). The common law is simply that portion of the law of this country which has been handed down to us from generation to generation. It consists of general maxims and established customs, and is that law by which proceedings and determinations in the king's ordinary courts of justice are guided and directed. The various decisions of the judges of the courts of common law are in conformity with these maxims and customs, and those decisions as contained in the various volumes of reports are expositions of these maxims and customs, and indeed in popular law language are taken as a portion of the common law of the land itself. It is now generally called common law, in contradistinction to the statute law, the civil law, the law merchant, and such like.—1 Bl. 67.

Common Pleas (communia placita). One of the superior courts of common law, and is now usually held in Westminster Hall. The proceedings in this court are the same as those in the other courts of common law. See also Common Bench.

Common Recovery. See Recovery.

Common Weal. Common or public good (bonum publicum).—Plowd. 25; Cunningham.

Commorancy (commorantia). The dwelling or living in any place as an inhabitant, which is termed being commorant therein.—4 Bl. 273.

Commote. In Wales, half a cantred or hundred containing fifty villages.—Dod. Hist. Wales, fol. 2; Cowel.

Communance. Those commoners or tenants who enjoyed the right of common or commoning in open fields were formerly so called.—Cowel.
COMMUNE CONCILIUM REGNI ANGLÆ. The general council of the realm assembled in parliament.—Cowel.

COMMUNIA PLACITA NON TENENDA IN SCACCARIO. A writ directed to the treasurer and barons of the Exchequer, forbidding them to hold pleas between common persons in that court.—Reg. of Writs, 187; Cowel.

COMMUNIA CUSTODIA. A writ which lay for a lord (whose tenant, holding by knight service, died, and left his eldest son under age) against a stranger who entered the land and obtained the ward of the body.—Old. Nat. Brev. fol. 39; Cowel.

COMPANAGE (Fr.) Any kind of food excepting bread and drink. Some tenants of the manor of Feskerston, in the county of Nottingham, when they performed their boon or work days to their lord, had three boon loaves with copanage allowed them.—Cowel.

COMPPELLATIVUM. An accuser, an adversary.—Leg. Athelstan; Cowel.

COMPERTORIUM. In the civil law signifies a judicial inquest made by delegates or commissioners to find out and relate the truth of a cause.—Ken. Paroch. Antiq.; Cowel.

COPERUPT AD DIEM (he appeared at the day). The name of a plea in an action of debt on a bail bond.

COMPOSITION (compositio). A composition, or as it is termed, a real composition, is an agreement made between the owner of lands and a parson or vicar, with the consent of the ordinary and the patron, that such lands shall for the future be discharged from payment of tithes by reason of some land or other real recompense given to the parson, in lieu or satisfaction thereof.—2 Bl. 28.

COMPOSITIO MENSUARUM. The title of an ancient ordinance for measures.—23 H. 8. c. 4.

COMPOUNDING FELONY, or THEFT-BOTE. Where a person has been robbed, and he knows the felon, and receives back from him his goods that were stolen, or some other amends, upon agreement not to prosecute.—4 Bl. 133.

COMPRINT. The surreptitious printing of another bookseller’s copy, to make gain thereby, and which is not only contrary to the common law, but is also forbidden by statute.—Cowel.

COMPROMISE (comprimissum). The mutual promise of two or more parties at difference to refer their controversy to the arbitrament or decision of an arbitrator.—West. par. 2, Symb.; Cowel.

COMPTROLLER. An officer who has the inspection, examination, or controlling of the accounts of collectors of public money.—Cowel.

COMPURGATORS. Persons who swear they believe the oath of another person made in defence of his own innocence. Such was the case with the popish clergy, who
when accused of any capital crime, were not only required to make oath of their own innocence, but also to produce a certain number of persons, called compurgators, to swear that they believed his oath.—3 Bl. 342.

**Computo.** A writ so called because it compels a bailiff, receiver, or chamberlain, to yield up his accounts, and to compute what is owing.—*Old Nat. Brev. fol. 58; Cowel.*

**Concealers (concelatores).** Those persons who discover concealed lands, i.e. lands that are privily kept from the king by common persons, having no title or estate therein.—39 Eliz. c. 22; Cowel.

**Concessi (I have granted).** A word frequently used in conveyances, creating a covenant in law, as dedi (I have given) makes a warranty.—*Co. Lit. 384; Cowel.*

**Concionator.** A common-councilman. — *History Ein.; Cowel.*

**Conclusion (conclusio).** When a man by his own act upon record has charged himself with a duty or other thing; as in the case of a freeman confessing himself to be the villain of another, and afterwards such other takes his goods, he shall be concluded from saying in any action or plea afterwards that he is free, by reason of his own confession. The word conclusion, as used in reference to declarations, pleas, replications, &c. retains its common signification, meaning the end or conclusion of the respective pleading to which it refers.—*Les Termes de la Ley; Cowel.*

**Concord (concordia).** An agreement entered into between two or more persons, upon a trespass having been committed, by way of amends or satisfaction for the trespass. In that species of conveyance which was formerly in use, called a fine, the word concord also occurs; and here it signifies an agreement between the parties, who are levying the fine of lands one to another, how and in what manner the lands shall pass, and is usually an acknowledgment from the deforciant (or those who keep the other out of possession) that the lands in question are the right of the complainant; and from this acknowledgment or recognition of right, the party levying the fine is called the cognizor, and he to whom it is levied the cognizee.—2 Bl. 350.

**Concubent.** Lying together.—1 H. 2, c. 6; *Tomlins.*

**Concupinage (concubinatus).** An exception against a woman who sues for dower, thereby alleging that she was not a wife lawfully married to the party, from whose lands she seeks to be endowed, but only his concubine.—*Brit. c. 107; Cowel.*

**Condition (conditio).** A kind of stipulation or restraint annexed to a thing; and in its general signification bears the same meaning as it does in common language. The word condition is, however, in law usually associated with the word estate, as an estate upon condition; it will, therefore, be necessary to consider the various sorts of estates upon condition, or,
in other words, the various sorts of conditions that are annexed to and qualify certain estates. Estates then upon condition thus understood are of two sorts. 1, Estates upon condition implied; 2, Estates upon condition expressed. Estates upon condition implied in law, are where a grant of an estate has a condition annexed to it inseparably from its essence and constitution, although no condition be expressed in words. As if a grant be made to a man of an office generally, without adding other words, the law tacitly annexes thereto a secret condition, that the grantee shall duly execute his office, on breach of which condition it is lawful for the grantor, or his heirs, to oust him, and grant it to another person. An estate on condition expressed in the grant itself, is where an estate is granted either in fee simple or otherwise, with an express qualification annexed, whereby the estate granted shall either commence, be enlarged, or be defeated, upon performance or breach of such qualification or condition. These conditions are therefore either precedent or subsequent. Precedent are such as must happen or be performed before the estate can vest or be enlarged. Subsequent are such by the failure or non-performance of which an estate already vested may be defeated. Thus, if an estate for life be limited to A. upon his marriage with B, the marriage is a precedent condition, and till that happens no estate is vested in A. Or if a man grant to his lessee for years, that upon payment of a hundred marks within the term, he shall have the fee, this also is a condition precedent, and the fee simple passes not till the hundred marks be paid. But if a man grant an estate in fee-simple, reserving to himself and his heirs a certain rent, and that if such rent be not paid at the times limited, it shall be lawful for him and his heirs to re-enter, and avoid the estate; in this case the grantee and his heirs have an estate upon condition subsequent, which is defeasible if the condition be not strictly performed.—2 Bl. 152 to 154.

**Conditional Fee.** See Fee.

**Cone and Key.** A woman when arrived at the age of fourteen or fifteen years had liberty to take charge of her house, and as it was termed to receive cone and key, i.e. she was then considered competent to keep the accounts and keys of the house.—Bract. lib. 2. c. 37; Cowel.

**Confederacy.** Two or more persons combining together to do any hurt or damage to another, or to do any other unlawful act.

**Confession (confessio).** This word in the law retains its usual and popular signification. Thus, when a prisoner is indicted of treason and felony, and brought to the bar to be arraigned, and the indictment being read to him, and the court demanding what he can say thereto, he confesses the offence and indictment to be true, or pleads not guilty. The word confession is also used in civil matters, as where a defendant confesses the plaintiff's right of action by giving him a cognovit, &c.—3 Bl. 397.

**Confesso.** Bill taken pro confessio. See tit. Pro confessio.
CONFIRMATION (confirmatio). A confirmation is of a nature nearly allied to a release, and is defined by Sir Edward Coke to be a conveyance of an estate or right in esse, whereby a voidable estate is made sure and unavoidable; or whereby a particular estate is increased; and the words of making it are these, "have given, granted, ratified, approved, and confirmed." An instance of the first branch of the definition may be illustrated in the case of a tenant for life leasing for forty years and dying during the term; here the lease for years is voidable by him who has the reversion, yet if he has confirmed the estate of the lessee for years, before the death of the tenant for life, it is then no longer voidable but sure.—2 Bl. 325.

CONFISCATE (confiscare). As the Romans say, when for any offence goods are forfeited to the Emperor's treasury, that they are bona confiscata; so we apply the same term to those goods that are forfeited to our king's exchequer. Staundfs. Pl. Cr.; Cowel.

CONGEABLE (Fr. congé, leave or permission). Lawful, lawfully done, or done with leave; as the entry of the disseisee is congéable, i.e. lawful.—Cowel.

CONGE d'accorder. Leave to accord or agree. In the statute of fines it is thus mentioned. "When the original writ is delivered in presence of the parties before the justices, a pleader shall say this, Sir Justice conge d'accorder, and the justice shall reply to him, What saith Sir R? and shall name one of the parties."—18 Eliz. 3; Cowel.

CONGE D'ESLIRE (leave to elect). The royal license or permission sent to a dean or chapter when any bishoprick becomes vacant, empowering them to proceed to the election of a new bishop.—1 Bl. 382.

CONJURATIO. An oath, and the word conjuratus signifies the same as conjurator, i.e. one who is bound by an oath.—Mon. 1, Tom. p. 207; Cowel.

CONJURATION (conjuratio). A plot or compact made by persons combining together by oath or promise to do some public harm; but in its more ordinary sense it signifies the offence of enchantment, witchcraft, or sorcery.—4 Bl. 61.

CONQUEST (conquestus). It is said by Blackstone to signify in its feodal acception acquisition.—2 Bl. 48.

CONSANGUINEO. The name of a writ mentioned in Reg. Orig. 226; Cowel.

CONSANGUINEUS FRATER. A brother by the father's side.—2 Bl. 232.

CONSANGUINITY or KINDRED (consanguinitas). Relationship by blood, in contradistinction to affinity, which is relationship by marriage.—1 Bl. 434.

CONSCIENCE, Courts of. Courts of conscience, or as they are
otherwise called courts of request, are courts constituted by act of parliament in the city of London, and other commercial districts, for the recovery of small debts. They are constituted of two aldermen and four common-councilmen, who sit twice a week to hear all causes of debt not exceeding the value of forty shillings, which they examine in a summary way, by the oath of the parties or other witnesses, and make such order therein as is consonant to equity and good conscience.—3 Bl. 81.

Conservator. A delegated umpire, arbitrator, or third person, chosen to adjust differences between two contending parties. It also signifies a protector or preserver.—Kennet’s Paroch. Ant.; Cowel.

Conservator of the Peace. A preserver of the peace. All officers who in any way have to keep the peace are conservators of the peace.—4 Bl. 413.

Conservators of Truce and Safe Conducts. Were officers who were appointed in every port for the hearing and determining causes arising from the violation of safe conductors or passports, or from the commission of acts of hostility against such as are in amity, league, or truce with us, and who are in this country under a general implied safe conduct. And they were also empowered to hear and determine such treasons committed at sea, according to the ancient marine law then practised in the admiral’s court.—4 Bl. 68, 69.

Consideratio Curiae (the consideration of the Court). This phrase used frequently to occur in our pleadings. Ideo consideratum est per curiam, i.e. therefore it is considered (or adjudged) by the court.—Cowel.

Consideration (consideratio). This word, as applied to contracts generally, signifies the thing given in exchange for the benefit which is to be derived from such contract. Thus, when A. purchases an estate of B., the money which A. gives to B. in exchange for his estate is the consideration for which such purchase was made. Indeed the word as used in law retains its common and usual signification. Thus, in common parlance a person might say “on consideration of your not revealing such a secret, I will give you five pounds;” here the five pounds is the consideration paid by one party to the other for not revealing the secret; and precisely the same is it in law proceedings; as when I grant a man a lease of a house at 50l. per annum, here the annual rent of 50l. is the consideration for my granting him the lease. And a consideration of some sort or other is so absolutely necessary to the forming of a contract, that an agreement to do or pay anything on one side, without any adequate compensation on the other, is either totally void, or voidable in law. This thing, which is the price or motive of the contract, is therefore called the consideration, and it must be a thing in itself lawful, or else the contract is void.—2 Bl. 442, 443, 444.

Consignee. The person to
whom goods are consigned or delivered over.—Lex. Mercat.; Tomlins.

CONSIGNMENT. The act of delivering or consigning goods to a consignee.

CONSILIUM (dies consilii). The time allowed for an accused party to make his defence and answer the charge of the accuser. It is generally used now for an early day appointed to argue a demurrer, which is usually granted by the court after demurrer joined upon reading the record of the cause.—Cowell; 4 Bl. 356.

CONSIMILI CASU. See Casu consimili.

CONSISTORY (consistorium). Nearly the same meaning as praetorium or tribunal. The Consistory Court of every diocesan bishop is held in their several cathedrals, for the trial of all ecclesiastical causes arising within their respective dioceses. The bishop's chancellor or his commissary is the judge; and from his sentence an appeal lies by virtue of the same statute to the archbishop of each province respectively.—3 Bl. 64.

CONSOLIDATION (consolidatio). As applied to benefices it signifies the uniting of two benefices into one.—Cowell; 37 H. 8, c. 21.

CONSPIRACY (conspiratio). This word, as used in 33 Edw. 1, cap. 2, signifies an agreement of those who bind themselves by oath or other alliance to aid each other falsely and maliciously to indict men of felony, and so occasion them to be imprisoned, &c.

CONSPIRATIONE. A writ that formerly lay against conspirators.—Comp. Jurisd. 209; Cowell.

CONSPIRATORS. Persons guilty of a conspiracy. See Conspiracy.

CONSTABLE. The word constable has been said to be derived from the Saxon language and to signify the support of the king; but others have with greater reason supposed it to be derived from the Latin comes stabuli, an officer who among the Romans used to regulate all matters of chivalry, tilts, tournaments, and feats of arms, &c. The Constable of England, or Lord High Constable as he was called, was an officer of high dignity and importance in this realm about the time of Henry the Eighth; but since that period it has been disused in England except on great and solemn occasions. He was then the leader of the king's armies and had the cognizance of all matters connected with arms and war. He also sometimes exercised judicial functions in the court of chivalry, where he took precedence of the earl marshal. The constables however to which we more immediately refer now are of two sorts, high constables and petty constables; the former are appointed at the court leets of the franchise or hundreds over which they preside, or in default of that by the justices at the quarter sessions; and are removable by the same authority
that appoints them. They have the superintendence and direction of all petty constables within their district, and are in some measure responsible for their conduct. They have also the surveying of bridges, the issuing of precepts concerning the appointment of overseers of the poor, of surveyors of the highways, of assessors and collectors of taxes, &c. The duties of petty constables are subordinate to those of the high constable and of a less important character. There are also Constables of Castles, who are governors or keepers of the same, and whose office is usually honorary.—1 Bl. 355.

CONSTAT. The name of a certificate which the clerk of the pipe and auditors of the Exchequer make at the request of any person who intends to plead or move in that court for the discharge of any thing; and the purport of it is to certify what constat (appears) on record concerning the matter in question.—3 & 4 Ed. 6, cap. 4; Cowel.

CONSUEUDINARIUS. A book containing the rites and forms of divine offices, or the customs of abbies and monasteries.—Brompton; Cowel.

CONSUEUDINIBUS ET SERVICIS. A writ which lies for the lord against his tenant, who withholds from him the rents and services due by custom or by tenure for his land.—F. N. B. 151; 3 Bl. 231.

CONSUL. In the law, an earl.—Cowel.

CONSULTA ECCLESIA. A church full or provided for.—Cowel.

CONSULTATION (consultatio). When a party to a suit in one of the inferior courts has obtained a writ of prohibition from one of the superior courts prohibiting such inferior court from proceeding further in the matter; and if such superior court shall finally after demurrer and argument be of opinion that there was no competent ground for having so restrained such inferior jurisdiction, then judgment shall be given against him who applied for the prohibition in the superior court, and a writ of consultation shall be awarded; so called because, upon deliberation and consultation had, the judges find the prohibition to be ill founded, and therefore by this writ they return the cause to its original jurisdiction to be there determined in the inferior court.—3 Bl. 113.

CONTEMPT (contemptus). Contempt of court signifies a disobedience to the rules, orders, or process of a court. See Commission of Rebellion.

CONTENEMENT (contenementum). This word will be better understood by giving the student an example of its use, than by attempting to define it, especially as writers are not agreed upon the meaning of the word. "No man shall have a larger amercement imposed upon him than his circumstances or personal estate will bear; saving to the land-holder his contenement, or land; to the
trader his merchandize; and to
the countryman his wainage or
team and instruments of hus-
bandry.” I think it appears from
the above that the word conten-
ment signifies means of support, i.e.
the land, tenements, and appur-
tenances are the same to the land-
holder as the merchandize is to the
merchant.—M. O. MS.

CONTENTIOUS JURISDICTION.
The litigious proceedings in eccle-
siastical courts are sometimes said
to belong to its contentious jurisdic-
tion in contradistinction to what
is called its voluntary jurisdiction,
which is exercised in the granting
of licenses, probates of wills, dis-
pensations, faculties, &c.—3 Bl. 66.

CONTINGENT LEGACY. See
Legacy.

CONTINGENT REMAINDER.
See Remainder.

CONTINGENT USE. See Use.

CONTINUAL CLAIM. See
Claim.

CONTINUANCE. Previously to
giving a definition of this word, I
have thought it advisable to sub-
mint to the student the following
outline illustrative of the word.
Anciently, the parties in an action,
or their attorneys for them, used to
appear in open court; the plain-
tiff’s advocate stated his cause of
complaint vivâ voce; the defend-
ant’s advocate his ground of de-
fence; the plaintiff’s advocate re-
plied; and the altercation con-
tinued till the two parties came to
contradict one another, or as it

was termed, to issue. If this issue
was upon a point of law, the
judges decided it; if upon a point
of fact, it was tried by a jury, or
by one of the other modes which
prevailed at that period. While
this was going on, the officers of
the court, who sat at the feet of the
judges, took a written minute of
the proceedings on a parchment
roll, which was called the record,
and was preserved as the official his-
tory of the suit, and that alone, the
correctness of which could be after-
wards recognized and depended on;
it was the only evidence of the mat-
ters stated there, and the court
would not allow it to be contra-
dicted. As the proceedings ge-
erally occupied more days than
one, the court used to adjourn
them from time to time; if these
adjournments, which were called
continuances, were not made, the
suit was at an end, since there was
no period at which either party
had a right again to call the court’s
attention to it; and if the continu-
ance, though made, were not en-
tered on the record, the suit was
equally at an end, since the record
was the only evidence the court
would admit of the fact of the con-
tinuance. In such a case the
action was said to be discontinued.
And now when a cause is put
down in the list of causes to be
tried at a certain time, and from
some cause or other it is not then
tried, but is adjourned, a minute
of such adjournment is entered on
the record, which is technically
termed entering a continuance, be-
cause such entry signifies that the
cause is not yet finished but con-
tinues pending.—Smith’s Action at
Law, p. 52. This practice of en-
tering continuances is by a late rule of court abandoned.

**Continuando (by continuing).** In trespasses of a permanent nature, where the injury is continually renewed (as by spoiling or consuming the herbage with the defendant's cattle) the declaration may allege the injury to have been committed by continuatio from one given day to another, which is called laying the action with a continuando, and the plaintiff shall then not be compelled to bring separate actions for every day's separate injury.—3 Bl. 212; 2 Roll, Abr. 545.

**Contracausator.** A criminal, or one prosecuted for a crime.—Cowel.

**Contract.** A covenant or agreement between two or more persons with a lawful consideration.—West Symb.; Cowel.

**Contrafaction (contrafactio).** The act of counterfeiting. Contrafactio sigilli regis, i.e. counterfeiting the king's seal.—Cowell.

**Contra Formam Collationis.** A writ that lay where a man had given lands in perpetual alsms to any lay houses of religion, as to an abbey or convent, &c. and they aliened the land, to the disherison of the house and church, then the donor or his heirs shall have this writ to recover the lands.—Reg. Orig. 238; Cowel.

**Contra Formam Feoffamenti.** A writ that lay for the heir of a tenant who was enfeoffed of certain lands or tenements by charter of feoffment from a lord to pay certain suits and services to his court and who was afterwards distrained for more than was contained in the said charter.—Reg. Orig. 176; Cowel.

**Contra Formam Statuti (contrary to the form of the statute).** This is the usual conclusion of indictments laid on an offence created by statute.—Tomlins.

**Contramandatio Placiti.** It seems to signify a respiting or giving a defendant further time to answer. An imparlance or a countermand of what had been previously ordered.—Cowel.

**Contramandatum.** A lawful excuse which the defendant by his attorney alleges for himself, to show that the plaintiff has no cause to complain. *Si dies placiti sit contramandatus.*—Leges H. 1, c. 59.

**Contrapositio.** A plea or answer.—Cowel; Leg. H. 1, c. 34.

**Contrarients.** A name of reproach applied to the Earl of Lancaster and his followers who in the reign of Ed. 2 took part against the king. To call them rebels or traitors was thought too derogatory for persons of such rank.—Cowel.

**Contratenerere.** To withhold.—Leg. Alfr.

**Contribules.** Kindred.—Cowel.
CONTRIBUTIONE FACIENDA. A writ that lay where several tenants in common were bound jointly to do something, and yet the burden was thrown upon one of them, the others refusing to do their share; and this writ was to compel them to do their part.—Reg. Orig. 671; Cowel.

CONTROLLER. See Controller.

CONTROVER. An inventor or devisor of false news.—2 Inst. 227.

CONVENABLE. Suitable, convenient, or fitting.—2 H. 6, c. 2; Cowel.

CONVENTIO. In law pleadings an agreement or covenant.—Cowel.

CONVENTION. An assembled parliament, before any act is passed or bill signed.—Cunningham. But it seems to be rather applied to the meeting of the houses of parliament without the assent of the king: as the convention parliament which restored king Charles the Second to the throne, and which assembled some time before his return; the lords by their own authority, and the commons in pursuance of writs issued in the name of the keepers of the liberty of England by authority of parliament.—1 Bl. 151.

CONVENTIONE. A writ of covenant which lay for the non-performance of any covenant in writing.—Reg. Orig. 185; Cowel.

CONVENTUAL CHURCH. A church consisting of regular clerks professing some order of religion, or of a dean and chapter, or other such society of ecclesiastics.—Cowel.

CONVENTUALS. A society of religious men united together in some religious house.—Cowel.

CONVERSION. An action of trover and conversion is an action for recovery of damages against such person as had found another’s goods and refused to deliver them on demand, but converted them to his own use; from which finding and converting it is called an action of trover and conversion.—3 Bl. 152.

CONVEYANCE. A deed by which the property in lands and tenements is conveyed from one person to another.—2 Bl. 309. The various kinds of conveyances will be found under their respective titles.

CONVICT. He who is found guilty of an offence by the verdict of a jury.—Staunf. Pl. Cr.; Cowel.

CONVICT RECUSANT. He who had been legally presented, indicted, and convicted for refusing to come to church to hear the common prayer according to the several statutes of Eliz. and Ja.

CONVICTION. A conviction is defined to be a record of the summary proceedings upon any penal statute, before one or more justices of the peace, or other persons duly authorized, in a case where the offender has been convicted and sentenced, and consists first of an information or charge against the defendant; secondly, of a summons
or notice of such information, in order that he may make his defence; thirdly, his appearance, or non-appearance; fourthly his defence or confession; fifthly, the evidence against him in case he does not confess; and sixthly, the judgment or adjudication.—Boscaw. Pen. Con. 7; R. v. Green, Cald. Cas. 396, 397.

Convivium. A condition annexed to a certain tenure whereby the tenants are bound to provide meat and drink for their lord once or oftener in every year. It is the same amongst the laity as procuratio is among the clergy.—Selden in Eadmer, 150; Cowel.

Convocation (convocatio). An ecclesiastical assembly, consisting of the representatives of the clergy of the two provinces of Canterbury and York, convened for the purpose of consulting on ecclesiastical matters in time of parliament.—25 H. 8, c. 19; Cowel.

Conusance of Pleas. This is a privilege or right vested in the lord of a franchise to hold pleas; or a privilege granted to a great city that the inhabitants thereof shall be sued within their city.—5 Vin. Abr. p. 569.

Conusant (Fr. connaissant). Knowing, privy to, understanding. Thus, if a son be conusant, and agree to the feoffment, &c.—Co. Lit. 159.

Coparceners (participes), also called parceniers. Where an estate of inheritance descends from the ancestor to two or more persons, it is said to be an estate in coparcenary; and those persons to whom it descends are called coparceners, or sometimes for the sake of brevity parceniers. As where a person seised in fee-simple or in fee-tail dies, and his next heirs are two or more females, his daughters, sisters, aunts, cousins, or their representatives; in this case they shall all inherit. Parceniers by particular custom are where lands descend, as in gavel kind, to all the males in equal degree, as sons, brothers, uncles, &c. And in either of these cases all the parceniers put together make but one heir, and have but one estate among them. 2 Bl. 188.

COPARTNERSHIP. Same as Partnership.

Cope. In Domesday book it is said to signify a bill; but it also signifies a custom or tribute due to the lord of the soil or to the king out of the lead mines in some parts of Devonshire.—Cowell.

Copia libelli deliberanda. A writ that lay for a man when he could not get the copy of a libel delivered to him from the hands of the ecclesiastical judge.—Reg. Orig. 51; Cowel.

Copyhold (tenura per copiam rotulii curiae). A copyhold estate is an estate the only visible title to which is the copy of the court rolls, which are made out by the steward of the manor on a tenant’s being admitted to any parcel of land or tenement belonging to the manor. To illustrate the word it will be
necessary to give an outline of the origin of these estates, which is as follows: On the arrival of the Normans in England, there was a certain inferior and miserable class of persons called villeins, who were employed in rustic works of the most sordid kind. These villeins belonged chiefly to the great lords of manors, and held small portions of land by way of sustaining themselves and families; but this was at the mere will of the lord, who might dispossess them whenever he pleased; and they held this land upon villein services, such as to carry out dung, to hedge and ditch the lord’s demesnes, and such like. These villeins, however, in process of time gained considerable ground on their lords, and in particular strengthened the tenure of their estates to that degree, that they came to have in them an interest in many places full as good, in others better, than their lords. For the good nature and benevolence of many lords of manors having time out of mind permitted their villeins and their children to enjoy their possessions without interruption in a regular course of descent, the common law, of which custom is the life, now gave them title to prescribe against their lords, and on performance of the same services, to hold their lands, in spite of any determination of the lord’s will. For though in general they are still said to hold their estates at the will of the lord, yet it is such a will as is agreeable to the customs of the manor, which customs are preserved and evidenced by the rolls of the several courts baron, in which they are entered or kept on foot by the constant immemorial usage of the several manors in which the lands lie. And as such tenants had nothing to show for their estates but these customs and admissions in pursuance of them, entered on these rolls, or the copies of such entries witnessed by the steward, they now began to be called tenants by copy of court roll, and their tenure itself a copyhold. Thus copyhold tenures, as Sir Edward Coke observes, though very meaneely descended, yet come of an ancient house; for from what has been premised it appears, that copyholders are in truth no other but villeins, who by a long series of immemorial encroachments on the lord have at last established a customary right to those estates which before were held absolutely at the lord’s will.—2 Bl. 94, 95.

Coram non judice (not before a judge). When a cause is brought into a court the judges of which have no jurisdiction, it is said to be coram non judice. —2 Cro. 351; Powell’s Case; Cowel.

Coronatore Eligendo. The name of a writ, which after the death or discharge of any coroner was directed to the sheriff out of chancery to call together the freeholders of the county for the choice of a new coroner, and to certify into chancery both the election and name of the party elected, and to give him his oath.—West 2, cap. 10; F. N. B. 163; and Cowel.

Coronatore Exonerando. A writ for the removal of a coroner, because he is engaged in other business, or is incapacitated by
years or sickness or otherwise.—1 Bl. 347.

**Corium forispacere.** To be condemned to be whipped, which was formerly the punishment of a servant. *Corium perdere* signifies the same; *corium redimere*, to compound for a whipping; and *corio componere*, to be whipped.—Cowel.

**Cornage (cornagium, from the Lat. cornu, a horn).** Tenure by *cornage* was to blow a horn when the Scots or other enemies entered the land, in order to warn the king’s subjects, and was like other services of the same nature a species of grand serjeancy.—2 Bl. 74.

**Cornare.** To blow in the horn.—Mat. Par. 181; Cowel.

**Corn Rents.** There was a restriction with regard to college leases, by *stat. 18 Eliz. c. 6*, which directed that one third of the old rent then paid should for the future be reserved in wheat or malt, reserving a quarter of wheat for each 6s. 8d., or a quarter of malt for every 5s., or that the lessees should pay for the same according to the price that wheat and malt should be sold for in the market next adjoining to the respective colleges, on the market day before the rent becomes due.—2 Bl. 322.

**Corodio habendo.** A writ by virtue of which *corodies* of abbeys or religious houses used to be exacted.—Reg. Orig. 264; Cowel.

**Corody (corodium).** Corodies are a right of sustenance, or to receive certain allotments of victual and provision for one’s maintenance. In lieu of which (especially when due from ecclesiastical persons) a pension or sum of money is sometimes substituted. And these may be reckoned a species of incorporeal hereditaments, though not chargeable on or issuing from any corporeal inheritance, but only charged on the person of the owner in respect of such his inheritance.—2 Bl. 40.

**Coroner (a corona).** An ancient officer at the common law, who has principally to do with pleas of the crown or such wherein the king is more immediately concerned. He is chosen by the freeholders at the county court and ought to have an estate sufficient to maintain the dignity of his office and to answer any fines that may be set upon him for his misbehaviour, &c. The office and power of a coroner are also, like those of the sheriff, either judicial or ministerial, but principally judicial. This is in a great measure ascertained by *stat. 4 Edw. 1, de officio coronatoris*, and consists, first, in inquiring when any person is slain, or dies suddenly, or in prison, concerning the manner of his death. And this must be *super visum corporis*, for if the body be not found the coroner cannot sit. He must also sit at the very place where the death happened; and his inquiry is made by a jury from four, five, or six of the neighbouring towns, over whom he is to preside. If any be found guilty by this inquest, of murder or other homicide, he is to commit them to
prison for further trial, and is also to enquire concerning their lands, goods, and chattels, which are forfeited thereby; but whether it be homicide or not, he must enquire whether any deodand has accrued to the king, or the lord of the franchise by this death; and must certify the whole of this inquisition under his own seal and the seals of his jurors, together with the evidence thereon, to the Court of King’s Bench, or the next assizes. Another branch of his office is to enquire concerning shipwrecks, and certify whether wreck or not, and who is in possession of the goods. Concerning treasure trove he is also to enquire, who were the finders, and where it is, and whether any one be suspected of having found and concealed a treasure. —1 Bl. 348, 349.

CORONER OF THE KING’S HOUSE (usually called coroner of the verge). An officer appointed by the lord steward, or lord great master of the king’s house for the time being. His office resembles that of a coroner of a county, only that his duties are limited to such matters as occur within the verge or within the precincts of the king’s palace.—1 Chitty’s Bl. 347, note 20.

CORONE. This was the title to which all matters of the crown were formerly reduced; and were things that concerned treason, felony, and various other offences.—Shep. Epit. 367; Tomlins.

CORPORATION (corporatio). A corporation is defined to be an as-
and united into a corporation, they and their successors are then considered as one person in law; as one person they have one will, which is collected from the sense of the majority of the individuals; this one will may establish rules and orders for the regulation of the whole, which are a sort of municipal laws of this little republic, or rules and statutes may be prescribed to it at its creation, which are then in the place of natural laws. The privileges and immunities, the estates and possessions of the corporation, when once vested in them, will be for ever vested, without any new conveyance to new successors; for all the individual members that have existed from the foundation to the present time, or that shall ever hereafter exist, are but one person in law, a person that never dies, in like manner as the river Thames is still the same river, though the parts which compose it are changing every instant. The first division of corporations is into aggregate and sole. Corporations aggregate consist of many persons united together into one society, and are kept up by a perpetual succession of members, so as to continue for ever; of which kind are the mayor and commonalty of a city, the head and fellows of a college, the dean and chapter of a cathedral church. Corporations sole consist of one person only and his successors, in some particular station, who are incorporated by law, in order to give them some legal capacities and advantages, particularly that of perpetuity, which, in their natural persons, they could not have had. In this sense the king is a sole corporation, so is a bishop, so are some deans and prebendaries distinct from their several chapters, and so is every parson and vicar. Another division of corporations, either sole or aggregate, is into ecclesiastical and lay. Ecclesiastical corporations are where the members that compose it are entirely spiritual persons, such as bishops, certain deans and prebendaries, all archdeacons, parsons, and vicars, which are sole corporations; deans and chapters at present, and formerly prior and convent, abbot and monks, and the like bodies aggregate. Lay corporations are of two sorts, civil and eleemosynary. The civil are such as are erected for a variety of temporal purposes, as for the good government of a town or particular district, as a mayor and commonalty, bailiff or burgesses or the like; and some for the better carrying on of divers special purposes, as churchwardens for conservation of the goods of a parish; the college of physicians and of surgeons in London for the improvement of medical science; the Royal Society for the advancement of natural knowledge, &c. The eleemosynary sort are such as are constituted for the perpetual distribution of the free alms or bounty of the founder of them to such persons as he has directed. Of this kind are all hospitals for the maintenance of the poor, sick, and impotent, and all colleges, both in our universities and out of them.—1 Bl. 467 to 471.
CORPUS CUM CAUSA. A writ issuing out of Chancery to remove both the body and the record touching the cause of any man lying in execution upon a judgment for debt, into the King's Bench, there to remain until he has satisfied the judgment.—*Fitz. Nat. Brev.* 251; *Cowel*.

CORRECTOR OF THE STAPLE. A clerk belonging to the staple, who wrote and recorded the bargains of merchants that were made there.—*27 Edw. 3, stat. 3, c. 22, 23; Cowel*.

CORREDIUM, COUREDIUM. The same as corrodium or corody.—*Cowel*.

CORRUPTION OF BLOOD. The immediate consequence of attainder is corruption of blood, both upwards and downwards; so that an attainted person can neither inherit lands or other hereditaments from his ancestors, nor retain those he already has, nor transmit them by descent to any heir, because his blood is considered in law to be corrupted.—*4 Bl. 388*.

CORSEPRESENT. It was anciently usual to bring a mortuary (or customary gift due to the minister on the death of a parsoner) to church along with the corpse when it came to be buried, and thence it was sometimes called a corsepresent.—*2 Bl. 425, 426*.

CORSNED. A species of purgation which probably sprung from a presumptuous abuse of revelation in the darker ages, was the corsned or morsel of execration; being a piece of cheese or bread, of about an ounce in weight, which was consecrated with a form of exorcism; desiring the Almighty that it might cause convulsions and paleness, and find no passage, if the man was really guilty, but might turn to health and nourishment if he was innocent.—*4 Bl. 345; Spelm. Gloss.* 439.

COSDUNA. Custom or tribute.—*Mon. Ang. tom. 1, p. 562; Cowel*.

COSENAGE OR COSINAGE (Fr. cousinage). A writ that lay where the tresail (i.e. the father of the besail or great grandfather) was seised of lands, &c. in fee on the day of his death, and afterwards a stranger entered and abated, and so kept out the heir.—*F. N. B. 221; Cowel*.

COSENING. An offence arising out of some deceitful act, whether in reference to a contract or not; and for which offence there is no recognised name.—*Cowel*.

COSHERING. A right or custom which the feudal lords imposed upon their tenants of sometimes lying and feasting themselves and their followers at their tenants houses.—*Spelman of Parl. MS.; Cowel*.

COSTS. The expenses which are incurred either in the prosecuting or the defending an action are called the costs. Costs between attorney and client are those which the client always pays his attorney, whether such client is
successful or not, and over and above what the attorney gets from the opposing party in case of such party having lost the action. Costs between *party and party* are those which the defeated party pays to the successful one as a matter of course.

**Coterellus and Cotarius,**

These words, according to Spelm an and *Du Fresne,* signify servile tenants. But Cowel seems to think that there is a distinction not only in their name, but in their tenure and quality. For the *cotarius,* he says, had a free socage tenure, and paid a stated firm in provisions or money, with some occasional customary service; whereas the *coterellus* seemed to have held in mere vilenage, and was subject to have his person and issue and goods disposed at the pleasure of his lord.—Paroch. Antiq. 310; Cowel.

**Cotland and Cotsethland.**

Land held by a cottager either in socage or in vilenage.—Paroch. Antiq. 532: Cowel.

**Cotsethus.** A cottager who by servile tenure was bound to work for the lord.—Cowel.

**Coucher or Courcher.** A factor who continues in some place or country for traffic, as formerly in *Gascoign* for buying wines. It is also used for the general book in which any religious house or corporation registers their particular acts.—3 & 4 Ed. 6, c. 10; Cowel.

**Covenant.** A covenant is a kind of promise, contained in a deed, to do a direct act, or to omit one; and is a species of express contract, the violation or breach of which is a civil injury. The person who makes such a covenant is termed the *covenantor,* and he with whom it is made the *covenantee.* Thus in a lease the lessor covenants that the lessee shall quietly enjoy the premises demised to him by the lease; and on the other hand the lessee covenants to pay the rent for the premises to the lessor. When the covenantor covenants for himself and his heirs, it is then called a covenant *real,* and descends upon the heirs, who are bound to perform it, if capable of doing so; when he covenants for his executors and administrators, it is a *personal covenant,* and binds his personal representatives. Covenants are also said to be express or implied; express, when they are literally expressed or inserted in the deed; implied, when not inserted or expressed in the deed, but which the law implies as a matter of course; as if A. demises a house and land to B. for a certain term of years, and in the lease creating such demise there is no covenant on the part of A. that B. shall enjoy the premises quietly during the term; in this case the law very justly supposes that although A. has not formally entered into such a covenant, yet that it must or ought to be his intention to permit B. to quietly enjoy the premises demised to him, and therefore it considers such a covenant on the part of A. as implied.—3 Bl. 156. Covenants are said to run with the land when they affect or are intimately at-
tached to the thing granted, as a covenant to repair, to pay rent, &c. and such covenants in a lease bind not only the lessee but his assignee also.—2 Chitty's Bl. p. 303, note 16.

COVENANT TO STAND SEISED TO USES. A species of conveyance, by which a man, seised of lands, covenants, in consideration of blood or marriage, that he will stand seised of the same to the use of his child, wife, or kinsman, for life, in tail, or in fee.—2 Bl. 338.

COVERT-BARON. By marriage the husband and wife become one person in law: i.e. the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of her husband, under whose wing, protection, and cover she performs every thing; and she is therefore called in our law French a feme covert; is said to be covert-baron, i.e., under the protection and influence of her husband or baron; and her condition during her marriage is called her coverture.—1 Bl. 442.

COVERTURE. See Covert-Baron.

COVIN (covina). A deceitful compact or agreement between two or more persons to the prejudice or injury of another. As if a tenant for life or in tail secretly conspires with another that he shall recover the land which he the tenant holds, to the prejudice of him in reversion.—Cowel.

COUNSELLOR. See Barrister

COUNT (Fr. conte, a narrative). In common law pleadings a section of a declaration is so called. In order to give the student a correct idea of the nature of a count, the author begs his attention to the following outline. Where a plaintiff has several distinct causes of action, he is allowed to pursue them cumulatively in the same suit, subject to certain rules, which the law prescribes, as to joining such demands only as are of similar quality or character. Thus, he may join a claim of debt on bond with a claim of debt on simple contract, and pursue his remedy for both by the same action of debt. So, if several distinct trespasses have been committed, these may all form the subject of one declaration in trespass; but on the other hand, a plaintiff cannot join in the same suit a claim of debt on bond, and a complaint of trespass; these being dissimilar in kind. Such different claims or complaints, when capable of being joined, constitute different parts or sections of the declaration; and are known in pleading by the description of several counts. “It is worthy of notice,” says Mr. Serjeant Stephen, “that in the law of Normandy this word conte had a more extensive meaning, and one therefore more conformable to its popular and original sense of narrative, than that which it now bears in the English law; being applied to any of the allegations of fact in the cause at whatever part of the pleading it might occur.” The word count is also used in real actions, as the name for the whole declaration.—Stephen on Pleading, p. 295, and Appendix.
COUNTENANCE. Credit, estimation.—Old Nat. Brev. 111; Cowel.

COUNTER. There were formerly two city prisons in London, called the Counters.—Cowel.

COUNTER-PART. Signifies little else than a copy of the original, Blackstone's definition of it is as follows:—When the several parts of an indenture are interchangeably executed by the several parties, that part or copy which is executed by the grantor is usually called the original, and the rest are counter-parts.—2 Bl. 296.

COUNTER-PLEA. All pleadings of an incidental kind, diverging from the main series of the allegations, are called counter-pleas; as when a party demands oyer, in a case where upon the face of the pleading his adversary conceives it to be not demandable, the latter may demur, or if he has any matter of fact to allege, as a ground why the oyer cannot be demanded, he may plead such matter, and if he plead, the allegation is called a counter-plea to the oyer.—Stephen on Plead. 79.

COUNTER ROLLS. Are rolls which the sheriffs of counties have with the coroners, as well of appeals as of inquests.—3 Ed. 1, c. 10; Cowel.

COUNTORS (Fr. contour). Serjeants-at-law were anciently called serjeant countors.—Cowel.

COUNTRIES CORPORATE. Are certain cities and towns, some with more, some with less territory annexed to them; to which, out of special grace and favour, the kings of England have granted the privilege to be counties of themselves, and not to be comprised in any other county, but to be governed by their own sheriffs and other magistrates, so that no officers of the county at large have any power to intermeddle therein. Such are London, York, Bristol, and many others.—1 Bl. 113.

COUNTRIES PALATINE, so called a palatio; because the owners thereof (the Earl of Chester, the Bishop of Durham, and the Duke of Lancaster) had therein jura regalia, as fully as the king had in his palace. They might pardon treasons, murders, and felonies; they appointed all judges and justices of the peace, all writs and indictments ran in their names, as in other counties in the king's; and all offences were said to be done against their peace, and not as in other places, contra pacem domini regis.—1 Bl. 117.

COUNTING-HOUSE OF THE KING'S HOUSEHOLD. Commonly called the board of green cloth, where the lord steward, treasurer of the king's house, and the comptroller, &c., sit for daily taking the accounts of the expenses of the household, and making provisions for the same, &c.—39 Eliz. c. 7; Cowel.

COUNTY COURT. A court incident to the jurisdiction of the sheriff. It is not a court of record, and may hold pleas of debt or damages under the value of
forty shillings. No action, however, can be brought in this court, unless the cause of action arose, and the defendant resides within the county.—3 Bl. 35.

Court (curia). A court is defined to be a place wherein justice is judicially administered. Some courts are said to be courts of record, others not of record. A court of record is that where the acts and judicial proceedings are enrolled in parchment for a perpetual memorial and testimony, which rolls are called the records of the court, and are of such high and eminent authority, that their truth is not to be called in question. A court not of record is the court of a private man, whom the law will not intrust with any discretionary power over the fortune or liberty of his fellow-subjects. Such are the courts-baron incident to every manor and other inferior jurisdictions, where the proceedings are not enrolled or recorded. An inferior court, not of record, cannot impose a fine, or imprison, whereas the courts of record can.—3 Bl. 23.

Court of Admiralty. See Admiralty.

Court-Baron (curia baronis). The court-baron is a court incident to every manor in the kingdom, and is held by the steward of the manor; and is of two natures; the one a customary court, appertaining entirely to copyholders, in which their estates are transferred by surrender and admittance, and other matters transacted relative to copyhold property; the other a court of common law, which is the baron's or freeholders' court, and is held for determining by writ of right all controversies relating to the right of lands within the manor; and also for personal actions, where the debt or damages do not amount to forty shillings.—3 Bl. 33.

Court of Chancery. See Chancery.

Court of Chivalry (curia militaris). Also called the Marshal Court. This court was formerly held before the lord high constable and earl marshal of England jointly; but, since the extinguishment of the office of lord high constable, it has usually, with respect to civil matters, been held before the earl marshal only, and takes cognizance of contracts and other matters touching deeds of arms and war as well out of the realm as within it. This court is now grown out of use.—3 Bl. 68.

Court Christian. The various species of ecclesiastical courts which take cognizance of religious and ecclesiastical matters, are called courts christian (curiae Christianitatis), as distinguished from the civil courts.—3 Bl. 64.

Court of Conscience. See Conscience.

Court, County. See County Court.

Court of Delegates. See Courts Ecclesiastical, sec. 6.

Courts Ecclesiastical.
The ecclesiastical courts are those
which are held by the king's authority, as supreme head of the church, for the consideration of matters chiefly relating to religion. The causes usually cognizable in these courts are of three sorts, pecuniary, matrimonial, and testamentary. Pecuniary are such as arise either from the withholding ecclesiastical dues, or the doing or neglecting some act relating to the church, whereby some damage accrues to the plaintiff; matrimonial are such as have reference to the rights of marriage; as suits for the restitution of conjugal rights, for divorces and the like; testamentary are such as relate to wills and testaments, &c. The various species of ecclesiastical courts are as follow:

1. The Archdeacon's Court is the most inferior court in the whole ecclesiastical polity. It is held in the archdeacon's absence, before a judge appointed by himself, and called his official; and its jurisdiction is sometimes in concurrence with, sometimes in exclusion of the bishop's court of the diocese.

2. The Consistory Court of every diocesan bishop is held in their several cathedrals, for the trial of all ecclesiastical causes arising within their respective dioceses; whereof the bishop's chancellor or his commissary is the judge.

3. The Court of Arches. See Arches Court.

4. The Court of Peculiars is a branch of, and annexed to the Court of Arches. It has jurisdiction over all those parishes dispersed through the province of Canterbury, in the midst of other dioceses, which are exempt from the ordinary's jurisdiction, and subject to the metropolitan only. All ecclesiastical causes arising within these peculiar or exempt jurisdictions are originally cognizable by this court.

5. The Prerogative Court is established for the trial of all testamentary causes, where the deceased has left bona notabilia within two different dioceses; in which case the probate of wills belongs to the archbishop of the province. And all causes relating to wills, administrations, or legacies of such persons, are originally cognizable herein, before a judge appointed by the archbishop, called the judge of the Prerogative Court.

6. The Court of Delegates (judices delegati), appointed by the king's commission, under his great seal, and issuing out of Chancery, was the great court of appeal in all ecclesiastical causes. The power and franchises of this court were by 2 and 3 Wm. 4, c. 92, transferred to the privy council.

7. A Commission of Review was a commission sometimes granted in extraordinary cases, to revise the sentence of the court of delegates, when it was apprehended they had been led into a material error. This appeal, however, is now to the king in council.

Courts of Equity. They will be found under their respective heads or titles.

Court of Hustings. This is the highest court of record held at Guildhall for the city of London, before the mayor, recorder, and sheriffs. It determines pleas, real, personal, and mixt; and in this court all lands, tenements, and
hereditaments, rents, and services, within the city of London and suburbs are pleadable in two hustings, one called hustings of plea of lands, and the other hustings of common pleas. In this court also the members who serve for the city in parliament must be elected by the livery of the respective companies.—3 Bl. 80; Tomlins.

**Court Leet.** This is a court of record held once or twice in every year within a particular hundred, lordship, or manor, before the steward of the leet, for the preservation of peace, and the chastisement of divers minute offences. Its original intent was to view frank-pledges, that is freemen within the liberty, who, it will be remembered, according to the institution of Alfred the Great, were all mutually pledges for the good behaviour of each other.—4 Bl. 273.

**Court of Marshalsea.**—See Marshalsea.

**Court Martial.** A military court for trying and punishing the military offences of soldiers in the army.

**Court of Peculiars.** See Courts Ecclesiastical, sec. 4.

**Court of pie-poudre (curia pedis pulverisati).** A court held in fairs, to do justice to buyers and sellers, and for the redress of disorders committed therein. It is so called because the time of year when they were held being summer, the suitors came with dusty feet.—Cowel.

**Court of Requests.** See Conscience, Courts of.

**Court of Review.** See tit. Review, Court of.

**Court of the Lord Steward of the King's Household, or (in his absence) of the treasurer, comptroller, and steward of the Marshalsea, was erected by stat. 33 Hen. 8, c. 12, with a jurisdiction to inquire of, hear, and determine all treasons, misprisions of treason, murders, manslaughters, bloodshed, and other malicious strikings, whereby blood shall be shed in or within the limits (i.e. within two hundred feet of the gate,) of any of the palaces and houses of the king, or any other house where the royal person shall reside.—4 Inst. 133; 4 Bl. 276.

**Court of Star-chamber (camera stellata).** A court of very ancient original, but new modelled by statutes 3 Hen. 7, c. 1, and 21 Hen. 8, c. 20, consisting of divers lords, spiritual and temporal, being privy councillors, together with two judges of the courts of common law, without the intervention of any jury. Their jurisdiction extended legally over riots, perjury, misbehaviour of sheriffs, and other misdemeanors contrary to the laws of the land; yet it was afterwards stretched to the asserting of all proclamations and orders of state, to the vindicating of illegal commissions and grants of monopolies, holding for honorable that which it pleased, and for just that which profited, and becoming both a court of law to determine civil rights, and a court of revenue
to enrich the treasury. It was finally abolished by 16 Car. 1, c. 10, to the general satisfaction of the whole nation.—4 Bl. 226, 267; Lamb. Arch. 156.

COURTS OF THE UNIVERSITIES. The chancellor's courts in the two universities of England enjoy the sole jurisdiction, in exclusion of the king's courts, over all civil actions and suits whatsoever, when a scholar or privileged person is one of the parties; excepting in such cases where the right of freehold is concerned. These privileges were granted in order that the students might not be distracted from their studies by legal process from distant courts and other forensic avocations. And these courts are at liberty to try and determine either according to the common law of the land, or according to their own local customs, at their discretion.—3 Bl. 83.

COURTS OF PRINCIPALITY OF WALES. A species of private courts of a limited though extensive jurisdiction; which, upon the thorough reduction of that principality, and the settling of its polity in the reign of Henry the Eighth, were erected all over the country. These courts, however, have been abolished by 1 Wm. 4, c. 70; the principality being now divided into two circuits, which the judges visit in the same manner as they do in England, for the purpose of disposing of those causes which are ready for trial.—3 Bl. 77.

COURT LANDS. Domains or lands kept in the hands of the lord to serve his family.—Cowel.

COUSENAGE. See Cosenage.

COUTHUTLAUGH. He who willingly receives, cherishes, and conceals an outlaw, knowing him to be such.—Bract.; Cowel.

CRASTINO SANCTI VINCENTII. The morrow after the feast of St. Vincent the Martyr, viz. the 22nd of Jan., as crastino animarum is the morrow of All Souls in Michaelmas term; crastino purificationis beatae Marie Virginis, the morrow of the purification of the Virgin Mary, in Hilary term; crastino ascensionis Domini, the morrow of our Lord's ascension, in Easter term; and crastino sanctae Trinitatis, the morrow of the Holy Trinity, in Trinity term.—Cowel; Tomlins.

CRAVARE. To impeach.—Cowel.

CRAVEN OF CRAVENT. A word of Anglo-Saxon derivation, signifying to crave, to beg, to implore, &c. In the ancient trial by battle if either champion proved recreant, i.e. yielded and pronounced the horrible word craven, he was considered to have ceded the victory to his opponent.—Kendall's Trial by Battel, as cited by Chitty in 3 Bl. 340.

CREANSOR. A creditor; he who trusts another with property.—Old Nat. Brev. 66; Cowel.

CREMENTUM COMITATUS. The improvement of the king's rents above the ancient vicontiel rents, for which improvements the sheriff answered under the title of
Crementum comitatus, or firma de cremento comitatus.—Hale on Sheriffs' Accounts; Cowel.

Crepore Oculum. To put out an eye; for which offence there was a punishment of sixty shillings inflicted.—Leg. H. 1, c. 93; Cowel.

Crime. The distinction between a crime and a civil injury is, that the former is a breach and violation of the public rights and duties due to the whole community, considered as such, in its social aggregate capacity; whereas the latter is merely an infringement or privation of the civil rights which belong to individuals considered merely in their individual capacity.—4 Bl. 4.

Cross Bill. A suit in Equity is commenced by the plaintiff filing his bill, wherein is stated all the circumstances which gave rise to the complaint; the defendant's mode of defence is then usually by answer, wherein he controverts the facts stated in the bill, or some of them, &c., but when he is unable to make a complete defence to the plaintiff's bill, without disclosing some facts which rest in the knowledge of the plaintiff himself, he then files what is called a cross bill, which differs in no respect from the plaintiff's original bill, excepting that the occasion which gave rise to it proceeded from matter already in litigation.—Gray's Chan. Pract.; 3 Bl. 448.

Cross Remainder. See Remainder.

Crown Office. An office of the court of king's bench, the master of which is usually called clerk of the crown, and in pleadings and other law proceedings is styled "coroner and attorney of our lord the king." In this office the attorney-general and clerk of the crown exhibit informations for crimes and misdemeanors, the one ex officio, the other commonly by order of the court.—4 Bl. 265; 1 Archb. Praxt. 24.

Cry de Pais. On the commission of a robbery or other felony hue and cry may be raised by the country, in the absence of the constable, which is thence called cry de pais.—2 Hale's Hist, P. C. 100.

Cucking-stool (tumbrellum). An engine of correction for common scolds, which in the Saxon language is said to signify the scolding-stool, though now it is frequently corrupted into ducking stool, because the judgment is that when the woman is placed therein, she shall be plunged in the water for her punishment. It is also called a trebucket, tumbral, and castigatory.—3 Inst. 219; 4 Bl. 168.

Cui ante Divortium. A writ which lay for a woman when a widow or when divorced, to recover her estate, which her husband, during her coverture (cui in vita sua, vel cui ante divortium, ipsa contradicere non potuit,) had aliened.—Britton, c. 114, fol. 264; 3 Bl. 183.

Cui in Vita. See Cui ante Divortium.
CULPRIT. Besides its popular sense of a prisoner accused of some crime, it used formerly to be made use of in the following manner. When a prisoner had pleaded not guilty, non culpabilis, or nient culpabile; which used to be abbreviated upon the minutes thus "non (or nient) cul," the clerk of the assize, or clerk of the arraigns, on behalf of the crown, replied that the prisoner is guilty, and that he was ready to prove him so. This was done by two monosyllables in the same spirit of abbreviation, "cul prit," which signified, first that the prisoner was guilty, (cul, culpable, or culpabilis) and then that the king was ready to prove him so; prit, præstio sum, or paratus verificare. This was therefore a replication on behalf of the king viva voce at the bar, which was formerly the case in all pleadings, as well in civil as in criminal causes. —4 Bl. 339.

CULVERTAGE (culvertagium). The true sense of this word, says Cowel, is not cowardice as some have surmised, but confiscation or forfeiture of lands and goods; it was a Norman feodal term for the lands of the vassal escheating to the lord: and sub nomine culvertagii was under pain of confiscation.—Cowel.

CUNTEY-CUNTEY. A kind of trial, which is thought by some to have been much the same as the ordinary trial by jury.—Bract. lib. 4, tract. 3, cap. 18; Cowel.

CURATOR. In the Roman laws was the same as the committee of an infant's estate is in our law; the guardian performing with us the office both of tutor and curator of the Roman laws.—1 Bl. 460.

CURIA (court). In its general acceptance a court of justice. It was sometimes however taken for the persons, or feudatory and other customary tenants who did suit and service at the lord's court. —Kennet's Paroch. Antiq. 130; Cowel.

CURIA ADVISARE VULT (the court wishes to advise). The courts sometimes take time to deliberate before giving judgment when the point before them is one of unusual difficulty; and when judgment is stayed upon motion to arrest it, then it is entered by the judges curia advisare vult. —New Book of Entries; Cowel.

CURIA CURSUS AQUE. A court held by the lord of the manor of Gravesend for the regulation of boat and barge traffic on the Thames between Gravesend and London.—2 Geo. 2, c. 26.

CURIA CLAUDENDA. A writ that lay against him who should fence or close up his ground, and refuses or defers to do it.—Reg. Orig. 155; F. N. B. 127. Abolished since 31st December, 1834.

CURIA DOMINI. The lord's house, hall, or court, where all the tenants, if need should be, were bound to attend every three weeks, but generally at the feasts of the Annunciation and St. Michael.

CURIA PENTICIARUM. A
court held by the sheriff of Chester in a place called the Pentice; and supposed to have taken its title from having been held in a pent-house or open shed. — Cowel.

Cursitors. Are officers connected with the Court of Chancery, of very ancient institution, and twenty-four in number. They make out all original writs, and the business of the several counties in England in this respect is distributed among them by the Lord Chancellor, by whom they are also appointed. They are called cursitors from the writs de cursu: in stat. 18 E. 3, c. 5, they are called Clerks of Course. — Archbold's Prac. 27.

Curtesy of England, Tenant by the. When a man marries a woman seised of an estate of inheritance, i.e. of lands and tenements in fee simple or fee tail, and has by her issue born alive, which was capable of inheriting her estate; in this case he shall, on the death of his wife, hold the lands for his life as tenant by the curtesy of England. — Lit. 35, 52; 2 Bl. 126.

Curtilage (curtilagium, from the Fr. cour, court, and Sax, leah, locus). A piece of ground lying near and belonging to a dwelling house, as a court yard or the like. — Cowel.

Curtilices Terrae. See Court lands.

Custantia. The same as custagium, which signifies costs. — Cowel.

Custode admittendo and Custode amovendo. Writs for the admitting or removing of guardians. — Reg. Orig. ; Cowel.

Custodes Libertatis Angliæ Authoritatem Parliamenti. During the rebellion in the reign of Charles the first all writs and judicial processes ran in the above style. — Cowel.

Cutodiam dare. Was a gift or grant for life. — Du Cange; Cowel.

Custom (consuetudo). Is a law not written, established by long usage, and the consent of our ancestors. Customs are either general or particular: general customs are the universal rule of the whole kingdom, and form the common law in its stricter and more usual signification: particular customs are those which for the most part affect only the inhabitants of particular districts, as gavel-kind in Kent and the like.

Customs of London. These are particular customs relating to the government of the city of London, and also to trade, apprentices, widows, orphans, &c. They differ from all others in point of trial, for if the existence of the custom be brought in question, it shall not be tried by a jury, but by certificate from the Lord Mayor and aldermen by the mouth of their recorder, unless it be such a custom as the corporation is itself interested in, as a right of taking toll, &c. for then the law does not permit them to certify on their own behalf. — 1 Bl. 76.
CUSTOM OF MERCHANTS (lex mercatoria). A particular system of customs used only among one set of the king's subjects, which, however different from the general rules of the common law, is yet engrafted into it, and made a part of it, being allowed for the benefit of trade to be of the utmost validity in all commercial transactions, being a maxim of law cui libet in sua arte credendum est. This lex mercatoria or custom of merchants comprehends the laws relating to bills of exchange, mercantile contracts, sale, purchase, and barter of goods, freight, insurance, &c.—1 Chitty's Bl. 76, and note 9.

CUSTOMS ON MERCHANDISE. Are duties or tolls charged upon merchandise exported and imported, and which form a part of the royal revenue.—1 Bl. 313.

CUSTOMARY TENANTS. Tenants who hold their estates according to the custom of the manor. A copyhold tenant is so called because he holds his estate by copy of court roll at the will of the lord according to the custom of the manor; and, although a distinction has been made between a copyholder and a customary tenant, yet they both agree in substance and kind of tenure, i.e. by custom and continuance of time.—2 Bl. 148; Culthorpe on Copyholds.

CUSTOMS AND SERVICES annexed to the tenure of lands, are those which the tenants thereof owe unto their lords; and which if withheld the lord may resort to a writ of customs and services to compel them.—Cowel; Tomlins.

CUSTOS BREVIIUM. An officer in the Court of King's Bench and Common Pleas who had the custody of writs and records. This office was abolished by 7 Wm. 4 and 1 Vict. cap. 30.

CUSTOS PLACITORUM CORONAE. An officer who is thought to have been the same as our custos rotulorum.—Reg. Orig. 133; Cowel.

CUSTOS ROTULORUM. A special officer to whose custody the records or rolls of the sessions are committed; he is always a justice of the quorum, and is usually selected either for his wisdom, countenance, or credit; his nomination is by the king's sign manual, and to him the nomination of the clerk of the peace belongs, which office he is expressly forbidden to sell for money.—37 Hen. 8, c. 1; Lambard; 4 Bl. 272.

CUSTOS OF THE SPIRITUALITIES. He who exercises spiritual or ecclesiastical jurisdiction in a diocese during the vacancy of the see.—Cowel.

CUSTOS OF THE TEMPORALITIES (custos temporalium). He to whose custody a vacant see or abbey was committed by the king as supreme lord, who, as steward of the goods and profits thereof, was to give an account to the escheator, and he into the exchequer. His trust continued till the vacancy was supplied by a successor, who obtained the king's writ de restitutione temporalium, which was sometimes after and sometimes before
consecration, though more frequently after.—Cowel.

**Custuma antiqua sive magna** (ancient or great duties). Duties payable by every merchant, as well native as foreign, on wool, sheepskins, or woolfells, and leather exported; the foreign merchant had to pay an additional toll, viz. half as much again as was paid by the natives.—1 Bl. 314.

**Custuma parva et nova** (small and new duties). Imposts of three-pence in the pound, due from merchant strangers only, for all commodities as well imported as exported, and was usually called the alien's duty, and was first granted in 31 Edw. 1; 4 Inst. 29; 1 Bl. 314.

**Cut-Purse.** A pick-pocket.—4 Bl. 242.

**Cynebote.** See Cenegild.

**Cyricbryce (Sax.) Irruptio in ecclesiam.**—LL. Eccl. Canuti Regis.

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**D.**

**Da (Fr.)** A word affirmative for yes.—Law French Dict.

**Damages.** A compensation and satisfaction given to a man by a jury for some injury by him sustained; as for a battery, for imprisonment, for slander, or for trespass.—2 Bl. 438.

**Damage cleer** (damna cleris corum). A fee assessed of the tenth part in the common pleas, and the twentieth part in the king's bench and exchequer out of all damages (exceeding five marks) recovered in those courts in all actions on the case, covenant, trespass, battery, &c., and others wherein the damages were uncertain, which the plaintiff paid to the prothonotary, or chief officer of that court wherein they were recovered, before he could take out execution for them, this was originally a gratuity given to the prothonotaries and their clerks for drawing special writs and pleadings; but was taken away by 17 Car. 2, c. 6, sec. 2, which forbids the receiving any such gratuity or fee, under pain of forfeiting treble the sum so received.—Cunningham.

**Damage-feasant, or faisant (doing damage).** One of the injuries for which a distress may be had, is where a man finds the beasts of a stranger wandering in his grounds, damage feasant, i.e. doing him hurt or damage, by treading down his grass or the like, in which case the owner of the soil may distrain them, until satisfaction be made him for the injury he has thereby sustained.—3 Bl. 7.

**DAM.** A boundary or confinement, *infra damnum suum*, within the bounds of his own property or jurisdiction.—Bract. lib. 2, c. 37.

**Damnum absque injurio** (damage without an injury). If a man commences a business in any particular place, another man
may do the same thing in the same place, even though he draw away the business from the other, and this is damnnum absque injuria, a damage without an injury.—3 Salk. 10; Tomlins.

DANEGELT or DANE-GELD. A tribute laid on our ancestors of 1s. and afterwards of 2s. for every hide of land throughout the realm, for clearing the seas of Danish pirates, which they did by making a pecuniary stipulation with the Danes for that purpose.—Camd. Brit. 142; Spelman; Cowel.

DANE-LAGE. The foreign customs which the Danes introduced into our laws went under the name of Dane-lage.—4 Bl. 411.

DANGERIA. A pecuniary payment made by the forest tenants to their lord, to gain leave to plough and sow in time of pannage or mast-feeding.—Cowel.

DAPIFER (à dapes ferendo). Originally a domestic officer, like our steward of the household or clerk of the kitchen; but it by degrees became applied more especially to the chief steward or head bailiff of any honor or manor. Cowel.

DARE AD REMANENTIAM. To give away in fee or for ever.—Glanvil, lib. 7, c. 1.

DARREIN. Signifies last; corrupted from the French dernier.—Cowel.

DARREIN PRESENTMENT. See Assise of darrein Presentment.

DATIVE or DATIF. Whatever may be given or disposed of at will or pleasure.—45 Ed. 3, c. 10; Cowel.

DAY. See Night.

DAY RULE. A certificate of permission which the court in term time gives to a prisoner to go beyond the rules of the prison for the purpose of transacting his business, upon application to the marshal or warden, (according to whose custody the prisoner is in) and signing a petition to the court for that purpose.—2 Arch. Pract. 910.

DAYS IN BANK (dies in Banco). In every term there were stated days called days in bank, which meant days of appearance in the court of common bench; they were about a week apart from each other, and had reference to some festival of the church. On one of these days in bank all original writs were made returnable, and hence it was usually called the returns of that particular term.—3 Bl. 277.

DAYS-MAN. An arbitrator is so called in the north of England. Cowel.

DEADLY FEUD. An open profession of irreconcilable enmity against a man, till revenge has been obtained even by his death. This enmity or deadly feud was allowed by our ancient laws in the times of the Saxons; so that when any man had been killed and no pecuniary satisfaction had been made to the deceased’s kindred it
was lawful for them to take up arms and revenge themselves on the murderer.—43 Eliz. c. 13; Cowel.

**Dea Pledge (mortuum vadium).** See Mortgage.

**De-afforested or Disafforested.** Freed or exempted from the forest laws, as de warrenata signifies the breaking up or doing away with a warren.—17 Car. 1, c. 16; Cowel.

**Dean (decanus, from the Greek Δεκα, ten.** An ecclesiastical dignitary so called because he presides over ten canons or prebendaries at least; he is next in rank to the bishop and is head of the chapter of a cathedral. A dean and chapter is a spiritual corporation, and form together the council of the bishop, to assist him with their advice in affairs of religion and also in the temporal concerns of his see. All ancient deans were elected by the chapter, by conge d'estire from the king, and letters missive of recommendation, in the same manner as bishops; but in those chapters that were founded by Henry the Eighth out of the spoils of the dissolved monasteries, the deanery is donative, and the installation merely by the king's letters patent. The chapters consisting of canons or prebendaries are sometimes appointed by the king, sometimes by the bishop, and sometimes elected by each other.—1 Bl. 382; 3 Rep. 75.

**Dead Man's Part.** That portion of the personal property of a person dying intestate that goes to the administrator.—2 Bl. 518.

**Death.** The death of a person was formerly accounted to be either a natural or a civil death; the former signifying the natural dissolution of the body; the latter commencing when any man was abjured the realm by the process of the common law, or entered into religion, that is, went into a monastery, and became a professed monk; in which cases he was considered absolutely dead in law, and his next heir should have his estate. Indeed a monk, or such religious person, was so effectually dead in law, that a lease made even to a third person, during the life of one who afterwards became a monk, was determined by his entry into religion or so becoming a monk; whence leases, and other conveyances for life were usually made for the term of one's natural life.—1 Bl. 132; Co. Litt. 132.

**De bene esse.** In law, signifies conditionally; as where a plaintiff files his declaration de bene esse, it signifies conditionally, in contradistinction to his filing it absolutely.—1 Arch. Pract. 280. Or as Cowel expresses it, to do a thing de bene esse is to allow or accept for the present as good until it comes to be more fully examined, and then to stand or fall according to its merits.—Cowel.

**Debenture.** An instrument in the nature of a bond or bill to charge the government with the payment of a certain sum of money due to a creditor or his assigns. There are debentures also used in mercantile transactions at the cus-
Debet et detinet. The form of a writ of debt was sometimes in the *debet* and *detinet* and sometimes in the *detinet* only: that is, the writ stated either that the defendant *owed* and unjustly *detained* the debt or thing in question, or only that he unjustly *detained* it. It was brought in the *debet* as well as *detinet* when sued by one of the original contracting parties who personally gave the credit, against the other who personally inured the debt, or against his heirs if they were bound to the payment; as by an obligee against an obligor, a landlord against a tenant. But if it were brought by or against an executor, for a debt due to or from the testator, this not being his own debt was sued for in the *detinet* only.—F. N. B. 119; 3 Bl. 156.

Debet et solet. Words used in a writ of right; as whereof a man sued to recover any right whereof his ancestor was disseised by the tenant or his ancestor; then he used only the word *debet* in his writ, because his ancestor only was disseised and the estate discontined; but if he sued for anything that was for the first time denied him then he used both the words *debet et solet*; because his ancestors before him, as well as he himself had usually enjoyed the thing for which he sued, until this present refusal of the tenant. —Old Nat. Brev. 78; Les Termes de la Ley.

Debt (*debitum*). The legal signification of debt is a sum of money due by certain and express agreement: as by a bond for a determinate sum; a bill, or a note, as special bargain; or a rent reserved on a lease; where the quantity is fixed and specific, and does not depend upon any subsequent valuation to settle it. The non-payment of these is an injury, for which the proper remedy is by action of debt, to compel the performance of the contract and to recover the specific sum due. Debts are either debts of *record*, *specialty* debts, or *simple contract* debts. Debts of record are the highest and most important kind, and are such debts as appear to be due by the evidence of a court of *record*, as a sum of money recovered by a plaintiff against a defendant in an action at law; for this having been adjudged due from the defendant to the plaintiff by the sentence of the court is considered a contract of the highest nature. Debts upon recognizance are also sums of money recognized or acknowledged to be due to a party, in the presence of some court, or magistrate, and these, together with statutes merchant, and statutes staple, &c. are also ranked among this first class of debts, viz. debts of record; since the contract on which they are founded is witnessed by the highest kind of evidence, viz. by matter of record. Specialty debts are such as become due or are acknowledged to be due by some deed or instrument under seal; as by a deed of covenant, by lease reserving rent, or by bond or obligation; thus in the case of a lease where rent is reserved, if the lessee
omits to pay such rent as in the lease he covenants to pay, the debt which he thus incurs is a specialty debt; and these kind of debts] are looked upon as the next in importance to those of record, because they are confirmed by special evidence under seal. Simple contract debts are such, where the contract upon which the obligation arises is neither ascertained by matter of record, nor by deed or instrument under seal, but merely by oral evidence or by some written agreement or contract not under seal; as where the only evidence of such debt is a verbal promise, or a bill of exchange or promissory note, or the like; and these are considered in law as belonging to the least important of the three classes of debts above mentioned.—2 Bl. 464—467; and Chitty’s Notes.

Decem tales. When some of the persons impaneled on a jury do not appear, or appearing are challenged by the plaintiff or defendant on account of partiality or other cause, in this case the judge grants a supply to be made by the sheriff of other men instead of those that were impaneled, and thereupon a writ goes to the sheriff apponere decem tales, &c. and a fresh supply is made accordingly.—Les Termes da la Ley; Cowel.

Deceptione. See Deceit.

Decies tantum. A writ which lay against a juror for having taken money from either plaintiff or defendant in consideration of giving his verdict; the writ is so called because the juror shall pay ten times as much as he has received. This writ also lay against embracers for their intermeddling with a jury. Reg. Orig. 188.—Les Termes de la Ley.

Decimation (decimatio.) The punishing every tenth soldier by lot was Decimation legionis. It may also sometimes signify a tithing.—Cowel.

Deciners, Decennaries or Doziners, (decennarii). In our old law writings, those who were accustomed to have the command and oversight of ten free burghs, for preserving the king’s peace; and the limits or circuits of their jurisdiction were called Decenna. In the times of the
Saxons these persons seemed to have great authority, taking cognizance of causes within their circuit, and redressing wrongs by way of judgment. But in the more modern writers this word signifies nothing more than one who by his oath of loyalty to his prince is settled in the combination or society of a Dozeine; and a Dozeine seems to extend as far as the leet extends, because in leets only this oath is administered by the steward, and taken by such as are of the age of twelve years and upwards, dwelling within the precinct of the leet where they are sworn.—Nat. Brev. 161.

**Declaration.** In an action at law signifies the plaintiff’s statement of his cause of action; wherein he declares the reason of his complaint and states the nature and quality of his case.—Refer to title Action. The declaration is generally divided into counts or departments, each of which contains, or ought to contain, a distinct ground of complaint. Its parts and particular requisites, consist in the title of the court in which the action is brought and of the term; the venue or county, mentioned in the margin, and wherein all matters stated in the declaration are supposed to have taken place; the commencement; the statement of the cause of action; the several counts; the conclusion; and the profert. Step. on Pleading; 3 Chitty’s Bl. 293, note 2.

**Decree.** The judgment of a court of equity, and of much the same nature as a judgment at common law. See this word explained in the Outline of a Suit in equity at the end of this dictionary.

**Decretals (decretales).** Papal decrees of various popes that were published under the auspices of Gregory the ninth about the year 1230, in five books, entitled decretalia Gregorii noni. A sixth book was added by Boniface the eighth, about the year 1298, which is called sextus decretalium, 1 Bl. 82.

**Deducta (Sax. ded-bane).** A murderer, homicide, or manslayer.—Leg. Hen. 1. cap. 85. Cowel.

**Dedi (I have given).** This word in a deed or conveyance amounts to a warranty to the persons and his heirs to whom the lands are conveyed. Co. Litt. 384.

**Dedimus Potestatem.** A writ issuing out of chancery empowering certain persons therein named to perform certain acts; as when a justice of the peace appointed under the king’s commission intends to act under this commission, a writ of dedimus potestatem issues, empowering certain persons therein named to administer the usual oaths to him; which being done, he is at liberty to act.—Lamb. 23. 1 Bl. 352. Dedimus potestatem de attornato faciendo. At common law the parties in an action were obliged to appear in court in person unless allowed by a special warrant from the crown (bearing the above title) to appoint an attorney; or
unless after appearance they had appointed a deputy called a Res-
ponsalitis to act for them, and which the court allowed them to do in
some instances. But now a gene-
ral liberty is given to parties in an
action to appear by attorney, ex-
cepting in the cases of infants,
ideots, and married women.—F.
N. B. 25. 1 Arch. Pract. 61.

DEED (factum). A deed is a
writing sealed and delivered by
the parties. It is sometimes called
a charter, carta, from its materials,
but most usually when applied to
the transactions of private sub-
jects, it is called a deed, because
it is the most solemn and authen-
tic act that a man can possibly per-
form with relation to the disposal
of his property, and it consists of
three principal points, writing,
sealing, and delivery; writing, to
express the contents; sealing, to
testify the consent of the parties;
and delivery, to make it binding
and perfect.—Co. Litt. 171. 2
Bl. 295. If a deed be made by
more parties than one, there should
be as many copies of it as there
are parties, and each should be
cut or indented (formerly in acute
angles, instar dentium, like the
teeth of a saw, but now in a
waving line) on the top or side,
to tally or correspond with each
other, and a deed so made is
called an indenture.—See Chiro-
graph.

DEED-POLL. A deed made
by one party only and not in-
dented, but polled or shaved quite
even; and thence called a deed-
poll. Such a deed is not an agree-
ment between two persons, but a

declaration of some one particular
person. Thus a feoffment from
A. to B. by deed-poll is not an
agreement between A. and B. but
rather a declaration by A addressed
to all mankind, informing them
that he thereby enfeoffs B. of cer-
tain lands therein mentioned; and
such a deed usually begins thus:
“Know all men by these pre-
sents, that I, &c.”—4 Cru. Dig.
p. 9. 2 Bl. 296.

DEERMSTERS OR DEMSTERS
(Sax. dema, i.e. a judge or umpire).
Certain judges in the Isle of Man
who decide cases without any pro-
cess or writings, and make no
charges to the litigants for so
doing.—Cam. Brit.; Cowel.

DE ESSENDON QUIETUM DE
TOLONIO. A writ which lay for
those who are privileged from the
payment of toll, and yet the
same has been extorted from them.
—F. N. B. 226; Cowel.

DE EXPENSIS MILITUM. A
writ commanding the sheriff to
levy so much per day for the
expenses of a knight of the shire
in attending parliament; and there
is also a similar writ to levy 2s.
per day for every citizen and bur-
gess, called de expensis civium et
burgensium.—4 Inst. 46; Cowel.

DE FACTO. A thing done de
facto signifies that it is actually
done, done in deed; a king de
facto is one who is in the actual
possession of the throne without
any lawful title to the same, in
contradistinction to a king de jure,
who has a right to the crown
though out of possession of the same.—3 Inst. 7; Cowel.

**Defeasance** *(Fr. *defaire*, to defeat, &c.)* It is defined to be a collateral deed made at the same time with a feoffment or other conveyance, containing certain conditions, upon the performance of which the estate then created may be defeated or totally undone. There are six requisites to a defeasance. 1st, That it be made by the same species of assurance as the principal instrument. 2nd, That it recite or refer to the deed to which it relates. 3rd, That it be made between the same persons as are parties to the deed to be defeated. 4th, That where, as in case of feoffment, the estate is executed, it be made at the same time as the principal instrument. 5th, That in case of bonds or other executory instruments it be made at the same, or subsequent (*not previous*) to the bond, &c. 6th, That it be made of a thing defeasible. The defeasance to a warrant of attorney is written on the same paper or parchment on which the warrant of attorney is written, and, like the condition of a bond, when the terms of such defeasance are performed, discharges the estate of the obligor.—2 Bl. 327; Co. Litt. 236; 1 Ch. Gen. Pract. of the Law, 321.

**Defectum**, *Challenge propter.* See Challenge.

**Defence.** When the plaintiff in an action has stated his case in his declaration, it is incumbent on the defendant within a reasonable time to make his defence and to put in a plea; or else the plaintiff will at once recover judgment by *default*, or *nihil dicit*, of the defendant. Defence in its true legal sense signifies not a justification, protection, or guard, which is now its popular signification; but merely an opposing or denial (from the French verb *defender*) of the truth or validity of the complaint. It is the *contestatio litis* of the civilians: a general assertion that the plaintiff hath no ground of action, which assertion is afterwards extended and maintained in his plea. —3 Bl. 296.

**Defend** *(defendere).* In our ancient laws and statutes signifies to prohibit or to forbid.—Co. Litt. 161; Leg. Ed. Conf. cap. 37; Cowel.

**Defendant** *(defendens).* The party against whom an action at law is brought, and who therefore has to defend himself against such action.

**Defendemus.** An ordinary word in feoffments and donations; and in those instruments it binds the donor and his heirs to defend the donee against any attempt which may be made by any one to lay any incumbrance or servitude upon the thing given, other than that already imposed by the deed of donation.—Bract. lib. 2, c. 16; Cowel.

**Defender of the Faith** *(defensor fidei).* A title given to the king of England by the pope; as Catholic to the king of Spain,
and *Most Christian* to the king of France. It was first given by Pope Leo the Tenth to King Henry the Eighth, for writing against Martin Luther in behalf of the church of Rome.—*Herbert's Hist. of Hen. 8th.*, 105; *Stow's Annals*, 563.

**Defendere se per corpus suum.** A phrase which occurs in Bracton and some of our old law writers, signifying to offer duel, combat, or camp-fight, as a legal trial or appeal.—*Cowel.*

**Defendere unica manu.** To wage law, by denying the accusation upon oath.—*See Manus.*

**Defenso.** That part of an open field that was kept for corn and hay, upon which there was no commoning or feeding, which was said to be *in defenso*. So any meadow ground laid in for hay; and so for any part of a wood where the cattle had not liberty to run, but was inclosed and fenced up to secure the growth of the underwood.—*Mon. Dug. tom. 3, p. 306; Cowel.*

**Defensum.** An inclosure or any fenced ground.—*Mon. Ang. tom. 2, p. 114.*

**Deforcement (deforciamentum).** The holding of any lands or tenements to which another person has a right, but who has never yet had possession under that right. As in the case where a lord has a seignory, and lands escheat to him *propter defectum sanguinis*, but the seisin of the lands is withheld from him; here the injury arising from the person so forcibly withholding such lands is called a *deforcement*. Or if a man lease lands to another for a term of years, or for the life of a third person, and the term is determined by surrender, or by the death of the *cestuy qui vie*, or otherwise, and the lessee or any stranger, who was at the determination of the term in possession, holds over, and refuses to deliver the possession to him in remainder or reversion, this is also a *deforcement*.—3 Bl. 172; *Co. Litt. 277.*

**Deforciant or Deforceor.** In levying a fine the person against whom the fictitious action is brought upon a supposed breach of covenant, is called the *deforciant*. The person who commits the injury of *deforcement* is also called the *deforciant or deforceor*.—3 Bl. 173; *Finch L. 293, 294.*

**Deforciato.** A distress, or seizure of goods, for satisfaction of a lawful debt.—*Kennet's Paroch. Antiq. 293; Cowel.*

**Degradation (degradatio).** The depriving a peer of his nobility is called degrading him. Thus Edward the 4th degraded George Nevile, duke of Bedford, by act of parliament, on account of his poverty, which rendered him unable to support his dignity. It also signifies an ecclesiastical censure, whereby a clergyman is divested of his holy orders. The word *deposition* is also used in nearly the same manner, excepting that it is not so great a punishment as *degradation*, the latter word not only including *deposition*, or dis-
placing one from an office, but also the divesting the criminal of all his badges of honour, and delivering him over to the secular judge, where he cannot purge himself of the offence of which he was convicted.—Seld. Tit. of Hon. 787; 1 Bl. 402.

DEHORS (French, without). A word which was used in the ancient pleadings, signifying that the thing was without the land, &c. or out of the point in question.—Cunningham.

DE INJURIA SUA PROPIA ABSQUE TALI CAUSA (of his own wrong without such cause). Words used in replications in actions of trespass; as where A. sues B. in an action of trespass, and B. answers that he committed the act which A. calls a trespass by the command of C., his master; then A. replies that he did it in his own wrong, without such cause as he alleges.—Cro. E. 539, pl. 2.

DEI JUDICIMUM. The Saxon trial by ordeal was so called, because they thought it an appeal to God for the justice of a cause, and believed that the decision would depend upon his divine will and pleasure.—Dr. Brady’s Introd. 272.

DELATURA. An accusation. Sometimes it signifies the reward of an informer.—DuFresne; Leges H. 1, c. 64.

DEL CREDERE (of belief or trust). A commission del credere is an undertaking by an insurance broker in consideration of an ad-
ditional premium, to insure his principal against the contingency of the failure of the underwriter,—1 Term Rep. 112.

DELEGATES. The persons appointed by the commission of delegates.—See Commission of Delegates.

DEMANDANT. The person who prosecutes a real action is called the demandant; in the same sense as he who prosecutes a personal action is called the plaintiff.

DEMESNE or DEMAIN. That portion of the lands of a manor which the lord retained in his own hands for the use of himself and his family, was called terra dominicales or demesne lands; being occupied by the lord, or dominus manerii, and his servants and household, &c.—Co. Cop. sec. 3; 2 Bl. 90; see Ancient Demesne.

DEMISE (demissio). A word used in conveyances of estates in fee, for life, or for term of years; but more usually in the latter, where it is almost synonymous with the word lease. Thus in a lease for years it is thus used: “He, the said A. B. hath demised and leased, and by these presents doth demise and lease, &c. The various law lexicographers have not attempted to define this word, although most of them (Spelman excepted) have given it a place in their books.—See next title.

DEMISE OF THE KING. The natural death of the king is generally called his demise; demissio
regis, vel corone; an expression which signifies merely a transfer of property; for as is observed in Plowden, when we say the demise of the crown, we mean only that in consequence of the disunion of the king's natural body from his body politic, the kingdom is transferred or demised to his successor; and this is in accordance with the maxim of our law, that "the king never dies."—Plowd. 177, 234; 1 Bl. 249.

DEMISE and REDEMISE. When there are mutual leases made from one party to another on each side, of the same land or something out of it, it is said to be a conveyance by demise and redemise; as where A. grants a lease to B. at a nominal rent, and the latter redemises the same property to A. for a shorter term at a real substantial rent.—Jacob.

DEMURRAGE. An allowance made to the master of a ship by the freighters, for staying in a place beyond the time originally appointed for his departure.—Abbot on Shipping, 182; Tomlins.

DEMURRER AT LAW (from the Lat. demorari, or Fr. demorrer, to "wait or stay"). Imports, according to its etymology, that the party will not proceed with the pleading. It arises thus,—when the plaintiff has declared (i.e. delivered his declaration) it is for the defendant to devise the manner of his defence. For this purpose he considers whether, on the face of the declaration, and supposing the facts there stated to be true, the plaintiff appears to be entitled in point of law to the redress he seeks, and in the form of action which he has chosen. If he appears to be not so entitled in point of law, and this by defect either in the substance or the form of the declaration, i.e. as disclosing a case insufficient on the merits, or as framed in violation of any of the rules of pleading, the defendant is entitled to except to the declaration on such ground; in so doing he is said to demur; and this kind of objection is called a demurrer.—Step. on Plead. p. 50.

DEMURRER IN EQUITY. A demurrer in equity is of much the same nature as a demurrer at law, with the difference that the former is applied to the plaintiff's bill, and the latter to his declaration. A demurrer in equity amounts to an admission of the truth of the plaintiff's bill, or of that portion of it to which the demurrer refers, but insists upon some defect or objection apparent on the face of it, which may be offered in bar of the suit; as if the facts stated in the bill do not entitle the plaintiff to any relief, or if it be so framed as to be insufficient to found a definitive decree upon, &c., and this demurrer in equity (the same as in law) in form prays the judgment of the court, whether the defendant can be compelled to answer the plaintiff's bill.—Gray's Chan. Prac. p. 5, 6; 3 Bl. 446.

DEMURRER TO EVIDENCE. A demurrer to evidence is analogous to a demurrer in pleading; the party who demurs declaring that he will not proceed, because the evidence offered by the oppo-
site party (although true) is insufficient in point of law to maintain the issue. Upon joinder in demurrer by the opposite party, the jury are usually discharged from giving any verdict; and the demurrer being entered on record, is afterwards argued and decided by the court in banc. — Steph. on Plead.; Smith’s Action at Law.

Demurrer to Indictments. This is a demurrer incident to criminal cases, and is, when the fact, as alleged, is allowed to be true; but the prisoner joins issue upon some point of law in the indictment, by which he insists that the fact, as stated, is no felony, treason, or whatever the crime is alleged to be. Thus, for instance, if a man were indicted for feloniously stealing a dog, which is an animal in which no valuable property can be had, and therefore it is not felony, but only a civil trespass to steal it; in this case, the party indicted may demur to the indictment, denying it to be felony, though he confesses the act of taking it.—4 Bl. 333.

Demurrer-Book. When the parties in an action have come to issue, and that issue is one of law, then the transcript of the pleadings which is made at this period of the action, is termed the demurrer-book, as in the case of the issue being one of fact, it is termed the issue.—2 Arch. 696.

Demy-sangue or Sanke. Half blood; as when a man marries a woman, and has by her a son or a daughter, and the wife dies, and then he marries another woman, and has by her also a son or daughter: now, these two sons are to a certain extent brothers, or as they are termed half brothers, or brothers of the half blood, i. e., brothers by the father’s side, because they had both one father, and are both of his blood, and not brothers at all by the mother’s side, because both had different mothers.—Les Termes de la Ley.

Den and Strond. A liberty for ships or vessels to run aground or come ashore, granted to the barons of the cinque-ports by Edw. 1.—Cowell.

Denarii de caritate. Whitsun-farthings or Pentecostals, or customary oblations made to cathedral churches in the time of Pentecost, when the parish priests and many of their people went in procession to visit their mother church. This voluntary custom was afterwards changed into a settled due, and commonly charged on the parish priest.—Cart. Abbat. Glaston, MS. 15.

Denarius Dei. God’s penny, or earnest-money given by him who enters into a contract, to signify that he is bound thereby. It is so called, because in former times the piece of money so given to seal the contract was given to God, i. e., to the poor or to the church.—Cart. 31 Ed. 1.

Denarius tertius Comitatus. In the fines and other profits arising from the county courts, two parts were reserved to the king, and a third part or penny to the earl of the county, who either
received it in specie at the assizes and trials, or had an equivalent composition paid from the Exchequer. — Paroch. Antiq. 418; Cowel.

DENELAGE. See Danelage.

DENIZEN. A denizen is an alien born, but who has obtained, ex donatione legis, letters patent to make him an English subject; and he is then considered in a kind of middle state, between an alien and a natural born subject, and partakes of both of them, being able to take lands by purchase or devise, which, as an alien, he could not; but cannot take by inheritance, for his parent, through whom he must claim, being an alien, had no inheritable blood, and therefore could convey none to the son.—11 Rep. 67; 1 Bl. 374.

De non Decimando. A prescription de non decimando, is a claim to be entirely discharged of tithes, and to pay no compensation in lieu of them; as in the case of a king, whose prerogative discharges him from all tithes: so a vicar who shall pay no tithes to the rector, nor the rector to the vicar; for ecclesia decimas non solvit ecclesia.—Cro. Eliz. 511; 2 Bl. 31.

De non Residentia Clerici Regis. An ancient writ, excusing a parson employed in the king’s service for being a non-resident.—2 Inst. 624; Cowel.

Deodand (Deo dandum). Any personal chattel that is the immediate occasion of the death of any reasonable creature, and which is forfeited to the king, to be applied to pious uses, and distributed in alms by his high almoner, though formerly destined to more superstitions purposes. It seems to have been originally designed, in the blind days of popery, as an expiation of the souls of such as were snatched away by sudden death; and for that purpose ought properly to have been given to holy church: in the same manner as the apparel of a stranger, who was found dead, was applied to purchase masses for the good of his soul. And this may account for that rule of law, that no deodand is due where an infant under the age of discretion is killed by a fall from a cart, or horse, or the like, not being in motion; whereas, if an adult person falls from thence and is killed, the thing is certainly forfeited. The true ground of this rule seems rather to have been, that the child, by reason of its want of discretion, was presumed incapable of actual sin, and therefore needed no deodand to purchase propitiatory masses; but every adult who died in actual sin, stood in need of such atonement, according to the humane superstition of the founders of the English law.—1 Bl. 300.

De onerando pro rata Portionis. A writ that formerly lay for one who had been distrained for rent which ought to have been paid by others proportionably with him.—F. N. B. 234.

Departure. A departure in pleading is said to be, when a man quits or departs from one defence
which he has first made, and has recourse to another: it is when his second plea does not contain matter pursuant to his first plea, and which does not support and fortify it.—2 Wms. Sauud. 84, n. 11. A departure takes place when in any pleading the party deserts the ground that he took in his last antecedent pleading, and resorts to another.—Stephen on Pleading, p. 439. Hence, it is obvious, that a departure can never take place till the replication. The following is an example of a departure in pleading. In assumpsit, the plaintiffs, as executors, declared on several promises alleged to have been made to the testator in his lifetime. The defendant pleaded that she did not promise within six years before the obtaining of the original writ of the plaintiffs. The plaintiffs replied, that within six years before the obtaining of the original writ the letters testamentary were granted to them, whereby the action accrued to them the said plaintiffs within six years. The court held this to be a departure, as in the declaration they had laid promises to the testator; but in the replication alleged the right of action to accrue to themselves as executors. They ought to have laid promises to themselves as executors in the declaration, if they meant to put their action on this ground.—Steph. on Plead. 440.

Deposition (depositio). The testimony of a witness put down in writing (after the manner of the civil law). And for this purpose, in courts of equity, interrogatories are framed, or questions in writing, which, and which only, are to be proposed to, and asked of the witnesses in the cause. When all the witnesses are examined, and the depositions published, they are read as evidence on the hearing of the cause.—Newl. Pract. 143; 3 Bl. 449. In the ecclesiastical courts also witnesses are examined, and their testimony taken down in writing, which is also called their depositions. It also sometimes signifies degradation, which see, under that title.—3 Bl. 101.

Deprivation. One of the ways by which a parson or a vicar may cease to be so is by deprivation; which is first by sentence declaratory in the Ecclesiastical Court, for fit and sufficient causes allowed by the common law, or secondly, in pursuance of divers penal statutes, which declare the benefice void for some nonfeasance or neglect, or else for some malfeasance or crime.—Dyer, 108; Jenk. 210; 1 Bl. 303.

De quibus sur disseisin. A writ of entry so called.—F. N. B. 191; Cowel.

Depopulatorum Agrorum. By stat. 4 H. 4. 2, they appear to have been great offenders by the common law, and were so called, because by prostrating and ruining of houses they seemed to depopulate towns.—13 El. 10; Cowel.

Deraign or Dereyn (from the Fr. deraigner, to confound or disorder). In its general signification it means to prove, as diractionabit jus suum haves propinquior, he proved that land to be his own.—Glanvit, lib. 2, c. 6. In its literal import it signifies displacing,
putting out of order, &c. as derivation or departure out of religion, which is applied to those religious persons who forsake their orders or profession.—31 H. 8, c. 6; Skene.

DERELICT (derelictus). Any thing forsaken or left, or wilfully cast away. The word dereliction is also used for the retiring of the sea, as it does on some of our coasts. It is thus used: and as to lands gained from the sea, either by allusion, i.e. by the washing up of sand and earth, so as in time to make terra firma, or by dereliction, as when the sea shrinks back below the usual watermark; in these cases the law is held to be, that if this gain be by little and little, by small and imperceptible degrees, it shall go to the owner of the land adjoining.—2 Roll. Abr. 170; Dyer, 326; 2 Bl. 261.

DESCENDANT, Writ of Formedon in. A writ of formedon in descender lies where a gift in tail is made, and the tenant in tail aliens the lands entailed, or is dispossessed of them, and dies; in this case the heir in tail shall have this writ of formedon in the descender, to recover these lands so given in tail, against him who is then the actual tenant of the freehold. In which action the demandant is bound to state the matter and form of the gift in tail, and to prove himself heir secundum formam doni.—3 Bl. 191; Finch’s L. 211, 212.

DESCENT (descensus). The modes of acquiring a title to real property are two only, descent and purchase. The former, where the title is vested in a person by the single operation of law; the latter, where the title is vested by the person’s own act and agreement.—3 Cru. Dig. p. 362. Purchase in law is used in contradistinction to descent, and is any other mode of acquiring real property, viz., by a man’s own act and agreement, by devise, and by every species of gift or grant. The principal distinctions between these modes of acquiring estates are these:—1. That by purchase, the estate acquires a new inheritable quality, and is rendered descendible to the blood in general of the person to whom it is limited, as a feud of indefinite antiquity. 2. That an estate acquired by purchase will not, like a title by descent, render the owner answerable for the acts of his ancestors. The instances of persons taking by descent may be classed under the following heads:—1st. Where an estate devolves in a regular course of descent from father to son, or from any other ancestor to his heir-at-law. 2nd. Where the ancestor, by any gift or conveyance takes an estate of freehold, and in the same conveyance an estate is limited either immediately or immediately, to his heirs in fee or in tail, (the estates becoming both united in the ancestor under the rule in Shelly’s case), 1 Coke, 93; 1 Preston, 263. 3rdly. Where an ancestor devises his estate to his heir-at-law, the heir then taking by his preferable title, viz., by descent. —2 Saund. 8, note 4. 4thly. Where an ancestor by deed or his will limits a particular estate to a stranger, and either limits the remainder, or more properly speaking the
reversion, to his right heirs, or leaves the same undisposed of. Descent or hereditary succession then is the title whereby a man on the death of his ancestor acquires his estate by right of representation as his heir-at-law. And an heir therefore is he upon whom the law casts the estate immediately on the death of the ancestor; and an estate so descending to the heir is in law called the inheritance.—2 Bl. 201; 3 Cru. Dig. 362.

Des son tort Demesne (of his own wrong). Words used in an action of trespass by way of reply to the defendant’s plea. For example A. sues B. in an action of trespass, B. answers, that he did that which A. calls a trespass, by the command of C. his master, A. replies, that B. did it de son tort demesne, sans ceo que C. luy command modo et forma, i.e., that B. did it of his own wrong without having been commanded by C. in manner and form as B. stated, &c. —Cowen.

Despitus. In our old law writers is used to signify a contemptible person.—Fleta, lib. 4, c. 5; Cowen.

Desubito. Signifies, in our old writers, to weary a person by continual barkings, and then to bite. This offence is prohibited by the old laws.—Leg. Alfred. 26.

Detainer. Forcible detainer is the keeping another out of possession of lands or tenements by force, and is an injury of both a civil and a criminal nature; the civil being remedied by immediate restitution, which puts the ancient possessor in statu quo; the criminal injury, or public wrong by breach of the king’s peace, being punished by fine to the king.—Com. Dig.; 3 Bl. 179.

Detainer, writ of. A writ which lies against prisoners in the custody of the marshal of the Marshalsea, or warden of the Fleet Prison, and is directed to either of those officers (as the case may be), whom it commands to keep the prisoner, until lawfully discharged from his custody.—Smith’s Action at Law; Arch. Pract. 894.

Determination. The putting an end to; the termination. When an estate is said to be determined, it means that its existence is put an end to, or terminated. As if a woman has an estate granted to her during her widowhood, and she marries, this act of marrying determines or puts an end to her estate. So if a person has a lease granted to him for twenty-one years, and before the expiration of that term he surrenders the lease, such surrender determines the lease. Hence the words determination and expiration are not synonymus; for an estate does not expire until the expiration of the term for which it is granted, but it may be determined long before that period arrives, by various contingencies happening; so that when an estate expires it is always determined; but when it is determined it has not always expired.

Detinet. See Debet and Detinet.
DE.onerror} (detinendo). An action of detinue was the regular method for recovering possession of goods which are detained by a person who refuses to restore them. As if I lend a man a horse, and he afterwards refuses to restore it, this injury consists in the detaining, and not in the original taking, (which was lawful); and for recovery of the horse, and of damages for its detention, this action was usually brought, although now it has almost fallen into disuse, and has given place to the action of trover.—Co. Litt. 286; 3 Bl. 152.

DETERINE OF GOODS IN FRANK MARRIAGE. A wife after a divorce shall have this writ of detinue for recovery of the goods given her in marriage.—F. N. B. 308.

DRECHIARE. To seize, attach, or take into custody another man's goods or person.—Cowel.

DECTARE. To be torn in pieces with horses.—Flata lib. 1, c. 37; Apostata, sacrilegi et hujsmodi, detractari debent et comburi; Cowel.

DETCINARE. To discover, lay open, or make manifest to the whole world.—Mat. Westm.

DEVIATUS. Without securities or pledges, Domesday tit. Sudrei.

DEVASTATION. A waste of the testator's property by his executor.—Toller, 346; 2 Bl. 508.

DEVASTAVIT (he has wasted). In an action against an executor or administrator for devastation, or waste of the testator's or intestate's property, the usual writ of execution, after judgment having been given against him, is a fieri facias de bonis testatoris; but if the sheriff return to this writ nulla bona testatoris nec propria and a devastavit, the plaintiff may immediately sue out a fieri facias de bonis propriis, or an elegit, or a capias ad satisfaciendum against the property or person of the executor or administrator. A devastavit then is a return made by the sheriff to a writ of execution against an executor or administrator, signifying that he has wasted the goods of the testator or intestate, (as the case may be).—2 Arch. Prac. 934.

DEVENERUNT. A writ formerly in use, and directed to the escheator, when any tenant of the king holding in capite died; and his son and heir being within age, and in the king's custody died, commanding the escheator that he by the oaths of good and lawful men inquire what lands and tenements came to the king by the death of such tenant.—Dyer, 360; Keilway's Rep. 199.

DEVESTER (devestire). To take away the possession of any thing; and is opposed to invest, which signifies to deliver the possession of any thing. Thus when it is said that a person is devested of an estate, it means that he is put out of possession of such estate.—5 Cruise 233.

DE VENTRE INSPICIENDO (of
inspecting the belly). Where a widow is suspected of feigning herself pregnant, with a view to produce a supposititious child, the presumptive heir may have a writ, de ventre inspiciendo, to examine whether she be pregnant or not, and if she be pregnant, to keep her under a proper restraint till she be delivered.—3 Cruise, 365.

Devise (from the Fr. deviser, to divide). This word appears originally to have meant any kind of division or distribution of property, but now signifies the giving away of lands or other real estate by will and testament; and he who thus gives away lands, &c., is termed the deviser, and the person to whom they are given the devisee.—6 Cruise, 3; 2 Bl. 373.

Devoires of Caleis (duties of Calais). The customs due to the king for merchandize brought to or carried out of Calais when our staple was there.—2 R. 2, stat. 1, c. 3.

Dictores and Dictum. The former of these words signifies arbitrators, the latter arbitrum or award. Dictum also signifies the casual or individual opinion of a judge, expressed in court upon any matter before him.—Malms. 384; Blount.

Dictum de Kenelworth. An edict or award between Henry the Third and all those who had been in arms against him; and was so called because it was made at Kenelworth Castle, in Warwickshire, and contained a composition of five years' rent for the lands and estates of those who had forfeited them in that rebellion.—An. 51 Hen. 3.

Diem clausit extremum. A writ that issued out of chancery to the escheator of the county upon the death of any of the king's tenants in capite, to inquire by a jury of what lands he died seised, and of what value, and who was the next heir to him.—Fitz. Nat. Br. 251.

Dies non juridicus (not court days). Are certain days in which the proceedings in the courts are suspended; such are Sundays, the day of the Nativity of our Lord, Good Friday, and several others.—1 Arch. 23.

Dies datus (a day given). A day or time of respite given by the court to a defendant in an action.—Broke, tit. Continuance. See also this dictionary, tit. Continuance.

Dies Marchiæ. The day of congress, or meeting of the English and Scotch appointed to be held annually on the marches or borders, to adjust all differences, and to preserve the articles of peace.—Tho. Walsingham in R. 2, p. 278; Cowel.

Diet (conventus). A legislative assembly; as the diets of Poland, Germany, and Sweden.—1 Bl. 146.

Dieu et mon Droit (God and my right). The motto of the royal arms, first introduced by Richard the First, and signifying that
the king of England holds his dominions of none but God.

**DIEU son Act (the act of God).** Words frequently used in our law, it being a maxim that the act of God shall prejudice no man; so that if a house be beaten down by a tempest, or other act of God, the lessee for life or years shall not be liable to an action of waste, &c.—Co. lib. 4, p. 63; Cowel.

**DIFFACERE.** To destroy.—Du Cange.

**DIFFACTIO.** The maining any one.—Leg. H. 1, c. 64, 88, 92; Cowel.

**DIFFORCIARE Rectum.** To deny justice to any one after having been required to do it.—Mat. Paris, Anno 1164.

**DIGNITIES.** Dignities, or titles of honor, having been originally annexed to land, are considered as real property; being a species of incorporeal hereditaments wherein a man may have a property or estate.—1 Cruise, 55; 2 Bl. 37.

**DILATORY Pleas.** Pleas are divided into two general divisions—dilatory and peremptory. Dilatory pleas are those pleas which from their nature cause delay in the action; such are pleas to the jurisdiction of the court, in suspension of the action, in abatement of the writ or declaration, &c.—Stephen on Pleading, p. 52.

**DILIGIATUS.** Outlawed. De lege ejectus,—viz. Si quis diligiatus

**legalem hominem accusat, funestam dicimus vocem ejus.—Leg. H. 1, c. 45.**

**DILLIGROUT.** There was a tenure in serjeancy, the service annexed to which was the finding pottage (called dilligrout) for the king's table on the day of his coronation. One Robert Agyllon held lands in the county of Surrey by this tenure.—39 H. 3; Cowel.

**DIMIDIEETAS.** A moiety, or one-half.—Cowel.

**DIMINUATION (diminutio).** This word, as applied to a record, signifies that there is something wanting or omitted in the record, and that there is cause for it to be rectified; and on a party appealing to a superior court for that purpose, he was said to allege diminution of the record.—4 Bl. 390; 1 Arch. Pract. 525.

**DIMISSORY Letters.** When a candidate for holy orders has a title in one diocese, and is to be ordained in another, the proper diocesan gives letters dimissory to some other ordaining bishop, giving the bearer permission to be ordained to such a cure within his diocese.—Cowel.

**DISABILITY (disabilitas).** Incapacity: as when a man is disabled, or rendered incapable of inheriting, or taking a benefit, which he otherwise might have done; which may happen by the act of the ancestor, by the act of the party, by the act of law, or by the act of God. By the act of the ancestor, as if a man be attained
of treason or felony, which attainder is supposed to corrupt his blood, and thereby render himself and his children incapable of inheriting. By the act of the party himself, as where a man binds himself by obligation that upon the surrender of a lease, he will grant a new estate to the lessee, and afterwards he grants over the reversion to another, which puts it out of his power to perform such obligation.—Co. lib. 5, p. 21. By the act of law, as where a man by the mere operation of the law is disabled, and thereby rendered incapable of deriving any benefit from it, as is the case of an alien born, &c. By the act of God, as where a person is non compos mentis, or of non-sane memory, which disables him from making any grant, and when he does make any grant the same may be disannulled and avoided after his death, it being a maxim in our law, "that a man of full age shall never be received to disable his own person."
—Co. lib. 8, p. 69.

Disadvocare. To deny a thing, not to acknowledge it.—Cowel.

Disalt. Bears nearly the same meaning as disable.—Litt. chap. on Discontinuance.

Disceit. See Deceit.

Discent. See Descent.

Disclaimer (from the Fr. claimer and dis). When a tenant who holds of any lord neglects to render him the due services, and upon an action brought to recover them, disclaims to hold of his lord, such a civil crime is called a disclaimer; in which case the lord may have a writ of right sur disclaimer, grounded on this denial of tenure, and shall, upon proof of the tenure, recover back the land itself so holden, as a punishment to the tenant for such his false disclaimer.—Finch, 270, 271; 2 Bl. 275.

Discontinuance (from Fr. discontinuer, to cease or discontinue). There is a discontinuance of an estate and a discontinuance of an action. The discontinuance of an estate is an injury which happens when he who hath an estate tail maketh a larger estate of the land than by law he is entitled to do; in which case the estate is good, so far as his power extends who made it, but no further. As if tenant in tail makes a feoffment in fee simple, or for the life of the feoffee, or in tail; all which are beyond his power to make, for that by the common law extends no farther than to make a lease for his own life; in such case the entry of the feoffee is lawful during the life of the feoffor; but if he retains the possession after the death of the feoffor, it is an injury, which is termed a discontinuance; the ancient legal estate, which ought to have survived to the heir in tail, being gone, or at least suspended, and for awhile discontinued.—3 Bl. 171.

The discontinuance of an action is somewhat similar to a nonsuit; for when a plaintiff leaves a chasm in the proceedings of his cause, as by not continuing the process regularly from day to day, and time
to time, as he ought to do, the suit is discontinued, and the defendant is no longer bound to attend; but the plaintiff must begin again, after usually paying the costs of his antagonist. This word may also be further illustrated by the following case. In an action of trespass for breaking a close, and cutting down three hundred trees, if the defendant pleads as to cutting down all but two hundred trees some matter of justification or title, and as to the two hundred trees says nothing, the plaintiff is entitled to sign judgment as by nil dicit against him in respect of the two hundred trees, and to demur or reply to the plea as the remainder of the trespass. In such cases the plaintiff should take care to avail himself of his advantage in this (which is the only proper) course. For if he demurs, or replies to the plea, without signing judgment for the part not answered, the whole action is said to be discontinued. The principle of this is, that the plaintiff by not taking judgment, as he was entitled to do for the part unanswered, does not follow up his entire demand; and there is, consequently, that sort of chasm or interruption in the proceedings which is called in technical phrase a discontinuance. — *Stephen on Pleading*, 241.

**DISCOVERT.** An unmarried woman or widow, or one not within the bonds of matrimony. — *Law Fr. Diet.*

**DISCOVERY, Bill of.** A bill filed in the Court of Chancery for a discovery of facts within the knowledge of the other party, or of deeds or writings, or other things in his custody or power; and the discovery is usually sought, in order to enable the party requiring it to prosecute or to resist an action at law, brought by him against the party from whom the discovery is required, or against him by that party, the courts of law having no means of eliciting those facts which are only within the knowledge of the parties to the actions which are brought before their tribunal; and therefore the party seeking the discovery is obliged to resort to this proceeding, in order, as it were, to make a witness of his adversary; for when he has obtained his answer to the bill of discovery, he may read it against him in court on the trial of the action at law. — *Gray's Ch. Pr. 69.*

**DISFRANCHISE.** To take away from, or divest certain places or persons of any privilege, freedom, or liberty; and is exactly opposed to the word enfranchise. — 14 *Car. 2*, c. 31.

**DISHÉRISON (Fr. dishérisme).** An old law term, which signifies much the same as disinheriting. It is used in the statute of vouchers, made 20 *Ed. 1*, and in 8 *R. 2*, c. 4.

**DISHÉRITOR.** A person who disinherits another, or puts him out of his inheritance. — *Cowel.*

**DISMES (decimae).** Are tithes. It also signifies the tenths of spiritual livings yearly given to the prince, called a perpetual dism, and which were formerly given to
the pope, until Pope Urbane gave them to Richard the Second, to aid him against the French king Charles, and those others that upheld Clement the Seventh against him. It also signifies a tribute levied of the temporality.—Cowen.

DISPARAGEMENT. This word in law bears nearly the same meaning as in common parlance. It is thus used by Blackstone. While the infant was in ward, the guardian had the power of tendering him or her a suitable match, without disparagement or inequality.—2 Bl. 70.

DISPAUPER. When a poor person is admitted to sue in forma pauperis, and before the suit is ended, the same party has any lands or personal estate come into his possession, or if there is any other cause why this privilege should be taken from him, he is then put out of the capacity of suing in forma pauperis, and he is then said to be dispaupered.—Cowen.

DISPERSONARE. To scandalize or disparage.—Cowen.

DISSIGNARE. To break open a seal.—Cowen.

DISEISEIN (from the Fr. dis-saisin). When one man invades the possession of another, and by force or surprise turns him out of the occupation of his lands, this is termed a disseisin, being a deprivation of that actual seisin or corporal possession of the freehold which the tenant before enjoyed. In other words, a disseisin is said to be when one enters, intending to usurp the possession, and to oust another of the freehold. Therefore quærendum est a judice quo anim he entered. To constitute an entry a disseisin, there must be an ouster of the freehold, either first, by taking the profits, or secondly, by claiming the inheritance.—2 Bl. 195; 1 Cruise, 60. He who so enters and puts a party out of possession of the freehold, is termed the disseisor; and he who is so put out of possession, is termed the disseisee.—Litt. 279.

DISSEISOR and DISSEISEE. See Disseisin.

DISTRESS (districtio). The taking a personal chattel out of the possession of the wrong doer, into the custody of the party injured, to procure a satisfaction for the wrong committed. The most usual injury for which a distress may be taken is that of non-payment of rent, but as a general principle it may be laid down, that a distress may be taken for any kind of rent in arrear; the detaining of which beyond the day of payment is an injury to him who is entitled to receive it. A distress may also be taken when a man finds beasts of a stranger wandering in his grounds damage-feasant, i. e. doing him hurt or injury by treading down his grass or the like, in which case the owner of the land may restrain them till satisfaction be made him for the injury he has thereby sustained. And it may be laid down as a general rule, that all chattels personal are liable to be distrained, unless particularly protected or exempted.—Co. Litt. 47; 3 Bl. 6, 7.
DISTRESS INFINITE. In the case of a distress for fealty or suit of court, no distress can be unreasonable, immoderate, or too large; for this is the only remedy to which the party aggrieved is entitled, and therefore it ought to be such as is sufficiently compulsory; and be of what value it will, there is no harm done, especially as it cannot be sold or made away with, but must be restored immediately on satisfaction made. A distress of this nature, that has no bounds with regard to its quantity, and may be repeated from time to time, until the stubbornness of the party is conquered, is called a distress infinite, which is also used for some other purposes, as in summoning jurors and the like.—3 Bl. 231.

DISTRICTIO IN SCACCARIIT. The stat. 51 H. 3, st. 5, as to distresses in the Exchequer for the king's debt.—Tomlins.

DISTRINGAS. A writ directed to the sheriff, commanding him to distress upon the goods and chattels of a man, in order to compel his appearance to a writ of summons. This distringas, however, is only granted when the person requiring the same shall have shown by affidavit to the satisfaction of the court, out of which the writ of summons issued, that the defendant has not been personally served with any such writ of summons, and has not, according to the exigency thereof, appeared to the action, and cannot be compelled so to do without some more efficacious process.—1 Arch. Pract. 667.

DISTRINGAS JUARATORES. A writ directed to the sheriff peremptorily commanding him to compel the appearance of jurors in court on a certain day therein appointed.—1 Arch. Pract. 397.

DISTURBANCE. A species of real injury, commonly consisting of a wrong done to some incorporeal hereditament, by hindering or disquieting the owners in their regular and lawful enjoyment of it. And Blackstone enumerates five sorts of this injury, viz. 1. Disturbance of franchises. 2. Disturbance of common. 3. Disturbance of ways. 4. Disturbance of tenure, and 5. Disturbance of patronage.—Finch, 187; 3 Bl. 236.

DISTURBER. If a bishop refuse or neglect to examine and admit the patron's clerk without good reason assigned or notice given, he is styled a disturber by the law, and shall not have any title to present by lapse; for no man shall take advantage of his own wrong.—2 Roll. Abr. 369; 2 Bl. 278.

DIVERSITY OF PERSON. See Collateral Issue.

DIVIDEND IN THE EXCHEQUER. Is taken for one part of an indenture. The word dividenda was anciently used for an indenture.—28 Ed. 1, st. 3, c. 2; Cowel.

DIVINE SERVICE, TENURE BY. An ancient tenure; the obligation annexed to which was, that the tenants should perform some special divine service; as to sing so many masses, to distribute such
a sum in alms and the like. Since the statute of quia emptores, 18 Ed. 1, none but the king can give lands to be holden by this tenure.—2 Bl. 102.

**DIVISA.** A devise of goods by last will and testament, and sometimes the will itself. Sometimes also it is taken for a charity given by will; sometimes a parcel or portion of land devised by last will; sometimes for a boundary of a place or farm; and sometimes for an award; and in such various significations is it used, that the sense can only be determined by the other words with which it is accompanied.—Leg. Inæ, c. 44; Eadmerus, lib. 1, p. 8; Cowel.

**Divorce (divortium).** The separation of husband and wife by the operation of the law. There are two kinds of divorce, the one total, the other partial; the one *a vinculo matrimonii*, the other merely *a mensa et thoro*. The total divorce *a vinculo matrimonii* must be for some canonical cause of impediment, and those existing before the marriage, as is always the case in consanguinity; not supervenient, or arising afterwards, as may be the case in affinity or corporeal imbecility. For, in causes of total divorce, the marriage is declared null, as having been absolutely unlawful *ab initio*; and the parties are therefore separated *pro salute aninarum*; for which reason no divorce can be obtained but during the life of the parties. In these divorces, the wife, it is said, shall receive all again that she brought with her; because the nullity of the marriage arises through some impediment, and the goods of the wife were given for her advancement in marriage, which now ceaseth; but this is where the goods are not spent; and if the husband give them away during the coverture without any collusion, it shall bind her: if she knows her goods are unspent, she may bring an action of detinue for them; but, as to money, &c. which cannot be known, she must sue in the spiritual court.—Dyer, 62. This divorce enables the parties to marry again, and to do all other acts as if they had never been married. *Divorce a mensa et thorae* is when the marriage is just and lawful *ab initio*, and therefore the law is tender of dissolving it, but for some supervenient cause it becomes improper or impossible for the parties to live together: as in case of intolerable ill temper or adultery in either of the parties. In this case the law allows alimony to the wife: which is that allowance which is made to a woman for her support out of the husband’s estate; being settled at the discretion of the ecclesiastical judge, on consideration of all the circumstances of the case. This is sometimes called estovers; for which, if he refuses payment, there is (besides the ordinary process of excommunication), a writ at common law, *de estoveriis habendis*, in order to recover it. It is generally proportioned to the rank and quality of the parties.—1 Bl. 440 to 442.

**Docket or Docquet.** Docketing a judgment is making a sort of abstract of it, and entering it in a book, according to the directions
of stat. 4 & 5 Wm. & M. c. 20. It is necessary to docket a judgment: 1, in order to bind the defendant's lands; 2, to enable the plaintiff to bring debt or scire facias on the judgment; 3, to proceed against bail on the recognizance; 4, in case a writ of error is brought; and 5, in order to bind assets in the hand of the executor or administrator of the defendant. —1 Arch. Pract. 495.

**Doge-draw.** Defined to be an apparent deprehension of an offender against venison in the forest. There are four of these mentioned by Manwood, in his Forest Law, _viz._, Stable-stand, Dog-draw, Back-bear, and Bloody-hand. Dog-draw, he says, is where any man has stricken or wounded a wild beast, by shooting at him either with a cross-bow, long-bow, or otherwise, and is found with a hound, or other dog drawing after him to receive the same. —Cowell.

**Do Law (facere legem).** To do law signifies the same as to make law.—23 Hen. 6, c. 14.

**Dole (dola, Sax. dōl, from delau, to divide, to distribute).** A part or portion of a meadow is so called; as _dole meadow_ (anno 4 Jac. c. 11), where several persons have shares. This word still retains the signification of share, portion, &c.; as to _dole_ out any thing among so many poor people, &c. signifying to deal or distribute to them.—Cowell.

**Dom-bot.** See Dome-book.

**Dome or Doom (Sax. dom).** A judgment, sentence, ordinance, or decree. Thus in the Black Book of Hereford, fol. 46, the homager's oath ends thus: so help me God at his holy _dome_, and by my trouth, &c.—Cowell.

**Dome-Book (liber judicialis).** A book compiled during the time of Alfred, and under his immediate superintendence, for the general use of the country. This book is said to have been extant so late as the reign of King Edward the Fourth, but is now unfortunately lost. It contained, we may probably suppose, the principal maxims of the common law, the penalties for misdemeanors, and the forms of judicial proceedings. Thus much may at least be collected from that injunction to observe it, which we find in the laws of King Edward the Elder, the son of Alfred:—"Omnibus qui reipublicae præsunt etiam etiam mando, ut omnibus equos se præbeant judices, perinde ac in judiciali libro (Saxonico domboe), scriptum habetur; nec quisquam formident quem jus commune (Saxonice folcrihte), audacter libereque dicant."—1 Bl. 65.

**Domesday-Book (liber judiciarius, vel censualis Angliae).** An ancient work compiled in the time of William the Conqueror, consisting of two volumes, and which contain the details of a great survey of the kingdom. One volume comprehends all the counties in England, excepting Northumberland, Cumberland, Westmoreland, Durham, and part of Lancashire, which were not sur-
veyed, and also excepting Essex, Suffolk, and Norfolk, which are comprehended in the other volume. It was begun by five justices assigned for the purpose in each county in the year 1081 and was finished in 1086. The Domesday-book made by William the 1st referred to the time of Edward the Confessor as that of King Alfred did to the time of Etheldred. When any question arises whether or not lands are of ancient demesne it is always to be decided by this Domesday-book, from whence there is no appeal; nor is there any averment to be made against it; and such was the authority of the book that even William the Conqueror himself submitted some cases wherein he was concerned to be decided by it. Cowel; 2 Bl. 49.

Domes-Men. Men in the quality of judges appointed to doom and determine suits and quarrels. Hence the Scotch phrase falling of domes, signifying reversing of judgment, or annulling of decrees.—Cowel.

Domigerium. Damage, danger. It also sometimes signifies the power of one over another.—Bract. lib. 4, t. 1, c. 19; Cowel.

Domina. A title formerly bestowed on those honourable women who in their own right of inheritance held a barony.—Paroch. Antiq. p. 78.

Dominicum. See Demesne.

Dominium. Right or legal power. And dominium directum and dominium utile are terms by which the rights of the superior and vassal are distinguished in the Scotch law. The right of superiority is termed the dominium directum, as being the highest and most ancient of the town. The vassal’s right is termed the dominium utile, because under it he enjoys the whole fruits and produce of the estates.—Tomlins.

Dominus. In ancient times this word being prefixed to a name usually denoted the person to be a knight or a clergyman; and Dr. Cowel seems to think that this title was given generally to gentlemen of quality, and especially to lords of manors.—Cowel.

Domo reparanda. A writ which lies for a man against his neighbour calling upon him to repair his house, by the fall of which he fears damage will be done to his own.—Reg. Orig. 153.

Donatio Causa Mortis (a donation in prospect of death). A disposition of property when on one’s death bed. As when a person in his last sickness, apprehending his dissolution near, delivers or causes to be delivered to another the possession of any personal goods to keep in case of his decease. This gift, if the donor die, needs not the assent of his executor; yet it shall not prevail against creditors; and it is accompanied with this implied trust, that if the donor live, the property thereof shall revert to himself, being only given in contemplation of death, or mortis causa.—Prec. Chanc. 269; 2 Bl. 514.
DONATIVE Advowson. See Advowson.

DONIS, Statute de. The stat. 13 Edw. 1, c. 1, is called the statute de donis conditionalibus, (of conditional gifts). This statute revived in some measure the ancient feudal restraints which were originally laid on alienations, by enacting that from thenceforth the will of the donor be observed; and that tenements given to a man and the heirs of his body should at all events go to the issue, if there were any; or if none, should revert to the donor.—2 Bl. 112.

DONOR and DONEE. He who gives lands or tenements to another in tail is called the donor; and the person to whom they are given is called the donee.—Cowell.

DOTE ASSIGNANDA. A writ that lay for a widow, where it was found by office that the king's tenant was seised of tenements in fee or fee-tail at the day of his death, and that he held of the king in chief, &c., in which case, the widow came into chancery, and there made oath, that she would not marry without the king's leave, anno 15 Ed. 3, cap. 4, and hereupon she had this writ to the escheators, for which see Reg. of Writs, fol. 297, and F. N. B. fol. 263. These widows are called the King's widows.

DOTE UNDE NIHIL HABET. A writ of dower, that lay for the widow against the tenant, who bought land of her husband in his lifetime, whereof he was seised solely in fee simple or fee-tail, in such as the issue of them both might have inherited it. F. N. B. fol. 147.

DOTIS ADMENSURATIONE. See Admeasurement.

DOUBLE FINE. A fine sur done, grant, et render was called a double fine, because it comprehended the fine sur cognizance de droit come ceeo, &c. and the fine sur concessit, and might be used to create particular limitations of estates; whereas the fine sur cognizance de droit come ceeo, &c. conveyed nothing but an absolute estate, either of inheritance or at least of freehold.—Salk. 340; 2 Bl. 353.

DOUBLE PLEA (duplex placitum). A plea in which the defendant alleges two several matters in bar of the plaintiff's action, when one of them is sufficient: as when a man pleads several things, the one not depending on the other, the plea in such case is accounted double, which is not allowed; but when they mutually depend on each other and the party cannot have the last plea without the first, then such double plea is allowable.—Les Termes de la Ley.

DOUBLE QUARREL (duplex querela). A complaint made by any clerk or other person to the archbishop of the province against any inferior ordinary, for delaying justice in any ecclesiastical cause; as for refusing to give sentence, or to institute a clerk presented, or such like: the effect of which is, that the archbishop taking cog-
nizance of such delay directs his letters to the clerks of his province, commanding and authorising them to admonish the said ordinary within nine days to do the justice required, or otherwise to cite him to appear before him or his official on a day mentioned, to show cause why he so delayed, &c. It seems to be called a double quarrel because it is usually made against the judge and him at whose request justice is delayed. — Les Termes de la Ley.

Dow (from the Lat. do). To give or to endow. — Cowel.

Dowager (dotata, dotissa). A widow who is endowed, or who has a jointure. This word is applied more particularly to the widows of princes, dukes and other personages of rank and title. — Cowel.

Dower (dotarium.) That portion which a widow acquires of her husband’s real property after his death for her support and maintenance. It is derived from the Germans, among whom it was a rule that a virgin should have no marriage portion, but that the husband should allot a part of his property for her use in case she survived him. Dower at common law is thus described by Littleton, s. 36. — “Tenant in dower is where a man is seised of certain lands and tenements in fee simple, fee tail general, or as heir in special tail, and taketh a wife and dieth; the wife, after the decease of her husband, shall be endowed of a third part of such lands and tenements as were her husband’s at any time during the coverture; to have and to hold to the same wife in severalty, by metes and bounds, for term of her life; whether she hath issue by her husband or not, and of what age soever the wife be, so as that she be past the age of nine years, at the time of the death of her husband. Dower by custom is where a widow becomes entitled to a certain portion of her husband’s lands in consequence of some local and peculiar custom; and in cases of this kind the widow cannot waive the provision thereby made for her, and claim dower at common law, because all customs are equally ancient with the common law. Thus by the custom of some boroughs the wife shall have for her dower all the tenements that were her husbands; which is also called free bench.” Littleton’s description of dower at common law points out three circumstances as absolutely necessary to create a title to dower, viz. marriage, seisin, and death of the husband: 1st. With respect to the marriage, it must be between persons capable of contracting together, and duly celebrated; for it is a maxim of law, ubi nullum matrimonium, ibi nulla dos; and although the marriage be had before the parties are of sufficient age to consent, yet if the wife be passed the age of nine years at the time of her husband’s death, she shall be endowed, of what age soever her husband be, although he were but four years old. 2nd. With regard to seisin, the husband should be seised some time during the coverture of the estate whereof the wife is dowable. There is, however, no necessity
for a seisin in deed as in the case of curtesy; for a seisin in law will be sufficient, otherwise it would be in the husband’s power, either by his negligence or his malice, to defeat his wife of that subsistence after his death which the law has provided for her; and she cannot enter to gain a seisin in her own right, as her husband may do in lands descended to her, in order to entitle himself to curtesy. 3rd. The death of the husband, which is the last circumstance required to the existence of an estate in dower, and by which the wife’s estate is consummate. It is generally said, that nothing but the natural death of the husband will give a title to dower, though there are some authorities to prove that banishment by abjuration of the realm, or by parliament, which is a civil death, will have the same effect. Besides dower by common law, and dower by particular custom, there were also three other kinds of dower, viz. dower ad ostium ecclesiae, dower ex assensus patris, and dower de la plus belle. Dower ad ostium ecclesiae was where a tenant in fee simple, of full age, openly at the church door, after affiance made, &c., endowed his wife with the whole, or such quantity as he pleased of his lands, at the same time specifying them, on which the wife after the husband’s death might enter without further ceremony. Dower ex assensus patris was a species of dower ad ostium ecclesiae, made when the husband’s father was alive, and the son, by his consent expressly given, endowed his wife with parcel of his father’s lands. In either of these cases they must (to prevent fraud) have been made in facie ecclesie et ad ostium ecclesiae; non enim valent facta in lecto mortali, nec in camera, aut alibi ubi clandestine fuere conjugia. Dower de la plus belle, was where the wife was endowed with the fairest portion of her husband’s estate. These three last mentioned kinds of dower have long been out of use. Dower de la plus belle was abolish together with the military tenures, of which it was a consequence; and dower ad ostium ecclesiae, and dower ex assensus patris, were abolished by 3 & 4 Wm. 4, c. 105.—1 Cruise, 164 to 168; 2 Bl. 132; Hayes Introd. to Convey.

DOWR (dos mulieris). The portion or property which the wife brings her husband in marriage; otherwise called maritgium, marriage goods. Some authors have confounded dower with dowry, but they are quite distinct as will be seen on referring to tit. Dower.

DOZEIN (decenna). This word is used in the statute for view of Frankpledge, and signifies that territory over which a dosinor or deciner had jurisdiction.—18 E. 2; See Deciners.

DREIT—DREIT or DROIT—DROIT (jus duplicatum). A double right. For it is an ancient maxim of the law, that no title is completely good unless the right of possession be joined with the right of property, which right is then denominated a double right, jus duplicatum or droit-droit.—Co. Litt. 266; Bract. lib. 5, tr. 3, c. 5.
DRENCHES or DRENGES (drenghi). Tenants in capite, who, at the coming of William the Conqueror, being put out of their estates, were afterwards, upon complaint being made to him, restored to them. Sir Edward Coke defines them to be free tenants of a manor. Domestay tit. Lestrese. The tenure by which these persons held their lands was called drenge, vel servitium Drengarit—Spelm.

DRENGAGE. See Drenches.

DRIFT OF THE FOREST (agitatio animalium in foresta). An exact view or examination of the number of cattle that are in a forest, in order that it may be known whether it be overcharged or not, and whose the beasts are; and whether they are commonable beasts, &c.—Mantwood; 4 Inst. 309.

DRINKLEAU (Sax. drinc-leau). A contribution of the tenants towards a potation; or ale provided by them to entertain the lord or his steward; a Scot-ale.—Cowel.

DROFLAND or DRYFLAND (from the Sax. dryfeul, i.e. driven). A quit rent or yearly payment, formerly made by some tenants to the king, or their landlords, for driving their cattle through the manor to fairs or markets.—Cowel.

DROIT (Fr. signifying right). This word is used in various senses in the law, but in its most general acceptation signifies a right. It is thus used by Blackstone. If a father be tenant in tail, and aliens the estate tail to a stranger in fee, the alienee thereby gains the right of possession, and the son has only the mere right of property; and hence it will follow, that one man may have the possession, another the right of possession, and a third the right of property. So when one possesses a thing which was taken from another wrongfully, the claim of him who is properly entitled to such is termed his right. There are also numerous writs (many of which are now obsolete) which are termed writs of right, and are of very high authority.—2 Bl. 198; Les Termes de la Ley. See also Droit-Droit.

DRY EXCHANGE (cambium siccum). In former times was an exchange, where something was pretended to pass on both sides, although in truth nothing passed but on one side, whence it was termed dry. It is said to have been devised for the purpose of disguising or covering usury.—3 H. 7, c. 5.

DRY RENT. The same as redditus siccus, which see under tit. Rent.

DUCES TECUM (bring with thee). In an action at law, when a person who is not a party to the cause has in his possession any written instrument, &c. which could be evidence for you at the trial, you must serve him with a writ called a subpæna duces tecum, which commands him to bring it with him and produce it at the trial. Upon being served with a copy of this subpæna, he must attend at the trial with the instrument required, and produce it in
evidence, unless he has some lawful or reasonable excuse for withholding it, of the validity of which excuse the court and not the witness is to judge.—1 Arch. Pract. 380.

**DUCES TECUM LICET LANGUIDUS.** A writ formerly in use and directed to the sheriff upon his having made a return that he could not bring his prisoner without danger of death, he being *adeo languidus;* whereupon the court granted a *habeas corpus* in the nature of a *duces tecum licet languidus.*—New Book of Entries.

**DUCHY COURT OF LANCASTER.** See this under tit. Chancellor.

**Ducking Stool.** See Cucking Stool.

**Duel.** See Battel.

**Dum Fuit Infra Ætatem.** When a person of full age wishes to recover lands which he had aliened *while under age,* he may resort to a writ of the above title for recovery of the same, and when recovered may take them back again, and by his entry thereon shall be remitted to his ancestors' right. So in the case of the death of the infant, his heir might have had this writ.—F. N. B. 192.

**Dum Fuit in Prisona (while he was in prison).** A writ of entry that lay to restore a man to his lands who had aliened them under duress of imprisonment.—2 Inst. 482.

**Dum Fuit Non Compos Men-

**TIS (while he was of unsound mind).** A writ that lay for a man, who had recovered his understanding after having while insane aliened his lands, for recovery of those lands from the alienee, because not being of sane memory at the time of the alienation, he was not capable of making a grant.—F. N. B. 202.

**Duodena.** A jury of twelve men.—Tho. Walsing.; Cowel.

**Duodena Manu.** In former times when a defendant was accused of a very great offence of which there was no proof, he was obliged to purge himself by the oaths of twelve witnesses; which was called *jurare duodecima manu* or *duodena manu.*—Leg. Hen. 1, c. 64.

**Duplex Querela.** See tit. Double Quarrel.

**Duplicate.** This word as used by Crompton signifies the second letters patent granted by the Lord Chancellor in a case wherein he had formerly done the same, and were therefore held as void. Any copy or transcript of a deed or writing is called a duplicate. Also a second letter written and sent to the same party and to the same purpose as the former for fear of the miscarriage of the first is called a duplicate.—Cromp. Jurisd. 215; Les Termes de la Ley.

**Duplicity in pleading.** See Double Plea.

**Durante Absentia (during absence).** When an administration
is granted while the executor is out of the realm it is said to be granted durante absentia, and continues in force until his return.—1 Lutw. 342; 2 Bl. 503.

**DURANTE MINORE ÄETATE (during minority).** An infant cannot act as an executor; but durante minore ætate, i.e. during such infant’s minority, administration with the will annexed shall be granted to the guardian of such infant, or to such other person as the Spiritual Court shall think fit, until such infant shall have attained the full age of twenty-one years, at which period and not before probate of the will shall be granted to him.—2 Chitty’s Bl. 503, n. 23.

**Duress (durities).** If a man, through fear of death or mayhem, is prevailed upon to execute a deed or do any other legal act, these, though accompanied with all the other requisite solemnities, may be afterwards avoided, if forced upon him by a well-grounded apprehension of losing his life, or even his limbs in the case of his non-compliance; and the same is also a sufficient excuse for the commission of many misdemeanours; and the constraint a man is under in these circumstances is called in law duress, of which there are two sorts: 1. *Duress of imprisonment*, where a man actually loses his liberty. 2. *Duress per minas*, where the hardship is only threatened and impending.—2 Inst. 483; 1 Bl. 130.

**Dutchy Court of Lancaster.**

**DUTY.** Anything that is known to be due by law, and thereby recoverable, is said to be a duty before it is recovered, because the party interested in the same has power to recover it.—1 Lil. 495.

**E.**

**EALHORDA.** A word mentioned in a charta of Hen. 2 to the Abbott of Glastonbury, and signifies the privilege of assigning and selling ale and beer.—Cowel.

**EALDERMAN.** An officer of high importance among the Saxons, and held much the same rank as earl among the Danes, and among us of the present day they are called aldermen.—Les Termes de la Ley.

**EARNEST.** Money or goods given by one contracting party to another by way of signifying that they are in earnest, and consider the contract as binding. When a man agrees with another for goods at a certain price, he may not carry them away before he has paid for them; but if any part of the price is paid down (if it be but a penny) or any portion of the goods be delivered by way of earnest, the property of the goods is bound by it, and the vendee may recover the goods by action as well as the vendor may the price of them.—Noy’s Max. c. 42; 2 Bl. 447,