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A

DICTIONARY

OF

LAW TERMS

EXPLAINING

THE TECHNICAL WORDS AND PHRASES

EMPLOYED IN THE

SEVERAL DEPARTMENTS OF LAW,

WITH A

GLOSSARY

OF

INDIAN JUDICIAL AND REVENUE TERMS.

THIRD EDITION
REVISED AND ENLARGED.

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PREFACE.

THIS volume was originally compiled to meet the demand for a cheap Law Dictionary that existed at the time of first publication. As that demand has since steadily continued, it is now re-produced, with many additions and emendations with a view to increase its utility as a handy-book of general reference.

The terms and phrases have been selected from every department of law, Civil, Mercantile, Criminal and International, and the definitions are those found in the works of standard authors and in the more important Acts of the Legislative Councils of India.

The vocabulary of Indian Revenue and Judicial terms chiefly selected from WILSON'S elaborate, expensive and scarce *Glossary*, given as an addendum, has been also added to.

The new matter thus introduced into the present edition, extends over some twenty pages.

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October, 1885.

TABLE OF REFERENCES.

ACT.—Acts of the Legislative Council of India, and of the Governor-General of India in Council.

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WILSON.—Glossary of Indian Terms.

A

POPULAR

DICTIONARY

OF LAW TERMS.

A.

ABANDONMENT, in marine insurance, is the act of cession by which, in cases where the loss or destruction of property is imminent, the assured, on condition of receiving at once the whole amount of insurance, relinquishes to the insurers all his property or interest in the thing insured.—*Crump.* It usually takes place in cases of the constructive total loss of a vessel or goods in the progress of a voyage. The term also refers to the relinquishment of interest or claim; as where a plaintiff gives up a portion of a debt to bring the action within the jurisdiction of the Court in which he is suing: the desertion of a husband, wife, or child.

ABATE, to overthrow or level. To *abate* a nuisance means to remove or put an end to a nuisance. This word has another meaning, viz., in respect to the interruption or intrusion by a wrong-doer, called an *abator*, who, on the death of an owner of land, puts out the heir, or interposes a possession adverse to the heir. Also to *abate* a writ or process, legally means the showing of some defect therein, and thereby overthrowing it or defeating it.—*Tomlin.*

ABATEMENT is an allowance made for prompt payment, and in this sense it is used in the customs.—*Tomlin.* It also includes the allowance made in duties on goods damaged by salt water.

ABATEMENT OF LEGACIES. See LEGACIES.

ABATOR or ABATER, one who prostrates a nuisance or enters into a house or land vacant by the death of the former possessor and not yet taken possession of by his heir or devisee.—*Cowel.*

ABDICATE, the renouncing or giving up of an office before the term of service or enjoyment is expired. This word is, in common parlance, confounded with resignation, but materially differs from it, as *abdication* is done absolutely, whereas *resignation* is in favour of some other person.—*Tomlin.*

ABDUCTION, the compelling by force, or inducing by any deceitful means, any person to go from any place. Under the Indian Penal Code, abduction is punishable when done with intention to murder, or to put one in danger of being murdered; to secret or wrongfully confine; to compel a woman to marry, or to force, or induce her to illicit intercourse, or to subject a person to grievous hurt, slavery, &c.; or to steal moveable property from the person of a child under 10 years of age. The abduction of Soldiers, Mariners, and Apprentices, is likewise punishable.

ABETTOR is an instigator or inciter, a person who promotes or procures the commission of an offence or felony by his counsel, command, or encouragement.—*Tomlin.* A person who, by wilful misrepresentation or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure a thing to be done, abets the doing of the thing. It is sufficient to constitute the offence, intentionally, by any act or illegal omission, to aid the doing of a thing, no matter whether the act abetted is committed, or the effect requisite to cause the offence is caused. It is, moreover, not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intentions or knowledge as that of the abettor, or any guilty intention or knowledge whatever.—*Ind. P. C.*, secs. cvii. and cviii.

ABEYANCE. When the inheritance to which a party claims to be entitled is not in the possession of any one, it is said to be in abeyance. Titles of honour and dignities are said to be in abeyance when it is uncertain who shall enjoy them; as when a nobleman, holding his dignity descendible to his heirs general, dies leaving daughters, the King, by his prerogative, may grant the dignity to which of the daughters he pleases, or to the male issue of one of such daughters. During the time the title to the dignity is thus in suspension, it is said to be in abeyance. A

parsonage remaining void is also said to be in abeyance. In a more loose sense, this term is used to denote that a judgment is pending relative to a matter or right undetermined, and of which no one hath the immediate enjoyment, the right being in a state of suspension. The strict interpretation of this word as to freehold interests has puzzled eminent lawyers; and Mr. Justice Coleridge lately observed that it was more a matter of curiosity than practical importance.—*Tomlin.* It was customary in speaking of a thing in abeyance to say that it was "*in nubibus*" or "*in gremio legis,*" the latter phrase denoting that the fee simple or freehold which was in abeyance was meanwhile under the care or protection of the law.—*Brown.*

ABORTION. To administer to any woman, being quick with child, any poison or noxious thing, or to use any instrument or *other means whatever*, with the intent to procure miscarriage, is by law declared a capital felony, not only as against the offender, but as against every one counselling, aiding, or abetting therein. And to use the like means to procure miscarriage in a woman *not* quick with child, or not proved so to be, is also declared a felony punishable by transportation for 14 years, or imprisonment, with or without hard labour, and whipping. By the words "other means," the administering any herb, or drug, or any act done with the intent to produce abortion, constitutes the offence: and it may be remarked, that if death ensue, the party is guilty of murder.—*Tomlin.* Under the Indian Penal Code, the degree of punishment varies with reference to the act done with or without the consent of the woman; to the child being quick or not, or to the death or survival of the woman. If the miscarriage be caused in good faith for the purpose of saving the life of the woman, it is no offence.

ABROGATION, to disannul or take away anything: to abrogate a law is to lay aside or repeal it.—*Cowel.* The term stands opposed to *rogation;* it is distinguished from *derogation,* which implies the taking away only some part of a law; from *subrogation,* which denotes the adding of a clause to it; from *abrogation,* which implies the limiting or restraining it; from *dispensation* which only sets it aside in a particular instance: and from *antiquation,* which is the refusing to pass a law.—*Encyc. Lond.*

ABSENCE CUM DOLO ET CULPA, not appearing to a writ, subpœna, citation, &c., or to delay or defeat creditors, or avoiding arrest either on civil or criminal process.—*Ayliffe.*

ABSTRACT OF TITLE, an epitome of the evidences of ownership. Such an abstract should shew the soundness of a person's right to a given estate, together with any changes or circumstances in any wise affecting it. A perfect abstract discloses that the owner has both the legal and equitable estates at his own disposal perfectly unencumbered.—*Wharton.*

ABUTTALS, or BOUNDARIES, the buttings or boundings of lands —east, west, north, or south—with respect to the places by which they are limited and bounded. The sides or the breadth of lands are more properly described as adjacent or bordering, and the ends in length abutting or abounding. Boundaries are of several sorts, such as hedges, ditches, and inclosure of walls, land-marks in common fields, trees and boundary stones in parishes, brooks, rivers, highways, in manors or lordships, &c. —*Tomlin.*

ACCEDAS AD CURIAM, the title of a writ which removes a plaint from an inferior Court, generally the county court, the issuing of which is a preliminary to trying a question of right upon a distress of goods by the proceeding called Replevin, which see. —*Tomlin.*

ACCEPTANCE, signifies the accepting or taking of one thing as a compensation for the payment or performance of another: it is akin to what is termed *accord and satisfaction*, but is distinguished from it by legal subtleties. All that need here be said upon this subject is, that when a party is entitled to a gross sum, he is not bound to accept it piece-meal, and the acceptance of a less sum in satisfaction of a greater may be taken before the day the money becomes due. ACCEPTANCE is also an engagement to pay a bill of exchange according to the tenor of the acceptance. It may be either written or verbal.—*Tomlin.*

ACCEPTANCE SUPRA PROTEST. Acceptance of a bill is usually made by the party drawn upon (the *drawee*), but it sometimes happens, after the issuing of the bill, that the party drawn upon cannot be found, or that he will not accept at all, or, if he do accept, that he does so under terms that impede the negotiation of the bill, or perhaps the drawee's credit may be suspected, or some other circumstance may intervene to prevent his accepting; then, in order to prevent the return of the bill, it is not unusual for some other person to accept the bill for the honour or credit of the person on whose account it was drawn. This transaction is termed an acceptance *supra protest*, and the new acceptor is quite

as liable as if he had been the party originally drawn upon, and the holder of the bill is bound to receive this acceptance if the party thus accepting be a responsible person.—*Tomlin.*

ACCEPTING SERVICE, is when a solicitor receives a writ or other document on behalf of a client. If he does so, he is liable for the consequences.

ACCEPTOR, the person who accepts a bill of exchange. He stands in the same relation as the *maker* or drawer, as he sometimes is called, of a promissory note.—*Tomlin.* When acceptance is refused and the bill is protested for non-acceptance and any person accepts it *supra protest* for honor of the drawer or any of the endorsers, such person is called an "acceptor for honor."

ACCESSARY or **ACCESSORY**, before the fact, is, by Judge Hale, defined to be a person who, being absent at the time of the felony committed, yet procures, counsels, commands, or abets another to commit a felony. After the fact is a person who, knowing a felony to have been committed by another, receives, relieves, comforts, or assists the felon; but a bare knowledge of the felony will not make him accessory, even if he agree for money not to give evidence against the felon. All who are aiding and abetting when a felony is committed, and, as such, being accessories, are styled principals in the second degree, in contradistinction to principals in the first degree who are the persons actually committing the felony. However, it is to be recollected that, in the highest and lowest offences, high treason and misdemeanour, all are principals, and must be indicted as such. In murder, also, all aiders, abettors, and accessories before the fact, are treated as principals in the first degree. It is therefore only in felonies below treason that there can be accessories.—*Tomlin.* The distinction of accessories before and after the fact does not exist under the provisions of the Indian Penal Code.

ACCESSION, is the acquisition of property by right of occupancy.

ACCIDENTS, or **ACCIDENTAL INJURIES**, unforeseen or undesigned events productive of disadvantage or injury. Against such accidents equity will relieve should the Common Law remedy be inadequate, and the suitor be entitled to redress. Compensation to families for death caused by actionable wrong is provided for by Act XIII of 1855. *Criminally*, "nothing is an offence which is done by accident or misfortune, and without

any criminal intention or knowledge in the doing of a lawful act in a lawful manner, by lawful means and with proper care and caution."—*Ind. P. C.*, sec. lxxx. Acts done in the prosecution of other acts, unlawful or prohibited, are punishable.

ACCOMMODATION, a friendly agreement, an amicable composition between persons at variance. *An accommodation Bill of Exchange*, is where one person accepts a bill for another, there being no consideration between them, for the purpose of raising money upon it for the present necessity of one or both of them.—*Wharton.*

ACCOMPLICE, one of many equally concerned, or a co-partner in a felony; generally applied to those admitted to give evidence against their fellow-criminals.—*Hawk. P. C.*, 87.—*Wharton.*

ACCOUNT, or **ACCOMPT** a registry of debts, credits, and charges, or a detailed statement of a series of receipts (credits) and disbursements (debits) of money which have taken place between two or more persons. Accounts are either—(1) open, where the balance is not struck, or it is not accepted by all the parties; (2), stated, where it has been accepted, either expressly or impliedly, by all the parties; and (3), settled, where it has been accepted and discharged.—*Wharton.*

ACCRIMINATION. See ACCUSATION.

ACCRUE. To grow to or to arise.

ACCRUING COSTS, expenses incurred after judgment.—*Wharton.*

ACCUMULATIVE JUDGMENT. If a person already under sentence for a crime be convicted of another offence, the Court is empowered to pass a second sentence, to commence after the expiration of the first.—*Wharton.*

ACCUMULATIVE LEGACIES. If in a will, or by two distinct writings of different dates, as by a will and a codicil, or by two codicils, an equal, greater, or lesser sum be given, this is an accumulation, and a legatee takes a double or accumulative legacy. —*Ind. Suc. Act.*

ACCUSATION, the charging one with an offence. By Magna Charta, no man shall be imprisoned or condemned, on any *accusation*, without trial by his "peers," that is, his equals, or the law of the land.—*Tomlin.*

ACCUSED, is the generic name for the defendant in a criminal case and is more appropriate than either prisoner or defendant. —*Brown.*

ACKNOWLEDGMENT-MONEY is a sum paid in some parts of England by the copyhold tenants, on the death of their landlord, as an acknowledgment or recognition of their new lords, much in the same manner as a small sum of money is sometimes paid by a tenant as an acknowledgment of his new landlord on the transfer thereof to a purchaser, or on the entry of the heir, called *attornment.—Tomlin.*

ACKNOWLEDGMENT OF A WIFE'S ASSURANCE, the elaborate formalities to be observed that a married woman may legally convey her estate, or extinguish her rights or powers in realities or money to be laid out in reality.—*Wharton.* Such formalities are now rendered unnecessary by the Married Woman's Property Act of 1882.

ACQUEST or ACQUET. Property obtained by purchase or donation.—*Encyc. Lond.*

ACQUITANDIS PLEGIIS, an obsolete writ, lying for a surety against the creditor who refuses to acquit him after the debt is satisfied.—*Reg. Writs,* 158.

ACQUITTAL is when a person is found not guilty of the offence wherewith he is charged by a Jury upon verdict.—*Tomlin.* It is of two kinds—(1), *acquittal in deed,* as when a person is cleared by verdict; and (2), *acquittal in law* if two be indicted for a felony, the one as principal and the other as accessory, and the Jury acquit the principal. By law, the accessory is also acquitted.—*Wharton.* The word also signifies to be free from entries and molestations of a superior lord for services issuing out of lands.—*Brown.*

ACQUITTAL CONTRACTS, a discharge from an obligation which is either by deed, prescription, or tenure.—*Co. Litt.* 100*a.*

ACQUITTANCE, a release or written discharge of a sum of money or debt due, as where a man is bound to pay money on a bond, rent reserved upon a lease, &c., and the party to whom it is due, on receipt thereof, gives a writing under his hand witnessing that he is paid, this will be such a discharge in law that he cannot demand and recover the sum or duty again if the acquittance be produced.—*Termes de la Ley.* 15.

ACTION is the remedy to be pursued for a wrong done, or is the right of suing by law for what is due to any one. All actions arise either out of contract or out of tort; if a proceeding originates out of a crime it is not an action, but a prosecution.—*Brown. Civil actions* are divided into real, personal, and mixed.—(1),

Real, which concern real property only:—they are three, action of dower, dower *unde nihil habet*, and *quare impedit;* (2), *Personal*, such as concern contracts, both sealed and unsealed, and offences or trespasses; the former are called *ex contractu*—they are debt, promises, covenant, account, detenue, revivor, and *scire facias;* the latter *ex delicto*, as case, trover, replevin, and trespass *vi et armis;* (3), *Mixed*, which lie as well for the recovery of the thing, as for damages for the wrong sustained, as ejectment.—*Wharton.*

ACT of GOD, is a legal expression denoting some occurrence over which it is impossible for man to exercise control.

ACTIO BONÆ FIDEI, an action which the Judge decided according to equity, the *judex* thus acting as *arbiter* with a wide discretion.—*Lond. Inst.* 424.

ACTITATION, a debating of law-suits.—*Wharton.*

ACTIVE DEBT, a debt due to a person.—*Ib.*

ACTIVE TRUST, a confidence connected with a duty.—*Ib.*

ACTIVE USE, a present legal estate.—*Ib.*

ACTUARY, may be properly applied to the Registrar of a public body, or manager of a Joint Stock Company, but is more especially applicable to the Officer of an Insurance Company, who combines with the duties of Secretary those of a person skilled in the calculation of insurance risks; life annuities, and reversions; the word has a legal signification from its recognition in the Acts for regulating friendly societies.—*Cab. Lawyer.*

ADALUT, UDALUT, corruptly **ADAWLUT**, Court of Justice; Justice, equity. The chief or High Court in each Presidency of British India was, until its amalgamation with the Supreme Court of Judicature, called the *Sudder Dewany and Foujdarry or Nizamut Udalut;* Dewany meaning civil, and Foujdarry or Nizamut, criminal.

AD DAMNUM. To the damage.

ADEMPTION, revocation, a taking away of the legacy; *i.e.*, if any thing which has been specially bequeathed, does not belong to the testator at the time of his death, or has been converted into property of a different kind, the legacy is *ademed:* it cannot take effect by reason of the subject-matter having been withdrawn from the operation of the will.—*Ind. Suc. Act*, sec. cxxxix.

ADJOURNMENT, a putting off to another time or place: the postponement of the hearing of a suit.

ADJUDICATION, the act of giving judgment, sentence, or decree. In Scotch law, there is—(1), the adjudication for debt; (2), the adjudication on security; and (3), the adjudication in implement,—the mode of perfecting a defective title to property. —*Wharton.*

ADJUSTMENT, the settlement of a loss claimed of an insurer by the insured. The usual mode of settling a transaction of this nature is for the underwriter or insurer to indorse upon the policy, "Adjusted loss at——per cent. payable——(generally a month)." The term "adjustment" applies to the settlement of loss upon a fire policy.—*Tomlin.*

ADMINICULAR EVIDENCE, explanatory or completing testimony. —*Wharton.*

ADMINISTRATION, the disposing of an intestate's property; the body of Ministers deputed by the Crown to manage the affairs of State.—*Wharton.*

ADMINISTRATOR, a person appointed by competent authority to administer the estate of a deceased person when there is no executor.—*Ind. Suc. Act*, sec. iii. The powers invested in him may be specific and of limited duration, or general.

ADMINISTRATRIX, a female administrator.

ADMIRAL. A high Officer or Magistrate that has the government of the King's navy, and the adjudication of all causes of Merchants and Mariners and things happening on the main sea, and in ships riding in great rivers near the sea, and in his Court of Admiralty determining the same.

ADMIRALTY, COURT OF. This Court, or, rather, the exercise of the ordinary jurisdiction of the Admiral, is divisible, and is executed by two Courts, who have the same Judge, one termed the Instance Court, the other the Prize Court. The one is the ancient tribunal; the other is erected by virtue of a Commission from the King to determine litigations, and to adjudicate upon matters relating to prize ships, captures, seizures, and privateering or reprisals. This latter Court only exists during a war, and until the litigations consequent upon it are brought to an end. The other, which is the Court generally known by the name of "the Admiralty," is a Court for the determination of public or criminal and private wrongs arising at sea, or

intimately connected with maritime affairs, where the common law of the land can give no remedy, or, at least, not so apt and convenient.—*Tomlin.*

Vice-Admiralty Courts.—A recent Statute, the Act II, *Will.* 4, *c.* 51, *s.* 6, declares the matters over which the Vice-Admiralty Courts abroad can exercise jurisdiction; being seamen's wages (which are always, *and, under every circumstance*, entitled to a priority,) pilotage, bottomry, collision, contempt of the regulations of H. M.'s service at sea, and *droits* or rights of Admiralty, when a ship or its master shall come within the local limits of the Vice-Admiralty Courts abroad, notwithstanding the cause of action arose elsewhere .—*Tomlin.*

ADMISSIONS, in the law of evidence, are either by word of mouth, by conduct, by the assumption of a particular office or character, by writing under hand, unless stated to be without prejudice, or by deed. The word is more commonly used to denote the mutual concessions which the parties to an action or suit make in the course of their pleadings and the effect of which is to narrow the area of facts or allegations required to be proved by evidence.—*Brown.*

ADOLESCENCE, the period between 12 in females, and 14 in males, till 21 years of age.

ADOPTION, an act by which a person rears the child of another, and appoints him as heir. There is not any law of adoption in England.—*Land Inst.* 121. In India, the practice is quite general among the Hindus on failure of male heirs, and the law requires the performance of certain ceremonies to legalize the adoption.

AD QUOD DAMNUM, a writ directed to the Sheriff of a county to inquire by a jury whether a grant intended to be made by the King will be made to the damage of him or others. This writ is also had for the turning and changing ancient highways, which cannot lawfully be done without the King's license obtained by this writ, on the jury finding that such a change will not be detrimental to the public. So of a public river, which is a highway.—*Tomlin.*

ADULTERATION, the admixture of any preparation or matter of baser substance, or of a different nature, tending to deceive the sight or taste of a purchaser, or in any wise to deteriorate deceitfully things used in the ordinary purposes of life.—*Tomlin.* It has particular applicability to food and drink.

ADULTERY, the sin of incontinence between two married persons; or, if but one of the parties be married, it is, nevertheless, adultery, but distinguished by the name of *single* adultery. It is only punishable in either by ecclesiastical censure and *penance;* but the husband can have redress by an action on the case for damages, which are assessed by the verdict of a jury.—*Tomlin.* The offence is also called *Advowtry.* In India, it is *criminal;* and, in sec. ccccxcvii. of the Penal Code, is thus defined, "Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or concurrence of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery." The enticing or taking away or detaining a married woman for the purpose of criminal intercourse is likewise punishable; but in neither case is the wife amenable to the criminal law.

AD VALOREM, a term strictly used in speaking of the duties on customs paid for certain goods; the duties on some articles are paid by the number, weight, measure, tale, &c., and others are paid *ad valorem*, that is, according to their value.—*Wharton.*

ADVANCEMENT, promotion; additional price. Where, pursuant to the obligation to provide for such relations, a purchase is made in the name of a wife or child, of an illegitimate child, grand-child, or nephew of a wife, when the purchaser has placed himself as to such relations *in loco parentis* there will *primâ facie* be a presumption of advancement or a giving beforehand to the child its portion of the estate.

ADVENTURE, *Bill of*—a writing signed by a merchant stating that the property of goods shipped in his name belongs to another, to the adventure or chance of which the person so named is to stand, with a covenant from the merchant to account to him for the produce.—*Wharton.*

ADVERSE POSSESSION, an unmolested occupation of real estate, which may, after the lapse of a certain time, confer a perfect title even against the person otherwise entitled.—*Holdsworth.*

ADVOCATE, a patron of a cause assisting his client with advice, and pleading for him. It is the same in the civil and ecclesiastical laws, as a counsel at the common law.—*Spel. Glos.*

ADVOWSON. The perpetual right of presentation to an ecclesiastical benefice or cure, corresponding to the right of patronage in the canon law.—*Tomlin.* There are several kinds of advow-

sons, viz. :—(1), presentative, sub-divided into *(a)* appendant, (*b*) in gross, and (*c*) partly appendant and partly in gross; (2) donative, and (3) collative. A *presentative advowson appendant* is a right of patronage annexed to the position of some corporeal inheritance. . . . A *presentative advowson in gross* is a right of patronage self-subsistent, belonging to the patron, as an individual and not in any wise appendant to a corporeal inheritance. . . . A *presentative advowson may be partly appendant and partly in gross;* thus, when the owner grants to another every second presentment, for then the advowson will be appendant for the grantor's turn, and in gross for that of the grantee. . . . A *donative advowson* is a spiritual preferment not presentable, conferred by the royal letters patent upon the founder of a Church or chapel, to be visited by the founder, and not the Bishop or ordinary. . . . A *collative advowson* arises when a Bishop has the right of patronage, either originally or by lapse.—*Wharton.*

ADVOWTRY, is another name for adultery.

AFFIDAVIT, a declaration in writing, sworn before a person having authority to administer an oath.—21 *Car. I. B. R.* It has all the effect of an oath in Court, and carries with it the penalties of perjury if false.

AFFILIATION, is the process resorted to for judicially determining who is the father of an illegitimate child, and for fining upon such father the obligation of contributing to the maintenance of such child.

AFFINITY. The relation which marriage occasions between the husband and the blood relations of the wife, and between the wife and blood relations of the husband. Thus there is an affinity between the wife and her husband's brother, but there is no affinity between the wife's sister and the husband's brother.—*Brown.*

AFFRAY, when two or more persons, by fighting in a public place, disturb the public peace, they are said to commit an affray.—*Ind. P. C.*, sec. clix.

AGE. This word has a legal effect in relation to those periods of life which enable persons to do certain acts, which, for presumed want of judgment on account of tenderness of years, they were forbidden to do, and such acts rendered void.—*Tomlin.*

AGENT, a person who transacts the business of another.—*Tomlin.* Agents are of three classes—(1), *Commercial*, as auc-

tioneers, brokers, factors, consignees, super-cargoes, ship's husbands, masters of ships, partners; (2), *for the purpose of Litigation*—as Attorneys-at-law, Solicitors in Equity, Proctors in the Spiritual Probate, or Divorce Courts; and (3) *Social*—as Attornies-in-fact, Servants.—*Wharton.*

AGGRAVATION, the increase of the enormity of crime; augmenting the injury of wrong, or inflaming damages.—*Wharton.*

AGGREGATE PUNISHMENT, the sum of the several penalties to which one is liable for the different offences of which he may be convicted before a court of law.—See *Crim. Pro. C.*, sec. 46.

AGISTMENT, is where other men's cattle are taken into any ground at so much per week. Agistment is also the profit of such feeding in a ground or field, and extends to the depasturing of barren cattle of the owner, for which tithes are payable to the parson.—*Tomlin.*

AGREEMENT, in a general sense, is taken for any reciprocal contract, but is a term more correctly used to designate a verbal promise or simple contract *reduced into writing*, which is deficient in the formula of sealing and delivery as a deed.—*Tomlin.*

AIDER, whoever, either prior to or at the time of the commission of an act does any thing in order to facilitate the commission of that act and thereby facilitates the commission thereof, is said to aid the doing of that act.—*Ind. P. C.*, sec. 107, Ex. 2, see *Abettor.*

ALIBI, is a defence resorted to in criminal prosecutions, where the party accused, in order to prove that he could not have committed the crime with which he is charged, offers evidence that he was in a different place at the time the offence was being committed—*Encyc. Lond.*

ALIENATION, a transferring of property to another.

ALIENI JURIS, an expression applicable to those who are in the keeping or subject to the authority of another and have not full control of their person or property. In English law there are generally reckoned three classes of such persons: infants, (*i.e.*, minors) married women and lunatics.—*Mozley.*

ALIENS; persons *born* out of the King's allegiance, *i.e.*, in a foreign State or country not under the dominion of Great Britain. But persons who are the children of fathers, natural-born subjects, and their children, even though their mothers were

aliens, are considered Englishmen. The issue of an Englishwoman by a foreigner is deemed an alien.—*Tomlin.*

ALIMONY, is that allowance for maintenance which an Ecclesiastical Court decrees or orders should be paid to a wife separated from her husband by divorce.—*Tomlin.*

ALLISION, the running of one vessel against another.—*Wharton.*

ALLOCATION. Properly a placing or adding to; in law an allowance made upon an account in the Exchequer.—*Cowel.*

ALLOCATUR, the certificate of the allowance of costs by the master on taxation.—*Jacob.*

ALLONGE, a paper annexed to a Bill of Exchange or promissory note, which is rendered necessary when there are so many successive endorsements to be made that the original paper would not contain them.—*Chit. on Bill*, 158.

AMBIGUITY, doubtfulness, double meaning, obscurity. There are two species of ambiguity, viz., *latent* hidden, and *patent* apparent. The latter cannot be explained by parol evidence, but the former may.

AMBULATORY, changeable, revocable, as when we say that a man's will is ambulatory in his life-time.—*Mozley.*

AMENDMENTS, corrections of errors in process and pleadings, which the Courts generally permit. In some proceedings, however, errors may be what are termed "fatal," *i.e.*, the proceeding is absolutely void, and, therefore, cannot be amended; but these instances are comparatively rare.—*Tomlin.*

AMENDS, TENDER OF. See TENDER.

A MENSA ET THORO, (*from table and bed.*) It was a partial divorce, when the marriage was just and lawful, *ab initio* (from the beginning), but for some supervenient cause it became improper or impossible for the parties to live together, as in the case of intolerable cruelty in the husband, or adultery in either of them. This divorce was affected by sentence of the Ecclesiastical Court. It caused the separation of the husband and wife only, but did not annul the marriage, so that neither of them could marry during the life of the other. A decree for a judicial separation by the Court for Divorce and Matrimonial Causes has superseded this divorce. 20 & 21 Vict., c. 85, sec. 7. —*Wharton.*

AMERCEMENT or **AMERCIAMENT**, a punishment by the purse, a penalty assessed by the peers or equals of the party amerced for

an offence done, for which he places himself at the mercy of the lord. The difference between *amercements* and *fines* is as follows:—the latter are certain, and were created by some statute; they can only be imposed and assessed by Courts of Record; the former are arbitrarily imposed by Courts not of Record, a Court-leet for instance.— *Termes de la Ley*, 40.—*Wharton.*

AMICUS CURIÆ, (a friend of the Court) A bystander, usually a barrister, who informs a Judge in Court on a point of law on which the Judge is doubtful or mistaken.—*Mozley.*

AMPLIATION, an enlargement, a deferring of judgment till the cause be further examined.—*Cowel.*—*Wharton.*

ANCIENT DEMESNE. See MANOR, SOCAGE.

ANCIENT LIGHTS, windows are so called when they have remained unaltered and unobstructed for more than 20 years.

ANCIENT WRITINGS, documents upwards of 30 years old.

ANCILLARY, that which depends on, or is subordinate to, some other decision.—*Encyc. Lond.*

ANIMALS are distinguished by the law into such as are tamed, and such as are untamed or wild (*ferœ naturæ*). In such as are tamed and domestic, as horses, cattle, and poultry, these are as much property, and the subjects of ownership, as a table or bed, because they will not stray unless stolen or enticed, *i.e.*, *feloniously led away*. In wild animals or fish, no one can have a property sufficient for the purpose of an indictment till he has taken possession of them; and some animals are of so base a nature, that they will not form the subject of an indictment or action, although the taking them is punishable summarily by statute.—*Tomlin.* Under the Indian Penal Code, the word "animal" denotes any living creature other than a human being.

ANNI NUBILES, the marriageable age of a woman. A woman is held able to consent to marriage at the age of 12, and when it is said that the consent of parents or guardians is required, this merely refers to the penalties incurred by the parties marrying without such consent, or the minister who celebrates such marriage.—*Mozley.*

ANNUITY, a yearly payment issuing out of land, or charging the person, or both. The first is distinguished by the name of *rent-charge;* the latter are generally annuities, made determinable on life or other contingencies, created for the purpose of securing a greater interest upon a loan than £5 per cent. The

person receiving the annuity is styled the *grantee;* the paying, the *grantor.—Tomlin.*

ANTE LITEM MOTAM, before litigation commenced.

ANTIMONY, a contradiction between two laws or two articles of the same law.—*Encyc. Lond.*

APERTURA TESTAMENTI, a form of proving a will in the civil law by the witnesses acknowledging before a Magistrate their having sealed it. 1. *Wm. Exs.* 292 *n. (t).—Wharton.*

APPARITOR, a messenger or officer who serves the processes of the Ecclesiastical Courts. His duty is to serve citations or summonses, calling upon the parties cited to appear; to arrest them if the Court award process of *contumacy, i.e.*, contempt, against them for not appearing; and to execute the sentences or decrees of the Judges of the Court.—*Tomlin.*

APPEAL, signifies the removal of a cause from one Court to another that is superior for ultimate decision.—*Tomlin.*

APPEARANCE, personal presence, a being present in Court. When a person is served with a summoning process from a Court, he generally comes into such Court to defend himself, which is done by entering an appearance with the proper officer. There are several modes for a defendant to appear—(1) in person; (2) by attorney; (3) by guardian; and (4) by committee. In Chancery, there are six kinds of appearances—(1) *Gratis*, when a defendant appears before he is cited, upon learning that a bill has been filed against him . . . . (2) *Voluntary*, when a defendant duly appears upon being cited . . . (3) *Compulsory*, (when a defendant, being duly cited, does not appear), which is—(*a*) *Substituted* (appearance *sec. reg.*), when the appearance is entered by the plaintiff for the defendant . . . (*b*) *Personal*, when a defendant is taken and brought up upon an attachment, and compelled to enter an appearance for himself . . . . (*c*) *By order, the defendant being out of the jurisdiction* . . . . (4) *Special, without citation, the defendant having absconded* . . . . (5) *Optional*, which is—(*a*) *Common*. Where a party is served with a copy of the bill under the 11th Rule of the Order desires the suit to be prosecuted against himself in the ordinary way, is entitled to have it so prosecuted; and in that case he must enter an appearance in the common form, and the suit will then be prosecuted against him in the ordinary way . . . . (*b*) *Special*. Where a party is served with a copy of the bill under the 11th Rule of the order X, and desires to

be served with a notice of the proceedings in the cause, but not otherwise to have the same prosecuted against himself, he may enter a special appearance .... (6) *Subsequent, or secondary.* A defendant; notwithstanding that an appearance may have been entered for him by the plaintiff, may afterwards enter an appearance for himself in the ordinary way.—*Wharton.*

APPELLANT, the party appealing; the party resisting the appeal is called *respondent.*—*Encyc. Lond.*

APPELLOR, a criminal who accuses his accomplices; one who challenges a jury, &c.—*Ib.*

APPENDANT, a thing of inheritance belonging to another inheritance which is more worthy: as an advowson, common, &c., which may be appendant to a manor, common of fishing to a freehold, a seat in a church to a house, &c. It differs from appurtenance, in that appendant must ever be by prescription, *i.e.*, a personal usage for a considerable time, while an appurtenance may be created at this day, for if a grant be made to a man and his heirs, of common in such a moor for his beasts levant or couchant upon his manor, the commons are appurtenant to the manor, and the grant will pass them.—*Co. Litt.* 121*b*.—*Wharton.*

APPENNAGE, or APENNAGE, a child's part or portion, and is properly the portion of the King's younger children in France, whereby a fundamental law, called the law of appenages, the king's younger sons formerly had duchies, counties, or baronies granted to them and their heirs, &c.; the reversion being reserved to the crown, and all matters of regality as to coinage and levying taxes in such territories.—*Spelm*; *Cowel.*—*Wharton.*

APPOINTMENT, direction, designation; the selection of a person for an office.—*Wharton.*

APPORTIONMENT, a division or sub-division into proportional parts of a rent, common of pasture, or a pew, or similar interests; as where a part of the land out of which the rent issues is sold, or the house in right of which the common or pew attaches is sold off, or a partition is made amongst coheirs, each portion is charged with a proportionate part of the incumbrance, or the benefit is allotted in shares having exact relation to the amount or quantity of the whole.—*Tomlin.*

APPRAISER, a person who values goods.—*Tomlin.*

APPRENTICE, a young person bound by indenture to a tradesman

or mechanic, who undertakes to teach him his trade: there are also agricultural apprentices, factory apprentices, and apprentices to the sea service. . . . The apprentice is, in the eye of the law, a servant, and may be reasonably chastised by his master or mistress, or, which is more advisable, may be taken before a Justice of the Peace, who will deal with the refractory apprentice by committing him to the house of correction, for not exceeding one month, to hard labour.—*Tomlin.*

APPROPRIATION, the application of the payment of a sum of money made by a debtor to his creditor, to one of several debts. The annexing of some ecclesiastical benefice to the proper and perpetual use of some religious house, &c., just as *impropriation* is the annexing a benefice to the use of a lay person or corporation. 2 *Burn's Eccl. Law*, 347.—*Wharton.*

APPROVER, a party to a criminal offence, who accuses others to be guilty of the same, and is admitted as a witness at the discretion of the Court, to give evidence against his companions in guilt: he is vulgarly called "King's evidence." No person who has pleaded "not guilty" to the offence can be such witness; and all persons convicted of felony, and infants under the age of discretion, are equally inadmissible.—*Tomlin.*

APPURTENANCES, something belonging to and attached to a freehold, and of a less nature or lower degree, as rights of way, common of pasture, turbary, fishing, &c., out-houses, dovecotes, yards, orchards, and gardens. Land cannot be appurtenant to land, or a house to a house; therefore, by the word *appurtenances* only such things pass of an inferior condition, which usually have been enjoyed together with the house or land.—*Tomlin.*

ARBITRATION, the submitting of a matter in dispute to the judgment of one, two, or more persons called arbitrators.—*Angl. Socr.* 1772.—*Wharton.*

ARBITRATOR, or **ARBITER**, a disinterested person to whose judgment and decision matters in dispute are referred.—*Terms de la Ley.* 50.—*Wharton.* When the cause or matter is referred to an arbitrator by a Court of Justice or any competent public authority, such arbitrator is deemed a "public servant."—*Ind. P. C.*, sec. 21.

ARCHES COURT, a court of appeal belonging to the Archbishop of Canterbury, the Judge of which is called the Dean of the Arches, because his Court was anciently held in the church of Saint Mary-le-Bow (*Sancta Maria de arcubus,*) so named from

the steeple, which is raised upon pillars, built *archwise*, like so many bent bows.—*Wharton.*

ARGUMENTATIVE PLEA. A plea not direct or positive.—*Blackstone.*

ARMORIAL BEARINGS, or ARMS, the device depicted on the (now imaginary) shield of one of the British *nobility*, which is divided into the *greater nobility*, and the *lesser nobility*. The *greater* containing all titles and degrees of honor from knighthood upwards; the *lesser*, all from barons downward, gentry being the lowest degree of nobility. The criterion of nobility is the bearing of arms or armorial bearings received from ancestry and descent.—*Tomlin.*

ARMS, any thing that a man wears for his defence, or takes into his hand to strike at another; ordinarily, weapons such as swords, pistols, guns, halberts, lances, javelins, bayonets, &c.—*Tomlin.*

ARRAIGNMENT, the charging a party to plead to an indictment of felony. The party generally is called upon to hold up his hand for the purpose of acknowledgment and identity; if he answers to his name, it is sufficient for the purpose. If a party refuse to plead, the Court may order a plea of "not guilty" to be recorded for him.—*Tomlin.*

ARRAY, to rank or set forth a jury of men impanelled upon a cause. To challenge the array of the panel is at once to accept against all persons arrayed or impanelled in respect of partiality, or some default in the Sheriff.—*Co. Litt.* 156.—*Wharton.*

ARREARS, or ARREARAGES, money unpaid at the due time, as rent behind-hand; the remainder due on account; or a sum of money remaining in the hands of a party bound to account.—*Tomlin.*

ARREST, the restraint of a person by law, which in civil cases is for securing a debt to an individual, and in criminal or penal cases for compelling the person charged with a crime or offence to appear and submit to justice. Arrest in criminal cases is termed "an apprehension."—*Tomlin.*

ARREST OF INQUEST, pleading in arrest of taking the inquest upon a former issue, and shewing cause why an inquest should not be taken.—*Brotel. Repleader.*—*Wharton.*

ARREST OF JUDGMENT, to move in *arrest of judgment* is to show cause why the judgment, whether in a criminal or civil cause, should be stayed on account of insufficiency in the indictment

or record. In criminal causes, it is done before judgment is pronounced; in civil causes, before the successful party can, by the rules of practice, perfect or sign his judgment.—*Tomlin.*

ARSON, the maliciously, and, with intent to injure, setting fire to and burning any house, building, ship, stacks of corn, crops, &c. The intention must be to injure or defraud some third person, who is not identified with the defendant. Therefore, a married woman cannot be indicted for setting fire to the house of her husband, with intent to injure him. This offence is felony. The burning of the house, &c., of another, cannot amount to arson, unless it be malicious; it is a trespass, for which the party injured can have his remedy by action: but if a man set fire to his own house, and thereby burn the house of his neighbour, it is arson.—*Tomlin.* In the Indian Penal Code this offence is classed under the head of MISCHIEF, which head see.

ARTICLED CLERK, a pupil of an attorney or solicitor, who undertakes, by articles of clerkship, containing covenants, mutually binding, to instruct him in the principles and practice of the profession.—*Wharton.*

ARTICLES, is an expression generally applied to any agreement containing numerous parts or particulars which constitute the details of the agreement. The term is also usually applied to the apprenticeship of a clerk, partnership, the particulars of a religious creed, impeachments, &c.

ARTICLES OF THE PEACE, are so called when any person makes affidavit that he apprehends violence towards himself by any person, and requires such person to find bail for keeping the peace.

ARTIFICIAL PERSON, a corporation, a body of men, a company. —*Wharton.*

ASCENDANTS, the progenitors of a family.

ASPORTATION, carrying away or removing goods. In all larcenies, there must be both a taking and a carrying away (*cepit et asportavit*).—4 *Bl. Com.* 431.—*Wharton.*

ASSASSINATION, murdering a person by lying in wait for him. —*Jacob.*—*Wharton.*

ASSAULT. Whoever makes any gestures or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he

who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault. Mere words do not amount to an assault, but the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.—*Ind. P. C.*, sec. 351.

ASSAULT and BATTERY, a simple assault is an attempt to commit an act of personal violence to another; no words, however provoking, will amount to an assault. Battery is the beating or unauthorized touching another, or wilfully putting in motion any substance against him; therefore, any acts done to the person of another in a violent, rude, or revengeful manner, as by spitting upon him, jostling him, or touching him in anger, are batteries: a battery includes the assault.—*Tomlin.* See ASSAULT, CRIMINAL FORCE, HURT, &c.

ASSEMBLY, UNLAWFUL, is a gathering together of five or more persons, if the common object of the persons composing that assembly, be—*first*, to overawe by criminal force, or show of criminal force, the legislative or executive Government of India, or the Government of any Presidency, or any Lieutenant-Governor, or any public servant in the exercise of the lawful power of such public servant; or *secondly*, to resist the execution of any law, or of any legal process; or *thirdly*, to commit any mischief or criminal trespass, or other offence; or *fourthly*, by means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or *fifthly*, by means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do. An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.—*Ind. P. C.*, sec. 141.

ASSESSED TAXES, duties charged upon persons in respect of articles in their use or keeping, as houses, servants, carriages, horses, dogs, hair powder, armorial bearings, and game certificates.—*Wharton.*

ASSESSORS, men empannelled to set as a jury in criminal cases and to give an opinion as to whether the accused is guilty or not

guilty of the offence charged against him; but the Judge is not bound by such opinion. He can set it aside and pronounce sentence on his own verdict.

ASSESSORS are men of law appointed to advise and direct a Judge or Judges of an inferior Court in their decision. This title is also given to those Barristers who assist the mayor in revising the list of voters in corporate boroughs.—*Tomlin.*

ASSESSORS, those that *assess* public taxes, viz., parish dues, highway rates, &c., and also parliamentary taxes.—*Tomlin.*

ASSETS or ASSETZ, goods or money *enough* (Fr. *assez*) to pay a burthen or obligation cast upon a man in relation to his own transactions, or those of others whose property he has in his hands. A drawee, when he accepts, is supposed to have assets in his hand, or, commercially speaking, "effects" of the drawer. A drawer of a cheque has assets at his bankers. But the term is more frequently applied to the funds or property in the hands of executors or administrators, applicable for the purposes of paying debts and legacies, or debts only. The law styles property in land come to the heir, *assets real;* personal property, *assets personal;* land in the hands of the heir applicable for payment of debts, *assets per or by descent.*—*Tomlin.*

ASSIGN, to transfer a right to another. It has another signification; as to *assign* a widow her dower, is to allot or portion out a woman the third part forming her dower; to *assign* a perjury, is to state upon what particular false statement of the party the false swearing is intended to be sustained, or, in common parlance, "it is an oath upon which perjury may be *assigned;*" *i.e.*, the oath is sufficiently certain and distinct in its allegation, that it can be negatived by evidence of its falsity, and that the party knew it to be false. To *assign* an error; to state an error in legal terms.—*Tomlin.*

ASSIGNEE, the person to whom a thing is transferred or assigned. This word, as well as the word *assigns*, includes the assignee of an assignee, the heir of an assignee, and the assignee of an heir, and so in personal estate, the executors of an assignee, &c. The words "executors, administrators, and *assigns*," so often repeated in deeds relating to personality, are little better than surplusage; *assigns* certainly is; for what any one takes absolutely by act or deed, he cannot be prevented from alienating. As many erroneously suppose these words to be indispensable, it accounts for their frequent repetition and occurrence;

but a power to A will not extend to his assigns, unless expressly named.—*Tomlin.*

ASSIGNMENT, the transfer by one to another of an interest or power, if specially authorized. The name of a conveyance which, though it may be made of freeholds and interests therein, such as annuities, rent charges, mortgages, &c., yet is generally mentioned with reference to what are termed *personal interests* arising out of land, such as leases, and estates for years; and to simple personality, *i.e.*, goods, chattels, and security for money.—*Tomlin.*

ASSIZES, the court and time where the processes of assize, *i.e.*, *sittings*, are taken and executed. Assize also signifies a regulation or ordinance, as the "assize of bread." Assize was also the name of a writ which lay to restore a man to his freehold when he had been forcibly thrust out by what is legally termed a disseisin; now abolished.—*Tomlin.*

ASSOCIATION, is a word frequently used as the name of a company, subject to the Companies' Act.

ASSUMPSIT, is the name of the common action "upon promises," which is given for the recovery of damages sustained by the non-performance of a contract, promise, or agreement, *express* or *implied*.—*Tomlin.*

ASSURANCE is the title or legal evidence by which an estate is assured to the owner. It has also latterly begun to be applied to contingencies of lives instead of insurance, which is reserved for fires, losses at sea, &c.—*Col. Law.*

ATTACHMENT, a process from a Court of Record, awarded by the Judges at their discretion on a bare suggestion, or on their own knowledge, against a person guilty of a contempt, who is punishable in a summary manner. Contempts may be thus classed—(1) Disobedience to the Queen's writs; (2) Contempts in the face of a Court; (3) Contemptuous words or writings concerning a Court; (4) Refusing to comply with the rules and awards of a Court; (5) Abuse of the process of a Court; and (6) Forgery of writs, or any other deceit tending to impose on a Court.—*Leach's Hawk. P. Cr.*, c. 22, s. 33.

ATTACHMENT, FOREIGN—a process which takes the goods of foreigners found in some liberty to satisfy creditors.—*Com. Dig.* tit., *Attachment Foreign.* Also a judicial proceeding, by means of which a creditor may obtain the security of the goods or other personal property of his debtor, in the hands of a third person,

for the purpose, in the first instance, of enforcing the appearance of the debtor to answer an action; and afterwards, upon his continued default, of obtaining the goods or property in satisfaction of the demand. It is also called *garnishment.—Wharton.*

ATTAINDER, is the figurative *taint*, or ideal *corruption of blood*, which attaches on a person capitally convicted of treason or felony. The practical consequence of this doctrine, or rather fiction, which is of feudal origin, formerly was, that it rendered the convict, after judgment, incapable of having heirs, and by this incapacity or civil death obstructed the course of descent, thereby depriving the heir of the land, which the king is entitled to as a thing *escheated* or reverted to him; but now it only operates as a forfeiture for life, and in common parlance is so intended. Attainder for felony also brings with it the forfeiture of goods. As far as the forfeiture of interests in lands of inheritance are concerned, attainder is limited to treason and murder, or the abetting, &c. Bills of attainder are sometimes brought into Parliament, and pass into acts, against open rebels, traitors, &c., upon which the party is executed, and his lands and goods forfeited, saving the wife's jointure and dower.—*Tomlin.*

ATTEMPTS TO COMMIT CRIME, are offences punishable by law, and are specially provided for by sec. 511, Ind. P. C.

ATTENDANT TERM, terms for years in real property are created for many purposes, *e.g.*, to furnish money for the payment of debts, to secure rent-charges or jointures, to raise portions for younger children, daughters, &c.—*Wharton.*

ATTENTATES, proceedings in a Court of Judicature, pending suit, and after an inhibition is decreed and gone out. Those things which are done after an extra-judicial appeal may be styled *Attentates.—Ayliffe.*

ATTESTATION, testimony, evidence, justification, the execution of a deed or will in the presence of witnesses.—2 *Bl. Com.* 307.

ATTORNEY, one who is appointed by another to do something in his absence, and who has authority to act in the place and turn of him by whom he is delegated. He is of two kinds—(1) *Attorney-at-Law*, a public officer who conducts legal proceedings on behalf of others, called his clients, by whom he is retained: he answers to the Solicitor in the Courts of Chancery, and the Proctor of the Admiralty, Ecclesiastical, Probate, and Divorce Courts. It is a popular error (entertained, however, by many)

that the term "*Solicitor*," is more honorable than, or superior to "*Attorney*." The late Lord Tenterden repeatedly animadverted upon the absurdity of using the term "Solicitor," when applied to any one conducting an action or other proceeding in Courts of law. There is not any distinction whatever in the degree of respectability between them; in fact, both the terms are generally found combined in the same gentleman. (2.) *Attorney-in-Fact*, including all agents employed in any business or to do any act in *pais* for another; also a person acting under a special agency, whose authority must be expressed by deed, commonly called a Power of Attorney.—1 *Bac. Abr.* tit. "*Attorney*."—*Wharton.*

ATTORNEY-GENERAL, a great law officer of the King, made by letters patent. It is his duty to prosecute for the crown, and to exhibit informations of a criminal nature; also to file bills or informations in the exchequer, in respect of matters concerning the revenue or the King's profits. He is the only legal representative of the King in the Courts. When he prosecutes in his *official* capacity, he has always the right to reply.—*Tomlin.* The *Advocate-General* occupies a similar position in India.

ATTORNEY, POWER OF. This is an instrument by which one person empowers another to act in his stead. The donor of the dower is called the *principal*, the donee is called the *attorney* or (when appointed by a corporation aggregate to receive administration) the syndic. A power of attorney which simply authorizes the attorney to vote is called a proxy; one which simply authorizes the attorney to appear in an action and confess the action or suffer judgment to go by default is called a *warrant of attorney*, all other authorities are called simply powers of attorney the power being *special* if it is to do one particular act and *general* if to do generally all matters connected with a particular employment.—*Brown.*

ATTORNMENT, is the acknowledgment of a tenant to a new landlord, either by payment of rent, or a very small nominal sum. There are but few cases in which it confers any legal advantage. See ACKNOWLEDGMENT-MONEY.—*Tomlin.*

AUCTIONEER and SALES BY AUCTION. An auctioneer is a person licensed to conduct sales by auction, which is most usually done by notifying the conditions of sale, by previous advertisement, or at the time of sale explaining the incidents and qualifications of the property, and receiving the offers or biddings of the

persons assembled.—*Tomlin.* An auctioneer is deemed the agent of both parties; he can bind *virtute officii* the seller and the purchaser of realty by his memorandum of the sale under the Statute of frauds; but he is only the agent of the seller at the sale.—*Wharton.*

AUTOGRAPHY, a copy or counter part of a deed.

AUTREFOIS ACQUIT, (formerly acquitted), a plea in criminal cases; when a person is indicted for an offence and acquitted, he cannot be afterwards indicted for the same offence, provided the first indictment were such that he could have been lawfully convicted on it; and if he be thus indicted a second time, he may plead *autrefois acquit*, which will be a good bar to the indictment. The true test by which the question, whether such a plea is a sufficient bar in any particular case, may be tried, is, whether the evidence necessary to support the second indictment would have been sufficient to procure a legal conviction upon the first.—*R.* v. *Emden*, 9 *East*, 437; 14 & 15 *Vict.*, c. 100, s. 28.—*Wharton.*

AUTREFOIS CONVICT, (formerly convicted). 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 para.

AUTRE VIE. The life of another; thus an estate *pur autre vie* is an estate for the life of another.—*Mozley.*

AVAIL of MARRIAGE, the right of marriage, which the lord or guardian in chivalry had of disposing of his infant ward in matrimony. A guardian in socage had also the same right, but not attended with the same advantage.—1 *Step. Com.* 194—*Wharton.*

AVERAGE, in its strict sense, is a contribution made by the owners of a ship, and the proprietors of goods, to those whose goods are sacrificed or damaged in the preservation of such ship or cargo, or any part of the merchandize. It is sufficient, for the purposes of ordinary information, to state that the averages, which subject the whole of the ship and cargo to this contribution, are either *general* or *particular*. General, when the sacrifice is incurred to prevent a total loss of the ship. Particular, when the loss to ship or goods occurs on the ordinary incidents of a voyage, although they reach their destination; such as accidents to rigging, loss of anchors, &c.; in which case the expenses or loss must be compensated by the parties not immediately con-

cerned in the ship or cargo, viz., the insurers. Particular average, or, as it is commercially termed, average loss, is to be considered only with reference to a particular partial loss, which, when applied to the ship, means a damage sustained from some of the accidents assured against; and when referred to the cargo, has relation to the damage which the goods have suffered from storm, &c., though the whole or the greater part may arrive in port.—*Tomlin.*

AVERAGE, PETTY, SMALL, or ACCUSTOMED, is a small duty paid to masters of ships, where goods are sent in another man's ship, for their care of the goods, over and above the freight, which comprises the charges of pilotage, towage, &c. It is usual to charge one-third of them to the ship, and two-thirds to the cargo.—*Tomlin.*

AVOIDANCE, when a benefice is void of an incumbent, in which sense it is opposed to plenarty.—*Jacob.* Also an evitation or making void.—*Wharton.* Likewise destroying the effect of a written instrument, or of any disposition therein (1) by revocation on the part of any person entitled to revoke the same, (2) by establishing its invalidity in a Court of Justice.—*Mozley.*

AVOWRY, the justifying and *avowing* a distress, *i.e.*, a plea by a party making a distress, who is sued in *replevin*, stating why he (the distrainor) took it.—*Tomlin.*

AVULSION, lands torn off by an inundation or current from property to which they originally belonged and gained to the estate of another; or where a river changes its course, and instead of continuing to flow between two properties, cuts off part of one and joins it to the other property. The property of the part thus separated continues in the original proprietor, in which respect *avulsion* differs from *alluvion*, by which an addition is insensibly made to a property by the gradual washing down of the river, and which addition becomes the property of the owner of the lands to which the addition is made.—*Wharton.*

AWARD. When persons refer any matter in dispute to the private decision of another party, such act is termed a *submission.* The party who is to decide upon such submission is the *arbitrator*, and the decision of such arbitrator is termed an *award.*—*Tomlin.*

AWAY-GOING-CROP, a crop sown during the last year of a tenancy; but not ripe till after its expiration.—*Mozley.*

BACHELOR, a man who has never been married; and, as such

taxes have been at times levied or increased, as in the case of an increased tax on servants, payable by bachelors.—*Tomlin.*

BACHELOR OF ARTS, is the first degree taken by students at the universities.—*Tomlin.*

BACKING, a warrant of a Justice or Police Magistrate, is, where a warrant granted by a Justice or Magistrate in one jurisdiction or county is required to be executed in another, as where a felony or offence has been committed in one county, and the offender resides or has gone into another; or where goods, for which a search-warrant has been obtained from Justices or Commissioners of Bankrupt, are taken from one place to another; . . . Backing is also used in common parlance (for the practice is legally superfluous), for the indorsement or memorandum which a pawn-broker makes on the back of a duplicate, thereby acknowledging that the party pledging the goods has requested a stay of sale for three months.—*Tomlin.*

BAIL, to set at liberty a person arrested or imprisoned, on security being taken for his appearance on a day and at a place certain, which security is called bail, because the party arrested or imprisoned is delivered into the hands of those who bind themselves for his forthcoming, in order that he may be safely protected from prison. Bail and mainpernors are often confounded, but there is this marked distinction between them:—*mainpernors* are merely a person's sureties who cannot imprison him themselves to secure his appearance, but *bail* may, for they are regarded as his gaolers, to whose custody he is committed, and, therefore, they may take him up on a *Sunday* and confine him until the next day, and then render him to the proper prison. The word "bail" is never used with a plural termination.—*Wharton.*

BAILABLE, an arresting process is said to be bailable when bail can be given, and the person arrested may obtain his liberty in consequence, *e.g.*, a *capias* on *mesne* process is bailable; a *capias ad satisfaciendum* is non-bailable.—*Wharton.*

BAIL-BOND, an instrument prepared in the Sheriff's office after an arrest, executed by two sufficient sureties and the person arrested, and conditioned for his causing special bail to be put in for him in the Court out of which the arresting process issued.—*Badley's Prac.* 357.—*Wharton.*

BAILEE, a person to whom goods are entrusted for a specific purpose.—*Wharton.*

BAILIES, Magistrates of burghs, possessed of certain jurisdictions, and having the same powers within them as Sheriffs of counties. Also officers or persons named by proprietors to give infefftment.—*Scotch Law.*—*Wharton.*

BAILIFF, this term is mostly used to signify officers of the Sheriff, who execute all processes directed to him.—*Tomlin.* There are divers sorts of bailiffs: as bailiffs of liberties; of lords of manors; of cities, as of Westminster; and of royal castles, as of Dover. Sheriffs are also called the Queen's bailiffs, and their counties their *bailiwicks.* There are also bailiffs of forests and bailiffs in husbandry; which last imply, the steward or chief servant of a land-owner. *Bound bailiffs* are Sheriff's officers as being bound to the faithful execution of their office.—*Cab. Law.*

BAILIWICK, is a county of which the Sheriff is legally the keeper, or bailiff. It is also used to signify the precinct of an exclusive jurisdiction distinct from the Sheriff, though within his county. In the execution of processes relating to civil matters, this last distinction does not now exist.—*Tomlin.*

BAILMENT, is a delivery by one to another of goods, either by lending, pledging, keeping for safe custody with or without recompense, hiring, or, in fact, any delivery not made on sale, or in contemplation of it. The person who delivers goods is termed the *Bailor*, he to whom they are delivered the *Bailee.*—*Tomlin.* Bailments are properly divisible into three kinds—(1) those in which the trust is exclusively for the benefit of the bailor, or of a third person, when the bailee is liable for gross negligence only; (2), those in which the trust is exclusively for the benefit of the bailee, who is then bound to the very strictest diligence; and (3), those in which the trust is for the benefit of both parties, or of both or one of them, and a third party; when the bailee must exercise an ordinary and average degree of diligence. The first embraces deposits and mandates; the second, gratuitous loans for use; and the third, pledges or pawns, and hiring and letting to hire.—*Story's Bailments.*—*Wharton.* The obligations that arise upon the various deliveries of goods, or valuables, or contracts, either expressed or implied, will be noticed under the following titles, CARRIER, COMMISSION, HIRING, PAWN.

BAIL PIECE. The slip of parchment on which the recognizance entered into by the parties becoming bail is transmitted to the Court.—*Mozley.*

BANC (or BANCO), SITTINGS IN. The sittings of a superior

Court of common law as a full Court, as distinguished from the settings of single judges at *Nisi Prius* or on circuit.

BANKRUPT. The definition of this word has varied at different periods of our legal history. A bankrupt may perhaps be defined generally as a person who, by reason of some act or circumstance indicating a failure to meet his liabilities and called an "act of bankruptcy" has been adjudicated a "bankrupt" by a Court of competent jurisdiction for that purpose.—*Mozley.*

BANKRUPTCY, COURT OF, is a Court established for the sole administration of the bankrupt law, and takes special cognizance of all transactions relative to a bankrupt's estate, and the debts due from, or payable to it. The funds arising from the bankrupt's estate are also committed to the trust and management of this Court; the assignees chosen by the creditors still having the sole conduct of the sale, and paying the proceeds over to the official assignee.—*Tomlin.*

BANS, the publication of matrimonial contracts, which is done in the church before marriage, to the end that if any one can show just cause to the contrary, either in respect of kindred, nonage, bigamy, &c., they may take their exceptions in time. If there is a faculty or license for the marriage, this ceremony is omitted.—*Tomlin.*

BARGAIN AND SALE, the name of a conveyance by which freeholds were granted. It is required to be enrolled in the Courts of Law or Chancery within six lunar months, exclusive of the day of the date. If made of land or houses in London, it is enrolled in the Court of Hustings. This mode of conveyance has great advantages, but its publicity has brought it into disuse.—*Tomlin.*

BARON, a degree of the greater nobility of the kingdom next to a Viscount. Great proprietors of land were originally termed "barons;" and their title has since been confirmed by patent or prescription, to distinguish them from the lesser barons, being the ordinary gentry, who in former days were the only proprietors of land in common with the greater barons, who were called up to Parliament. There are still barons by office, as the barons of the Exchequer, and barons of the Cinque Ports. All persons of importance seem to have been known by this name. The burgesses of London, in Henry the Third's time, were styled barons, and so were persons holding land of the King.—*Tomlin.*

BARON AND FEME, the legal style of husband and wife. A

wife being under the protection and influence of her *baron* lord, or husband, is styled a *feme covert*, and her state of marriage is called her *coverture*.

BAR, PLEA IN, a pleading shewing some ground for barring or defeating the action at common law. A plea in bar is, therefore, distinguished from all pleas of the dilatory class, as impugning the right of action altogether, instead of merely tending to divert the proceedings to another jurisdiction, or suspend them, or abate the particular writ or declaration. It is, in short, a substantial and conclusive answer to the action. It follows from this property, that, in general, it must either deny all, or some essential part of the averments of fact in the declaration; or, admitting them to be true, allege new facts which obviate or repel their legal effect. In the first case, the defendant is said, in the language of pleading, to *traverse* the matter of the declaration; in the latter, to *confess and avoid* it. Pleas in bar are consequently divided into—(1) pleas by way of traverse; and (2) pleas by confession and avoidance.—*Step. Plead.* 57.—*Wharton.*

BARRATOR, a promoter or instigator of suits and actions in disturbance of the public peace, and for his own gain, without regard to the plaintiff's right. This offence is termed Barratry, and is punishable by fine and imprisonment.—*Tomlin.*

BARRATRY, in insurance, is the commission of any fraudulent or illegal act by a Captain or crew, to the damage of the ship, or whereby the ship may be subjected to forfeiture or detention, to the injury of the owners, freighters, or insurers. This is a contingency forming a subject of insurance on ships. The acts done must be fraudulent in intent; for mere indiscretion or ignorance, in the absence of fraudulent motives, will not render the Captain chargeable.—*Tomlin.*

BARRATRY, the offence of instigating suits and actions in disturbance of the public peace.

BARRISTER, a counsellor learned in the law admitted to plead at the bar of the Courts, and to take upon himself the protection and defence of those who retain him. They are either *utter* or *outer* Barristers, that is, plead *without* the bar; Kings counsel and Serjeants-at-Law, who plead *within* the bar.—*Wharton.*

BASE FEE. A base or qualified fee is an estate which hath some qualification subjoined thereto, and which must cease or determine whenever such qualification is 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.—*Brown.*

BASE COURT. An inferior Court, not of record, as the Court baron.—*Mozley.*

BASTARD, one *born* out of lawful wedlock. The only incapacity of a bastard is, that he cannot be heir or next of kin to any one, save to his own issue. In Scotland, the rule of the civil and canon law is allowed, which legitimates children if their parents afterwards intermarry. The English law does not require that the child shall be begotten in lawful wedlock, but it is indispensable that it should be *born* after matrimony, no matter how short the time, the law supposing it to be the child of the husband; on the other hand, children born so long after the death of the husband, that by the usual course of gestation they could not have been begotten by him, are illegitimate or bastards: the usual course of gestation is 40 weeks, or 280 days; but the law allows some days longer.—*Tomlin.* An elder son born before marriage is called *Bastard eigné*, and those born subsequent to the marriage of their mothers, *mulier puisné.*

BENCH, a word used with reference to Judges and Magistrates; thus we speak of "Judges of the bench," "the Judicial bench," "a bench of Magistrates."

BENCHER, a senior in the Inns of Court, entrusted with their government or direction. The benchers have the absolute and irresponsible power of punishing a Barrister guilty of misconduct, by either admonishing or rebuking him, by prohibiting him from dining in the Hall, or even by expelling him from the bar, called disbarring. They might also refuse admission to a student, or reject his call to the bar.—*Wharton.*

BENCH WARRANT, an attachment issued by order of a criminal Court against an individual, either for a contempt or for the purpose of arresting a person accused, when a true bill has been found against him by a Grand Jury; one signed by a Judge or two Justices of the Peace to apprehend a person charged with an offence.—*Wharton.*

BENEFICE, any ecclesiastical living or promotion, dignity, or preferment. They are either elective, as bishoprics, deaneries, prebendaries, &c.; donative, as rectories and vicarages: and these last are more strictly and properly termed "benefices."—*Tomlin.*

BENEFICIAL INTEREST. A right of substantial enjoyment in opposition to merely nominal ownership. Thus if A holds lands in tenure for B, A is said to have the legal estate and B is said to have the beneficial interest.—*Mozley.*

BENEFIT SOCIETIES. See FRIENDLY SOCIETIES.

BEQUEATH, to dispose of personal property by will. In reference to real property, the word *devise* is generally used.—*Mozley.*

BEQUEST is a gift by will.

BIGAMY, is the offence of polygamy, *i.e.*, the having a plurality of husbands or wives at once. The law provides, that the marrying another during the life of the former husband or wife, no matter *where* the second marriage takes place, is a felony, punishable in principal and accessory. . . . But there are four exceptions. 1. Where the second marriage is contracted out of England by an alien. 2. Where either of the parties have been *continually* absent from each other for seven years, not knowing the other party to be living. *(But this exception only relieves the party from a criminal prosecution; it will not legalize the second marriage, should the first husband turn out to be alive, for he, on his return, may sue in the ecclesiastical court for conjugal rights.)* 3. Where there is a divorce from the bond of matrimony on account of nullity. 4. Where the first marriage has been declared void.—*Tomlin.* In respect of offences against marriages in India, see Ind. P. C., c. 20.

BILL, a word applied to many writings which state special or particular matters, such as a bill of complaint, or bill in chancery, a bill of indictment, bill of exceptions, bill of exchange, bill of lading, bill of charges, bill of store, bill of sufferance, &c.—*Tomlin.*

BILL IN TRADE, (both wholesale and retail, and among workmen), an account of merchandize or goods delivered, or of work done, and performed, &c.—*Tomlin.*

BILL OF CONFORMITY, a bill filed by an executor or administrator, when the affairs of the deceased are so much involved that he cannot safely administer the estate, except under the direction of a Court of Chancery.—*Wharton.*

BILL OF COSTS, an account of the charges and disbursements of an attorney or solicitor, incurred in the conduct of his client's business. It must be delivered, signed, to the client, one *calendar* month before an action can be brought to recover the amount

thereof, in order to give the client an opportunity of taxing it. Conveyancing costs are taxable. An executor or administrator of an attorney or solicitor must also deliver a bill of costs, signed, before he can sue upon it. See 6 & 7 Vict., c. 73.—*Wharton.*

BILL OF CREDIT, a licence or authority given in writing from one person to another, very common among merchants, bankers, and those who travel, empowering a person to receive or take up money of their correspondents abroad.—*Wharton.*

BILL OF DEBT, or **BILL OBLIGATORY**, when a merchant, by his writing, acknowledges himself in debt to another, in a certain sum, to be paid on a certain day, and subscribes it at a day and place certain. It may be under seal or not.—*Com. Dig. Merchant, F.* 2.—*Wharton.*

BILL OF EXCEPTIONS, an appeal. If a Judge, at the trial of a cause at *Nisi Prius*, mistake the law, either in directing a judgment of non-suit, or in refusing demurrers to evidence, rejecting or admitting challenges to Jurors, and other matters, the counsel for the party dissatisfied with the ruling of the Judge may tender a bill of exceptions at any time before verdict, and require the Judge to seal it. The case always goes to the Jury, and as soon as the bill of exceptions is completed, and judgment has been given upon the verdict, the mode of proceeding is by bringing error on the judgment, and having the matter determined in a Court of error, and not in the Court out of which the record issued for the trial. The practice, however, of granting new trials, has limited the number of cases in which counsel deem it expedient to tender a bill of exceptions.—1 *Chit. Arch. Prac. by Prem.* 420.—*Wharton.*

BILL OF EXCHANGE, is a transferable order for the payment of money, and obtains its currency by *indorsement*, and in many instances by *delivery* from one to another. A bill of exchange is defined by Blackstone to be "an open letter of request from one to another, desiring him to pay a sum named therein to a third person on his account." The person requesting, is called the *drawer;* the party requested to pay is the *drawee*, who, when he has signified his assent by *acceptance*, is styled the *acceptor;* and the person to whom the money is requested to be paid, not unfrequently the drawer himself, is the *payee*. Bills are either *inland*, viz., those passing from one party to another here; or *foreign*, those passing from one country to another, and either made or payable abroad.—*Tomlin.*

BILL OF LADING, a memorandum signed by masters or captains of ships, acknowledging the receipt of goods, to be delivered by them at a certain place, subject to certain casualties, for which they are not to be answerable, those being provided for by insurance. The bill of lading is signed in three parts; one part being kept by the consigner, another being sent to the consignee, and the third is kept by the captain.—*Tomlin.*

BILL OF SALE, a contract under seal, whereby goods and chattels, or any kind of moveables, are transferred. This contract is always under seal, *i.e.*, a deed; because if any one give or grant goods and valuables, without any consideration, or without delivering the possession, it does not alter the ownership of the property, for a bare promise or undertaking does not found a right of action; but if a party by *deed*, of which a seal is the distinguishing mark, sell or give goods, this changes the property, although no consideration was paid and possession given, a man being always stopped from denying his own deed, at least at law. This deed, therefore, is executed by a party for the purpose of divesting himself of goods and moveables, which, though it could be done without deed (*i.e.*, by mere words, or, what is the same at law, mere writing without seal) is more absolutely perfected by this contract and deed.—*Tomlin.*

BILL OF SIGHT, when a merchant is ignorant of the real quantities or qualities of any goods assigned to him, so that he is unable to make a perfect entry of them, he must acquaint the Collector or Comptroller of the circumstance; and he is authorized, upon the importer or his agent making oath that he cannot, for want of full information, make a perfect entry, to receive an entry by *bill of sight* for the packages, by the best description which can be given, and to grant warrant that the same may be landed and examined by the importer in presence of the officers; and within three days after any goods shall have been so landed, the importer shall make a perfect entry, and shall either pay down the duties or shall duly warehouse the same.—3 & 4 *Wm. IV.*, c. 52, s. 24.—*Wharton.*

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.—3 & 4 *Wm. IV.*, c. 52.—*Wharton.*

BILL OF SUFFERANCE, a license granted to a merchant, to suffer him to trade from one English port to another, without paying custom.—*Wharton.*

BILLS OF MORTALITY, accounts of the births and deaths within a certain district.

BILLINGSGATE MARKET is to be kept every day, the toll being regulated by statute. All persons buying fish in this market may sell the same in any other market by retail, but none but fishmongers shall sell them in shops. Persons buying at this market for others, and fishmongers ingrossing the market, incur a penalty of £20.—*Tomlin.*

BISHOP'S COURT, an ecclesiastical court, held in the cathedral of each diocese, the Judge whereof is the bishop's chancellor who judges by the civil canon law; and if the diocese be large, he has his commissaries in remote parts, who hold *consistory courts*, for matters limited to them by their commission.—*Wharton.*

BLACK CAP, is the covering of the head of a Judge while pronouncing sentence of death.

BLACK MAIL, a certain rent of money, coin, or other thing, anciently paid to persons upon or near the borders, being men of influence, and allied with certain robbers and brigands, to be protected from their devastations; rendered illegal by 43 Eliz., c. 13. Also, rent paid in cattle, otherwise called neat-gild, and all rents not paid in silver, are called *reditus nigri* (black mail or rents), by way of distinction from the *reditus albi* (blanch firmes or white rents.)—*Wharton.*

BLANKS, certain void spaces sometimes left by mistake in judicial proceedings or written instruments, and which, if any thing material be wanting, render the same void.—*Tomlin.*

BLASPHEMY, the denying the existence of God or His providence. Contumelious reproaches of our Saviour are offences punishable at common law; and by a statute of King James the First, the profanely or jestingly using the name of God, our Saviour, or the Holy Trinity, in any stage-play, is punishable by a fine of £10.—*Tomlin.*

BLOCKADE, in international law, is the means in time of war of rendering intercourse with an enemy's port unlawful on the part of neutrals. It is carried into effect by ships of war which by cruising in the neighbourhood block up and bar export or import from and to the place blockaded.

BLOOD, kindred, lineage. It is a maxim that none shall claim as heir, who is not of the blood (*i.e.*, kindred) of the purchaser.—*Co. Litt.* 12*a*.—*Wharton.*

BOARD OF TRADE. This was formerly limited to the control of foreign property of the crown and the supervision of merchant shipping, but the jurisdiction has been extended to railways, bankruptcy and other matters of very wide scope, and of a very indefinite character, including boiler explosions.

BODY OF AN INSTRUMENT signifies the main and operative part as opposed to the recitals, &c.—*Mozley*.

BONA FIDE, "with good faith." An act done *bonâ fide*, with good faith, without fraud, knowledge, or notice of any deceit or impropriety, and in contradistinction to an act done colorably, deceitfully, with bad faith, fraudulently, with knowledge of previous facts rendering the act intended to be set up, invalid.—*Tomlin*.

BONA NOTABILIA, *i.e.*, notable or known effects, are such goods as a party dying has in another diocese, besides that wherein he dies, amounting to £5, which renders it necessary that the will should be proved before the archbishop of the *province*, he having the *prerogative* to grant probate of such wills, unless there is a custom to the contrary. Debts owing to the deceased are *bonâ notabilia*, as well as goods in possession.—*Tomlin*.

BONA VACANTIA, stray goods. Those things in which nobody claims a property and which belong to the crown, by virtue of its prerogative.—1 *Bl. Com.* 298.

BONA WAVIATA, goods waived or thrown away by a thief in his flight, for fear of being apprehended. They are given to the crown by the law, as a punishment upon the owner for not himself pursuing the felon and taking away his goods from him.—1 *Bl. Com.* 296.

BOND, is a writing under seal, styled *obligatory*, because the party signing and sealing binds or obliges himself, his heirs, executors, and administrators, to pay a certain sum of money to another (the *obligee*) at a day appointed. There is generally a condition added, that if the obliger does a particular act, the obligation shall be void or else shall remain in full force, as payment of money, rent, performance of covenants contained in another deed, indemnity, &c. A bond is a security of a high nature, and being an instrument under seal, is called a specialty, and has priority as such in the administration of an estate.—*Tomlin*.

BOND CREDITOR, a creditor whose debt is secured by bond.

BOROUGH COURTS OF RECORD, the jurisdiction of ancient courts for the trial of actions, formerly held in boroughs now governed by the operation of the Municipal Corporation Act, are preserved by the same Act, but the jurisdiction is extended to twenty pounds, under certain provisions which insure the good regulation of such courts, and place their rules under the *surveillance* of the courts of Westminster.—*Tomlin.*

BOTTOMRY BOND, a contract in the nature of a mortgage, or, as it is termed, *hypothecation* of the ship, as a security for money lent, or expended upon her without reserving any claim against the owners in person, and usually made by the master abroad, stipulating that the money advanced, together with the agreed premium, shall be paid within a stipulated number of days after the safe arrival of the vessel at a named port of discharge in England, or at any port within the Admiralty jurisdiction: BOTTOMRY is not to be confounded with a simple loan, upon the success of an adventure, although it may be coupled with an assignment of the party's interest in the ship, which is in some cases forbidden.—*Tomlin.*

BOUGHT-AND-SOLD NOTES, the practice of licensed brokers is to keep books, wherein they *enter* or register the terms of any contract they effect, and the names of the parties, which is legally binding; as when the broker for a seller treats with a buyer, he is deemed the agent of both, and he, in strictness, should sign the book, and deliver a transcript or memorandum thereof to each party, which is called a "bought-and-sold note," and contains all particulars.—*Tomlin.*

BREACH OF TRUST, a violation of duty by a trustee, executor, or other person in a fiduciary position.—*Wharton.* The offence in a *criminal* sense in India, embraces all those who being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriate or convert to their own use that property, or dishonestly use or dispose of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which they have made touching the discharge of such trust, or wilfully suffers any other person so to do.—*Ind. P. C.*, sec. 405.

BRIBERY, an offence signifying the receiving or offering any undue reward to a person concerned in the administration of public justice, whether Judge or officer, &c., to influence his

behaviour in his office, and it sometimes signifies the appointment of another person to a public office, upon undue consideration or reward. The giving or offering a bribe is as much *bribery* as the offence of taking the reward or receiving the consideration.—*Temlin.* This offence in India is termed receiving a *Gratification.*—*Ind. P. C.*, sec. 161.

BRIEF, a summary of the client's case, made out for the instruction of counsel, wherein the case of the party ought to be briefly, but is often lengthily, stated . . . . A brief is also any writing issued out of the superior Courts commanding any thing to be done in a judicial cause. There is likewise a Church brief, or Queen's letter, sometimes issued out of the Privy seal, addressed to the Clergy, Magistracy, and parish officers, authorizing collections to be made for a specified charitable purpose. —*Cab. Law.*

BRITISH INDIA, as defined by several "Acts" of the Indian Legislature, comprehends the territories which are or may become vested in Her Majesty by *Stat.* 21 & 22 *Vict.*, c. 106, entitled "An Act for the better government of India," except the settlement of Prince of Wales' Island, Singapore, and Malacca.

BROKER, an agent employed to make bargains and contracts between other persons, in matters of trade, commerce, and navigation, for a compensation commonly called a brokerage. Domat has given (B. 1, tit. 17, s. 1, art. 1) a very full and exact description, according to the sense of our law: "The engagement (says he) of a broker is like to that of a proxy, a factor, and other agent; but with this difference, that the broker being employed by persons, who have opposite interests to manage, he is, as it were, agent both for the one and the other, to negotiate the commerce or affair in which he concerns himself. Thus his engagement is two-fold, and consists in being faithful to all the parties, in the execution of what every one of them entrusts him with. And his power is not a trust, but to explain the intentions of both parties, and to negotiate in such a manner as to put those who employ him in a condition to treat together personally." . . . . There are various sorts of brokers now employed in commercial affairs, whose transactions form, or may form, a distinct and independent business. Thus, for example, there are exchange and money-brokers, stock-brokers, ship-brokers, and insurance-brokers, who are respectively employed in buying and selling bills of exchange, or promissory notes, railway-scrip, goods, stocks, ships, or cargoes; or

in procuring freights or charter parties. The character of a broker is also sometimes combined in the same person with that of a factor. In such cases, we should carefully distinguish between his acts in the one character and in the other, as the same rules do not always precisely apply to each.—*Wharton.* See FACTOR.

BROKERAGE, the commission or percentage paid to brokers on the sale or purchase of bills, funds, goods, &c.

BROTHEL, or BAWDY HOUSE, a house, room, or other place kept for the resort of lewd persons of both sexes.—*Tomlin.*

BURDEN OF PROOF, [*onus probandi*, Lat.], the most prominent canon of evidence is, that the point in issue is to be proved by the party who asserts the affirmative, according to the civil law maxims, *Ei incumbit probatio qui dicit, non qui negat*, and *Affirmanti non neganti incumbit probatio.* The burden of proof lies on the person who has to support his case by proof of a fact which is peculiarly within his own knowledge, or of which he is supposed to be cognizant. "It is a well-known principle of the law," remarks Archbishop Whately (*Rhetoric*, pt. 1, chap. iii, sec. 2), "that every man (including a prisoner brought up for trial) is to be *presumed* innocent, till his guilt is established. This does not, of course, mean that we are to *take for granted* he is innocent; for if that were the case, he would be entitled to immediate liberation; nor does it mean that it is antecedently *more likely than not* that he is innocent; or that the majority of those brought to trial are so. (According to the most correct use of the term, a 'presumption' in favour of any supposition, means, not as has been sometimes erroneously imagined, a preponderance of probability in its favour, but such a *pre-occupation* of the ground, as implies that it must stand good, till some sufficient reason is adduced against it). It evidently means only that the 'burden of proof' lies with the accusers;—that he is not to be called on to prove his innocence, or to be dealt with as a criminal till they have done so; but that they are to bring their charges against him, which, if he can repel, he stands acquitted." "Thus again, there is a 'presumption' in favour of the right of any individuals or bodies corporate to the property of which they are in *actual possession*; this does not mean that they are, or are not, *likely* to be the rightful owners, but merely that no man is to be disturbed in his possessions till some claim against him shall be established. He is not to be called on to prove his right, but the claimant to

disprove it; on whom, consequently, the 'burden of proof' *lies.*"—*Wharton.*

BURGLARY, is the offence of breaking and entering a dwelling-house between nine o'clock at night and six o'clock in the morning, with intent to commit a felony therein. . . . A man cannot be indicted for burglary in his own house. Therefore, if he break and enter the room of his lodger and steal his goods, he can only be convicted of the larceny.—*Tomlin.* In India, the offence of burglary does not now exist. It is comprehended in those of "Lurking house-trespass by night." "House-breaking," &c. See these heads.

BURNING, the offence of arson, at common law, extended not only to the burning of dwelling-houses, but of all out-houses part thereof, although not contiguous thereto, such as barns, stables, &c. The dwelling-house was also required to be proved that of *another* person. Later statutes have extended the offence to other descriptions of buildings, and the *Stat.* 1, *Vict.* c., 89, which amends the laws relating to burning or destroying buildings and ships, has made the offence of setting fire to any dwelling-house, any person being therein, a capital felony; and with respect to the setting fire to a church, chapel, house, stable, coach-house, out-house, warehouse, office, shop, mill, malt-house, hop-oast, barn, or granary, or any building or erection used in carrying on any trade or manufacture, or any branch thereof, whether the same be in the possession of the offender, or of any other person, with intent to defraud or injure any person, is declared a felony.—*Tomlin.* This offence in India is comprehended in the term *Mischief*, which see.

BYE-LAWS, the orders and regulations of corporations for the government of their members, being private laws, which may also be made by courts-leet and courts-baron, persons having right of common, &c., which are binding upon themselves, unless contrary to law or public policy, and then they are void. But there should be a custom authorizing the making, especially if a penalty is incurred for non-observance.—*Tomlin.*

CÆTERORUM, the granting of administration to the residue of an estate after a *limited* power of administration, already given has been exhausted.

CALLING THE PLAINTIFF, when a plaintiff or his counsel, seeing that sufficient evidence has not been given to maintain the issue, withdraws, the crier is ordered to call or demand the

plaintiff, and if neither he nor any person for him appear, he is non-suited, the jurors are discharged without giving a verdict, the action is at an end, and the defendant recovers his costs. Such judgment does not prevent a plaintiff from bringing another action for the same cause, but a verdict would have barred him for ever.—3 *Bl. Com.* 376; *Step. Pl.* 120, 330.—*Wharton.*

CALLS ON CONTRIBUTORIES, demands made by a joint stock company or its official liquidator, upon persons liable to contribute to its assets.—*Mozley.*

CANCELLATION, according to Bartolus, an expunging or wiping out of the contents of an instrument by two lines drawn in the manner of a cross.—*Wharton.*

CANON LAW, the ecclesiastical law, partly founded upon the imperial or Roman law, also called the *civil* law, which has place in the Courts of Admiralty and in the Courts of the two universities.—*Tomlin.*

CANONS, rules framed by the clergy for their own governance, but which do not bind the laity, unless sanctioned by Parliament; but the clergy are bound by canons made in convocation and confirmed by the Queen.—*Tomlin.*

CANONS OF INHERITANCE, the rules directing the descent of real property throughout the lineal and collateral consanguinity of the owner, dying intestate, who is technically called the purchaser.—*Wharton.*

CAPIAS, the name of a writ, taking its name from the operative Latin word, *that you take*, directed to the Sheriff, commanding him to arrest the defendant and to keep him until he gives bail, or is liberated by due course of law; therefore, under this writ, the Sheriff detains the defendant till he gives bail, &c. This *capias* is called mesne process, as also all writs before one of the final processes in a suit, called a *capias ad satisfaciendum* (called, from its abbreviation, a *ca. sa.*), under which writ the Sheriff takes the defendant, and keeps him till he pays the debt. There is also a writ of capias, which issues to apprehend a party against whom an indictment is found, in order to outlaw the party; but in ordinary cases, persons indicted, not in custody at the finding of the bill, are apprehended by warrant from the Chief Justice, called a *bench warrant*, or by other warrant, if for a felony or misdemeanour.—*Tomlin.*

CAPIAS AD SATISFACIENDUM, (*that you take to satisfy*), called in practice a *ca. sa.* A writ of execution of the highest nature, inasmuch as it deprives a person of liberty, till the satisfaction awarded be made; and therefore, when a man is once taken in execution upon this writ, no other process can be sued out against his lands and goods, unless he escape or is rescued; and by 21 Jac. I., c. 24, if the defendant die while charged in execution upon this writ, the plaintiff may, after his death, sue out a new execution against his lands, goods, or chattels.—*Wharton.*

CAPIAS IN WITHERNAM, (*that you take by way of reprisals*). If the goods before an action of replevin have been eloigned, so that the Sheriff cannot replevy them, then, upon plaint being levied in the county court by the plaintiff, the Sheriff may issue this writ, *in vetito* (or, more properly, *repetito*), *namio*, signifying a second or reciprocal distress in lieu of the first which was eloigned; in other words, the officer is commanded to take goods or cattle of the defendant, to the value of those taken by him, and deliver them to the plaintiff, who gives a bond with sureties, conditioned to prosecute his suit and to return the goods, &c., so to be delivered to him, if a return of them should be afterwards adjudged. Goods taken *in withernam* cannot be replevied till the original distress is forthcoming. Also, after verdict and judgment for defendant in replevin, and the usual writ of execution *de retorno habendo* has been sued out, to which the Sheriff has returned that the goods, &c., are eloigned, *i.e.*, conveyed to places unknown to him, so that he cannot execute the writ, the defendant may then sue out a *capias in withernam*, requiring the Sheriff to take other goods, &c., of the plaintiff, to the value of the goods, &c., eloigned, and deliver them to the defendant, to be kept by him until the plaintiff deliver to him the goods, &c., originally replevied.—3 *Bl. Com.* 148.—*Wharton.*

CAPIAS PRO FINE, or MISERICORDIA, (*that you take for the fine or in mercy*). If the verdict be for the defendant, the plaintiff is adjudged to be amerced (nominally) for his false claim; but if the verdict be for the plaintiff, then in all actions *vi et armis*, or where the defendant in his pleading has falsely denied his own deed, the judgment contained an award of a *capiatur pro fine;* in all other cases, the defendant is adjudged to be amerced. In actions of trespass and ejectment, a *capias pro fine* used to issue in pursuance of the *capiator*, and the defendant was obliged to compound the fine, by paying some small sum to

the master, until by 5 W. & M., c. 12, it was enacted that no *capias pro fine* should thereafter issue in actions of "trespass, ejectment, assault, or false imprisonment" brought in any of the Courts of Westminster; but that the plaintiff should pay 6*s.* 8*d.* to the master in satisfaction of the said fine, at the time of signing the judgment, and should be allowed the same in his costs; and it is now unnecessary in any case.—1 *Chit. Arch. Prac. by Pren.* 500.—*Wharton.*

CAPITA. When an intestate's estate is distributed to persons who are next in succession to the deceased, for the time being they are said to receive *per capita* or in their own right and not through or in right of any one else.

CAPITAL FELONIES, crimes for which the party indicted is liable to suffer death.—*Tomlin.*

CAPITATION, a tax or imposition raised on each person in consideration of his labor, industry, office, rank, &c. It is a very ancient kind of tribute, and answers to what the Latins called *tributum*, by which taxes on persons are distinguished from taxes on merchandize, called *vectigalia.*—*Wharton.*

CAPTION, the subscription of the commissioners names, and the return of an executed commission; the preamble of an indictment; and, in Scotch law, the order to incarcerate a debtor who has disobeyed an order given him by letters of honor.—*Bell—Mozley.*

CAPTURE, this word has peculiar relation to *prizes* taken by privateers in time of war, but it is equally applicable to prizes taken by the army or navy.—*Tomlin.*

CARRIER, a person carrying goods for others, whether in ships, boats, barges, carts, waggons, coaches, or *otherwise*, for hire. A man may be a *common* carrier, or a carrier for the particular occasion. The taking a reward or hire founds the contract.—*Tomlin.* A common carrier *in India*, according to the Carriers' Act, 1865, denotes a person, association, or body of persons, whether incorporated or not, other than the Government, engaged in the business of transporting for hire, property from place to place by land or inland navigation for all persons indiscriminately.—*Act III*, 1865, sec. 2.

CARRYING COSTS, a verdict is said to "carry costs" in those cases where by law it involves the payment of costs by the unsuccessful party to the party in whose favour the verdict is given without any discretion on the part of the Judge.—*Mozley.*

CARTE BLANCHE, a white card, or free permission, signed at the bottom with a person's name, and sometimes sealed, giving another person power to superscribe what conditions he pleases. Applied generally in the sense of unlimited terms being granted. —*Wharton.*

CARTEL, an instrument executed between two belligerent powers of settling the exchange of prisoners of war.—*Mozley.*

CARTEL-SHIP, a vessel commissioned in time of war to exchange the prisoners of any two hostile powers; also to carry any particular proposal from one to another; for this reason, the officer who commands her is particularly ordered to carry no cargo, ammunition, or implements of war, except a single gun for the purpose of signals.—*Encyc. Lond.*

CASE, ACTION ON, resorted to where a party sues for *damages*, for any wrong or cause of complaint to which *covenant* or *trespass* will not apply.—*Wharton.*

CASE STATED, an agreement between litigants, setting forth the facts and points in dispute, with a view to a prompt decision. —*Wharton.* It is also a statement of the doubts entertained by a civil court on questions of law, or usage having the force of law, or the construction of a document affecting the merits of a suit in which its decision or order is final, submitted for the decision of the High Court; or by an arbitrator in matters relating to an award to a civil court.—See *Acts XXIII*, 1861, sec. 28; *and VIII*, 1859, sec. 321.

CASSETUR BREVE, (*that the writ be quashed*), when the defendant pleads sufficient matter in abatement, and the plaintiff cannot deny it, he may either obtain leave to amend his declaration, if that will answer his purpose, and which will be granted upon payment of costs, or he may at once enter on the roll a *cassetur breve*, or judgment upon his prayer that his writ may be quashed, to the intent that he may sue out a better. In practice, judgment is not often signed, nor any entry made on record, but the prayer and award are copied on paper, and delivered, in the same manner as a pleading, to the opposite party. Neither party is entitled to costs.—2 *Chit. Arch. Prac. by Pren.* 1417.— *Wharton.*

CATALS, goods and chattels.—*Wharton.*

CATCHING BARGAIN, a purchase from an expectant heir, for an adequate consideration.—*Wharton.*

CAUSE-LIST, a printed roll of actions to be tried in the order of their entry, with the names of the attorneys for each litigant.

CAUSE OF AUCTION, the ground on which an action can be maintained; as when we say that such a person has no cause of action. But the phase is often used to signify the matter of the complaint or claim on which a given action is in fact grounded, whether or not legally maintainable.—*Mozley*.

CAUTIONE ADMITTENDA, a writ that lies against a bishop who holds an excommunicated person in prison for contempt, notwithstanding he offers sufficient caution or security to obey the orders and commandment of the church for the future.—*Reg. Orig.* 66.—*Wharton*.

CAVEAT, (*that he take heed*) in the ecclesiastical court, is a process to stop the institution of a parson, and more frequently the probate of a will or grant of letters of administration; it holds good for three months.—*Tomlin*. It is also entered to stay the probate of a will, the issue of letters of administration, a licence of marriage, &c.

CEMETERY, a place of burial. It appears to be distinguished from a church-yard by its locality and its incidents: by its locality, as it is separate and apart from any sacred building used for the performance of divine service; as to its incidents, that, inasmuch as no vault or burying-place in an ordinary church-yard can be purchased for a perpetuity, in a cemetery a *permanent* burial-place can be acquired.—*Tomlin*.

CEPI CORPUS ET PARATUM HABEO, (*I have taken the body and have it ready*), a return made by the Sheriff upon an attachment, *capias*, &c., when he has the person against whom the process was issued in custody.—*F. N. B.* 26.—*Wharton*.

CEPIT IN ALIO LOCO, a plea in replevin when the defendant took the goods in another place than that mentioned in the declaration.—*Woodf.* L. and T. 680.—*Ibid*.

CERTIFICATE, the certifying or giving notice of a thing done. This term is applied to many legal acts. A Judge *certifies* a particular fact on the back of a *nisi prius* record, in order to entitle to or deprive a plaintiff of costs. A clerk of assize gives a certificate of a former conviction of felony, in order that a party, if found guilty upon a present indictment, should undergo a cumulative punishment. Magistrates *certify* or give certificate of witnesses' expenses in attending before them, or give a certificate to a party convicted of a petty assault, of his

having paid the fine, or suffered the imprisonment, to bar an action at law. Questions of law, referred to the Judges from chancery, are answered by *certificate*. Officers inferior *certify* or report to officers superior, or to a Court, facts officially known to them. Certificates are always in writing, with the exception in the case of the recorder of London, who certifies or verifies the certificate or report of the Mayor and Aldermen concerning the customs of London, by word only, upon a question sent by the Courts to them in respect of such customs. This is called Trial by Certificate.—*Tomlin.*

CERTIORARI, (*to be more fully informed of*), an original writ issuing out of the common law jurisdiction of the Court of Chancery in civil cases, and the crown side of the Court of Queen's Bench in criminal cases, addressed, in the Queen's name, to the Judges or the officers of inferior courts, commanding them to certify or to return the records of a cause depending before them, to the end the party may have the more sure and speedy justice, before such Justices as shall be assigned to determine the cause.—*F. N. B.* 145.—*Wharton.*

CERTIORARI, BILL OF, an original bill praying relief. It is filed for the purpose of removing a suit pending in some inferior court of equity into the Court of Chancery, on account of some alleged incompetency of the inferior court, or some hardship in its proceedings.—*Wharton.*

CESSIO BONORUM, the cession or yielding up by a debtor of his goods to his creditors.—*Blackstone.*

CESSIO IN JURE, a fictitious suit in which the person who was to acquire the thing claimed (*vindicabat*) the thing as his own, the person who was to transfer it acknowledged the justice of the claim, and the Magistrate pronounced it to be the property (*addicebat*) of the claimant.—*Sand. Just.* 176.—*Wharton.*

CESSIONARY BANKRUPT, one who has given up his estate to be divided amongst his creditors.—*Wharton.*

CESTUI QUE TRUST, the person who possesses the equitable right to deal with property and receive the rents, issues, and profits thereof, the legal estate in which is vested in a trustee, and there is such a confidence between the *cestui que trust* and his trustee, that no action at law will lie between them, but they must settle their differences and arrange their disputes in a Court of Equity.—*Wharton.*

CESTUI QUE USE, in old law tracts *cestui á que use.* Previously to the Statute 27, Hen. VIII., c. 10 (usually called the Statute of Uses), the use was an equitable or beneficial interest enjoyed by the *cestui que use*, distinct from the legal property in the land, which was held by the feoffee to uses.—*Wharton.*

CESTUI QUE VIE, the person for whose life any lands, tenements, or hereditaments may be held.—*Wharton.*

CHALLENGE, an exception taken to Jurors in civil or criminal cases. In *civil*, where a Juryman is of kin to either party, or has an interest in the matter in question; in *criminal*, where the prosecutor or culprit, without assigning any reason, causes Juryman to be set aside, or, after a limited number have been set aside, makes some special exception, as that the intended Juryman is prejudiced or biassed for or against the prisoner, and has so declared his mind, or alleges with certainty any other facts, such as relationship, affinity, favour, infamy, disqualification, &c.—*Tomlin.*

CHAMBERS, JUDGES', are *quasi* private-rooms, in which the Judges dispose of points of practice not sufficiently important to be heard and argued in Court.

CHAMPARTY, or CHAMPERTY, properly a bargain between a plaintiff or defendant in a cause, *campum partire*, to divide the land or other matter sued for between them, if they prevail at law; whereupon the champertor is to carry on the party's suit or action, at his own expense; or it is the purchasing the right of action or suit of another person. It was chiefly upon this ground that the courts of common law refused to recognize the assignment of debts and other rights of action and securities, though the same doctrine obtains not in equity. Every champerty implies maintenance, but every maintenance is not champerty. (2 *Inst.* 108). And courts of equity being ever solicitous to enforce all the principles of law respecting champerty and maintenance, they will not in any case uphold an assignment, which involves any such offensive ingredients. Thus, for instance, courts of equity, equally with courts of law, will repudiate any agreement or assignment made between a creditor and a third person, to maintain a suit of the former, so that they might share the profits resulting from the success of the suit; for it would be a clear case of champerty.—2 *Story's Comm.*, *p.* 289; *Story on Contracts*, sec. 208.—*Wharton.*

CHANCELLOR, the highest judicial officer in the kingdom, and,

when there is no Lord-High Steward, the first officer of the kingdom. He is created by the King's will, and not by patent or writ; therefore holds his office during pleasure. He is keeper of the great seal of the United Kingdom, which office of keeper has the same power as the Lord Chancellor, but they are usually vested in one and the same; though instances have occurred of a Lord Keeper being a Judge of one of the Courts: but there cannot now be a Lord Keeper and a Lord Chancellor.—*Tomlin.*

CHANCELLOR OF THE EXCHEQUER, a great officer, who sometimes sits with the barons of the exchequer in the exchequer chamber; but his office, in fact, is rather with the practical management of the revenue, he being, generally, first commissioner of the treasury.—*Tomlin.*

CHANCE MEDLEY, a casual affray. Such killing of a person as happens either in self-defence on a sudden quarrel, or in the commission of an unlawful act, without any deliberate intention of doing any mischief at all.—1 *Hawk. P. C.*, c. 30, sec. 1. It is sometimes termed *chaud-medley*, which more properly signifies an affray in the *heat* of blood or passion. It is frequently difficult to distinguish this species of homicide, upon chance-medley in self-defence, from that of manslaughter in the proper legal sense of the word. But the true criterion between them seems to be this, when both parties are actually combating at the time when the mortal stroke is given, the slayer is then guilty of manslaughter; but if the slayer has not begun to fight, or, having begun, endeavours to decline any further struggle, and afterwards, being closely pressed by his antagonist, kills him to avoid his own destruction, this is homicide, excusable by self-defence. For which reason the law requires, that the person who kills another in his own defence, should have retreated as far as he conveniently or safely can to avoid the violence of the assault before he turns upon his assailant, and that not fictitiously, or in order to watch his opportunity, but from a real tenderness of shedding another's blood. The civil law, in this respect, goes further than ours,—"*qui cum aliter tueri se non possunt, damni culpam dederint, innocæii sunt.*" (Those who, when they cannot otherwise defend themselves, destroy their assailants, are innocent.)—4 *Bl. Com.* 184.—*Wharton.*

CHANCERY, is the Court wherein the Lord Chancellor, or Lord Keeper, exercises his jurisdiction, which is divided into what is termed the common law and the equitable jurisdiction. The *first* being that in which he is bound to observe the method of

the common law, by issuing various writs returnable in other courts, writs of *habeas corpus* and prohibition to inferior courts, and taking cognizance of a variety of formular matters in respect of bankruptcy, letters patent, sureties of the peace against peers, &c. The *second* being the equitable jurisdiction, which is the most extensive, in which he proceeds by the rules of equity and good conscience, and moderates the rigour of the common law, considering rather the *intention* 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, in cases of accidents, mistakes, &c., without fault of his own, *equity* never acting *against*, but in conformity to the common law, supplying its deficiencies, not contradicting its rules—a judgment at law not being reversible in chancery. It may here be noticed, that there are in England two supreme courts of *equity*, the high court of *chancery*, and the *exchequer*, the latter affording equal relief with the former, though, for various reasons, it is not so much used.—*Tomlin.*

CHARGE, the instructions given by a Judge to a grand jury; the taking proceedings against a prisoner; an obligation imposed on property; a commission.—*Wharton.* It is also a written instrument under the hand and seal of a Magistrate declaring the offence with which an accused person is charged, and for which he is to be tried before the Session Court.—*Crim. Pro. C.*, sec. 233.

CHARGE SHEET, is a list of the cases to be brought before a Magistrate.

CHARTER, written evidence or deeds, a term formerly applied to all writings under seal, and now applied to letters patent royal, under the great seal. The form of action for detaining deeds is "*detinue of charters.*"—*Tomlin.*

CHARTER-PARTY, is a contract under hand, or sometimes under hand and seal, made between the freighter, *i.e.*, he who charters or hires the ship, or a part, for the carriage of his goods, and the owners, or master on their account (he generally having authority, written or implied, from the terms of his employment), containing the terms upon which the ship is hired to freight; and in this contract the owners or master bind themselves, the ship, tackle and furniture, that the goods

freighted shall be delivered (dangers of the sea excepted) at the place of consignment; and they also covenant to provide seamen, rigging, &c., and to equip the ship completely, which they also warrant sea-worthy. The freighter, on his part, stipulates to pay the freight. It is not *at law* considered a deed, unless under seal, but its efficacy is not materially lessened for want of this formality. It is distinguished from a bill of lading, inasmuch as the charter-party states the terms and conditions of the freight or carriage, whereas the bill of lading only ascertains the contents of the cargo.—*Tomlin.*

CHATTELS, all property, moveable or immoveable, which is not freehold, copyhold, or inheritable. They are in law distinguished as *real* and *personal*; chattels real, or chattel interests, are interests or minor estates carved out of greater; as terms of years, leases, &c., which are but chattels, or personalty, in the eye of the law. Chattels personal are all other property not connected with what is termed freehold. All chattels, both real and personal, go to the executor or administrator on the death of the owner; whereas *realty*, *i.e.*, freehold, copyhold, or other inheritance, descends to the heir. A man is technically said to be *possessed* of chattels, *seised* of freehold or inheritance. Leases, as have been said before, are chattels, even though they are for a thousand years; it is a vulgar error to suppose that a lease beyond ninety-nine years constitutes a freehold. *Chattels Personal*, are things moveable, such as animals, house-hold furniture, money, jewels, corn, clothes, and everything else that can properly be put in motion, and transferred from place to place. *Chattels Real*, are things which immediately concern, and in some degree partake of the nature of real property, as by being immoveable and of a lasting nature; as terms for years, viz., leases, the next presentation to a church. There is another sort of chattel, which, though personal, yet is often called by another name, viz., chose in action, *i.e.*, *a thing in action*, being mere rights arising from contracts not yet brought into possession, therefore outstanding; such as a reversionary interest concerning money or personalty, money due on simple contract, note, bill, bond, or other security.—*Tomlin.*

CHATTEL INTEREST, is sometimes applied to deeds, agreements and other appurtenances connected with or attached to land, but which cannot be severed from the land or disassociated from it.

CHAUD-MEDLEY, the killing of a man in an affray in the heat

of blood and while under the influence of passion: it is thus distinguished from chance-medley, which is the killing of a man in a casual affray in self-defence.—*Brown.*

CHEATING, a criminal offence, which is by law thus defined: whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation, or property, is said to "cheat." A dishonest concealment of facts is a deception within the meaning of this definition. A person is said to "*cheat by personation*," if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is. The offence is committed whether the individual personated is a real or imaginary person.—*Ind. P. C.*, secs. 415, 416.

CHEATS, are dishonest practices, in defrauding or attempting to defraud another of his property; such as using false weights or scales, fraudulently gaming, &c.; and are either punishable at common law, or, as in the case of obtaining money or goods by false pretences, punishable by statute: in either case they are deemed misdemeanours, and termed cheats.—*Tomlin.* See CHEATING.

CHEQUE, or **CHECK**, or **DRAFT**, is a written order, addressed to the bankers of the drawer, payable to a person therein named, or bearer, for payment of a sum of money.—*Tomlin.*

CHILD, in law means a legitimate child in the absence of evidence of an intention to signify an illegitimate child.—*Brown.* Nothing is an offence when done by a child under seven years of age, nor by one of this age and up to twelve who has not attained sufficient maturity of understanding to judge of the nature and consequence of his conduct on the particular occasion.—*Ind. P. C.*, sec. 82, 83. But it is presumed that notwithstanding this limit, a child of whatever age would be deemed guilty of and punished for a criminal offence if he gave notice by his conduct at the time of sufficient knowledge of his committing a wrongful act.

CHOKEY, the station of a guard or watchmen; a police station: a place where an officer is stationed to receive tolls or customs.

CHOSE, is a common expression in law signifying, "thing." It is used in divers senses, of which the four following are the most important:—(1.) *Chose local*, a thing annexed to a place, as a mill, &c. (2.) *Chose transitory*, that which is moveable, and may be taken away, or carried from place to place. (3.) *Chose in action*, otherwise called *chose in suspense*, a thing of which a man has not the possession or actual enjoyment, but has a right to demand it by action or other proceeding. It is rather in *potentia* than in *esse*, as a debt, bond, &c. A well-known rule of the common law is, that no possibility, right, title, or thing in action, can be granted to third parties; for it was thought that a different rule would be the occasion of multiplying litigation, as it would in effect be transferring a law-suit to a mere stranger .... (4.) *Chose in possession*, where a person has not only the right to enjoy, but also the actual enjoyment of the thing.—*Wharton.*

CIRCUITS, eight certain divisions of England and Wales, appointed for the Common Law Judges to go twice a year, in the respective vacations after Hilary and Trinity Terms, to administer justice in the several counties. Two Judges go on each of the eight circuits, with the exception of those of North and South Wales, to each of which one Judge is found sufficient. Where there are two Judges, they preside simultaneously in the civil and criminal courts; but the Judge who takes the civil side in one county, takes the criminal side in the next county, and so alternately throughout the circuit. In presiding in the criminal court, the Judge sits robed in scarlet and ermine, and wears a full bottomed wig; but in the civil court, he wears a black silk gown, and a short wig.—*Wharton.*

CIRCUMSTANTIAL EVIDENCE, presumptive proof, when the fact itself is not proved by direct testimony, but is to be inferred from circumstances, which either necessarily or usually attend such facts. It is obvious that a presumption is more or less likely to be true, according as it is more or less probable that the circumstances would not have existed, unless the fact which is inferred from them had also existed: and that a presumption can only be relied on until the contrary is actually proved.—1 *Phill. Evid.* c. 7, sec. 2.

CIRCUMSTANTIBUS. A *tales de circumstantibus* is the filling up

of the number of the jury, when necessary, from the bystanders.—*Cowel.*—*Mozel.*

CITATION, a summons to appear, applied particularly to process in the spiritual and probate courts; also a reference to authorities in support of an argument.—*Wharton.*

CIVILIZATION, a law; an act of justice, or judgment which renders a criminal process civil; performed by turning an information into an inquest, or the contrary.—*Harris.*—*Wharton.*

CIVIL DEATH. The doctrine of civil death is now absolete; but a person who has been absent and not heard of seven years is for all purposes presumed to be dead.—*Mozel.*

CIVIL LAW, that rule of action which every particular nation, commonwealth, or city has established peculiarly for itself, more properly distinguished by the name of municipal law. The term "Civil Law" is now chiefly applied to that which the old Romans compiled from the laws of nature and nations. The "Roman Law," and the "Civil Law," are convertible phrases, meaning the same system of jurisprudence; it is now frequently denominated "the Roman Civil Law."—*Wharton.*

CIVIL REMEDY, one open to a private person, as opposed to a criminal prosecution.—*Wharton.*

CLAIM, a challenge of interest of anything which is in another's possession, or at least out of a man's own possession, as claim by charter, descent, &c.—*Plow.* 359*a*.—*Wharton.*

CLAIM IN EQUITY, in simple cases, where there is not any great conflict of complicated facts, and a discovery from a defendant is not sought, but a reference to chambers is nevertheless necessary before final decree which would be as of course all parties being before the Court, the summary proceeding by claim is sometimes adopted, thus obviating the recourse to plenary and protracted pleadings.—*Wharton.*

CLANDESTINE MORTGAGES. The mortgage of land already mortgaged, with concealment of the fact of its prior mortgage so as to defraud the second mortgage.

CLAUSSUM FREGIT. "He broke the close," *i.e.*, committed an unwarranted entry upon another's soil. These words are generally used in reference to an action of trespass in entering another's land.—*Mozel.*

CLEARANCE, a certificate that a ship has been examined and cleared at the custom-house.

CLEARING, among London bankers, a method adopted by them for exchanging the drafts of each other's houses, and settling the difference. Thus, at half-past three o'clock a clerk from each banker attends at the clearing-house, where he brings all the drafts on the other bankers which have been paid into his house during that day, and deposits them in their proper drawers (a drawer being allotted to each banker); he then credits their accounts, separately, with the articles which they have against him, as found in the drawer. Balances are then struck from all the accounts, and the claims transferred from one to another, until they are so wound up and cancelled that each clerk has only to settle with two or three others, and their balances are immediately paid.—*Gilbart's Prac. Trea. on Banking*, 16—20; *Tate's Modern Cambist.*—*Wharton.*

CLERICO CAPTO PER STATUTUM MERCATORUM, &c., a writ for the delivery of a clerk out of prison, who is taken and incarcerated upon the breach of a statute-merchant.—*Reg. Orig.* 147.—*Wharton.*

CLERICO CONVICTO COMMISSO GAOLÆ IN DEFECTU ORDINARII DELIBERANDO, an ancient writ, that lay for the delivery of a clerk to his ordinary, that was formerly convicted of felony, by reason his ordinary did not challenge him, according to the privilege of clerks.—*Ibid.* 69.—*Ibid.*

CLERICO INFRA SACROS ORDINES CONSTITUTO, NON ELIGENDO IN OFFICIUM, a writ directed to those who have thrust a bailiwick or other office upon one in holy orders, charging them to release him.—*Ibid.* 143.—*Ibid.*

CLERICUM ADMITTENDUM, a writ of execution directed, not to the Sheriff, but to the Bishop or Archbishop, and requiring him to admit and institute the clerk of the plaintiff.—3 *Bl. Com.* 413.—*Wharton.*

CLERK, the law-term for a clergyman, and by which all of them who have not taken a degree are designated. In another and more ordinary sense, it signifies a person who is employed by his pen in any Court, or by private individuals.—*Tomlin.*

CLERK OF ASSIZE, the chief clerk or clerk of the crown for the counties included in a particular circuit. He is included in the commission of assize, or, as it is termed, "associated" with the justices of assize and gaol delivery. He is a barrister, and is prohibited from being counsel to any on the circuit. He keeps the indictments, and all records of the criminal proceed-

ings on the circuit, and appoints the clerk of indictments, clerk of arraigns, and other officers of the circuit. The clerk of indictments is generally included in the commission. The duties of this office also comprehend the granting of certificates, and various businesses connected with the circuit.—*Tomlin.*

CLERK OF THE PEACE, an officer belonging to the quarter sessions. His duty is to read the indictments, enrol the proceedings, and issue processes, and transact a variety of business incident to the sessions, he being, in fact, the clerk of assize for the quarter sessions; at least, his office corresponds therewith as far as the jurisdiction of the quarter sessions of the county or riding is concerned.—*Tomlin.*

CLIENT, a person who seeks advice of a lawyer or commits his cause to the management of one, either in prosecuting a claim, or defending a suit in a court of justice. The relation between solicitor and client, and the power which his situation gives the former over the latter, makes it impossible to be perfectly assured whether, in their transactions, the client is a free agent or under influence and imposition; a court of equity, therefore, will not let a solicitor take a security from his client, pending a suit by way of gratuity, however reasonable it might be; and equity will not allow a solicitor to make a purchase from his client whilst the relation subsists.—*Smith's Dic. of Antiq.*—*Wharton.*

CLOSE, a field or piece of ground parted off from other fields or common ground, by banks, hedges, &c.

CLOSE WRITS, grants of the king sealed with his great seal, but directed to particular persons and for particular purposes,—and which therefore not being proper for public inspection, are closed up and sealed on the outside,—are called writs close, *litterœ clauseœ* and are recorded in the *close rolls*; in the same manner as letters patent, *litterœ patentes*, are in the *patent rolls*. —1 *Step. Com.* 619.—*Mozel.*

CLUB-LAW, regulation by force; the law of arms.

CLUBS, or **CLUB HOUSES**, are associations to which individuals subscribe for purposes of mutual entertainment and convenience; the affairs of which are generally conducted by a steward or secretary, who acts under the immediate superintendence of a committee. It has hitherto been supposed that these societies, in a legal sense, partake of the character of a commercial partnership, and that, consequently, members paying their subscriptions, or partaking of the advantages

held out by such associations, are liable for engagements entered into by the manager or committee. This question has been recently set at rest, it being unanimously held in the court of exchequer, that the members of a club, *merely as such*, were not liable for debts incurred by the committee for work done, or goods supplied to the club.—*Tomlin.*

COAL-NOTE, a particular description of promissory note in the coal trade, expressing therein the words "value received in coals." The statute under which these notes were used has been since repealed.—3 *Geo. II*, c. 26, secs. 7, 8.—*Wharton.*

COASTING TRADE, the trade carried on in coasting vessels.

COASTING VESSEL, any vessel plying between one port in British India not being a free port, and another port in British India not being a free port, without touching at any intermediate foreign port.—*Con. Cus. Act*, sec. 11.

CODE, a collection or system of laws. The collection of laws and constitutions, made by order of the Emperor Justinian, is distinguished by the appellation of "The Code," by way of eminence.—*Wharton.*

CODICIL, an instrument made in relation to a will and explaining, altering, or adding to its dispositions. It is considered as forming an additional part of the will.—*Ind. Suc. Act*, sec. 3.

COERCION, in matters of contract, is the committing or threatening to commit, any act forbidden by the Indian Penal Code or the unlawful detaining or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement. It is immaterial whether the Indian Penal Code is or is not in force in the place where the coercion is employed.—*Ind. Con. Act*, sec. 15. Coercion excuses a criminal offence, when the person offending is compelled to commit the act by threats which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise follow. Murders and offences against the state punishable with death are under no circumstances excused.—*Ind. P. C.*, sec. 94.

COGNATI, relations by the mother's side, *i.e.*, derived *per fœminei sexus personas*. A cognate is related by conception; thus, one's mother, grandmother, daughter's children, and maternal uncle and aunt, are cognate to him.

COGNIZANCE, or **CONUSANCE**, the hearing of a thing judicially;

also an acknowledgment of a fine; and in replevin it is the pleading of a defendant who has acted as bailiff, &c., to another, in making a distress, by which he alleges the right or title to be in that person by whose command he acted.—*Step. Plead.* 225. *Cognizance of pleas* is a privilege granted by the Crown to a city or town, to hold pleas of all contracts, &c., within the liberty of the franchise; and when any person is impleaded for such matters in the Courts of Westminster, the mayor, &c., of such franchise may ask cognizance of the plea, and demanded that it shall be determined before them; but if the Courts at Westminster are possessed of the plea before cognizance be demanded, it is then too late.—*Termes de la Ley.* —*Wharton.*

COGNOVIT ACTIONEM is where a defendant confesses the cause of action to be just; upon which judgment may be entered up, and execution levied according to the terms therein agreed upon by the parties.—*Cab. Law.*

COIN, a piece of metal used for the time being as money and stamped and issued by the authority of some state or sovereign power, in order to be so used. Coin stamped and issued by the authority of the Queen, or by the authority of the Government of India, or of the Government of any Presidency, of any Government in the Queen's dominions, is the Queen's coin.—*Ind. P. C.*, sec. 230.

COLLATERAL, indirect, sideways, that which hangs by the side; applied in several ways, thus:—*collateral assurance*, that which is made over and above the deed itself; *collateral consanguinity or kindred*, which descend from the same stock or ancestor as the lineal relations, but do not descend from each other, as the issues of two sons; *collateral issue*, where a criminal convict pleads any matter allowed by law, in bar of execution, as pregnancy, pardon, an act of grace, or diversity of person, viz., that he or she is not the same that was attainted, &c., whereon collateral issue is taken, and tried by a jury *instanter; collateral security*, where a deed is made of other property, besides that already mortgaged, for the better safety of the mortgagee; *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. But now warranty is abolished by 3 & 4 *Wm. IV.*, c. 74, sec. 14.—*Wharton.*

COLLATION, the comparison of a copy with its original to ascertain its conformity; or the report of the officer who made the comparison.—*Wharton.*

COLLATION TO A BENEFICE, where the bishop and patron are one and the same person; in which case the bishop cannot present to himself, but he does, by the one act of collation or conferring the benefice, the whole that is done in common cases both by presentation and institution.—2 *Bl. Com.* 22.—*Wharton.*

COLLATIONE FACTA UNI POST MORTEM ALTERIUS, a writ directed to Justices of the Common Pleas, commanding them to issue their writ to the bishop, for the admission of a clerk in the place of another presented by the Crown, where there had been a demise of the crown during a suit; for judgment once passed for the king's clerk, and he dying before admittance, the king may bestow his presentation on another.—*Reg. Orig.* 31.—*Wharton.*

COLLATIONE HEREMITAGII, a writ whereby the king conferred the keeping of an hermitage upon a clerk.—*Reg. Orig.* 303, 308.—*Ib.*

COLLATION OF SEALS, when upon the same label one seal was set on the back or reverse of the other.—*Wharton.*

COLLIGENDUM BONA DEFUNCTI, *letters ad*, in defect of representatives and creditors to administer to an intestate, &c., the Probate Court may commit administration to such discreet person as it approves of, or grant him these letters *to collect the goods* of the deceased, which neither makes him executor nor administrator; his only business being to keep the goods in his safe custody, and to do other acts for the benefit of such as are entitled to the property of the deceased.—1 *Wm. Ex.* 242, 389.

COLLITIGANT, one who litigates with another.

COLLOQUIUM, a talking together or affirming of a thing, laid in declarations for words in actions of slander, &c.—*Wharton.*

COLLUSION, is a deceitful agreement or contract between two or more persons, for the one to bring an action against the other, &c., to some evil purpose, as to defraud a third person of his right, &c. This collusion is either apparent, when it shows itself on the face of the actor, which is more common; it is secret, when done in the dark, or covered over with a show of honesty. And it is a thing the law abhors; therefore, when found, it makes void all things dependent upon the same, though otherwise in themselves good. Collusion is also a varied

deceit wrought by means of an action or legal proceeding, in which parties, having *apparently* adverse interests, exclude or defraud some person by means of the judgment given in such suit.—*Tomlin.*

COLOUR OF OFFICE is always taken in the worst sense, to signify an act evilly done by the countenance of an office, the office being but a veil to the falsehood.—*Cowel.*—*Mozel.*

COMBINATION, is the organizing any number of persons, from two to an unlimited extent, to do an unlawful act, or, more distinctly speaking, to do an act to the wrong of another. The term is usually applied to workmen who *combine* to raise their wages by a sudden refusal to work except on certain stipulated conditions, which is only unlawful where means of intimidation and threat are used, or where contracts of a definite and precise nature are sought to be avoided.—*Tomlin.*

COMITY OF NATIONS, the most appropriate phrase to express the true foundation and extent of the obligation of the laws of one nation within the territories of another. It is derived altogether from the voluntary consent of the latter; and it is inadmissible, when it is contrary to its known policy, or prejudicial to its interests. In the absence of any positive rule, affirming, or denying, or restraining the operation of foreign laws, courts of justice presume the tacit adoption of them by their own government, unless repugnant to its policy. It is not the comity (courtesy) of the courts, but the comity of the nation, which is administered and ascertained in the same way, and guided by the same reasoning, by which all other privileges of the municipal law are ascertained and guided.—*Story's Conflicts of Laws*, sec. 38.—*Wharton.*

COMMISSION, is the term used for a *bailment*, or delivery, of something to another, who undertakes *without recompense* to do some act concerning the thing delivered, or, as it is technically termed, "bailed;" such as, to carry it.—*Tomlin.*

COMMISSION. Brokerage, factorage, or agency. An allowance or remuneration given by principals, or employers, to their brokers, factors, or other agents, which allowance is generally established by the usage of some particular trades or businesses; it varies, accordingly, with the nature of the employment, and is sometimes chargeable upon the thing, or price of the thing, sold or dealt with; and where the transaction does not admit of that mode of payment, it is a direct

claim upon the employer or purchaser, as the case may be. It is not unfrequently fixed by a special agreement, especially where the duty to be performed by the agent is ascertained, and no liability incurred; but where an agent, on the sale of his employer's goods, guarantees the responsibility of the purchaser, he is entitled to a higher rate, settled by usage of trade, called *del credere*. Where there is no express agreement the law presumes that the parties contracted for the usual remuneration due by custom; and if there is no custom or usage, or no express agreement evidenced, then it is a matter of consideration for a jury to ascertain what was the value of the services rendered. Of course, no remuneration can be recovered if, from the negligence or misconduct of the broker, the employer derived no benefit.—*Tomlin.*

COMMISSION. The warrant or letters patent which all persons exercising jurisdiction, either ordinary or extraordinary, have to determine any cause or action, as the commission to the judges, special commissions of oyer and terminer, gaol delivery, &c. From this word is derived Commissioner, who is any one that has a commission, letters patent, or other lawful warrant, to examine any matters, or to execute any public office, of which there are an infinite number.—*Tomlin.*

COMMISSION OF BANKRUPTCY, an order given by the court directing five or more individuals to enquire into the affairs of a bankrupt.—*D'Cruz.*

COMMISSION OF THE PEACE, is a warrant constituting one or more persons justice or justices of the peace.

COMMITMENT, the sending a person to prison by warrant or order, either for a crime, contempt, or contumacy.—4 *Step. Com.* 416. The sending up of a person charged with an offence for trial before a sessions court.

COMMITTITUR PIECE, an instrument in writing on parchment, which charges a person already in prison, in execution at the suit of the person who arrested him.—*Wharton.*

COMMODATUM, one of those obligations which are contracted *re*. He who lends to another a thing for a definite time, to be enjoyed and used under certain conditions, without any pay or reward, is called *commodans;* the person who receives the thing is called *commodatarius*, and the contract is called

commodatum. It differs from locatio and conductio in this, that the use of the thing is gratuitous.—*Dig.* 13, tit. 6; *Instit.* iii, 4, 12.—*Wharton.*

COMMON, there are several kinds of *common*, which word signifies a right which persons have or use in the land, woods, or waters, &c., of another. It is one of those properties legally termed *incorporeal hereditaments*, which presumedly commenced by some deed between lords and tenants, now lost, but being by age formed into a prescription, continues good.—*Tomlin.* There are five sorts of commons, viz.:—(1.) Common of pasture, limited or unlimited, which is the right of feeding one's beasts in another's land. (2.) Common of piscary, a liberty of fishing in another's water. It is either appendant, appurtenant, or in gross. (3.) Common of turbary, a licence to dig turf upon the ground of another, or in the lord's waste. (4.) Common of estovers, or estouviers, or necessaries, a liberty of taking necessary wood for the use of furniture of a house or farm from off another's estate. (5.) Common in the soil, which consists of the right of digging for coals, minerals, stones and the like.

COMMONABLE LANDS, are those lands which during a part of the year, are in severalty, that is, occupied severally by individuals as their own, to the exclusion, for the time, of other people.—*Mozley.*

COMMON ASSAULT, an assault unaccompanied with circumstances of aggravation.—*Ibid.*

COMMON ASSURANCES, the legal evidences of the translation of property, whereby every person's estate is assured to him, and all controversies, doubts, and difficulties are either prevented or removed. The common assurances are of four kinds:—(1.) By matter in *pais*, or deed, which is an assurance transacted between two or more private persons *in pais*, in the county; that is (according to the old common law) upon the very spot to be transferred. (2.) By matter of *record*, or an assurance transacted only in the sovereign's public courts of record, or under the authority of a public board or commission empowered by act of parliament to record its proceedings. (3.) By special *custom* obtaining in some particular places, and relating only to some particular species of property. These three are such as take effect during the life of the party conveying or assuring. (4.) The fourth takes no effect till after

his death, and that is by *devise*, contained in his last will and testament.—2 *Bl. Com.* 290.

COMMON LAW, is the term used for the law of this kingdom, (Europe) simply without other laws, as it was generally administered before any known act of parliament made to alter or qualify it. According to Judge Hale, the common law of England is the common rule for administering justice within this kingdom, and asserts the king's royal prerogatives, and likewise the rights and liberties of the subject. It is generally that law by which the determinations in the king's ordinary courts are guided; and this directs the course of descents of lands; the nature, extent, and qualification of estates, and therein the manner and ceremonies of conveying them from one to another; with the forms, solemnities, and obligation of contracts; the rules and directions for the exposition of deeds and acts of parliament; the process, proceedings, judgments, and executions of our courts of justice; also, the limits and bounds of courts and jurisdictions, the several kinds of temporal offences and punishments, and their application.—*Tomlin.*

COMMON NUISANCE, otherwise called a public nuisance, is a nuisance which affects the public in general and not merely a particular person or a definite number of persons.—*Mozley.*

COMMON PLEAS. One of the Queen's Courts at Westminster, now constantly held in Westminster Hall. It is, as its name imports, a Court for determining "common pleas," *i.e.*, pleas between subject and subject. It takes no cognizance of crimes, or matters of a public nature, but it can restrain inferior courts who proceed beyond their jurisdiction; and causes from those courts can be removed into this. It has in all civil actions the same power and authority that the Queen's bench has.—*Tomlin.*

COMMUTATION, conversion; the change of a penalty or punishment from a greater to a less; or giving one thing in satisfaction of another, as commuting tithes into a rent-charge, copyhold services into money-payments, &c.

COMMUTATIVE CONTRACT, one in which each of the contracting parties gives and receives an equivalent.

COMPANY. This word in common parlance applies to a partnership of more than two persons; but it is more particularly used to designate a body, or number of persons associated for the purpose of carrying on some particular undertaking, commercial

or otherwise. Some great companies are incorporated by royal charter, and their privileges thereby are confirmed by act of parliament, as in the case of the Bank of England, Royal Assurance, East India Company, and many others; and these are deemed *corporations*, and partake of the advantages and privileges incident to that condition. Other companies are created or associated by mutual agreement, declared by a deed of trust and arrangement. In these associations, each subscriber is a partner, and consequently liable for all the contracts of the company. These are distinguished by the name of *Joint Stock Companies*, and have very often letters patent granted them for the purpose of investing them with necessary powers for the conduct of their affairs, *but no further*, and sometimes (but seldom) the liability of share-holders is limited to the amount of their shares.—*Tomlin.* In India the liability of registered companies is limited under the provisions of an Act of the Governor-General in Council, No. 6 of 1882.

COMPANY'S PAPERS or GOVERNMENT SECURITIES are Promissory Notes of the Government of India, issued under the regime of the late East India Company on their different loans.

COMPENSATION, making things equivalent, satisfying or making amends, a reward for the apprehension of criminals; also a sort of right by set-off or stoppage, whereby a person who has been sued for a debt, demands that the debt may be compensated with what is owing to him by the creditor, which, in that case, is equivalent to payment.

COMPOSITION, an amicable arrangement of a law-suit; also an agreement or contract between a parson, patron, or ordinary, and the owner of lands, 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 and satisfaction thereof.—*Wharton.*

COMPOUNDING A FELONY, is where the party robbed not only knows the felon, but takes back his goods, or agrees not to prosecute for some compensation or amends made him.—*Tomlin.* See also *Ind. P. C.*, secs. 213, 214.

COMPOUNDING FOR A DEBT, is where the debtor arranges for payment of his debt to the satisfaction of the creditor.

COMPRINT, a surreptitious printing by a man of another's book to make a gain thereby to himself.—*Cowel.*—*Mozley.*

COMPROMISE, an adjustment of claims in dispute by mutual concession, without resorting to law: also a mutual promise of two or more parties at difference to refer the ending of their controversy to arbitrators.—*Wharton.* In Indian Courts, the word *Razinamah* is ordinarily used, which see.

COMPURGATION, one who by oath justifies another's innocence. —*Cab. Law.*

COMPUTO, a writ to compel a bailiff, receiver, or accountant, to yield up his accounts, founded on the Statute of Westminster II., c. 12. It also lies against guardians.—*Reg. Orig.* 135. Also an order to compute is made, when the master is required to ascertain the debt and interest on a bill of exchange or promissory note, &c., at the same time that he taxes the costs on an interlocutory judgment for want of a plea, in order that final judgment may be signed and execution issued thereon. The rule to compute is abolished by *C. L. P. A.* 1852, sec. 92.

CONCEALMENT, *i.e.*, *suppressio veri*, to the injury or prejudice of another. This must amount, in order to be deemed a fraud, to the suppression or non-disclosure of facts, which one party under the circumstances is bound, both legally and equitably, to disclose to the other party, the latter having an undoubted right to be put in possession of such facts.

CONCUBINAGE, an exception against her who sues for dower, alleging thereby that she was not a wife lawfully married to the party in whose land she seeks to be endowed, but his concubine. —*Brit.*, c. 107.

CONCURRENT, acting in conjunction; agreeing in the same act; contributing to the same event; concomitant in agency; having a similar jurisdiction.—*Wharton.*

CONDITION, a restraint annexed to a thing, so that by the non-performance, the party to it shall receive prejudice and loss; and by the performance, commodity or advantage; or it is that which is referred to an uncertain chance, which may or may not happen. There are many kinds of conditions, but the following are the most important: A *condition in a deed*, or *express*, which is joined by express words to a feoffment, lease, or other grant, as if a person make a lease of lands to another, reserving a rent to be paid at a certain day, upon condition if the lessee fail in payment at the very day, then it shall be lawful for the lessor to enter.

A *condition in law*, or *implied*, is when a person grants another an office, as that of keeper of a park, steward, bailiff, &c., for term of life; here, though there be no condition expressed in the grant, yet the law makes one, which is, if the grantee do not justly execute all things belonging to the office, it shall be lawful for the grantor to enter and discharge him from his office. A *condition precedent* is when an estate is granted to one for life, upon condition that if the grantee pay to the grantor a certain sum of money at such a day, then he shall have the fee-simple; in this case, the condition precedes the estate in fee, and on performance thereof gains the fee-simple. A *condition subsequent* is when a man grants to another his estate, &c., in fee, upon condition that the grantee shall pay to him at such a day a certain sum, or that his estate shall cease: here the condition is subsequent, and following the estate, and upon the performance thereof, continues and preserves the same; so that a condition precedent gets and gains the thing or estate made upon condition, by the performance of it; as a condition subsequent keeps and continues the estate by the performance of the condition.—*Termes de la Ley. Condition inherent* is such that descends to the heir, with the land granted, &c. *Condition collateral* is that which is annexed to any collateral act. Conditions are likewise *affirmative*, which consist of doing an act; *negative*, which consist of not doing an act; *restrictive*, for not doing a thing; *compulsory*, as that the lessee shall pay rent, &c.; *single*, to do one thing only; *copulative*, to do divers things; and *disjunctive*, where one thing of several is required to be done.—*Shep. Touch*, 117; 2 *Com. Dig.* tit. "*Condition*;" *Bac. Ab.* tit. "*Condition*."—*Wharton.*

CONDITIONAL LEGACY, a bequest whose existence depends upon the happening or not happening of some uncertain event by which it is either to take place or to be defeated.—1 *Rop. Leg.* 645, 3rd edit.—*Wharton.*

CONDITIONAL LIMITATION, is a phrase used especially in the two following ways:—(1.) Of an estate or interest in land so expressly defined and limited by the words of its creation that it cannot endure for any longer time than till a particular contingency happens: that is, a *present* interest to be divested on a future contingency. (2.) Of a future interest limited to take effect upon a given contingency, in derogation of a preceding estate or interest. This is likewise called a *shifting* or *secondary*

use and also an *executory* interest. It is a future estate to come into possession upon a given contingency.—*Mozley.*

CONDONATION. Sir Cresswell Cresswell thus defined the term in *Keats* v. *Keats*, "a blotting out of the offence imputed, so as to restore the offending party to the position occupied before the offence was committed." A plaintiff may be said to have condoned an offence either by the pardoning of, or complicity with, the wrong-doing of the defendant. Condonation, as accessory or accomplice, bars the suit of the plaintiff.—*Cab. Law.*

CONDUCT MONEY, money for the payment of the reasonable expenses of a witness at a trial.—*Mozley.*

CONE AND KEY, the accounts and keys of a house. To receive cone and key is to take the charge of a house.—*Cowel.*—*Mozley.*

CONFEDERACY is the same as Combination and Conspiracy, only that the two former words denote particular offences, of which a confederating or unlawful union is the essence. In all acts of this nature, the offence is complete on proof of the confederacy, though nothing be concluded, the intent and not the effect being the criterion of the offence. All confederacies for the purpose of wronging another are unlawful; indeed, the word is used in the law in an adverse sense, as well as in common parlance.—*Tomlin.* See CONSPIRACY, COMBINATION.

CONFESSION is when one party to an action admits the truth of something alleged by the opposing party.

CONFESSION AND AVOIDANCE plea by, a plea in bar, admitting the matter of fact in the declaration to be true, but showing some new matter of fact tending to obviate or take off its legal effect. These pleas are distinguished (in reference to their subject-matter) as pleas in justification or excuse, or as pleas in discharge. The former class of pleas shew some justification or excuse of the matter charged in the declaration: those of the latter, some discharge or release of the matter. The effect of the former, therefore, is to show that the plaintiff never had any right of action, because the act charged was lawful, the plea of *son assault demesne* is an example; the effect of the latter is to shew, that though he had once a right of action, it is discharged or released by some matter subsequent, as a release, &c. This division applies to pleas only; for replications or other subsequent pleadings in confession and avoidance, are not

subject to any such classification.—*Step. Plead.* 229; 1 *Chit. Arch. Prac. by Pren.* 234.—*Wharton.*

CONFIDENTIAL COMMUNICATION. See PRIVILEGED COMMUNICATIONS.

CONFINEMENT. See WRONGFUL CONFINEMENT.

CONFIRMATION, a species of conveyance by which voidable estate is made valid and unvoidable, or by which a particular estate is increased. The operative words are "ratified and confirmed;" though, for safety, it is usual and prudent to insert the words "given and granted." Estates which are void cannot be confirmed, but only those which are voidable. A confirmation does not strengthen a void estate; for a confirmation may make a voidable or defeasible estate good; but it cannot work upon an estate that is void at law.—*Wharton.*

CONFISCATION, the condemnation and adjudication of goods or effects to the public treasury, as the bodies and effects of criminals, traitors, &c.—*Wharton.*

CONFLICT OF LAWS, the discordance between the laws of one country and another, as applied to the same subject-matter; as for instance in the case of a contract made in one country and intended to be executed in another.—*Mozley.*

CONJUGAL RIGHTS, the privilege which husband and wife have of each other's society, comfort, and affection. The suit for restitution of conjugal rights is a matrimonial cause, cognizable in the Divorce Court, which is brought whenever either the husband or wife is guilty of the injury of subtraction, or lives separate from the other without any sufficient reason; in which case the Court will compel them to come together again, if either party be weak enough to desire it, contrary to the inclination of the other.—*Wharton.*

CONJURATION, a plot of compact made by persons combining by oath to do any public harm; but was more especially used for the having (as was supposed) personal conference with the devil, or some evil spirit, to know any secret or effect any purpose. The difference between *conjuration* and *witchcraft* was said to be, that a person using the one endeavoured, by prayers and invocations, to compel the devil to say or do what he commanded him; the other dealt rather by friendly and voluntary conference or agreement with the devil or familiar, to have his desires served, in lieu of blood or other gift offered. Both

differed from *enchantment* or *sorcery*, because the latter were supposed to be personal conferences with the devil, and the former were but medicines and ceremonial form of words, usually called charms, without apparition.—*Cowel.*—*Wharton.*

CONNIVANCE, signifies shutting of the eye. It is used with reference to a person allowing another to commit an act or offence by pretending not to see it: especially with reference to a husband tacitly encouraging his wife to commit adultery in order that he may obtain a divorce. Such connivance if established will deprive the husband of his remedy.—2 *Steph. Com.* 280—*Mozley.*

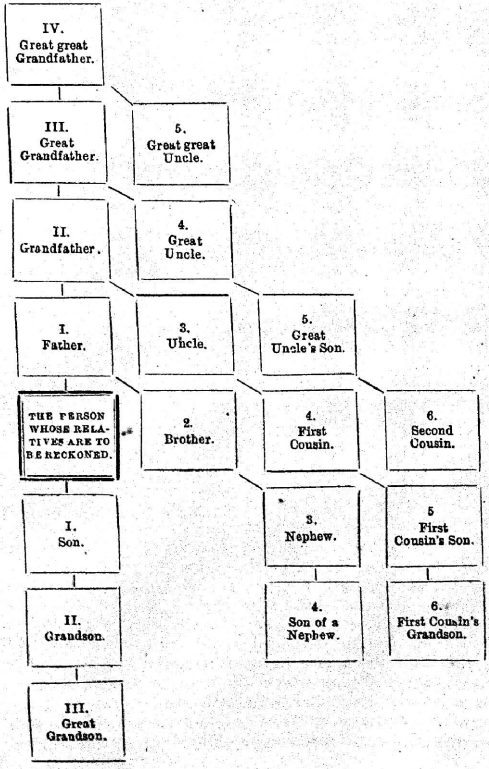
CONSANGUINEUS FRATER, is the brotherhood between two sons of the same father but of different mother.

CONSANGUINITY or KINDRED, is the connection of relation of persons descended from the same stock or common ancestor. It is either lineal or collateral. *Lineal consanguinity* is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather, and great-grandfather, and so upwards in the direct ascending line. Every generation constitutes a degree, either ascending or descending. A man's father is related to him in the first degree, and so likewise is his son, his grandfather and grandson in the second degree; his grandfather and great-grandson in the third. *Collateral consanguinity* is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other. For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is proper to reckon upwards from the person deceased to the common stock, and then downwards to the collateral relation, allowing a degree for each person, both ascending and descending. For the purpose of succession, there is no distinction between those who are related to a person deceased through his father, and those who are related to him through his mother; nor between those who are related to him by the full blood, and those who are related to him by the half blood; nor between those who are actually born in his life-time, and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive.—*Ind. Suc. Act.* secs. 20—23. The annexed table exhibits the degrees of kindred as far as the fifth:

A TABLE

OF LINEAL AND COLLATERAL CONSANGUINITY OR RELATIONSHIP.

The Roman figures represent lineal relationship, the Arabic figures collateral. In both, the degree of relationship to the deceased is demonstrated.



CONSENT, the agreement of two or more persons on the same thing in the same sense. It is said to be *free*, when not caused by coercion, undue influence, fraud, misrepresentation, or mistake.—See *Coercion*.

CONSEQUENTIAL DAMAGE or INJURY, is damage or injury arising by *consequence* or *collaterally* to one man, from the culpable act or omission of another.—3 *Steph. Com.* 365.

CONSIDERATION, the *quid pro quo;* the matter of inducement to a contract or transaction; the object in view which is introductory to the dealing. *Considerations* are by law required to be lawful, and not have for their object the carrying into effect any fraudulent or injurious act.—*Tomlin.* Considerations divide themselves into—(1), valuable; and (2), insufficient. *Valuable* may be thus classed:—(*α*) *Benefit and injury.* The principal requisite, and that which is the essence of every consideration, is, that it should create some benefit to the party promising, or some trouble, prejudice, or inconvenience to the party to whom the promise is made. (*β*) *Forbearance* for a certain or reasonable time to institute a suit upon a well-founded claim, or even upon one which is doubtful, but not upon one utterly unfounded, is sufficient, since it is a benefit to the one party, and a prejudice to the other. (*γ*) *Assignment of a chose in action*, unless it be void on account of maintenance. (*δ*) *Mutual promises* are concurrent considerations, and will support each other if they be made simultaneously, unless one or the other be void. (*ε*) *Considerations moving from third persons.* It is a general rule that in cases of simple contract, if one party make a promise to another for the benefit of a third, although no consideration move from such third person, it is binding, and either the party to whom it is made, or the party for whose benefit it is made, may maintain an action upon it. *Insufficient* considerations may be divided into—(*α*) *Gratuitous*, which are void for want of consideration. (*β*) *Illegal and impossible consideration.* A contract may be illegal, because it contravenes the principles of the common law, or the special requisitions of a statute. A contract founded upon an impossible contract is void; for the law will not compel a man to attempt to do that which is not within the limits of human capacity. *Lex neminem cogit ad vana aut impossibilia.* (*γ*) *Moral consideration* is not alone a sufficient legal consideration to support either an express or implied promise. (*δ*) *Executed consideration.* A consideration, in regard to the time when it operates, is either

—1st, *executed*, or something already performed before the making of the defendant's promise, which must be at the request of the promisor, otherwise it will not support a promise; 2nd, *executory*, or something to be done after the promise; 3rd, *concurrent*, as in the case of mutual promises; and 4th, *continuing*, *i.e.*, executed in part only. The three last classes are sufficient to support a contract not void for other reasons. —*Story on Con.*, 71. Since deliberation necessarily accompanies the making and completion of deeds, they are adjudged to bind the party, without examining upon what consideration they were made; for in the deed is a sufficient consideration, viz., the will of the party who made it. A deed, therefore, must be founded upon good and sufficient consideration, not upon fraud or collusion, either to deceive purchasers *bonâ fide*, or just and lawful creditors. The consideration may be either good or valuable; *good*, is such as that of blood, or natural love and affection; *valuable*, such as marriage, money, and the like.— 2 *Bl. Com.* 296.—*Wharton.*

CONSIGNMENT, the delivery of goods to another for sale or purchase. He who consigns the good is called the *consignor*, and the person to whom they are sent is called the *consignee*.— *Wharton.*

CONSISTORY COURT, or DIOCESAN COURT, is the Court of every Diocesan Bishop, held in his cathedral, or other convenient place within the diocese, concerning all ecclesiastical causes arising within his diocese; and in this Court, probate of wills and letters of administration are granted, where the deceased's *personal* property is only in that diocese, and he has not goods to the value of £5 (£10 if in London) elsewhere. The Bishop's Chancellor is the Judge in this Court, and in places remote from the Court he appoints a Commissary with a register to enter his decrees. From the sentence of either an appeal lies to the Archbishop of the province, or Metropolitan of the diocese, (either Canterbury or York,) and from them the case can be removed to the judicial committee of the Privy Council.—*Tomlin.*

CONSOLIDATING ACTIONS, if two or more actions be brought by the same plaintiff, at the same time, against the same defendant, for causes of action which might have been joined in the same action, the Court or a Judge at chambers, if they deem the proceedings oppressive, will, in general, compel the plain-

tiff, by rule or order, to join, (*i.e.*, consolidate) them, and to pay the costs of the application, which may be made at any time after appearance, though before declaration. The rule will seldom be granted in penal actions. If the plaintiff is defeated in one of the actions, he may try another, consolidated in the rule, without applying to the Court. Where several actions are brought on the same policy of insurance, the Court, or a Judge, upon the application of the defendants, will grant a rule or order to stay the proceedings in all the actions but one, the defendants undertaking to be bound by the verdict in such action, and to pay the amount of their several subscriptions and costs, if the plaintiff should recover, together with such other terms as the Court or a Judge may think proper to impose upon them.—2 *Chit. Arch. Prac. by Pren.* 1297.—*Wharton.*

CONSOLIDATION, in the civil law, the uniting the possession, occupancy, or profits, &c., of land, with the property, and *vice versâ;* in the ecclesiastical law, the uniting two benefices by assent of the ordinary, patron, and incumbent.—*Wharton.*

CONSPIRACY, the term used for an unlawful confederacy to prejudice a third person. Formerly, and in its strict legal sense, it was used for an agreement of two or more falsely to prosecute another for felony, which is a crime not very frequent now. There must be two at least to form a conspiracy. For acts which are in the nature of false accusations, the party aggrieved can have his remedy by action *on the case.*—*Tomlin.*

CONSTABLE, an inferior Police officer to whom our law commits the service of actually maintaining the peace, and bringing to justice those by whom it is infringed.—*Wharton.*

CONSTRUCTIVE TREASON, an attempt to establish treason by circumstantiality and not by the simple genuine letter of the law, and, therefore, highly dangerous to public freedom.—*Erskine's defence of Lord George Gordon;* 3 *Hall, Cons. Hist.*, c. xv., p. 151.—*Wharton.* See TREASON.

CONSTRUCTIVE TRUST, which arises from equitable operation; thus, when an estate is subject to a trust or equitable interest or lien, and a person purchases it for value, with either actual or constructive notice of it, the estate will still be subject to the trust, or equitable interest in the hands of such a purchaser. To this general rule, however, there is an exception in the case of a disseisor, abator, or intruder, who cannot hold in trust,

although he have notice of it, for he is not *in* in privity of the estate, to which it is annexed, but in the *post*, which is inconsistent with the trust. And notice of an unenrolled bargain and sale, or of an unregistered deed, will bind a purchaser; but notice of a fraud will not convert the person receiving it into a trustee. So a person acquiring an estate as voluntary grantee, even without notice, or as a devisee, will take it subject to every equitable interest, for equity will presume notice where no consideration has been paid.—*Wharton.*

CONSUL, an officer appointed by Government to reside in foreign countries for the purpose of extending and facilitating commerce and communication between the two countries. Also, merchants or other persons appointed by foreign princes to reside here for the same purpose.—*Tomlin.*

CONSULTARY RESPONSE, the opinion of a court of law on a special case.

CONSUMMATE, tenant by courtesy, when a husband, upon his wife's death, becomes entitled to hold her lands in fee simple or fee tail, of which she was seized during the marriage, for his own life, provided he has had issue by her, capable of inheriting.—*Wharton.*

CONTEMPT, an act of insult or contumely offered to a court of justice, for which the party can be *attached*, or, if the insult be offered in the face of the court, instantly committed. Contempts may be *constructive*, that is, as an act of disobedience to an order of a court is deemed to be a contempt of its jurisdiction. A person who refuses to pay or do what the court orders should be paid or done, is said to be *in contempt*; and though the contempt may be, and mostly is, a mere matter of default of payment, yet it is treated as an affront offered to the court; but as the courts can only enforce their orders or *rules*, as they are termed, in this manner, it is not so unreasonable a fiction as many at first sight would suppose. The process that issues to take a person guilty of contempt is called an *attachment.*—*Tomlin.*

CONTENEMENT, a man's countenance or credit, which he has together with, and by reason of, his freehold; or, that which is necessary for the support and maintenance of men, agreeably to their several qualities or states of life.—*Wharton.*

CONTENTIOUS BUSINESS, when a caveat is entered in the Pro-

bate Court against the grant of probate or letters of administration, and litigation is the consequence.—*Wharton.*

CONTENTIOUS JURISDICTION, where there is an action or judicial process, and it consists in hearing and determining the matter between party and party.—*Wharton.*

CONTINGENCY WITH A DOUBLE ASPECT, when *one event only* is expressed by the party, and two events are clearly in his contemplation. This is a construction in favor of the intention, that the intention may not be frustrated. The general rule is, that an interest to commence on a contingency, shall not take place unless that contingency shall arise. It is in a few cases only that this favor is extended by construction.—*Wharton.*

CONTINGENT INTEREST, may be defined, for all practical purposes, as a future interest not transmissible to the representatives of the party entitled thereto, in case he dies before it vests in possession.

CONTINGENT LEGACY, one that is bequeathed to a legatee subject to the occurrence of a specified event.

CONTINGENT REMAINDER, an executory remainder limited so as to depend on an event or condition, which may never happen or be performed, or which may not happen or be performed till after the determination of the preceding estate. Four sorts of contingent remainders are distinguished under this definition by Mr. Fearne, (*Cont. Rem.*) viz.:—(1.) When the remainder depends entirely on a *contingent determination of the preceding estate itself.* (2.) Where the contingency, on which the remainder is to take effect, is *independent of, and unconnected with, the determination of the preceding estate.* (3.) Where a remainder is limited to take effect upon an event, which, though it certainly must happen some time or other, yet *may not happen till after the determination of the particular estate.* (4.) Where a remainder is limited to a person *not ascertained*, or *not in being at the time when such limitation is made.*—*Wharton.*

CONTINGENT USES, these properly take effect as remainders, and in imitation of contingent remainders. Where an estate is limited previously to a future use, and the future use is limited by way of remainder, it is subject to the rules of the common law, which are, that a vested estate of freehold must precede in order to support the remainder, and that a remainder must vest either during the existence of such preceding estate, or *eo instanti*

that it determines. And herein these contingent or springing uses (for they have been called by both epithets, and without any great inconsistency, although it creates difficulty in regard to their distinctive classification,) differ from executory devises, which latter do not require any particular estate to support them; that by them a fee-simple or other less estate may be limited after a fee-simple, and that a remainder may be limited of a chattel interest, after a particular estate for life created in the same. The following is an example of a contingent use: A use to the first unborn son of A, after a previous limitation to A for life or for years, determinable on his life: for this does not answer to the notion of either a shifting or a springing use. —*Wharton.*

CONTINUANDO, a word used in a special declaration of trespass when the plaintiff would recover damages for several trespasses in the same action; and to avoid multiplicity of actions, a man may in one action of trespass, recover damages for many trespasses, laying the first to be done with a continuando to the whole time in which the rest of the trespasses were done, which is in this form, *continuando* (by continuing the trespasses aforesaid, &c., from the day aforesaid, &c.,) until such a day, including the last trespass.—*Termes de la Ley.*—*Wharton.*

CONTRABAND GOODS are those articles or commodities which are prohibited by Act of Parliament or the Queen's proclamation to be exported or imported, bought or sold.—*Tomlin.*

CONTRACT comprises in its full and more liberal signification, every description of agreement, obligation, or legal tie whereby one party binds himself, or becomes bound, expressly or impliedly, to another, to pay a sum of money, or to do or omit to do a certain act; but, in its more familiar sense, it is most frequently applied to agreements not under seal. . . . . Contracts or obligations *ex contractu* are of three descriptions—(1), *Contracts of record* which consist of judgments recognizances, and statutes staple; (2), *Specialties* or obligations under seal, such as deeds and bonds; and (3), *Simple contracts*, not only such as are merely *verbal*, but also such as, although they have been reduced into *writing* have not been sealed and delivered; "all contracts" it has been said "are, by the laws of England, distinguished into agreements by specialty, and agreements by parol; nor is there any such third class as in writing. If they be merely written and not specialties they are parol," and have the same efficacy, pro-

perty, and effect. The difference, therefore, is not between verbal and written contracts, but between parol or written contracts or contracts on the one hand, and specialties or obligations under seal on the other.—*J. Chitty, Jun.* Some contracts are—1, Illegal at common law—or; 2, Void by statute. To the former belong contracts—(*a*), Immoral in their nature; (*b*), Contrary to public policy; (*c*), Void for fraud. To the latter contracts—(*a*), Respecting stock jobbing; (*b*), Sales of offices; (*c*), Illegal charges on benefices; (*d*), Gaming, &c. A contingent contract is a contract dependent for its fulfilment on some event happening or not happening.

CONTRAMANDATUM, a lawful excuse, which a defendant in a suit by attorney alleges for himself, to shew that the plaintiff has no cause of complaint.—*Blount.*

CONTRIBUTION, where every one pays his share, or performs his part in any agreement or arrangement. It frequently arises between sureties, who are bound for the same principal, and, upon his default, one of them is compelled to pay the money, or to perform any other obligation for which they all become bound: the surety, who has paid the whole, is entitled to receive contribution from all the others for what he has done, in relieving them from a common burthen. Contribution amongst sureties may, in general, be enforced as well in courts of law as in equity; but in some cases the remedy is more extensive in equity than at law.—*Wharton.*

CONTRIBUTIONE FACIENDA, a writ that lay where there were tenants-in-common, that were bound to do one thing, and one was put to the whole burthen, to compel the rest to make their contribution.—*Reg. Orig.* 175; *F. N. B.* 162.—*Ibid.*

CONTRIBUTORY, every member of a company, and also every other person liable to contribute to the payment of any of the debts, liabilities, or losses thereof, whether as heir, devisee, executor, or administrator of a deceased member, or as a former member, of the same, or as heir, devisee, executor or administrator of a former member of the same, deceased or otherwise howsoever.—11 & 12 *Vict.*, c. 45, secs. 3, 76.—*Ibid.*

CONTRIBUTORY NEGLIGENCE, culpable negligence, by which a man contributes to the happening of an accident to himself, for which others are partially or even mainly, responsible. The injured person will not be entitled to recover damages for the

injury if it can be shown that, but for his negligence, the accident would not have happened.—*Mozley.*

CONTUMACE CAPIENDO, excommunication in all cases of contempt in the spiritual courts is discontinued by 53 *Geo. III.* c. 127, sec. 2, and in lieu thereof, where a lawful citation or sentence has not been obeyed, the judge shall have power, after a certain period, to pronounce such person contumacious and in contempt, and to signify the same to the court of Chancery, whereupon a writ *de contumace capiendo* shall issue from that court, which shall have the same force and effect as formerly belonged, in case of contempt, to a writ *de excommunicato capiendo.*—2 & 3 *Wm. IV.*, c., 93; 3 & 4 *Vict.* c., 93.—*Wharton.*

CONTUMACY, a refusal to appear in court when legally summoned, or disobedience to its rules and orders.—*Wharton.*

CONVERSION, where a person finds, or, having the goods of another in his possession, applies or converts them to his own use, without the owner's consent, and for which the owner may maintain an action of trover and conversion against him.—*Wharton.* The distinction between trespass and conversion is a good deal technical; trespass is where force, actual or implied, is used and constitutes the injury: to damage or meddle with the chattel of another, but without intending to exercise an adverse dominion over it, is a trespass and not a conversion; but though trespass may be by damaging the goods, it may also include or consist of taking them. A conversion may be said to mean a breach, made adversely, in the continuity of the owner's dominion over his goods, though the goods may not be hurt. The gist of the action in trespass is the force and direct damage inflicted; in conversion, it is the deprivation of the use.—*Collett.*

CONVEYANCE, a deed which passes or conveys land from one to another. The conveyances now in use are the "lease and release," "bargain and sale enrolled," and "settlements." A deed that conveys what is termed an *incorporeal* hereditament, that is, some advantage or right issuing out of or chargeable upon land, is legally styled *a grant*, as a grant of annuity, grant of advowson, &c.—*Tomlin.*

CONVEYANCERS are those who employ themselves solely in the preparation of deeds and conveyances of land, &c. No person is deemed qualified by law to act as a conveyancer unless he is a barrister or attorney, or a student, or member of some *Inn of*

Court duly certificated, *i.e.*, paying £12 stamp duty for his license. The drawing up of wills or powers of attorney does not subject the party to any penalty for practising as a conveyancer without payment of the £12 duty imposed by the stamp acts.—*Tomlin.*

CONVICT, a person found guilty of a crime or offence alleged against him, either by a verdict of a jury or other legal decision. —*Wharton.*

CONVICTION, the act of proving guilty of an offence charged against a party, by a legal tribunal. A *summary conviction* is where a man is found guilty of an offence on summary proceeding before a police magistrate or bench of justices.

CONVOY, ships of war appointed by Government in time of war to escort merchants' ships to various ports. It is against law for ships to sail without convoy in war-time. It is also made one of the stipulations in shipping policies that the insured sail with convoy; and, to perform this warranty or stipulation sufficiently, the insured must obtain, if possible, the *sailing instructions*, which afford full information as to signals, place of rendezvous, &c.—*Tomlin.*

COPARCENERS or PARCENERS, a tenancy which arises when an inheritable estate descends from the ancestor to several persons possessing an equal title to it. It arises by act of law only, *i.e.*, by descent, which, in relation to this subject, is of two kinds—(1), *Descent by the common law*, which takes place where an ancestor dies intestate, leaving two or more females as his next co-heiresses, these, according to the canon of real property inheritance, take altogether as coparceners or parceners, the law of primogeniture not obtaining among women in equal relationship to their ancestor; they are, however deemed to be as one heir; and (2), *Descent by particular custom*, as gavelkind lands, which descend to all the males in equal degree, as the sons, brothers, or uncles of the deceased intestate ancestor: in default of sons, they descend to all the daughters equally. Coparcenary relates to the estate—joint tenancy to the person. —Hence a man may be coparcener with himself.—*Wharton.*

CO-PARTNERSHIP, the having an equal share in any matter or business.—*Wharton.*

COPY, the transcript of an original writing, as the *copy* of a patent, charter, deed, &c.—*Tomlin.*

COPYHOLD, a tenure of lands in *England* (for it is rare in Ireland), for which the tenant or owner has nothing to show but the *copy* of the *rolls* made by the steward who holds the lord's court, which rolls contain special entries and memoranda of the *admission* of a tenant, his surrender to the use of another, or *alienation*, his *death*, and the claim and admission of the heir or devisee. There are two sorts of copyhold. The first, which is styled ancient demesne, or a customary freehold, which are only subject to a very small quit-rent, and an occasional nominal heriot. The second, a base tenure or mere copyhold, holden, as the *copy* says, "at the will of the lord," and subject to a two years' value as the fine or death, or alienation, or *heriot*, and a yearly quit-rent superadded, which shows the baseness of the tenure, it being a relic of the servile tenure of *villeins*, or bondsmen, who held their lands at their lord's will, that is, while they performed base or servile offices, and paid an acknowledgment for the profits of the land. The "will of the lord" is now practically a nullity, it being qualified by "the custom of the manor;" and the liberal construction courts have put upon the formular words, which are still useful as they designate the tenure, and, consequently, the nature, of the services attendant upon this inferior inheritance.—*Tomlin.*

COPYRIGHT, the exclusive right of printing and publishing *copies* of any literary performance; extended also to music, engravings, calico-prints, designs, and most works of art.—*Tomlin.* The term or endurance of copyright varies in different countries. In India a copyright in any publication is secured by registering it at the office of the Registrar of Books, under Act XX of 1847. The fact of registry is *primâ facie* evidence of title or proprietorship. As in England, so in India, the right endures for the natural life of the author and for seven years after his death; but if the seven years expires before the lapse of forty-two years from the date of original publication then it extends to the termination of the forty-two years. Copyrights may be assigned in whole or in part, as well as, after the author's death, revived for a further period of forty-two years.

CORAM NON JUDICE, (*in presence of a person not a judge*), when a cause is brought and determined in a court, whereof the judges have not any jurisdiction, then it is said to be *coram non judice*, and void.—*Wharton.*

CO-RESPONDENT, in a broad sense, is one of two or more parties

who are jointly made defendants, but the expression is limited in practice to the second party to an alleged adultery in a divorce case.

CORONER, an ancient officer, whose duty is chiefly to make inquiry or *inquisition* upon violent or unnatural deaths, and to perform certain acts relating to the execution of process where the sheriff is a party.—*Tomlin.*

CORPORAL HEREDITAMENT, that subject of property which is comprised under the denomination of things real.—*Wharton.*

CORPORAL OATH, an oath administered to one upon his *personal*, not written, testimony.—*Tomlin.*

CORPORATIONS, a body politic or incorporated, consisting of a number of persons, empowered by law to act under one name and as one person. They are established by Royal Charter or Act of Parliament, not unfrequently both, and they may claim to be a corporation by *prescription*. Corporations are either *aggregate*, that is, composed of many, who are in the eye of the law but one natural body, or *sole*, which consist of one person only, incorporated by law, and having a certain perpetuity and endurance which in their natural persons they could not have; in this sense a king is a corporation sole, so are bishops, deans, and prebendaries distinct from their several chapters, and so are parsons and vicars. Corporations aggregate are most commonly the mayor and burgesses of a city or town, the head and fellows of a college, the master and brethren of an hospital, the dean and chapter of a cathedral church. They are termed *ecclesiastical* corporations when the members are all spiritual or clerical persons, or, rather, act in that capacity. When the corporation has for its object the relief of the sick or poor, as an hospital, or the advancement of learning, as a college, it is termed an *eleemosynary* corporation: the latter are not *spiritual*, though all the persons may be clerical, but, like other corporations, *lay*, *i.e.*, the members are devoted to worldly affairs.—*Tomlin.*

CORRUPTION OF BLOOD, an ideal infection, which, in contemplation of law, attached upon all persons committing felony, rendering their heirs incapable of inheriting or claiming through them: by this fiction, the heir was rendered incapable of taking his parent's land, which, together with his goods, were forfeited to the superior lord, not then unfrequently, and now almost

always, the Queen. However, this corruption is taken away by a late Act, the felon only forfeiting his life-estate and his goods, except in cases of high treason or murder, in which the law remains unaltered.—*Tomlin.*

CORPOREAL PROPERTY, is that which can be handled or exclusively possessed, as a house, field, tables, as distinguished from incorporeal property such as a right of way or of light.

CORPUS DELICTI, the body of an offence, or essence of a crime; a phrase used with reference to the establishment of the fact that an offence has been committed; as opposed to the proof that a given person has committed it.—*Bouvier.—Mozley.*

COSENAGE or COSINAGE, kindred, consinship. Also a writ that lay where the *tresail, i.e.*, the father of the *besail*, or great-grandfather, being seized of lands and tenements in fee at his death, and a stranger entered upon the heir abated, then his heir had this writ.—*F. N. B.* 221.—*Wharton.*

COSENING, an offence, where anything is done deceitfully, whether belonging to contracts or not, which cannot be properly termed by any special name.—*Wharton.*

CO-STIPULATOR, a joint promiser.

COSTS, in almost all cases where a man recovers debt or damages, he is entitled to recover his expenses or *costs*, which consist of fees payable to the officers of the courts, counsel, and attornies. And where a defendant has a verdict, or the plaintiff discontinues his suit, he is, on the other hand, entitled to his costs, and *execution* may be levied for them. Costs may be considered either as between *attorney and client*, being what are payable in every case to the attorney by his client, whether he succeeded or not; or as between *party and party*, being those costs only which are allowed in some particular cases to the party succeeding against his adversary. In either case they are assessed, or, as it is termed, *taxed*, by one of the Masters of the court, before they are leviable upon either party by execution in the suit in which they have accrued.—*Tomlin.*

COSTS DE INCREMENTO, *costs of increase, i.e.*, those extra expenses incurred, which do not appear on the face of the proceedings, such as witnesses' expenses, fees to counsel, attendances, court-fees, &c.—*Wharton.*

COUCHER, or COURCHER, a factor who continues abroad for traffic; also the general book wherein any corporation, &c., register their particular acts.—*Wharton.*

COUNSEL, or COUNSELLOR, a person retained by a client to plead his cause in a court of judicature; a Barrister; an Advocate.—*Wharton.*

COUNTS. The sections or several charges of an indictment are called counts.

COUNTER-DEED, a secret writing, either before a notary or under a private seal, which destroys, invalidates, or alters a public one.—*Wharton.*

COUNTERFEIT, that which is made to resemble another thing, with a view to practice deception, or knowing it likely that deception will be thereby practised. It is not essential to counterfeiting that the imitation should be exact.—*Ind. P. C.*, sec. 28.

COUNTERMAND, where a thing formerly executed is afterwards, by some act or ceremony, made void by the party who first did it; it is either actual by deed, or implied by law. A plaintiff who has given notice of trial may countermand it in writing four days before the time mentioned in the notice of trial, unless short notice of trial has been given, and then two days only, unless otherwise ordered.—1 *Chit. Arch. Prac. by Pren.* 296.—*Wharton.*

COUNTERMARK, a sign put upon goods already marked; also the several marks put upon goods belonging to several persons, to shew that they must not be opened, but in the presence of all the owners or their agents.—*Wharton.*

COUNTERPART, the corresponding part or duplicate; the key of a cipher. 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 counterparts; though, of late, it is more frequent and better for all the parties to execute every part, which renders them all originals.—*Wharton.*

COUNTER PLEA, a kind of replication; an incidental pleading; diverging from the main series of the allegations. When the tenant in any real action, tenant by the curtesy or dower, in his answer and plea, vouches any one to warrant his title, or prays in aid of another who has a larger estate, as of him in

reversion, &c. : or where one that is a stranger to the action comes and prays to be received to save his estate; then that which the demandant alleges against it, why he should not be admitted, is called a counterplea: it is a replication to *aid prier*, and is called counterplea to the voucher. But when the voucher is allowed, and the vouchee comes and demands what cause the tenant has to vouch him, and the tenant shows his cause, whereupon the vouchee pleads anything to avoid the warranty, that is termed a counterplea of the warranty.—*Termes de la Ley.—Wharton.*

COUNTER-SECURITY, a security given to one who has entered into a bond or become surety for another; a countervailing bond of indemnity.—*Wharton.*

COUPONS, orders for the payment of interest at certain periods, as dividend due upon foreign and other loans.—*D'Cruz.*

COURT, the Queen's palace or mansion; also a place where justice is administered. In every court there must be at least three constituent parts, the *actor*, or plaintiff, who complains of an injury done; the *reus*, or defendant, who is called upon to make satisfaction for it; and the *judex*, or judicial power, which is to examine the truth of the fact, to determine the law arising upon that fact, and if any injury appear to have been done, to ascertain, and by its officers to apply, the remedy. It is usual in the superior courts to have attorneys or solicitors, and advocates or counsels, as assistants. Courts are either of *record*, where their acts and judicial proceedings are enrolled for a perpetual memory and testimony, and they have power to fine and imprison, and error may be brought upon their judgment; or, *not of record*, as those generally of a private man, which the law will not entrust with any discretionary power over the fortune or liberty of the subject; their proceedings are neither enrolled nor recorded; they cannot hold pleas of matters cognizable at the common law, unless under the value of 40*s.*, nor of any forcible injury whatsoever, nor have any process to arrest the person of the defendant; a writ of false judgment lies to reverse their decisions. It does not follow, however, that a court which is not of record must be an inferior court. The equity jurisdiction of the High Court of Chancery is said to be in strictness a court not of record; but the dignity of this court precludes a writ of false judgment, when sitting as a court of equity; and

as it is not a court of record, no error can be brought to rectify its decrees, the proceeding for this purpose is by appeal to the House of Lords. The instances in which this court sits as a court of common law are very rare, but whenever this does occur, as it is then a court of record, error lies from its judgments.—3 *Bl. Com.* 23.—*Tomlin.* For a description of the several courts, public or private, general or special, consult the initial letter of the particular title of every court, *e.g.*, Court of Admiralty, Sessions Court, Small Cause Court, &c.

COURT OF COMMON PLEAS, is one of the superior courts of common law and forms a division of the High Court of India. It takes cognizance of all actions between subject and subject without exception.

COURTS MARTIAL, are courts who sit in pursuance of martial and naval articles of war.—*Tomlin.*

COURTS OF CONSCIENCE, courts for the recovery of debts.—*Tomlin.*

COVENANT, the agreement of two or more by deed under seal, whereby either or one of the parties promises to the other that something is done already, or shall be done afterwards. He that makes the covenant, is called the *covenantor*; and he to whom it is made, the *covenantee*. A *covenant* is generally either *in fact* or *in law*. *In fact*, is that which is expressly agreed between the parties, and inserted in the deed. *In law*, is that covenant which the law intends and implies, though it be not expressed in words; as if a lessor demise and grant to his lessee a house or lands for a certain term, the law will intend a covenant on the lessor's part, that the lessee shall, during the term, quietly enjoy the same against all incumbrances. Covenant is also the name of an action adopted for the recovery of damages for the breach of any deed or covenant.—*Tomlin.*

COVENANT TO STAND SEISED TO USES, a voluntary assurance, operating under the Statute of Uses, and by non-transmutation of possession; *i.e.*, it does not transfer the seisin to another to raise the use in the covenantee, but that seisin remains in the covenantor, he standing seised to the use of the covenantee.—*Wharton.*

COVERTURE, the condition of a woman during marriage,

because she is then under the cover, influence, and protection of her husband.—*Ibid.*

COVIN, a secret conspiracy or agreement of two or more persons to injure or defraud some other person.—*Ibid.*

CREDENTIALS, papers which give a title or claim to confidence, as the letters of commendation and power given to an ambassador, or public minister, by the Prince who sends him to a foreign court.—*Ibid.*

CREDIT, a transfer of goods on trust in confidence of future payment. The seller believes in the solvency and probity of the buyer, and delivers his goods to him in confidence of it; or he delivers them on the reputation of his customer. In bookkeeping, the side of any account in which payment is entered opposed to debt.—*Ibid.*

CREDIT, LETTER OF, sometimes termed a bill of credit, because it is by merchant-law a contract as binding as a bill of exchange, and indeed resembles it in many particulars, save its negotiability. . . . . A *general* letter of credit is an open writing or letter to the same purport, but is directed to all merchants or more than one in a particular place, and makes the writer responsible for the bills of exchange that are drawn upon him by the merchants who furnish the bearer of the letter with money or goods, although the writer does not accept, or refuses to accept, such bills.—*Tomlin.*

CREDITOR, one who trusts or gives credit, correlative to debtor.—*Wharton.*

CREDITORS' BILL, a bill in equity filed by one or more creditors, by and in behalf of himself or themselves, and all other creditors who shall come in under the decree, for an account of the assets and a due administration of the estate.—*Ibid.*

CRIMES, as opposed to civil injuries, are violations of rights, which, considered in reference to their evil tendencies, as regards the community at large are the subjects of indictment.

CRIMINAL BREACH OF TRUST. See BREACH OF TRUST.

CRIMINAL CONVERSATION. See ADULTERY.

CRIMINAL COURT, any Judge or Magistrate lawfully exercising jurisdiction in criminal cases, whether for the decision of

such cases in the first instance or on appeal, or for commitment to any other court or officer.—*Crim. Proc. C.*, sec. 11.

CRIMINAL FORCE, is when one intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear, or annoyance to the person to whom the force is used.—*Ind. P. C.*, sec. 350. See FORCE.

CRIMINAL INFORMATION, a proceeding at the suit of the Queen, without a previous indictment or presentment by a grand jury. Criminal informations are of two sorts—(1), ex-officio, which is a formal written suggestion of an offence committed, filed by the Attorney-General, or in the vacancy of that office by the Solicitor-General, in the Court of Queen's Bench, without the intervention of a grand jury. It lies for misdemeanours only, and not for treasons or felonies. The usual purposes are seditious or blasphemous libels or words, seditious riots not amounting to treason, libels upon the Queen's ministers, the Judges, or other high officers, reflecting upon their conduct in the execution of their official duties; obstructing such officers in the execution of their duties; against officers themselves for bribery, or for other corrupt or oppressive conduct. The information is filed in the Crown office without the previous leave of the court. (2). Information by the Master of the Crown office, which is filed at the instance of an individual, with the leave of the court; and usually confined to gross and notorious misdemeanours, riots, batteries, libels, and other immoralities.—*Wharton.*

CRIMINAL INTIMIDATION. See INTIMIDATION, CRIMINAL.

CRIMINAL TRESPASS. See TRESPASS.

CROSS-BILL, answering to the *reconventio* of the canon law, as a mode of defence by cross-examination, is one filed by a defendant against the plaintiff or their defendants in the same suit, either to obtain—(1), a necessary discovery of facts in aid of his defence to the original bill; or (2), full relief to all parties, touching the matters of the original bill, as in a suit for the specific performance of a written contract, which the defendant at the same time insists ought to be delivered up or cancelled, in order to protect him from the plaintiff hereafter bringing an action at law upon such contract, a relief which the defendant

must pray for by a cross-bill.—*Mitf. Pl.* 97; *Sto. Eq. Plead.*, s. 389, *et seq.*—*Wharton.*

CROSS-ACTION, where A having brought an action against B, B brings an action against A upon the same subject-matter, or arising out of the same transaction, this second action is called a *cross-action*. This double action is sometimes necessary to insure justice to both parties.—*Mozley.*

CROSS-APPEAL, if both parties to a judgment are dissatisfied therewith and each accordingly appeals, the appeal of each is called a cross-appeal in relation to that of the others.—*Mozley.*

CROSS-EXAMINATION, a close and rigid questioning of a witness by the counsel of the adverse party, in order to test the truth of his examination-in-chief.—*Ibid.*

CROSSED CHECKS. It is very usual for the drawers of bankers' checks to write across them the name of the payee's banker, in which case the banker on whom the check is drawn will only pay to that banker; in other cases, as when the drawer is unaware of the payee's banker, it is usual for him to write merely the words "and Co.," leaving it to the payee to add the name of his banker. This serves the purpose of some security in case the check is lost, since it can only be paid through a banker, and moreover postpones in some measure the payment until the clearing hours in the afternoon.—*Ibid.*

CROSS-REMAINDERS, reciprocal contingencies of succession, which may be implied in a will, but must always be expressed in a deed, and should be expressly limited in a will. The broad rule is, that wherever realty is devised to several persons in tail as tenants-in-common, and the testator's intention appears, that not any part is to go over until the failure of the issue of all the tenants-in-common, they take cross-remainders in tail amongst themselves.—*Wharton.*

CROWN SOLICITOR, the solicitor to the Treasury acts, in state prosecutions, as solicitor for the Crown in preparing the prosecution.—*Ibid.*

CUI ANTE DIVORTIUM, (*to whom before divorce*), a writ for a woman divorced from her husband to recover her lands and tenements which she had in fee-simple or in tail, or for life, from him to whom her husband did alienate them during the marriage, when she could not gainsay it.—*Reg. Orig.* 233.—*Ibid.*

CUI IN VITA, (*to whom in life*), a writ of entry for a widow against him to whom her husband aliened her lands or tenements in his life-time; which must contain in it, that during his life she could not withstand it.—*Reg. Orig.* 232.—*Ibid.*

CULPA, an act of neglect, causing damage, but not implying an intent to injure, of which the Roman jurists recognized two —(1), *culpa lata culpa latior; magna culpa*, gross neglect, treated very much like fraud; *culpa magna dolus est, dolo proxima.* (2), *Culpa*, without any epithet, or *omnis culpa, culpa levis, levior;* or *levissima*, slight neglect.—*Cum. Civ. Law*, 279; *Sand. Just.* 476. —*Ibid.*

CULPABLE HOMICIDE, the causing death by an act done with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that death is likely to be caused thereby. Where death is caused by bodily injury, the person who causes such bodily injury is deemed to have caused the death, although by resorting to proper remedies and skilful treatment, the death might have been prevented. The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born. *Culpable Homicide amounts to murder* if the act by which the death is caused is done with the intention of causing death; or if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient, in the ordinary course of nature, to cause death; or if the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid. *Culpable Homicide does not amount to murder*—(1), if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident. Provided, (*a*), that the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person; or (*b*), that the provocation is not given by

anything done in obedience to the law or by a public servant in the lawful exercise of the powers of such public servant; or (c), that the provocation is not given by any thing done in the lawful exercise of the right of private defence. Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder, is a question of fact. (2). If the offender, in the exercise, in good faith, of the right of private defence of person or property, exceeds the power given to him by law, and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence. (3). If the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law and causes death by doing an act which he in good faith believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused. (4). If it is committed without premeditation, in a sudden fight, in the heat of passion, upon a sudden quarrel, and without the offender's having taken undue advantage or acted in a cruel or unusual manner. It is immaterial in such cases which party offers the provocation or commits the first assault; and (5), when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent. If a person, by doing any thing which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends, nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself likely to cause.—*Ind. P. C.*, secs. 299-301.

CULPRIT, one who is indicted for a criminal offence; popularly mistaken for the legal denomination of a criminal.—*Wharton.*

CUMULATIVE, or ACCUMULATIVE, signifies *additional*, and is applied to judgments or sentences, which add or impose an additional punishment to commence after the expiration of the first. . . . . For instance, if a man is convicted, or is under sentence of seven years' transportation, on a second conviction he is now liable to be sentenced to an additional term of seven or fourteen years, or for life, as the case may be. This term is also applied to the additional legal remedy a person is

sometimes entitled to, upon a wrong done him, as an indictment for the breach of social order, and an action at law for damages, which, in some instances, will attach upon offences not felonies.—*Tomlin.*

CUMULATIVE LEGACY, is a legacy which is to take effect in addition to another disposition whether by the same or another instrument in favour of the same party as opposed to a *substitutional* legacy, which is to take effect as a substitution for some other disposition.—*Mozley.*

CURATOR, a protector of property. His duty was to see that the person under his care did not waste his goods.—*Civil Law; Sand. Just.*, 156.—*Ibid.*

CURIA ADVISARE VULT, (*the court desires to consider*), a deliberation which a court of judicature sometimes takes, where there is any point of difficulty, before they give judgment in a cause. Abbreviated in our reports thus, *cur. adv. vult.*—*Wharton.*

CURRENCY, bank notes, or other paper money issued by authority, and which are continually passing as, and for, coin.—*Ibid.*

CURTESY, is the life estate which a husband has in the lands of his deceased wife, which by the common law takes effect when he has had issue by her born alive and capable of inheriting the lands—*Cowel.*—*Mozley.*

CUSTODE ADMITTENDO, CUSTODE AMOVENDO, writs for the admitting and removing of guardians.—*Ibid.*

CUSTODIAM LEASE, a grant from the Crown under the Exchequer seal, by which the custody of lands, &c., seised in the king's hands, is demised, or committed to some person, as custodee or lessee thereof.—*Ibid.*

CUSTOM, an unwritten law established by long usage and the consent of our ancestors. If it be universal, it is common law; if particular, it is then properly custom. The requisites to make a particular custom good are these—(1), it must have been used so long that the memory of man runs not to the contrary; (2), it must have been continued; and (3), peaceable; also (4), reasonable; and (5), certain; (6), compulsory, and not left to the option of every person, whether he will use it or not; and (7), consistent with each other. One custom cannot be set up in opposition to another.—*Ibid.*

CUSTOMS are duties charged on commodities on export or import. The customs are regulated by various Acts, in which specific directions are given for the entry, discharging, and shipping of all goods, inwards and outwards, with certain prohibitions and restrictions as to the import and export of certain goods.—*Tomlin.*

CUSTOM-HOUSE BROKERS, are persons authorized by the commissioners of customs to act for parties in the entry or clearance of ships, and the transaction of general business.—*Tomlin.*

CUTCHERRY, a subordinate court of justice; an office for the transaction of business relating to revenue matters.

CUTTING AND STABBING. See HURT, &c.

CUTWAL, a principal officer of police in a large town; the superintendent of a market.

DACOITY, is when five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting, or aiding, is said to commit "dacoity."—*Ind. P. C.*, sec. 391.

DAMAGE, any hurt or hindrance that a person receives in his estate, but particularly a part of what the jurors are to enquire of and bring in, when a verdict passes for the plaintiff.—*Wharton.*

DAMAGES, are the pecuniary satisfaction which a plaintiff may obtain by success in an action. They are of three kinds, viz.: Nominal, Substantial, and Exemplary. *Nominal* damages mean a sum of money that may be spoken of, but has in effect no existence in point of quantity, as one-anna damages. *Substantial* damages are those which are intended as a compensation for the injury sustained, whether it be a breach of contract or tort. *Exemplary*, (sometimes but improperly called *vindicative*, damages can only be given in cases of tort. They are substantial damages, but are not the result of calculation, and the only scale by which they can be measured is the application of a temperate discretion. By the *measure of damages* is meant the scale, by reference to which the amount of damages to be recovered, is in any given case to be assessed.—*Collett.*

DAMNUM, damage not necessarily pecuniary or perceptible

but appreciable and capable in legal contemplation of being estimated by a jury.—*Br. Com.* It is either *cum injuria*, accompanied with legal wrong, or *sine injuria*, without loss in the eye of the law.

DAY, the legal or common day (as distinguished from the astronomical day) is a space of 24 hours, commencing from midnight. In legal proceedings, generally, the law does not notice the particular time of a day when any act is done, unless it be an act which is criminal or penal from the circumstance of its being done by night.—*Tomlin.*

DAYS OF GRACE, when a bill or note is payable at one or more usances, or at a certain time after date, or after sight, or after demand, it is not payable at the precise time, but three days of grace are allowed. This indulgence the acceptor can claim as a right; and it now seems to be settled that, in England, bills payable at sight or on demand have this indulgence.—*Roscoe on Bills.—Wharton.*

DEAD FREIGHT is freight payable by the character of a vessel under his charterparty when the cargo has for some cause not been conveyed as intended.—*Brown.*

DE BENE ESSE [*conditionally*], to accept or allow a thing to be well done for the present; but when it comes to be more fully examined or tried, to stand or fall according to the merit of the thing in its own nature.—*Wharton.*

DEBENTURE, a deed-poll, charging certain property with the re-payment of a loan advanced by a certain person therein named at a given interest. It is frequently resorted to by public companies to raise money for the prosecution of their undertakings. It is a kind of I. O. U. Also, a term used at the custom-house for a kind of certificate, signed by the officers of the customs, which entitles a merchant exporting goods to the receipt of a bounty or drawback.—*Ibid.*

DEBT, means a sum of money due by some certain and express agreement, *e.g.*, on a bond, bill of exchange, &c., where the amount is determined. Debts are of various kinds, namely: (1) *Judgment debts*, or debts upon which judgment has been entered either upon *cognovit* or as the result of a successful action; (2) *specialty debts*, arising out of contracts under seal; (3) *simple contract* debts, arising out of one verbal or written, but not under seal, agreements.

DEBTEE-EXECUTOR, if a person indebted to another make his creditor or debtee his executor, or if such creditor obtain letters of administration to his debtor, he may retain sufficient to pay himself before any other creditors whose debts are of equal degree.—*Plowd.*, 543.—*Ibid.*

DECEIT. See FRAUD, CHEATING, &c.

DECISIVE OATH, resorted to in the civil law, where one of the parties to a suit, not being able to prove his charge, offers to refer the decision of the cause to the oath of his adversary; which the adversary was bound to accept or tender the same proposal back again; otherwise the whole was taken as confessed by him.—*Cod.* 4, 1, 12.—*Wharton.*

DECLARATION, a proclamation or affirmation, open expression or publication. More properly, in law, a statement, on the plaintiff's part, of his cause of action. In a real action, it is more correctly called the *count*; in a personal, the declaration; but this is now the general term, being that commonly used when referring to real and personal actions without distinction. —*Ibid.*

DECLARATORY ACTIONS, those wherein the right of the pursuer is craved to be declared; but nothing claimed to be done by the defender.—*Ibid.*

DECLARATORY STATUTE. An Act which merely declares what the common law is.

DECREE an edict, a law. Also the judgment of a court of equity. After the hearing of all parties in a cause, it is either, (1), *interlocutory* (usually termed an order,) when, for the purpose of ascertaining any matter of law or fact previously to a final decree, the court directs that the further consideration of the cause be adjourned; or (2), *final*, where all the facts and circumstances material to be ascertained in order to enable the court to do complete justice between the parties are so fully adduced and established by the several pleadings in the cause, that no further elucidation is requisite. In the majority of contested causes, the decree is interlocutory, in order to ascertain a variety of important matters.—*Wharton.*

DEED, is the general term applied to a contract under seal, and has its essence by sealing, signing, and delivery; which last is the manual or constructive giving it to the party, with or to whom the deed is made, and is generally presumed

to be done where other essentials concur.—*Tomlin.* Deeds are of two kinds, viz.: (1.) A *deed-poll, i.e.*, a bald or shorn deed, made by one person only beginning with the words "know all men," &c. (2) an *indenture, i.e.*, an indented deed made between two or more parties beginning with the words "This indenture," &c., and stating the parties at the outset.

DE FACTO, a thing actually done or existing.—*Cab. Law.*

DEFAMATION, the making or publishing by words either spoken or intended to be read, or by signs or by visible representations, any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm the reputation of such person. An imputation in the form of an alternative, or expressed ironically, may amount to defamation. It may amount to defamation to impute anything to a deceased person if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives. No imputation is said to harm a person's reputation, unless that imputation, directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful. In the following cases, however, it is not defamation—(1), to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published: whether or not, it is for the public good is a question of fact; (2), to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character so far as his character appears in that conduct and no farther; (3), or respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no farther; (4), to publish a substantially true report of the proceedings of a court of justice, or of the result of any such proceedings; (5), to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a court of justice, or respecting the conduct of any person as a party, witness, or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no farther; (6), to express in good faith any opinion res-

pecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no farther. A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public. (7), It is not defamation in a person having over another any authority, either conferred by law, or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates; (8), to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of the accusation; (9), to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good; (10), to convey a caution, in good faith, to one person against another, provided that such caution, be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.—*Ind. P. C.*, sec. 499.

DEFEASANCE is a deed supplement to another; the non-fulfilment of the supplementary conditions being a defect or defeasance of the principal deed.

DEFENCE, popularly a justification, protection, or guard; in law, an opposing or denial by the defendant of the truth or validity of the plaintiff's complaint.—*Wharton.* See PRIVATE DEFENCE.

DEFENDANT, the person sued in a personal action, or indicted, as tenant is he who is sued in a real action; but the former term, however, is applicable to actions of every description, and is the expression most commonly used.—*Ibid.*

DEL CREDERE, [a phrase borrowed from the Italians, exactly equivalent to our word guarantee or warranty, or the Scotch term warrandice], an agreement, so called, by which a factor, for an additional premium, when he sells goods on credit, becomes bound to warrant the solvency of the purchasers, and renders himself liable at all events to the payment of the price of the goods sold. It is, in fact, a guarantee.—*Story's Agency*, 28. A *del credere* factor or agent is a surety to his principal —*Ibid.*

DELICTO, ACTIONS, etc. These are actions arising from a tort or wrong, being independent of contract. The wrong must not amount to a crime, otherwise it is no tort in English Law.—*Brown.*

DELIVERY OF A DEED, a requisite to a good deed. The delivery may be effected either by acts or by words, *i.e.*, by doing something and saying nothing, as merely handing it to the grantee or his agent; or by doing nothing and saying something, as "I deliver this writing as my act and deed," or language of a similar import; or by doing and saying something. Delivery is of two kinds:—(*a.*) *Absolute*, when the execution perfects the deed, and there is not anything left to be done; or, (*b.*), *Conditional*, which is the handing of the writing to some third person, to be delivered by him as the act and deed of the grantor, when certain specified conditions shall be performed, until which the instrument is called an escrow, scrowl, or writing.—*Wharton.*

DEMAND, a claim, a challenging, the asking of anything with authority, a calling upon a person for anything due. It is either *in deed*, written or verbal, as a demand for rent, or an application for payment of a debt; or, *in law*, as an entry on land, distraining for rent, bringing an action.—*Ibid.*

DEMISE, a grant by lease; it is applied to an estate either in fee, for term of life or years, but most commonly the latter; it is used in writs for any estate.—2 *Inst.* 483.—*Ibid.*

DEMONSTRATIVE LEGACY, a legacy of quantity is ordinarily a general legacy; but there are legacies of quantity in the nature of specific legacies, as of so much money, with reference to a particular fund for payment. This kind of legacy is called by the civilians a demonstrative legacy; and it is so far general, and differs so much in effect from one properly specific, that if the fund be called in or fail, the legatee will not be deprived of his legacy, but be permitted to receive it out of the general assets; yet the legacy is so far specific, that it will not be liable to abate with general legacies upon a deficiency of assets.—2 *Wm. Exors.* 1043.—*Ibid.*

DEMURRAGE, is a compensation or allowance paid by the merchant or exporter to the owners of a vessel, in case she is obliged to wait for goods beyond her lay or running days (days allowed

to load or unload a ship) either before or after the voyage, or while she is waiting for convoy.—*Cab. Law.*

DEMURRER, in pleading is the formal mode of disputing the sufficiency in law of the pleading of the other side.—*Brown.*

DENIZEN, is an alien by birth who has obtained, *ex donatione regis*, letters patent making him an English subject. A denizen holds a middle position between an alien and a natural born or naturalized subject.—*Brown.*

DEODAND, any *personal* chattel, that is, any thing not forming part of the freehold by its annexation to house or land, which is forfeited by "moving to the death" of a person, no matter whether the owner were concerned in the killing or not, which killing is generally by an accident occasioned by negligence. In strictness, if the thing which kills is *in motion*, not only that part which gives the wound (as the wheel which runs over a man's body and kills him), but all things which move with it, and help to make the load more dangerous (as the cart and loading, which increase the pressure of the wheel) are forfeited. Where a thing *not in motion* is the occasion of a man's death, as if a man fall from a cart wheel, the thing alone, *i.e.*, wheel, is forfeited. Where there does not appear to have been negligence in the owner, the jury will (though not strictly warrantable) mitigate the deodand. The deodand, viz., the produce of the sale, generally belongs or is forfeited to the Queen, but, by prescription or custom, it may belong to the lord of a manor or franchise; in either case it should, by ancient law, be laid out in *pious*, *i.e.*, charitable uses, not for superstitious or even religious purposes.—*Tomlin.*

DEPONENT is a witness, usually by affidavit.

DEPORTATION, transportation, exile into a remote part of the kingdom, with prohibition to change the place of residence; exile, an abjuration, which is a deportation for ever into a foreign land, was anciently with us a civil death.—*Aylife.*—*Wharton.*

DEPOSIT, is a *bailment* or delivery of goods to another to keep without reward.—*Tomlin.*

DEPOSITARY, the person with whom any thing is deposited.—*Ibid.*

DEPOSITION, death; depriving a person of a dignity, &c.; also the act of giving public testimony; evidence put down in writing

by way of answer to interrogatories, exhibited for that purpose. —*Wharton.*

DERELICT LANDS, those suddenly left by the sea, as when the sea shrinks back below the usual water mark.—*Wharton.*

DERELICT, any thing thrown away or abandoned with the intention of quitting the ownership thereof. Goods thrown out of a vessel to lighten it in time of distress are not derelict, for want of the intention.

DERIVATIVE CONVEYANCES, secondary deeds, which pre-suppose some other conveyance primary or precedent, and only serve to enlarge, confirm, alter, restrain, restore, or transfer the interest granted by such original conveyance.—*Wharton.* See DEED.

DESCENT, is where the title to land vests in any one by mere operation of law. As thus used, the term is distinguished from *purchase*, which may be either *divise* or *grant*.—*Brown.*

DESERTION. See ABANDONMENT.

DETERMINABLE FREEHOLDS, estates for life, which may determine upon future contingencies before the life for which they are created expires. As if an estate be granted to a woman during her widowhood, or to a man until he be promoted to a benefice; in these and similar cases, whenever the contingency happens, when the widow marries, or when the grantee obtains a benefice, the respective estates are absolutely determined and gone.—*Ibid.*

DETERMINATION, denotes the ending or expiration of any estate or interest in property or the closing of a contract, &c.

DETINUE, the name of an action which lies against him who *detains* a specific article or chattel from another. But the thing sought to be recovered must be identified; therefore money or coin, unless in a bag or box, cannot be recovered; *trover* being the remedy applicable for this injury. In *detinue*, the plaintiff can only recover the thing sought for. In *trover*, the plaintiff can either recover the thing claimed, or damages. This action is mostly brought to recover deeds and papers, and such things, the loss of which could not be recompensed in damages.—*Tomlin.*

DEVASTAVIT, a devastation or waste of the property of a deceased person, by an executor or administrator being extravagant or misapplying the assets, for which he will be liable, as the credi-

tors or legatees cannot be prejudiced by his misconduct.—2 *Wm. Exs.* 1629, *et seq.*—*Wharton.*

DEVISE, is the bequest or gift by will of realty, or things of that nature, being immoveable. The term *bequest* applies in strictness to personalty.—*Tomlin.* The giver is called the *deviser*, the person to whom lands are given, the *devisee.*

DEWANY ADAWLUT, the chief civil court. The High Courts in India until recently were so called.

DICTUM. The legal decision of a Judge.

DIES JURIDICUS. A day on which legal proceedings may go on.

DIES NON JURIDICUS. A day on which legal proceedings cannot go on.

DIGAMA or DIGAMY, second marriage; marriage to a second wife after the death of the first: as *bigamy* in law is having two wives at once.—*Wharton.*

DILATORY PLEAS, a class of defence at common law, founded on some matter of fact not connected with the merits of the case, but such as may exist without impeaching the right of action itself, and are either pleas to the *jurisdiction*, shewing that by reason of some matter therein stated the case is not within the jurisdiction of the court; or pleas in *suspension*, shewing some matter of temporary incapacity to proceed with the suit; or pleas in *abatement*, showing some matter for abatement or quashing the declaration.—*Wharton.*

DILIGENCE, care, of which there are infinite shades, from the slightest momentary thought to the most vigilant anxiety; but the law recognizes only three degrees of diligence.—(1.) Common or ordinary, which men, in general, exert in respect of their own concerns; the standard is necessarily variable with respect to the facts, although it may be uniform with respect to the principle. (2.) High or great, which is extraordinary diligence, or that which very prudent persons take of their own concerns. (3.) Low or slight, which is that which persons, of less than common prudence, or indeed of any prudence at all, take of their own concerns. The civil law is in perfect conformity with the common law. It lays down three degrees of diligence—ordinary, (*diligentia*); extraordinary,

(exactissima diligentia); slight, *(levissima diligentia)*.—*Story on Bailments*, 14.—*Ibid.*

DIMINUTION, the act of making less, opposed to *augmentation*. In proceedings for reversal of judgment, if the whole record be not certified, or not truly certified by the inferior court, the party injured thereby, in both civil and criminal cases, may allege a diminution of the record, and cause it to be rectified.—*Ibid.*

DIOCESE or **BISHOPRIC**, the extent of every bishop's jurisdiction.—*Tomlin.*

DIOCESAN COURTS, the consistorial courts of each diocese exercising general jurisdiction of all matters arising locally within their respective limits, with the exception of places subject to *peculiar* jurisdiction: deciding all matters of spiritual discipline —suspending or depriving clergymen—and administering the other branches of the ecclesiastical law.—3 *Step. Com.* 14.—*Wharton.*

DIRECT EVIDENCE is that which bears directly upon the points at issue as distinguished from circumstantial evidence.

DISABILITY, incapacity to do any legal act. It is divided into two classes—(1), *absolute*, which, while it continues, wholly disables the person, such are outlawry, excommunication, attainder, and alienage; (2), *partial*, as infancy, coverture, idiotcy, lunacy, and drunkenness.—*Ibid.* Disability arises either from the act of the party, or from the act of his ancestor, or from the act of the law, or from the act of God.

DISBAR, to deprive a barrister permanently of the privileges of his position. It is analogous to striking an attorney off the rolls.—*Brown.*

DISCLAIMER, a renunciation or a denial by a tenant of his landlord's title, either by refusing to pay rent, denying any obligation to pay, or by setting up a title in himself or a third person, and this is a distinct ground of forfeiture of the lease or other tenancy, whether of land or tithe; and where a tenant for a term of years under a lease delivered up possession of the premises and the lease, in fraud of his landlord, to a person who claimed under a hostile title, and not with the intention that he should hold under the lease, it was held that the term and lease were thereby forfeited. But a *qualified* denial, as an offer to pay rent, if the claimant, by derivative title, will adduce

reasonable evidence of his right, will not necessarily amount to a disclaimer.—*Wharton.*

DISCOVERT, a widow; a woman unmarried; one not within the bonds of matrimony.—*Ibid.*

DISCOVERY, revealing or disclosing a matter. The late V. C. Wigram, in his work, entitled "*Points in the Law of Discovery*," epitomized the two cardinal principles on this subject, in the two following propositions:—(1.) It is the right, as a general rule, of a plaintiff in equity to exact from the defendant a discovery upon oath as to all matters of fact which, being well pleaded in the bill, are material to the plaintiff's case about to come on for trial, and which the defendant does not by his form of pleading admit. (2), The right of a plaintiff in equity to the benefit of the defendant's oath, is limited to a discovery of such material facts as relate to the "*plaintiff's case*," and does not extend to a discovery of the manner in which the "*defendant's case*" is to be exclusively established, or to evidence which relates exclusively to his case.—*Wharton.*

DISHONOR, the non-payment of a bill of exchange or promissory note, check, or any negotiable instrument, on the day when it becomes due, and after presentment duly made. It also means the non-acceptance of a person drawn upon by his correspondent or other person in favor of the drawer, or some particular payee.—*Tomlin.*

DISPENSATION, an exemption from some law, a permission to do something forbidden, an allowance to omit something commanded.—*Wharton.*

DISPAUPER, is to deprive a person admitted to sue *in formâ pauperis* of the privilege of so doing on his subsequent acquisition of property or for any other sufficient cause.

DISSEISIN, a wrongful putting out of him that is seised of the freehold, not, as in *abatement* or *intrusion*, a wrongful entry, where the possession was vacant; but an attack upon him who is in actual possession, and turning him out: it is an ouster from a freehold in deed, as abatement and intrusion are ousters in law.—3 *Step. Com.* 474.—*Wharton.*

DISTRESS, is the taking of a personal chattel out of the possession of the wrong-doer into the custody of the injured party,

to procure a satisfaction for the wrong committed. Distress also signifies the thing taken.—*Tomlin.*

DISTRICT, a tract of country constituting the territorial jurisdiction of a court: the extent of a collectorate.

DISTRINGAS, (*that you distrain*), anciently called *constringas*, a writ addressed to the sheriff, and issued to effect various purposes.—*Wharton.*

DIVORCE, the dissolution of the marriage contract. It is of two kinds, namely, *a mensa et thoro*, (from bed and board); and *a vinculo matrimonii*, (from the bond of marriage).—*Tomlin.*

DOCUMENT, any matter, expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used as evidence of that matter. It is immaterial by what means or upon what substance the letters, figures, or marks are formed, or whether the evidence is intended for, or may be used in a court of justice or not. Whatever is expressed by means of letters, figures, or marks, as explained by mercantile or other usage, is deemed to be expressed by such letters, figures, or marks, although the same may not be actually expressed.—*Ind. P. C.*, sec. 29. See FORGERY.

DOLI CAPAX, means capable of mischief; but is generally applied to children between seven and fourteen years of age, who are considered capable of judging between right and wrong and therefore criminally responsible.

DOMICILE. In a strict and legal sense, that is properly the domicile of a person where he has his true fixed permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning (*animus revertendi.*)—*Wharton.* The domicile of origin of every person of legitimate birth is in the country in which, at the time of his birth, his father was domiciled: or, if he is a posthumous child, in the country in which his father was domiciled at the time of the father's death. The domicile of origin of an illegitimate child is in the country in which, at the time of his birth, his mother was domiciled. A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin. A man is not to be considered as having taken up his fixed habitation in British India merely by reason of his residing there in Her Majesty's civil or military service, or in the exercise of any profession or calling.—*Ind. Suc. Act*, secs. 7-10

DOMINANT TENEMENT, in the law of easements, the tenement whose owner as such enjoys an easement over an adjoining tenement is called by this name.—*Brown.*

DONATIO MORTIS CAUSA, *a gift by reason of death.* A gift made of personal property in the last illness of the donor.—*Tomlin.*

DONATIVE, a species of advowson, when the Queen or any subject by her license founds a church or chapel, and ordains that it shall be merely in the gift or disposal of the patron; subject to her visitation only, and not to that of the ordinary, and vested absolutely in the clerk by the patron's deed of donation without presentation, institution, or induction.—2 *Bl. Com.* 23.—*Wharton.*

DORMANT PARTNERS, those whose names are not known or do not appear as partners, but who nevertheless are silent partners, and partake of the profits, and thereby become partners, either absolutely to all intents and purposes, or at all events, in respect to third parties. Dormant partners, in strictness of language, mean those who are merely passive in the firm, whether known or unknown, in contradistinction to those who are active and conduct the business of the firm, as principals. Unknown partners are properly secret partners; but in common parlance they are usually designated by the appellation of dormant partners. They are held responsible as partners until retirement to third parties, although they may not be so chargeable *inter sese.*—*Wharton.*

DOUBLE PLEADING, this is not allowed either in the declaration or subsequent pleadings. Its meaning with respect to the former is, that the declaration must not, in support of a single demand, allege several distinct matters, by any one of which that demand is sufficiently supported. With respect to the subsequent pleadings, the meaning is, that none of them is to contain several distinct answers to that which preceded it; and the reason of the rule in each case is, that such pleading tends to several issues in respect of a single claim.—*Ibid.*

DOWER, is a third part, or other customary share of such lands of inheritance whereof the husband was owner during the marriage, which the wife is to enjoy during her life, unless she acknowledges a deed parting with this right, which attaches on all land not conveyed to the husband in a special manner, for the purpose of barring this right, or where the wife has not released

it before marriage in consideration of a jointure or other provision, whether he sold it during the marriage or not.—*Tomlin.*

DOWRY, otherwise called *maritagium*, or marriage goods, that which the wife brings the husband in marriage. This word should not be confounded with dower.—*Co. Litt.* 31.—*Wharton.*

DRAWBACK, certain duties of the customs or excise, allowed upon the exportation of some manufacturers or upon certain merchandize, that has paid the import duty.—*Cub. Law.*

DRUNKENNESS, intoxication with strong liquor; habitual ebriety. It never excuses an offence except when the intoxicating thing was administered without the knowledge or against the will of the offender.—*Ind. P. C.*, secs. 85, 86.

DUCES TECUM, subpœna. If a person, even if he be not a party to a cause, have in his possession any written instrument, &c., which would be evidence at the trial, instead of the common subpœna, he is served with a subpœna *duces tecum*, commanding him to bring it with him and produce it at the trial.—*Wharton.*

DURESS, imprisonment, compulsion. Duress is either by imprisonment or by threats. In order to constitute duress by imprisonment, either the imprisonment or the duress consequent upon it must be tortious and unlawful. Duress by threat has been thus divided:—through fear, (1), of loss of life; (2), of loss of member; (3), of mayhem; (4), of imprisonment.—*Wharton.* See FORCE.

DYING DECLARATIONS, statements made by persons *in extremis.*

EAR-MARK; personal property that can be identified, *i.e.*, distinguished from other personal property of the same nature. As a general rule money has no such distinguishing feature or ear-mark.—*Brown.*

EARNEST, or **EARNEST MONEY**, the sum paid by the buyer of goods in order to bind the seller to the terms of the agreement. —*Wharton.*

EASEMENT, a convenience which one neighbour has of another, by a grant or prescription; a way through his lands, a watercourse or a prospect over his grounds.—*Cab. Law.*—Easements are of various kinds classed as (1), easements of necessity, and (2), easements of convenience. To the former belong all those that are necessary to the enjoyment of one's property or the pursuance of one's trade; and to the latter all those that con-

tribute to the enjoyment of property, &c., in a readier or more comfortable way.

EAT NIDE SINE DIE means that a defendant is discharged from attendance without a day being named for his future appearance.

ECCLESIASTICAL LAW, the civil and canon laws respecting spiritual offences and rights, wills of personalty, and matrimonial and defamation causes.—*Wharton.*

EFFLUXION OF TIME; when this phrase is used in leases, conveyances and other like deeds or in agreements expressed in simple writing, it indicates the conclusion or *expiration* of an agreed term of years specified in the deed or writing, such conclusion or expiration arising in the *natural* course of events, in contradistinction to the *determination* of the terms by the act of the parties or by some unexpected or unusual incident or other sudden event.—*Brown.*

EJECTMENT, or "*trespass* and ejectment," as it is legally termed, is the name of an action that lies to recover all real property, or houses, lands, &c., and minor interests therein. It depends or is framed upon several fictions to facilitate the process and bring the question of right before the jury.—*Tomlin.*

ELEEMOSYNARY CORPORATIONS, artificial bodies 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, which are founded for the promotion of piety and learning by proper regulations and ordinances, and for imparting assistance to the members of those bodies, in order to enable them to prosecute their devotions and studies with greater care and assiduity.—*Wharton.*

ELEGIT, the name of a writ of execution whereby the sheriff is empowered to seize and (not to sell but) deliver to the plaintiff, at an appraisement, all the goods of a debtor *except his oxen and beasts of the plough*, and if that is insufficient to liquidate the debt or damages, then to deliver one moiety, or half of the land, or interests in land, to the plaintiff, to receive the rents and profits until his debts be discharged. This writ is executed by means of a jury, whom the sheriff summons for that purpose.—*Tomlin.*

ELISORS, if the sheriff or coroner, who ought to return the jury, be a party to a suit or interested therein, the venire shall be directed to two clerks of the court or to two persons of the county, named by the court and sworn; and these two who are called *elisors* or electors, shall name the jury.—*Cab. Law.*

EMBARGO, a prohibition upon shipping not to go out of any port on a war breaking out, &c.; to detain; a stop put to trading vessels.—*Wharton.*

EMBEZZLEMENT, the pilfering or purloining money or property entrusted to any one as a servant or agent, or for a particular purpose.—*Tomlin.* See BREACH OF TRUST.

EMBLEMENTS, when a tenant from year to year, tenant for life, parson having glebe land, or any person whose tenancy is not determined by the tenor of the lease or agreement under which he holds the land, sows the land, the tenant or executors shall reap the crops which have been so sown; but it is otherwise in respect of leaseholders, or those whose tenancies expire at a particular day, as at the end of the lease or other specific time agreed on at the commencement of the tenancy, except by custom as to *way-going crops, &c.*—These crops are termed *emblements.—Tomlin.*

EMBRACEOR, he that, when a matter is in trial between party and party, comes to the bar with one of the parties, having received some reward so to do, and speaks in the case; or privately labors the jury, or stands in the court to survey and overlook them, whereby they are awed or influenced, or put in fear or doubt of the matter.—19 *Hen. VII.*, c. 13. But counsel, attornies, &c., may speak in the case for their clients, and not be embraceors.—*Wharton.*

EMBRACERY, an attempt to influence a jury corruptly in favor of one party in a trial by promises, persuasions, entreaties, money, entertainments, and the like.—*Ibid.*

ENABLING STATUTE is an Act that gives the power of doing something that could not be legally done before, as distinguished from a statute having a restrictive effect.

ENDOWMENT, wealth applied to any person or use. The assuring dower to a woman; the setting forth a sufficient portion for a vicar towards his perpetual maintenance, when the benefice is appropriated.—*Cowel.—Ibid.*

ENFEOFFMENT, the act of investing with any dignity or possession; also the instrument or deed by which a person is invested with possessions.—*Ibid.*

ENLARGER L'ESTATE, a species of release which enures by way of enlarging an estate, and consists of a conveyance of the ulterior interest to the particular tenant; as if there be tenant for life or years, remainder to another in fee, and he in remainder releases all his right to the particular tenant and his heirs, this gives him the estate in fee.—1 *Step. Com.* 521.—*Wharton.*

ENURE, is to take effect in favor of some one.

ENTAIL, is where the succession to an estate is limited or tied up to certain conditions; as to the heirs of a man's body, begotten, or to be begotten. The chief object in this mode of settling property is to rescue from alienation great family possessions. There are two kinds of entailed estates, *general* and *special*. When lands are given to a man and the heirs of his body without restriction, this is called an estate-tail general; but if the gift is limited to certain heirs, exclusive of others, this is an estate-tail special. Entail estates are also distinguished into estates-*tail male*, and estates-*tail female*. In the former case, the estate is limited to, or descendible only to, male heirs; in the latter, only females inherit.—*Cab. Law.* There is no estate-tail in personal estate, whether chattels real or chattels personal; but the words which seem to confer an estate-tail in personalty confer in fact an absolute estate in fee simple.—*Brown.*

ENTRY, the depositing of a document in the proper office or place; actual entry on land is necessary to constitute a seisin in deed, and is necessary in certain cases, as to perfect a common law lease.—*Wharton.*

EQUITABLE ESTATE, a person for whose benefit a trust is created is said to have the *equitable* estate, because his interest is morally defined, and recognized in equity. It is used in contradistinction to the *legal* estate, which may vest in a trustee by virtue of the deed creating the trust, and who is the owner in the view of the law.—*Cab. Law.*

EQUITABLE ESTATES, one of the three kinds of property in lands and tenements; the other two being legal property and customary property. That is properly an equitable estate or

interest, for which a court of equity affords the only remedy: and of this nature, especially, is the benefit of every trust, express or implied, which is not converted into a legal estate by the Statute of Uses. The rest are equities of redemption, constructive trusts, and all equitable charges.—*Burton's Comp.*, c. 8.—*Wharton.*

EQUITABLE MORTGAGE. The following mortgages are equitable:—(1.) Where the subject of a mortgage is trust-property, which security is effected either by a formal deed or a written memorandum, notice being given to the trustees in order to preserve the priority. (2.) Where it is an equity of redemption, which is merely a right to file a bill or claim in equity to redeem the estate. (3.) Where there is a written agreement only to make a mortgage, which creates an equitable lien on the land. (4.) Where a debtor deposits the title-deeds of his estate with his creditor or some person on his behalf, without even a verbal communication. The deposit itself is deemed evidence of an executed agreement or contract for a mortgage of such estate.—*Wharton.*

EQUITY, is the relief afforded to parties by English courts of equity, where the common law, from its constitution and practice, is unable to afford the suitor substantial justice. It is particularly exercised in cases of trust and matters arising from the mutual faith and confidence which man is obliged to repose in man. It is almost impossible to define its boundaries, or to state with precision in a work of this nature the extent of its jurisdiction. The mode of procedure and proof is adapted to cases of the above nature, and addresses itself to the conscience of a party complained of, as he is obliged to answer upon his oath all matters relating to the transaction.—*Tomlin.*

EQUITY OF REDEMPTION, there is no clearer instance of the beneficient interposition of municipal equity to supply the deficiencies of a strict common law, than its operation on the conscience of a mortgagee, who, although he has become absolute owner of the legal estate in the pledged property (no matter how much its value might exceed the loan), on account of the breach of the condition for re-payment of the loan within the strict time, yet is compelled to re-convey the legal estate to the mortgagor, who applies to equity to redeem it before foreclosure, and within 20 years of the last written acknowledgment, (3 & 4 *Wm. IV.*, c. 27, sec. 28), on payment of the principal, interest and costs,

equity treating the breach of the condition as a penalty which it abhors; and the retention for the mortgagee's own benefit of that which was intended simply as a pledge, as contrary to the soul and spirit of substantial justice. This right or equity of redemption is, in the contemplation of the Court of Chancery, the ancient estate in the property without change of ownership. It is therefore subject to all the limitations to which other equitable estates are liable. It is treated as an equitable asset. While an equity of redemption of a mortgage in fee is liable to forfeiture for treason only, the equity of redemption of a mortgage by demise is forfeitable for felony as well as treason.—*Wharton.*

EQUITY FOLLOWS THE LAW, *Æquitas sequitur legum,* this maxim signifies that the courts of chancery follow the same principles in construing documents and in determining rights as the courts of common law but the rule is subject to a few inconsiderable exceptions, which the courts of chancery have for reasons of their own, thought fit to make in their application of it.—*Brown.*

ERROR, WRIT OF. After final judgment had been signed in an action, the unsuccessful party, if desirous of disputing the matter afresh, might bring a writ of error, being a writ which was sued out of the chancery, and which was addressed to the judges of the court in which the judgment had been given, commanding them in some cases to examine the record themselves, and in others to send it to another court of appellate jurisdiction. The error might consist either (1) in a matter of fact or (2) in a matter of law.—*Ibid.*

ESCAMBRO, is an authority to transfer a bill of exchange to a person beyond seas.

ESCHEAT, a species of reversion: it is a sort of caducary inheritance, and a fruit of seignory, the lord of the fee, from whom or from whose ancestor the estate was originally derived, taking it as *ultimus hæres* upon the failure, natural or legal, of the intestate tenant's family.—*Wharton.* Escheats are of two kinds:—(1.) Those forfeitures which belong to the Queen in right of her prerogative, upon the defect of heirs to succeed to the inheritance. (2.) Those which belong to every lord of the manor, by reason of his seignory, under a royal grant.—*Cab. Law.*

ESCROW, a deed delivered to a third person to hold until some future condition be performed by the grantee, and then to be delivered to him.—*Norton.*

ESSE. *In esse* is something certain and tangible, as distinguished from *in posse* or possibly attainable.

ESTATE, signifies an inheritance, freehold, for term of life or years, or any interest that a man has in tenements, or things holden, as a mortgage estate, an estate at will, from year to year, or at sufferance, &c. As to what is real and what is personal estate, see REAL ESTATE.—*Tomlin.*

ESTOPPEL, a conclusive admission, which cannot be denied, or controverted. It is of three kinds :—(1.) By matter of record. A record generally concludes the parties thereto, and their privies, whether in blood, in law, or by estate. (2.) By deed (3.) In *pais*, as that a tenant cannot dispute his landlord's title.—*Wharton.*

ESTREAT is a copy or duplicate of an original document.

EUNDO MORANDO ET REDEUNDO, *in going, delaying, or remaining, and returning.—Ibid.*

EUROPEAN BRITISH SUBJECT, one naturally born in Great Britain, or the legitimate offspring of a father or mother so born, intermarrying with a native of this country and their descendants. The term East Indian is legally applied to a class distinct from that known as British subjects or European British subjects under the Acts and Charters applicable to India. East Indians are the offsprings of a British subject and a native of this country who have not married, and their descendants.—*Opinion of Adv. Genl. contained in Govt. Order, 8th Oct.* 1864, *No.* 1342.

EVICTION, is the same as dispossession or ouster of the possession. It is usually applied to ouster from real property only; but it is not inapplicable to the dispossession from personal property also.—*Brown.*

EVIDENCE, proof, either written or unwritten, of allegations in issue between parties. That which the parties produce to the judge in order to enable him to form his opinion upon the truths of the facts stated in the pleadings, or such of them as remain to be tried under the various issues. If evidence amounts to conviction, it amounts to proof.—*Norton.* In regard to the

different kinds of evidence, see the different heads to which they relate, as CIRCUMSTANTIAL EVIDENCE, HEARSAY, &c.

EXAMINATION, the act of enquiring by questions as to a person's knowledge of facts or science; also a searching by, or cognizance of, a magistrate.—*Wharton.* The term examination is technically used of the party: the term deposition of a witness. —*Norton.* Each witness is examined in the first instance by the party who has cited him, and this is called the *examination-in-chief*; afterwards he is *cross-examined* by the opposite party; and finally he may be *re-examined* by the party who first called him.—*Kindersley.*

EXCHANGE, an original common law conveyance, for the reciprocal transfer of interests, *ejusdem generis*, as fee-simple for fee simple, legal estate for legal estate, copyhold for copyhold of the same manor, and the like, the one in consideration of the other. It takes place between two distinct contracting parties only, although several persons may compose each party, constituting in effect but two relative parties.—*Wharton.*

EXCEPTION, in conveyancing means an exception of part of the thing granted, being a part which is less than and severable from the whole and which is of such a nature that it may be held of itself, exceptions to an answer to a Bill in chancery are objections taken to it on the ground either of insufficiency or of scandal.—*Brown.*

EXCHEQUER, Court of, consists of two divisions, a court of revenue and a court of common law.—*Wharton.*

EXCISE, the name given to the duties or taxes laid on certain articles produced and consumed at home.—*Ibid.* The revenue arising from duties and taxes laid on articles, the produce of, or consumed in, this country.—*Tomlin.*

EXCOMMUNICATION, a sentence of the ecclesiastical courts prohibiting offenders from mixing with the congregation, or participating in the offices of the church.—*Ibid.*

EX CONTRACTU, (*from a contract*), one of the great classes of obligation from which a right of action accrues. The actions are—(1), account; (2), *assumpsit*, or promises; (3), covenant; (4), debt; (5), detinue; (6), *scire facias*, or revivor.—*Wharton.*

EXCUSABLE HOMICIDE, is of two sorts, either *per infortunium*, by

misadventure, or *se defendendo*, upon a sudden affray.—*Wharton.* See CULPABLE HOMICIDE.

EX DELICTO, (*from a tort or offence*), the actions which arise from torts are—(1), case; (2), trespass; (3), trover; (4), replevin.—*Wharton.*

EXECUTION is the final process or writ by which the judgment of a court is executed. It issues from the court where the judgment was obtained, and is either—(1), against the body of the defendant alone; (2), against his goods and chattels; (3), against the goods of the defendant, and the profits of all his lands; (4), against the defendant's goods, and the half of his lands. Execution is styled *final process:* all previous process is called *mesne process.*—*Tomlin.*

EXECUTION OF DEEDS, the signing, sealing, and delivering of them by the parties as their own acts and deeds, in the presence of witnesses.—*Wharton.* And so of *Wills*, &c.

EXECUTOR, the person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided. —*Ind. Suc. Act*, sec. 3. Such a one is called a *lawful* executor. An executor *de son tort* (of his own wrong) is one who becomes executor by intermeddling with the estate after the death of the testator. He is liable to all the trouble of an executorship without any of the profits or advantages.—*Wharton.*

EXECUTORY DEVISE, Mr. Fearne, (*Cont. Rem.*, 386), defines an executory devise to be strictly such a limitation of a future estate or interest in lands or chattels (though, in the case of chattels personal, it is more properly an executory bequest) as the law admits in the case of a will, though contrary to the rules of limitation in conveyances at common law. It is only an indulgence allowed to a man's last will and testament, where otherwise the words of the will would be void; for wherever a future interest is so limited by devise as to fall within the rules laid down for the limitation of contingent remainders, such an interest is not an executory devise, but a contingent remainder.—*Ibid.*

EXECUTORY REMAINDER, a contingent remainder, because no present interest passes.—*Ibid.*

EXHIBIT, is the name given to any particular document which in the course of a cause is *exhibited, i.e.*, produced by

either party. Generally no document may be proved as an exhibit, if it requires more to substantiate it than the proof of execution or of hand-writing.—*Brown.*

EXTINGUISHMENT, the annihilation of a collateral, or the supercedure of one interest by another, and greater interest, thing, or subject in that out of which it is derived. It is of various natures as applied to various rights. (1.) Extinguishment of common. (2.) Extinguishment of copyhold. (3.) Extinguishment of debt. (4.) Extinguishment of estates. (5.) Extinguishment of an *interesse termini*. (6.) Release by way of extinguishment.—*Brown.*

EXTORTION, the intentionally putting any person in fear of any injury to that person or to any other, and thereby dishonestly inducing the person so put in fear to deliver to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security.—*Ind. P. C.*, sec. 383.

EXTRADITION, the act of sending by authority of law a person accused of a crime to a foreign jurisdiction, where it was committed, in order that he may be tried there. It is usually the subject of international treaty.—*Wharton.*

EXTRINSIC EVIDENCE, is evidence brought forward to throw light upon a written instrument *ab extra* the instrument.—*Brown.*

FACTORS, those who are concerned in the *sale* and *purchase* of commodities are either *brokers*, specifically so termed, or factors. The former have not the possession of goods, but simply conclude the bargain in the name and on the account of some other person.—*Tomlin.*

FABRICATING FALSE EVIDENCE. See FALSE EVIDENCE.

FACTORAGE. See COMMISSION.

FACTORS DEL CREDERE. See DEL CREDERE.

FÆDER-FEOH, the portion brought by a wife to her husband, and which reverted to a widow, in case the heir of her deceased husband refused his consent to her second marriage; *i.e.*, it reverted to her family in case she returned to them.—*Anc. Inst. Engl.*—*Wharton.*

FAILURE OF RECORD, when an action is brought against a person, who alleges in his plea matter of record in bar of the action, and avers to prove it by the record; but the plaintiff saith *nul tiel record*, viz., denies there is any such record: upon which the defendant has a day given him by the court to bring it in: if he fail to do it, then he is said to fail of his record, and the plaintiff is entitled to sign judgment.—*Termes de la Ley.*—*Wharton.*

FALSE EVIDENCE, whoever being legally bound by an oath, or by an express provision of law, to state the truth, or, being bound by law to make a declaration upon any subject, makes any statement, verbal or otherwise, which is false, and which he either knows or believes to be false, or does not believe to be true, is said to give false evidence. A false statement as to the belief of the person attesting is within the meaning of this Section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know. Whoever causes any circumstance to exist, or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry, or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry, or false statement, so appearing in evidence, may cause any person who, in such proceeding, is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said, "*to fabricate false evidence.—Ind. P. C.*, secs. 191, 192.

FALSE IMPRISONMENT, restraining personal liberty without lawful authority, for which offence the law has not only decreed a punishment, as a heinous public crime, but has also given a private reparation to the party as well by removing the actual confinement for the present by *habeas corpus*, as by subjecting the wrong-doer to an action of trespass, &c., usually called an action of false imprisonment, on account of the damage sustained by the loss of time and liberty.—3 *Step. Com.* 471.—*Wharton.* See FORCE.

FALSE PRETENCES, obtaining property by. This offence, though closely allied to larceny, is distinguishable from it as being per-

petrated through the medium of a mere fraud.—*Wharton.* See CHEATING, PERSONIFICATION, &c.

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

FARM LET, operative words in a lease, which strictly mean to let upon payment of a certain rent in farm, *i.e.*, in agricultural produce.—*Wharton.*

FEES, certain perquisites or pecuniary sums or rewards allowed to officers in the administration of justice, for their labor and care, and are either ascertained by Acts of Parliament or ancient usage.—*Tomlin.*

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

FEE-TAIL, is an estate, inferior to that of fee-simple, held by a man to him and the heirs of his body.

FEIGNED ISSUE, a proceeding whereby an action is supposed to be brought by consent of the parties to determine some disputed right, without the formality of pleading, saving thereby both time and expense.—*Wharton.*

FELO DE SE, (*a felon of himself*), a self-murderer; one who feloniously commits self-slaughter.—*Ibid.*

FELONY, all crimes (not mere misdemeanors, however high) above simple larceny to treason. Larceny is a felony by statute, which it never was at common law, or as the law, till lately, stood; but it is not punishable as a felony, nor has it superadded to its punishment forfeiture of goods and chattels, which is the distinguishing criterion of felony in the eye of the law.—*Tomlin.*

FEME or **FEMME**, a woman.

FEME COVERT, a married woman.

FEME SOLE, an unmarried woman.

FEOFFMENT, the name of a conveyance of freehold lands, now not in much use, because it must be accompanied by an open and known delivery of possession at the time of executing the deed, termed "livery of seisin." It is mostly used for gifts, or where no pecuniary consideration is given or money paid, as where corporate property is vested in a certain number of persons of whom very few survive, the survivors by this deed enfeoff some new nominees.—*Tomlin.*

FICTIONS, are pretences or claims presumed upon in actions for the purpose of forcing certain decisions with a view to ulterior proceedings, or to establish some position by a legal decision.

FIERI FACIAS, a writ of execution, by which the sheriff is directed *to cause to be made of all the goods and chattels* of the party named in the writ, a certain sum, being the sum awarded by the judgment. Under this writ the sheriff takes and sells all the goods and chattels (strictly so termed) of the party; but he cannot take what are termed *choses in action*, which are bank notes or securities for money, or money itself lying loose. —*Ibid.* Usually abbreviated *fi. fa.*

FIGHTING. See AFFRAY.

FILIATION, the relation of a son to his father; correlative to paternity.—*Wharton.*

FILIUS MULIERATUS, the eldest legitimate son of a woman who was illicitly connected with his father before marriage.—*Ibid.*

FINES IN COPYHOLDS, a fine which is preserved by 12 *Car.* 2, c. 24, sec. 6, is a sum of money payable by custom to the lord. There are three classes of fines:—(1), those due on the change of the lord; (2), those on the change of the tenant; and (3), those for a license to empower the tenant to do certain acts.—*Ibid.*

FINDING OF A JURY, or verdict of the Jury. They find a mixed verdict, that is, partly of law and partly of fact, and it is competent for them to find the contrary of the truth, for their finding maketh even what is false to be true, in cases of an exceptional character.—*Brown.*

FIXTURES, are those things which are fixed to house or land by a tenant or occupier, either for purposes of domestic comfort or ornament, or for the convenience of trade, more commonly known as house-fixtures and trade-fixtures.—*Tomlin.*

FLAGRANTE DELICTO. Taken in the act of committing a crime.

FLOTSAM or **FLOATSAM**, goods floating upon the sea, which belong to the crown, unless claimed by the true owners thereof within a year and a day.—*Wharton.*

FŒNUS NAUTICUM, (*nautical usury*), a contract for the re-payment of money borrowed, not on the ship and goods only, but on the mere hazard of the voyage itself, with a condition to be re-paid with extraordinary interest.—*Wharton.*

FŒTICIDE. Criminal abortion. See ABORTION.

FOLIO, a certain number of words; in conveyances, &c., amounting to seventy-two, and in Parliamentary proceedings, to ninety; also the figure at the top or bottom of a page.—*Wharton.*

FORCE. A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion, in one of the three following ways, viz.:—(1), by his own bodily power; (2), by disposing any substance in such a manner that the motion, or change, or cessation of motion, takes place without any further act on his part, or on the part of any other person; (3), by inducing any animal to move, to change its motion, or to cease to move.—*Ind. P. C.*, sec. 349.

FORCE, compulsion, except murder and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence; provided the person doing the act did not of his own accord, or from a

reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint. A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do any thing that is an offence by law. A person seized by a gang of dacoits, and forced, by threat of instant death, to do a thing which is an offence by law: for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.—*Ind. P. C.*, sec. 94.

FORECLOSURE, a mortgagee, or any person claiming an interest in the mortgage under him, can compel the mortgagor, after breach of the condition, to elect either to redeem the pledge, or that his equity of redemption be extinguished.—*Wharton.*

FORGERY, is the making any false document or part of a document, with intent to cause damage or injury to the public or any person, or to support any claim or title, or to cause any person to part with property or to enter into any express or implied contract, or with intent to commit fraud, or that fraud may be committed. A person is said to make a false document when he, (1), dishonestly and fraudulently makes, signs, seals, or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed, or executed by, or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, or executed, or at a time at which he knows that it was not made, signed, sealed, or executed; or (2), when, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, he alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or (3), when he dishonestly or fraudulently causes any person to sign, seal, execute, or alter a document, knowing that such person, by reason of unsoundness of mind or intoxication, cannot, or that by reason of deception practised upon him he does not know the contents of the document or the nature of the alteration. A man's signature of his own name may amount to forgery, as when A signs his own name to a bill of exchange,

intending that it may be believed that the bill was drawn by another person of the same name. The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person intending it to be believed that the document was made by the person in his life-time, may amount to forgery. A false document made wholly or in part by forgery, is designated "*a forged document.*"—*Ind. P. C.*, secs. 463, 464.

FORMA PAUPERIS. This expression applies to persons who are allowed to sue without paying customary fees and with various other indulgences. The grant of the privilege is in the discretion of the court.

FORNICATION, the act of incontinency in single persons; for if either party be married, it is adultery. The Spiritual Court takes cognizance of the offence, and by 27 *Geo. III.*, c. 44, the suit must be instituted within eight months, and not at all after the marriage of the parties offending.—*Wharton.*

FOUJDARI ADALUT, the chief criminal court, the high court under the East India Company's regime in the Madras and Bombay Presidency; that in the Bengal Presidency was designated the Nizamat Adalut.

FRATER CONSANGUINUS, a brother by the father's side.

FRAUD, all deceitful practices in defrauding or endeavouring to defraud another of his known right, by means of some artful device, contrary to the plain rule of common honesty. It is condemned by the common law, and punishable according to the heinousness of the offence. Under the criminal law of India, a person is said to do a thing fraudulently, if he does so with *intent* to defraud, but not otherwise. Doing a thing dishonestly is doing it with the intention of causing wrongful gain to one person, or wrongful loss to another person.—*Ind. P. C.*, secs. 24, 25. In matters of contract a suggestion as to the truth of something that is not true by one who does not believe it to be true, an active concealment of a fact or a promise made without any intention of performing it, is a fraud. Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that regard being had to them, it is the duty of the person keeping silence to speak or unless his silence is in itself equivalent to speech.—*Ind. Con. Act*, sec. 17. See CHEATING.

FRAUD, CONSTRUCTIVE, such acts or contracts, as, though not originating in any actual evil design, or contrivance to perpetrate a positive fraud or injury upon other persons, yet, by their tendency to deceive or mislead other persons, or to violate public or private confidence, or to impair or injure the public interests, are deemed equally reprehensible with positive fraud, and therefore are prohibited by law, as within the same reason and mischief, as acts and contracts done *malo animo*.—*Wharton.*

FREE-BENCH, a widow's customary dower out of copyholds, which is regarded as an excrescence growing out of the husband's interest, and being indeed a continuance of the estate. Free-bench is equally applicable to the estate of the husband as to that of the widow; and anciently it was indiscriminately applied to the former as well as to the latter, though of later days the estate of the husband is denominated his curtesy, while the term of free-bench has been confined to the widow's estate. The etymology of the term may thus be traced:—on the widow or husband acceding to the estate, at the death of the other, such widow or husband immediately becomes a tenant of the manor and enabled to sit on the homage as one of the *pares Curiæ*, and hence called a *bencher*.—*Wharton.*

FREEHOLD, one of the two chief tenures known in ancient times by the phrase "tenure in free socage," and is the only free lay mode of holding property. When the interest extends beyond the ancestor's life, it is called a *freehold of inheritance*, and when it only endures for the ancestor's life, it is a freehold not of inheritance. An estate to be a freehold must possess these two qualities. (1), Immobility, that is, the property must be either land, or some interest issuing out of, or annexed to, land; and, (2), a sufficient legal indeterminate duration, for if the utmost period of time to which an estate can endure be fixed and determined, it cannot be a freehold.—*Ibid.*

FREIGHT, the money paid for a carriage of goods by sea; or, in a larger sense, it is taken for the price paid for the use of a ship to transport goods, and for the cargo, or burthen of the ship. Ships are freighted either by the *ton* or by the *great*; and, in respect of time, the freight is agreed for, at so much per month, or at a certain sum for the whole voyage.—*Tomlin.*

FRIENDLY SUIT, one brought by a creditor in chancery against an executor or administrator, which is really a suit by the executor or administrator in the name of a creditor against himself,

in order to compel the creditors to take an equal distribution of the assets.—2 *Wm. Exs.* 1731.—*Wharton.*

FURZE, the wilfully setting fire to corn, grain, or pulse, (whether standing or cut down), or any part of a wood, coppice, or plantation of trees, or any heath, gorse, or furze, is a felony, punishable by transportation for seven years, or imprisonment with or without solitary confinement, and (if a male) whipping. —*Ibid.* See MISCHIEF.

FUTURE ESTATES, expectancies, which are, at the common law, of two kinds:—reversions and remainders.

FUTWAH, a judicial sentence; but ordinarily applied to the written opinion of a Mahomedan law officer on points referred to him by a court.

GAGE, an abbreviation of mortgage; as "estates in gage" meaning estates which are mortgaged. The word is sometimes used for a pledge or pawn.

GAMING, is the term used for excessive, and, consequently, unlawful playing at games, or with cards and dice.—*Tomlin.* The keeping of gaming houses is an offence punishable by law.

GAOL DELIVERY, a commission to the Judges, &c., empowering them to try and deliver every prisoner who may be in gaol when they arrive at the circuit town, whenever or before whomsoever indicted, or for whatever crime committed.—*Wharton.* See ASSIZES.

GARNISHEE, the person warned not to pay money which he owes to another person, which person is indebted to a creditor, and attaches the money in the hands of the person warned or summoned, called the *Garnishee.—Tomlin.*

GARNISHMENT, warning not to pay money, &c., to a defendant, but to appear and answer to a plaintiff-creditor's suit. It usually arose in cases of detinue, thus—if a defendant allege that certain deeds were delivered to him by the plaintiff and another person upon condition, such defendant prays that the other person may be warned to plead with the plaintiff, as to whether the conditions were performed or not, he (the defendant) being willing to deliver the property to the party entitled to it; thereupon a process of garnishment, monition, or notice issues, and all parties are brought before the court, that the cause may be thoroughly and justly determined. It is nearly

allied to the proceedings in interpleader.—3 *Reeves' Hist. Eng. Law.* 448.— *Wharton.*

GAVELKIND, a custom which holds in Kent, concerning the descent of lands in most parts of that county, whereby the lands of the father are equally divided at his death amongst all his sons, or the land of the brother among all the brothers, if the brother has no issue. Females inherit jointly and severally as at common law.—*Tomlin.*

GENEALOGY, history of the succession of families; enumeration of descent in order of succession; pedigree.—*Encyc. Lond.*

GENERAL AGENT, in law, is not an agent who deals in general, but who is instructed by his principal to act for him in general.

GENERAL AVERAGE. See AVERAGE.

GENERAL DEMURRER, a pleading at common law, which excepts to sufficiency in general terms, without showing specifically the nature of the objection. It is resorted to usually when the objection is to matter of substance.—*Step. Plead.* 152.—*Wharton.*

GENERAL ISSUE, a plea simply traversing *modo et formâ* the allegations in the declaration. In criminal proceedings, the general issue is "not guilty," which is pleaded *vivâ voce* by the prisoner at the bar.—*Ibid.*

GENERAL LIEN, a right to detain a chattel, &c., until payment be made, not only for the particular article, but of any balance that may be due on general account in the same line of business. A general lien being against the ordinary rule of law, depends entirely upon contract, either express or implied, from the special usage of the particular trade, or the previous course of dealing between the parties.—*Wharton.*

GENERAL SHIP, as opposed to a chartered one, is a ship not chartered wholly to one person; but the owner offers her generally to carry the goods of all comers, or where if chartered to one person he offers her to several sub-freighters for the conveyance of their goods.—*Brown.*

GENERAL VERDICT, the decision of the jury, when they find the point in issue generally. A general verdict is sometimes found for the plaintiff, subject to a special case, stating the facts for the opinion of the court above.—*Wharton.*

GIFT, a conveyance or deed which passes or transfers either land or goods: it signifies a gratuitous transaction, purely voluntary. Although the words "give and grant" are often used together in deeds, yet *grant* means the transfer of a thing for an adequate consideration. Gifts, when a person is in insolvent circumstances, are generally void, as against creditors. —*Tomlin.*

GIFTOMAN, the right to dispose of a woman in marriage.—*Wharton.*

GOD'S PENNY, is earnest money.

GOOD CONSIDERATION, one founded on motives of generosity, prudence, and natural duty; such as natural love and affection. —*Wharton.*

GOODS AND CHATTELS, the generic denomination of things personal, as distinguished from things real, or lands, tenements, and hereditaments.—*Ibid.*

GOODWILL, the advantage or benefit which is acquired by an establishment, beyond the mere value of the capital, stock, funds, or property employed therein, in consequence of the general public patronage and encouragement which it receives from constant or habitual customers, on account of its local position or common celebrity or reputation for skill or affluence, or punctuality, or from other accidental circumstances, or necessities, or even from ancient partialities or prejudices.—*Ibid.*

GRANT, is the name of a conveyance or deed which passes things of an *incorporeal* nature, or things which are not of a permanent or substantial nature.—*Tomlin.*

GRATIFICATION, a gift or remuneration, other than legal, to any one being or expecting to be a public servant, as a motive or reward for doing, or forbearing to do any official act, or for shewing or forbearing to shew, in the exercise of his official functions, favor or disfavor to any person, or for rendering or attempting to render any service or disservice to any person with the Government or any public servant as such. The term is not restricted to pecuniary gratifications or to those estimable in money.—*Ind. P. C.*, sec. 161.

GRIEVOUS HURT. See HURT.

GROSS. See IN GROSS.

GUARANTY, or GUARANTEE, an engagement to be responsible for the debts or duties of a third person, in the event of his failure to fulfil his engagement. It requires both a proposal and an acceptance thereof.—*Wharton.* It may be either written or oral. The person giving the guarantee is called 'surety;' the person on whose behalf it is given the 'principal debtor;' and the person to whom it is given the 'creditor.' A *continuing* guarantee is one extending to a series of transactions.—*Ind. Con. Act.*, secs. 126 and 129.

GUARDIAN. In modern times, guardians may be said to be of five kinds:—(1), *Testamentary*, those appointed by Will; (2), *Customary*, in respect of copyhold manors, ancient corporations, and gavelkind lands; (3), *Ad litem*, for purposes of litigation; (4), *By appointment of Chancery* for the protection of the general interests of its infant ward, where there is no guardian already selected; and (5), *Guardian in tort, or by intrusion (tutor alienus)*, which is an implied, indirect kind of guardianship, arising from a person intruding himself into an infant's property: if such a one receive the profits belonging to the wronged infant as its guardian, he must account for them in chancery, being, by this court, regarded as such infant's trustee.—*Ibid.*

HABEAS CORPUS, (*i.e., that you*—meaning the person to whom this writ is directed—*have the body of*); the name of a writ which is used for various purposes, but the chief of which is the release or bailing of a person who considers himself illegally imprisoned, or entitled to be discharged upon bail. It is also applicable to all cases where the party confined in private, or *any custody whatever*, is desirous of being released.—*Tomlin.*

HABENDUM OF A DEED, that part of a conveyance, &c., which determines the quantity of interest conveyed; but should the quantity be expressed in the premises, then the *habendum* may lessen, enlarge, explain, or qualify, but not totally contradict, or be repugnant to the estate granted in the premises.—*Wharton.*

HACKNEY CARRIAGES, are coaches, juts and single bullock carts which *ply* for hire at a stand or on a road way. They are registered under Acts of the local Legislature.

HALF-BLOOD, are children and other persons related to each other through one parent only, whether through the father only or mother only.—*Brown.*

HEARSAY EVIDENCE, also called SECONDARY and MEDIATE, is that kind of evidence, whether spoken or written, which does not derive its credibility solely from the credit due to the witness himself, but rests also in part on the veracity and competency of some other person from whom the witness may have received his information.—*Norton.*

HEIR, a person who succeeds by descent to an estate of inheritance. It is *nomen collectivum*, and extends to all heirs; and under heirs, the heirs of heirs are comprehended *in infinitum*. The different kinds of heirs may be thus classed and defined:—(1.) *Heir apparent.* He whose right of inheritance is indefeasible, provided he outlive the ancestor: as the eldest son, who must, by the course of the common law, be heir to his father on his death.—3 *Prest. Abst.* 5. (2.) *Heir by custom.* He depends upon a particular and local custom, as in borough-English lands, the youngest son succeeds his father, while in gavelkind lands, all the sons inherit as parceners, and make but one heir.—*Co. Litt.*, 140. (3.) *Heir by devise*, or *hæres factus.* He is made, by will, the testator's heir or devisee, and has no other right or interest than the Will gives him. (4.) *Heir general*, or *heir at law.* He who, after his father or ancestor's death, has a right to inherit all his lands, tenements, and hereditaments. (5.) *Heir presumptive.* He who, if the ancestor should die immediately, would, in the present circumstances of things, be his heir, but whose right of inheritance may be defeated by the contingency of some nearer heir being born; as a brother or nephew, whose presumptive succession may be destroyed by the birth of a child; or a daughter, whose present hopes may be hereafter cut off by the birth of a son. (6.) *Hæres sanguinis et hæreditatis.* (Heir of the blood and inheritance.) A son who may be defeated of his inheritance by his father's displeasure. (7.) *Heir special.* Issue upon whom an estate is entailed. The entail may either be upon the heirs *general* or *special*, being to be born of a particular mother; and these may be either male or female. (8.) *Ultimus hæres.* He to whom lands come by escheat or forfeiture, for want of proper heirs, or on account of treason or felony. He is either the lord of the manor or the crown. In the Scotch law, heir has a more extended signification, comprehending not only those who succeed to lands, but also successors to personal property also.—*Wharton.*

HEIRLOOM, personal chattels, such as carriages, utensils, and other household implements, which go by the special custom of

a particular place to the heir, together with the inheritance.—*Wharton.*

HEREDITAMENT is a very comprehensive term, including whatever may be inherited, be it *corporeal* or *incorporeal*, *real* or *personal*. *Corporeal* hereditaments consists wholly of substantial and permanent objects, all of which may be comprehended under the general denomination of land. An *incorporeal* hereditament is a right issuing out of a thing corporeal, whether real or personal, or concerning or annexed to the same—such as rights of way, advowsons, rights of common, annuities, &c.—*Tomlin.*

HIGHWAY, a public way open to all the king's subjects and leading between two public termini.—*Brown.*

HIRING, a bailment always for a reward or compensation. It is divisible into four sorts:—(1.) The hiring of a thing for use (*locatio rai*). (2.) The hiring of work or labor (*locatio operis faciendi*). (3.) The hiring of care and services to be performed or bestowed on the thing delivered (*locatio custodiæ.*) (4.) The hiring of the carriage of goods (*locatio operis mercium vehendarum*), from one place to another. The three last are but subdivisions of the general head of hire of labor and services.—*Wharton.*

HOLDING over is retaining possession of land or premises after the term of the tenancy has expired. If following a landlord's notice to quit, it resumes the tenancy as before unless the landlord interposes. If following the tenants' notice to quit, the landlord is entitled to enforce double rent.

HOMICIDE. See MURDER, CULPABLE HOMICIDE, PRIVATE DEFENCE.

HOTCHPOT, the bringing in all monies and estates into one sum or account, in order to effect a more equal distribution.—*Tomlin.*

HOUSE-BREAKING. A person is said to commit the offence of "house-breaking," if, in committing house-trespass, he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say:—(1.) If he enters or quits through a passage made by himself, or by any abettor of

the house-trespass, in order to the committing of the house-trespass. (2.) If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building. (3.) If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass, by any means by which that passage was not intended by the occupier of the house to be opened. (4.) If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass. (5.) If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault. (6.) If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass. Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the above meaning. If the offence be committed by night, it is called "*House-breaking by night*," and the punishment is greater.—*Ind. P. C.*, sec. 443.

HOUSE-TRESPASS. See TRESPASS.

HUE AND CRY, *hue* is a party's complaint, and *cry* the pursuit of a felon. It is raised upon a felony committed, and is a species of arrest wherein both officers and private men are concerned.—*Wharton.*

HURT, is the causing of bodily pain, disease, or infirmity to any person. The following kinds of hurt are designated as "*grievous*":—(1.) Emasculation. (2.) Permanent privation of the sight of either eye. (3.) Permanent privation of the hearing of either ear. (4.) Privation of any member or joint. (5.) Destruction or permanent impairing of the powers of any member or joint. (6.) Permanent disfiguration of the head or face. (7.) Fracture or dislocation of a bone or tooth. (8.) Any hurt which endangers life, or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits. Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby

to cause hurt to any person, and does thereby cause hurt to any person, is said "*voluntarily to cause hurt.*" If the hurt which he causes is grievous hurt, he is said "*voluntarily to cause grievous hurt.*" A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt, and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if, intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.—*Ind. P. C.*, secs. 319—322.

IDIOT, is a natural fool, a person who has never had any understanding or reason, and has not enjoyed lucid intervals.—*Tomlin.*

IGNORAMUS, a Latin word signifying "we are ignorant," formerly indorsed on a bill of indictment by the grand jury, when they rejected the evidence as too weak or defective, so as to put the person accused on his trial: the words now used, since the abolition of Latin proceedings, are "not a true bill," or "not found;" upon this, the person against whom the bill or presentment is made is delivered from gaol, by proclamation or otherwise.—*Ibid.*

ILLEGAL CONDITIONS, all those that are impossible, or contrary to law, immoral, or repugnant to the nature of the transaction.—*Wharton.*

ILLEGAL CONSIDERATIONS. See CONSIDERATION.

ILLEGAL CONTRACT, an agreement to do any act forbidden by the law, or to omit to do any act enjoined by the law. Illegal contracts have been divided into—1st, contracts which violate the common law; sub-divided into—(1.) Contracts void on account of fraud, which may be either, (*a*), misrepresentation, and (*b*), concealment. (2.) Contracts void on account of immorality. (3.) Contracts in violation of public policy, which may be—(*a*), in restraint of trade; (*b*), in restraint of marriage; (*c*), marriage brokerage contracts; (*d*), wagers; (*e*), contracts to offend against law, &c.; (*f*), trading with an enemy without license. 2nd. Contracts which violate any statute provisions.—*Story on Con.*, 102.—*Wharton.*

IMMOVEABLE, not to be forced from the place, the characteristics of things real, or land.—*Ibid.*

IMPANEL, or IMPANNEL, the writing and entering of the names of a jury in a parchment schedule by the sheriff.—*Wharton.*

IMPATRONIZATION, the act of putting into full possession of a benefice.—*Ibid.*

IMPEACHMENT, the accusation and prosecution of a person for treason or other crimes and misdemeanors.—*Tomlin.*

IMPEACHMENT OF WASTE, is a restraint of committing waste. —*Ibid.*

IMPECHIARE, to impeach, to accuse or prosecute for felony or treason.—*Wharton.*

IMPERTINENCE, where the pleadings in chancery are encumbered with long recitals, or with lengthy digressions of matters of fact, which are altogether unnecessary, and totally immaterial to the point in question, as where a deed is stated, which is not prayed to be set forth, *in hæc verba.*—*Ibid.*

IMPLICATION, a necessary inference of something not expressly declared between parties in deeds, agreements, contracts, &c., arising from what is therein already expressed.—*Tomlin.*

IMPLIED TRUSTS, an implied trust arises generally from an equitable construction put upon the acts, conduct, or situation of parties. Implied trusts have been distributed into two classes—(1), those depending upon the presumed intent of the parties, as where property is delivered by one to another to be handed over to a third person, the receiver holds it upon an implied trust in favor of such third person; (2), those not depending upon such intention, but arising by operation of law, in cases of fraud, or notice of an adverse equity.—*Wharton.*

IMPOTENCY, an inability of generation or propagating the species; a ground for dissolution of a marriage, as being merely void, and, therefore, needs only a sentence declaratory of its being so.—*Eccl. Law.*—*Ibid.*

IMPOTENTIÆ, (*property ratione*), a qualified property, which may subsist in animals on account of their inability, as where hawks, herons, or other birds build in a person's trees, or coneys, &c., make their nests or burrows in a person's land, and have young there, such person has a qualified property in them till they can fly or run away, and then such property expires.—2 *Step. Com.*, 9.—*Ibid.*

IMPOUND, is to take possession of or retain any thing in custody. In the practice of the courts it means the detention by the court of documents tendered in evidence—as the retention of an improperly stamped instrument or a document suspected to be forged. Ordinarily the word applies to stray cattle taken into the custody of the Police, or to cattle or other stock taken under a distress.

IMPRESCRIPTABLE RIGHTS, such as a person may use or not, at pleasure, since they cannot be lost to him by the claims of another founded on prescription.—*Wharton.*

INAUTRE DROIT, in another's right.

IN BANCO, or **BANC**, *sittings.* The judges of the three superior courts of common law sit during the term, and also in vacation, if they so determine, for the despatch of business, in their full courts, but the *puisne* judges sit by rotation, in each term, or otherwise, as they agree among themselves, so that no greater number than three of them sit at the same time in banc, unless in the absence of the lord chief justice or chief baron, the number of the judges forming the full court in banc being limited to four. The usual business brought on before the Court in banc are arguments on demurrers, rules in arrest of judgment, and for new trials, &c., and in the Queen's Bench, criminal informations, parish cases, &c.—*Wharton.*

INBORH, a security, pledge, or hypotheca, consisting of the chattels of a party unable to obtain a personal "borg," or surety.—*Ibid.*

INCENDIARIES, persons who burn houses, barns, ricks, &c.—*Tomlin.* See ARSON, MISCHIEF.

INCEST, the marriage of persons within the levitical degrees; in fact, those degrees of collateral consanguinity, or affinity, prohibited by our law; being the third degree in consanguinity, and the fourth degree in affinity. These marriages are void from the act itself, and the issue are deemed bastards. A divorce can be sued for in the ecclesiastical court at the instance of any one.—*Ibid.*

INCH OF CANDLE, is a species of auction, notice being given upon the exchange, or other public place, of the time of sale. The goods to be thus sold are divided into lots, printed papers of which, and the conditions of sale, are also published; and when the goods are exposed to sale, a small piece of wax candle,

about an inch long, is burning, and the last bidder, when the candle goes out, is entitled to the lot or parcel so exposed.—*Tomlin.*

INCIDENT, a thing necessarily depending upon, appertaining to, or passing with, another that is more worthy or principal. Rent is *incident* to a reversion; timber trees are *incident* to the freehold, as also deeds and charters, and a way to lands; distress to rent, and amercements, &c. And there are certain *incidents* to estates-tail, as to be dispunishable of waste, to bar the tenant's issue by deed acknowledged, &c.—*Ibid.*

INCIPITUR, the beginning or commencement of pleadings or sometimes of other proceedings.—*Brown.*

INCORPORATION, the formation of a legal or political body, with the quality of perpetual existence and succession, unless limited by the act of incorporation.—*Wharton.*

INCORPOREAL, is the description of a right to something not being actually tangible or touchable as a right of way.

INCORPOREAL HEREDITAMENTS or RIGHTS. See HEREDITAMENT, PRESCRIPTION.

INCROACHMENT, an unlawful gaining upon the right or possession of another.—*Wharton.*

INCUMBENT, a clerk resident on his benefice with cure; and is so called, because he does, or ought, to bend all his study to the discharge of the cure of the church to which he belongs.—*Tomlin.*

INCUMBRANCE, a mortgage, annuity, rent-charge, a condition or covenant affecting an estate, or, in legal language, "following the land," the concealment of which from a purchaser is fraud.—*Ibid.*

INDEBITATUS ASSUMPSIT, (*being indebted he undertook*), that species of the action of assumpsit, in which the plaintiff first alleges a debt, and then a promise in consideration of the debt. The promise laid is generally implied. All actions on the *indebitatus* counts are now, both in form and substance, actions of debt.—*Wharton.*

INDEFEASIBLE, that which cannot be defeated or made void; as a good and *indefeasible* estate, &c.—*Tomlin.*

INDEFINITE PAYMENT, where a debtor owes several debts to a creditor, and makes a payment, without specifying to which of the debts it is to be applied.—*Wharton.*

INDEMNITY, a writing to secure one from all danger and damage that may ensue from any act.—*Wharton.* See GUARANTEE.

INDENTURE, a deed between two or more parties.—*Ibid.*

INDICTMENT, a written accusation of one or more persons, of a crime of a public nature, preferred to and presented upon oath by a grand jury.—*Ibid.*

INDIRECT EVIDENCE, inferential, presumptive: where the fact in issue cannot be proved by the testimony of eye witnesses, it is inferred with more or less probability from circumstances which usually precede, accompany, or follow such a fact.—*Kindersley.*

INDORSEMENT, anything written on the back of a deed; as receipts for consideration-money, the attestation of the sealing and delivery, &c. On sealing of a bond, anything may be *indorsed* or subscribed upon the back thereof as part of the condition, and the *indorsement* and that shall stand together.—*Tomlin.*

INDORSEMENT OF BILLS or **NOTES.** The writing of a *payee* on the back (*in dorso*) of the bill or note, for the purpose of transfer to a third party.—*Tomlin.*

INDORSER, INDORSEE, when a transfer is made of a bill of exchange or note, if made by indorsement, *i.e.*, a writing on the back, the person making it is called the indorser, and the person in whose favour or to whom it is made is called the indorsee, who, when in possession of the bill, is called *the holder.* There is no limit to the number of indorsees, for, if there be not room on the bill, others may be added on an annexed paper. —*Ibid.*

INDUCEMENT, that portion of a declaration or of any subsequent pleading in an action, which is brought forward by way of explanatory introduction to the main allegations.—*Brown.*

INDUSTRIAM PER, a qualified property in animals *ferœ naturæ*, by a man's reclaiming and making them tame by art, industry, and education; or by so confining them within his own immediate power, that they cannot escape and use their natural liberty.—2 *Step. Com.* 5.—*Wharton.*

INFANT, a person under the age of twenty-one years; whose acts the law in many cases pronounces *void* or *null*, or *voidable*,

i.e., good until dissent had, and which may be ratified, after the infant's attaining full age, or set aside, at the infant's option.—*Tomlin.* In India the term of minority is fixed at eighteen and twenty-one. See MINOR.

INFANTICIDE, the killing of a child after it is born. The felonious destruction of the *fœtus in utero*, is more properly called fœticide, or criminal abortion.—*Wharton.*

INFORMATION, CRIMINAL, is a formal written suggestion or relation of an offence alleged to be committed, filed by the Queen's Attorney-general (or, in the vacancy of that office, by the Solicitor-general,) in the Court of Queen's Bench, without the intervention of a grand jury, and it lies for misdemeanors alone.—*Tomlin.*

INFORMER, is the designation of a person who takes upon himself the public duty of enforcing penal statutes. *Common* informers are so styled from their obtaining a livelihood by their taking upon themselves this task.—*Ibid.*

INFRINGEMENT, is an encroachment upon a right, usually referring to copy rights and patents.

IN FORMA PAUPERIS. In the character of a pauper.

IN GROSS, standing separate from any corporeal hereditament. —*Brown.*

INHERITANCE, a perpetual or continuing right to an estate invested in a person and his heirs.—*Wharton.*

INHIBITION, a writ to forbid a judge's proceeding in a cause that lies before him. It generally issues out of a higher court to an inferior, and is similar to a prohibition.—*Ibid.*

INITIALS, persons who draw, accept, or indorse bills or promissory notes, or in other writings are designated by the initial letters, or any contraction of their christian name, may be held to bail, sued, and described by such initial or contracted name. —*Tomlin.*

INJUNCTION, is a writ issuing out of a court of equity, and is said to be—1st, remedial or preventive; 2nd, judicial or decretal.—*Ibid.*

INLAND BILLS, bills of exchange drawn upon persons in this

country, in contradistinction to foreign or outland bills, as they used formerly to be termed.—*Tomlin.*

INNOCENT CONVEYANCES, a covenant to stand seised, a bargain and sale, and release, so called, because, since they convey the actual possession by construction of law only, they do not confer a larger estate in property, than the person conveying possesses, and, therefore, if a greater interest be conveyed by these deeds, than a person has, they are only void *pro tanto*, for the excess. But a feoffment was a *tortious* conveyance, and, therefore, under such circumstances, would have been void altogether, and produced a forfeiture. But by the 4th sec. of the 8 & 9 *Vict.*, c. 106, a feoffment made after the 1st October 1845 shall not have any tortious operation. It is, therefore, an innocent conveyance.—*Wharton.*

INNOMINATE CONTRACTS, those which had no particular names, as permutation and transaction.—*Civ. Law.*—*Ibid.*

INOFFICIOUS TESTAMENT, a will contrary to a parent's natural duty.—*Ibid.*

INNS OF COURT, societies of law which are governed by masters and benchers, and of which all barristers are fellows, they being called to the bar by these societies, which are four in number, viz., the Inner Temple, the Middle Temple, Lincoln's Inn, and Gray's Inn. Subject to these are lesser inns, called

INNS OF CHANCERY, which appertain to some of the inns of court, and are governed by principals, and ancients, or pensioners. They consist of attorneys, solicitors, and clerks in chancery. Clifford's Inn, Clement's Inn, and Lyon's Inn, belong to the Inner Temple; New Inn to the Middle Temple; Furnival's Inn and Thavie's Inn (which has lost its exclusiveness,) to Lincoln's Inn; and Staple Inn and Barnard's Inn to Gray's Inn.—*Tomlin.*

INNUENDO, a word formerly used in Latin pleadings, and now, in the present English forms, to point out the person or thing meant; as to say "he," *(innuendo,) i.e.*, "*meaning* the plaintiff," did so and so, or such a thing was meant, when there was previous mention made of another person or thing.—*Ibid.*

IN PERSONAM, against or upon a person, as distinguished from *in rem*, against or upon a thing.—*Brown.*

INQUEST, an inquiry by a jury of twelve men, impanelled by

the sheriff, which is the means of trying or ascertaining any fact in a cause, civil or criminal; but the term is usually confined to inquiries before grand juries, which consist of more than twelve and not exceeding twenty-four, and is always used on the Queen's behalf in criminal, or presumed criminal matters, offences, &c.; as the grand jury, who are sworn at assizes, sessions, and commissions of the peace, or *oyer* and *terminer*, to inquire into bills presented to them of indictment and other matters, which they may *present* or notify to the court, the coroner's jury, and the leet-jury.—*Tomlin.*

INQUISITION, it is synonymous with inquest, though the latter is more frequently applied to coroners' leet, and grand juries. —*Ibid.*

INROLMENT, transcribing a deed on a roll of parchment, according to certain forms and regulations.—*Brown.*

INSANE, see Lunatic.

INSOLVENT, in the general acceptation of the word, is a term applied to designate any one who is unable to perform his engagements with his creditors, and a declaration of this fact made by any trader so circumstanced.—*Brown.*

INSPECTORSHIP, deed of, an instrument entered into between an insolvent debtor and his creditors upon a composition of the debts, appointing one or more person or persons to inspect and oversee the winding up of such insolvent's affairs on behalf of the creditors.—*Wharton.*

INSTANCE COURT, is a technical or practical name given to the court of admiralty, which has jurisdiction in respect to private rights or private injuries, connected with maritime transactions at sea.—*Tomlin.*

IN STIRPES, according to lineage.

INSTITUTION, used in four senses:—(1), laws, rights, and ceremonies enjoined by authority, as permanent of conduct or of government; (2), putting a clerk into possession of a spiritual benefice, previous to which the oaths against simony and of allegiance and supremacy are to be taken; (3), a Society for promoting any public object; as a charitable or benevolent institution; (4), in the civil law, a debtor who is to be heir,

i.e., who is to carry on the legal existence, the *persona*, of the testator.—*Wharton.*

INSTRUMENT, in law, is any written or printed document having an express legal force or application.

INSURANCE or **ASSURANCE**, is an agreement or contract of indemnity, whereby a person, who is termed the *insurer* or *underwriter*, in consideration of a specified sum, denominated a *premium*, undertakes to secure another, who is called the *assured*, from certain risks or perils (*i.e.*, casualties) to which he is or may be exposed. This contract is termed a *policy;* and as it is only signed by the insurer or insurers, who subscribe their names and the amount for which they become liable, they are usually distinguished as *underwriters.—Tomlin.*

INTAKERS, receivers of stolen goods.

INTENDENT, a person who has the charge, direction, and management of some office or department.—*Tomlin.*

INTENDMENT OF CRIMES, the law generally does not punish *intendments* or intentions to do ill, if the intent be not executed, except in case of treason, where intention proved by circumstances shall be punished as if put in execution.—*Ibid.*

INTENDMENT OF LAW, the understanding, intention, and true meaning of law; and by which judges ought to give judgment. —*Ibid.*

INTERCOMMONING, is where the commons of two manors lie together, and the inhabitants of both have time out of mind depastured their cattle promiscuously in each.—*Ibid.*

INTEREST, a legal term applied to any inferior estate in land, or connected with it as a lease, or mortgage; it is mentioned in contradistinction to "estate," which is significative of the entirety. It is a redundancy of expression to repeat in deeds "all the estate, right, title, *interest*, claim, &c.," as the greater interest would, of course, include the lesser. It also means the profit on loans of money, which is always recoverable on bonds, bills, and notes, and upon express promises made for that purpose, or where such a promise can be implied from the custom or usage of the parties, or trade.—*Ibid.*

COMPOUND INTEREST, is when the interest, instead of being paid, is added to the principal sum, and becomes increased capital bearing interest.—*Ibid.*

INTERIM ORDER, one made in the meantime, and until something is accomplished.—*Tomlin.*

INTERLOCUTORY, that which is incident and spoken to between the ordinary proceedings in an action or suit, and is not final. Thus, in *equity*, it seldom happens that the first decree can be final and conclude the cause; for, if any matter of fact be strongly controverted, the court is so sensible of the deficiency of trial by written depositions, that it will not bind the parties thereby, but pronounces an interlocutory decree, usually directing the matter to be tried by jury in a court of common law. So at *common law*, a judgment in default of the defendant not pleading is interlocutory in all cases in which the sole object of the action is damages, and not until the damages are ascertained by a writ of enquiry before the sheriff, or an order to compute before the master, can a final judgment be signed.—*Ibid.*

INTERNATIONAL LAW, the law of nations, strictly so called, was in a great measure unknown to antiquity, and is the slow growth of modern times, under the combined influence of Christianity and commerce.—*Ibid.*

INTERPLEADER, is the trying a point incidentally happening before the principal cause can be determined; and occurs where two or more persons claim the thing in dispute, of a third party in whose hands it is, but who claims no interest, and desires to be relieved by way of indemnity at the hands of a court of law or equity, which will adjudge to whom the thing belongs; as if I am a stakeholder, or depository of property, and two persons severally claim this of me, I can interplead, *i.e.*, call upon the court to adjudge to whom the money shall be paid, or goods delivered.—*Tomlin.*

INTERROGATORIES, particular questions in writing, to which witnesses are to give answers singly, as they are read over to them. These interrogatories are administered by commissioners, or officers named by the court out of which they issue.—*Ibid.*

INTERVENER, the interposition or interference of a person in a suit in the court of probate and divorce in defence of his own interests is so termed. A person is at liberty to do this in every case in which his interest is affected either in regard of his property or his person.—*Brown.*

INTESTATE, dying without making a will, or leaving any

legal record of his wishes with respect to the disposal of his property.

INTIMIDATION, CRIMINAL, the threatening another with any injury to his person, reputation, or property, or to the person, or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat. A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within the above meaning.—*Ind. P. C.*, sec. 503.

INVENTORY, a list containing a true description, together with the values of goods and chattels, made on various occasions, as on the sale of goods, or transfer of moveables for pecuniary consideration; sometimes it signifies a mere list of things taken or seized, as an inventory taken on a distress for rent. Inventories generally state for what purpose they are made, so that they are not unfrequently evidences of title, when actual possession of the things inventoried accompanies the inventory. Inventories are also, in common parlance, termed, *appraisements*, when a gross sum is named by the appraiser as the total value; a very imperfect mode of information, as the appraiser's valuation is not governed by the intrinsic value of the things appraised, and the single values are omitted.—*Tomlin.*

IPSO FACTO, (*by the very act*), this expression is used where any forfeiture or invalidity is incurred; and the meaning of it is, that it shall not be necessary to declare such forfeiture or invalidity in a court of law, but that by *the very doing of the act* prohibited, the penalty shall be thereby instantly and completely incurred. When a condition is broken, the estate is said to be *ipso facto* void, *i.e.*, the defect is irremediable, unless cured by confirmation or waiver.—*Ibid.*

ISSUABLE PLEA, is that which puts the merits of the cause, either on the facts or law in issue; in other words, which will decide the action.—*Brown.*

ISSUE is taken for children born in wedlock; and, in that sense, is applied to the issue of a marriage, as children to be begotten between A and B his wife particularly named, or

by A with any other woman. It also signifies the profits of lands or tenements. It is also used to signify the point of matter. When in the course of pleading the parties in a cause come to a point, which is affirmed on one side and denied on the other, they are then said to be *at issue*. Issue is also a term applied to the sum levied, which the sheriff is directed to take by a writ of *distringas*, in order to compel the appearance of a party in court.—*Tomlin.*

JEOFAILE, an oversight in pleadings or in other law proceedings. The powers of amendment conferred by the Civil Procedure Code supersede the statutes of Jeofailes.

JOINDER of ISSUE, in an action at law, in any stage of the pleadings when either side traverses or denies, the facts pleaded by his antagonist, he usually tenders an issue, as it is called, which if the other party accepts issue is said to be joined.—*Brown.*

JOINT AND SEVERAL means that every person concerned is liable to an action against himself personally or as one of the parties should they be sued together.

JOINT TENANTS, an estate in joint tenancy is where two or more persons hold by grant or will from another, any lands or tenements, or even personalty. As such possession can never arise by means of descent or by other operation of law, it follows that the creation of a joint tenancy can only arise by the act of the parties themselves, as by will, deed, &c.; and this object is effected by merely giving or granting the estate to a number of persons and their heirs or executors, without adding any words restricting or explaining the grant: for, as the grantor has united their names, so the law gives them a union in respect of possession. The essential difference between joint tenants and tenants in common is, that joint tenants have the lands by one *joint* title and in one right, and tenants in common by *several* titles, or by one title and *several* rights. The essential requisites of *a joint tenancy* are that the parties must have—(1), one and the same interest: (2), an unity of title; (3), there must also be an unity of time at the commencement of their estates; and (4), an unity of possession.—*Tomlin.* Unless there is something to expressly provide to the contrary, the death of one of two and more joint tenants invests the survivors with the whole of the estate. It is in this respect the reverse of tenancy in common.

JOINTURE, a settlement of lands or tenements made to a woman, on account of marriage.—*Brown.*

JUDGES, officers appointed by authority to try civil and criminal causes and punish offences.

JUDGMENT, the sentence of the law pronounced by the court, or awarded by the Judges. *In civil cases*, judgments are said to be of four sorts—(1), where the facts are admitted by the parties, but the law arising from the pleadings is disputed, and consequently determined by the Judges: this is termed judgment on demurrer; (2), where only the facts are disputed, as in judgment upon verdict; (3), where the defendant admits the law and facts as laid in the declaration: this occurs in judgments by *confession* or *default*, or in judgment *acknowledged for debts*; (4), where the plaintiff abandons his suit either at the last or at any previous proceeding, whereby the defendant has what is termed judgment of *non-suit* or *non pros.*—*Tomlin.*

JUDGMENT BY NIL DICIT, a judgment by default; the words *nil dicit* signifying, when all the proceedings of the courts were in the Latin language, "says nothing," which words are now the words used in the record of a judgment by default. Judgments acknowledged by means of a warrant of attorney state that the judgment thereupon is to be entered up by *nil dicit*, or "otherwise;" so that the judgment, when entered up, appears as a judgment by default in a common action, although no previous process has been issued.—*Ibid.*

JUDGMENT CREDITOR, is one who has obtained a judgment upon which he is entitled to proceed to execution.

JUDGMENT DEBT, is a debt in respect of which a judgment has been passed.

JUDICIAL SEPARATION, is a process of the Divorce Court which separates married persons as effectively as if they were divorced, with the proviso that they must not intermarry with other persons so long as they both live.

JURATS, officers in nature of aldermen, sworn for the government of many corporations.—*Tomlin.*

JURISDICTION, an authority or power which a man has, to do justice in causes of complaint brought before him.—*Ibid.*

JURY, a certain number of men sworn to inquire of, and try a matter of fact, and declare the truth upon such evidence as shall be delivered them in a cause; and they are sworn judges upon evidence in matter of fact.—*Tomlin.* Women are empanelled as a jury in two cases only—(1), upon a writ *de ventre inspiciendo;* (2), where a female prisoner is condemned to be executed, and pleads pregnancy as a ground to postpone the completion of the sentence until after her confinement. Upon this, a jury of matrons, or discreet women, is formed to enquire into the truth of the plea; should they bring in their verdict that the prisoner is *enceinte*, the execution will be stayed until after the birth of the child, and sometimes the crown will commute the punishment to perpetual exile.—*Wharton.*

JUS, law, right, equity, authority, and rule. A Roman magistratus generally did not investigate the facts in dispute in such matters as were brought before him; he appointed a judex for that purpose, and gave him instructions. Accordingly the whole of civil procedure was expressed by the two phrases *Jus* and *Judicium*; of which the former comprehended all that took place before the magistratus *(in jure,)* and the latter all that took place before the judex *(in judicio.)* Originally, even the magistratus was called judex; as, for instance, the consul and prætor (*Liv.* iii. 55); and under the empire, the term judex often designated the præses.—*Smith's Dict. of Antiq.*—*Ibid.*

JUS AD REM, an inchoate and imperfect right; such as a parson promoted to a living acquires by nomination and institution.—*Ibid.*

JUS DISPONENDI, the right to call upon a trustee to execute conveyances of the legal estate as the *cestui que* trust directs.—*Lewin on Trusts*, 595.—*Ibid.*

JUS IN PERSONAM, a right which gives its possessor a power to oblige another person to give or procure, to do or not to do something.—*Ibid.*

JUS IN RE, a complete and full right; a real right, or a right to have a thing to the exclusion of all other men.—*Wharton.*

JUS MARETI, a right a husband acquires to his wife's moveable estate by virtue of the marriage.—*Ibid.*

JUS RELICTÆ, the right of a widow in her deceased husband's

personalty; if there be children, she is entitled to a third of it; if there be none, to a half.—*Wharton.*

JUSTICE, the virtue by which we give to every man what is his due, opposed to injury or wrong. It is either *distributive*, belonging to magistrates, or *commutative*, respecting common transactions among men.—*Ibid.*

JUSTICES, officers deputed by the Queen, who is the supreme executive power to administer justice, and to *do right by way of judgment*, as the books emphatically say. Of these *Justices* there are various sorts.—*Tomlin.*

JUSTICES OF THE PEACE. Judges appointed by the Queen's commission to be Justices in certain limits, generally within the counties wherein they are resident. There are many persons who are Justices by virtue of their offices, as the mayors and aldermen of cities or towns and liberties, and the chancellor or keeper, The Judges of the Queen's Bench are Justices by *prescription*. There are also Justices of the Peace paid or appointed by Government. See POLICE.—*Ibid.*

JUSTIFIABLE HOMICIDE, the killing of a human creature without incurring any legal guilt. It is of various kinds—(1), such as is occasioned by the due execution of public justice, in putting a malefactor to death who has forfeited his life by the laws of his country; (2), it may be committed for the advancement of public justice, as in the following instances:—(*a*), where an officer or his assistant, in the due execution of his office, either in a criminal or civil case, arrests or attempts to arrest a party who resists, and is consequently killed in the struggle; (*b*), in case of a riot or rebellious assembly, the officers endeavouring to disperse the mob are justifiable in killing them, both at common law and by the Riot Act, 1 *Geo. I.*, c. 5.; (*c*), where the prisoners in a gaol assault the gaoler or officer, and he in his defence kills any of them, it is justifiable, for the sake of preventing an escape; (*d*), where an officer or his assistant, in the due execution of his office, arrests or attempts to arrest a party for felony, or a dangerous wound given, and the party having notice thereof, flies, and is killed by such officer or assistant in pursuit; (*e*), where, upon such offence as last described, a private person, in whose sight it has been committed, arrests or endeavours to arrest the offender, and kills him in resistance or flight, under the same circumstances as above mentioned, with

regard to an officer; (3), when committed for the prevention of any forcible or atrocious crime, but not of any crime unaccompanied by force; (4), where two persons being shipwrecked, and getting on the same plank, but finding it not able to save them both, one of them thrusts the other from it, whereby he is drowned, which is in pursuance of the great universal principal of self-preservation.—4 *Step. Com.* 120.—*Wharton.* See also PRIVATE DEFENCE.

JUSTIFICATION, or excuse are pleas to show some justification or excuse of the matter charged in the declaration, the effect of which is to show that the plaintiff never had any right of action because the act charged was lawful.—*Brown.*

KAZY, a Mahomedan judge; an officer formerly appointed by the Government to administer both civil and criminal law, chiefly in towns, according to the principles of the Koran. Under the British authorities the judicial functions of the Kazis in that capacity ceased. Some years ago they were employed as the legal advisers of the courts in cases of Mahomedan law, but the post has been abolished. They continue to have, however, the general superintendence and legalization of the ceremonies of marriage, funerals, and other domestic occurrences among the Mahomedans.

KIDNAPPING, is of two kinds; (1), kidnapping from British India, and (2), kidnapping from lawful guardianship. Whoever conveys any person beyond the limits of British India without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from British India. Whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship. The words "lawful guardian" include any person lawfully entrusted with the care or custody of such minor or other person. This does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.—*Ind. P. C.*, secs. 359-369. See ABDUCTION.

KINDRED, persons of kin, or related to each other by descent through the father or mother. There are two degrees of either kindred; the one in the right or direct line ascending or descending, and the other in the collateral line.—*Tomlin.* The reckoning of degrees of kindred or relationship is as follows:—

I. LINEAL.

(*a.*) Consanguinity.

(1.) Ascending. Father, mother, grandfather, grandmother, great-grandfather, great-grandmother; and so on, *ad infinitum.*

(2.) Descending. Father, mother, son, daughter, grandson, granddaughter; and so on, *ad infinitum.*

(*b.*) Affinity.

(1.) Ascending. Father-in-law, mother-in-law, step-father, step-mother.

(2). Descending. Father-in-law, mother-in-law, son-in-law, daughter-in-law.

II. COLLATERAL.

(*a.*) Consanguinity. Brother, sister, brother's children, sister's children, uncle, aunt.

(*b.*) Affinity. Brother's wife, sisters husband, uncle's wife, aunt's husband.

—*Wharton.*

KING'S BENCH, COURT OF, is so called, because the King used formerly to sit there in person. During the reign of a Queen, it is called the Queen's bench. This court consists of a Chief Justice and four Puisne Judges, though in practice seldom more than four sit on the bench, and they are by their office the sovereign conservators of the peace, and supreme coroners of the land. The jurisdiction of this court is very high, and claims precedence of the court of chancery. It keeps all inferior jurisdictions within the bounds of their authority, and may

either remove their proceedings to be determined here, or prohibit their progress below. It superintends all civil corporations in the kingdom. It commands magistrates and others to do what their duty requires, in every case where no particular remedy is appointed. It protects the liberty of the subject by liberating persons unjustly imprisoned or restrained of their liberty, by *habeas corpus* or bail. It takes cognizance both of criminal and civil causes (the common pleas and exchequer are confined to civil actions); the former in what is called the crown side or crown office, the latter in the plea side of the court —*Tomlin.*

LACHES, slackness, negligence. It is laid down generally as a maxim, that no laches or negligence shall be imputed to an infant; but this is chiefly true of the exemption that he enjoys from the ordinary bar by lapse of time. It cannot safely be understood in a much larger sense.—*Co. Litt.* 380 *b.*—*Wharton.*

LADA, purgation, exculpation. There were three kinds—(1), that wherein the accused cleared himself by his own oath, supported by the oaths of his consacramentals (compurgators) according to the number of which the *lad* was said to be either simple or three-fold; (2), ordeal; (3), corsned. Also, a service which consisted in supplying the lord with beasts of burthen. —*Ibid.*

LAND, in its restrained sense, means soil, but in its legal acceptation it is a generic term, comprehending every species of ground or earth, as meadows, pastures, woods, moors, *waters*, marshes, furze, and heath; it includes also messuages (*i.e.*, dwelling-houses, with some adjacent land assigned to the use of them, usually called a curtilage), tofts (*i.e.*, places where houses formerly stood), crofts (derived from the old English word *creaft*, meaning *handy-craft*, because such grounds are usually manured by the skilful hand of the owner; they are small enclosures for pasture, &c., adjoining to dwelling-houses), mills, castles, and other buildings, for, with the conveyance of the *land*, the *structures* upon it pass also. And besides an indefinite extent *upwards*, it extends *downwards* to the globe's centre, hence the maxim, "*Cujus est solum ejus est usque ad cœlum et ad inferos*," or more curtly expressed, "*Cujus est solum, ejus est altum.*" But although the term "land" includes everything on its surface, as well as under or over it, yet it must be understood with the exception of royal mines, *i.e.*, mines of

gold and silver, which belong by prerogative to the Queen, who has the privilege of entering upon the lands of a subject, and digging and carrying away such ores; in this country, however, no mines of gold or silver have yet been discovered, so that this branch of the revenue has been hitherto valueless. A slight intermixture of gold and silver will not constitute a royal mine. Water, by a solecism, is, in legal language, held to be a species of land; and yet it is to be observed, that a grant of *a certain water* will not convey the soil, but only a right of fishing; but it is doubtful whether, by the grant of a *several piscary*, the soil passes or not; or, in other words, whether a person can have a *several fishery* without being owner of the soil.—*Wharton.*

LARCENY, the legal term for stealing or theft. The law defines a stealing or larceny to be the taking and carrying away with a felonious intent, (*i.e.*, with the intention of unlawful appropriation) the goods of another. It is distinguished as simple and compound; *simple*, when the stealing is unaccompanied with aggravating circumstances; *compound*, when the theft is committed upon the person, or consists in stealing from a dwelling-house. Stealing under particular circumstances is a crime of another denomination; for instance, taking from the person in a violent manner is *robbery*, and stealing in a dwelling-house after having broken therein, a *burglary*.—*Tomlin.* See THEFT.

LATENT AMBIGUITY, see AMBIGUITY.

LEADING CASE, amongst the various cases that are argued and determined in the courts, some, from their important character, have demanded more than usual attention from the judges and from this circumstance are frequently looked upon as having settled or determined the law upon all points involved in such cases and from the importance they thus acquire are familiarly termed "leading cases."—*Brown.*

LEADING QUESTION, is one which either suggested or tends to suggest a particular answer, or which embodies a material fact so as to admit of the simple answer "Yes" or "No."—*Kindersley.*

LEAGUE, a treaty of alliance between different states or parties. It may be offensive or defensive, or both. It is *offensive* when the contracting parties agree to unite in attacking a common

enemy; *defensive*, when the parties agree to act in concert in defending each other against an enemy.—*Wharton.*

LEASE, a letting of lands, tenements, or hereditaments, to another for a term of life or years, for a rent reserved. Any letting, however short, is termed in law a lease—as lessee at will, or tenant at will.—*Tomlin.*

LEASE AND RELEASE, a conveyance of the inheritance in land, the lease giving *first* the possession, and the release, the right and interest. This mode or form of conveyance, which is almost universally adopted, was originally framed to avoid the necessity of a bargain and sale enrolled, which is quite as applicable to the purpose, and has the advantages of being registered at full length, thereby preventing the consequences of loss or accident to the writing.—*Ibid.*

LEASEHOLD, a dependent tenure derived either from a freehold or a copyhold estate.—*Wharton.*

LEGACY, is a bequest of a sum of money, or any *personal* effects of a testator, and these are to be paid by his executors or those who administer the will, after all the debts of the deceased are discharged as far as the assets will extend.—*Tomlin.* There are four kinds of legacies:—(1.) *General*, where it does not amount to a bequest of any particular thing or money, distinguished from all others of the same kind; as if a testator give A a diamond ring, not referring to any particular diamond ring, as distinguished from others. (2.) *Specific*, where a testator bequeaths to any person a specified part of his property, which is distinguished from all other parts of his property. (3.) *Demonstrative*, where a testator bequeaths a certain sum of money, or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be made. The distinction between a specific legacy and a demonstrative legacy consists in this, that where specified property is given to the legatee, the legacy is specific; where the legacy is directed to be paid out of specified property, it is demonstrative. (4.) *Accumulative*, or *substitutional*; thus, where a testator by *different* testamentary documents has given legacies of equal, greater, or lesser sums to the same person, the court considering that he who has given more than once must, *primâ facie*, be intended to mean more than one gift, awards to the legatee all the legacies, except under certain circumstances.—*Wharton.*

LEGITIMACY, lawful birth.

LESSEE, is the tenant under a lease; **LESSOR** is the person who grants the lease.

LESION, the injury suffered in consequence of inequality of situation by one who does not receive a full equivalent for what he gives in a commutative contract.—*Civ. Law.*—*Wharton.*

LETTER OF ATTORNEY, a writing authorizing another person, who in such case is called the "attorney" of the party, appointing him to do any lawful act in the stead of another; as to receive debts or dividends; sue a third person; transfer stock, or give possession upon a deed of feoffment. It is either general or special, *i.e.*, *general*, in respect of the conduct of all a person's affairs, as where he leaves the country: *special*, in respect of any one or more named matters, as to receive money. This instrument gives the "attorney" authority to act in his name, exactly as the party giving it would himself do, *until revocation*. Letters of attorney which authorize the receipt of money payable, and are intended to operate as assignments thereof, are irrevocable, and will enable the "attorney" or assignee to receive the money for his own use.—*Tomlin.*

LETTER OF CREDIT, is where a merchant or correspondent writes to another, requesting him to credit another with a sum of money on the account of the writer.—*Ibid.*

LETTER OF LICENSE, a writing signed by creditors allowing a debtor longer time for the payment of his debts, and protecting him from the suits of those who sign it. It must be duly stamped.—*Wharton.*

LETTERS OF MARQUE and REPRISAL, are commissions granted by the commissioners of the admiralty in war-time, empowering owners of ships called privateers to make *reprisals* upon the enemy, *i.e.*, take their ships; the *prizes* captured being divided between the owners, captain, and crew of the privateer. Security is given by the owners to the admiralty to make compensation for any violation of treaties between those foreign powers with whom the nation is at peace, and against smuggling. Prize acts are passed on the breaking out of a war, or the King may authorize the admiralty, by proclamation, to grant and regulate these *letters* or commissions.—*Wharton.*

LETTERS OF SAFE-CONDUCT. No subject of a nation at war with us can, by the law of nations, come into the realm, nor can travel himself upon the high seas, or send his goods and mer-

chandize from one place to another, without danger of being seized by our subjects, unless he has letters of safe-conduct, which, by divers old statutes, must be granted under the Great Seal, and enrolled in Chancery, or else are of no effect, the sovereign being supposed the best judge of such emergencies as may deserve exemption from the general law of arms. But passports under the sovereign's sign-manual or licenses from our ambassadors abroad are now more usually obtained, and are allowed to be of equal validity.—1 *Chit. Com. Law*, 60.—*Wharton.*

LETTERS PATENT, or **LETTERS OVERT,** writings of the Queen, sealed with the Great Seal of England, whereby a person or public company is able to do or enjoy that which otherwise he or it could not.—*Ibid.*

LEVANT AND COUCHANT, is a law term denoting that cattle have been a day and night upon land.—*Tomlin.*

LEVARI FACIAS, a writ of execution executed by the sheriff, for *levying* money upon the goods and lands of another. It issues from the county court and other inferior courts, but is also used for the levying money due for taxes, upon recognizances, &c., and in the latter case is issued from the exchequer. —*Ibid.*

LIBEL, is the term used for written scandal, slander being used to denote verbal scandal or defamation; there is an important distinction between words written and words spoken; for many words which would render another ridiculous, or lower him in the estimation of the world, are not remediable at law unless they are written; for instance, reflections upon a lady's chastity are actionable if printed or written, otherwise not, unless followed by actual damage.—*Tomlin.* Libels, from a criminal point of view, may be divided into three classes—(1), *Treasonable*, when an act, if done, would be treason, every deliberate word spoken and every writing instigating to it, will also be treason; (2), *Seditious*, those which aim at creating disaffection among the people, by bringing obloquy and contempt upon the public administration; (3), *Personal*, mere words not reduced to writing, will not support an indictment, unless they tend to produce some public injury, as being seditious or grossly immoral.—*Mayne.* See DEFAMATION.

LICENSE, or **LICENCE,** a grant of permission, a power or authority given to another to do some lawful act. It may be either written or verbal; when written, the paper containing the authority is called a licence.—*Wharton.*

LIE is a word used in law to denote the good grounds of an action. If these grounds are strong, it is said the action will *lie*: if they are weak that it will not.

LIEN, is a right in one man to retain that which is in his possession belonging to another, till certain demands of him, the person in possession, are satisfied. There are two kinds of lien:—(1.) *General*; (2.) *Particular*. (1.) A *general lien* is a right to hold not only for demands arising out of the thing retained, but for a general balance of accounts relating to dealings of the like character: this lien is regarded strictly by the law, and therefore can only be established by an express contract, or by that which is evidence of contract, usage of trade, or previous dealings between the same parties, wherein such a right has been allowed. (2.) *Particular liens* are charges made in respect of the labour, expense, skill, &c., bestowed upon a particular or specific thing; as a tailor for mending a coat, a farrier for training a horse, a miller upon the corn ground.—*Tomlin.*

LIGAN, a wreck, consisting of goods sunk in the sea, but tied to a cork or buoy, in order to be found again.—5 *Rep.* 106.—*Wharton.*

LIMITATION, a certain time assigned by the statute law within which a civil action must be brought; for felonies are punishable at any lapse of time, though, in many statutes concerning penal offences, a time is limited for the bringing action thereupon, varying from three months to two years.—*Tomlin.*

LIMITATION OF ESTATE, a modification or settlement of an estate, determining how long it shall continue, or a qualification of a precedent estate.—*Tomlin.*

LIMITED ADMINISTRATION, where the Administrator's appointment is limited to certain purposes.

LIMITED EXECUTOR, where his appointment is qualified by limitations as to the time or place wherein, or the subject-matter whereon, the office is to be exercised; or the creation of the office may be conditional.—1 *Wm. Exs.* 217.—*Wharton.*

LIMITED LIABILITY, seven or more persons, associated for any lawful purpose, may, by subscribing their names to a memorandum of association, and otherwise complying with the requisitions of the 19 & 20 *Vict.*, c. 47, [or as regards India with the provisions of Act X, 1866], in respect of registration, form

themselves into an incorporated company, with or without limited liability.—*Wharton.*

LINEAL CONSANGUINITY is that which subsists between persons of whom one is descended in a direct line from the other.—*Tomlin.* See DESCENT, KINDRED.

LINEAL DESCENT, the descent of estates from ancestor to heir, *i.e.*, from one to another, in a right or direct line.—*Ibid.* See DESCENT.

LIQUIDATED DAMAGES, or ASCERTAINED DAMAGES, is the sum fixed upon by the parties to a contract by the terms of their agreement, as the damages payable in the event of a breach of such contract; but not by way of penalty.

LIQUIDATION, is where a person in embarrassment instead of suffering himself to be made a bankrupt may summons a meeting of his creditors and prevail with them by special resolution to declare that his affairs shall be liquidated by arrangement. —*Brown.*

LIQUIDATOR is the statutory designation of the person charged with the official winding up of a company.

LIVERY OF SEISIN, is the putting a person in corporal possession of a freehold, by giving him the ring, latch, or key of the door; or, if land, by delivering him a turf or twig; or in either case, doing any act before witnesses, which clearly places the party in possession. It formerly accompanied all conveyances of land, but is now confined to that conveyance called a feoffment: it is necessary that no other person should be in possession at the time this formal delivery of possession takes place, except by necessity.—*Tomlin.*

LLOYD'S BONDS, are acknowledgments by a borrowing company under its seal of a debt incurred and actually due by the company to a contractor or other person for work done, goods supplied, or otherwise as the case may be, with a covenant for payment of the principal and interest at a future time.—*Brown.*

LOAN, anything lent or given to another on condition of return or re-payment. A sum of money confided to another, generally on the security of a promissory note or bond, the guarantee of a third party, or the possession or assignment of property. If it be effected by the Government on the pledge of certain taxes to pay the interest, it is a *public loan.* The practice of borrowing money to defray the extraordinary expenses in time of war has given rise to our national debt.—*Wharton.*

LOAN, GRATUITOUS, or COMMODATE, a class of bailment which is called *commodatum* in the Roman law, and is denominated by Sir William Jones a *loan for use* (*prêt á usage*), to distinguish it from *mutuum*, a loan for consumption. It is gratuitous lending of an article to the borrower for his own use.—*Wharton.*

LOCAL ACTION, is that action which must be tried in the county where the subject-matter takes place. An action for recovery of land, viz., ejectment, is local, and must, therefore be tried in the county where the lands lie. Actions of another nature, called *transitory*, may or may not be brought in the county where the subject arises.—*Tomlin.*

LOCUS IN QUO, the place where anything is alleged to be done. —*Ibid.*

LOTTERY, a kind of public game at hazard, in order to raise money for the service of the State. It consisted of several numbers of blanks and prizes which where drawn out of wheels, one of which contained the numbers, and the other the corresponding blanks or prizes. The 6 *Geo. IV.*, c. 60, utterly abolished it.—*Wharton.* And in India, Act XX, 1847.

LUNACY, is the common legal designation of insanity or the state of being *non compos mentis*. The law takes notice of three degrees of Lunacy; (1), Lunacy which exempteth in crime; (2), Lunacy which excuseth in contract; and (3), Lunacy which placeth the party and his property under the protection of the crown.—*Brown.*

LUNATIC, or NON COMPOS MENTIS, is the term applied to a person who has had a sound mind or understanding, but which is subsequently impaired or lost: a lunatic, indeed, is generally said to be a person mad, but alternately enjoying lucid intervals; while *non compos mentis*, or *of unsound mind*, is applied to those who lose their intellects by disease, imbecility, great age, or are deaf and dumb; in short, not capable of managing their own affairs.—*Tomlin.*

LURKING HOUSE TRESPASS. See TRESPASS.

MAGISTRATE, is in effect the same as Justice, Justices and Magistrates being correlative terms.—*Tomlin.*

MAGNA CHARTA, the greater charter of liberties granted in the 9th year of King Henry III. King John had previously granted a similar one, but he broke it. The laws contained therein are the earliest written declaration of the liberty of the subject, as opposed to the then overweening power of the crown.—*Tomlin.*

MAIMING. See HURT.

MAINOUR, MANOUR, or MEINOUR, a thing taken away which is found in the hand (*in manu*) of the thief who took it.—*Wharton.*

MAINOVRE, or MAINŒUVRE, a trespass committed by hand.—*Ibid.*

MAINPRISE, a term used for bail in criminal cases; the delivery of a person into friendly custody, upon security that he shall be forthcoming at the time and place assigned: it differs from *bail,* in that a person bailed is not supposed to be at large, but in the ward or actual keeping of his sureties.—*Cab. Law.*

MAINTENANCE and CHAMPERTY, an agreement which gives a stranger the benefit of a suit on condition of his conducting it and prosecuting it. This is an indictable offence, and punishable by fine and imprisonment.—*Ibid.*

MAJORITY. See MINOR.

MALA IN SE, wrongs of themselves; such as murder, robbery, perjury, &c.

MALA PRAXIS, if the health of an individual be injured by the unskilful or negligent conduct of a surgeon, or apothecary, or general practitioner, in assuming to heal a dislocated or fractured limb, or internal disorder, an action for compensation may be sustained, (8 *East.,* 348); or the wrong-doer might be proceeded against by censure in the college, or for gross negligence or misconduct he might be indicted.—*Com. Dig.* "*Physician.*"—*Wharton.*

MALA PROHIBITA, wrongs which are prohibited by human laws, but are not positively wrongs in themselves, as treason, forgery, playing at unlawful games, &c.—*Wharton.*

MALFEASANCE, the commission of some unlawful act as distinguished from omitting to comply with a legal obligation, which is *nonfeasance*; and from the wrongful exercise of an ostensibly lawful right, which is *misfeasance.*—*Ibid.*

MALICE, in a legal sense, means a wrongful act done intentionally without just cause or excuse.... It is not confined to personal spite against individuals, but consists in a conspicuous violation of the law, to the prejudice of another.—*Mayne.*

MALICIOUS INJURIES. doing mischievous damage to private property, not with an intent to gain by another's loss, but out of a spirit of wanton cruelty or of deep revenge.—*Wharton.*

MALICIOUS PROSECUTION is bringing a criminal prosecution

to bear upon a person against whom there is no ground for criminal proceedings.

MALVERSATION, misbehaviour in an office, employment, or commission, as breach of trust, extortion, &c.—*Wharton.*

MANDAMUS, (*we command*), is a high writ issuing in the Queen's name out of the court of Queen's Bench, and directed to any person, corporation (public or incorporated by Act of Parliament), or inferior court of judicature, *commanding* them to do some particular thing therein specified, as appertaining to their *public* office and duty. This writ generally issues upon *public* considerations, although upon *private* complaint.—*Tomlin.*

MANDATE, a judicial command, charge, commission. Also, a bailment of goods, without reward, to be carried from place to place, or to have some act performed about them. The person employing is called in the civil law *mandant* or, *mandator* and the person employed *mandataruis* or *mandatory.*—*Wharton.*

MANIFEST, a statement of the name and tonnage of a ship, the name of the master, the amount and description of the cargo, and, in short, every particular connected with the voyage and the parties interested therein.—*Cab. Law.*

MANNER AND FORM, (*Modo et fonna*). Formal words introduced at the conclusion of a traverse; and their object is to put the party whose pleading is traversed, not only to the proof that the matter of fact denied is in its general effect true as alleged, but also that the manner and form in which the fact or facts are set forth are also capable of proof.—*Brown.*

MANNIRE, to cite any person to appear in court and stand in judgment there; it is different from *bannire;* for both of them are citations; this is by the adverse party, and that is by the judge.—*Du Cange.*—*Wharton.*

MANOR, the jurisdiction and rights upon a certain district or site of land, with the perquisites belonging to it. The origin of manors was the granting by the king to some great person of a tract of ground, for rendering certain military services; he in his turn granted and parcelled out the same to inferior tenants, who rendered to him similar and sometimes pecuniary services, the better to enable him to perform his tenure in chief, and they re-granted *ad infinitum.*—*Tomlin.*

MANSLAUGHTER, has been defined to be the unlawful and felonious killing of another without any malice, express or implied. The two most usual cases in which the killing is only

viewed as manslaughter, are those in which the death has been caused by negligence, or under the influence of violent provocation.—*Mayne.* See PRIVATE DEFENCE.

MANUMISSION, the act of giving freedom to slaves.—*Wharton.*

MARKET OVERT, selling goods in an open market as opposed to selling them privately or in a covert place: the former kind of sale effects a change in the property of the things so sold, even as against the true owner, *e. g.*, in the case of stolen goods; but a sale out of market does not.—*Brown.*

MARRIAGE, a civil contract, to which may be superadded a religious ceremony, whereby a man is united to a woman, for the purposes of civilized society.—*Tomlin.*

MARRIAGE SETTLEMENT, a conventional arrangement usually made before marriage, and in consideration of it (which is the highest consideration known to the law), whereby a jointure is secured to the wife, and portions to children, in the event of the husband's death. If it be made after marriage, it will, as a general rule, be fraudulent and void against all persons who are creditors of the husband at the time of the settlement, unless such settlement contain a provision for debts, or is made in pursuance of articles made before marriage, or unless it be against a single debt, or the debt be secured by mortgage, in which case it would not affect the settlement, for to do that it seems the party must be insolvent at the time.—*Wharton.*

MARSHALLING, the act of arranging or of putting into proper order. The doctrine of marshalling assets and securities depends upon the principle that a person having two funds out of which to satisfy his demands, shall not, by his election, disappoint a party who has only one such fund. If, therefore, a person, having a claim upon two funds, resort to the only fund upon which another has a claim, that other person shall stand in his place for so much against the fund, to which otherwise he could not have access: the object being that every claimant shall be satisfied, as far as by any arrangement consistent with the nature of the several claims the property which they seek to affect can be applied in satisfaction of such claims, which is in accordance with the great ethical maxim, "*Sic utere tuo ut alienum non lædas*;" "So exercise your own right has not unnecessarily to defeat that of your neighbour."—*Ibid.*

MARTIAL LAW, consists of no definite code, but of the will and

pleasure of the king or his lieutenant; for in the time of war, on account of the great necessity there is for guarding against dangers that often arise and which require immediate attention, the king's power is absolute and his word is law. Nevertheless, martial law in that sense does not exist in time of peace; and the law of courts martial, sometimes called Military and naval law, is to be distinguished from it as that law which governs soldiers and sailors as such in times of peace, and for the due administration of which there are special courts military or courts naval provided.—*Brown.*

MASTER AND APPRENTICE, a business relationship which should be constituted by deed, containing all proper and explicit stipulations. If the apprentice be under age, an adult person should covenant for his good conduct, because a minor cannot be sued for misconduct.—*Wharton.*

MASTER IN CHANCERY. In the chancery there are masters who are assistants to the lord-chancellor, or lord keeper, and master of the rolls. Of these there are some *ordinary*, and some *extraordinary:* the masters in *ordinary* are twelve in number, of whom the master of the rolls is chief; they have referred to them orders for taking accounts, &c.; they also administer oaths, take affidavits, and acknowledgments of deeds and recognizances; they also examine, on reference, the propriety of bills in chancery. The *extraordinary* masters are appointed to act in the country, in the several counties of England, beyond ten miles distant from London, by taking affidavits, recognizances, acknowledgments of deeds, &c.—*Tomlin.*

MASTER OF A SHIP, in law, is defined to be any "person having the charge or command of any ship." No person is qualified to be master of a "*British*" ship, except he be a natural born subject of her majesty or naturalized by Act of Parliament, or made a denizen, or except he has become a *British* subject by virtue of conquest, or cession of some newly acquired country, and who shall have taken the oath of allegiance, or the oath of fidelity required by the treaty of capitulation, or except he shall have served in the navy in time of war for the space of three years.—*Ibid.*

MATRIMONIAL CAUSES, injuries respecting the rights of marriage. They are a branch of the ecclesiastical jurisdiction. They are either:—(1.) *Causæ jactitationis matrimonii,* as when one of the parties boasts or gives out that he or she is married

to the other, whereby a common reputation of their marriage may ensue. The party injured may petition the divorce court, which will enjoin a perpetual silence on that head. (2.) Restitution of conjugal rights. A suit for this is brought when a husband or wife is guilty of the injury of living apart from the other without any sufficient reason. The court will compel them to come together again. (3.) Judicial separation and dissolution, which have superseded the divorces *á mensâ et thoro*, and *á vinculo matrimonii*.—*Wharton.*

MATRIMONIUM the inheritance descending to a man *ex parte matris*, (*from his mother*).—*Ibid.*

MATRONS, JURY OF, is a jury formed of women, which is impanelled to try the question whether a woman be with child or not.—*Brown.*

MATURITY, is generally the date at which a Bill of Exchange or Promissory note falls due. Every Bill of Exchange or Pro. note not expressed to be payable on demand, at sight or on presentation, is at maturity on the third day after the day on which it is expressed to be payable. If that day be a "public holiday" the instrument attains maturity on the next preceding business day.

MAYOR, the chief governor or magistrate of a city or town corporate; as the lord mayor of London, the lord mayor of Dublin, the lord mayor of York, the mayor of Southampton, &c. King Richard I., anno. 1189, changed the bailiffs of London into a mayor. Mayors of corporations are Justices of Peace.—*Tomlin.*

MEDIO ACQUIETANDO, a judicial writ to distrain a lord for the acquitting of a mesne lord from a rent, which he had acknowledged in court not to belong to him.—*Reg. Jur.* 129.—*Wharton.*

MELDFEOH, the recompense due and given to him who made discovery of any breach of penal laws committed by another person, called the promoter's (*i.e.*, informer's) fee.—*Leg. Mœ.* c. 20.—*Ibid.*

MELIUS INQUIRENDUM, a writ that lay for a second enquiry, where partial dealing was suspected; and particularly of what lands or tenements a man died seised, on finding an office for the king.—*F. N. B.* 255.—*Ibid.*

MEMORANDUM of ASSOCIATION, is a document required to be signed by a certain number of persons, the registration of which suffices to incorporate a company.

MEMORIAL, that which contains the particulars of a deed, &c., and is the instrument registered, as in the case of an annuity, which must be registered.—*Wharton.*

MENSA ET THORO. See A MENSA ET THORO.

MENTAL ALIENATION, INSANITY. The subject was thus classified by Esquirol, at least, in its main features:—(1), *Mania*, an hallucination which extends to all kinds of objects, accompanied with excitement; (2), *Monomania*, confined to a single or a small number of objects; (3), *Dementia*, an incapacity of reasoning in consequence of functional disorder of the brain, not congenital. Dementia appears under two different degrees of severity, which are designated as *acute* and *chronic;* (4), *Idiotism*, congenital, from original malconformation in the organ of thought; (5), *Moral Insanity, i.e.*, a morbid perversion of the natural feelings, affections, inclinations, temper, habits, and moral dispositions, without any notable lesion of the intellect, or knowing and reasoning faculties, and particularly without any maniacal hallucination; (6), *Demonomania*, a variety of melancholy arising from mistaken ideas on religious subjects; (7), *Nymphomania*, or *furor uterinus*, a raving mania of females, connected with a disorder of the generative organs.—*Wharton.*

MERGER, an annihilation by act of law, of a particular in an expectant estate consequent upon their union in the same person,—thus accelerating into possession the expectant which swallows up the particular estate. It is the drowning of one estate in another, and differs from suspension, which is but a partial extinguishment for a time; while extinguishment, properly so termed, is the destruction of a collateral thing in the subject itself out of which it is derived.—*Ibid.*

MERITS, affidavit of, this instrument is necessary when a defendant seeks to set aside proceedings for irregularity, especially if the irregularity be doubtful.—*Ibid.*

MERITORIOUS CAUSE of ACTION; a person is sometimes said to be the meritorious cause of action when the cause of action, or the consideration on which the cause of action was founded, originated with or was occasioned by such person. Thus, in an action by husband and wife for the breach of an express promise to a wife in consideration of her personal labor and skill in curing a wound, she would be termed the meritorious cause of action.—*Brown.*

MESNE, middle, intermediate, intervening. The word is ordin-

arily used in combination with, process, profits, incumbrances, &c. MESNE PROCESS, such process as issues pending the suit upon some collateral interlocutory matter, as to summon juries, witnesses, and the like; distinguished from the original process, which is the writ. Mesne process is also sometimes put in contradistinction to *final process*, or process of execution; and then it signifies all such process as intervenes between the beginning and end of a suit.—*Tomlin.* MESNE PROFITS are intermediate profits; that is, profits which have been accruing between two given periods. MESNE INCUMBRANCES, intermediate charges, burdens, liabilities or incumbrances; *i.e.*, incumbrances which have been created or have attached to property between two periods.—*Brown.*

MESSUAGE, a dwelling-house; but a shop and almost any other building may pass in a conveyance under that name.—*Tomlin.*

MILITARY STORES are defined to comprehend, under *Madras Reg.* I, 1812, saltpetre, gunpowder, cannon, muskets, carbines, bayonets, bullets, matchlocks, pistols, swords, rifles, spears, and Nyr's knives.

MINIMENT or **MUNIMENT**, the evidences or writings, whereby a man is enabled to defend the title of his estate. It includes all manner of evidences.—*Cowel.*—*Wharton.*

MINOR, a person under age, who is not yet arrived at the power of ministering his own affairs, or the possession of his estate.—*Ibid.* In India the term of minority continues till the completion of the twenty-first year of age in all cases of those whose person or property is under the guardianship of a person appointed by a court of Justice or of the court of wards. All others, domiciled in British India attain their majority on the completion of their eighteenth year of age.—*Act IX of* 1875. See INFANT.

MISADVENTURE, nothing is an offence which is done by accident or misadventure, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means, and with proper care and caution, as where a man is at work with a hatchet and the head of it flies off and kills a bystander. Nor indeed is it an offence if an act is done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.—*Ind. P. C.*, sec. 80.

MISCARRIAGE. See ABORTION.

MISCHIEF, is the committing an injury to public or private property, not for the purposes of theft, but from sheer wantonness or malice. This offence is thus defined in the criminal law of India:—"Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public, or to any person, causes, the destruction of any property, or any such change in any property, or in the situation thereof as destroys or diminishes its value or utility, or effects it injuriously, commits "mischief." It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not. Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly. Under this head the following offences are also comprehended: the doing of any act which causes or is likely (1), to cause a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness, or for carrying on any manufacture; (2), to render any public road, bridge, navigable river or channel, impassible or less safe for travelling or conveying property; (3), to cause an inundation or any destruction to any public drainage, attended with injury or damage; (4), to cause the destruction or removal of any light-house or other light used as a sea-mark, or any sea-mark or buoy or other thing placed as a guide for navigators; or to render such light-house, &c., less useful as a guide; (5), to destroy or remove, or rendering less useful, any land-mark set up by authority of a public servant; (6), to destroy or damage property, by fire or any explosive substance; (7), to destroy or render unsafe any decked vessel; (8), the running any vessel aground or ashore, intending to commit theft of any property contained therein, or to dishonestly appropriate any such property, or with intent that such theft or misappropriation of property may be committed.—*Ind. P. C.*, secs. 425—441.

MISDEMEANOR, a crime less than felony. The term misdemeanor is generally used in contradistinction to felony, and comprehends all *indictable offences*, which do not amount to felony, as *perjury, libels, conspiracies, assaults, &c.* The refusal

to do a thing enjoined by law is a misdemeanor, although no penalty for disobedience be named.—*Tomlin.*

MISDIRECTION is when a judge in ignorance or forgetfulness of the law upon some certain points, conveys to the jury a wrong impression, whereby their verdict may be influenced.

MISERECORDIA, an arbitrary amerciament or punishment imposed on any person for an offence. It is thus called, according to Fitzherbert, because it ought to be but small and less than that required of Magna Charta.—*Anc. Inst. Eng.* Also a discharge of all manner of amerciaments, which a person might incur in the forest.—*Wharton.* See CAPIAS PRO FINE.

MISFEAZANCE, a misdeed or trespass; also the improper performance of some lawful act.—*Wharton.*

MISJOINDER, joining parties in a suit or action, who ought not to have been so joined. In equity, if the misjoinder be of parties as plaintiffs, all the defendants may demur. If the misjoinder be of parties as defendants, those only can demur who are improperly joined. The improperly joining two different causes of suit in one bill is technically called multifariousness. —*Ibid.*

MISNOMER, the using one name for another; a mis-naming. A defendant may avoid an outlawry, by pleading a misnomer of name of baptism, or surname; but in pleadings or indictments, in civil or criminal cases, misnomers do not abate the proceedings.—*Tomlin.*

MISPRISION, a neglect, oversight, or contempt: as, for example, misprision of treason is a negligence in not revealing treason to the king, his council, or a magistrate, where a person knows it to be committed: so of felony.—*Tomlin.* Misprisions are divided, in the text-books, into two kinds:—(1.) *Negative*, consisting in the concealment of something which ought to be revealed, such is *misprision of treason*, as in the example just quoted; misprision of felony, theftbote, and concealing treasure trover; (2.) *Positive*, otherwise denominated contempt or high misdemeanors, such as the mal-administration of such high officers as are in public trust and employment, usually punishable by parliamentary impeachment; also, embezzlement of the public money, punishable by fine and imprisonment; also, such contempts of the executive magistrate as demonstrate themselves by some arrogant and undutiful behaviour towards the sovereign and government. And to endeavour to dissuade

a witness from giving evidence, to disclose an examination before the Privy Council, or to advise a prisoner to stand mute (all of which are impediments to justice), are high misprisions and contempts of the courts, and punishable by fine and imprisonment. Misprisions of clerks, &c., relate to their neglect in writing or keeping records, and here misprision signifies a mistaking.—*Wharton.*

MISREPRESENTATION, in a matter of substance essentially material to the subject, whether by acts or by words, by manœuvres or by positive assertions, whereby a person is actually misled and injured, and a fraud perpetrated. And it is wholly immaterial whether the misrepresenter knew the matter to be false or asserted it, either innocently, by mistake, or without knowing if it were true or false; for the affirmance of that which is not known to be true is quite as unjustifiable as the assertion of that which is known to be false, since it is equally a means of deception.—*Ibid.* Misrepresentations in matters of contract consist in the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true, in any breach of duty which without an intent to deceive gains an advantage to the person committing it by misleading another to his prejudice, or in causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.—*Ind. Con, Act*, sec. 18. See CHEATING.

MISTAKE, misconception, error. The word "mistake," as employed in chancery, is to be understood as an unintentional act or omission, arising from ignorance or imposture. Mistakes are either—(1), in a point of law, or (2), of a matter of fact.—*Wharton.* Nothing is an offence which is done by one who is, or who by reason of a mistake of fact and not of law, in good faith believes himself to be bound by law to do it.—*Ind. P. C.*, sec. 76.

MITTIMUS, a writ by which records are transferred from one court to another. This word is also used for the precept directed to a gaoler, under the hand and seal of a Justice of the Peace, for the receiving and safe keeping a felon, or other offender, by him committed to gaol.—*Tomlin.*

MIXED ACTIONS, suits at common law partaking of the nature of real and personal actions, by which some real property is demanded, and also personal damages for a wrong sustained.

They substantially partake, however, of the character of real actions, and are often so called, but they are now abolished, except the action of ejectment.—3 & 4 *Wm. IV*, c. 27. Correctly, however, ejectment is in its form a species of the personal action of trespass.—*Step. Plead. App.* 7.—*Wharton.*

MIXED CONTRACT, one in which one of the parties confers a benefit on the other, and requires of the latter something of less value than what he has given; as a legacy charged with something of less value than the legacy itself.—*Civ. Law.*—*Ibid.*

MIXED LARCENY, otherwise called compound or complicated larceny, that which is combined with circumstances of aggravation or violence to the person, or taking from a house.—*Ibid.*

MIXED PROPERTY, a compound of realty and personalty.—*Ibid.*

MIXED QUESTIONS OF LAW OR FACT, cases where a jury are to find the particular facts, and where the court can decide upon the legal quality of those facts by the aid of established rules of law, independently of any general inference or conclusion to be drawn by a jury. All technical expressions, such as asportation, conversion, acceptance, &c., are, in their application, partly matters of law, partly matters of fact. Yet the terming any question a mixed question of law and fact is chargeable with some degree of indistinctness. Questions of law and fact are not in strictness ever mixed. It is always for the jury to decide the one, and the court the other, however complicated the case may be. In some cases the main difficulty may consist in ascertaining the facts, where the application of the law to the ascertained facts admits of no doubt; in another, the facts may be clear and simple, and their legal effect doubtful; but still in each case the provinces of the court and jury are perfectly plain and distinct. It is true that, in some instances, the court could not, without the aid of a conclusion of fact drawn by a jury, apply the law; but this consideration does not properly occasion any intermixture of a confusion of the respective functions of the court and jury; for the latter, in drawing their conclusion, still confine themselves to mere matters of fact.—6 *East.* 3; 1 *T. R.* 167.—*Wharton.*

MIXED SUBJECTS OF PROPERTY, such as fall within the definition of things real, but which are attended nevertheless with some of the legal qualities of things personal, as emblements, fixtures, and shares in public undertakings, connected with land. Besides these, there are others which, though things personal in point of

definition, are, in respect of some of their legal qualities, of the nature of things real; such are animals *ferœ naturæ*, charters and deeds, court rolls and other evidences of the land, together with the chests in which they are contained, ancient family pictures, ornaments, tombstones, coats of armour, with pennons and other ensigns, and especially heirlooms.—*Wharton.*

MODAL LEGACY, a bequest with a direction as to the mode in which it is to be applied to the legatee's benefit.—*Ibid.*

MODO ET FORMÂ, (*in manner and form*), a phrase used in pleading. It is the nature of a traverse to deny the matter of fact in the adverse pleading, in the *manner and form* in which it is alleged, and, therefore, to put the opposite party to prove it to be true in *manner and form* as well as in general effect. A traverse, when in the negative, generally denies the last pleading, *modo et formâ*, (in manner and form as alleged). The plea of *non est factum*, and the replication *de injuriâ*, are almost the only negative traverses that are not pleaded *modo et formâ*. —*Ibid.*

MODUS DECIMANDI, is when either land, a sum of money, or yearly pension, is given to the parson, &c., by composition or custom, as satisfaction for his tithes in kind.—*Tomlin.*

MOLLITER MANUS IMPOSUIT, several justifications in trespass, *i.e.*, actions of assault are called by this name, from the words *gently laid his hands upon him*, used in the plea: as where the defendant justifies an assault, by showing that the plaintiff was unlawfully in the house of defendant, making a disturbance, and being requested to cease such disturbance and depart, he refused, and continued therein, making such disturbance, he, the defendant, *gently laid his hands on the plaintiff*, and removed him out of the house.—*Ibid.*

MONSTRANS DE DROIT, (*manifestation* or *plea of rights*), one of the common law methods of obtaining possession or restitution from the crown, of either real or personal property. It is preferred or prosecuted either on the common law or ordinary side of the court of chancery, or in the exchequer.—*Wharton.*

MONTH, in law, is a lunar month, or 28 days, unless otherwise expressed. Hence a lease for 12 months is for 48 weeks only; but if it be for "a twelve month," it is good for the whole year. In a contract, if the parties obviously intended that a month should be a calendar month, the law will give effect to that intention.—*Brown.*

MORATUR IN LEGE, (*he demurs*), because the party does not proceed in pleading, but rests or abides upon the judgment of the court in a certain point, as to the legal sufficiency of his opponent's pleading. The court deliberate and determine thereupon.—*Wharton.*

MORE OR LESS, (*sive plus, sive minus*), these words, in a contract, which rests *in fieri*, will only excuse a very small deficiency in the quantity of an estate; for if there be a considerable deficiency, the purchaser will be entitled to an abatement.—*Hill* v. *Buckley*, 17 Ves. 394; and see *Cross* v. *Eglin*, 2 B. & Ad. 106; *Powel on Powers*, 397.—*Ibid.*

MORTGAGE, a dead pledge; a thing put into the hands of a creditor. A mortgage is the creation of an interest in property, defeasible, *i.e.*, annullable upon performing the condition of paying a given sum of money, with interest thereon, at a certain time. Mortgages are either legal, which are enforceable at the common law, or equitable, which can only be realized through a decree of chancery.—*Ibid.*

MORTMAIN, the holding of land by corporations, whether aggregate, as companies, &c., or sole, as parsons, vicars, &c. The giving or devising land to such bodies who never die, but are perpetually renewed, is against the policy of the law. A bequest of land to charities is the same, and within the intent of the prohibition.—*Tomlin.*

MOTION IN COURT, an occasional application to a court of justice, by the parties or their counsel, in order to obtain some rule or order of court, which becomes necessary in the progress of a cause.—*Ibid.*

MOVEABLES. Moveable and immoveable is one of the commonest, because the most apparent and natural, of the modern divisions of things, as the subjects of property. It is not coincident, however, with the historical divisions which have obtained most extensively in ancient or in modern times, not agreeing with the Roman Law division into *Res Mancipi* and *Res Nec Mancipi* (agricultural and non-agricultural) on the one hand, nor with the English Law division into lands and chattels or real and personal property on the other. Nevertheless, just as the division into *Res Mancipi* and *Res Nec Mancipi* gradually gave way before the industrial development of Roman greatness, so also the division into real and personal property is more and more giving way before the advancing diversities of English

wealth. The division into moveable and immoveable finding its basis in nature, promises to be permanent; and it may grow to be as fertile in consequence as the older divisions have been. —*Brown.*

MOULVEE, a learned and religious man; an interpreter of the Mahomedan law.—*Tomlin.*

MULIER PUISNE, when a man has a bastard son, and afterwards marries the mother, and by her has also a legitimate son, the elder son is *bastard eigné,* and the younger son is *mulier puisné.*—*Wharton.*

MULTITUDE, an assembly of 10 or 12 persons.—*Ibid.*

MUNICIPAL LAW, that which pertains solely to the citizens and inhabitants of a state, and is thus distinguished from political law, commercial law, and the law of nations. It is now, however, more usually applied to the customary laws that obtain in any particular city or province, and which have no authority in neighbouring places.—*Ibid.*

MUNIMENT, support, defence, record, writing upon which claims and rights are founded and depend; evidences, charters. —*Ibid.*

MURDER, is culpable homicide, or the slaying of another—(1), if the act by which the death is caused is done with the intention of causing death; or (2), if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or (3), if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient, in the ordinary course of nature, to cause death; or (4), if the person committing the act knows that it so imminently dangerous, that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.—*Ind. P. C.* sec. 300.

MUTE, a prisoner is said to *stand mute,* when, being arraigned for treason or felony, he either makes no answer at all, or answers foreign to the purpose, or with such matter as is not allowable, and will not answer otherwise; or upon having pleaded *not guilty,* refuses to put himself upon the country. Standing mute, in all cases, amounts to a constructive confession. —*Tomlin.*

MUTUAL TESTAMENT, wills made by two persons who leave their effects reciprocally to the survivor.—*Wharton.*

MUTUS. See MUTE.

MUTUUM, a loan whereby the absolute property passes to the borrower, it being for consumption, and he being bound to restore, not the same thing, but other things of the same kind. Thus, if corn, wine, money, or any other thing which is not intended to be returned, but only an equivalent in kind, is lost or destroyed by accident, it is the loss of the borrower; for it is his property, and he must restore the equivalent in kind.—*Wharton.*

NATURAL BORN SUBJECTS, those that are born within the dominions of the Crown of England, *i.e.*, within the allegiance of the sovereign.—*Ibid.*

NATURAL CHILDREN, a natural or illegitimate child is one who comes under any of the five following categories:—(1), a child born of a woman not actually married at the time of its birth; or (2), of a wife under such circumstances that prove her husband cannot be its father; or (3), of a husband and wife, whose marriage has since been judicially dissolved, which illegitimatizes their previously lawful issue; or (4), of a widow so long after her husband's decease, as to render it absolutely impossible for it to be a child begotten by him; or (5), of a husband or wife, who has married during the life of his or her former wife or husband, for the second marriage is utterly void. —*Wharton.*

NATURALIZATION, the making an *alien* or rather putting an *alien*, in the situation of a natural-born subject.—*Tomlin.*

NAZAR, an officer of an Indian court, whose duties are similar to those of a sheriff.

NECESSARIES, a relative term, not strictly limited to such things as are absolutely requisite for support and subsistence, but to be construed liberally, and varying with the state and decree, the rank, fortune, and age of the infant. It has always been held that an infant is bound to pay a reasonable price for such necessary things as relate to his maintenance and education, as for food, lodging, apparel, medical attendance, and schooling.—*Wharton.* Similarly, "necessaries" for a married woman are things suitable for her station in life, and for the supply of these her husband will in general be responsible. —2 *Steph. Com.* 270.

NE EXEAT REGNO, a writ to restrain a person from going out of the kingdom without the king's license. It is directed to the sheriff to make the party find surety that he will not depart the realm; and, on his refusal, to commit him to prison: it is, however, now used for private purposes; and is granted on the application of a creditor who fears that his debtor may leave the kingdom.—*Tomlin.*

NEGATIVE PREGNANT, a form of denial which implies or carries with it an affirmative. This is considered as a fault in pleading, because the meaning of such a form of expression is ambiguous. The rule against a negative pregnant has been very much relaxed, for many cases have occurred in which, upon various grounds of distinction from the general rule, such form of expression has been held free from objection.—*Step. Plead.* 419.—*Wharton.*

NEGLIGENCE, a culpable omission of a positive duty. Negligence in reference to the keeping of property is of three kinds:—(1), *gross*, which is the want of that care which every man of common sense takes of his own property; (2), *ordinary*, which is the omission of that care which a man of prudence takes of their concerns; and (3), *slight*, which is the omission of that diligence which every circumspect and careful person employs.—*Ibid.*

NEGOTIABLE INSTRUMENTS, those, the right of action upon which is by exception from the common rule, freely assignable from one to another, such as bills of exchange and promissory notes.—*Ibid.*

NEGOTIORUM GUSTOR, a person who, spontaneously, and without the knowledge or consent of the owner, intermeddles with his property, as to do work on it, or to carry it to another place, &c.—*Ibid.*

NE RECIPIATUR, a caveat entered by a defendant to prevent a plaintiff from trying his cause at a certain sittings, where the cause is not entered in due time.—*R.* 43, *H. T.* 1853.—*Ibid.*

NEVER INDEBTED, plea of, a species of traverse which occurs in actions of debt on simple contract, and is resorted to when the defendant means to deny in point of fact the existence of any express contract to the effect alleged in the declaration, or to deny the matters of fact from which such contract would by law be implied.—*Ibid.*

NEW ASSIGNMENT, a form of pleading which sometimes arises from the generality of the declaration, when the complaint not having been set out with sufficient precision, it becomes necessary from the evasiveness of the plea, to re-assign the cause of action with fresh particulars.—*Wharton.*

NEW TRIAL, is the setting aside of a judgment given in the absence of the defendant and the execution thereupon and the granting of a re-hearing of the case *de novo* on sufficient cause shewn for that purpose.

NEXT FRIEND, a guardian in socage. An adult under whose protection an infant or, formerly, a married woman institutes an action or other legal proceeding, and who is responsible for the conduct and the costs of the same.

NEXT OF KIN. See KINDRED.

NIENT COMPRISE (*not contained*), an exception taken to a petition, because the thing desired is not contained in the deed or proceeding upon which the petition is founded.—*Wharton.*

NISI PRIUS, a common law phrase which originated thus: an action was formerly triable only in the Court where it was brought. But it was provided by Magna Charta, in ease of the subject, that assizes of novel disseisin, and mort-ancestor (which were the most common remedies of that day) should thence-forward, instead of being tried at Westminster, in the superior court, be taken in their proper counties, and for this purpose justices were to be sent into every county once a year to take these assizes there.—1 *Reeves*, 246. These local trials being found convenient, were soon applied not only to assizes, but to other actions: for, by the Statute of *Nisi Prius*, 13 *Edw. I*, c. 30, it is provided, as the general course of proceeding, that writs of *venire* for summoning juries to the superior courts shall be in the following form: *Præcipimus tibi quod venire facias coram justiciariis nostris apud Westm. in Octavis Sancti Michaelis nisi talis et talis, tali die et loco, ad partes illas venerint, duodecim, &c.* Thus the trial was to be had at Westminster only in the event of its not previously taking place in the county before the justices appointed to take the assizes. This clause of *nisi*, or *nisi prius*, is not now retained in the *venire*, but it occurs in the record and the judgment roll. And it is enforced by a subsequent statute of 14 *Edw. III*, c. 16, which authorizes, at the present day, a trial before the justices of assize, in lieu of the superior court, and gives it the name of a trial at *nisi prius*.—2 *Inst.* 424. As

to sittings at *nisi prius*, see 1 *Chit. Arch. Prac. by Pren.* 161 and 358 *et seq.*—*Wharton.*

NOLLE PROSEQUI, (*unwilling to prosecute*), is a term used in the law, where a plaintiff in any action will not proceed any further. *Non prosequi* has a similar signification. In common parlance, these words are abbreviated as *nolle pros.* and *non pros.*—*Tomlin.*

NON ASSUMPSIT, (*that he did not undertake*), is a plea to an action on promises.—*Ibid.*

NON EST FACEUM, the general issue, in an action on bond or other deed, whereby the defendant *denies that to be his deed*, whereon he is sued.—*Ibid.*

NON CEPIT, (*he took not*), a plea by way of traverse, which occurs in the action of replevin.—*Ibid.*

NON COMPOS MENTIS, said of a person who is not of sound memory and understanding.—*Ibid.* See IDIOT AND MENTAL ALIENATION.

NON DAMNIFICATUS, (*not injured*), a plea in an action of debt on an indemnity bond, or bond conditioned "to keep the plaintiff harmless and indemnified, &c."—*Ibid.*

NON EST INVENTUS, a sheriff's return to a writ when the defendant is not to be found in his bailiwick.—*Wharton.*

NON-FEASANCE, (non-performance), the omitting to do what ought to be done, *e.g.*, where a gratuitous bailee simply refuses to enter upon the agency, and for which mere non-feasance, he is held to be not liable.—*Brown.*

NON-JOINDER, a plea in abatement for the non-joinder of a person as co-defendant; it must state that the person who is the subject of the plea resides within the jurisdiction, and his residence must be stated with convenient certainty in an affidavit verifying the plea.—*Wharton.*

NON-SUIT, a renunciation of a suit by the plaintiff, most commonly upon the discovery of some error or defect, when the matter is so far proceeded in that the jury is ready to deliver their verdict.—*Tomlin.*

NON-TENURE, a plea in bar to a real action, by saying that he (the defendant) held not the land mentioned in the plaintiff's count or declaration, or at least some part thereof. It is either general, where one denied ever to have been tenant of the land

in question, and special, where it is alleged that he was not tenant on the day whereon the writ was purchased.—1 *Mod.*, 181. —*Wharton.*

NON USER, neglect of official duty.—*Ibid.*

NOTARY, or **NOTARY PUBLIC**, is one who publicly attests deeds or writings, to make authentic in another country; but their principal business in London and elsewhere is to protest foreign bills of exchange, and inland bills and notes; which latter are, if protested, to be at the charge of the holder, if paid on the day of protest, as it is not imperative on holders of inland bills to cause them to be protested.—*Tomlin.*

NOT GUILTY, a plea by way of traverse which occurs in actions *ex delicto*, and amounts to a denial only of the breach of duty or wrongful act alleged to have been committed by the defendant. —*H. T.* 1853 *r.*, 16.—*Wharton.*

NOTHUS, a natural child, or a person of spurious birth.—*Ibid.*

NOTICE OF TITLE, is where one man gives another notice that he claims to be the legal or equitable owner of land referred to, —as when a purchaser of an occupied house gives the tenant notice to pay the rent to him.

NOTICE TO QUIT, notice to leave a house or tenancy.

NOVATION, the acceptance of a new debt or obligation in satisfaction of a prior existing one. Thus, it is said that a surety is discharged by the novation of the debt; for he can no longer be bound for the first debt, for which he was surety, since it no longer subsists, having been extinguished by the novation; neither can he be bound for the new debt into which the first has been converted, since this new debt was not the debt to which he acceded.—*Brown.*

NUDE CONTRACT, one made without any consideration, upon which no action will lie, in conformity with the maxim "*ex nudo pacto non oritur actio.*"—*Wharton.*

NUDUM PACTUM, *(a naked agreement)* is where one party agrees to pay or do something without binding the other party to any obligation. It is generally void in law.

NUISANCE. Nuisances are of two kinds—(1), *Public or common*, which is the doing any act, or an illegal omission which causes any common injury, danger, or annoyance to the public or to the people in general, who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger, or

annoyance to persons who may have occasion to use any public right. A common nuisance is not excused on the ground that it causes some convenience or advantage.—*Ind. P. C.*, sec. 268. And (2), *Private*, which may be defined to be anything done to the hurt or annoyance of the lands, tenements, or hereditaments of another.—*Tomlin.*

NUL DISSEISIN, plea of, a traverse in real actions, that there was no disseisin: it was a species of the general issue.—*Wharton.*

NUL TIEL RECORD, issue of, a traverse that there is no such record. This is the proper form of issue whenever a question arises as to what has judicially taken place in a superior court of record; for the law presumes, that, if it took place, there will remain a record of the proceeding. But if the court be not of record, the issue should be directly upon the fact whether any such proceeding took place, and not upon the existence of any judicial memorial.—3 *Barn. and Cres.* 449; 2 *Chit. Arch. Prac. by Pren.*, 892.—*Ibid.*

NUL TORT, plea of, a traverse in a real action that no wrong was done: it was a species of the general issue.—*Ibid.*

NULLA BONA, (*no goods*), a return made by a sheriff to a *fi. fa.* attachment, &c., when there is no property to distrain upon.—*Ibid.*

NULLIUS FILIUS, a son of nobody, *i.e.*, a natural child.

NUNCUPATIVE WILL, an oral testament, declared by a testator *in extremis* before a sufficient number of witnesses, and afterwards reduced to writing.—*Wharton.*

OATH, an affirmation or denial of any thing before one or more persons who have authority to administer the same, for the discovery and advancement of truth and right, calling God to witness that the testimony is true; it is called a *corporal* oath, because the witness, when he swears, lays his right hand on the Holy Evangelists, or New Testament. There are several sorts of oaths in our law, viz., *juramentum promissionis*, where oath is made either to do, or not to do, such a thing; *juramentum purgationis*, where any one is produced as a witness, to prove or disprove a thing; and *juramentum triationis*, when any persons are sworn to try an issue, &c.—*Tomlin.*

OBITER DICTUM, (*an incidental opinion*), an opinion of a judge not necessary to the judgment given of record, in contradistinction to a *judicial dictum*, which is necessary and concluding to the judgment. This last is of much greater authority than the

former, because delivered upon deliberation, under sanction of the judge's oath, while an extra-judicial opinion is no more than the *prolatum*, or saying of him who gives it, a *gratis dictum*.—*Wharton.*

OBLIGATION, a bond containing a penalty, with a condition annexed for payment of money, performance of covenants, or the like. A bond is styled a writing obligatory.—*Tomlin.* But the word is commonly used in a much more general sense in jurisprudence as denoting any liability incurred by one person to another in virtue either of an agreement of the parties or their disagreement; and an alligation is said to arise either *ex contractu* or *quasi* so, or *ex delicto* or *quasi* so.—*Brown.*

OBLIGEE, the person in whose favor an obligation or bond is entered into; a creditor.—*Wharton.*

OBLIGOR, he who enters into an obligation; as obligee is the person with whom it is entered into.—*Tomlin.*

OBSIGNATORY, ratifying and confirming.—*Wharton.*

OBSTRICTION, obligation; bond.—*Ibid.*

OBVENTIONS, offerings or tithes, and oblations. Obventions and offerings are generally the same thing, though obvention has been esteemed the most comprehensive.—*Tomlin.*

OCCUPANCY, taking possession of those things which before belonged to nobody hence the title which a person so acquires in things is called title by occupancy.—*Brown.*

OCCUPATILE, that which has been left by the right owner, and is now possessed by another.—*Wharton.*

OCCUPATION, possession; act of taking possession; also, trade or mystery.—*Ibid.*

OCCUPATIVE, possessed, used, employed.—*Ibid.*

OCCUPAVIT, a writ that lay for him who was ejected from his freehold in time of war, as the writ of *novel disseisin* lay for one disseised in time of peace.—*Ibid.*

OFFENCES. An "offence" is the general term for an injury inflicted either against the public peace in the person or property of an individual, against the laws of religion or decency, or against those laws of constitution and state, recognized and allowed for the preservation of society. Those acts which involve wrongs against individuals in respect of their property or persons, may be termed "offences against property" and "offences against the person;" distinctions pretty well under-

stood by all. These wrongs or offences may be also termed "private" (although "public" in regard to their evil example), to distinguish them from injuries of a more public nature, and which peculiarly and directly affect the peace and welfare of the community at large; such as offences against the Queen and her government, public justice, trade, policy, and internal government. In a strict legal sense and understanding, the word "offence" signifies a mere breach of a penal statute.—*Tomlin.* Nothing is an offence which is done by a person who is, or who, by reason of a mistake of fact and not by reason of a mistake of law, in good faith believes himself to be bound by law to do it; or which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means, and with proper care and caution; and so under a variety of other circumstances, some acts attended by injurious results are deemed inoffensive,—for which see *Ind P. C.*, secs. 76—95.

OFFICER, a man employed by the public, of whom there is a multitude.—*Wharton.*

OFFICES, are either judicial or ministerial: the first, relating to the administration of justice, or the actual exercise thereof, must be executed by persons of sufficient capacity, and by the persons themselves to whom they are granted; ministerial, are merely matters of employment, and may be executed by deputy. —*Tomlin.*

OFFICIAL ASSIGNEES, certain persons from the class of merchants or accountants, appointed by the Lord Chancellor, to act in all bankruptcies; one of whom shall in all cases be an assignee of the bankrupt's estate and effects, together with the assignee or assignees chosen by the creditors. All the personal estate, the profits of the realty, and the proceeds of all such estates as shall be sold, are received by such official assignee alone, and paid by him into the Bank of England to the credit of the accountant in bankruptcy. Until assignees are chosen by the creditors, he is sole assignee of the bankrupt's estate and effects. He is attached to the proceedings at the sitting to adjudicate.—12 & 13 *Vict.*, c. 106, secs. 38—45.—*Wharton.*

OFFICIAL LIQUIDATOR, person appointed to wind up an insolvent limited company.

OFFICIAL USE, an active use before the statute of uses, which imposed some duty on the legal owner or feoffee to uses, as a

conveyance to A, with directions for him to sell the estate and distribute the proceeds amongst B, C, and D. To enable A to perform this duty, he had the legal possession of the estate to be sold.—*Wharton.*

OFFICIARIIS NON FACIENDIS VEL AMOVENDIS, a writ addressed to the magistrates of a corporation, requiring them not to make such a man an officer, or to put one out of the office he has, until inquiry is made of his manners, &c., *Reg. Orig.* 126.—*Ibid.*

OMISSION, neglect to do something, which renders void many proceedings, and sometimes is placed amongst crimes and offences.—*Ibid.*

ONE HUNDRED THOUSAND POUNDS CLAUSE, a precautionary stipulation inserted in a deed making a good tenant to the *præcipe* in a common recovery.—*Ibid.*

ONUS PROBANDI, *(burden of proof).* It is a general rule that he who asserts a fact is bound to prove it; and it is not ordinarily required to prove a negative, *ei qui dicit non qui negat incumbit probatio.* But what is at first sight a negation may be in reality an affirmative assertion, and in respect of it the *onus probandi* would rest on the person asserting it, unless the matter was peculiarly within the knowledge of the other party.—*Brown.*

OPENING BIDDINGS, where estates are sold, under the decree of a court of equity, the court considers itself to have a greater power over the contract than it would have, were the contract made between party and party; and as the chief aim of the court is to obtain as great a price for the estate as can possibly be got, it is in the habit of opening the biddings after the estate is sold. When a person is desirous of opening a bidding, he must, at his own expense, apply to the court, by motion for that purpose, stating the advance offered. Notice of the motion must be given to the person certified, the purchaser of the lot, and to the parties in the cause. If the court approve of the sum offered, the application will be granted, and on the order being drawn up, entered, and served, a new sale must be had before the chief clerk. The order is made at the expense of the person opening the biddings, and he must bear the expense of paying in his deposit, and pay the costs of the first purchaser, and interest, at the rate of four per cent. on such part of the purchase-money as the chief clerk shall find to have lain dead. The biddings will be opened more than once, even on the application of the same person, if a sufficient

advance be offered. Biddings, generally, cannot be opened after the confirmation of the certificate of the highest bidder. Where the biddings are open, the advance is to be deposited immediately. The biddings of an estate sold under a bankruptcy have been opened in analogy to the rules upon sales in courts of equity. —*St. Leon. V. and P.* 90.—*Wharton.*

OPENING THE PLEADINGS, on a trial before a jury, the counsel who holds the affirmative of the question at issue begins, because he is called upon to give evidence in support of his case, in conformity with the civil law maxim:—"*ei incumbit probatio, qui dicit, non qui negat; cum per rerum naturam factum negantis probatio nulla sit.*"—*Cod.* 4.—*Ibid.*

OPEN POLICY, applies only in marine assurances. It means that the value of the ship or cargo insured is not expressed, but is left to be determined by evidence in case of loss.

OPERATIVE WORDS OF A DEED, are those which impose an obligation or confer a power or benefit, as distinguished from the recital or statement of the circumstances.

OPTIONAL WRIT, a *præcipe*, because it was in the alternative, commanding the defendant to do the thing required, or shew the reason wherefore he had not done it.—*Wharton.*

ORAL PLEADING, pleading by word of mouth in presence of the judges. This was the original mode of pleading; it was, however, superseded by written pleading in the reign of the third Edward.—*Ibid.*

ORDER OF REVIVOR, an order as of course for the continuance of an abated suit. It superseded the bill of revivor. The opposite party may move to discharge it within 12 days after service. —*Ibid.*

ORDINARY, a term applied to a bishop, or other person having peculiar or original ecclesiastical jurisdiction in a diocese, in contradistinction to extraordinary or delegated jurisdiction. This term is derived from the imperial or civil law.—*Tomlin.* A judge who has authority to take cognizance of causes in his own right, and not by deputation.—*Civ. Law.*—*Ibid.*

ORDINARY CONVEYANCES, those deeds of transfer which are entered into between two or more persons, without an assurance in a superior court of justice.—*Ibid.* See DEED.

ORIGINAL AND DERIVATIVE ESTATES; an *original* is the first of several estates, bearing to each other the relation of a particular estate and a reversion. An *original* estate is contrasted with

derivative estate; and a *derivative* estate is a particular interest carved out of another estate of larger extent.—*Pres on Est.* 125. —*Wharton.*

ORIGINAL WRIT, or Original, the beginning or foundation of a real action at common law. It is also applied to processes for some other purposes. Original writs differ from each other in their tenor, according to the nature of the plaintiff's complaint, and are conceived in fixed and certain forms. Many of these forms are of a remote and undefined antiquity, but others are of later origin.—*Ibid.*

OUSTER, dispossession, a wrong or injury that may be sustained in respect of hereditaments, corporeal or incorporeal, and carries with it the amotion of possession; for thereby the wrong-doer gets into the actual occupation of the land or hereditament, and obliges him that has a right to seek his legal remedy, in order to gain possession and damages for the injury sustained. Such dispossession may be either of the freehold or of chattels real. Ouster of the freehold is effected by various methods:—(1), by abatement; (2), intrusion; (3), disseisin; (4), deforcement; and (5), discontinuance. Ouster of chattels real consists—(1), of amotion of possession from estates held by statute, recognizance, or *elegit*, which happens by a species of disseisin or turning out the legal proprietor before his estate is determined by raising the sum for which it is given to him in pledge; and (2), of amotion of possession from an estate of years, which also takes place by a like kind of disseisin, ejection, or turning out the tenant from the occupation of the land during the continuance of his term.—*Ibid.*

OUTLAWRY, the process of putting a man out of the protection of the law, so that he is incapable of bringing any action for redress of injuries.—*Brown.*

OUT OF COURT, he who has no legal status in court is said to be "out of court," *i.e.*, he is not before the court. Thus when a plaintiff in an action, by some act of omission or commission, shews that he is unable to maintain his action, he is frequently said to put himself "out of court," sometimes a person who is out of court is said to have no *locus standi*.—*Ibid.*

OUTSTANDING TERM, *a term in gross at law*, which, in equity, may be made attendant upon the inheritance, either by express declaration or by implication.—*Wharton.*

OVERSAMESSA, a forfeiture for contempt or neglect in not pursuing a malefactor.—*Wharton.*

OVERT ACT, an open act, which by law must be manifestly proved. Some overt act is to be alleged in every indictment for high treason; and *no evidence* shall be admitted of any *overt act* that is not expressly laid in the indictment.—*Tomlin.*

OYER AND TERMINER, a commission directed to the judges and other gentlemen of the county to which it is issued, by virtue whereof they have power to *hear* and *determine* treasons, and all manner of felonies and trespasses. *Terminer* is sometimes written *determiner*.—*Wharton.*

O YES, corrupted from the French oyez,(*hear ye,*)is an expression used by the crier of a court in order to enjoin silence when any proclamation is made.—*Ibid.*

PANDECTS, the books of the Civil Law compiled by Justinian. The word literally translated means a universal collection or compilation of passages, and denotes the universality of the subjects treated of in the *Corpus Juris Civilis;* whereas the word *Digest*, which in England is the more common of the two words, means a methodical arrangement, and denotes the method or order which is so perfectly observed in the arrangement of the same compilation.—*Brown.*

PANEL, the *pane* or square piece of parchment on which the names of the jury are written.—*Wharton.*

PARAPHERNALIA, something reserved to a wife over and above her dower or dotal portion. It includes all the personal apparel and ornaments of the wife which she possesses, and which are suitable to her rank and condition of life.—*Ibid.*

PARCENERS. See CO-PARCENERS.

PARDON, the effect of a pardon is to make the offender a new man, to acquit him of all forfeitures; but nothing but an Act of Parliament can restore the party after actual attainder.—*Tomlin.*

PARENTICIDE, one who murders a parent.—*Wharton.*

PARICIDE, a word to be distinguished from *patricide* or *parricide*, with two *r*'s, which is simply a softening of the *t*. The one is a murderer generally; the other a murderer of his father. The derivation is evidently in one case fr. *parem*, Lat. an equal, and *cædo*, to kill, that is, the murder of a fellow-citizen, not a slave; but in the other, fr. *patrem*, a father, and *cædo*.—*Ibid.*

PARLIAMENT, the great council of the realm; the *legislative* branch (the king, the executive) of the supreme power of Great Britain; consisting of the king, the lords spiritual and temporal, and the knights, citizens, and burgesses, representatives of the commons of the realm, in Parliament assembled.—*Tomlin.*

PAROLE, the promise made by a prisoner of war, when he has leave to go anywhere, of returning at a time appointed, or not to take up arms till exchanged.—*Wharton.*

PAROL EVIDENCE; oral, by word of mouth. Thus, a parol agreement signifies an agreement by word of mouth in contradistinction to a written agreement. Parol evidence is also the phrase commonly used to denote extrinsic evidence, *i.e.*, evidence outside of the written document which it is used to explain.—*Brown.*

PARRICIDE, one who destroys his father; one who destroys or invades any person or thing to whom he owes particular reverence: as his country or patron.—*Wharton.*

PARTIAL LOSS, in marine assurance, is equivalent to average loss.

PARTICEPS CRIMINIS, an accomplice in crime. Broadly applied to participators in all kinds of offences or wrongs.

PARTICULAR ESTATE, that interest which is granted or carved out of a larger estate, which then becomes an expectancy either in reversion or remainder.—*Wharton.*

PARTICULAR LIEN, a right of retaining possession of a chattel from the owner, until a certain claim upon it be satisfied.—*Ibid.* See LIEN.

PARTICULAR OF BREACHES. Where an ejectment is brought for a forfeiture, the court, or a judge upon application, will order the plaintiff to give the defendant a particular of the covenants and breaches, &c., on which he means to insist that the defendant has forfeited his term, and that he shall not be allowed to give evidence at the trial of anything not contained in such particular.—*C. L. P. Act* (1852), sec. 175.—*Ibid.*

PARTIES, a number of persons concerned in any business-affair; litigants. The parties to an action at law are called, in real actions, *demandant* and *tenant*, and in personal actions *plaintiff* and *defendant*, and so in suits in equity. In appeals, they are called *appellant* and *respondent*. The order in which the

parties to a conveyance are set out is as follows:—(1.) The owner of the legal inheritance. (2.) Persons having equitable or beneficial interests in the inheritance. (3.) Persons possessed of chattel interests. (4.) The grantee or releasee. (5.) Trustees for the grantee or releasee. In criminal cases, they are the *prosecutor* and the *prisoner* or *defendant*.—*Wharton.*

PARTITION, deed of, a primary or original conveyance. When an estate is held in community by joint tenants, tenants-in-common, co-parceners, or joint heirs in gavelkind, and they are desirous of dividing it into distinct portions to be exclusively enjoyed by each, and they are not under legal disability, they can accomplish such desire by this deed. Sometimes, instead of agreeing as to their several allotments, a reference is made to a chosen person to divide the estate into the required portions, and a good plan of effecting this is to convey the whole estate to the proposed referee upon trust to convey the several allotments to the respective parties, according to his award.—*Ibid.*

PARTNERS AND PARTNERSHIP, is the relation which subsists between persons who have agreed to combine their property, labor or skill in some business, and to share the profits thereof between them. Persons who have entered into partnership with one another are collectively called a *firm*.—*Ind. Con. Act*, sec. 239. In general, all the partners appear ostensibly to the world. It is, however, by no means uncommon for monied men to embark considerable sums in trade, without taking any part in the management of the concern, or suffering their names to appear; such persons are called *dormant* or *sleeping* partners, and when discovered, are liable, in common with the rest, to the creditors of the firm. There are also *Special* partnerships, formed for a single adventure, and the consequences and liabilities of these are confined to the transactions thence arising. The legal distinction of joint tenancy does not exist in regard to mercantile property, whether it be mere personalty or freeholds, &c., so that it be purchased with the partnership funds, or forming part thereof; therefore, each partner holds his share in severalty, and individually, according to his due proportion. These are usually called *Private* partnerships. *Public* partnerships are associations, consisting of a great number of persons, called companies or societies; many of which are incorporated by Act of Parliament, or by letters-patent-royal, and others not.—*Tomlin.*—*Associations* are not partnerships, pro-

vided there are no trade profits divisible among members. Such are a committee, a club, or a combination to effect a joint purchase distributable *pro rata* amongst the subscribers.

PARTNERSHIP PROPERTY, there is not any difference whether the partnership property, held for the purposes of the trade or business, consists of personal or moveable property, or of real or immoveable property, or of both, so far as their ultimate rights and interests are concerned. It is true that at law real or immoveable property is deemed to belong to the person in whose name the title by conveyance stands. If it is in the name of a stranger, or of one partner only, he is deemed the sole owner at law; if it is in the names of all the partners, or of several strangers, they are deemed joint-tenants, or tenants-in-common, according to the true interpretation of the terms of the conveyance. But, however, the title may stand at law, or in whose name or names soever it may be, the real estate belonging to the partnership will in equity be treated as belonging to the partnership, like its personal funds, and disposable and distributable accordingly; and the parties in whose names it stands as owners of the legal title, will be held to be trustees of the partnership, and accountable accordingly to the partners, according to their several shares, rights, and interests in the partnership, as *cestuis que trust* or beneficiaries of the same. Hence, in equity, in case of the death of one partner, there is no survivorship in the real estate of the partnership, but his share will go to his personal representatives.—*Collyer on Partnership*, 82.—*Wharton.*

PART OWNERS or **QUASI-PARTNERS**, joint-owners, or tenants-in-common, who have a distinct, or, at least, an independent, although an undivided interest in the property. Neither of them can transfer nor dispose of the whole property, or act for the others as partners can in relation thereto; but each can merely deal with his own share, and to the extent of his own several right and interest.—*Ibid.*

PARTY-WALL, a wall that separates one house from another. The common use of a wall separating adjoining lands belonging to different owners, is *primâ facie* evidence that the wall and the land on which it stands belong to the owners of those adjoining lands, in equal moieties, as tenants-in-common. If a house or office be separated from other premises by a wall, and that wall belongs to the owner of the house or office, he is,

of common right, bound to repair it; and an action will lie against him for not doing it.—*Wharton.*

PASSIVE DEBT, a debt due to another, or owing by a person. —*Ibid.*

PASSIVE TRUST, passive uses were resorted to before the statute of uses, in order to escape from the trammels and hardships of the common law, the permanent division of property into legal and equitable interests, being clearly an invention to lessen the force of some pre-existing law. For similar reasons, equitable interests were after the statute revived under the form of trusts. As such, they continued to flourish, notwithstanding the signal amelioration effected at a later period in the law of tenure, because the legal ownership was attended with some peculiar inconveniences. For, in order to guard against the forfeiture of a legal estate for life, passive trusts, by settlement, were resorted to, and hence trusts to preserve contingent remainders; and passive trusts were and are created in order to prevent dower.—*Ibid.*

PATENT, an exclusive right acquired by law and registry to the manufacture and sale of any substance or article.

PATENT AMBIGUITY, an ambiguity which appears on the instrument itself, and which is raised by the inherent vice or defect of the language used; it is patent to all the world, and therefore is called "patent ambiguity."—*Norton.*

PATENT RIGHT, the exclusive privilege of selling and publishing particular contrivances of arts.—*Wharton.*

PATENT-ROLLS, registers in which letters-patent are recorded. —*Ibid.*

PATENTS or LETTERS PATENT ROYAL, grants from the king under the great seal, so called from their being (*open patentes*) in contradistinction to those acts of the king which were sealed up and called *close*, such as grants of privilege, protections, &c. —*Tomlin.*

PATRIMONY, an hereditary estate or right descended from ancestors.—*Wharton.*

PAWN, or PLEDGE, is a bailment or delivery of valuables to another as a gage for the payment of money.—*Tomlin.* A mortgage of goods is in common law distinguishable from a mere pawn. By a *mortgage*, the whole legal title passes conditionally to the mortgagee; and if the goods be not re-

deemed at the stipulated time, the title becomes absolute at law, although equity preserves a redemption. But in a *pledge*, a special property only passes to the pledgee, the general property remaining in the pledger. Also, in the case of a pledge, the right of the pledgee is not consummated, except by possession: and, ordinarily, when that possession is relinquished, the right of the pledgee is extinguished or waived. But, in the case of a mortgage of personal property, the right of property passes by the conveyance to the pledgee, and possession is not or may not be essential to create or support the title.—*Wharton.*

PAWNBROKERS, all persons who receive by way of pawn, pledge, or exchange, any goods for the re-payment of money lent thereon, and taking a greater profit for the loan thereof than 5 per cent. per annum.—*Tomlin.*

PAWNEE, the person with whom a pawn is deposited.—*Wharton.*

PAWNER or PAWNOR, the person depositing a pawn.—*Ibid.*

PAYEE, one to whom a bill of exchange or promissory note is made payable.—*Ibid.*

PEACE, breach of the, a violation of that quiet, peace, and security which is guaranteed by the laws, for the personal comfort of the subjects of this kingdom.—*Ibid.*

PEACE, CLERK OF THE, an officer who acts as clerk to the Court of Quarter Sessions, and records all their proceedings.—*Ibid.*

PEACE, COMMISSION OF THE, one of the authorities, by virtue of which the Judges sit upon circuit.—*Ibid.* See ASSIZES.

PECULIAR, a particular parish or church that has jurisdiction within itself, and power to grant administration or probate of wills, &c., exempt from the bishop or other ecclesiastical authority exercising ordinary jurisdiction. Some of these peculiar jurisdictions belong to deans and chapters, some to the king, thence called *royal* peculiars, some to the archbishop, called *archbishop's* peculiars. The king's chapel is a peculiar or exempt jurisdiction.—*Tomlin.*

PEERS, all persons under the degree of a *peer* are commoners, and subject to the common tribunals and ordinary jurisdiction of the kingdom, and, in a legal sense, are "peers" of each other, *i.e.*, equal to each other, for the law knows no distinction between them. But *peers* of parliament are Judges of each

other, and exempt from the common and ordinary jurisdiction, and are distinguished as "peers" of the realm.—*Tomlin.*

PENAL SERVITUDE, a punishment which has superceded transportation.

PENAL STATUTES, those which impose penalties or punishments for an offence committed.—*Wharton.*

PENAL STATUTES, ACTIONS ON, the penalties or forfeitures under these statutes are generally made recoverable by the crown, or the party aggrieved, or a common informer, as the case may be. This remedy is generally designated a penal action; or where one part of the forfeiture is given the crown and the other part to the informer, a popular or *qui tam* action.—*Ibid.*

PENAL SUM, is an amount of forfeiture provided in a deed in certain events expressed.

PENALTY, where a certain gross sum of money is reserved on an agreement to be paid in case of the non-performance of such agreement, it is generally to be considered as a penalty, the legal operation of which is, not to create a forfeiture of that entire sum, but only to cover the actual damages occasioned by the breach of contract. Wherever the payment of a small sum is secured by the payment of a much larger sum, it must be considered as a penalty, and calling a sum liquidated damages will not change its character as a penalty, if, upon the true construction of the instrument, it must be deemed to be a penalty.—*Wharton.*

PENDENTE LITE, until an action is decided.

PENSION, that which in the Inner and Middle Temple is called a parliament, and in Lincoln's Inn a council, is in Grey's Inn termed a pension; *i.e.*, an assembly of the members of the society to consult of their affairs. Certain annual payments of each member of the Inns of Court are also so termed. There is also a writ called a pension writ which seems to be a sort of peremptory order against those members of the society who are in arrear of their pensions and other dues.—*Cowel—Brown.*

PENTONVILLE PRISON, a place which is provided for the confinement of male convicts under sentence or order of penal servitude, until they shall be otherwise disposed of.—*Wharton.*

PEPPER CORN RENT, is a material acknowledgment of a tenancy that is really rent free. In ancient times, the delivery and acceptance of a pepper corn or other symbol was a security to

the tenant as well as a personal acknowledgment of the landlord's supremacy; but in modern times the custom of making such leases is more honoured in the breach than in the observance.

PER AND POST, to come in in the *per*, is to claim by, or through the person last entitled to an estate, as the heirs or assigns of the grantee; to come in in the *post*, is to claim by a paramount and prior title, as the lord by escheat.—*Wharton.*

PEREMPTION, a non-suit, also a quashing or killing.—*Ibid.*

PEREMPTORY CHALLENGE, an arbitrary and capricious species of challenge to a certain number of jurors, without shewing any cause. This privilege is granted to a prisoner in criminal cases, but denied to the crown by 6 *Geo. IV.*, c. 50. In treason, a prisoner can challenge without cause thirty-five jurors, and in felony twenty.—7 & 8 *Geo. IV.*, c. 28, sec. 3.—*Ibid.*

PEREMPTORY PLEAS, or PLEAS IN BAR, those which are founded on some matter tending to impeach the right of action itself.—*Ibid.*

PERFECT TRUST, an executed trust.

PERJURY, the taking a false oath or making a false declaration before a magistrate in writing, or if a Quaker, Moravian, or Separatist, making a false affirmation knowingly, so that a thing material to the question before a competent and judicial authority be falsely and wittingly denied or intentionally concealed. Voluntary and corrupt perjury must be proved; for mistake or inadvertence, however reprehensible, will not subject a party to an indictment for this offence.—*Tomlin.* See FALSE EVIDENCE.

PERMISSIVE WASTE, the neglect of necessary repairs.

PERMIT, a license or instrument granted by the officers of excise, certifying that the excise duties on certain goods have been paid, and permitting their removal from some specified place to another.—*Wharton.*

PERNANCY, the taking or receiving of anything.—*Ibid.*

PERPETUATING TESTIMONY, when evidence is likely to be irrecoverably lost, by reason of a witness being old, or infirm, or going abroad, before the matter to which it relates can be judicially investigated, equity will, by anticipation, preserve and perpetuate such evidence in order to prevent a failure of justice. Also any person who would become entitled, upon the happening of any future event, to any honor, title, dignity, or office, or

to any estate or interest in any property, real or personal, the right or claim to which cannot by him be brought to trial before the happening of such future event, may obtain the perpetuation of any testimony, which may be material for establishing such claim or right; but the Attorney-general must be joined should the crown be interested, 5 & 6 *Vict.*, c. 69.—*Wharton.*

PERPETUITY, duration to all futurity; exemption from intermission or ceasing, where, though all who have interest should join in a covenant, they could not bar or pass the estate. It is odious in law, destructive to the commonwealth, and an impediment to commerce, by preventing the wholesome circulation of property.—*Ibid.*

PERQUISITES. In law this expression is very different in its meaning to that popularly understood. It is legally defined as things gotten by a man's own industry, or purchased with his own money as opposed to things which come to him by descent.

PERSONAL ACTION, one brought for the specific recovery of goods and chattels, or for damages or other redress, for breach of contract, or other injuries, of whatever description, the specific recovery of lands, tenements, and hereditaments, only excepted.—*Ibid.* An action arising in such a way that none but the aggrieved person can proceed upon it. See ACTIONS.

PERSONALITY OF LAWS, all laws which concern the condition, state, and capacity of persons, as the reality of laws means all laws which concern property or things. Whenever foreign jurists wish to express that the operation of a law is universal, they compendiously announce that it is a personal statute: and whenever, on the other hand, they wish to express that its operation is confined to the country of its origin, they simply declare it to be a real statute.—*Wharton.*

PERSONAL PROPERTY, chattels which include whatever wants either the duration or the immobility attending things real. They are distributed into chattels-real and chattels personal.—*Ibid.* See CHATTELS.

PERSONAL REPRESENTATIVES, executors or administrators.—*Ibid.*

PERSONAL RIGHTS, the right of personal security, comprising those of life, limbs, body, health, reputation, and the right of personal liberty.—*Ibid.*

PERSONALITY, personal property, that which relates to the person.—*Ibid.*

PERSONATION, pretending to be some other person than one really is. It is an offence to personate a soldier, a public servant, a juror or assessor or any person, for the purpose of any act or proceeding in a suit, or for the purpose of cheating.—*Ind. P. C.*

PER-STIRPES, a distribution *in* or *per stirpes* is when, by a fiction of law, a family comes by representation into the place of the person deceased, and so divide that share amongst themselves which the deceased would have received if he had been living: as where one of four children dies before the father, and leaves children behind him, those children represent their father, and have his part, viz., a fourth part, amongst them all. *In* or *per capita* is when the fund is to be divided according to the number of persons who are to succeed, as where the personality of the father is divided amongst his four children.—*Tomlin.*

PETIT JURY, a jury in criminal cases who try the bills found by the grand jury.—*Wharton.*

PETIT TREASON (not known in Indian law) is a treason towards other than the Crown, that being distinguished by high treason. Petit treason is where a person who is under an obligation of service or relationship fatally abuses it; as where a servant kills his master or a wife her husband.

PETTI FOGGER, is a lawyer who cultivates clients and cases of a paltry character.

PETTY LARCENY, theft of property under the value of a shilling. In the present state of law there is no such offence.

PETTY-BAG OFFICE, an office belonging to the common-law jurisdiction of the Court of Chancery, for suits for and against solicitors and officers of that court, and for process and proceedings by extents on statutes, recognizances, *ad quod damnum*, *scire facias*, to repeal letters-patent, &c.—*Termes de la Ley.*—*Wharton.*

PILLORY, a frame erected on a pillar, and made with holes and moveable boards, through which the heads and hands of criminals were put.—*Ibid.*

PIN-MONEY, an annual sum settled on a wife to defray her own charges, in dress and pocket-money. Courts of equity refuse to call upon a husband to pay beyond the arrears of a year, although stipulated for by a marriage settlement, for the money is meant to dress the wife during the year, so as to keep

up the dignity of the husband, and not for the accumulation of the fund. The personal representatives of the wife are not allowed to make any claim for the arrears of pin-money, not even for arrears of a year. If, however, the wife live separate, and have no allowance, an account of the arrears of pin-money will be decreed.—*Aston* v. *Aston*, 1 *Ves.* 269; *Spect. No.* 295; *Jodrell* v. *Jodrell*, 9 *Beav.* 45.—*Wharton.*

PIRACY, a robbery on the high seas, and within the jurisdiction of the admiralty, which does not extend to any creek or arm of the sea, or sea flowing between two points of land, such, in contemplation of law, being within a county. The piracy or robbery must be upon persons not at enmity with this country, and must be without authority of any state. Intent is an ingredient in this offence (as with almost all offences); for a person accused of piracy may show that he captured the vessel, or took the goods, under an impression that the ship belonged to a state at war with England.—*Tomlin.* The expression is also applied to infringement of copy-right. See PIRATES.

PIRATES, common sea rovers, without any fixed place of residence, who acknowledge no law, and support themselves by pillage and depredation on the high seas in ships or vessels. —*Ibid.*

PLAINT, the exhibition of the ground of action in writing. It is the first process in the institution of a suit and is a brief statement of the plaintiff's cause of action.

PLAINTIFF, he who commences a suit in law or equity against another, who is called defendant.—*Wharton.*

PLEA, a defendant's answer of fact to a plaintiff's declaration; anciently a suit or action. Pleas are divided into *common pleas*, relating to civil causes, and *pleas of the crown*, relating to criminal prosecutions. At *common law*, pleas are divided into—(1.) *Dilatory;* which are sub-divided into—(*a*), to the jurisdiction of the court; (*b*), in suspension of the action; (*c*), in abatement of the writ or declaration, and—(2.) *Peremptory*, *i.e.*, in bar of the action. The distinction between these two classes of *pleas* is, that the *dilatory* shew some ground for quashing the declaration; the *peremptory*, for defeating the action. The invariable order of pleading is as follows:—(1.) To the jurisdiction of the court. (2.) To the disability of the person —(*a*), of plaintiff; (*b*), of defendant. (3.) To the court or declaration. (4.) To the writ. (5). To the action itself in bar

thereof. In *equity*, a plea is resorted to by a defendant when an objection is not apparent on the bill itself, or, as the technical phrase is, where it arises from matter *dehors* the bill, if the defendant means to take advantage of it, he ought to shew the matter which creates the objection to the court, either by plea or by answer. A plea is a special answer, showing or relying upon one or more things, as a cause why the suit should either be dismissed, delayed, or barred. Pleas are divided into two sorts—(1), *pure pleas*, which rely wholly on matter *dehors* the bill, such as a release or a settled account; and (2), *anamolous* or *negative pleas*, which consist mainly of denials of the substantial matters set forth in the bill. The defendant's pleas in *ecclesiastical* causes are called allegations. The order of a prisoner's pleas in *criminal* law is as follows: (1.) To the jurisdiction. (2.) In abatement. (3.) Special pleas in bar, as—(*a*), *auterfois acquit*; (*b*), *auterfois convict*; (*c*), *auterfois attaint*; (*d*), *pardon*. (4). General issue of not guilty.—*Wharton*.

PLEADING, in a large sense, contains all the proceedings in a trial or action, from the declaration until the issue is joined; but, in its immediate or direct sense, is taken for the defendant's answer to the *declaration*. Pleadings are the mutual altercations between the plaintiff and defendant in a suit, which are delivered between the attorneys on each side. There is—(1), the *declaration*, setting forth the plaintiff's complaint, (2), the *plea*, or answer to it, (if negative *issue* can be taken upon it, as is usually the case); (3), the *replication*, the exception or answer made by the plaintiff to the defendant's plea; (4), the *rejoinder*, the answer of the defendant to the plaintiff's replication; (5), the *surrejoinder*; (6), the *rebutter*; (7), the *surrebutter*. When, in the course of these *special* pleadings, the plaintiff and defendant have not agreed upon a point, they are said to be at *issue*, which is often done at the replication or the surrejoinder, and not so frequently carried through the whole course of pleading.—*Tomlin*.

PLEDGE, anything put to pawn or given by way of warrant or security; also a surety, bail, or hostage. There are two kinds of estates held in pledge, *vifgage* and *mortgage*.—*Wharton*. See PAWN.

PLEDGEE, one who pledges; a pawnee.—*Ibid*.

PLEDGER, one who offers a pledge, a pawner.—*Ibid*.

PLEDGERY, suretyship, or an undertaking or answering for another.—*Wharton.*

PLENARY,—PLENARTY, full, complete; an ordinary proceeding through all its gradations and formal steps, opposed to *summary*. Plenary causes in the ecclesiastical courts are reduced to the following:—(1), suits for ecclesiastical dilapidations; (2), suits relating to seats or sitting places in churches; (3), suits for tithes.—*Ibid.*

PLENE ADMINISTRAVIT, a plea pleaded by an executor or administrator on an action being brought against him, to the effect that he has fully administered, *i.e.*, that he has exhausted the assets before such action was brought.—*Toller's Exec.*, 267.

PLEVIN, is a warrant or assurance.

POACHING, stealing game.—*Tomlin.*

POCKET-JUDGMENT, a statute-merchant which is enforceable at any time after non-payment on the day assigned, without further proceedings.—*Wharton.*

POCKET-SHERIFF, when the sovereign appoints a person sheriff who is not one of the three nominated in the exchequer, he is called a pocket-sheriff.—1 *Bl. Com.* 342.—*Ibid.*

POLICE, the municipal regulations of a city, as far as regards the prevention of crime, public convenience, and cleanliness, the prompt and efficacious administration of those summary remedies administered by magistrates, and the disposal of offenders, by committing them to prison till duly delivered.—*Tomlin.*

POLITICAL or Civil Liberty, natural liberty, restrained by human law so far as is necessary and expedient for the public advantage. —*Wharton.*

POLL, a deed poll is executed by only one person.

POLYGAMY, the plurality of wives or husbands. It is a criminal offence, denominated in India an "*offence relating to marriage*," for a man or woman to marry, during the lifetime of his wife or her husband, some other person under circumstances which render such marriage void. It is no offence, however, on the part of any person whose marriage with such husband or wife has been declared void by a court of competent jurisdiction, nor on the part of any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven

years, and shall not have been heard of by such person as being alive within that time, provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted, of the real state of facts so far as the same is within his or her knowledge.—*Ind. P. C.*, sec. 494.

POOR-RATE, that rate or tax, to be raised by the Statute 43 *Eliz.*, for the purpose of purchasing materials to set the poor on work, and to relieve the lame, blind, impotent, and unable to work, and for putting out poor children apprentices, and for other purposes relating thereto.—*Tomlin.*

POPULAR ACTION, an action given by statute to any one who will sue for the penalty.—*Ibid.*

POSSE (*in posse*) is that which may be as distinguished from that which is, which is *in esse.*

POSSE COMITATUS, the power of the county, which includes the aid and attendance of all persons of the degree or wealth of a knight (the *title*, in its legal sense, is dispensed with), including all persons of lower quality, and men above 15, within the county; and this *posse* the sheriff may raise to the assistance of the justices, upon apprehension or happening of any riot or breach of the peace.—*Tomlin.*

POSSESSION, the state of owning or having a thing in one's own hands or power; the thing possessed. It is either *actual*, where a person enters into lands or tenements descended or conveyed to him; *apparent*, which is a species of presumptive title where land descended to the heir of an abator, intruder, or disseisor, who died seised; *in law*, when lands, &c., are descended to a man, and he has not actually entered into them; or *naked*, that is, mere possession, without color of right.—*Wharton.*

POSSESSORY ACTION, the action of trespass, the gist of which is the injury to the possession; a plaintiff, therefore, cannot maintain it, unless at the moment of the injury he was in actual or constructive, immediate and exclusive possession.—*Ibid.*

POSSIBILITY, expectation, an uncertain thing which may or may not happen. It is either *near* or *ordinary*, as where an estate is limited to one after the death of another; or *remote*, or *extraordinary*, as where one man shall be married to a

woman, and then that she shall die, and he be married to another.—*Wharton.*

POSSIBILITY ON A POSSIBILITY, a remote possibility, as if a remainder be limited in particular to A's son John, or Edward, it is bad if he have no son of that name, for it is too remote a possibility that he should not only have a son, but a son of that particular name.—*Cholmley's Case*, 2 *Rep.* 51.—*Ibid.*

POST-DATING, is the dating of a bill or other document later than the time when it is drawn or executed. It is not an offence, unless it is done with the intent to effect a specific fraud.

POSTHUMOUS CHILD, a child born after its father's death; or taken out of the body of a dead mother.—*Wharton.*

POSTLIMINIUM, the return of a person to his own country, after having sojourned abroad. The right of *postliminy* is that by virtue of which persons and things taken by an enemy in war are restored to their former state, when coming again under the power of the nation to which they belonged.—*Inter. Law.*—*Ibid.*

POST NUPTIAL SETTLEMENT, a settlement made after marriage, it is generally deemed voluntary unless made pursuant to written articles entered into before the marriage.—*Ibid.*

POUND, a place of strength, inclosed, wherein to keep cattle, distrained for rent or for damage feasant, until they are redeemed or replevied. Common pounds are termed *pounds overt, i.e.*, open: any place where cattle or goods are kept, being part of a dwelling-house or out-house, barn, or stable, are called *pounds covert, i.e.*, close. If cattle are put in a *pound overt*, the owner is bound to feed them; if in a *pound covert*, the distrainer. If cattle are put into a common pound, no notice is necessary; but otherwise, if the impounding be in a *pound covert*. Any person distraining goods or cattle can use any secure place, even part of the premises where the things are taken, as a pound for securing the distress. *Pound breach*, or rescuing cattle from the pound, and goods distrained, is punishable by fine or imprisonment, or both, according to circumstances.—*Tomlin.*

POURPARTY, a coparcener's share.

POURPRESTURE, the wrongful inclosing of another man's property, or the encroaching or taking to one's self that which

ought to be in common. It is perhaps more commonly applied to an encroachment upon the property of the crown, either upon its demesne lands or streets.—*Brown.*

POWER, an authority which one man gives another to act for him: it is also a term commonly applied to reservations made in a conveyance for persons to do certain acts, as to make leases, raise portions, create a jointure, charge, sell, or exchange, which are chiefly inserted in marriage-settlements and wills, and technically distinguished as "powers of revocation and appointment," all of them postponing, abridging, or defeating, in a greater or less degree, the previous uses and estates, and appointing new uses in their stead. Also a man may, by deed or will, give an estate to such persons as another shall appoint or direct. By a *general* power of appointment is legally understood that kind of power which enables the party to appoint the estate to any person he thinks proper; and in this sense it is opposed to a qualified or *particular* power, which enables the party to appoint to or among particular objects only; as a power of appointing to his children, or the children of any other person. The former has been termed a *power of ownership*; the latter, a *power of selection.*—*Tomlin.*

PRÆMUNIRE, whenever it is said that a person by any act incurs a *præmunire*, it is meant to express that he thereby incurs the penalty "of being out of the king's protection; and his lands and tenements, goods and chattels, are forfeited to the king, and that his body shall remain in prison during the king's pleasure;" but these forfeitures never denoted a felony, though the party was in effect outlawed.—*Ibid.*

PRACTICE is the form and manner of conducting and carrying on suits at law, or in equity or in criminal procedure, according to the principles of law and the rules of the courts.—*Ibid.*

PRAY IN AID, a petition made in a court of justice for the calling in of help from another that has an interest in the cause in question.—*Wharton.*

PREAMBLE, the introducing clause or section of a statute is so termed. It usually recites the objects and intentions of the legislature in passing the statute, and frequently points out the evils or grievances which it was the object of the legislature to remedy. Although the preamble is generally a key to the construction, yet it does not always open or disclose all the parts of

it. A reference to the preamble is therefore only an insufficient guide to the true interpretation of the statute.—*Brown.*

PRECARIOUS LOAN, a bailment at will.—*Ibid.*

PRECARIUM, a contract by which the owner of a thing, at another's request, gives him the thing to use as long as the owner shall please.—*Civ. Law.*—*Wharton.*

PRECATORY WORDS, expressions in a will, praying or recommending that a thing be done.—*Ibid.*

PRECEDENTS, some prior example. Its most important application is to the former decisions of the various judges and courts, but it also applies to established mode of doing legal business, and especially to the wording and arrangement of legal documents in accordance with eminent authority or acknowledged custom.

PRECEPT, a rule authoritatively given; a mandate; a command in writing by a justice of the peace or other officer, for bringing a person or record before him; the direction of a sheriff to the proper officer to proceed to the election of members of Parliament; a command to a sheriff to empanel a jury; also, a provocation whereby one incites another to commit a felony.—*Cowel.*—*Wharton.*

PRE-EMPTION, (*shufaa*) the right, under Mahomedan law, of possessing immoveable property which has been sold, by paying a sum equal to that paid by the purchaser. The right is usually claimable by a partner in the property sold, a participator in its appendages and a neighbour.

PREFERENCE, a fraudulent preference in law is a transfer of money or other subject of value to a creditor, with the intention in the mind of the debtor of preventing the law of bankruptcy operating over his effects, in the distribution of them for the equal benefit of all his creditors. Such act, however *moral* in intention, and notwithstanding the creditor is in the highest degree meritorious, in law is a fraud. To amount to a fraudulent transfer, it must be made in contemplation of bankruptcy or insolvency, and voluntary or spontaneous, or *not in the usual course of business;* which, after all, is the chief point for jurymen to consider, when they have to consider a verdict involving this consideration.—*Tomlin.*

PREGNANCY, plea of, where a woman is capitally convicted, and pleads her pregnancy, though this is no cause to stay the

judgment, yet it is to respite the execution, till she is delivered.—*Tomlin.*

PREMISES, that part, in the beginning of a deed, the office of which is to express the grantor and grantee, and the land or thing granted or conveyed.—*Ibid.* In legal phraseology the word is synonymous with circumstances; "in the premises" and "under the circumstances" being in most cases exact equivalents.

PREPENSE, *forethought:* as prepensed malice is, which makes killing, murder; and when a man is slain on a sudden quarrel, if there were malice prepensed previously between the parties, it is prepensed murder.—*Tomlin.*

PREROGATIVE COURT, the court in which all wills are proved and administrations taken out, where the testator or intestate had goods in *divers dioceses;* the archbishop of the province having the *prerogative* of proving the will and granting administration. The two *prerogative* courts are those of the archbishops of Canterbury and York.—*Ibid.*

PREROGATIVE LAW, that part of the common law of England which is more particularly applicable to the king.—*Brown.*

PRESCRIPTION, rules produced and authorized by long usage. It is known in the Roman law as *usucapio.* There are two kinds of prescription, viz.:—(1), *negative,* which relates to realty or corporeal hereditaments, whereby an uninterrupted possession for a given time gives the occupier of valid and unassailable title, by depriving all claimants of every stale right and deferred litigation, and (2), *positive,* which relates to incorporeal hereditaments, and originated at the common law, from immemorial or long usage only. Positive prescription is sub-divided into—(*a*), that which has been exercised by a person and his ancestors, or by a body corporate and their predecessors, and is a personal right; or (*b*), that which has been attached to the ownership of a certain estate, and is only exerciseable by those seised of the fee-simple of such estate, technically denominated a prescription in a *que* estate.—*Wharton.*

PRESCRIPTION, CORPORATIONS BY, those that have existed beyond the memory of man, and therefore are looked upon in law to be well created, such as the city of London.—*Ibid.*

PRESENTMENT, an information made by the jury in a court, before a judge who hath authority to punish an offence.—*Tomlin.*

PRESENTS. "These presents" is a quaint expression which really means "this document."

PRESIDENCY, the territories subject to a subordinate Government in India; the chief town of a presidency.

PRESUMPTION, a supposition, opinion, or belief previously formed. Presumptions are said to be either—(1), *juris et de jure;* (2), or *juris;* or (3), *hominis vel judicis.* (1.) The presumption *juris et de jure* is that where law or custom establishes the truth of any point, on a presumption that cannot be traversed on contrary evidence; thus a minor or infant, with guardians, is deprived of the power of acting without their consent, on a presumption of incapacity, which cannot be traversed. (2.) The *præsumptio juris* is a presumption established in law till the contrary be proved, as the property of goods is presumed to be in the possessor: every presumption of this kind must necessarily yield to contrary proof. (3.) The *præsumptio hominis vel judicis* is the conviction arising from the circumstances of any particular case.—*Wharton.*

PRESUMPTIVE EVIDENCE. See CIRCUMSTANTIAL EVIDENCE.

PRESUMPTIVE HEIR, one who, if the ancestor should die immediately, would, in the present circumstances of things, be his heir; but whose right of inheritance may be defeated by the contingency of some nearer heir being born.—*Wharton.*

PRESUMPTIVE TITLE, a barely presumptive title, which is of the very lowest order, arises out of the mere occupation or simple possession of property (*jus possessionis,* Lat.), without any apparent right, or any pretence of right, to hold and continue such possession. This may happen where one man disseises another; or where, after the death of the ancestor, and before the entry of the heir, a stranger abates and holds out the heir.—*Ibid.*

PRETENSED RIGHT, where one is in possession of land, and another, who is out of possession, claims and sues for it; here the pretensed right or title is said to be in him who so claims and sues for the same.— *Mod. Cas.* 302.—*Ibid.*

PRETERITION, the entire omission of a child's name in the father's will, which rendered it null: exheredation being allowed, but not preterition.—*Civ. Law.*—*Ibid.*

PREVENTIVE SERVICE, armed police-officers engaged to watch the coasts for the purpose of preventing smuggling and other

illegal acts. It is sometimes termed the Coast-Blockade-Force. —*Wharton.*

PRIMA FACIE EVIDENCE, that which, not being inconsistent with the falsity of the hypothesis, nevertheless raises such a degree of probability in its favor, that it must prevail if it be accredited by the jury, unless it be rebutted, or the contrary proved; *conclusive* evidence, on the other hand, is that which excludes, or at least tends to exclude, the possibility of the truth of any other hypothesis than the one attempted to be established.—1 *Stark. Evid.* 544.—*Ibid.*

PRIMAGE, a small payment made to the master of a vessel for his personal care and trouble, which he is to receive in addition to his wages or salary to his own use, unless he has otherwise agreed with his employers. This payment is that intended in the phrase "with primage and average accustomed." It is sometimes called "hul money".—*Brown.*

PRIMARY CONVEYANCES, original conveyances: they are—(1), feoffments; (2), grants; (3), gifts; (4), leases; (5), exchanges; (6), partitions.—*Wharton.*

PRIMOGENITURE, seniority, eldership, state of being first-born; the title of an elder son in right of his birth.—*Ibid.*

PRINCIPAL AND ACCESSORY. *Principals* in offences are of two degrees—(1), of the first degree, as the actual perpetrators of the crime; (2), of the second degree, those who are present, aiding and abetting the fact to be done. *Accessories* are not the chief actors in the offence, nor present at its performance, but are in some way concerned therein, either before or after the fact committed.—*Ibid.* See ACCESSORY.

PRINCIPAL AND AGENT, he who, being competent and *sui juris* to do any act for his own benefit or on his own account, employs another person to do it, is called the principal, constituent, or employer, and he who is thus employed is called the agent, attorney, proxy, or delegate of the principal, constituent, or employer. The relation thus created between the parties is termed an agency. The power thus delegated is called in law an authority. And the act, when performed, is often designated as an act of agency or procuration.— *Story on Agency*, 2.—*Ibid.*

PRINCIPAL SUDDER AMEEN, a judicial functionary; a judge who exercises a limited civil and criminal jurisdiction under the administration of the British Government. He was formerly called a native judge.

PRISON, a place of confinement for the safe custody of persons, in order to their answering any action, civil or criminal; a gaol. —*Wharton.*

PRISONER, one who is confined in hold. A prisoner on *matter of record* is he who, being present in court, is by the court committed to prison; a prisoner *on arrest* is one apprehended by a sheriff or other lawful officer.—*Ibid.*

PRIVATE DEFENCE, every person has a right, subject to the restrictions noted below, to defend his own body, and the body of any other person, against any offence affecting the human body; the property, whether moveable or immoveable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief, or criminal trespass, or which is an attempt to commit theft, robbery, mischief, or criminal trespass. (1.) The right of *private defence of the body* extends to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely—(*a*), such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault; (*b*), such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault; (*c*), an assault with the intention of committing rape; (*d*), an assault with the intention of gratifying unnatural lust; (*e*), an assault with the intention of kidnapping or abducting; (*f*), an assault with the intention of wrongfully confining a person under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release. If the offence be not of any of the descriptions just enumerated, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend to the voluntary causing to the assailant of any harm other than death. The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence. There is, however, no right of private defence (*a*), against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done or attempted to be done by a public servant acting in good faith under color of his office, though that act may not be strictly justifiable by law, (*b*), against an act which does not reasonably cause the apprehension of

death or of grievous hurt, if done or attempted to be done by the direction of a public servant acting in good faith under color of his office, though that direction may not be strictly justifiable by law; or (*c*), in cases in which there is time to have recourse to the protection of the public authorities. A person is not deprived of the right of private defence against an act done or attempted to be done by a public servant as such, unless he knows or has reason to believe that the person doing the act is such public servant, or against an act done or attempted to be done by the direction of a public servant, unless he knows or has reason to believe that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or, if he has authority in writing, unless he produces such authority, if demanded. The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues. (2.) The right of *private defence of property* extends, under the restrictions above noted, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereafter enumerated, namely,—(*a*), robbery; (*b*), house-breaking by night; (*c*), mischief by fire committed on any building, tent, or vessel, which building, tent, or vessel is used as a human dwelling, or as a place for the custody of property; (*d*), theft, mischief, or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right or private defence is not exercised. If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions just enumerated, that right does not extend to the voluntary causing of death, but, under the restrictions already mentioned, to the voluntary causing to the wrong-doer of any harm other than death. The right of private defence of property commences when a reasonable apprehension of danger to the property commences, and continues—(1), in the case of theft, till the offender has effected his retreat with the property, or the assistance of the public authorities is obtained, or the property has been recovered

(2), in the case of robbery, so long as the offender causes or attempts to cause to any person death, or hurt, or wrongful restraint, or as long as the fear of instant death, of instant hurt, or of instant personal restraint continues; (3), in case of criminal trespass or mischief, so long as the offender continues in the commission of criminal trespass or mischief; and (4), in the case of house-breaking by night, so long as the house-trespass which has been begun by such house-breaking continues. If, in the exercise of the right of private defence, against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk. —*Ind. P. C.*, sec. 97—106.

PRIVATE ACTS or STATUTES, affect or concern particular persons or companies. The statutes of the realm are generally divided into *public* and *private;* the former being a universal rule that regards the community at large and of which the courts of law are bound of themselves judicially to take notice; the latter being rather exceptions than rules, operating only upon particular persons and private concerns, and of these the judges need only take notice when expressly pleaded.—*Brown.*

PRIVIES, those who are partakers or have an interest in any action or thing, or any relation to another. They are of six kinds; (1.) *Privies of blood*, such as the heir to his ancestor. (2.) *Privies in representation*, as executors or administrators to their deceased testator or intestate. (3.) *Privies in estate*, between grantor and grantee, lessor and lessee, assignor and assignee, &c. (4.) *Privies in respect of contract*, are personal privities, and extend only to the persons of the lessor and lessee. (5.) *Privies in respect of estate and contract*, as where the lessee assigns his interest, but the contract between the lessor and lessee continues, the lessor not having accepted of the assignee. (6.) *Privies in law*, as the lord by escheat, a tenant by the courtesy, or in dower, the incumbent of a benefice, a husband suing or defending in right of his wife, &c.—*Wharton.*

PRIVILEGED COMMUNICATIONS, are communications and correspondence privately and confidentially made upon the ordinary occurrences of life, which, if made and continued without malice or injury to another, are protected from being taken advantage of by third parties; for instance, if one man for proper purposes inquire the character or responsibility of

another, and the party addressed answer unfavourably, such letter or statement cannot be the object of an action or prosecution against the individual making it;—otherwise, if the statement were malicious, or the writer exceeded the bounds of ordinary communication.—*Tomlin.*

PRIVILEGED DEBTS, debts which an executor may pay in preference to all others, such as sick-bed and funeral expenses, mourning, servants' wages, &c.—*Wharton.*

PRIVY. A person is said to be privy to something when he is a party or has an interest in the matter referred to, or is in the secret if there is one, or knows all about the subject in question.

PRIVY COUNCIL, the principal council of the Queen, styled, *par excellence*, the council: the members are constituted at the pleasure of the Queen; from these are selected the Ministers of State who form the "cabinet."—*Tomlin.*

PROBATE, official proof, especially that of a will. This is obtained by the executor in the Probate Court, and is either in *common form*, which is only upon the executor's own oath before the ordinary or his surrogate, or *per testes*, in more solemn form of law, in case the validity of the will be disputed. When the will is so proved, the original must be deposited in the registry of the court, and a copy thereof on parchment is made out under its seal, and delivered to the executors, together with a certificate of its having been proved, all which together usually styled the *probate*.—2 *Step. Com.* 202.—*Wharton.*

PROBATOR, an examiner; an accuser or approver, or one who undertakes to prove a crime charged upon another.—*Ibid.*

PROCESS, it is largely taken for all the proceedings in any action or prosecution, real or personal, civil or criminal, from the beginning to the end; strictly, the summons by which one is cited into a court, because it is the beginning or principal part thereof, by which the rest is directed.—*Brit.* 138.—*Ibid.*

PROCHEIN AMI, (*the next friend*), a term used for the next of kin who sues for an infant in any suit respecting the infant's rights; any other person may be *prochein ami*. *Prochein amis* are liable for costs. Infants defend suits by their guardians, either *natural*, as father, mother, &c., or at *law*, by a guardian specially appointed. A married woman suing in equity in respect of her separate estate, may sue by *prochein ami*.—*Tomlin.*

PROCTOR, an attorney in an admiralty or ecclesiastical court. He discharges duties in these courts similar to those of attorneys and solicitors in other courts.

PROCURATION, or per proc., as it is called, is the signing or contracting as proxy for or by authority of another. The agent should always describe himself as such as otherwise he may be incurring a personal liability.

PROCURATOR, in its general signification means, any one who has received a charge, duty, or trust for another.—*Brown.*

PROFERT IN CURIA, (*he produces in court*), where either party alleged any deed, he was generally obliged, by a rule of pleading, to make *profert* of such deed; that is, to produce it in court simultaneously with the pleading in which it was alleged. This, in the days of oral pleading, was, of course, an actual production in court. Since then, it consisted of a formal allegation that he showed the deed in court, it being, in fact, retained in his own custody.—*Step. Plead.* 72.—*Wharton.*

PROHIBITION, a writ which lies from the Queen's bench to *prohibit* inferior courts, either ecclesiastical or temporal, as courts of request, &c., from taking cognizance of suits that do not belong to them, or are not comprehended within the jurisdiction.—*Tomlin.*

PRO-INDIVISO, (*as undivided*), the possession or occupation of lands or tenements belonging to two or more persons, whereof none knows his several portion; as co-parceners before partition.—*Wharton.*

PROMATERTARA, a great maternal aunt; the sister of one's grandmother.—*Ibid.*

PROMISE, a voluntary engagement for the performance or non-performance of some particular thing, which may be made either by deed, or without deed, when it is said to be by parol: *promise* is usually applied when the engagement is by parol only, for a promise by deed is technically called *a covenant.*—*Ibid.*

PROMISSORY NOTE, a written engagement by one person to pay another person, therein named, absolutely and unconditionally, a certain sum of money at a time specified therein. It is generally negotiable by being paid to order or to the bearer, for it is rarely limited to be payable only to a particular person named therein. The person who makes the note is called the

maker, and the person to whom it is payable is called the *payee*, and when it is negotiated by indorsement by the payee, he is called the *indorser*, and the person to whom the note is transferred is the *indorsee*.—*Story's Com. on Prom. Notes*, 1.—*Wharton.*

PROMUTUUM, a quasi contract, by which he who receives a certain sum of money, or a certain quantity of fungible things, which have been paid to him through mistake, contracts towards the payer the obligation of restoring him as much. It resembles the contract of *mutuum*—(1), that in both a sum of money or some fungible things are required; (2), that in both there must be a transfer of the property in the thing; (3), that in both there must be returned the same amount or quantity of the thing received.—*Civ. Law.*—*Ibid.*

PRONURUS, the wife of a great-grandson.—*Ibid.*

PROOF, the showing any matter alleged by witnesses.—*Tomlin.* See EVIDENCE.

PROPERTY, the highest right a man can have to any thing, being used for that right which one has to lands or tenements, goods or chattels, which does not depend on another's courtesy. Property is of three sorts: *absolute*, *qualified*, and *possessory*. Property in realty is acquired by entry, descent, or conveyance; and in personalty, by many ways, but most usually by gift, or bargain and sale.—*Wharton.*

PROPERTY MARK, a mark used for denoting that moveable property belongs to a particular person.—*Ind. P. C.*, sec. 479. See TRADE-MARK.

PROPINQUITY, kindred, parentage.—*Wharton.*

PROPOUNDER of a will, he by whom it is brought forward, and who seeks to obtain for it probate. This is generally the executor; but if any testamentary paper be left in the possession of, or materially benefits, any other person, it may be propounded by such person.—*Brown.*

PROSECUTION, a proceeding either by way of information or indictment, in the criminal courts, in order to put an offender upon his trial.—*Wharton.*

PROTECTION, defence, shelter from evil, especially from being arrested; also, an immunity granted by the crown to a certain person to be free from suits at law for a certain time, and for some reasonable cause; it is a branch of the royal prerogative. It is now very rarely, if ever, resorted to.—*Ibid.*

PROTECTOR, the person who, upon the settling or limiting of an estate-in-tail, is actually in possession of a prior estate of freehold or for lives: his consent is requisite, if the tenant-in-tail wishes to alien. If the tenant-in-tail is in possession, he may alien by deed inrolled: for instance, if land be settled on A for life, remainder to B and his heirs male, which is an estate-in-tail, B cannot, during the life of A, and without his consent, alien, A being the protector to the settlement. Protectors are rather *consenting* than *conveying* parties.—*Tomlin.*

PROTEST, has two meanings or applications; one by way of caution, to call witnesses (as it were), or openly affirm that the party either doth not at all, or but conditionally, yield his consent to any act, or to answer anything further than he is lawfully bound; the other is by way of complaint, as to protest a man's bill, which is done upon refusal of the acceptor to pay, or the drawee to accept.—*Ibid.*

PROTHONOTARY, a chief officer. In the Queen's bench, the master is the prothonotary. In the common pleas, there are four who are termed "masters." They enter and enrol declarations, judgments, and other proceedings, tax costs, and hear matters which the court may refer to them for their report, &c. Many other courts style their first clerks (*protonotarius*) prothonotaries, viz., the Marshalsea, Court of Record at Stepney, &c.—*Ibid.*

PROVE, in legal phraseology, does not necessarily mean to demonstrate, but to produce conclusive evidence of.

PROVING A WILL, is the act of propounding a will and giving the required evidence as to the validity of it which entitles an executor to probate.

PROVISO, stipulation, caution, a condition inserted in any deed, on the performance whereof the validity of the deed depends. The terms *proviso* and *condition* are synonymous, and signify some quality annexed to a real estate by virtue of which it may be defeated, enlarged, or created upon an uncertain event. Such qualities annexed to personal contracts and agreements, are generally called conditions. A proviso or condition differs from a covenant in this, that the former is in the words of, and binding upon, both parties, whereas the latter is in the words of the grantor only. It is a rule in provisos, that where a proviso is, that the lessee shall perform or not perform a thing, and no penalty is annexed to it, that is a condition, otherwise it would be

void; but if a penalty be annexed, it is a covenant.—*Wood's Land. and Tent.* 103, 268.—*Wharton.*

PROVISO, trial by, in all cases where the plaintiff, after issue joined, does not proceed to trial, where, by the course and practice of the court, he ought to have done so, the defendant may, if he wish, have the action tried by proviso; that is, he may give the plaintiff notice of trial, make up the *Nisi Prius* record, carry it down and enter it, and proceed to the trial as in ordinary cases as if he were proceeding as plaintiff. This, however, can be done only in cases where the plaintiff has been guilty of some laches or default after issue joined, except in replevin, prohibition, *quare impedit*, and error in fact: in which cases both parties being plaintiffs, the defendant may make up the *Nisi Prius* record, and thereupon proceed to trial, although no laches or default be imputable to the plaintiff. The court have also allowed a defendant to carry down the record of an issue directed by the court of chancery to trial by proviso, upon its being suggested to them that the plaintiff wished to delay the cause.—*Ibid.*

PROXINETA, a kind of broker or agent. All contracts and agreements respecting marriage (commonly called marriage-brokage contracts), by which a party engages to give another a compensation, if he will negotiate an advantageous marriage for him, are void, as being injurious to, or subversive of, the public interest. But the civil law does not seem to have held contracts of this sort in such severe rebuke; for it allowed *proxinetæ* or match-makers, to receive a reward for their services to a limited extent. And the period is comparatively modern in which a different doctrine was engrafted into the common law, and received the high sanction of the House of Lords. All marriage-brokage-contracts are utterly void as against public policy, so much so, that they are deemed incapable of confirmation, and even money paid under them may be recovered back in a court of equity.—1 *Story's Eq. Jurisp.* 214.—*Ibid.*

PUBLIC ACT or STATUTE, an Act which concerns the whole community. See PRIVATE ACT or STATUTE.

PUBLICATION, divulgation; proclamation. In respect of libels, it is a publication if one delivers a libel from his hands and ceases to have control over it. There need not be any actual manifestation of its contents, but a delivery is sufficient. It is

not a publication if the libellous matter is contained in a private letter to plaintiff, and delivered to him only: but it is otherwise if defendant knew that it was the habit of the plaintiff's clerk to open his letters in his absence, and, in point of fact, the clerk does open the letter.—*Collett.*

PUBLIC HOUSES, places of public resort, mostly for purposes of drinking.—*Wharton.*

PUBLIC PROSECUTOR, the Queen, in whose name criminals are prosecuted, because all offences are said to be against the Queen's peace, her crown, and dignity.—*Ibid.*

PUBLIC SERVANT, a person falling under any of the descriptions hereinafter following, namely, (1), every covenanted servant of the Queen; (2), every commissioned officer in the military or naval forces of the Queen while serving under the Government of India or any Government; (3), every judge; (4), every officer of a court of justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the court; and every person specially authorized by a court of justice to perform any of such duties; (5), every juryman, assessor, or member of a punchayet assisting a court of justice or public servant; (6), every arbitrator or other person to whom any cause or matter has been referred for decision or report by any court of justice, or by any other competent public authority; (7), every person who holds any office by virtue of which he is empowered to place or keep any person in confinement; (8), every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety, or convenience; (9), every officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey, assessment, or contract on behalf of Government, or to execute any revenue process, or to investigate, or to report, on any matter affecting the pecuniary interests of Government, or to make, authenticate, or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government or remunerated by fees or commission for the performance of any

public duty; (10), every officer whose duty it is, as such officer, to take, receive, keep, or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town, or district, or to make, authenticate, or keep any document for the ascertaining of the rights of the people of any village, town, or district. Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not, and the term is understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.—*Ind. P. C.*, sec. 21.

PUISNE, younger, subordinate, thus all the judges, excepting the chief, are termed puisne judges; *i.e.*, they are subordinates to their respective chiefs.—*Brown.*

PUIS DARREIN CONTINUANCE (*since the last continuance*) **PLEA**, if any matter of defence arise after the defendant has pleaded, and before the jury have actually delivered their verdict, the defendant may, within eight days after such matter of defence arose, unless a further time be allowed by the court or a judge, avail himself of it by a plea, styled a plea *puis darrein continuance*, before the abolition of the entry of continuances, but now more properly denominated a plea to the further maintenance of the action. It cannot be pleaded after a demurrer or verdict. —*Wharton.*

PURCHASE, the buying or other acquisition of lands of inheritance with money, or by deed, gift, or agreement, as distinct from the obtaining them by descent or hereditary right, and the course of descent is somewhat varied accordingly.—*Tomlin.*

PURGATION, the clearing a person's self of a crime of which he is publicly suspected and accused before a judge. It was either *canonical*, which was prescribed by the cannon law, the form whereof, used in the spiritual court, is, that the person suspected to take his oath that he is clear of the facts objected against him, and bring his honest neighbours with him to make oath that they believe he swears truly; or *vulgar*, which was by fire or water-ordeal, or by combat. They are all abolished.—*Wharton.*

PURVIEW, proviso, providing clause; also, that part of a statute which begins with "Be it enacted," &c.—*Ibid.* In modern times the word is used to denote the scope of an Act.

PUTATIVE, supposed, reputed.—*Ibid.*

QUALIFIED PROPERTY, an ownership of a special and limited kind, and that either in reference to the peculiar circumstances of the matter, which is not capable of being under the absolute dominion of any proprietor, as in the case of animals *feræ naturæ* or on account of the peculiar circumstances of the owner, when the thing itself is very capable of absolute ownership, as in the case of a bailment.—*Wharton.*

QUALITY OF ESTATE, the period when, and the manner in which, the right of enjoying an estate is exercised. It is of two kinds—(1), the period when the right of enjoying an estate is conferred upon the owner, whether at present or in future; and (2), the manner in which the owner's right of enjoyment of his estate is to be exercised, whether solely, jointly, in common, or in co-parcenary.—*Ibid.*

QUANTITY OF ESTATE, its time of continuance, or degree of interest, as in fee, during life, or for years.—*Ibid.*

QUARANTINE, or **QUAREANTINE**, *the widow's*, it is provided by Magna Charta, that the widow shall not be distrained to marry afresh, if she choose to live without a husband, but shall not, however, marry against the consent of the lord; and further, that nothing shall be taken for assignment of the widow's dower, but that she shall remain in her husband's capital mansion-house for forty days after his death, during which time her dower shall be assigned. These forty days are called the widow's *quarantine.* Marriage during these forty days forfeits the quarantine. This right was enforced by writ of *Quarantina habenda.*

Also a regulation by which all communication with individuals, ships, or goods, arriving from places infected with the plague, or other contagious disease, or supposed to be peculiarly liable to such infection, is interdicted for a certain definite period. The term is derived from the Italian *quaranta.* forty; it being generally supposed, that if no infectious disease break out within forty days or six weeks, no danger need be apprehended from the free admission of the individuals under quarantine. During this period, too, all the goods, clothes, &c., that might be supposed capable of retaining the infection, are subjected to a process of purification.—*Wharton.*

QUARE IMPEDIT, (*wherefore he hinders*), the name of a writ and suit which lies for the recovery of an advowson, or right of presentation.—*Tomlin.*

QUARTERIZATION, dividing a criminal into four quarters.—*Wharton.*

QUASH, to annul for insufficiency or for other cause. The court of Queen's bench will *quash* an indictment for informality, or an order of sessions for irregularity.—*Tomlin.*

QUASI-CONTRACT, an act which has not the strict form of a contract, but yet has the force of it; an implied contract.—*Wharton.*

QUASI-CRIME, or **QUASI-DELICT**, the action of one doing damage or evil involuntarily.—*Ibid.*

QUASI-ENTAIL, an estate *purautre vie* may be granted, not only to a man and his heirs, but to a man and the heirs of his body, which is termed a *quasi-entail*; the interest so granted not being properly an estate-tail (for the Statute *De Donis* applies only where the subject of the entail is an estate of inheritance), but yet so far in the nature of an estate-tail, that it will go to the heir of the body as special occupant during the life of *cestui que vie*, in the same manner as an estate of inheritance would descend, if limited to the grantee and the heirs of his body. And such estate may be also granted with a remainder thereon during the life of *cestui que vie*; and the alienation of the *quasi*-tenant-in-tail will bar not only his issue, but those in remainder. The alienation, however, for that purpose (unlike that of an estate-tail, properly so called), may be effected by any method of conveyance, except a will.—1 *Step. Com.*, 448.—*Ibid.*

QUASI-FEE, an estate gained by wrong, for wrong; is unlimited and uncontained within rules.—*Ibid.*

QUASI-PERSONALTY, things which are moveable in point of law though fixed to things real, either actually, as emblements (*fructui industriales*) fixtures, &c.; or fictitiously, as chattels real, leases for years, &c.—*Ibid.*

QUASI-REALTY, things which are fixed in contemplation of law to realty, but moveable in themselves, as heir-looms (or limbs), title deeds, court rolls, &c.—*Ibid.*

QUASI-TENANT AT SUFFERANCE, an under-tenant who is in possession at the determination of an original lease, and is permitted by the reversioner to hold over.—*Ibid.*

QUASI-TRADITIO, the placing a person in possession of a right.—*Ibid.*

QUASI-TRUSTEE, a person who reaps a benefit from a breach of trust, and so becomes answerable as a trustee.—*Lewin's Trusts*, 846.—*Wharton.*

QUEEN'S BENCH, which is a court of record at Westminster, and has five judges, viz., one Lord Chief Justice, and four *puisne* or junior justices. Besides the five judges, there are five masters and a numerous staff of clerks for the transaction of the business of the several offices connected with the court. The jurisdiction of this court is two-fold; the civil or the plea side, and the criminal or the crown side.—*Ibid.*

QUEEN'S EVIDENCE, an accomplice, to whom a hope is held out, that if he will fairly disclose the whole truth as a witness on the trial, and bring the other offenders to justice, he shall himself escape punishment.—1 *Phil. Evid.*, 31.—*Ibid.*

QUI TAM, (*who as well,*) the plaintiff, in an action to recover a penalty, describes himself as suing as well for the king as for himself, *i.e.*, where any part is given to the king, and any proportion to the informer, a penal action is therefore vulgarly called a *qui tam* action.—*Tomlin.*

QUO WARRANTO, (*by what warrant or authority,*) a writ that lies against any person that usurps the office or franchise of another: the writ itself is fallen into disuse; but the same end is attained by the attorney-general filing an information in the nature of a *quo warranto*. This proceeding is applied to the decision of corporation disputes, in respect of offices held under Acts of Parliament or at common law, as for deciding the right to a stewardship of a court-leet, a ferry, a fair or market, a toll, &c.—*Ibid.*

RACK-RENT, a rent of the full annual value of the tenement, or near it.—*Brown.*

RANSOM, price of redemption of a captive or prisoner of war, or for the pardon of some great offence. It differs from amerciament, because it excuses from corporal punishment.—*Wharton.*

RAPE, a man is said to commit "rape," who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:—(1), against her will; (2), without her consent; (3), with her consent, when her consent has been obtained by putting her in fear of death, or of hurt; (4), with her consent, when the man knows that he is not her husband, and that her

consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married; (5), with or without her consent, when she is under ten years of age, though it be by a man with his own wife. Sexual intercourse by a man with his own wife, the wife not being under ten years of age, is not rape.—*Ind. P. C.*, sec. 375.

RATIFICATION, authorizing subsequently what has been already done without authority. In contract law it is equivalent to a prior request to make the contract; and in the law of torts it often has the effect of perjuring the tort.—*Brown.*

RATIONABLE ESTOVERIUM, alimony.—*Wharton.*

RAVISHMENT, violation, forcible constupration.—*Ibid.* See RAPE, ABDUCTION.

REAL ACTION, one brought for the specific recovery of lands, tenements, and hereditaments. There are only three extant, viz., dower, dower *unde nihil habet*, and *quare impedit*.—*Wharton.*

REAL LAWS, laws purely real, directly and indirectly regulate property, and the rights of property, without intermeddling with, or changing the state of the person.—*Ibid.*

REAL PROPERTY, is legally distinguished from *personalty*, principally in two respects: *first*, its permanent, fixed, and immoveable quality; and *secondly*, that the interest therein must be not less than the term of the life of the owner, or of another person or persons; whereas personalty is either moveable, or readily capable of being so, or, as in the case of a lease for years, is considered as of so inferior a nature, that it is not allowed the incidents and privileges of *real* property. *Blackst. Com.*, vol. ii., p. 386. Even a long term of years perpetually renewable is not real, but only personal, property.—*Tomlin.*

REAL RIGHT, the right of property, *jus in re*, the person having which right may sue for the subject itself. A personal right, *jus ad rem*, entitles the party only to an action for performance of the obligation.—*Wharton.*

REALTY, an interest in land.

REBELLION, the taking up of arms traitorously against the crown, whether by natural subjects or others, when once subdued; also, the disobedience to the process of the courts.—*Wharton.*

REBELLIOUS ASSEMBLY, a gathering of twelve persons or

more, intending, going about, or practising unlawfully and of their own authority, to change any laws of the realm, or to destroy the enclosure of any park or ground enclosed; banks of fish-ponds, pools, conduits, &c., to the intent the same shall remain void, or that they shall have way in any of the said grounds; or to destroy the deer in any park, fish in ponds, coneys in any warren, dove-houses, &c.; or to burn stacks of corn; or to abate rents, or prices of victuals, &c.—*Wharton.* See ASSEMBLY, UNLAWFUL.

REBUTTER, the answer of a defendant to a plaintiff's surrejoinder, *i.e.*, the defendant *rebuts* the assertion stated in the plaintiff's previous pleading.—*Tomlin.* See PLEADING.

REBUTTING EVIDENCE, that which is given by one party in a cause, to explain, repel, counteract or disprove evidence produced by the other party.—*Wharton.*

RECEIPT, is an acquittance for a sum of money. It is not demandable of right, or, rather, by law; so that if a man offer to pay money to another, provided he will give him a receipt, this is not a sufficient tender, for the party tendering has attached a condition which vitiates the *tender*.—*Tomlin.*

RECEIPTOR, a person to whom property is bailed by an officer, who has attached it upon mesne process, to respond the exigency of the writ, and satisfy the judgment, the understanding being to have it forthcoming on demand.—*Wharton.*

RECEIVER, a person appointed by the court of chancery to receive the rents of lands, &c., in its custody or direction: he gives sureties for his due payment of the rents, &c., and is chargeable with interest if he delay payment.—*Tomlin.*

RECEIVING STOLEN GOODS, the receiving "any chattels, money, valuable securities, and other property whatsoever," knowing the same to have been stolen, is criminal, and punishable by law.—*Ibid.*

RECITAL, the rehearsal or making mention in a deed or writing of something which has been done before.—1 *Lill. Abr.* 416. —*Wharton.*

RECOGNIZANCE, an obligation with penalty attached, acknowledged and enrolled in a court of law, with a condition to be void on the performance of a thing stipulated, as recognizances to keep the peace, recognizances taken from a prosecutor to attend and prosecute, from witnesses, &c.

RECORD, a memorial or remembrance; an authentic testimony in writing contained in rolls of parchment, and preserved in a court of record. There are three kinds of records, viz., (1), *judicial*, as an attainder; (2), *ministerial*, on oath, being an office or inquisition found; (3), by way of *conveyance*, as a deed enrolled.—*Tomlin.*

RECORD, Conveyances by, extraordinary assurances, as private Acts of Parliament, and Royal grants.—*Ibid.*

RECORD, Courts of, those where the judicial acts and 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 super-eminent authority, that their truth is not to be called in question. Every court of record has authority to fine and imprison for contempt of its authority.—*Ibid.*

RECORD, Debts of, those which appear to be due by the evidence of a court of record, such as a judgment, recognizance, &c.—*Wharton.*

RECORD of Nisi Prius, a transcript of the pleadings and issue, on parchment, for the use of the court on the trial of the action.—*Ibid.*

RECORD, Trial by, if a record be asserted on one side to exist, and the opposite party deny its existence under the form of traverse, that there is no such record remaining in court as alleged, and issue be joined thereon, this is called an issue of *nul tiel* record; and the court awards in such a case a trial by inspection and examination of the record. Upon this, the party affirming its existence is bound to produce it in court on a day given for the purpose: and if he fail to do so, judgment is given for his adversary. The trial by record is not only in use when an issue of this kind happens to arise for decision, but it is the only legitimate mode of trying such issue, and the parties cannot put themselves upon the country.—*Step. Plead*, 112; 2 *Chit. Arch. Prac. by Pren.*, 893.—*Ibid.*

RECORDER, a person whom the mayor and other magistrates of any city or town corporate, having jurisdiction in court of record within their precincts by the Royal grant, associate unto them for their better direction in matters of justice and proceedings according to law.—*Ibid.*

RECOUP, the keeping back or stopping something which is due; discount; recompense.—*Ibid.*

RECOVERIES AND FINES, were proceedings by which persons were enabled to bar estates-tail, and, with the concurrence of their wives, to bar them of dower, and to exclude remaindermen.—*Tomlin.*

RECOVERY, the obtaining a thing by judgment or trial. A *true* recovery is an actual or real recovery of anything, or the value thereof, by judgment; as if a man sue for any land or other thing moveable or immoveable, and gain a verdict or judgment. A *feigned* recovery, an abolished common assurance by matter of record, in fraud of the statute *de donis*, whereby a tenant-in-tail enlarged his estate-tail into a fee-simple, and so barred the entail, and all remainders and reversions expectant thereon, with all conditions and collateral limitations annexed to them, and subsequent charges subordinate to the entail. But incumbrances on the estate-tail equally affected such fee-simple, and any estate or interest prior to the entail remained undisturbed. This assurance consisted of two parts—(1), the recovery itself, which was a fictitious real action in the court of common pleas, carried on to judgment, and founded on the supposition of an adverse claim; and (2), the recovery-deed, which was partly a preparatory step to suffering the recovery, and partly a declaration of the uses when suffered. Recoveries were either legal or equitable. The parties to a recovery action were—(1), the *Demandant*, or Recoveror, who was merely a formal party for the purpose of supporting the character of plaintiff; (2), the *Tenant*, or Recoveree, who was the person in whom the immediate freehold resided, and against whom the lands were to be demanded by the plaintiff; and (3), the *Vouchee*, who was called to warrant or vouch upon a supposed warranty, and took the defence on himself.—*Wharton.*

RECTUS IN CURIA, one who stands at the bar of a court, and no accusation is made against him; also, said of an outlaw when he has reversed his outlawry.—*Ibid.*

REDDENDUM, a clause reserving rent in a lease, whereby a lessor retains some new thing to himself out of that which he granted before: it commonly and properly succeeds the *habendum*, and is usually made by the words "yielding and paying," or similar expressions.—*Ibid.*

REDDITION, a surrendering or restoring; also, a judicial acknowledgment that the thing in demand belongs to the demandant, and not to the person so surrendering.—*Ibid.*

REDEEMABLE RIGHTS, those which return to the conveyor or disposer of land, &c., upon payment of the sum for which such rights are granted.—*Wharton.*

REDEMPTION, is the recovery back of property in pawn, or the extinguishment of a security by paying the money or fulfilling the condition subject to which it is given. See EQUITY OF REDEMPTION.

REDEMPTION OF LAND TAX, is the payment down of a capital sum to free any given property from future land tax.

REDUCTION INTO POSSESSION, signifies in general the realization of an asset. When a depositor withdraws a deposit, or a creditor obtains a payment, he is said to reduce it into possession, whereby it is *in possession* as contradistinguished from *in action.*

REFEREE is a person to whom the decision of some point in dispute is referred to.

REFERRING A CAUSE. When a case or action involves matters of account or other intricate details which require minute examination and for that reason are not fit to be brought before a jury, it is not unusual to refer all matters in difference between the parties to the decision of an arbitrator, and in such a case the cause is said to be referred.—*Brown.*

REFRESHER. It frequently happens that after the briefs in a cause have been delivered to counsel, the cause, from a press of business or some other reason, is adjourned or allowed to stand over from one term or sitting to another, which imposes upon counsel the necessity of reperusing their briefs, in order to refresh their memory upon the various points of the cause; in consideration of which it is usual for the attorney to mark on the briefs which have been so delivered a small additional fee, hence termed a refresher fee.—*Ibid.*

REHABILITATE, to restore a delinquent to former rank, privilege, or right; to qualify again; to restore a forfeited right.—*Wharton.*

REJOINDER, a defendant's answer to a plaintiff's replication, which must be delivered within four days after notice, unless the defendant is under terms of "*rejoining gratis*," which means rejoining within four days from the delivery of the replication without a notice to rejoin, or a demand of a rejoinder. It does not apply to a joinder in demurrer, therefore, on a demurrer to a plea, the defendant is entitled to four days to join in it from

the service of a notice to do so. As to rejoining several matters, and rejoining and demurring together, see 1 *Chit. Arch. Prac. by Pren.*, 282.—*Wharton.*

RELEASE, a gift, discharge, or renunciation of a right of action; also a common law conveyance, the operative verb in which is "release;" hence the name. It operates or enures in five modes:—(1), by passing an estate (*mitter l'estate*), as where a joint-tenant or coparcener conveys his estate to his co-joint-tenant or coparcener. In consequence of the privity between such parties, a fee-simple will pass without any words of limitation. Tenants-in-common, however, cannot thus release to one another, since they have distinct interests in the property; (2), by transferring a right (*mitter le droit*), as in the cases of a desseisee discharging his right to a disseisor, his heir, or grantee. Words of limitation are not necessary, since the subject of transfer is a simple right, which, once discharged, is for ever extinguished, and not an estate which may be qualified or restricted. The difference between this and the previous mode is, that the former passes an estate where a privity exists between the parties; this passes only a right, in the absence of privity; (3), by extinguishment, as the lord releasing his seignorial rights to his tenant, or a life-tenant having conveyed a greater estate than he owns, the expectant releasing his right to the tenant's grantee. A release of all demands extinguishes all actions and titles, and is the amplest discharge that can be given; (4), by enlarging a particular estate into an estate commensurate with that of the person releasing; but a privity of estate must at the time exist between the releasor and the releasee, who must have an estate actually vested in him susceptible of enlargement; (5), by entry and feoffment, as a disseisee releasing to one of two disseisors, who then becomes as solely seised as if the disseisee had entered upon the property, put an end to the disseisin, and then enfeoffed such disseisor. —*Ibid.*

RELEGATION, *exile;* judicial banishment. *Abjuration* is forswearing the realm for ever; *relegation* is banishment for a time only.—*Co. Litt.* 133.—*Ibid.*

RELICT, a widow.

RELICTA VERIFICATIONE, where a judgment is confessed by *cognovit actionem* after plea pleaded, and the plea is withdrawn,

it is called a confession or *cognovit actionem relictâ verificatione.* —2 *Chit. Arch. Prac. by Pren.*, 899.—*Wharton.*

RELOCATION, a re-letting or renewal of a lease; a *tacit relocation* is permitting a tenant to hold over without any new agreement.—*Ibid.*

REMAINDER, is an estate limited in lands, tenements, or rents, to be enjoyed after the expiration of another intervening, or, as it is technically termed, "particular" estate. An estate-in-remainder is an estate limited to take effect, and be enjoyed, after another estate is determined. As if a man, seised in fee-simple, grants lands to one for twenty years, and, after the determination of the said term, then to another and his heirs for ever; here the former is tenant for years, remainder to the latter in fee.—*Tomlin.*

REMANET, is a case deferred from one period to another.

REMEDIAL STATUTES, those which are made to supply such defects, and abridge such superfluities in the common law, as arise either from the general imperfection of all human laws, from change of time and circumstances, from the mistakes and unadvised determinations of unlearned judges, or from any other cause. And this being done either by enlarging the common law, where it was too narrow and circumscribed, or by restraining it where it was too lax and luxuriant, has occasioned a division of remedial Acts of Parliament into enlarging and restraining statutes.—*Wharton.*

REMISE, to surrender or return; to release.—*Ibid.*

REMITMENT, the act of sending back to custody; an annulment.—*Ibid.*

REMITTER, where he who has the right of entry in lands, but is out of possession, obtains afterwards the possession of the lands by some subsequent, and, of course, defective title; in this case he is remitted or sent back, by operation of law, to his ancient and more certain title. The possession which he has gained by a bad title shall be *ipso facto* annexed to his own inherent good one; and his defeasible estate shall be utterly defeated and annulled by the instantaneous act of law, without his participation or consent.—*Ibid.*

REMITTITUR DAMNUM, where a jury gives greater damages than a plaintiff has declared for, the mistake might be rectified by entering a *remittitur* for the excess; or, if a plaintiff have signed

judgment for the greater sum, the court will give him leave to amend it, by entering a *remittitur* for the excess, even in a subsequent term and after error brought. The damages are usually remitted in ejectment and replevin where judgment is signed by confession or default.—2 *Chit. Arch. Prac. by Pren.*, 1447.—*Wharton.*

RENOUNCE, to give up a right, to refuse to be executor to an estate.

REPETITION, a recovery of money paid under an accident on mistake.—*Civ. Law.*—*Wharton.*

REPLEVIN, a personal action, *ex delicto*, brought to recover possession of goods unlawfully taken, the validity of which taking it is the regular mode of contesting. The word means a re-delivery of the pledge or thing taken in distress to the owner by the County Court Registrar, upon the owner giving security to try the right of the distress, and to restore it if the right be adjudged against him: after which the distrainer may keep it till tender made of sufficient amends, but must then re-deliver it to the owner. This action is of two sorts: (1), in the *detinet;* (2), in the *detinuit.* Where the party has had his goods re-delivered to him, the action is in the *detinuit;* "wherefore he detained the goods," &c.; but where replevin has not been made, but the distrainer still keeps possession, the action is in the *detinet,* "wherefore he detains the goods," &c. The action in the *detinet* has long fallen into disuse, and is never brought unless the distrainer has eloigned the goods, so that they cannot be got at to make replevin.—*Ibid.*

REPLEVY, or REPLEVISH, to let one to mainprise on surety; also, to re-deliver goods which have been distrained to their owner, upon his giving pledges in an action of replevin.—*Ibid.*

REPLIANT, a litigant who replies, or files, or delivers a replication.—*Ibid.*

REPLICATION, a plaintiff's answer to a defendant's plea, except in replevin, when it moves from the defendant, who, however, is a *quasi* plaintiff, in opposition to the plaintiff's plea in bar. In equity, the plaintiff's reply to an answer or plea, which puts the suit at issue, for the purpose of taking evidence.—*Ibid.*

REPLY, the response of the opening counsel on a trial, which is only allowed when evidence has been given in answer to the case first stated, except in the case of the crown, which is always entitled to reply.—*Ibid.*

REPORTS, LAW, are the record of cases tried in the various courts, with memoranda of circumstances, evidence, verdicts and judgments. They really constitute the actual law upon many points where decisions are governed by precedents.

REPRESENTATION. See PERSONATION.

REPRIEVE, the withdrawing of a criminal's sentence for an interval of time. It may take place—(1), *ex mandato reginæ*, at the mere pleasure of the crown; (2), *ex arbitrio judicis*, either before or after judgment, as where the judge is not satisfied with the verdict or the evidence is suspicious, or the indictment is insufficient, or if any favorable circumstances appear in the criminal's character, in order to give room to apply to the crown for either an absolute or conditional pardon; (3), *ex necessitate legis*, as where a woman is capitally convicted, and pleads her pregnancy; (4), if the criminal become *non compos.*—4 *Step. Com.*, 531.—*Wharton.*

REPRISAL, the taking one thing in satisfaction for another. It is either *ordinary*, as arresting and taking the goods of merchant-strangers within the realm; or *extraordinary*, as satisfaction out of the realm, and is under the great seal.—*Lex Mercat.*, 120.—*Ibid.*

REQUESTS, Court of, tribunals of a special jurisdiction for the recovery of small demands, usually convened for the settlement of the debts of military officers.

REQUISITIONS OF TITLE, a series of enquiries and requests which arise upon a title on behalf of a proposed purchaser, and which the vendor is called upon to satisfy and comply with. They are frequently much curtailed by the conditions of sale.—*Wharton.*

RESCEIT, or RECEIT, an admission or receiving of a third person to plead his right in a cause formerly commenced between two other persons.—*Ibid.*

RESCISSION, the rescinding or putting an end to a contract by the parties or one of them, *e.g.*, on the ground of fraud.

RESCUE, the freeing or rescuing a distress after distraint made.—*Tomlin.*

RESIDUARY DEVISEE, the person named in a will who is to take all the real property remaining over and above the other devises.—*Wharton.*

RESIDUARY LEGATEES, those to whom is given the residue of a testator's estate, after payment of debts and prior legacies, or who have a legacy payable out of the residue.—*Tomlin.*

RESIDUUM, the surplus of a testator's or intestate's estate after discharging all his liabilities. Unless it appear in the will that the executor was intended to have the residue, he will be deemed by a court of equity as trustee for the next of kin.—*Wharton.*

RES JUDICATA, a point already judicially decided. It is conclusive until the judgment is reversed.

RES NULLIUS, a thing which has no owner.

RESPITE, pause, reprieve; suspension of a capital sentence; a delay, forbearance, or continuation of time. There are respites of execution, of debt, of homage, and of a jury.—*Wharton.*

RESPONDEAT OUSTER, (*let him answer over*). If a demurrer is joined in a plea to the jurisdiction, person, or writ, &c., and it be judged that the defendant put in a more substantial plea, interlocutory judgment is given that he shall answer.—*Ibid.*

RESPONDENT, is the person who is required to answer to a citation based upon a petition in a Divorce Court. The word is almost equivalent to defendant.

RESPONDENTIA, the borrowing money upon goods and merchandize which are to be sold or exchanged in the course of a voyage. The borrower upon this contract is liable, unless the goods be lost. It differs not much from bottomry, except that in a loan of money upon *bottomry*, the lender runs no risk, though the goods be lost; and on *respondentia*, the lender must be paid his principal and interest, although the ship perish, provided the goods are safe.—*Tomlin.*

RESTITUTIO IN INTEGRUM, the rescinding of a contract or transaction, so as to place the parties to it in the same position, with respect to one another, which they occupied before the contract was made, or the transaction took place. The *restitutio* here spoken of is founded on the edict.—*Wharton.*

RESTITUTION, the restoring any thing unjustly taken from another; also, putting him in possession of lands or tenements who had been unlawfully disseised of them.—*Ibid.*

RESTITUTION, Writ of. If the judgment below be reversed in a court of error, the plaintiff in error may have a *writ of restitution* in order that he may be restored to all he has lost by the judg-

ment. If execution on the former judgment have been actually executed, and the money paid over, the writ of restitution may issue without any previous *scire facias*, but if the money have not been paid over, a *scire facias quare restitutionem non*, suggesting the matter of fact, viz., the sum levied, &c., must previously issue.—*Wharton.*

RESTRAINING STATUTES, those which restrict previous rights and powers.—*Ibid.*

RESULTING TRUST, one that arises from the operation or construction of equity, and in pursuance of the rule that trusts result to the party from whom the consideration moves, of which the following are instances:—(1), upon a contract to purchase a real-estate, a trust immediately results to the vendee, since equity looks upon things agreed to be done as actually performed; (2), where a purchase is made in the name of one, and the consideration is given, or paid by another, a trust results in favor of the latter, though there be no express declaration for the purpose; but not so, if the purchase money were paid by several, for that would be to introduce all the mischiefs which the Statute of Frauds was intended to prevent. There must then be a written declaration of trust. To raise a trust of this kind, the fact of the ownership of the money should appear upon the face of the deed, either by a recital, or by expressions, which amount to a necessary implication, or presumptive proof of it; (3), a purchase by a trustee with the trust-money; will raise a resulting trust to the person entitled to such money; (4), a conveyance to a man, without consideration, raises a resulting trust for the original owner; (5), where a trust is declared in part of an estate only, what remains undisposed of results to the grantor or his heir-at-law; (6), when the trusts created cannot take effect, a trust will result to the original owner or his heir; (7), where a conveyance is made to trustees, upon such trusts, and for such intents and purposes as A shall appoint, and A never appoints, the trust results to him and his heirs; (8), if a trustee renew a lease in his own name, such lease will be subject to the trust, affecting the old lesse; (9), where there is fraud in obtaining a conveyance, the grantee will be held, in equity, as a trustee for the person defrauded; (10), a wife cannot be a trustee for her husband, if then a husband purchase lands in his wife's name, it is presumed to be a provision for her; (11), where a son is married in the life-time of his father, and by him fully advanc-

ed and emancipated, then a purchase by the father, in the name of his son, may be a trust for the father, as much as if it had been in the name of a stranger; because, in that case, all presumptions and obligations of advancement cease. But where the son is not advanced, or but advanced or emancipated in part, there is no room for any construction of a trust by implication; and without clear proofs to the contrary, it ought to be taken as an advancement of the son, although the father take the possession, and receive the rents and profits. If a grandfather purchase lands in the name of his grandchild, the father being dead, it is an advancement, and not a trust; for the grandfather is *in loco parentis*. And it is the same, if a father purchase in the names of his son and a trustee, or in the names of himself and son; but, in this case, a moiety of the estate will be subject to the father's debts.—*Wharton.*

RESULTING USE, an implied use; a resulting use arises where the legal seisin is transferred, and no use is expressly declared, nor any consideration nor evidence of intent, to direct the use; the use remains in the original grantor, for it cannot be supposed that the estate was intended to be given away; the statute immediately transfers the legal estate to such resulting use.—*Ibid.*

RETAINER, a notice given to counsel by an attorney on behalf of the plaintiff or defendant in action, in order to secure his services as advocate when the cause comes on for trial. The notice is invariably with a fee called a retaining fee.—*Brown.* The payment of the fee does not compel the recipient to act for the party who pays it. He is only prevented from acting on behalf of the opposite party.

RETAINER OF DEBTS, among debts of equal degree, an executor or administrator is allowed to pay himself first, by retaining in his hands so much as his debt amounts to.—2 *Wms. Exs.*, 936. —*Wharton.*

RETOUR SANS PROTET, (*return without protest*), a request or direction by a drawer of a bill of exchange, that should the bill be dishonoured by the drawee, it be returned without protest or without expense (*sans frais*).—*Chit on Bills*, 114.—*Brown.*

RETRAVIT, (*he has withdrawn*) is an open and voluntary renunciation in court of a suit by the plaintiff, by which he for ever loses his action.—*Ibid.*

RETROCESSION, a re-assignment of inheritable rights to the cedent or original assigner.—*Civil Law.*—*Wharton.*

RETURN, is the certificate of a sheriff to whom a writ, warrant, or precept is directed, setting forth what has been done by virtue of such writ, precept, or warrant. It is generally indorsed on the writ, or is contained in a parchment annexed to the writ, called a schedule.—*Tomlin.*

RETURNUM IRREPLEGIABILE, a judicial writ addressed to the sheriff for the final restitution or return of cattle to the owner when unjustly taken or distrained, and so found by verdict; it is granted after a non-suit in a second deliverance.—*Reg. Judic.*, 27.—*Wharton.*

REUS, (*a defendant*), properly the debtor to whom the question was put. *Rei*, the parties or litigants.—*Cum. C. L.*, 251. —*Ibid.*

REVELACH, rebellion.—*Ibid.*

REVENDICATION, upon the sale of goods on credit, by the law of some commercial countries, a right is reserved to the vendor to re-take them, or he has a lien upon them for the price, if unpaid, and in other countries he possesses a right of stoppage *in transitu*, only in cases of insolvency of the vendee.—*Ibid.*

REVERSAL OF JUDGMENT, this may be effected by proceedings in error, or, in criminal cases, by matters foreign to, or *dehors*, the record.—*Ibid.*

REVERSER, a reversioner.—*Ibid.*

REVERSION, signifies the expectant interest which will accrue on the expiration of an estate or tenancy to the party creating such estate. A proprietor has the reversion of land after the determination of the leases. A mortgagor who grants a lease for securing the money borrowed, has a reversion expectant on its determination, by payment of the money or otherwise, though this is more properly an equity of redemption. A person who grants a lease for another's life has a reversion expectant on the lessee's death; in fact, that interest which will revert to the owner or his heirs, on the falling in of the estate parted with, or incumbered for a particular period, is a reversion. A *remainder* may be made to any third person after a partial grant or temporary parting with an estate; but a *reversion* can only be to the grantor, or those who represent him, being his heirs or assigns, &c.—*Tomlin.*

REVERSER, a debtor who makes a wadset (a kind of mortgage in Scotland); a reversioner.

REVERSIONER, one who has a reversion.—*Wharton.*

REVIEW, Bill of, it is in the nature of proceedings in error, and its object is to procure an examination and alteration, or reversal of a final decree in chancery duly signed and enrolled. If the decree be not enrolled, a petition of re-hearing is the proper proceeding.—*Ibid.*

REVIEW, BILL IN THE NATURE OF BILL OF. This is filed where the decree has not been enrolled; as, however, a decree not signed and enrolled may be altered or reversed upon a re-hearing, without the assistance of such bill, if there is sufficient matter to alter or reverse it appearing upon the former proceedings, the new investigation of the decree must be, or at least usually is, brought on by a petition for a re-hearing, when there is no defect to be supplied.—*Sto. Eq. Pl.*, sec. 421.—*Ibid.*

REVIEW, SUPPLEMENT BILL IN THE NATURE OF A BILL OF, it nearly resembles, in its frame, a bill of review, except that, instead of praying that the former decree may be reviewed or reversed, it prays that the cause may be heard with respect to the new matter made the subject of the supplemental bill, at the same time that it is re-heard upon the original bill, and that the plaintiff may have such relief as the nature of the case made by the supplemental bill requires.—*Ibid.*, sec. 425.—*Ibid.*

REVIEW OF JUDGMENT, is a re-hearing of a suit heard and determined by a court, in a case from which no appeal shall have been preferred to a superior court, on the discovery of new matter or evidence which was not within the knowledge of the person considering himself aggrieved by the decree, or which could not be adduced by him at the time when such decree was passed, or from any other good and sufficient reason.—*Act VIII*, 1859, sec. 376.

REVISING BARRISTERS' COURTS, courts held in the autumn throughout the country, to revise the list of voters for county and borough members of Parliament.—*Wharton.*

REVIVOR, Bill of, a bill filed to revive and continue the proceedings, whenever there was an abatement of the suit before its final consummation, either by death or marriage.—*Ibid.*

REVIVOR, BILL IN THE NATURE OF A BILL OF, the distinction between *bills of revivor* and *bills in the nature of bills of revivor*,

seemed to be, that the former, in case of death, were founded upon mere privity of blood or representation by operation of law; the latter in privity of estate or title by the act of the party. In the former case, nothing could be in contest, except where the party was heir or personal representative; in the latter, the nature and operation of the whole act, by which the privity of estate or title was created, was open to controversy. —*Wharton.*

REVIVOR, WRIT OF, in cases where it shall become necessary to revive a judgment, by reason either of lapse of time or of a change by death or otherwise, of the parties entitled or liable to execution, the party alleging himself to be entitled to execution may either sue out a writ of revivor in the form set forth in the act, or apply to the court or a judge for leave to enter a suggestion upon the roll, to the effect that it manifestly appears to the court that such party is entitled to have execution of the judgment, and to issue execution thereupon; such leave to be granted by the court or a judge upon a rule to shew cause or a summons, to be served according to the present practice, or in such other manner as such court or a judge may direct.—*Ibid.*

REVIVOR AND SUPPLEMENT, Bill of, this bill was a mere compound of the two preceding species of bills, and in its separate parts it must have been framed and proceeded upon in the same manner. It became proper where not only an abatement had taken place in a suit, but defects were to be supplied or new events were to be stated which had arisen since the commencement of the suit.—*Ibid.*

REVOCATION, the calling back of a thing granted; or a destroying or making void of some deed that had existence until the act of revocation made it void. It may be either *general*, of all acts and things done before; or *special*, to revoke a particular thing.—5 *Rep.*, 90.—*Ibid.*

REVOCATION OF AGENCY, an agency is dissolved or determined in several ways—(I.) By the act of the principal, either—(*a*), *express*, as—(1), by direct and formal writing publicly advertised; (2), by informal writing to the agent privately; (3), by parol; or (*b*), implied from circumstances, as by appointing another person to do the same act, where the authority of both would be incompatible. The exceptions to the power of the principal to revoke his agent's authority at mere pleasure,

are—(1), when the principal has expressly stipulated that the authority shall be irrevocable, and the agent has also an interest in its execution; (2), where an authority or power is coupled with an interest, or where it is given for a valuable consideration, or where it is a part of a security, unless there is an express stipulation that it shall be revocable; (3), when an agent's act in pursuance of his authority has become obligatory, for *nemo potest mutare consilium suum in alterius injuriam.* (II.) By the agent's giving notice to his principal that he renounces the agency; but the principal must sustain no damage thereby, otherwise the agent would be responsible therefor. (III.) By operation of law, as—(*a*), by the expiration of the period during which the agency was to exist or to have effect; (*b*), by a change of condition or of state, producing an incapacity of either the principal or the agent, as—(1), marriage of a *feme sole*, principal; (2), mental disability established by inquisition, or where the party is placed under guardianship; (3), bankruptcy, excepting as to such rights as do not pass to the assignees under the adjudication; (4), death, unless the authority is coupled with an interest in the thing vested in the agent; (5), by the extinction of the subject of the agency; (6), by the ceasing of the principal's power; (7), by the complete execution of the trust confided to the agent, who then is *functus officio.*—*Wharton.*

REVOCATION OF A WILL, an annulment. A will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will. There are four modes in which a will may be revoked—(1), by the marriage of the maker, except a will made in exercise of a power of appointment, when the property over which the power of appointment is exercised would not, in default of such appointment, pass to his or her executor or administrator, or to the person entitled in case of intestacy. Where a man is invested with power to determine the disposition of property of which he is not the owner, he is said to have power to appoint such property; (2), by another will or codicil; (3), by some writing declaring an intention to revoke the same, and executed in the manner in which an unprivileged will is required to be executed; (4), by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same. A *privileged* will or codicil may be revoked by the testator by an unprivileged will

or codicil, or by an act expressing an intention to revoke it, and accompanied with such formalities as would be sufficient to give validity to a privileged will, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same. In order to the revocation of a privileged will or codicil by an act accompanied with such formalities as would be sufficient to give validity to a privileged will, it is not necessary that the testator should, at the time of doing that act, be in a situation which entitles him to make a privileged will.—*Ind. Suc. Act.* 1865, secs. 57—59.

RIBAUD, a rogue, vagrant, whoremonger; a person given to all manner of wickedness.—*Wharton.*

RIDER, an inserted leaf; an additional clause tacked to a bill passing through Parliament.—*Ibid.*

RIDER-ROLL, a schedule or small piece of parchment, often added to some part of a roll, record, or Act of Parliament.—*Ibid.*

RIDING ARMED, or going armed with dangerous or unusual weapons, is a misdemeanor.—*Ibid.*

RIENS IN ARREAR, a plea used in an action of debt for arrearages of account, whereby the defendant alleges that there is nothing in arrear.—*Ibid.*

RIENS PER DESCENT, (*nothing by descent*), the plea of an heir where he is sued for his ancestor's debts, and has no land from him by descent or assets in his hands.—3 *Cro.* 151.—*Ibid.*

RIGHT, in its primitive sense, that which the law directs: in popular acceptation, that which is so directed for the protection and advantage of an individual, is said to be his right.—1 *Stark. Evid.* 1. n. (*b.*)—*Ibid.*

RING DROPPING, a trick thus practised: the prisoner, with some accomplices, being in company with the prosecutor, pretends to find a valuable ring wrapped up in paper, appearing to be a jeweller's receipt for "a rich brilliant diamond ring." They offer to leave the ring with the prosecutor, if he will deposit some money and his watch as a security. The prosecutor having accordingly laid down his watch and money on a table, is beckoned out of the room by one of the confederates, while the others take away his watch and money. This amounts to a larceny.—2 *East. Pl.*, 678.—*Ibid.*

RINGING THE CHANGES, a trick practised by a criminal, by which, on receiving a good piece of money in payment of an article, he pretends it is not good, and, changing it, returns to the buyer a counterfeit one, as in the following case: the prosecutor having bargained with the prisoner, who was selling fruit about the streets, to have five apricots for six-pence, gave him a good shilling to change. The prisoner put the shilling into his mouth, as if to bite it in order to try its goodness, and returning a shilling to the prosecutor, told him it was a bad one. The prosecutor gave him another good shilling, which he also affected to bite, and then returned another shilling, saying it was a bad one. The prosecutor gave him another good shilling, with which he practised this trick a third time, the shillings returned by him being in every respect bad. This was held to be an uttering of false money.—1 *Russ. on Cr.*, 114.—*Wharton.*

RIOTS, ROUTS, AND UNLAWFUL ASSEMBLIES. A riot seems to be a tumultuous disturbance of the peace, by three or more persons assembling together of their own authority, with an intent mutually to assist one another against any who shall oppose them in the execution of some enterprise of a private nature, and afterwards actually executing the same in a violent and turbulent manner, to the terror of the people, whether the act intended were of itself lawful or unlawful. If the parties assembled use force or violence in the execution of their design, whatever that design may be, they are guilty of a riot, unless in cases where the law allows of such force or violence; as for a sheriff, or a constable, or perhaps even a private person, to assemble a competent number of people, in order to suppress rebels, or enemies, or actual rioters. If the original intention of meeting be lawful, as at a fair or market, and a sudden quarrel and combat arise, this is not a riot, but an *affray*. But if, being innocently assembled, a dispute arise, and the parties arrange themselves into sides, and then commence a combat, it will amount to a riot, by reason of their confederating with an intention to break the peace: so, if parties, lawfully assembled, on a sudden, propose to do an act of violence, and actually execute it, because they have associated themselves for a different purpose from that on which they at first met.—*Tomlin.* See AFFRAY, ASSEMBLY, UNLAWFUL.

RIPARIAN PROPRIETORS, are the owners of the banks of a river.

ROBBERY, is an aggravated larceny or stealing, and is defined to be the forcible taking from the person of another, or in his

presence, against his will, of any "chattel, money or valuable security," to any value, by violence, or putting him in fear. The "fear" need not be proved further, than that the circumstances of the taking were such as to induce a prosecutor to part with his property, or were calculated to create fear also.—*Tomlin.* By Indian law, the offence is thus defined: In all robbery there is either theft or extortion. Theft is "robbery," if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death, or hurt, or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint. Extortion is "robbery," if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted. The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.—*Ind. P. C.*, sec. 390.

ROGUES AND VAGABONDS. See VAGRANTS.

ROLLS, are parchments which may be turned up with the hand in the form of a pipe. All the acts and records of courts are entered on rolls, and bound up with files.—*Tomlin.*

ROSTER, a list of persons, who are to perform certain legal duties when called upon in their turn.—*Wharton.*

ROUT, an assembly of persons going forcibly to commit an illegal act, though they do not actually commit it.—*Tomlin.*

ROYAL GRANTS, conveyances of record. They are of two kinds—(1), letters-patent; and (2), letters-close, or writs-close.—*Wharton.*

RUBRIC OF A STATUTE, its title, which was anciently printed in red letters. It serves to shew the object of the legislature, and thence affords the means of interpreting the body of the act. Hence the phrase of an argument, *á rubro ad nigrum.*—*Ibid.*

RULE ABSOLUTE, when a rule nisi is granted or is upon ex-parte evidence, and a day is appointed for hearing the other

side. The court has then the option of two course; it can discharge or quash the rule nisi, or make it absolute, in which latter case it is put in full force.

RULE NISI is when an order is made provisionally, subject to being subsequently decided upon.

RULES, guides or decisions; also orders regulating the practice of the courts, or orders made between parties to an action or suit. At common law, rules on the plea side of the courts are *common*, being obtained from the master, without any assistance of counsel; or *special*, obtained through means of that assistance. Those granted upon motion by counsel may be classed under the following heads: (1), those which are granted upon the motion-paper, being merely signed by counsel without any motion being actually made in court; (2), those which are considered so much as a matter of course, that the grounds of the motion are not particularized by counsel, and where, in some instances, counsel may hand the motion-paper to one of the masters, without making the motion *vivâ voce;* and (3), those which are granted upon the grounds of the motion being particularized by counsel. The first class of the above rules are absolute in the first instance; the second and third are either absolute in the first instance, or rules to shew cause, commonly called *rules nisi*, which are made absolute after service, unless good cause shewn to the contrary.—2 *Chit. Arch. Prac. by Pren.*, 1506—*Wharton.*

RUNNING WITH THE REVERSION. A covenant is said to run with the reversion when either the liability to perform or the right to take advantage of it passes to the assignee of that reversion.—*Brown.*

SACRILEGE, the breaking and entering a church or chapel, and stealing therein, is a felony; so of stealing in, and breaking out, of a church or chapel.—*Tomlin.*

SAFE-CONDUCT, convoy; guard through an enemy's country. It is a prerogative of the crown to grant safe conducts.—*Wharton.*

SAFE-GUARD, a protection of the crown to one who is a stranger, that fears violence from some of its subjects, for seeking his right by course of law.—*Reg. Orig.* 26.—*Ibid.*

SAFE-PLEDGE, a surety appointed for one's appearance at a day assigned.—*Bract.* l. 4.—*Ibid.*

SAILING INSTRUCTIONS, written or printed directions, delivered by the commanding officer of a convoy to the several masters of the ships under his care, by which they are enabled to understand and answer his signals, to know the place of rendezvous appointed for the fleet, in case of dispersion by storm, by an enemy, or by any other accident. Without sailing instructions, no vessel can have the full protection and benefit of convoy.—*Mar. Ins.* 368.—*Wharton.*

SALE is the exchange of property for a price. It involves the transfer of ownership from seller to buyer. The sale is complete and the ownership passes to the buyer on payment for or delivery of ascertained goods, or on tender, part-payment, earnest or part delivery or on agreement expressed or implied that the payment or delivery or both shall be postponed. When the seller has to do any thing to the property for the purpose of putting it into a state in which the buyer is to take it, the sale is not complete until such thing has been done. A seller has a lien on the goods so long as it is in his possession and the price or any part if it is unpaid or untendered. But he has no lien if payment by arrangement is deferred, unless the buyer becomes insolvent before delivery.—*Ind. Con. Act*, secs. 78, 80, 957.

SALVAGE, an allowance or compensation made to those by whose exertions ships or goods have been saved from the dangers of the seas, fire, pirates, or enemies.—*Wharton.*

SALVAGE-LOSS, the difference between the amount of salvage, after deducting the charges, and the original value of the property.—*Ibid.*

SANCTION OF A LAW, the provision for enforcing or promoting its observance.—*Ibid.*

SATISFACTION, legal compensation; the giving of recompense for an injury done, or the payment of money due and owing. The doctrine of satisfaction of legacies, portions, and debts, means the donation of a thing with the intention, either expressed or implied, that it is to be taken either wholly or partly in extinguishment of some prior claim or demand. Of course, it is perfectly open to a donor to expressly provide that his subsequent gift shall be a satisfaction of a prior demand which the donee may have against him, so as to prevent such donee from claiming the gift as well as the demand.—*Ibid.*

SAVING THE STATUTE OF LIMITATIONS, preventing the operation of the statute, a creditor is said to save the statute of limit-

ations when he saves or preserves his debt from being barred by the operation of the statute.—*Brown.* This is generally done by instituting a suit, which keeps alive the claim.

SCANDAL, a report or rumour, or an action whereby one is affronted in public. Scandal, in pleadings in equity, is calculated to do great and permanent injury to all persons whom it affects, by making the records of the Court the means of perpetuating libellous and malignant slanders, and the Court, in aid of the public morals, is bound to interfere to suppress such indecencies, which may stain the reputation, and wound the feelings of the parties and their relatives and friends.—*Wharton.* See DEFAMATION.

SCAN. MAG. (*scandalum magnatum*, libelling of great men), that a criminal proceeding against those who speak scandalous or derogatory words of peers, judges, "great men of the realm," and some high officers, seldom resorted to. It is founded upon an ancient statute against "devisers of false news and horrible lies of prelates, dukes, earls, barons, &c.," and compels the offender to produce his authority; and in default punishes him at the discretion of the council.—*Tomlin.*

SCHEDULE, a piece of paper or parchment containing a list or inventory of things usually annexed to deeds or to acts of Parliament.—*Brown.*

SCILICET, (*that is to say, to wit*), this is not a direct and separate clause, nor a direct and entire clause, in a conveyance, but *intermedia*; neither is it a substantive clause of itself, but it is rather to usher in the sentence of another, and to particularize that which was too general before, or distribute that which was too gross, or to explain that which was doubtful and obscure; and it must neither increase nor diminish the premises or *habendum*, for it gives nothing of itself; but it may make a restriction where the precedent words are not so very express, but that they may be restrained.—*Hob.* 171.—*Wharton.*

SCINTILLA JURIS ET TITULI, (*a spark of law and title*), a possibility of seisin, which is supposed to exist in the grantee to uses, when all actual seisin is taken from him by the operation of the statute, upon a limitation of springing uses, and the creation of contingent ones.—*Ibid.*

SCIRE FACIAS, a writ which lies to enforce the execution of judgments, patents, or matters of record, or to vacate, quash, or annul them. A judgment upon which execution has not issued

within a year and a day, is revived by this writ. A recognizance, which is matter of record, is enforced by this process; and a patent is repealed by its operation. The writ calls upon the party to make known to the Court why such and such thing should not be done, and calling upon him to show sufficient cause to the contrary.—*Tomlin.*

SCIRE FECI, the sheriff's return on a *scire facias*, that he has caused notice to be given to the party against whom the writ was issued.—*Wharton.*

SCRIP, a certificate or schedule, also evidence of the right to obtain shares in a public company; sometimes called "scrip-certificate," to distinguish it from the real title to shares.—*Ibid.*

SCRIPT, the original or principal document.—*Ibid.*

SCRIVENER, one who draws contracts; one whose business is to place out money at interest, receiving a bonus or commission for his trouble.—*Ibid.*

SEA-LETTER, or **SEA-BRIEF**, a document expected to be found on board of every neutral ship. It specifies the nature and quantity of the cargo, the place whence it comes, and its destination.—*Ibid.*

SEAMAN'S WILL. See WILL.

SEARCH-WARRANT, an authority requiring the officer to whom it is addressed to search a house or other place therein specified, for property therein alleged to have been stolen or secreted.—*Wharton.*

SEAWORTHINESS, a term applied to a ship, signifying that she is in every respect equipped for her voyage. In war-time, a ship is not deemed sea-worthy unless she be provided with all the papers necessary for the manifestation of the ship and cargo, or supplied with the sails required to facilitate her escape from an enemy.—*Tomlin.*

SECONDARIES, officers who are next or second to the chief officers, as the *secondaries* to the prothonotaries of the court of common pleas, the *secondaries* of the sheriffs of London, &c.—*Ibid.*

SECONDARY CONVEYANCES, those which pre-suppose some other conveyance precedent, and only serve to confirm, alter, restrain, restore, or transfer the interest granted by the original conveyance. They are otherwise called derivative, and are—(1),

releases; (2), confirmations; (3), surrenders; (4), assignments; and (5), defeazances.—*Wharton.*

SECONDARY EVIDENCE, that species of proof which is admitted on the loss of primary evidence. There are no degrees of this evidence.—*Ibid.*

SECONDARY USE, a use limited to take effect in derogation of a preceding estate; otherwise called a shifting use, as a conveyance to the use of A and his heirs, with a proviso that when B returns from India, then to the use of C and his heirs.—*Ibid.*

SECOND DELIVERANCE, Writ of, a judicial writ that lies, after a non-suit of the plaintiff in replevin, and a *retorno habendo* of the cattle replevied, adjudged to him that distrained them, commanding the sheriff to replevy the same cattle again, upon security given by the plaintiff in the replevin for the redelivery of them if the distress be justified. It is a second writ of replevin, and is practically obsolete.—*F. N. B.* 68; 2 *Chit. Arch. Prac. by Pren.* 1041; 2 *Selw. N. P.* 1221.—*Ibid.*

SECRETARY, one entrusted with the management of business; one who writes for another; an officer attached to a public establishment.—*Ibid.*

SECTA AD CURIAM, a writ that lay against him who refused to perform his suit either to the county-court or the court-baron.—*Ibid.*

SECTA FACIENDA PER ILLAM QUÆ HABET ENICIAM PARTEM, a writ to compel the heir, who has the elder's part of the co-heirs, to perform suit and service for all the coparceners.—*Ibid.*

SECTIS NON FACIENDIS, a writ for a woman, who, for her dower, ought not to perform suit of court.—*Ibid.*

SECURITY. See VALUABLE SECURITY.

SE DEFENDENDO, (*in self-defence*), excusable slaughter, in defence of one's own life, when attacked and put in jeopardy.—*Wharton.* See PRIVATE DEFENCE.

SEDITION, the uttering political writings and words which intemperately or indecently criticise the public measures of the King and his ministers, by imputing to them corrupt and improper motives, are, in law, *seditions;* for, though temperate observations on such measures are allowable, yet the attempting to possess the people with an ill-opinion of the Government must necessarily be considered as an offence of a serious

nature, whether the expedient resorted to be obloquy or ridicule. Verbal sedition chiefly consists in uttering intemperate words against the king, as by wishing him ill, repeating scandalous stories concerning him, cursing him, or denying his right to the throne; in fact, advisedly and deliberately saying anything to bring the Government into disesteem. The "uttering" may also be by printing and publishing, or circulating in any manner whatever, with knowledge of its contents, the alleged libel; newspaper-publishers, book-sellers, and vendors of newspapers, are answerable for the publications they print, publish, sell, or let to hire.—*Tomlin.*

SEDUCTION, the corruption of women.—*Wharton.* See ABDUCTION.

SEIGNIORAGE, a royalty or prerogative of the crown, whereby an allowance of gold and silver, brought in the mass to be exchanged for coin, is claimed.—*Wharton.*

SEISED IN DEMESNE AS OF FEE, is the strict technical expression used to describe the ownership in "an estate in fee simple in possession in a corporeal hereditament."—*Brown.*

SEISIN, signifies the possession of freehold or copyhold estate or property. The word "possession" applies in strictness to personal property. A man is said to be *seised* of freehold, &c., *possessed* of leasehold or other personalty.—*Tomlin.*

SEIZING OF HERIOTS, taking the best beast, &c., where an heriot is due, on the death of the tenant. It is a species of self-remedy, not much unlike that of taking goods or cattle in distress; only, in the latter case, they are seized as a pledge; in the former, as the property of the person for whom seized.—*Wharton.*

SELF-DEFENCE. See PRIVATE DEFENCE.

SEMBLE, it seems.—*Wharton.* The word is used in Law Reports to show that a point is not decided directly, but may be inferred.

SEMINAUFRAGIUM, half shipwreck, as casting goods overboard in a storm, also where a ship has been so much damaged as to cost more to re-fit her than her worth.—*Wharton.*

SEMI-PLENA PROBATIO, a semi-proof; the testimony of one person, upon which the civilians will not allow any sentence to be founded.—*Ibid.*

SENTENCE OF A COURT, a definitive judgment pronounced in a cause or criminal proceeding.—*Ibid.*

SENTENCE OF DEATH RECORDED, this being entered on the record, has the same effect as if it had been pronounced, and the offender reprieved.—*Wharton.*

SEPARATE ESTATE. The property of a married woman is her separate estate under the law of husband and wife. In bankruptcy, when a firm fails, the private property of each partner is his separate estate, out of which his private creditors are entitled to be paid in full, if the property is sufficient, the residue being liable for the debts of the firm.

SEPARATE MAINTENANCE, if a husband and wife cannot agree so as to carry out the great purpose of their union,—mutual love and respect, the contributing to the happiness of one another, and their solemn duty to their children, they should resolve to live apart. A deed of separation, containing the terms and reciprocal conditions upon which an *actual* and *immediate* separation is to be arranged and governed, will be valid, so far as relates to the trusts and covenants of the husband, and his indemnity by the trustees for the wife; but if it only contemplate a *contingent* or *future* separation, it will be void, as obviously opposed to the policy of marriage, and the sound well-being of the community.—*Wharton.*

SEPARATION, the living asunder of man and wife.—*Ibid.*

SEPTENNIAL ACT. The Statute 1 *Geo. I, st.* 2, c. 28, which limits the duration of a Parliament to seven years. At the end of this term, the Parliament must expire or die a natural death if not sooner dissolved by the royal prerogative or death of the sovereign.

SEQUATUR SUB SUO PERICULO, a writ that lay where a summons, *ad warrantizand*, is awarded, and the sheriff returns that the party has nothing whereby he may be summoned; then issue an *alias* and a *pluries*, and if he come not in on the *pluries*, this writ shall issue.—*O. N. B.* 163.—*Wharton.*

SEQUELS, small allowances of meal, or manufactured victual made to the servants at a mill where corn was ground, by tenure in Scotland, for their work.—*Ibid.*

SEQUESTER, to renounce, to set aside from the use of the owners to that of others.—*Ibid.*

SEQUESTRATIO, the separating or setting aside of a thing in controversy, from the possession of both the parties that con-

tend for it: it is two-fold, *voluntary*, done by consent of all parties, and *necessary*, when a judge orders it.—*Civ. Law.*—*Wharton.*

SERJEANT-AT-LAW, the highest degree in the law (excepting the judges, who are chosen from the serjeants), corresponding to that of "Doctor" in the civil law.—*Tomlin.*

SERJEANT-AT-ARMS, officers attending the sovereign's person to arrest individuals of distinction offending, and give attendance on the Lord High Steward of England, sitting in judgment on any traitor, &c.—*Wharton.*

SERVANTS, are of various descriptions. They are either servants in husbandry and labourers, artizans and workmen in particular trades, and menial or domestic servants.—*Tomlin.*

SERVIENT TENEMENT, an estate in respect of which a service is owing, as the *dominant tenement* is that to which the service is due.—*Wharton.*

SERVITIS ACQUIETANDIS, a judicial writ for a man distrained for services to one, when he owes and performs them to another, for the acquittal of such services.—*Reg. Judic.* 27.—*Ibid.*

SESSIONS OF THE PEACE, there are three different kinds of sessions holden by justices of the peace—(1), *general sessions*, which may be held at any time of the year, for the general execution of the authority of the justices; (2), *the general quarter sessions*, holden at four stated times in the year, pursuant to statute; (3), *a special or petty sessions*, which is holden upon particular occasions or settled times, as every market-day, and is rather a voluntary arrangement of the justices to decide matters which should belong to the jurisdiction of two justices, a single justice having previously granted a summons compelling the party summoned to appear before the petty sessions.—*Tomlin.*

SET, appears to be nearly synonymous with the word "lease." A lease of mines is frequently termed a "mining set."—*Brown.*

SET-OFF. Where there are mutual debts due between plaintiff and defendant, the debts may be set-off, or allowed one against the other; but such matter must be pleaded; and where the debt due to the defendant is less than that due to the plaintiff, he must, on pleading such set-off, pay the remaining balance into court. It is only in actions for the non-payment of money that set-offs are allowable; set-offs not being allowed

against unliquidated damages, penalties of bonds for the performance of covenants, &c.—*Tomlin.*

SETS OF EXCHANGE, it is common, and the practice has prevailed from a very early period, for the drawer to draw and deliver to the payee several parts, commonly called a set, of the same bill of exchange, any one part of which set being paid, the others are to be void.—*Wharton.*

SETTLEMENT, the act of giving possession by legal sanction; a jointure granted to a wife; a family arrangement of property.—*Ibid.*

SEVERAL COUNTS, where a plaintiff has several distinct causes of action, he is allowed to pursue them cumulatively in the same action, 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. Different causes of action, of whatever kind, may be joined, except in actions of replevin and ejectments, by C.L. P.A. 1852, sec. 41. 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.—*Step. Plead.* 302; 1 *Chit. Arch. Prac. by Pren.* 213.—*Ibid.*

SEVERAL COVENANT, a covenant by two or more separately.—*Ibid.*

SEVERAL INHERITANCE, an inheritance conveyed so as to descend to two persons severally, by moieties, &c.—*Ibid.*

SEVERAL TAIL, where land is entailed on two separately.—*Ibid.*

SEVERAL TENANCY, those tenants who are separate, and not joined.—*Ibid.*

SEVERALTY, Estates in, he who holds lands or tenements in severalty, or is sole tenant thereof, is he that holds them in his own right only, without any other person being joined or connected with him, in point of interest, during his estate therein.—2 *Bl. Com.* 179.—*Ibid.*

SHAM PLEA, a vexatious or false defence, resorted to for purposes of delay and annoyance. It is treated as a nullity.—*Ibid.*

SHERIFF, a conservator of the peace, appointed by the king for the purpose of executing process, and preserving the peace, and assisting justices and others therein. He is, during his office, which is for a year, the first man in the county, and superior to any nobleman: he sits, or is entitled to sit, on the bench with the justices of assize.—*Tomlin.*

SHERIFF'S OFFICERS. See BAILIFFS.

SHEWING, to be quit of attachment in a court, in plaints shewed and not avowed.—*Wharton.*

SHIFTING USE, a secondary or executory use, which, when executed, operates in derogation of a preceding estate; as land conveyed to the use of A and his heirs, with proviso that when B pays a certain sum of money, then to the use of C and his heirs.—*Ibid.*

SHIP, in law, signifies any description of vessel navigating on the sea, and includes all steam and other vessels employed in carrying passengers or goods.—*Tomlin.*

SHIP'S PAPERS, the papers or documents required for the manifestation of the property of the ship and cargo, &c. They are of two sorts, viz., (1), those required by the law of a particular country, as the certificate of registry, license, charterparty, bills of lading, bill of health, &c., required by the law of England to be on board British ships; and (2), those required by the law of nations to be on board neutral ships, to vindicate their title to that character. A ship using false or simulated papers is liable to confiscation.—*Ibid.*

SHOPLIFTER, one who privately steals goods out of shops, &c. —*Wharton.*

SHORT-CAUSE, a suit in chancery where there is only a simple point for discussion. As to setting it down, see *Smi. Ch. Pr.* 441.—*Ibid.*

SI-ACTION, the conclusion of a plea to an action when the defendant demands judgment, if the plaintiff ought to have his action, &c.—*Ibid.*

SI FECERIT TE SECURUM, a species of original writ, so-called from the words of the writ, which directed the sheriff to cause the defendant to appear in court, without any option given him, provided the plaintiff gave the sheriff security effectually to prosecute his claim.—*Ibid.*

SIGNATURE, a sign or mark impressed upon anything; a stamp, a mark; the name of a person written and subscribed by himself.—*Wharton.*

SIGN MANUAL, the royal signature, also the signature of any one's name in his own handwriting.—*Ibid.*

SIMILITER, where an issue of fact was tendered, the words were as follows: "and of this the defendant puts himself upon the country;" or thus, "and this the plaintiff prays may be enquired of by the country;" the issue and form of trial were then both accepted on the other side (unless there appeared grounds for demurrer), by the words following: and the plaintiff (or the defendant, as the case may be) doth the like," which latter words were called the *similiter*. Joinder in issue, pursuant to C. L. P. A. 1852, sec. 79, has superseded the *similiter.*—*Ibid.*

SIMONY, is a corrupt presentation of any one to an ecclesiastical benefice, for money, gift, or reward: the right of presentation to a living is forfeited, and vested, *pro hâc vice*, for the turn, in the crown.—*Tomlin.*

SIMPLE CONTRACT, a parole promise which may be either verbal or written, but not under seal.—*Wharton.*

SIMPLE CONTRACT DEBT, debts by simple contract are those where the contract upon which the obligation arises is neither ascertained by matter of record, nor yet by deed or special instrument, but by mere oral evidence, the most simple of any; or by notes unsealed, which are capable of a more easy proof, and (therefore only) better than a verbal promise.—*Tomlin.*

SIMPLE DEPOSIT, a deposit made, according to the civil law, by one or more persons having a common interest.—*Wharton.*

SIMPLE LARCENY, plain theft, without aggravation.—*Ibid.* See LARCENY, THEFT.

SIMPLE TRUST, where property is vested in one person upon trust for another, and the nature of the trust, not being qualified by the settler, is left to the construction of law. In this case, the *cestui que* trust has *jus habendi*, or the right to be put into actual possession of the property, and *jus disponendi*, or the right to call upon the trustee to execute conveyances of the legal estate as the *cestui que* trust directs.—*Lew. on Trust*, 21.—*Wharton.*

SIMPLEX OBLIGATIO, a single unconditional bond.—*Ibid.*

SINGLE BOND, a deed whereby the obligor obliges himself, his heirs, executors, and administrators, to pay a certain sum of money to the obligee at a day named.—*Wharton.*

SLANDER, a malicious publication of a false and defamatory statement, expressed orally.—*Collett.*

SMALL CAUSE COURT, a court having jurisdiction over claims for money due, whether on bond or other contract, or for rent or for personal property, or for the value of such property, or for damages, when the debt, damage, or demand, does not exceed 1,000 Rupees. It has no jurisdiction, however, in certain suits.

SLEEPING RENT, an expression frequently used in coal mine leases and agreements for same. It would seem to signify a fixed rent as distinguished from a render, or rent varying with the amount of coals gotten.—*Brown.*

SMUGGLING, the offence of importing prohibited articles, or of defrauding the revenue by the introduction of articles into consumption, without paying the duties chargeable upon them. It may be committed indifferently either upon the excise or customs revenue.—*Wharton.*

SOCAGE, service of the plough: from *soc*, a plough. An inferior free tenant's service on a grant of land from his superior lord.—*Tomlin.*

SODOMY, the crime against nature: man with man working that which is unseemly.

SOLE CORPORATION, one person and his successors, 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; as the sovereign, a bishop, parson, &c.—*Wharton.*

SOLE TENANT, he that holds lands by his own right only, without any other person being joined with him.—*Ibid.*

SOLICITOR, one entitled to transact business in a court of equity; same as is done by an attorney in the courts of common law.—*Cab. Law.* See ATTORNEY.

SOLIDATUM, absolute right or property.—*Wharton.*

SOLIDUM, to be bound *in solido* is to be bound for the whole debt jointly and severally with others; but where each is bound for his share, they are said to be bound *pro ratâ parte.*—*Ibid.*

SON ASSAULT DEMESNE, a justification in an action of assault

and battery, because the plaintiff made the first assault, and what the defendant did was in his own defence. It is a plea by confession and avoidance.—1. *Selw. N. P.* 32.—*Wharton.*

SORORICIDE, the murder of a sister.—*Ibid.*

SOUNDING IN DAMAGES, an action for unascertained damages. —*Ibid.*

SPECIAL ACCEPTANCE, is when the acceptor makes the Bill payable at a particular place "and not elsewhere." This is also sometimes termed a restrictive special acceptance as distinguished from one payable generally or at a particular place only, without the addition of the words "and not elsewhere."

SPECIAL BASTARD, one born of parents before marriage, the parents afterwards intermarrying. By the Civil and Scottish laws, he would be then legitimated.—*Wharton.*

SPECIAL CASE, where a difficulty in point of law arises upon a trial, the jury may, instead of finding a special verdict, find a general verdict for the plaintiff, subject to the opinion of the court above, on a special case stated by the counsel on both sides with regard to the matter of law.—*Ibid.*

SPECIAL DAMAGE, a wrong suffered or damage sustained from the breach of a public duty differing in kind from that which is common to others. Thus all who use a public road suffer from an obstruction of it, and those who must use it most suffer the more frequently, but all suffer in common; but where one suffers specially, as by tumbling into a ditch dug across the road, or over heaps of stones illegally deposited on it, and breaking his arm, he then has a personal right of action against the wrong-doer, on the ground of having sustained special damage.—*Collett.*

SPECIAL INJUNCTIONS, those prohibitory writs or interdicts against acts of parties, such as waste, nuisance, piracy, &c. —*Wharton.* See JUNCTIONS.

SPECIAL JURY, a jury consisting of persons who, in addition to the ordinary qualifications, are of a certain station in society, as esquires, or persons of higher degree, or bankers, or merchants.—*Ibid.*

SPECIAL PLEAS, those pleas which are not in the form of what are still called general issues, but they induct affirmative matter, as infancy, coverture, statute of limitations. Special pleas in bar in criminal matters go to the merits of the

indictment, and give a reason why the prisoner ought to be discharged from the prosecution; they are of four kinds, viz., a former acquittal, a former conviction, a former attainder, or a pardon.—*Wharton.*

SPECIAL TAIL, where an estate-tail is limited to the children of two given parents, as to A and the heirs of his body, by B his wife.—*Ibid.*

SPECIAL TRAVERSE, is that particular form of traverse or denial in pleading by which the party traversing seeks to explain or qualify his denial instead of putting it, as by a common traverse he would, in a direct and absolute form.—*Brown.*

SPECIAL TRUST, where the machinery of a trustee is introduced for the execution of some purpose particularly pointed out, and the trustee is not a mere passive depository of the estate, but is called upon to exert himself actively in the execution of the settler's intention; as where a conveyance is to trustees upon trust to sell for payment of debts. Special trusts have been divided into—(1), *ministerial* (or instrumental); and (2), *discretionary*. The former, such as demand no further exercise of reason or understanding than every intelligent agent must necessarily employ; the latter, such as cannot be duly administered without the application of a certain degree of prudence and judgment. Special trusts may be divided, with reference to the object in view, into—(1), lawful, and (2), unlawful.—*Wharton.*

SPECIAL VERDICT, a special finding of the facts of the case, leaving to the court the application of the law to the facts thus found.—*Ibid.*

SPECIE, as applied to a contract, signifies specifically, strictly or according to its specific terms. Thus performing a contract *in specie* means performing it strictly, or according to its very terms. As applied to things it signifies individuality or identity. —*Brown.*

SPECIFIC PERFORMANCE OF AGREEMENTS, equity, in obedience to the cardinal rule of natural justice, that a person should perform his agreement, enforces, pursuant to a regulated and judicial discretion, the actual accomplishment of a thing stipulated for, on the ground that what is lawfully agreed to be done, ought to be done, and, indeed is, in its contemplation, considered as now done. The common law has not recognized this

principle; it has only given damages to a suffering party for the non-performance of an executory agreement.—*Wharton.*

SPECIFICATION, as used in patents and in building contracts is (what the name denotes) a particular or detailed statement of the various elements involved.—*Brown.*

SPONSIONS, agreements or engagements made by certain public officers, as generals or admirals, in time of war, either without authority, or by exceeding the limits of authority, under which they purport to be made.—*Inter. Law.*—*Wharton.*

SPOUSE-BREACH, adultery as opposed to simple fornication.—*Ibid.*

SPRINGING USE, contingent use.—*Ibid.*

SPURII, children conceived in prostitution.—*Ibid.*

STABLESTAND, one of the four evidences or presumptions whereby a man is convicted to intend the stealing of the royal deer in the forest; and this is when a man is found at his standing in the forest, with a cross-bow bent ready to shoot at any deer, or with a long bow, or else standing close by a tree with greyhounds in a leash ready to slip.—*Cowel.*—*Ibid.*

STALE CHECK, an antedated check.

STALE DEMAND, a claim for a long time dormant and undemanded.

STANNARY, a tin-mine. There are stannary courts in Devonshire and Cornwall for the administration of justice among the tinners therein. They are courts of record of the same limited and exclusive nature as those of the counties palatine. They are held before a judge called the vice-warden, in virtue of a privilege granted to the workers in the tin-mines there, to sue and be sued only in their own courts, that they may not be drawn from their business, which is highly profitable to the public, by allowing their law-suits in other courts.—*Wharton.*

STARE DECISIS, to reply upon authorities or cases already adjudicated upon.—*Ibid.*

STARE IN JUDICIO, a suitor; a litigant in a court.—*Ibid.*

STATUTE, a law, an edict of the legislature, an act of Parliament. The civilians have divided statutes into three classes: *personal*, *real*, and *mixed*. By statutes, they mean, not the positive legislation, which in England is known as acts of Parliament, as contra-distinguished from common law; but the

whole municipal law of a particular state, from whatever source arising. Sometimes the word is used by them in contra-distinction to the imperial Roman law, which they are accustomed to style, by way of eminence, the common law, since it constitutes the general basis of the jurisprudence of all continental Europe, modified and restrained by local customs and usages, and positive legislation.—*Wharton.*

STATUTE-MERCHANT, a bond of record under the hand and seal of the debtor, authenticated by the king's seal, which renders it of so high a nature, that, on failure of payment on the day assigned, execution may be awarded, without any mesne process to summon the debtor, or the trouble or charges of bringing in proofs to convict him, and thus, it is presumed, it obtained the name of a "*pocket judgment.*" It is fallen into disuse.—*Coote on Mort.* 74.—*Ibid.*

STATUTE-STAPLE, a bond of record acknowledged before the mayor of the stample in the presence of the constables of the staples, or one of them, and the only seal required for its validity is the seal of the staple, and therefore if the statute be void for any cause, it cannot, as in the case of a statute-merchant, be proceeded on as a common obligation, and, wanting the sanction of the seal of the king, the sheriff after the extent, cannot deliver the lands to the conusee, but must seise them into the king's hands; and in order to obtain possession of them, the conusee must sue out a writ of *liberate*, which is a writ out of chancery, reciting the former writ, and commanding the sheriff to deliver the conusee all the lands, tenements, and chattels by him taken into the king's hands, if the conusee will have them, by the extent and appraisement made thereof, until he be satisfied of his debt.—*Ibid.*

STELLIONATE, a kind of crime which is committed by a deceitful selling of a thing otherwise than it really is; as if a man should sell that for his own estate which is actually another man's. In the Roman law, the making a second mortgage without giving notice of the first; but the crime was not committed if the land were equal in value to all the sums charged upon it.—*Ibid.*

STET PROCESSUS, an order of the court to stay proceedings, and, strictly, it can only be made with the consent of the parties; but where the ends of justice will be better answered by this course, it is authoritatively recommended by the court. —*Ibid.*

STIPULATED DAMAGE, liquidated damage.—*Wharton.*

STIPULATION, bargain; also, a recognizance of certain fide jussors in the nature of bail, taken in the admiralty courts.—*Ibid.*

STOCK, a race, lineage, or family; also money, capital, or credit; also the funds, considered merely as perpetual annuities, redeemable at the pleasure of the Government.—*Ibid.*

STOCK-BROKERS, or STOCK-JOBBERS. *Stock-brokers* are those who conclude contracts or bargains for the sale or transfer of Government or other stocks. They are admitted, as other brokers are, by the lord mayor and aldermen. *Stock jobbers* are generally members of an association called "the stock exchange," and accommodate the buyers and sellers of stock with the exact sums they want. A jobber is generally possessed of considerable property in the funds, and declares a price at which he will either sell or buy.—*Tomlin.*

STOLEN PROPERTY. Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated, or in respect of which the offence of criminal breach of trust has been committed, is designated as *stolen property*. But if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.—*Ind. P. C.*, sec. 410.

STOP ORDER; if any person entitled, in expectancy or otherwise, to any share or portion of any stocks or funds, standing in the name of the accountant-general of the court to the general credit of any cause, or to the account of any class or classes or persons, assign his interest in such stock or funds, the assignee (although not a party to the cause in which the fund is standing), may present a petition for a stop order to prevent the transfer or payment of such stock or funds, or any part thereof, without notice to him. And a person having a lien on a fund in court, may obtain a stop order.—*Wharton.*

STOPPAGE IN TRANSITU, is the term applied to the right a seller of goods as to stop them in their *transit* or passage to the buyer, in case of his bankruptcy or insolvency.—*Tomlin.*

STRICT SETTLEMENT, this limits an estate to the use of the husband for life, remainder to trustees, to support contingent remainders, remainder to the wife for life, remainder to other trustees for raising portions for younger children, remainder

to the first and other sons in tail-male, remainder to the daughters, as tenants-in-common, with cross-remainders between them, remainder to the husband in fee.—*Wharton.*

SUBORNATION, the crime of procuring another to do a bad action.—*Ibid.*

SUBPŒNA, a writ commanding attendance in a court under a penalty. It bears a close analogy to the citation, or *vocatio in jus*, of the civil and canon laws. There are several kinds, and at common law there are two to compel the attendance of witnesses—(1), *subpœna ad testificandum*, the common subpœna, which is personally served upon a witness, in order to compel him to attend the trial or enquiry, to give evidence; (2), *subpœna duces tecum*, this is personally served upon a person, who has in his possession any written instrument, &c., which would be evidence. These subpœnas are also used in criminal proceedings; four witnesses can be included in one subpœna, whether in civil or criminal cases. There are several *subpœnas* used in the course of a chancery suit, but only three names can be included in one writ, husband and wife counting as one. They are the following—(1), *subpœna ad testificandum*; (2), *subpœna duces tecum*; (3), *subpœna* to hear judgment; (4), *subpœna* for costs; (5), *subpœna* served upon an infant on attaining majority, to give him an opportunity to show cause against a decree; (6), *subpœna* to name a solicitor where the solicitor of a party has died, and such party refuses to appoint another.—*Ibid.*

SUBREPTION, the obtaining a gift from the crown by concealing what is true.—*Wharton.*

SUBSCRIBING WITNESS, he who witnesses or attests the signature of a party to an instrument and in testimony thereof subscribes his own name to the document.—*Brown.*

SUBSTITUTED SERVICE is the delivery of a writ or other process to some person in the stead of the person to whom it is addressed. In some cases this is expressly permitted and defined; in other cases it is accepted as sufficient when there is evidence that the fact of service has come to the knowledge of the party concerned.

SUDDER AMEEN, a subordinate judge exercising civil and criminal jurisdiction to a limited extent.

SUDDER DEWANNY ADAWLUT, the chief civil court of justice held at the presidency.—*Wharton.*

SUDDER MIAAMUT ADAWLUT, the chief criminal court of justice.—*Wharton.*

SUE, to prosecute by law, to gain by legal procedure.—*Ibid.*

SUFFERANCE, tenancy at, this is the least and lowest estate which can subsist in realty. It is in strictness not an estate, but a mere possession only. It arises when a person, after his right to the occupation, under a lawful title, is at an end, continues (having no title at all) in possession of the land, without the agreement or disagreement of the person in whom the right of possession resides.—*Ibid.*

SUICIDE, self-slaughter. Suicides may be divided into two classes, founded upon the different causes or circumstances by which they are actuated. The first includes those who have deliberately committed the act from the force of moral motives alone; the second, those who have been affected with some pathological condition of the brain, excited, or not, by moral motives.—*Ibid.*

SUI JURIS, a person who is neither a minor nor insane nor subject to any other disability is said to be *sui juris, i.e.*, able to deal with his property.

SUIT, a following. It is used in divers senses—(1), *an action-at-law*, or proceeding by bill in chancery; a prosecution; (2), *suit of court*, an attendance which a tenant owes to his lord's court; (3), *suit covenant* when one has covenanted to do suit and service in his lord's court; (4), *suit-custom*, where service is owed time out of mind; (5), the following one in chase on fresh suit; (6), a petition to a court, &c.—*Wharton.*

SUITER, or **SUITOR**, one that sues, a petitioner, a suppliant, a wooer.—*Ibid.*

SUITRESS, a female supplicant.—*Ibid.*

SUMMARY JURISDICTION, is the power of a court to give judgment or to make an order forthwith without further preliminaries, such as committing for trial.

SUMMARY APPLICATION, means redress by means of a motion in court, which is applicable to cases respecting annuities, attorneys, warrants of attorney, &c., and to those matters which by law are statute are placed within the immediate and peculiar jurisdiction of the courts of law; so that the party complaining may state his grievance, and have ample redress, without

the delay or hindrance of a suit, in which he could not be a witness.—*Tomlin.*

SUMMING-UP, a judge's charge to a jury.—*Wharton.*

SUMMING UP EVIDENCE, upon the trial of any cause, the addresses to the jury shall be regulated as follows:—The party who begins, or his counsel, shall be allowed, in the event of his opponent not announcing at the close of the case of the party who begins, his intention to adduce evidence, to address the jury a second time at the close of such case, for the purpose of summing-up the evidence; and the party on the other side, or his counsel, shall be allowed to open the case, and also to sum up the evidence (if any), and the right to reply shall be the same as at present.—*C. L. P. A.* 1854, sec. 18.—*Wharton.*

SUMMONS, a notice from a justice to a person to appear before him to answer some charge, and if not obeyed, is commonly followed by the more compulsory process of a warrant for his apprehension.—*Cab. Law.* In India, a subpœna or citation is usually called a summons.

SUNNUD, a prop or support, a patent, charter, or written authority, for holding either land or office.—*Wharton.*

SUPERCARGOES, are persons employed by commercial companies or private merchants to take charge of the cargoes they export to foreign countries, to sell them there to the best advantage, and to purchase returning cargoes of the most advantageous kind.—*Tomlin.*

SUPERFŒTATION, the conception of a second embryo during the gestation of one already conceived, so that the two children may be born at the same or at different times. Its bearing in legal medicine is on the question of legitimacy.—*Wharton.*

SUPERSEDEAS, a writ that lies in a great many cases; and signifies in general a command to stay some ordinary proceedings, on good cause shewn, which ought otherwise to proceed. —*F. N. B.* 236.—*Ibid.*

SUPERSTITIOUS USES, a devise of lands or goods for the maintenance of a priest or chaplain, to celebrate mass, pray for the soul of the deceased, to abridge the term of purgatory, or for a lamp to be kept perpetually burning in a chapel, are superstitious uses by I. E. 6, c. 14.—*Tomlin.* Religious purposes not recognized by law as opposed to charitable uses.

SUPPLEMENTAL CLAIM, a further claim which is filed when further relief is sought after the bringing of a claim.—*Smi. Ch. Pr.* 655.—*Wharton.*

SUPPLETORY OATH, the oath of a litigant party in the spiritual and civil-law courts.—*Ibid.*

SUPPRESSIO VERI, is the suppression of the truth by wilfully omitting something materially in favor of an opponent.

SURCHARGE, an overcharge of what is just and right; exceeding one's powers or privileges; also a second or further mortgage.—*Wharton.*

SURCHARGE AND FALSIFY, a mode of taking accounts in chancery.—*Ibid.*

SURETY, hostage, bondsman, one that gives security for another, one that is bound for another. A surety who discharges the liability is entitled to an assignment of all the securities held by the creditor.—19 & 20 *Vict.*, c. 97, sec. 5.—*Ibid.* See SECURITY.

SURGEONS AND APOTHECARIES, the business of an apothecary is to prepare and administer the prescription of the physician, pursuant to his directions; or they practise physic on their own account, and administer medicines upon their own responsibility or discretion. Surgeons are said to deal in the mechanical part of physic, by performing cures, or operating with the hand, and must not, *in that capacity*, administer inward medicine.—*Tomlin.*

SURPLUSAGE, a superfluity or redundancy of expression in the mode of statement; useless additions the courts reject, but retain the material part of the plea, writing, &c.—*Ibid.*

SUR-REBUTTER, (*in pleading*), the replication or answer of the plaintiff to the defendant's *rebutter*.—*Ibid.* See REBUTTER.

SUR-REJOINDER, a second defence (as the replication is the first) of the plaintiff's declaration in a cause. As a rejoinder is the defendant's answer to the *replication* of the plaintiff, so a sur-rejoinder is the plaintiff's answer to the defendant's rejoinder.—*Tomlin.* See REJOINDER, PLEADING.

SURRENDER, is a yielding up of an estate for life or years to him that has the immediate estate in reversion or remainder, and is either *in fact* or *in law*. *Surrenders-in-fact* must be made

by deed, which is the allowable evidence: a *surrender-in-law* is one which may be implied, and generally has reference to estates or tenancies from year to year, &c., as where a landlord receives the key or accepts possession of the tenement let, or does any act so inconsistent with the subsisting relation of landlord and tenant, as to imply an intention that the landlord should be in the same situation as if an express surrender had been made. Estates or tenancies created by any writing should be surrendered by writing; and the cancelling a lease will not of itself operate as a surrender.—*Tomlin.*

SURRENDEREE, a person to whom a surrender is made.—*Wharton.*

SURRENDEROR, a person who surrenders.—*Ibid.*

SURVIVORSHIP, is the becoming entitled to property by reason of surviving another who had an interest in it.

SUSPENSE, SUSPENSION, a temporal stop, or hanging up, as it were, of a right for a time; also a censure on ecclesiastical persons, during which they are forbidden to exercise their offices, or take the profits of their benefices.—*Wharton.*

SUSPENSION, pleas in, those which shew some matter of temporary incapacity to proceed with the action or suit.—*Ibid.*

SUS PER COLL., on the trial of criminals, the usage is for the judge to sign the calendar or list of all the prisoners' names, with their separate judgments in the margin, which is left with the sheriff. As for a capital felony, it is written opposite to the prisoner's name, "Hanged by the neck;" formerly in the days of Latin an abbreviation, *sus. per coll.* for *suspendatur per collum.*—4 *Bl. Com.*, c. 32.—*Ibid.*

SWEARING THE PEACE, shewing to a judge that one has just cause to be afraid of another in consequence of his menaces or attempts, in order to get him bound to keep the peace.—*Ibid.*

SWINDLER, a cheat; one who lives by cheating.—*Ibid.*

SYNDIC, an advocate or patron; a burgess or recorder; an agent or attorney who acts for a corporation or university; an actor or procurator, an assignee.—*Civ. Law.*—*Ibid.*

SYNGRAPH, a deed, bond, or writing, under the hands and seals of all the parties.—*Ibid.*

TACKING, the doctrine known by the name of *tacking*, which is, consolidating and priorizing two or more claims, applies in two cases; one, as against a mortgagor, the other, as between several incumbrancers.—*Wharton.*

TAIL or FEE-TAIL, a conveyance of lands (not copyhold, unless by special custom of the manor), to a man and the heirs of his body, or the heirs of the bodies of him and A his wife: the first is called *tail general*, the latter *tail special;* or such estate-in-tail may be diversified by the distinction of sexes, for both of them may be either *tail-male* or *tail-female:* for if the lands be given or conveyed to a man and the heirs *male* of his body, this is *tail-male general;* but if to a man and the heirs *female* of his body, on his present wife begotten, *tail-female special.* This estate may arise in wills by implication. This estate is a freehold in law, and the tenant or party entitled, although his interest is but for life, may commit waste and cut timber; and as to dower, curtesy, or the like, it is subject to the same incidents as freehold.—*Tomlin.*

TAIL AFTER POSSIBILITY OF ISSUE EXTINCT, tenant in, this estate arises out of a special entail as to the parentage of the issue, when the express condition has become impossible by reason of death. Thus, if an estate be granted to husband and wife, and their issue male or female, if either of them die without issue, the survivor is tenant-in-tail after possibility of issue extinct; and even if there have been issue, yet if the issue die without issue, then the surviving parent is also such a tenant; and also if an estate be entailed upon a man and his issue from a particular wife, if she die without issue, the interest of the husband becomes reduced to a tenancy-in-tail after possibility of issue extinct. Only a donee-in-tail special can become such a tenant, for if the entail be general, such a tenancy can never arise; for whilst he lives he may have issue, the law not admitting the impossibility of having children at any age. As an estate-tail is originally carved out of a fee-simple, so this estate is carved out of a special entail.—*Wharton.*

TALES DE CIRCUMSTANTIBUS, if a sufficient number of jurors do not appear upon a trial, or if by means of challenges or exemptions, a sufficient number of unexceptionable ones do not remain, either party may pray a *tales;* which is a supply of such men as are summoned upon the panel, in order to make up the deficiency.—*Ibid.*

TALESMAN, a person summoned to act as a juror from amongst the by-standers in the court.—*Wharton.*

TALION, law of retaliation.—*Ibid.*

TALLEY or **TALLY**, a stick cut into two parts, on each whereof is marked, with notches or otherwise, what is due between debtor and creditor. It was the ancient mode of keeping accounts; one part was held by the creditor, and the other by the debtor.—*Ibid.*

TALLIA, commons in meat and drink—*Ibid.*

TALOOK, a sub-division of a district for revenue purposes.

TARE AND TRET, the first is an allowance in merchandize, made to a buyer for the weight of the box, bag, or cask, wherein goods are packed; and the last is a consideration in the weight, for waste in emptying and re-selling the goods, by dust, dirt, breaking, &c. Tare is distinguished into—(1), *Real tare, i.e.*, the actual weight of the package; (2), *Customary tare*, its supposed weight, according to the practice among merchants; (3), *Average tare*, the medium deduced from weighing a few packages, and taking it as a standard for the whole.—*Wharton.*

TARIFF, a cartel of commerce, a book of rates, a table or catalogue, drawn usually in alphabetical order, containing the names of several kinds of merchandize, with the duties or customs to be paid for the same, as settled by authority, and agreed on between the several princes and states that hold commerce together.—*Encyc. Lond.*—*Ibid.*

TAX, an impost; a tribute imposed; an excise; tallage. Taxes are either *direct* or *indirect*. A *direct tax* is one that is demanded from the very persons who, it is intended or desired, should pay it. *Indirect taxes* are those which are demanded from one person, in the expectation and intention that he shall indemnify himself at the expense of another: such as the excise or customs. Taxes may be laid on any one of the three sources of income (rent, profits, or wages), or a uniform tax on all of them.—*Ibid.*

TAXING COSTS, submitting bills of attorneys to the masters of their respective courts, who make such deductions therein as they think reasonable, and the remaining charges allowed are certified and called the master's *allocutur*.—*Cab. Law.*—*Tomlin.*

TEHSILDAR, one who has charge of the collections; a native collector of a district acting under a European or Zemindar.—*Tomlin.*

TELEGRAPHIÆ, written evidence of things past.—*Blount.*—*Ibid.*

TEMPLES, the two inns of court, thus called, because anciently the dwelling-house of the Knights-Templars. At the suppression of that order, they were purchased by some professors of the common law, and converted into *hospitia*, or inns of Court. They are called the *Inner* and *Middle* Temple, in relation to Essex House, which was also a part of the house of the Templars, and called the *Outer* Temple, because situated without Temple Bar.—*Encyc. Lond.*—*Wharton.*

TEMPORALITY, the laity; secular people.—*Ibid.*

TEMPORALITY, or **TEMPORALS**, secular possessions, not ecclesiastical rights, such revenues, lands, and tenements as archbishops and bishops have had annexed to their sees by the kings and others, from time to time, as they are barons and lords of Parliament.—*Cowel.*—*Ibid.*

TENANCY, the condition of a tenant; also the temporary possession of what belongs to another.—*Ibid.*

TENANCY-IN-COMMON, this estate is created where several persons have several distinct estates, either of the same or of a different quantity, in any subject of property, in equal or unequal shares, and either by the same act or by several acts, and by several titles, and not a joint title. A tenancy-in-common differs from a joint tenancy in this respect: joint-tenants have one estate in the whole, and no estate in any particular part; they have the power of alienation over their respective aliquot parts, and, by exercising that power, may give a separate and distinct right to their particular parts. Tenants-in-common have several and distinct estates in their respective parts; hence the difference in the several modes of assurance by them. Each tenant-in-common has, in contemplation of law, a distinct tenement, and a distinct freehold.—*Ibid.*

TENANDUM, that clause in a deed wherein the tenure of the land is limited and created. Its office is to limit and appoint the tenure of the land which is held, and how and of whom it is to be held.—*Ibid.* See DEED.

TENANT, one that holds or possesses lands or tenements by any kind of title, either in fee, for life, years, or at will. The word in law is used with divers additions: thus, *tenant in*

dower, is she that possesses land by virtue of her dower; *tenant by the curtesy*, he that holds for his life, by reason of a child begotten of him by his wife, being an heiress; *tenant in mortgage*, he that holds by means of a mortgage; tenant by the verge in ancient demesne, who is admitted by the rod in the court of ancient demesne; tenant by copy of court roll, who is admitted tenant of any lands, &c., within a manor; tenant in fee-simple; tenant in fee-tail; tenant at the will of the lord, according to the custom of the manor; tenant at will by the common law; tenant from year to year; tenant by lease; and tenant upon sufferance. So there are also joint tenants, that have equal right in lands and tenements by virtue of one title; tenants-in-common, that have equal right, but hold by divers titles; particular tenant, as tenant for years, for life, &c., that holds only for his term; sole tenant, he that hath no other joined with him; several tenant, as opposite to joint tenant, or tenant-in-common.—*Tomlin.*

TENANTABLE REPAIR, such a repair as will render a house fit for present habitation.—*Wharton.*

TENANT-RIGHT, a custom either ensuring a permanence of tenure in the same occupant without liability to any other increase of rent than might happen to be sanctioned by the general sentiments of the community; or entitling a tenant of a farm to receive purchase-money, amounting to so many years' rent, on its being transferred to another tenant.—*Ibid.*

TENANTS-IN-COMMON, are such as hold by several and distinct titles, but by unity of possession only.—*Wharton.* See TENANCY-IN-COMMON.

TENDER, the producing and offering to pay money in satisfaction or payment of a claim or covenant. The effect of this is, that if a creditor refuse the sum tendered, and commences an action, the tender, accompanied by a payment of the sum tendered into court, will be a good defence, unless the creditor can prove that more is due, or can prove a prior or subsequent demand and refusal.—*Tomlin.*

TENEMENT, property held by a tenant.—*Tomlin.* It includes land, houses, and every species of real property which may be held, or in respect of which a person may be a tenant.—*Cab. Law.*

TENENDUM, (*to be held*) that clause in a deed wherein the tenure of the land is stated, how and by whom it is to be held.

TENOR, sense contained; general course or drift. *Tenor* implies that a correct copy is set out, but the word *effect* alone implies that the substance only is set out.—*Wharton.*

TENORE INDICTAMENTI MITENDO, a writ whereby the record of an indictment, and the process thereupon, is called out of another court into the Queen's bench.—*Ibid.* See CERTIORARI.

TENORE PRÆSENTIUM, (*by the tenor of these presents,*) the matter contained therein, or rather the intent and meaning thereof.—*Ibid.*

TENURE, the manner whereby lands or tenements are holden. A tenure may be of houses, and land, or tenements; but not of a rent, common, &c., these being incident to tenure. Under the word tenure, is included every holding of an inheritance; but the signification of this word, which is a very extensive one, is usually restrained by coupling other words with it: this is sometimes done by words, which denote the duration of the tenant's estate; as, if a man holds to himself and his heirs, it is called tenure in fee-simple; if to him and his heirs male, tenancy or tenure-in-tail, &c. At other times, the tenure is coupled with words pointing out the instrument by which an inheritance is held: thus, if the holding is by copy of court-roll, it is called tenure by copy of court-roll. At other times, this word is coupled with words that shew the principal service by which an inheritance is held, as, where a man held by knight service, it was called tenure by knight service.—*Tomlin.* In modern phraseology, the thing holden is called a *tenement*, the holder of it a *tenant*, and the manner of holding it a *tenure*. The subject of tenures is thus classed:

LAY TENURES.

- (I.) Frank tenement or freehold.
  - (1.) Military tenures (abolished, *except* grand serjeanty, and reduced to free socage tenures.)
    - (1.) Knight service proper, or tenure in chivalry.
    - (2.) Grand serjeanty.
    - (3.) Cornage.
  - (2.) Free socage, or plough-service.
    - (1.) Petit serjeanty.
    - (2.) Tenure in burgage.
    - (3.) Gavelkind.

(II.) Villenage.
- (1.) Pure villenage (whence copyholds at the lord's (nominal) will, which is regulated according to custom.)
- (2.) Privileged villenage, sometimes called villein socage (whence tenure in ancient demesne, which is an exalted species of copyhold, held according to custom, and not according to the lord's will), and is of three kinds.
  - (1.) Tenure in ancient demesne.
  - (2.) Privileged copyholds, customary freeholds, or free copyholds.
  - (3.) Copyholds of base tenure.

SPIRITUAL TENURES.

(I.) Frankalmoigne, or free alms.

(II.) Tenure by divine service.—*Wharton.*

TERM FEE, a certain sum charged to a suitor for each term that his cause is in the paper of business to be done.—*Ibid.*

TERMINUM, a day given to a defendant.—*Ibid.*

TERMINUS AD QUEM, the terminating point.—*Ibid.*

TERMINUS A QUO, the starting point.—*Ibid.*

TERMOR, he that holds lands or tenements for a given number of years or for life.—*Ibid.*

TERMS, the times during which the superior courts at Westminster are open to all that complain of wrong, or seek their right by course of law. There are four terms in each year. Hilary, Easter, Trinity, and Michaelmas.—*Ibid.*

TERMS FOR YEARS, an estate for years is denominated a term, because its enjoyment is strictly fixed, for by "term" is meant not only the interest which passes, but also the period for which it is held. It is a chattel real; *chattel*, because the estate passes to the owner's executors at his death, and not to his heir at law; so far, then, this estate partakes of the nature of personalty;

real, because it refers to the substance or land in which the interest may subsist, and therefore imparts to the estate the nature of real-property. An estate for years, then, is an interest in lands, tenements, and hereditaments for an ascertained period. It is to be observed that every estate of a determinate duration is a term, and of the nature of a term of years, though for a less period than a year, a year being the shortest time which the law in this case takes notice of.—*Wharton.*

TERRA, arable land.—*Ibid.*

TERRA AFFIRMATA, land let to farm.—*Ibid.*

TERRA BOSCALIS, woody land.—*Ibid.*

TERRA CULTA, cultivated land.—*Ibid.*

TERRA DEBILIS, weak or barren land.—*Ibid.*

TERRE-TENANT, the actual possession of the land.—*Cab. Law.*

TERRIS ET CATALLIS TENTIS ULTRA DEBITUM LEVATUM, a judicial writ for the restoring of lands or goods to a debtor who is distrained above the amount of the debt.—*Reg. Judic.*—*Wharton.*

TERRIS LIBERANDIS, a writ that lay for a man convicted by attaint, to bring the record and process before the king, and take a fine for his imprisonment, and then to deliver to him his lands and tenements again, and release him of the strip and waste.—*Reg. Orig.* 232. Also, it was a writ for the delivery of lands to the heir, after homage and relief performed, or upon security taken that he should perform them.—*Reg. Orig.* 293.—*Ibid.*

TERRITORIAL WATERS, are those within three miles from the coast of the country. By international law they are held to be within the jurisdiction of that country, so that even foreign ships within that distance are under control.

TERRITORY OF A JUDGE, the extent of a judge's jurisdiction.—*Wharton.*

TERTIUS INTERVENIENS, one who, claiming an interest in the subject or thing in dispute in action between other parties, asserts his right to act with the plaintiff, to be joined with him, and to recover the matter in dispute because he has an interest in it; or to join the defendant, and, with him, oppose the interest of the plaintiff, which it is his interest to defeat.—*Civ. Law.*—*Ibid.*

TEST, to bring one to a trial and examination; or to ascertain the truth.—*Wharton.*

TESTACY, leaving a will.—*Ibid.*

TESTAMENT, a disposition of personal property to take place after the owner's decease, according to his desire and direction. —*Ibid.* See WILL.

TESTAMENTARY, given by will; contained in a will.—*Ibid.*

TESTAMENTARY CAUSES, proceedings in the Probate Court relating to the validity of wills and intestacies of personal property, over which it has acquired exclusive jurisdiction.—*Ibid.*

TESTAMENTARY GUARDIAN, one appointed by a father's will over his own child.—*Ibid.* See GUARDIAN.

TESTATE, having made a will.

TESTATION, witness, evidence.—*Wharton.*

TESTATOR, he who makes a will or testament.—*Ibid.*

TESTATRIX, a woman who leaves a will.—*Ibid.*

TESTATUM, the witnessing part of a deed or agreement.—*Ibid.* See DEED.

TESTE, the witnessing part of a writ, warrant, or other proceeding, which expresses the date of its issue.—*Ibid.*

TESTIMONIAL, a writing produced by a person as an evidence for himself.—*Ibid.*

TESTIMONIAL PROOF, parol evidence.—*Civ. Law.*—*Ibid.*

TESTIMONY, evidence given; proof by a witness.—*Ibid.*

THEFT. Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft. A thing, so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth. A moving effected by the same act which effects the severance, may be a theft. A person is said to cause a thing to move by removing an obstacle which prevented it from moving, or by separating it from any other thing, as well as by actually moving it. A person who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal. The consent mentioned in the definition may be express or implied, and may be given either

by the person in possession, or by any person having for that purpose authority either express or implied.—*Ind. P. C.*, sec. 378. See ROBBERY.

THEFT-BOTE, compounding a felony.—*Wharton.*

THESAURUS INVENTUS, treasure-trove.—*Ibid.*

THINGS, the subjects of dominion or property, as contradistinguished from *persons.* They are distributed into three kinds (1), *things real or immoveable,* comprehending lands, tenements, and hereditaments; (2), *things personal or moveable,* comprehending goods and chattels; and (3), *things mixed,* partaking of the characteristics of the two former, as a title-deed, a term for years. The civil law divided things into corporeal (*tangi possunt*), and incorporeal (*tangi non possunt*).—*Ibid.*

THIRD PARTY, one who is a stranger to a proceeding not being plaintiff or defendant. A third party against whom a defendant claims indemnity or other remedy over may be introduced into the action.

THREATS, menaces of bodily hurt, through fear of which a man's business is interrupted.—*Ibid.* See OFFENCE, CRIMINAL FORCE, CRIMINAL TRESPASS.

THUG, one who has been habitually associated with any other person or persons for the purpose of committing robbery or child-stealing by means of, or accompanied with, murder.—*Ind. P. C.*, sec. 310.

TICKETS OF LEAVE, licenses to be at large, which are granted to convicts for good conduct, but are recallable upon subsequent misconduct.—*Wharton.*

TIGH, a close or enclosure.—*Ibid.*

TIME-BARGAIN, an illegal contract between two stockholders, generally members of an association, called "The Stock Exchange, who agree that on a specified future day, the difference in value of a nominal sum in some particular stock, as may be agreed upon, shall be paid over to the individual in whose favor the rise may be determined; accordingly, when what is termed the "settling day" arrives, the amount of the wager is paid to the winner.—*Tomlin.*

TITHES, are the tenth part of the increase arising from the produce of lands, payable to the rector, vicar, or perpetual curate, by endowment or prescription. They are said to be *predial, mixt,* and *personal.* *Predial* are such as are derived immediately

from the earth by culture or tillage, as corn, grass, wood, fruit, &c. *Mixt* tithes arise from the product of nature, improved by the care of man, as the young of cattle, wool, milk, cheese, eggs. *Personal* tithes are payable in respect of the profit arising from labor, confined to fish and corn mills, not in existence before 1315.—*Tomlin.*

TITLE, the legal terms signifying the means by which a man becomes seised of real property, or possessed of personal property; as title by descent, title by purchase, title by administration, title by bankruptcy, title by marriage, &c. This term is also used to signify generally, a right to land, and the buying or selling of "titles" is prohibited by statute, as Maintenance. —*Ibid.* See MAINTENANCE.

TITLE-DEEDS, the writings evidencing a man's right or title to property.—*Ibid.*

TOALIA, a towel. There is a tenure of lands by the service of waiting with a towel at the king's coronation.—*Wharton.*

TOFT, a messuage, or rather the scite of a messuage, or place where a messuage formerly stood, being decayed or burnt, and not re-built; it is a word getting into disuse.—*Tomlin.*

TOKEN, a sign of the existence of a fact; also, private money. —*Wharton.*

TOLL, to bar, defeat, or take away, as "to toll an entry" is to deny and take away the right of entry. See 3 & 4 *Wm. IV.*, c. 27.—*Ibid.*

TOLL, an excise of goods; a seizure of some part for permission of the rest. It has two significations—(1), a liberty to buy and sell within the precincts of the manor, which seems to import as much as a fair or market; (2), a tribute or custom paid for passage.—*Cowel.*—*Ibid.*

TOLL-THOROUGH, when a town prescribes to have toll for such a number of beasts, or for every beast that goes through the town, or over a bridge or ferry belonging to it.—*Com. Dig.* tit. "*Toll*" (C).—*Ibid.*

TOLL-TRAVERSE or **TRAVERS**, where one claims to have toll for every beast driven across his ground, for which a man may prescribe and distrain for it *viâ regiâ.*—*Cro. Eliz.* 710.—*Ibid.*

TONNAGE DUTIES, those imposed on wines imported, according to a certain rate per ton. This, with poundage, was formerly

granted to the monarch for life by Acts of Parliament, usually passed at the beginning of each reign.—*Wharton.*

TONTINE, a life-annuity, or a loan raised on life-annuities, with benefit of survivorship. The term originated from the circumstance that Lorenzo Tonti, an Italian, invented this kind of security in the middle of the 17th century, when the governments of Europe had some difficulty in raising money in consequence of the wars of Louis XIV, who first adopted the plan in France. A loan was obtained from several individuals on the grant of an annuity to each of them, on the understanding that, as deaths occurred, the annuities should continue payable to the survivors, and that the last survivor should take the whole. This scheme was adopted by other nations as well as France, but was not introduced into England until recently, and then only for the purpose of raising money to carry private speculations into effect, which could not be satisfactorily accomplished without a combination of capital. As to the formation of such a scheme, see *Stone's Benefit Build., Soc.* 78.—*Ibid.*

TORT. The word means that which is wrested or crooked, and so that which is contrary to right. A tort has been described by one English statute as a wrong independent of contract. It may be described as an invasion by A of B's rights either of property, person, liberty, or reputation. The Roman law called such wrongs delicts, and they have been defined as spontaneous, that is, free or voluntary actions or omissions contrary to law. The wrong being an act which is against right or law, the obligation to make reparation for the damage arises from the fault, and not from the intention; and conversely, a thing which is not a legal injury or wrong is not made actionable by being done with a bad intent. But it will be seen that, in many cases, to constitute an act a legal wrong or injury, the existence of a malicious intention is essential. There are two ingredients in a tort: the *injury* or legal wrong which is always essential, and the *damage* which is generally present, and sometimes said to be essential.—*Collett.*

TORTIOUS, anything done by wrong; an act involving a forfeiture of property.—*Wharton.*

TRADE, traffic; commerce; exchange of goods for other goods, or for money. All wholesale trade, all buying in order to sell again by wholesale, may be reduced to three sorts: the home trade, the foreign trade of consumption, and the carrying trade. —2 *Smi. Wealth of Nat., b.* ii., c. 5.—*Ibid.*

TRADE MARK, a mark used for denoting that goods have been made or manufactured by a particular person, or at a particular time or place, or that they are of a particular quality.—*Ind. P. C.*, sec. 478.

TRADER, one engaged in merchandize or commerce.—*Wharton.*

TRADESMAN, a shop-keeper.—*Ibid.*

TRAITOR, one who, being trusted, betrays; a state offender.—*Ibid.*

TRAITOROUSLY, in a manner suiting traitors; perfidiously treacherously.—*Ibid.*

TRAITRESS, a woman who betrays.—*Ibid.*

TRANSCRIPT, a copy: anything written from an original.—*Ibid.*

TRANSFER, to convey; to make over from one to another; to remove.—*Ibid.*

TRANSFERENCE, the name of an action by which a suit, which was pending at the time the parties died, is transferred from the deceased to his representatives, in the same condition in which it stood formerly. If it be the pursuer who is dead, the action is called a *transference active;* if the defender, it is a *transference passive.*—*Scotch Law.*—*Ibid.*

TRANSFERREE, the person to whom a transfer is made.—*Ibid.*

TRANSFERROR, the person who makes a transfer.—*Ibid.*

TRANSIRE, a warrant or certificate that a ship has paid customs dues and may therefore sail. This constitutes her *clearance.*

TRANSPORTATION, the banishing or sending away a criminal into another country; also, the carriage of property.—*Wharton.*

TRAVERSE, is the denying or disputing any matter of record, such as an inquisition or presentment; and in this sense it is used when a party indicted of a misdemeanor, pleads and *traverses, i.e.*, denies the indictment, so that it stands over till the ensuing sessions. Traverse also means any denial of a fact alleged in pleading.—*Tomlin.*

TRAVERSE OF AN OFFICE, proof that an inquisition made of lands or goods by the escheator is defective and untruly made.—*Wharton.*

TRAVERSING INDICTMENT, postponing the trial of it.—*Ibid.*

TRAVERSING NOTE, a plaintiff, after an appearance has been entered by, or for, a defendant defending in person or by a solicitor, but not otherwise, to a bill, may, in default of answer to which interrogatories have been filed for the examination of such defendant, proceed with his cause by filing a traversing note as to such defendant.—*Wharton.*

TREADMILL, an instrument of prison discipline. It is composed of a large revolving cylinder, having ledges or steps fixed round its circumference: the prisoners walk up these ledges, and their weight revolves the cylinder.—*Ibid.*

TREASON, an overt (open) act of compassing or devising the death of the king. Every thing wilfully or deliberately done or attempted, whereby the king's life may be endangered, is an *overt* act of compassing his death. Conspiring to depose him, or attempts to usurp the powers of government, are also overt acts; so inciting foreigners to invade the kingdom, or openly adhering to the king's enemies, are deemed *overt* acts. Writings which import such compassings or devices, attempts or intentions, if *published* or shown to third persons, or words of advice or persuasion, importing deliberation and design, are deemed *overt* acts. Treason used to be styled *high* treason, in contradistinction to what was termed *petty* treason, which was the killing of a master by his servant, a husband by his wife, &c.—*Tomlin.*

TREASURE-TROVE, money or coin, gold, silver, plate, or bullion found hidden in the earth or other private place, the owner thereof being unknown or unfound, in which cases it belongs to the crown. Bracton defines it, *vetus depositio pecuniæ.*—*Wharton.*

TRESPASS, is a term applied to those wrongs which are committed with actual or implied force, and the action that lies to redress those wrongs are termed actions of trespass.—*Tomlin.* It is also a criminal offence, and is classed as follows—(1), *criminal trespass*, which is the entrance into or upon property in the possession of another with intent to commit an offence, or to intimidate, insult, or annoy any person in possession of such property; or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult, or annoy any such person, or with intent to commit an offence; (2), *house-trespass*, the commission of criminal trespass by entering into or remaining in any building, tent, or vessel, used as a human dwelling, or any building used as a place for

worship, or as a place for the custody of property: the introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass; (3), *lurking house-trespass*, which is the commission of house-trespass, having taken precautions to conceal such house-trespass, from some person who has a right to exclude or eject the trespasser from the building, tent, or vessel which is the subject of the trespass; and (4), *lurking house-trespass by night*, which is the commission of lurking house-trespass after sunset and before sunrise.—*Ind. P. C.*, secs. 443—444.

TRIAL, the examination of a cause, civil or criminal, before a judge who has jurisdiction over it, according to the laws of the land.—*Wharton.*

TRIBUNAL, the seat of a judge, a court of justice.—*Ibid.*

TRIBUTE, payment made in acknowledgment; subjection.—*Ibid.*

TRIVIS OF JURORS, persons selected by the court to examine whether a challenge made to the panel of jurors or any of them be just or not.—*Brown.*

TROVER, a form of action which lies in general against a defendant for the conversion, or appropriation to his own use, of any personal property in which the plaintiff has a general property as owner, or special property as carrier, depository, trustee, &c.—*Tomlin.* As a distinct form of action it no longer exists: it is no longer a technical form of action.

TRUCK-SYSTEM, the practice of paying workmen in goods instead of money.—*Brown.*

TRUE BILL, the endorsement which the grand jury makes upon a bill of indictment when they find it, being satisfied of the truth of the accusation.—*Wharton.*

TRUSTEE, is a person who holds lands or tenements, or other property, upon the trust or confidence that he will apply the same for the benefit of those who are entitled, according to an expressed intention, either by the parties themselves, or by the deed, will, settlement, or arrangement of another.—*Tomlin.*

TRUSTS, a trust is simply a confidence, reposed, either expressly or impliedly, in a person (hence called the trustee,) for the benefit of another, (hence called the *cestui que trust*, or beneficiary,) not, however, issuing out of real or personal property, but as a collateral incident accompanying it, annexed in privity

to, *i.e.*, commensurate with, the interest, in such property, and also to the person touching such interest, for the accomplishment of which confidence, the *cestui que trust* or beneficiary has his remedy in equity only; the trustee himself likewise being aided and protected in the proper performance of his trust, when he seeks the court's direction as to its management. Trusts may be classed thus—(1), *express*, divided into—(*a*), trusts executed, perfect, complete, or constituted; (*b*), trusts executory, imperfect, incomplete, or directory; (2), *arising by operation of law*, divided into—(*a*), constructive; (*b*), resulting; (*c*), implied. Trusts are also divisible into—(1), *permanent*, when there is a continuing duty to be performed for the benefit of several persons in succession, and (2), *temporary*, when there is one particular duty only to perform. Again, trusts may be *general*, where a trustee's duty is passive; and *special*, where it is active. A trust, being in contemplation of equity the substantial ownership of property, its legal possessor can create a trust in relation thereto, co-extensive with his ability to dispose of it at law.—*Wharton.*

TUB-MAN, a barrister who has a pre-audience in the exchequer, and also a particular place in court.—*Ibid.*

TURNED TO A RIGHT, where a person's possession of property cannot be restored by entry, but can only be recovered by action.—*Ibid.*

TURPIS CAUSA, a base or vile consideration on which no action can be founded.—*Ibid.*

TUTELAGE, guardianship; state of being under a guardian.—*Sand. Just.* 136.—*Ibid.*

TYBURN TICKET, a certificate given to the prosecutor of a felon to conviction.—*Ibid.*

TYHSLAN, an accusation, impeachment, or charge.—*Ibid.*

UBERREINA FIDES, (*most entire confidence*) contracts made between persons in a particular relationship of confidence, as guardian and ward or attorney and client require the fullest information to be given beforehand by the person in whom the confidence is reposed to the person confiding, or the court will refuse to enforce the contract on behalf of the former.

ULLAGE, the quantity of fluid which a cask wants of being full, in consequence of the oozing of the liquor.—*Malone.*—*Wharton.*

ULTIMUM SUPPLICIUM, the last or extreme punishment; death. —*Wharton.*

ULTIMUS HÆRES, the last or remote heir; this is the sovereign who succeeds, failing all relations.—*Ibid.*

ULTRA VIRES, *(beyond their powers,)* said of a company when exceeding the authority imparted to it by Act of Parliament.—*Ibid.*

ULTRONEOUS WITNESS, one who gives voluntary evidence.

UMPIRAGE, friendly decision of a controversy; arbitration.—*Wharton.*

UMPIRE, a submission to arbitration usually provides, that in case of arbitrators not agreeing in an award, the matters should be decided by a third person, who is called an umpire. The submission either provides that the arbitrators shall appoint the umpire, or he is named therein.—*Ibid.*

UNALIENABLE, a thing which cannot be sold.—*Ibid.*

UNCEASESATH, an oath by relations not to avenge a relation's death.—*Blount.*—*Ibid.*

UNCORE PRIST, the plea of a defendant in nature of a plea in bar, where, being sued for a debt due on bond at a day past, to save the forfeiture of the bond, he says that he tendered the money at the day and place, and that there was none there to receive it, and that he is also still ready to pay the same.—*Ibid.*

UNDER-LEASE, a grant by a lessee to another of a part of his whole interest under the original lease, reserving to himself a reversion; it differs from an assignment, which conveys the lessee's whole interest, and devolves upon the assignee the responsibility of the covenants in the original lease.—*Ibid.*

UNDERTAKING, a promise: especially one formally given in the course of a legal proceeding, which may be enforced by attachment or otherwise. An *undertaking to appear* is a promise by a solicitor to appear for his client in an action, so as to make personal service on the client unnecessary.

UNDER-TENANT, one who holds by under-lease, from a lessee. Between the original lessor and an under-tenant there is neither privity of estate nor privity of contract, so that these parties cannot take advantage, the one against the other, of the covenants, either in law or in deed, which exist between the original lessor and lessee.—*Watk. Conv.* 308.—*Wharton.*

UNDER-WRITER, an insurer of ships, so called from writing his name under the policy of insurance.—*Wharton.*

UNDRESS, minors or persons under age not capable of bearing arms.—*Fleta*, l. 1, c. 9.—*Ibid.*

UNDUE INFLUENCE, any force, violence, or restraint, or the infliction of, or threat to inflict, any injury, or the practice of any intimidation, in order to induce any person to vote, or refrain from voting, or on account of his having done so.—*Ibid.* See FORCE.

UNGELD, an outlaw.—*Ibid.*

UNIAC TAXATIO, the obsolete language of a special award of *venire*, where, of several defendants, one pleads, and one lets judgment go by default, whereby the jury, who are to try and assess damages on the issue, are also to assess damages against the defendant suffering judgment by default.—*Ibid.*

UNILATERAL CONTRACT, when the party to whom an engagement is made makes no express agreement on his part, the contract is called unilateral, even in cases where the law attaches certain obligations to his acceptance. A loan of money and a loan for use are of this kind.— *Civ. Law.*—*Ibid.*

UNITAS PERSONARUM, the unity of persons, as that between husband and wife, or ancestor and heir.—*Ibid.*

UNITY OF POSSESSION, where one has a right to two estates, and holds them together in his own hands, as if a person take a lease of lands from another at a certain rent, and afterwards buys the fee-simple, this is a unity of possession by which the lease is extinguished, because that he who had before the occupation only for his rent, is now become lord and owner of the land.—*Termes de la Ley.*—*Ibid.*

UNIVERSAL AGENT, one who is appointed to do all the acts which the principal can personally do, and which he may lawfully delegate the power to another to do. Such a universal agency may potentially exist, but it must be of the very rarest occurrence. And indeed it is difficult to conceive of the existence of such an agency practically, inasmuch as it would be to make such an agent the complete master, not merely *dux facti* but *dominus rerum*, the complete disposer of all the rights and property of the principal.—*Ibid.*

UNIVERSAL LEGACY, a testamentary disposition by which the testator gives to one or several persons, the whole of the property which he leaves at his decease.—*Civ. Law.*—*Ibid.*

UNIVERSAL PARTNERSHIP, a species of partnership, by which all the partners agree to put in common all their property, *universorum bonorum*, not only what they then have, but also what they shall acquire.—*Wharton.*

UNLAWFUL ASSEMBLY, any meeting of great numbers of people, with which circumstances of terror as cannot but endanger the public peace, and raise fears and jealousies among the subjects of the realm.—4 *Step. Com.* 320.—*Ibid.* See ASSEMBLY, UNLAWFUL.

UNLIQUIDATED DAMAGES, penalties or damages not ascertained. —*Ibid.*

UNNATURAL OFFENCE, having carnal intercourse against the order of nature with any man, woman, or animal. Penetration is sufficient to constitute the carnal intercourse necessary to the commission of this offence.—*Ind. P. C.*, sec. 377.

UNSOUND MIND. See MENTAL ALIENATION.

USAGE, practice long continued.—*Wharton.*

USANCE, the time which it is the usage of the countries, between which bills are drawn, to appoint for payment of them. According to the language of merchants, "usance" signifies a month. The length of the usance or time which it includes, varies in different countries from fourteen days to one, two, or even three months after the date of the bill. Double or treble usance is double or treble the usual time, and half usance is half that time: when it is necessary to divide a month upon a half usance, the division, notwithstanding the difference in the length of the month, contains fifteen days.—*Ibid.*

USE AND OCCUPATION, in cases where a house, &c., is not let by any deed or lease under seal, the proper remedy is an action on premises for use and occupation. This action is founded either upon a contract, express or implied, between the plaintiff and defendant: it will not serve to try a right to premises.—*Tomlin.*

USER, is the act of using or enjoying any profit or benefit to be taken from or upon the land, or any easement to be enjoyed upon or over any land or water.—*Brown.*

USES AND TRUSTS, are akin to each other; a *use* being law, the profit of lands and tenements, upon a trust and confidence reposed in another, that he to whose use the trust is made, shall take the profits thereof. *Uses* only apply to land of inheritance: the *trust*, being a creature of equity, only attaches on the profits

or personalty. Therefore, no use can subsist of leaseholds; the conveyance being made to A in trust for B.—*Tomlin.*

USUAL TERMS, a phrase in the common law practice, which means pleading issuably, rejoining gratis, and taking short notice of trial.—*Ibid.*

USUCAPIO, the enjoying, by continuance of time, a long possession or prescription; property acquired by use or possession.—*Civ. Law.—Ibid.*

USUFRUCT, the right of using (*usus*) and reaping the fruits (*fructus*) of things belonging to others, without destroying or wasting the subject over which such right extends.—*Ibid.*

USUFRUCTUARY, he who has the use and reaps the profit of a thing.—*Wharton.*

USURA MARITIMA, interest taken on bottomry or respondentia bonds, which is proportioned to the risk, and was not affected by the abolished usuary laws.—19 *Geo. II*, c. 37.—*Ibid.*

USURPATION, a keeping or holding by using that which is another's; an interruption of usucapio, or disturbing a man in his right and possession, &c. It is called *intrusion* in the civil and canon laws.—*Sand. Just.* 236.—*Ibid.*

USURY, the offence of *taking* (not simply stipulating for) a greater interest than the rate prescribed by law. The restrictions on the amount of interest to be taken on loans are now abolished.

UTERINE BROTHER, a brother born of the same mother, but by a different father.—*Wharton.*

UTERO-GESTATION, pregnancy.—*Ibid.*

UTLAWRY, outlawry.—*Ibid.*

UTLESSE, an escape of a felon out of prison.—*Ibid.*

UTTER BARRISTERS, barristers who plead without the bar; outer barristers.—*Ibid.*

UTTERING, tendering, selling; putting in circulation; publishing.—*Ibid.*

VACANTIA BONA, things without an owner; the goods of one dying without successor.

VACANT SUCCESSION, an inheritance for which the heir is unknown.—*Wharton.*

VACATE, to cancel, render of no effect.

VACATION, intermission of juridical proceedings, or any other stated employments; recess of courts or senates.—*Encyc. Lond.* —*Wharton.* See LONG VACATION AND HOLIDAYS.

VADIUM MORTUUM, a mortage, or deadledge.—*Ibid.* See also VADIUM VIVUM.

VADIUM VIVUM. When a man borrows a sum of money of another (suppose £200) and grants him an estate, as of £20 per annum, to hold till the rents and profits shall repay the sum so borrowed; in this case the land or pledge is said to be living; it works off, *i.e.*, repays and survives, the debt, and immediately on the discharge of that reverts back to the borrower. It is called a *vivum vadium*, or living pledge, in contradistinction to a *mortuum vadium*, the land in which does not of itself work off, *i.e.*, repay the debt, but the mortgagor must needs himself repay the same before the land reverts to him. In the case of both these species of *vidium*, the pledgee receives the rents and profits without account, in which respect they both differ from a mortgage property so called.—*Brown.*

VADIUM PONERE, to take or pledge for a defendant's appearance.—*Wharton.*

VAGRANTS, are classed by the law as—(1), idle and disorderly persons; (2), rogues and vagabonds; (3), incorrigible rogues. —*Tomlin.*

VAKEEL, one endowed with authority to act for another; ambassador; agent sent on a special commission, or residing at a court; also a native law pleader.—*Wharton.*

VALENTIA, the value or price of anything.—*Ibid.*

VALUABLE CONSIDERATION, is distinguished by Blackstone from a *good* consideration; the latter is a consideration of blood or natural affection; the former is money, marriage, or the like, and is the equivalent given for the thing purchased or contracted for.—*Cab. Law.*

VALUABLE SECURITY, a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished, or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.—*Ind. P. C.*, sec. 30.

VALUE, a relative term. The value of a thing means the quantity of some other thing, or of things in general, which it exchanges for. The values of all things can never, therefore,

rise or fall simultaneously. There is no such thing as a general rise or a general fall of values. Every rise of value supposes a fall, and every fall a rise. The temporary or market value of a thing depends on the demand and supply; rising as the demand rises, and falling as the supply rises. The natural value of some things is a scarcity value, but most things naturally exchange for one another, in the ratio of their cost of production, or at what may be termed their *cost value*. The word value, it is to be observed, has two different meanings, and sometimes express the utility of some particular object, and sometimes the power of purchasing other goods which the possession of that object conveys. The one may be called "value in use;" the other "value in exchange."—*Wharton*.

VALUE RECEIVED, a phrase generally inserted in bills of exchange, but which is not necessary, since value is implied in every bill, as much as if expressed *in totidem verbis*.—*White* v. *Ledwick*, 4 *Doug*. 247; *Chit. on Bills*, 110.—*Ibid*.

VARIANCE, difference; variation.—*Ibid*. Usually the difference between the statements in the pleadings and the evidence adduced in proof thereof.

VASTUM, a waste or common lying open to the cattle of all tenants who have a right of commoning.—*Wharton*

VEJOURS, persons sent by a court to take a view of any place in question, for the better decision of the right thereto; also, persons appointed to view the result of an offence.—*O. N. B.* 112—*Ibid*.

VENDEE, one to whom anything is sold.—*Ibid*.

VENDER, or **VENDOR**, a seller.—*Ibid*.

VENDITIONI EXPONAS, a judicial writ addressed to the sheriff, commanding him to expose to sale goods which he has already taken into his hands, to satisfy a judgment-creditor.—*Reg. Judic.* 33.—*Ibid*.

VENIRE FACIAS DE NOVO, a second writ to summon another jury for a new trial. The *venire de novo* was the old common-law mode of proceeding to a second trial, and differed materially from granting a new trial, inasmuch as it was awarded from some defect appearing upon the face of the record, while a new trial was granted for matter entirely extrinsic. Where a verdict could have been amended, a *venire de novo* was never awarded. If awarded, the party succeeding at the second trial

was not entitled to the costs of the first. It is now superseded by a trial *de novo*.—2 *Chit. Arch. Prac. by Pren.* 1479.—*Wharton.*

VENIRE FACIAS TOT MATRONAS, a writ to summon a jury of matrons to execute the writ *de ventre inspiciendo*.—*Ibid.*

VENUE, a neighbouring place; the place whence a jury are to come for trial of causes.—*Ibid.*

VENTER, (*the belly*) is used in law as designating the maternal parentage of children. Thus where in ordinary phraseology we would say that A was B's child by his first wife, he would be described in law as "by the first venter"; similarly we may say, "A died seised, leaving two infant daughters by different venters."—*Brown.*

VERBAL NOTE, a memorandum or note, in diplomatic language, not signed, sent when an affair has continued a long time without any reply, in order to avoid the appearance of an urgency which, perhaps, the affair does not require; and, on the other hand, not to afford any ground for supposing that it is forgotten, or that there is no intention of not prosecuting it any further. —*Wharton.*

VERDICT, the determination of a jury declared to a judge. The verdict is either *general* or *special*. A *general verdict* is given, *vivâ voce*, by the jury, thus, "we find for the plaintiff, damages——, costs——," or, if for the defendant, then, "we find for the defendant." If there be several issues, the verdict may be distributed, finding some issues for the plaintiff, and others for the defendant. A *special verdict* must state the facts proved at the trial, and not merely the evidence given to prove those facts; otherwise the verdict will be insufficient, and the court will award a trial *de novo*.—1 *Chit. Arch. Prac. by Pren.* 427. Verdicts in criminal cases may be either *general*, as guilty or not guilty; or *special*, setting forth all the circumstances, and praying the judgment of the court, whether, upon the facts stated, there exists a crime in law.—4 *Step. Com.* 499.—*Ibid.*

VERGE, a rod. Tenants by the rod or verge, are copyholders, who, upon receiving admittance by the lord or his steward, hold a small rod which gives, or is symbolical of, possession; for the terms of admission are "to hold by *the rod* at the will of the lord, according to the custom of the manor."—*Tomlin.*

VERIFICATION, confirmation by evidence; an affirmation at the foot of a plaint, written statement, or declaration for

default of appearance, &c., that what is stated therein is true to the best of the information and belief of the party subscribing thereto.

VERRA, a slave born in his master's house.—*Civ. Law.*—*Wharton.*

VERY LORD AND VERY TENANT, they that are immediate lord and tenant one to another.—*Ibid.*

VEST, to place in possession; to make possessor of; to take an interest in property when a named period or event occurs.—*Ibid.*

VESTED LEGACY, a legacy is said to be vested when the words of the testator making the bequest convey a transmissible interest, whether present or future, to the legatee in the legacy.—*Brown.*

VESSEL, a ship, anything made for the conveyance by water of human beings or of property.—*Ind. P. C.*, sec. 48.

VESTED INTEREST, a present fixed right of future enjoyment, as reversions, vested remainders, such executory devises, future uses, conditional limitations, and other future interests, as are not referred to, or made to depend on, a period or event that is uncertain.—*Wharton.*

VESTED POSSESSION, a legal term applied to a right of present enjoyment actually existing.—*Ibid.*

VESTED REMAINDER, an expectant estate, which is limited or transmitted to a person who is capable of receiving the possession, should the particular estate happen to determine; as a limitation to A for life, remainder to B and his heirs: here, as B is in existence, he is capable, or his heirs, if he die, of taking the possession whenever A's death may occur.—*Ibid.*

VESTING ORDER, the court of chancery has the power of granting an order passing the legal estate in lieu of a conveyance, but such order must be stamped, as if it were a deed of conveyance, pursuant to 13 & 14 *Vict.*, c. 60, and 15 & 16 *Vict.*, c. 55. Also commissioners appointed by several modern statutes have the powers, by vesting order, to transfer legal estates without the necessity of a deed of transfer. Also an order of the Insolvent Court, transferring an insolvent's property to the provisional assignee.—*Ibid.*

VETERA STATUTA, the ancient statutes commencing with *Magna Charta*, and ending with those of Edward II. Including also some which, because it is doubtful to which of the three

reigns of Hen. III., Edw. I, or Edw. II. to assign them, are termed *incerti temporis.—Wharton.*

VETITUM NAMIUM, or REPETITUM NAMIUM, a second or reciprocal distress, in lieu of the first, which has been eloigned.—*Ibid.*

VETO, a prohibition, or the right of forbidding.—*Ibid.*

VEXATA QUÆSTIO, an undetermined point.—*Ibid.*

VEXATIOUS SUIT, one brought without probable cause, for the purpose of annoyance or oppression. As to vexatious indictments, see 22 & 23 *Vict.*, c. 17.—*Ibid.*

VICARIO, &c., an ancient writ for a spiritual person imprisoned upon forfeiture of a recognizance, &c.—*Reg. Orig.* 147.—*Ibid.*

VICE-ADMIRALTY COURTS, tribunals established in Her Majesty's possessions beyond the seas, with jurisdiction over maritime causes, including those relating to prize.—*Ibid.*

VICIOUS INTROMISSION, a meddling with the moveables of a deceased, without confirmation or probate of his will, or other probable title.—*Scotch Phrase.—Ibid.*

VICOUNTIEL JURISDICTION, that jurisdiction which belongs to the officers of a county, as sheriffs, coroners, &c.—*Ibid.*

VIDUITATIS PROFESSIO, the making a solemn profession to live a sole and chaste woman.—*Ibid.*

VIDUITY, widowhood.—*Ibid.*

VI ET ARMIS, (*with force and arms*), words inserted in pleadings to express a forcible and violent act.—*Ibid.*

VIEW, an inspection of property in controversy, or of a place, where a crime has been committed, by the jury, previously to the trial.—*Ibid.*

VI LAICA REMOVENDA, a writ that lies where two persons contend for a church, and one of them enters into it with a great number of laymen, and holds out the other *vi et armis;* then he that is holden out shall have this writ addressed to the sheriff, that he remove the lay force; but the sheriff ought not to remove the incumbent out of the church, whether he is there by right or wrong, but only the force.—*F. N. B.* 54.—*Ibid.*

VILLAIN or VILLEIN, a man of base or servile condition; a bondman or servant: one who held by a base service.—1 *Hall. M. A.* c. II., pt. ii., p. 199.—*Ibid.*

VILLAINOUS JUDGMENT, such a judgment as threw the reproach of villany and shame on those against whom it was given, and

by which they were discredited and disabled as jurors or witnesses; forfeited their goods and chattels and lands for life; had their lands wasted, their houses razed, their trees rooted up and their bodies committed to prison. A judgment in attaint against unjust jurors had these effects and was, therefore, a villainous judgment.—*Brown.*

VILLANIS REGIS SUBSTRACTIS REDUCENDIS, a writ that lay for the bringing back of the king's bondmen, that had been carried away by others out of his manors, whereto they belonged. —*Reg. Orig.* 87.—*Ibid.*

VILLEIN IN GROSS, one annexed to the person of the lord, and transferable by deed from one owner to another.—*Ibid.*

VILLEIN REGARDANT, one annexed to the manor or land.—*Ibid.*

VILLEIN SERVICES, base, but certain and determined services. —*Ibid.*

VILLEIN SOCAGE, a holding of the king; a privileged sort of villenage.—*Ibid.*

VILLENAGE, a base tenure. There are two sorts—(1), *pure*, where a man holds upon terms of doing whatsoever is commanded of him; and (2), *privileged*, otherwise called *villein socage.*—*Wharton.* See TENURE, VILLEIN SOCAGE.

VILLIBILITY, a capability of living after birth; extra uterine life.

VINDICATIO, a real action claiming property by its owner.—*Civ. Law.*—*Wharton.*

VINDICATORY PART OF LAWS, the sanction of the laws, whereby it is signified what evil or penalty shall be incurred by such as commit any public wrongs, and transgress or neglect their duty, —*Ibid.*

VINDICTIVE DAMAGES, those given by way of punishing the offender, over and above the actual loss suffered.

VIOLENT PRESUMPTION, circumstantial evidence, so powerful as to be unrebuttable.—*Wharton.*

VIOLENT PROFITS, double value of a tenement within a burgh, and the highest rent for lands in the country, recoverable against a tenant for refusing to remove.—*Scotch Phrase.*—*Ibid.*

VISITATION, judicial visit or perambulation.—*Ibid.*

VIS MAJOR, inevitable accident, irresistible force. By inevitable accident, commonly called the act of God, is meant any accident produced by any physical cause, which is irresistible;

such as a loss by lightning or storm, by the perils of the sea, by an inundation or earthquake, or by sudden death or illness. By irresistible force is meant such an interposition of human agency as is, from its nature and powers, absolutely uncontrollable.—*Story's Bailments*, 29.—*Wharton.*

VIVA VOCE, an examination by parol in open court.—*Cab. Law.*

VOIDANCE, the act of emptying; ejection from a benefice.—*Wharton.*

VOID AND VOIDABLE, there is this difference between these two words: *void* means that an instrument or transaction is so nugatory and ineffectual, that nothing can cure it; *voidable*, when an imperfection or defect can be cured by the act or confirmation of him who could take advantage of it. Thus, while acceptance of rent will make good a voidable lease, it will not affirm a void lease.—*Ibid.*

VOIR DIRE, examining a witness before he gives evidence in the cause, whether he be competent or interested in the cause or not.—*Ibid.*

VOLUMUS, (*we will*), the first word of a clause in the royal writs, of protection and letters-patent.—*Ibid.*

VOLUNTARY, acting without compulsion; done by design. When applied to a conveyance, it means that it is made merely on a *good*, and not on a *valuable* consideration.—*Wharton.* According to the criminal law, a person is said to cause an effect "*voluntarily*," when he causes it by means whereby he intended to cause it, or by means at the time of which, employing those means, he knew or had reason to believe, to be likely to cause it. *A* sets fire, by night, to an inhabited house in a large town for the purpose of facilitating a robbery, and thus causes the death of a person. Here *A* may not have intended to cause death, and may even be sorry that death has been caused by his act; yet if he knew that he was likely to cause death, he has caused death voluntarily.—*Ind. P. C.*, sec. 39.

VOLUNTARY ANSWER, one filed by a defendant to a bill in equity, without being called upon to answer by the plaintiff.—*Wharton.*

VOLUNTARY DEPOSIT, such as arises from the mere consent and agreement of the parties.—*Story's Bailments*, 47.—*Ibid.*

VOLUNTARY OATH, an oath administered in a case for which the law has not provided. See 5 & 6 *Wm.* IV., c. 62.—*Ibid.*

VOLUNTARY WASTE, that which is the result of the deliberate act of the tenant of property, as where he pulls down a wall, or cuts timber, opposed to permissive waste.

VOLUNTEER, a person who receives a voluntary conveyance; also one who offers his services to his country in time of war. —*Wharton.*

VOUCH, to give testimony, to obtest.—*Ibid.*

VOUCHEE, the person vouched in a writ of right.—*Ibid.*

VOUCHER, a witness, testimony, acquittance, or receipt.—*Ibid.*

VULGAR ERRORS, erroneous notions. The following are a few or the most prominent, in reference to legal matters—(1), that a funeral procession passing over private grounds creates a public right of way; (2), that it is lawful to arrest and detain a dead body; (3), that first cousins may intermarry and that second cousins may not: whereas they may both marry with each other;* (4), that a butcher cannot be sworn as a juryman on a coroner's inquisition; (5), that all persons born at sea, claim a right of settlement in Stepney parish;† (6), that a lease for more than 99 years constitutes a freehold; (7), that a husband is punishable for his wife's criminal acts; (8), that to disinherit a child, the sum of one shilling should be bequeathed.‡—*Tomlin.*

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* By our mode of computing the degree of consanguinity, which is in conformity with the civil or imperial law, cousins-german or first cousins, who are in the fourth degree, may intermarry. But the ecclesiastical or canon law, by using a different mode of computation, reckoned those in the fourth degree by the civil law to be in the second degree by the canon law. Therefore, this error has arisen by confounding the application of these two laws; for first cousins may marry by the civil law, and second cousins could not by the canon law, which has long ceased to be of force in respect of this subject.

† The "addition" or description of a sea-faring man, in indictments for offences committed upon the high seas, and in other legal proceedings. used ordinarily to be "late of Stepney, mariner," which most likely is the origin of this error, independently of the fact that the parish of Stepney has always been thickly inhabited by a sea-faring population.

‡ This error owes its origin to a rule of the civil law, which invalidates any will which is "inofficiose," *i. e.*, wanting in display of natural affection, by the omission of a bequest to, or provision for, a child. This doctrine is still acknowledged, to its full extent, in those countries where justice is administered according to the civil law, as in Scotland, &c.

WAGER OF LAW, a proceeding which consisted in a defendant's discharging himself from the claim, on his own oath, bringing with him at the same time into court eleven of his neighbours to swear that they believed his denial to be true. It was abolished by 3 & 4 *Wm. IV.*, c. 42, sec. 23.—*Wharton.*

WAGES, the compensation agreed upon by a master to be paid to a servant, or any other person hired to do business for him. —*Ibid.*

WAIF or WAIFT, WEIF or WEFT, goods found but claimed by nobody; that of which every one waives the claim. Also goods stolen and waived, or thrown away by the thief in his flight, for fear of being apprehended. These are given to the sovereign by the law, as a punishment upon the owner for not himself pursuing the felon and taking away his goods from him.—*Cro. Eliz.* 604.—*Ibid.*

WAINABLE, land that may be ploughed, manured, or tilled.—*Chart. Antiq.*—*Ibid.*

WAIVE, to forsake; to put a woman out of the protection of the law.—*Ibid.*

WAIVER, the passing by of a thing, or a declining or refusal to accept it; also, declining to take advantage of irregularities in proceedings.—*Ibid.*

WARD, the state of a child under guardianship. A *ward of court* is an infant under the protection of the court of chancery. —*Ibid.*

WARDMOTE, a court held in every ward in London. The wardmote inquest has power to inquire into and prevent all defaults concerning the watch and police doing their duty; that engines, &c., are provided against fire; that persons selling ale and beer be honest and suffer no disorders, nor permit gaming, &c., that they sell in lawful measures; searches are to be made for beggars, vagrants, and idle persons, &c., who shall be punished.—*Ibid.*

WARDWIT, the being quit of giving money for the keeping of wards.—*Ibid.*

WAREHOUSING SYSTEM, the allowing of goods imported to be deposited in public warehouses, at a reasonable rent, without payment of the duties on importation if they are re-exported; or if they are ultimately withdrawn for home consumption, without payment of such duties until they are so removed, or a purchaser found for them.—2 *Mill's Pol. Eco.* 444; 16 & 17 *Vict.*—*Ibid.*

WARGUS, a banished rogue.—*Wharton.*

WARNING OF A CAVEAT, a notice to a person, who has entered a *caveat* in the Probate Court, to appear and set forth his interest.—*Ibid.*

WARRANT, a precept under hand and seal, to some officer to arrest an offender, to be dealt with according to due course of law; also, a writ conferring some right or authority, a citation or summons.—*Ibid.*

WARRANTEE, a person to whom a warrant is made.—*Ibid.*

WARRANTOR, a person who warrants.—*Ibid.*

WARRANTS OF ATTORNEY and COGNOVITS, these are writings, the effect of which is to enable another party to obtain a judgment in a civil action against the person subscribing them. —*Tomlin.*

WARRANTY, a guaranty or security; also, a promise or covenant by deed by the bargainer for himself and his heirs, to warrant and secure the bargainee and his heirs against all persons for the enjoying of the thing granted.—2 *Bl. Com.*, c. 20 —*Wharton.* It is either express or implied.

EXPRESS WARRANTY, every affirmation made by the vendor, at the time of the sale in relation to the goods, amounts to a warranty, provided it appear in evidence to be so intended. Where an *express* warranty is couched in technical terms, it is to be interpreted according to their technical signification, unless they be manifestly used in a different sense, and differently understood by the buyer. A *general* warranty does not extend to patent defects, which are apparent upon due inspection, or to defects which are, at the time, known to the buyer.

IMPLIED WARRANTY, a warranty is *implied* in five cases—(1), a warranty of title will be presumed when the goods sold are, at the time of the sale, in the possession of the vendor or of a third person, unless the contrary be then expressed; (2), when an examination of goods is, from their nature or situation at the time of the sale, impracticable, a warranty will be implied that they are merchantable; (3), upon an executory contract of sale, where goods are to be manufactured, or to be procured for a particular use or purpose, a warranty will be implied that they are reasonably fit for such purpose or use, as far as goods of such a kind can be; (4), a warranty will be implied against all latent defects, in two cases—1*st*, when the seller knew that the buyer did not rely on his own judgment, but on that of the seller, who

knew at the time, or might have known, the existence of the defects; 2*nd*, where, from the situation of the parties (as in the case of a manufacturer or producer), the seller might have provided against the existence of defects; or where a warranty may be presumed from the very nature of the transaction; (5), where goods are sold by sample, a warranty is implied that the bulk corresponds to the sample in nature and quality.—*Story's Con.*, 329.—*Wharton.*

WASTE, and herein of DILAPIDATIONS. *Waste* is the committing any spoil or damage to houses or land by tenants, or those who have limited estates; for tenants-in-tail are privileged to do a variety of acts which in a tenant, or one whose interest is transitory or subordinate, would be deemed waste. Waste is either *actual* or *permissive;* (1), *actual*, or, as it is often termed, *voluntary waste*, is committed by committing acts of positive destruction, as by cutting down timber, ploughing up ancient meadow, and pulling down houses, together with infinite other acts of deterioration; (2), *permissive* or *negligent waste* is the suffering damage to accrue, for want of doing the necessary acts to keep house and land in order. Tenants for years, who hold upon lease, are, by their covenants, bound to do certain repairs to the houses they occupy, and these wants of repairs are known by the name of *dilapidations*, which are recoverable against the tenants. This brings us to consider what are *substantial* repairs, and what *tenantable* repairs. The first being obligatory on the lessee to perform, the latter on the tenant-at-will, or from year to year. *Substantial* repairs are the amendment and restoration of the main walls and vaults, the re-placing of beams, girders, roofs, and other main timbers, and other essentials of an edifice; and also comprise the reinstatement of any thing that has been lost or taken away, such as broken glass, locks, keys, shelves, mantel-pieces, &c., together with reasonable papering, whitewashing, cleansing, and amendments. *Tenantable* repairs are only putting in windows or doors, broken by the tenant, or during his occupation, so as to prevent waste and decay of the premises, it being incumbent on the landlord to do substantial repairs. Of course, tenants-at-will, or from year to year, must restore fixtures in good preservation, reasonable wear and tear excepted.—*Tomlin.*

WATER, a species of land (solecism though it be.) An action cannot be brought to recover possession of a pool or other piece

of water by the name of water only, but it must be brought for the land that lies at the bottom, as twenty acres of land, covered with water.—*Brown.* 142.—*Wharton.*

WATER-BAILIFF, an officer in port towns employed in examining of ships.—*Cab. Law.*

WATERCOURSE, the interest or right to take water in another's land or a convenience in the free running of water from one person's land to another. This is an easement, and that species of property which is termed *incorporeal.* It is the subject of prescription, and enjoyment of this right or property for twenty years is presumptive evidence of legality; but it is liable to be rebutted if the owner of the land was under age, a married woman, lunatic, or abroad; but the absolute right is acquired after forty years' undisturbed possession.—*Tomlin.*

WAVESON, goods swimming upon the waves after a shipwreck. —*Wharton.*

WAYS. There are four kinds of way—(1), a footway; (2), a horseway, which includes a footway; (3), a carriageway, which includes both horseway and footway; (4), a driftway. Although a carriageway comprehends a horseway, yet it does not necessarily include a driftway. It is said, however, that evidence of a carriageway is strong presumptive evidence of the grant of a driftway. A right of way may be either public or private: ways common to all the king's subjects are called highways. A way leading to a market town, and common for all travellers, and communicating with any great road, is a highway; but if it lead only to a church, or to a house, or village, or to the fields, it is a private way; whether it be a public or private way, is a matter of fact, and depends much on common reputation. The public may have a right to a high road as a common street, although there be no thoroughfare.—*Tomlin.*

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

WEALBEAF, the robbing of a dead man in his grave.—*Ibid.*

WEIGHERS, a class of Custom-house officers whose duty it is to attend and assist in the weighing of customable goods. They are divided into *established, preferable, extra,* and *glut* weighers. The established and preferable weighers only have the power of making seizures.—*Cab. Law.*

WELSH MORTGAGE, a mortgage in which no day is fixed for the re-payment of the mortgage-money, but left to the mortgager to take his own time, by which he enjoys a perpetual right of redemption.—*Wharton.*

WHARF, a broad plain place, near some creek or haven, to lay goods and wares on, that are brought to or from the water. There are two kinds—(1), *legal*, which are certain wharfs in all seaports, appointed by commission from the Court of Exchequer, or legalized by Act of Parliament; (2), *sufferance*, which are places where certain goods may be landed and shipped, by special sufferance granted by the crown for that purpose.—*Ibid.*

WHARFAGE, money paid for landing goods at a wharf, or for shipping and taking goods into a boat or barge thence.—*Ibid.*

WHEREAS, a word which implies a recital of a past fact. The word *whereas*, when it renders the deed senseless or repugnant, may be struck out as impertinent, and shall not vitiate a deed in other respects sensible.—See *Platt on Covts.* 35.—*Ibid.*

WHIPPING, a punishment inflicted for many of the smaller offences.—*Ibid.*

WHOLE BLOOD, being related by both the father and mother's side; derived from the same couple of ancestors.—*Wharton.*

WIDOW, a woman whose husband is dead.—*Ibid.*

WIDOW-BENCH, the share of her husband's estate, which a widow is allowed besides her jointure.—*Ibid.*

WIDOWER, one who has lost his wife.—*Ibid.*

WIDOW'S TERCE, the right which a wife has after her husband's death to a third of all the rents he died infeft of during life. —*Scotch Phrase.*—*Ibid.*

WIFE, a woman that has a husband.—*Ibid.*

WILLS, a revocable assurance posthumously disposing of property or the custody of children.—*Wharton.* A legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death. The addendum to a will explaining, altering, or adding to its disposition, is called a *codicil*. Wills are either *privileged* or *unprivileged*. *Privileged* wills are either *written* or *verbal*, technically *nuncupative*; or partly written and partly verbal. These latter can only be made by a soldier employed in an expedition, or engaged in actual warfare; or by a mariner being at sea: and differ

from *unprivileged* wills in the mode of making and executing them. See *Ind. Suc. Act*, secs. 50—53.

WITHDRAWAL OF JUROR, when a jury cannot agree upon a verdict, one of them is often withdrawn by consent of the litigants, so as to put an end to the proceedings, each party paying his own costs.—*Wharton.*

WITHOUT PREJUDICE, a phrase used in negotiations of compromise, or offers to settle differences *causâ pacis*, in order to guard against any waiver of right should they be ineffectual and go off.—*Ibid.*

WITHOUT RECOURSE TO ME, a phrase used by an agent who endorses a bill or note for his principal, which protects him from liability.—*Chit. on Bills*, 166.—*Ibid.*

WITNESS, one who gives evidence in a cause; and, being an indifferent party, is sworn to "speak the truth, the whole truth, and nothing but the truth."—*Tomlin.*

WOMAN, a member of the fair sex. The mention of a male in law usually includes the female.—*Wharton.* A female human being of any age.—*Ind. P. C.*, sec. 10.

WOUNDING, the shooting at, stabbing, or wounding any person maliciously, or with intent to commit some grievous bodily harm, is a capital felony; and if the person shot, stabbed, cut, or wounded, die within a year and a day, it is murder, and punishable accordingly, unless the circumstances would only have rendered it manslaughter, had death ensued. *Maiming*, which is the deprivation of a member, if it is effected by any of the above means, is punishable capitally, though, where the maim is not grievous or feloniously committed, an action will lie. Attempts to maim, with intent to murder, are also capital felonies. A "wounding" must be committed with a sharp or edged instrument.—*Tomlin.* See HURT.

WRECK, goods thrown on land after a shipwreck, which, by the custom of some manors, belong to the lord, if not claimed within a year and a day; and this franchise has its origin from a grant, or presumed grant from the crown, which last is by prescription.—*Ibid.*

WRIT, a judicial process by which any one is summoned as an offender, a legal instrument to enforce obedience to the orders and sentences of the courts.—*Wharton.*

WRITINGS OBLIGATORY, bonds.—*Ibid.*

WRONGFUL DETENTION, the wrongful retention of property.

WRONGFUL CONFINEMENT, is the restraining of any person in such a manner as to prevent him from proceeding beyond certain circumscribed limits.—*Ind. P. C.*, sec. 340.

WRONGFUL GAIN, is gain by unlawful means of property to which the person gaining is not legally entitled. A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully.—*Ibid.*, sec. 13.

WRONGFUL LOSS, is the loss by unlawful means of property to which the person losing it is legally entitled. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.—*Ind. P. C.*, sec. 340.

WRONGFUL RESTRAINT, the voluntarily obstructing any person so as to prevent him from proceeding in any direction in which he has a right to proceed. The obstruction of a private way over land or water, which a person in good faith believes himself to have a lawful right to obstruct, is not comprehended in this offence.—*Ibid.*, sec. 339.

ZENANAH, apartments used exclusively for females.

ADDENDUM.

INDIAN JUDICIAL AND REVENUE TERMS.

A.

ABHIMANAPUTRA, literally a son by affection.

ABKAR, distiller of spirits.

ABKARY, ABKAREE, excise; the revenue derived from spirits and intoxicating drugs.

ACHANDRARKKAM, (*until the moon and sun endure*), an expression used in muchalkas and other instruments to indicate the durability of the contract or agreement; that it is of a permanent character.

ADALUT, UDAWLUT, a court of justice. *Sudder Udalut*, principal court. *Dewanee Udalut*, court for civil suits. *Foujdaree* or *Nizamut Udalut*, criminal court.

ADATTA. In Hindu law, illegal, or void and resumable donation.

ADDISEYARTA, a contract by which a cultivator pledges the whole or a portion of his crop to a banker, as security for money borrowed.

ADHI, a pledge or deposit, which may be of two kinds—*Gopya*, to be preserved entire and perfect; or *Bhogya*, to be used or employed.

ADHI-VINNA, a superseded wife; one who has been succeeded by other wives.

ADMARJAI, a term used in leases, signifying failure from drought.

ADR GRANIA, sub-mortgage, or a mortgage of land by the mortgagee to another.

AHADNAMA, a written engagement.

AINAN SHERKUT AINAN, a species of partnership, of which "bail" is not one of the conditions.

AKAR, in Mahomedan law a marriage portion or dower.

AKDNAMA, a written contract, a marriage settlement.

ALUJA SANTANA, a system of inheritance which prevails in the province of Canara, whereby property descends in the *female* line: thus a man's property passes, on his decease, to his sisters, sister's sons, sister's daughters, and so forth. Failing these, it goes to the man's disciple, fellow-student, &c.

AMALDASTAK, UMULDUSTUK, deed of conveyance; any document giving possession of property; warrant or authority to collect the rents of an estate; a written order from the proper authority to enable the purchaser of an estate at a public sale to obtain possession of it.

AMANAT-NAMA, a deed of trust or deposit; a document conveying any thing in trust.

AMANI, lands, or other sources of revenue, held under the immediate management of Government officers, and not leased or rented out; in contradistinction to Zemindary. Also lands where the Government share is received in kind, in contradistinction to money rent.

AMANUT, trust or deposit.

AMARAM, is a village granted by Zemindar and other landholders rent free or on the payment of a favorable tribute on condition of service, viz., the furnishing a quota of peons to attend the Zemindar whenever their services may be required.

AMARAMDAR, the holder of an amarum.

AMBARAM, the Government share of the produce, a term principally in use in Zemindaries, and by the ryots among themselves but not by the Public servants or in public account.

AMIL, dominion; a farmer of revenue; an officer of Government.

AMILDAR, Governor: a native Revenue Collector: Tahsildar; generally any person holding a post or office.

AMILDAREE, a territory, government.

AMIN, UMEEN, *agent*, a title given to the native judges by the English: as *Sudder Ameen*, chief judge; *Sudder Ameen Ala*, principal chief judge: a chief officer of Police or Revenue: an Inspector. An arbitrator in financial or judicial affairs.

AMOOSHUM, the actual grain produce which the ryot has reaped with which he has to satisfy the Government demand for the revenue of the year.

AMR-BA-YAD, a form of divorce according to Mahomedan law. If a man says to his wife, "Your business is in your own hands" (*Amruki-ba-yadiki,*) and the woman assents, an irreversible divorce takes place.

AMWAL, property, goods, chattels, personal property.

ANABHOO, usufruct; or the enjoyment of the use, profits, or produce of any thing. Occupation.

ANANDRAVAR, the junior members of a family who are adherents to the *Maroomakatayam* system of inheritance.

ANANYASRITA, independent, not supported by, or dependent on, another. In Hindu law, unencumbered property.

ANDI, bail, bond, security.

ANITYA DWYAMUSHYAYANA, an imperfect adoption, where the adoption, so far from being permanent from generation to generation, continues during the life of the adopted only; his son, if he has one, returning to the natural family of his father.

ANSAHARA, a co-parcener, a co-heir; one who takes a share of an estate or property.

ANSAPATRA, a deed setting forth the shares or portions of a property; a deed of partition between the members of a Hindu family.

ANUMATIPATRA, a deed expressive of assent or concurrence; especially a deed executed by a husband about to die, authorizing his widow to adopt a son.

ANWARITA, a pledge or deposit placed with a third party.

APAVIDDHAPUTRA, a son deserted by his parents and adopted by strangers; one of the kinds of affiliation formerly permitted by the Hindu law.

ARAK, ARRACK, spirit, juice; fermented liquor; a liquor obtained by distillation of toddy or jaggery.

ARASINAGE-INAM, land granted in dower, or as pin-money; *literally* for turmeric, which enters largely into the materials of a Hindu lady's toilet in the south of India, being applied to stain her forehead, finger nails, soles of her feet, &c.

ARAVAR, a mortgage in which the mortgagee retains posses-

sion of the property in lieu of interest, until the debt is paid. It is also called *Ilavavar* and *Iladaravar*.

ARSHA, one of the modes of marriage according to Hindu law: the gift of a girl by her father on receiving one or two pairs of oxen from the bridegroom.

ARTHI, a suppliant, a plaintiff, a prosecutor, a prisoner; commercially, a broker, a salesman, a commission agent; a banker who grants and accepts bills on other bankers or correspondents.

ARUDIKARAI, landed miras are divided into two kinds—*Arudikkarai*, where the lands are held in severalty, and subject, consequently, to no periodical distribution; and *Passunkarai*, where the whole lands of the village are held jointly, and either cultivated in common or divided yearly, or at some other fixed period, according to an established custom.

ARUZ, UROOZ, personal property, exclusive of goods, chattels, and money.

ARZI, URZEE, a letter addressed to a superior, a petition.

ASAB, incidental or indirect heir; residuary heir.

ASADHARANA, in Hindu law, applied to property held by one person without the participation of another, as opposed to co-heirship or co-parcenary.

ASAMI, ASSAMEE, a cultivator; a client; a constituent; an employee.

ASHORE, one of the three inferior modes of marriage.

ASSAMEWAR SETTLEMENT; settlement with each individual holder of land.

ASSOOBUT, in its literal sense, signifies binding together the branches of a tree, a bundle of arrows, or so forth. In its secondary sense, it is used to express the descent of inheritances in the male line.

ATTIPER, freehold property. Also the name of a deed in Malabar, by which an hereditary tenant transfers the whole of his interest in his land to a mortgagee.

AUDI CAREI, a species of meerassee or hereditary land held in severalty, and not subject to periodical distribution.

AUKDAR, a share in possession of land by inheritance which is supposed to be divided into so many begahs of cultivated land, over which the jamma is equally apportioned. Each cultivator of begahs in a village is called an auk.

AURIDEE, alienated land, which from any cause is resumable by government after the expiration either of a specified term of years, or of a life or lives.

AURUNG, depôt; factory.

AVADHI-ARAVAR, a usufruct mortgage.

AVADI-KRAYA or **AVADIRANA-KRAYE**, a conditional sale obtaining in Southern India, to become absolute if the purchase-money be not re-paid within a stipulated time.

AVAKASAM-MURI, a deed of partition, a deed declaring the several rights and privileges of persons having a joint interest in property.

AVIBHAKTA, *undivided*, as property held in common, or as joint property; one who is unseparated from his family, a co-parcener.

AYACUT, the total area of land in a village. When applied to irrigation estimates, it means the land that can be watered by the tank or channel referred to.

AYAN-I-MAZMUN, things lent or pledged to be restored, when redeemed in the same condition as when deposited.

AYANTUCA, the separate property of a woman obtained otherwise than by gift of the bridegroom at the time of the marriage.

AYEEN, laws; regulations; institutes.

B.

BACHERAKH, an uninhabited village.

BA FARZANDAN, a term which when inserted in a grant implies that it is made to the grantee and his posterity.

BAGHAYET, land on which garden products (as chillies, tobacco, turmeric, &c.), are raised.

BAKHSHNAMA, a deed of gift.

BAKIDAR, a revenue defaulter; one who is in arrears.

BALA and **BALAKA**, generally a child, a boy, a youth. In law a minor, who is distinguished as—(1), *Kumara*, a boy under five years of age; (2), *Sesu*, under eight; (3), *Poyanda* from fifth to ninth, or, where the next distinction is omitted, till the sixteenth year; (4), *Kisóru*, from the tenth to the sixteenth. After the close of his minority, the youth is termed *Vyavahari*, or *Juta* or *prapta-vyavahara*, one by whom affairs may be conducted.

BALIVALI, a wife's dowry.

BANDHAK, a pledge, a pawn, a mortgage.

BANDHAKNAMA, a mortgage deed.

BANDIWAN, a prisoner, a convict. See KARTHAI.

BANGHY, a pole with slings at either end supporting portable boxes or baskets for baggage, carried over one shoulder.

BANGI, a species of village tenure in Tinnevelly, by which the fields are divided once in every six years among the villagers by lot.

BANJAR, waste or fallow land; *Banjai-jódid* land again brought into cultivation after lying fallow for some years.

BAPOTE, patrimony.

BARAI-KHOR-O-POSH, an assignment of real or personal property to a person for maintenance for life, not conveying a right of transfer.

BARAVARD, an estimate, a calculation; what is summed up; a statement of district disbursement.

BARIZ, an account of the assessment of the land revenue on any estate or village, the total sum of a revenue assessment the same as jumma.

BAT BUT, a partition, a division, a share.

BATIN, property of a domestic nature.

BATTA, extra pay or allowances to public servants; an allowance to temporary peons serving summons and other processes of courts.

BATTA-VARTTI, property held in severalty in contrast to that which is held in joint shares.

BAZ-NAMA, BAZMAINA, a deed of relinquishment; one abandoning or renouncing a claim, whether valid or not.

BEDIGA, quit-rent.

BEEGAH, a measure of land varying in extent in different parts of India.

BENAMI, property purchased or held or vested in a fictitious owner, the ostensible title is in the name of one person but the real ownership vests in another.

BESSOYE, the family-name of a race of Hill chiefs in the Northern Circars.

BETEL NUT, the fruit of the Areca Catechu tree. It is the kernel, or nut, that is eaten.

BHAG, share, part, portion. *Patnu bhaga*, partition among sons according to the number of their mothers or the wives of the deceased; *Putra-bhaga*, a division of property according to number of sons.

BHANG, an intoxicating preparation of hemp, either an infusion of the leaves and capsules, or the leaves and stalks bruised and pounded, and chewed or smoked like tobacco.

BHEASTY, a water-bearer.

BHOG-BANDA, a kind of bond or mortgage in which the article pledged or mortgaged may be converted to use, as lands, houses, cattle, trees, &c., the profits of which are to be appropriated by the lender or mortgagee in lieu of interest.

BHOYYADHI, a usufruct pledge; a pledge or deposit which may be used until redeemed.

BHRATRI-DATTA, what is given by a brother to sister on her marriage; one sort of *Stri-dhan*, or woman's wealth.

BISAR, a loan of seed to be re-paid with increase after harvest.

BRAHMIN, a man of the first order or caste of Hindus, properly charged with the duty of expounding the Vedas, and conducting the ceremonies they enjoin.

BRITTANT-PATRA, record of a decision pronounced by a punchayet.

BULUGH, maturity; legal maturity, being of age.

BUND, an embankment against inundation.

BUNDHUS, are the third class of heirs to a Hindu: cognate kinsmen in a remote degree. They are of three kinds—(1), such as are in parallel grade to the individual himself, who are the sons of his father's sister, the sons of his mother's sister, and the sons of his maternal uncle; (2), such as are parallel to his father, who are sons of his father's paternal aunt, the sons of his father's maternal aunt, and the sons of his father's maternal uncle; and (3), such as are parallel to his mother, who are the sons of her paternal aunt, the sons of her maternal aunt and the sons of her maternal uncle.

BUNJUR COOL, favorable terms for a series of years allowed to ryots for cultivating waste lands. This term varys according to the description of the soil, the number of years which have intervened since its last cultivation.

BYAHASTHA, for S. VYAVASTHA, a statute, a law; a written opinion or dictum on a point of Hindu law drawn up by a pundit.

C.

CABOOLEAT, an agreement or engagement in writing; the "counterpart" of a license to sell spirits, &c.

CALAVADE, the early part of the season that in which the ryots are collected and the quantity of land which each proposes to cultivate for the ensuing fusly is ascertained.

CALINGULA, an outlet or sluice for carrying off the surplus water of a reservoir.

CAZEE, a Mahomedan Judge or Magistrate.

CHALAN, a document sent with goods, treasure, or individuals; an invoice, a voucher, a passport.

CHALI GAINI, tenancy-at-will, or occupation on paying rent for a short or indefinite period.

CHANDAI CHAUK, a fair; the principal market place of any considerable village.

CHARHTA-PATTA, a lease for a term of years at a progressively increasing rent.

CHARTTA, a writing, document, title deed, register, catalogue.

CHECKBUNDY, the four boundaries with their distinctive marks which circumscribe the limits of each field as entered in the survey accounts. It is also applied to the four limits around a house, &c.

CHENGAVURASA, the rotation observed by partners in the management of village duties; also a personal inspection of the fields in a village either by zemindars, curnums or mutsuddies with a view to the discovery of fraud, as also to ascertain the precise amount of cultivation.

CHIRRARUPADUGAI, land which has been flooded.

CHITTA, an account particular, for land or cash; also a rough draft, a day-book.

CHOULTRY, or **CHUTTRUM**, a covered building for the accommodation of travellers.

CHUPRASSE, a passenger or courier wearing a badge as a mark of office, most usually a public servant.

CHUTTRUM. See CHOULTRY.

CIRCAR, the Government; the chief authority; the term used in regard to land paying full teervah to Government in contradistinction to Inam.

CONICOPOLY, an accountant, the village accountant.

COTAUR, a depôt for the sale of sea salt.

COWLE, an engagement or agreement. It refers generally to land taken on an agreement to pay a small but increasing rent for a certain number of years, when it becomes liable to the same rent as other cultivated lands.

CURNUM, the village accountant holding office under Government. (Vide Regulation XXIX of 1802.)

CUSBAH, the principal village in a talook where the Tahsildar resides.

CUTCHERRY, a public office of the Collector or Tahsildar; a hall of business.

D.

DAKHALNAMA, a deed of possession or occupancy, a document giving right of occupancy.

DAKS. Post, post office, or establishment for the conveyance of letters and of travellers; relays of men or cattle along the road for these purposes.

DALWA, light crops of rice grown in the dry hot weather in moist situations, commonly called the black crop.

DAMASHAI, equitable partition of the effects of an insolvent amongst his creditors; hence any just proportionate distribution.

DAROGHA, a chief native officer, a superintendent, a manager; especially the head of a police, custom, or excise, station.

DASIPUTRA, son *by* a female slave: the son *of* a female slave is *Dasira*.

DASTAWEJ, a voucher, a document, any legal paper, a note of hand, a bond, a title deed and the like. Any thing in writing producible in evidence, or by which a person may be bound in law; a certificate of any kind.

DATTA, a son given in adoption; also a gift, a donation; given in marriage, betrothed. The word is frequently used with the addition of *putra*, a son, as *Dattaputra*.

DATTATMA, the son self-given, one who offers himself of his own accord to be adopted.

DAVASTHANUM, lands or revenue applied to the support of a temple.

DAYA, in Hindu law, portion, inheritance, which may be of two kinds; without hinderance or impediment, absolute, direct, *Apratibandha;* and *Sapratibandha*, with observation, indirect, contingent, or presumptive. The word is also used in the sense of a charge, a plaint, law-suit.

DAYA-BHAGA, partition of inheritance; title of law books relating to the apportionment of heritable property amongst heirs.

DELOYET, a superior class of peons attached to the person of a chief European officer.

DESHMUK, a district Revenue officer who superintends the cultivation, and reports on the state of the crops, &c.

DESPANDI, the hereditary Revenue accountant of a district, or a certain number of villages.

DEWAN, place of assembly; native minister of the revenue department, and chief judge in civil causes within his jurisdiction; receiver-general of a province. The term has also by abuse been used to designate the principal revenue servant under a European Collector, and even of a zemindar.

DEWANY ADAWLUT, the chief civil court. The High Courts in India until recently were so called.

DEWUSTHAN KHURCH, money expended in charitable donations to temples and religious institutions.

DHRUVA-KAVULU, a permanent lease.

DHRUVA-PAIRU, garden produce, permanent crop; a tax levied on garden trees after a due period of their plantation.

DIDHISHU, the husband of a woman married a second time; a virgin widow re-married; an elder sister unmarried, whose junior is a bride: the childless widow of a brother, whom, under the old law, a surviving brother was required to marry.

DITTUM, fixed; the account of the probable settlement, ascertained early in the season, by taking from each ryot a memorandum of what he intends to cultivate.

DIWANI, civil as opposed to criminal.

DRISHTABANDHAK, a mortgage of real substantial visible property under which the mortgagor remains in possession till the stipulated time arrives.

DUFFADAR, a head peon; a native officer of irregular horse, under a jemadar.

DUFTER, records; the place where records are kept.

DUFTERBUND, a record or office-keeper; allowance paid to such an officer.

DURBAR, is a court or levee.

DURGAH, the tomb or shrine of some Mahomedan saint.

DURKHAST, a proposal to cultivate or rent land; a bid; a request.

DUSWUNCHUN, an inam of land, (generally one-fourth of that irrigated), given by native rulers to any individual who constructed a tank.

DUTTA-HOMAM, a sacrifice by fire, an essential ceremony performed in the adoption of a son.

DWYAMUSHYAYANA, or son to two fathers, the natural and adoptive: a peculiar form of adoption among Hindus.

E.

EDARU-CHITU, a document given by the purchaser of land engaging to give it back to the seller on re-payment of the purchase-money within a definite term.

EKEANAPATTA, lease of a definite quantity of land at an average rate per bigha, a tenure by which ryots hold in puranuja.

ENAM. See INAM.

ENATI-MAMUL, customary presents, an additional charge on the district at the time of assessment on this account.

ERIPACHAL, land watered by channels conducted from a reservoir or tank.

F.

FAISAL, a decree, judgment, a decision, adjustment of a quarrel, settlement of a debt.

FAISAL-TIRWAI, the rates settled on each field at the time of the original survey assessment.

FAKARRAHN, expiration or foreclosure of a mortgage, redemption of a pledge.

FARZAND, offspring, progeny, a son or daughter, a child, children. In Mahomedan law, lineal descendants in the male line; females and their posterity are excluded from the order of descent, except the person's own daughter.

FASAD, vice, depravity, corruptions. In law, any species of mental depravity, not arising from defect of understanding.

FASKH, breaking off an agreement dissolving a contract; breaking off or dissolving a marriage.

FASLI, the official revenue year beginning on the 12th of July, (recently changed by Government to 1st July for convenience of accounts.) Thus, Fasli 1276 begins in July 1866. Its subdivisions are little attended to, as its sole use is its application to revenue matters; and the year only is specified, not the months.

FAUTI, a person deceased, or one who is legally defunct from profligacy or any legal disqualification. The property of one who dies intestate and without legal heirs, which therefore reverts to the sovereign.

FAZULI, in Mahomedan law, an unaccredited agent, one who acts for another without authority, and whose transactions are invalid unless confirmed by the principal.

FOUJDAREE UDALUT, the late East India Company's chief criminal court.

FUSLJASTY, the extra tax imposed on "one-crop" land, when a second crop is raised.

FUTWA, a judicial sentence, a judgment; but more usually applied to the written opinion of the Mahomedan law officer of a court.

G.

GAHAN, a pawn, a pledge or thing in pawn, a mortgage; land held by mortgage tenure.

GAHANPUTRA, a deed of mortgage.

GAON-NISBAT-INAM, a mortgage, or grant of land made by the villagers to liquidate a debt incurred by the village for public expenses.

GARBHAJA, born of the mother, a son, whether begotten illegitimately, or of a wife by another father than the husband under special appointment, when the child is legitimate.

GAUNAPUTRA, a subsidiary or representative son, one by adoption, &c., or any form except by birth.

GHABN-I-FAHISH, shamefully fraudulent; applied, in Mahomedan law especially, to the sale of property for a price grossly inadequate to its value.

GHAIBAT-I-MUNKATAA, in Mahomedan law, remote distance; the absence of a husband at such a distance as renders the acts of his wife, with regard to his property, valid.

GHAIR-MANKULA, immoveable or real property; property other than personal.

GHARJAWAI, one who, with his wife, lives in the house of his father-in-law and manages his affairs.

GHAZAB, in Mahomedan law, forcible or unauthorized possession and use of property belonging to another.

GNYATI, a distant kinsman; one who does not participate in the oblations of food or water offered to deceased ancestors.

GOMASTAH, a commissioner, factor, agent; also, officially an assistant. Each principal native functionary has always a certain number of assistants so called.

GOLLA, peon, exclusively employed in the treasury.

GOSHA, a corner, retirement. The word is applied to Mahomedan females of respectability who never appear in public.

GOTRA, family, lineage, relationship by descent from a common ancestor of the same name.

GOTRAJA, a kinsman of the same family and name, the *gentile*, in opposition to the *bandu* or kinsman of a different family or cognate.

GRAMALU-MULU, an allowance given by villages to Brahmins of a quantity of rice in the husk at the time of harvest.

GRAMA-MANIAM, a certain extent of land enjoyed rent-free by an hereditary proprietor of part of the village lands, as a personal privilege attached to such a share.

GRAMA-MERAI, allowance of a portion of the crop to the village officers and servants.

GRAMATTAN-MANIAM. See GRAMA-MANIAM.

GRAMMA NATTAM, ground set apart, on which the houses of a village may be built.

GRAMA KHARCH, the private expenses of a village; the charges borne by it independently of the payments on account of revenue.

GRAMANEE, the head man of a village. A toddy drawer.

GRAMATSHAKUR, a village servant applied indiscriminately to the village barber, washerman, tallear, &c.

GOOSHWARAH, an abstract of the chittahs, prepared from those documents when they are completed.

GUDIVARAM, the ryot's share of the crop.

GUMASHTA, an agent; a native accountant in the Revenue department.

GYMKHANA, a gymnasium; a pleasure or play house. The term is applied to a club for all kinds of sports, as also to the pavilion or grounds where the sports are held. In southern India the word is used more restrictedly and refers to a particular celebration of sports.

H.

HADIS, the traditional sayings and doings of Mohamed, having for the most part the force of laws.

HADMAHADAD, a term in leases or farming contracts which recognizes the power of the farmer over all the land and crops within the limits of his farm.

HAJIB-NUKSAN, in Mahomedan law, partial exclusion with respect to inheritance, or substitution of one share for another; as in the case of a wife, who, where there are no children, has a fourth share: but where there are any, only an eighth.

HAJR, annulment, disqualification; the invalidity of acts done by a minor, an idiot, a slave, or the like; that is, by persons incompetent to act for themselves by virtue of immature years, defective intellect, or dependent situation.

HAK, right or title to share. Used especially of the duties of hereditary offices.

HALBANDI, assessment according to number of ploughs used.

HANAFI. The first of the four Sunni schools, that founded by Abu Hanifa. Most of the Sunnis are of this school.

HAR-HAMESHA, words inserted sometimes in a grant to signify one made for perpetuity, for ever and ever.

HAZL, *jesting;* applied in Mahomedan law to a contract publicly executed, as if of full force and validity, but which the parties are secretly engaged, shall be of no effect: if afterwards one of them pretend that the transaction was *bonâ fide*, the assertion of the other to the contrary annuls the engagement.

HENGA, a harrow.

HENNOO-MOOL, property descending by inheritance to the female members of a family in the Mopla caste.

HIBA or **HIBAT**, *a gift;* in law, a perfect gift, one accompanied by delivery and acceptance; a gift on a death-bed is considered a bequest.

HIBA-BA-SHART-UL-IWAZ, a gift with stipulation for a return; in law, a gift on promise or engagement to make a requital when the transaction is not complete, until the reciprocal condition is fulfilled.

HIBA-BIL-IWUZ, the transfer of property, partly by gift and partly for a consideration.

HIYAZAT, *accumulation;* in law, joint acquisition by two or more persons of some article that has no owner.

HOOKUM, an order or command.

HOOKUMNAMAH, a written order; standing rules for the details of land revenue assessment issued by Collectors.

HOOZOOR, the presence; the chief office (European) of the district. Head station.

I.

IBRA-NAMA, a written acquittance or relinquishment of claim.

IDDAT, the time of legal probation which a divorced woman or a widow must wait before she marries again, in order to determine whether she is pregnant.

IDU, pledge, pawn, mortgage.

IHLAL, rendering anything lawful, any act or formula by which a transaction is made legal.

IHSAN, in Mahomedan law, a person who is a free sane adult of chaste reputation, and of the Mahomedan faith: and who is, therefore, entitled to demand punishment for adultery committed with respect to him or her so characterized.

IJAB, in Mahomedan law, the first proposal made by one of the contracting parties in negociating any arrangement, as a marriage-contract, sale, or the like.

IKHTIAR, in Mahomedan law, it implies an option of divorce granted by a husband to his wife.

ILLADARWAR or **ARWAR DUSTAIVUZ**, a deed of mortgage of land. The land to be in possession of the mortgagee and the interest of debt to be paid by the annual rent.

IMAMIA, a follower of the imams; the code of Mahomedan law applicable to the Shiahs.

INAM, a gift; usually applied to a gift or grant of land, some quite free of rent, and some bearing a small quit-rent or jody.

INAMDAR, the holder of an Inam.

IRSAL NAMAH, a memorandum, or account of a money remittance.

IRSALPUTTEE, list of remittances from the villages or districts to the Hoozur.

ISTIDANAT, in law, any transaction which the manager in a partnership, where one finds the capital and the other the management, may undertake; but for which, if not included in, or consonant to, the terms of his contract with the proprietor of the share, he alone is responsible, and the profits of which he alone is entitled to, unless his partner had given his previous sanction.

ISTIHAR, or **ISTIHARNAMAH**, a notification; a proclamation.

J.

JAGHIRE, an assignment to an individual of a portion of territory, generally as a reward for military service.

JAGHIRE CIRCAR, the jaghire of the Government; *i.e.*, the Company's jaghire under the presidency of Fort St. George.

JAGHIRE DEWANNY, the jaghire of the Dewanny, *i.e.*, of the office of Dewan of Bengal, Behar, and Orissa, held by the Company.

JAGHIRE SIRDAR, the jaghire of the Government of the Nizam.

JAGHIREDAR, the holder of a jaghire.

JAIDAD-MANKULA, moveable property.

JAIDAD-MAURUSI, ancestral or hereditary property.

JAIZ, current, passing, legal, lawful, authorized: in law, the term is applied to such contracts as may be dissolved at the pleasure of either party.

JALIT-KHAT, a bond or note which has been cashed, also one the amount of which is given up as never likely to be realized.

JAMADAR, the chief or leader of any number of persons; in military language, a native subaltern officer, second to the Subadar; an officer of police, customs, or excise, second to the Darogha.

JAMA-MUFASSAL, the gross revenue to be collected in all the villages of a zemindary, as rated in the accounts, and to be paid after deducting charges to the Zemindar.

JANIBDAR, an advocate or defender, also a partial person.

JANKAR, a pledge in deposit until goods which have been taken away are finally approved of.

JANMA, or **JANM-PANAY-ELLUTA**, a deed of mortgage on which an additional sum being raised, the proprietor engages never to transfer the land to any other purchaser without the consent of the mortgagee: he may redeem it himself on paying the principal and interest, the latter not to exceed twice the amount of the former.

JANMA-PATRA, a horoscope, a paper prepared at the birth of a child foretelling his fate according to the aspects of the planets.

JAWABNUVEES, a native cutcherry officer, whose duty it is to read out reports, petitions, &c., and to draft replies to them.

JAVAD-VIBHAGA, apportionment of an ancestral estate by the father whilst living amongst his sons.

JODY, an easy rent, or quit-rent on those inams which are not entirely free, or surva.

JOWAREE, a species of millet which grows to a height of eight to twelve feet on a reedy stem.

JUMMA, the whole or total; it generally means the total demand of assessment or beriz on a village or district.

JUMMA KHURCH, a statement of the collections and disbursements of a village, drawn up in the form of an account current; the "Jumma" or collections being on one side, and the "Khurch" or disbursements on the other. Any general account of receipts and expenses.

JUMAEE ASSAMEES, a class of the agricultural community who having been located by the Puttydars, have obtained a right of occupancy only, with the privilege of paying the same rate or on the same principle as the Puttydars, and who cannot be ousted so long as they pay their quota of the revenue. Though generally of the lower caste, such as Aheers, Chumars, Kachies, Koormies, &c., they rank next to the Puttydars.

JUMMABUNDY, the annual settlement made under the Ryotwar system.

JUNGAMA, moveable property; all that is not comprehended within the term *Stavaram*.

JUPTEE, attachment; seizure.

JUTHWAR, relating to common property, corporate, joint, common, belonging to proprietary families or brotherhoods; settled or assessed according to fraternities.

JYESHTHANSA, the right of primogeniture, or the right of the eldest son to a larger portion of the patrimonial property than his brothers; a right formerly recognized, but now obsolete, the partition being equal.

K.

KABIN, ratification of a marriage in presence of a Kazi; a dower; a marriage portion.

KABUL, a written agreement; especially one signifying assent, as the counterpart of a revenue lease, or the document in which a payer of revenue, whether to Government, the Zemindar, or the farmer, expresses his consent to pay the amount assessed upon his land.

KADAPA, the counter agreement executed by the tenant in exchange for his lease.

KAFALEE, bail.

KAIFIYAT, statement, description; especially a statement of facts which cannot be disposed of by the ordinary routine, but require the special decision of a superior officer.

KALLAKARANAM, forged or false title-deeds or documents.

KALLAYENTU, a client.

KAMAL, the total assessment before any reduction, allowance, or remission is made.

KAMARDAI, the transfer of proprietary land by a proprietor, who is unable to cultivate it himself, to another person, to hold for a given term, on condition of allowing the owner a proportion of the produce, the occupant engaging not to dispose of the land to a third party.

KANAM, an advance or deposit of money made to a proprietor of lands or gardens on receiving them from him at a stipulated rent, upon lease for a given term of years: the deposit bears interest, which the tenant sets off against the rent: the principal is returned when the lease expires and the occupant does not renew it. This is, therefore, a somewhat different application of the same term from a loan upon a mortgage where the lender holds the land as a security; here the landlord holds the deposit as a security for his rent.

KANGARIVERO, a money-tax in commutation of grain paid by the cultivators in some places; a duty on grain.

KANI-KARAN, an hereditary proprietor or hereditary coparcener in village lands held in common.

KANI-MERAI, a portion of grain claimed by the Merasidars of the Tamil countries as a perquisite from all taxable lands.

KANINA, the son of an unmarried woman.

KANI-PERU, the greatness or dignity of holding landed property; a term used in conveyances of Merasi rights.

KANIYATCHI, that which is held in free and hereditary property; hereditary right to lands, fees of office, or perquisites, held by members of village communities, or by village officers, in the Tamil countries.

KANIYATCHI-MANIYAM, a portion of land held by each hereditary proprietor free of assessment.

KANYA, a maid, a virgin, a girl of nine or ten years of age.

KANYA-DANA, the presentation of the bride to the bridegroom by her parent or guardian; the giving of a girl in marriage; a gift to a girl upon her marriage; a dower.

KAPOO KAPOOR, one of the terms used in the Peninsula to denote the headman among the Meerassadars of a village.

KARAI, a portion of land, especially a share in a Merasi or hereditary coparcenary village; originally, in general, a determinate and entire share.

KARAI-YIDU, an agreement amongst the coparceners of a village for a temporary change of their respective shares.

KARAKAM, mean service in a temple.

KARAKASA-BHUMI, lands of which the boundaries are in dispute.

KARALAN, possessor of freehold or private property; the agent or manager of the lands of a temple on the part of the founder or endorser.

KARAMBU, waste or uncultivated land, and which is of two kinds—*Sekal-karambu*, which is capable of cultivation, although neglected for some time; and *Anadi-karambu*, waste from time immemorial, and which cannot be cultivated with any prospect of advantage.

KARANDA, an agent, a manager, an attorney, an officer.

KARAR-NAMA, a written contract or engagement.

KARJI, a village officer; the head of a village charged with revenue and judicial functions, or the accountant of a village, but sometimes filling the office of headman or manager, collecting the revenue from the villagers, and engaging for its payment to the Government.

KARKOON, a clerk, a writer, a registrar; an inferior revenue officer in charge of a *taraf* or division, under the Mamalatdar or District Collector.

KARNAVAN, the head of a family in Malabar; the senior male of whatsoever branch.

KARZ, *debt;* in Mahomedan law, besides the general sense, it implies a loan to be re-paid by something dissimilar, but of equal value, in distinction to *Ariyat*, the return of the identical thing borrowed; a money loan, money lent at interest for an indefinite time.

KAT-KABALA, a conditional engagement, a deed of conditional sale, as one stipulating that if the purchase-price be not returned

within a given period, the sale is absolute; a mortgage deed with liability of sale if not redeemed by a stipulated time.

KAT-KOBALA, a conditional engagement; a deed of conditional sale stipulating that if the purchase-price or money advanced be not re-paid within a given term, the sale shall become absolute.

KATTA-KANAM, a complimentary present made by a tenant or leaseholder to the proprietor of an estate.

KATTUBADI, a revenue term usually applied to a fixed, invariable, and favorable or quit-rent, which has been assessed on lands granted to public servants.

KAUL or KAVULU, a promise, an agreement on the part of a superior, especially a document granted by a superior to an inferior holder of land, specifying the terms of the tenure; a putta.

KAWAGHAZ-ARBA, the four written documents on which the proceedings in a suit are grounded, or the written complaint, the answer, the rejoinder, and the reply.

KAZI, a Mahomedan judge; an officer formerly appointed by the Government to administer both civil and criminal law, chiefly in towns, according to the principles of the Koran: under the British authorities, the judicial functions of the Kazis in that capacity ceased, and, with the exception of their employment as the legal advisers of the courts in cases of Mahomedan law, the duties of those stationed in the cities or districts were confined to the preparation and attestation of deeds of conveyance and other legal instruments, and the general superintendence and legalization of the ceremonies of marriage, funerals, and other domestic occurrences among the Mahomedans. The appointment of Kazis by Government is regulated by Act 12 of 1880.

KESNIAT, in law, partition of inheritance; in revenue matters, a portion of land detached from a larger division, as from a mouza.

KETTARUPPA, inheritance in the paternal line.

KEVALA DATTAKA, a son absolutely adopted, in Hindu law.

KHALA, putting or turning out; in Mahomedan law, a contract for the dissolution of a marriage; the repudiation of a wife at

her own desire, when she forfeits her dower; also, disinheriting a son, turning him out of doors.

KHANA SHUMARI, an annual enumeration of houses, with a specification of the caste and profession of each householder, for the purpose of adjusting the dues of Government.

KHARIJ-NAMA, a deed of separation or division; a deed for the partition of a joint estate, or for the separation of an individual share, or for making a dependent *taluk* separate and independent: also, simply a deed of transfer.

KHARKHANA, an office or place where business is carried on; a workshop, a manufactory, an arsenal.

KHAS-BANDI, distribution of the lands of a village, without regard to contiguity, amongst certain families, and the assessment of each estate in the lump, without reference to measurement or rating.

KHEDDA, an enclosure in which wild elephants are caught.

KHET-KHAT, a deed of sale or mortgage for a field, or a portion of a coparcenary estate, conveying the land alone, without the privileges attached to it.

KHET-KUL, a field boundary mark.

KHIRAJ, originally the tribute which the Mahometan conquerors exact by the law of the *Koran*, from subjected nations. The term is generally used to designate the revenue paid to Government on the cultivated lands, in which form the Mahometan rulers received the tribute in India.

KHURABA, bad or unproductive; waste. Under this denomination are included the sites of villages, ravines, beds of rivers, rocks, and in short every space that from natural or accidental circumstances is unavailable for cultivation.

KHURCH, KHIRCH, KURTCH, KHURCHEE, expense; disbursement; casual expenditure for public purposes in the business of revenue arrangement.

KHUSRA or **KHISRAH**, the registering a field generally: a field-book, shewing the number, extent, form, situation, quality of soil, rate of assessment, and fencing, cultivators of the fields of a village, and the tenures by which they are held.

KHOWASS, nobles, grandees; attendants, personal servants, usually the favorite or confidential attendant on a person of rank.

KHUNT-KHAT, a deed by which the rights of a coparcener in a village or estate are conveyed to another person, as well as the land.

KHUṢHKI, dryness, drought; dry land, land not artificially irrigated: by land in opposition to by water, as travelling.

KIRAZ, re-paying, borrowing, a debt; in law, a kind of partnership in which one party advances the capital, the other the labor or skill, and the profits are divided in stipulated proportions.

KIST, an instalment: the word applies generally to the fixed instalment for paying revenue.

KISTBUNDY, the written rules according to which the dates of the kists become due, and their proportion to the whole demand, are fixed.

KOLLAI, dry soil, high ground not capable of artificial irrigation; a back-yard, or, rather, an inclosed piece of ground belonging to one of the proprietors of a village, whether or not contiguous to his dwelling.

KOSHAM, case, repository, treasury, register. A village register, in which are entered the lands held by Brahmins in the Southern Poligar districts.

KUDIMARAMUT, repairs of the channels of irrigation on the borders of the fields by the cultivators themselves.

KUDIVARUM, the share of the produce which is the right of the inhabitants or of the cultivators.

KULNUSHT, an estate having no proprietor.

KURI-KANAM, money paid to a tenant on his relinquishing his lease, or to a mortgagee when a mortgage is paid off, for any improvements they may have made, especially to any fruit-bearing trees, as cocoanuts, &c., which they may have planted: on the other hand, if the property has been depreciated by neglect, compensation is deducted from the original deposit or loan.

KYLDAR, a person appointed to superintend the thrashing and measurement of grain.

KYLE, the actual measurement of grain.

L.

LA-DAWA, a deed of relinquishment; a deed foregoing a claim, or admitting that there is none; the act of relinquishment.

LAIKBANJAR, waste land fit for tillage.

LAKHERAJ, rent-free land; applied to land exempted, for some particular reason, from paying any part of the produce to the state.

LASCAR, a native sailor, but especially applied also to tent-pitchers, inferior artillerymen, and others.

LAVANYARJITAM, woman's property, having been presented to her by her parents and friends as a mark of respect or affection.

LAWARISMAL, property to which there is no heir, and which therefore escheats to the state.

LIHAINDI, throwing up water for irrigation from a pond or river with a kind of basket worked by two men.

LUGGYEIWALA, a cultivator who farms lands precisely as the Coolwaree for a certain number of years, but who receives a loan from the Government to enable him to procure the requisites for husbandry. Provision is made for the discharge of the loan at certain periods of his lease, but without interest.

LUKTA, in Mahomedan law, treasure-trove, property which a person finds on the ground, and takes charge of, as a trust until claimed, calling witnesses to his finding it, and announcing his intention of restoring it: if not claimed after a year, he should dispose of it if of any value, in charity, or he may keep it, but still for the owner, if the article be durable.

LUNGERKHANA, an alms-house; a place for distributing food to paupers, cripples, &c.

M.

MADEPAULOO, the ryot's and manufacturer's share of grain or salt produce.

MADHYASTHYAM, arbitration, intervention, interference of a third party to secure the observance of an engagement between two others.

MADUPUBIDU, waste lands attached to the lands cultivated by a farmer, that he may bring them also into cultivation.

MAFKUD, missing, lost; in Mahomedan law, it implies, a person of whom it is not known whether he be living or dead.

MAGANAM, a division of a revenue district, usually consisting of six or seven villages; the sub-division of a *tahsildari*.

MAGANI, wet cultivation; the cultivation of low lands by artificial irrigation; lands that are so irrigated.

MAHZUR, a representation, or statement of a case laid before a judge, certified by persons professing to have knowledge of the facts stated therein.

MAKAN, the residence of a fakeer.

MAKKATAYAM, a system of descent whereby the inheritance runs in the male line as contradistinguished from Maroomakatayam.

MALGUZARRY, established assessments under the authority of Government prior to the year 1168, including assul in the original rent abwab, subsequent taxes and toofeer, or profitable increase. The term is applied to assessed lands, or lands paying revenue; also the rent of such lands.

MAL SAYER, *mal*, the revenue, *sayer*, custom duties, and other branches of revenue not derived from the land.

MALIKANA, what belongs to a Malik in the way of fees, &c.; the allowance paid to a Zemindar whose estate is attached.

MAMOOL, established custom or usage.

MANAICHITTU, a deed of grant, or a title-deed for the site of a house.

MANAVARI, land of which the cultivation depends solely upon rain, not being irrigated artificially; dry cultivation.

MANGALICHA, of an irregular marriage: the offspring, illegitimate, bastard.

MANKOOL, a term comprehending every species of personal property.

MAROOMAKATAYAM, a system of descent prevailing in the province of Malabar, whereby the inheritance runs in the female and not in the male line; a man's property, according to this law, goes to his sisters, sister's sons, sister's daughters, and so forth.

MARUPANAYAM, a pawn pledged to another, or perhaps a counter-pledge.

MATA, the price of blood.

MATAL, a present bestowed to a woman divorced from her husband.

MATRI BANDHU, a mother's cognate relation, but limited in law to the son of a maternal grandfather's sister, of a maternal grandmother's sister, and of a mother's maternal uncle.

MATUA, in law, a person of incompetent understanding, one who can only imperfectly apprehend the nature of legal acts; as, for instance, knowing the nature of a sale, but incapable of appreciating the profit or loss attending it.

MAUNIUM, a grant of land or assignment of the Government share of the produce therefrom to the revenue officers and the public servants of the villages in the Northern Circars.

MAUPHEE ISTAWA, a tenure by which waste land is occupied free of rent for a specified number of years, proportioned to its state; at the expiration of which, it is assessed at a moderate rate, which is progressively increased until the lease of istawa has terminated.

MAZRA, in some parts of India it denotes a hamlet or cluster of houses dependent on a village, but detached from it for agricultural convenience, and managed separately: its assessment is comprised in that of the original village, until officially recognized as distinct. In some places, a *mazra* is a smaller division of a *mauza*, or village.

MELKANAM, mortgage upon mortgage; and additional advance upon the security of occupancy paid by the occupant of an estate to the proprietor.

MELUVARAM, the proportion of the crop claimed by the Government.

MERA, a portion of the crop given as a perquisite to the holders of a proprietary right in the village lands, or to the hereditary village officers and servants, out of the common stock from the threshing-floor: sometimes the appropriation is made from the Government share after division, but the practice and the proportion vary. See RUSSUM.

MERACA, dry land, upland, high ground. See METTA.

METTA, high and dry land not capable of irrigation but depending on the rain, and, therefore, unfit for rice.

MICHAVARAM, the landlord's share of the crop; in Malabar, the proprietor's rent, after deducting the interest of the money lent or advanced by the tenant; the surplus amount or difference between the interest of money lent on mortgage and the proceeds of the estate occupied by the mortgagee, payable to the mortgagor.

MIRAS, inheritance, inherited property or right: the term is used, especially in the south of India, to signify lands held by absolute hereditary proprietorship under one of three contingencies—(1), either as a joint coparcenary tenure in the lands of a village, and either cultivated in common, or allotted annually, or at some other stated period, among the proprietors; (2), as one of several parcels or lots in which the lands of the village are divided; or (3), as a whole estate where all the lands of the village are the property of one proprietor. In some parts of the Madras provinces, especially North and South Arcot and Chingleput, known in the native records as Tondamandalam, the term is also applied to certain hereditary privileges enjoyed by the holders of *Miraz* lands, consisting sometimes of a right to hold portions of their estates exempt from assessment, and, in almost all, the privilege of receiving portions of the general produce, or money compensation from the other members of the community. It also applies to the fees and perquisites receivable by the officers and servants of the community, who are not possessed of any share of the *Miraz* land, and to hereditary succession to various offices, privileges, and emoluments, as to the post of musician to a temple, or the like.

MIRASIDAR, the holder of hereditary lands or offices in a village.

MISLI, in Mahomedan law, applies to an article which, being lent or sold, is to be replaced by another of a similar description.

MISSUL, applied in Kurnool to the person actually performing the duties of an office in contradistinction to the sharers in the emoluments but who perform no duty; as Missul curnam the curnam who keeps the accounts and performs other duties of the office, but shares the pay with other curnams.

MITTA, a sub-division of a district, an estate forming such a division; a revenue estate created in the Madras territories under the permanent settlement.

MITTADAR, the holder or proprietor of an estate forming the sub-division of a district.

MOCHULKA, a solemn engagement or declaration in writing. A covenant to pay a penalty in default of fulfilling the condition; counterpart of a lease or written obligation.

MOFUSSIL, properly, separate, distinct, particular: in Hindustan, a subordinate or separate district; the country, the provinces, or the stations in the country, as opposed to the *Sadar*, or principal station or town.

MOHTURPHA, taxes personal and professionals on artificers, merchants and others; also on houses, implements, looms, &c.

MONASKHA, a table of inheritance, exhibiting the proportions of an estate payable to the sharers and residuaries according to the Mohamedan law.

MONIGAR, the head man of a village, employed as a revenue officer of the Circar, for which he holds a mannium, or receives payment.

MOOCHY, a worker in leather, a shoe or harness-maker, a saddler; a man employed in public offices to make ink, mend pens, provide paper, seal letters, bind books, and the like.

MOOKTEEARNAMAH, a document resembling a power of attorney. It constitutes the credentials under which an envoy represents his prince at a foreign court, a vakeel his client in a civil court, and a mercantile agent his principal or correspondent.

MOOKTIAR, an agent, a representative, an attorney; amongst the Mahrattas, the person appointed by the co-shares of an hereditary office to discharge its duties.

MOONSHEE, a native secretary, or jawabnuvees; a teacher of languages.

MOONSIFF, the head of the Village Police; the Monigar often holds this office; a "District Munsiff" is a native Judge, subordinate to the Zillah Judge.

MOONSIFF NAMA, an arbitration bond.

MOOTAH, a small sub-division of a district; a permanently settled estate.

MOOTAHDAR, the proprietor of a *Mootah*.

MOTURPHA, taxes levied on the manufacturing and trading community, as loom, tax-cooly tax, &c.

MOWZAH, a place; a village; the cultivated lands of a village.

MUCHILKA, a penalty bond; the counterpart of a lease or license from Government.

MUCTAH, cutting, cutting off; a contract, an agreement; rent, rate, a fixed rate of assessment.

MUFTI, a Mahomedan law-officer, whose duty it was to expound the law which the *Kazi* was to execute.

MUHAZIR-KHANA, a station-house; a place in a village where persons apprehended are first secured.

MUKHASA, a village or land assigned to an individual either rent-free or at a low quit rent, on condition of service; or a village held *khas* by the state, the revenue being paid to the Government direct; or a share of the Government in a village, or in the revenue paid by it.

MULASASANAMA, primary deeds or documents; original title deeds.

MULPATTA, a lease granted to the purchaser of an estate constituting him original or absolute proprietor, with right of transmission to his heirs.

MUNKIR, one who denies; in law, the defendant, the respondent.

MUZAHARAT, a formula of divorce, in which a man declares his wife indifferent to him.

MUZARABAT, a co-partnership of stock and labor, where one party finds capital, the other management, and the profits are divided between them.

N.

NAD, NADU, a province, a district, a division of a country; a country, a kingdom.

NADH, thug; a village.

NADI-MATRUKA-POLAMU, a field that is irrigated from a river adjacent.

NADU-SANABHOGA, the accountant of a district.

NADU-TALAVARU, the assistant of the head of a district.

NAFI, prohibiting, rejecting; in law, the formal denial of his paternity to a child born of his wife by a husband; rejection or abandonment of a child.

NAGAN, a contribution from the most opulent inhabitants of a town or village to defray any heavy exaction either of the state or an enemy.

NAGAR-KAUL, plough tenure; land held at an assessment per plough, usually for three or four years, for dry grain cultivation only.

NAIB-KAZI, the deputy of the Kazi.

NAJKARI, grain crop or cultivation, as distinguished from garden cultivation.

NAKL-I-PATTA, or **PATTAJAT**, a record or register of leases or revenue engagements; an account kept by the village accountant, giving, under the name of each cultivator, an abstract of his tenure, shewing the extent of his farm and amount of revenue, and the name, measurement, assessment, and revenue of each field.

NAKSHA-INTIKALI, a deed of conveyance or transfer of landed property.

NALISH, complaint; statement of wrong and prayer of redress; plaint; accusation.

NALU, a water-course; a channel or gulley cut in the soil by rain, down which, in the rainy season, rushes a considerable body of water; a rivulet; a creek; a drain; a ravine.

NANA, a maternal grandfather.

NANDINI, a husband's or wife's sister.

NANDOI, a husband's sister's husband.

NANGARAT, newly ploughed ground.

NANI, a maternal grandmother.

NANJAI, soil that is fit for the cultivation of rice, admitting of artificial irrigation, and hence commonly termed "wet ground or soil," in contradistinction to *punja*, or dry.

NANKAR-ZAMIN, lands assigned rent-free to Zemindars or public officers for their maintenance.

NAORAS, the name given to a child with reference to its horoscope.

NAPHARUGATI-PHAISALA, settlement of the revenue with individual cultivator; a ryotwary assessment.

NAR, young corn or paddy fit for transplanting.

NARWA, an undivided village held in coparcenary, and managed by a few of the chief sharers; applied also to the assessment of the revenue, by agreement with the principal shareholders.

NARWADAR, a coparcenary shareholder in a village.

NATARU, the second marriage of a woman whose husband is dead or is long absent, or from whom she is separated, practised by some inferior castes in the Deccan: it is also used for the marriage of a man to a second wife.

NATTAMKARAN, the head man of a village or a district; one who directs and superintends the cultivation, and has chief authority over the village servants: the *Patil* of the Maratha provinces; also the head man of a tribe, trade, or caste, in some places.

NATTUKARANAM, the Registrar or accountant of a district; a village accountant.

NATTUMANIYAM, land held rent-free as the perquisite of the head man of a village.

NAVACHAL, land newly brought into cultivation, and, therefore, lightly taxed, or free from tax.

NAZAR-KATAI, a present made to the farmer or revenue officer by the cultivators, for permission to cut their corn.

NAZIR, a sheriff, an officer of the court who is charged with the serving of process, &c.

NEKDARI, the general term for the sums or portions of the crop collected from the cultivators of a village for the village expenses and payments to the village officers and servants, as essential to the well-doing of the community.

NIAMAT, favor, bounty; an exaction from the Zemindars by the farmer of the revenue.

NIBANDHA, fees or perquisites due under a permanent title.

NIDHI, a treasure in general; a hoard, a hidden treasure; it is used in the south of India in deeds of conveyance for treasure-trove.

NIGADI-SHISTAM, a cash balance after payment of the Government revenue, payable to the proprietor by the tenant or occupier, either under lease or mortgage.

NIKAH-MUWAKKAT, a temporary marriage, one for a season, but celebrated with certain forms: it is void in law, but not unfrequent in practice.

NIKSHEPA, a pledge, a pawn, a deposit.

NILATTIRVAI, land assessment.

NILAVARI, ground rent, land tax.

NIMTHAL, going shares in a field; division of produce between the owner and cultivator; a half share of a field or its produce.

NIRDHANA, poor; in law, a person not entitled to hold property, as a slave, an idiot, &c.

NIRINDRIYA, one who has lost or was born deficient in some one of his organs of sense, and is thereby, in law, disqualified for inheritance. A female or the female sex; deficient in organic vigor.

NIRKH, price, rate, tariff, price-current, market rate or price; district or *pergunnah* rate of price, or of revenue payments, the standard rate at which the lands of a village or district are assessed; rate of exchange.

NIRVANSA, extinct, as a family; being without family or descendants; unclaimed, as property to which there are no heirs.

NISUDDHI, a mutual acquittance or release; settlement of an account; relinquishment of a right or claim.

NITYADATTAKA, a son adopted in a regular and legal manner, who thereby becomes a son for ever.

NIYAMAPATRA, a deed of agreement or assent; a contract; a written engagement.

NIZAMAT-ADALAT, the chief criminal court, or court of the *Nizam;* applied, until recently, to the chief criminal court of the British provinces.

NOTAGAR, an officer who keeps the money accounts of a village; also, a money-changer, a conjuror, a fortune teller.

O.

OLUGU, an account kept by the village accountant of the measurement and extent of the fields composing a village.

OOPANAYANA, drawing near; the ceremony of the investiture of a Brahmin youth with the sacerdotal thread, usually performed within the eighth year of age.

OPPITTADAKAGADA, a signed paper, an executed deed or bond.

OPPUMOLI, or **MOZHI**, a written agreement between two parties.

OTTI, a pledge, a pawn, a mortgage; in Malabar, it especially denotes a usufructuary mortgage, or one in which, for consideration of a sum advanced on loan, the borrower makes over the land of which he is the hereditary proprietor, to a temporary occupant, who receives the rent or profits in lieu of interest on his loan, paying the difference, if his receipts exceed the interest, to the proprietor. The term is also sometimes used for the assignment of a mortgage deed.

OTTIDRAVYAM, the money advanced on usufructuary mortgage.

OTTIKAMPARAM, a subsequent transaction, in which, for a further loan, the proprietor abandons finally to the mortgagee two-thirds of his hereditary rights and authority over the estate.

OTTIPERROLA, the written and executed deed by which a hereditary property is absolutely sold; hence also the title deed of an estate.

OLLA-OORKUR, a mode of deciding disputes as to village boundaries, by a person appointed to walk the boundary, and who should perform the ceremony in the skin of a beast newly killed.

OOTBUNDY, a general settlement formed with reference not only to the reputed quality of the land and rate of assessment, but also to the description of produce.

P.

PADAKAL, land exempt from revenue.

PADA-VANDANIKA, property given by a husband to a wife at the time of marriage in return for her humble salutation or marks of deference.

PAGODA, the European designation of a Hindu temple in the south of India; also, the gold coin formerly coined at Madras.

PAIK, a subordinate collector of rents.

PAISALU, decision, decree.

PAITHA, a district revenue account, in which the several fields of the villages, whether paying revenue or exempt, are specified under the names of their respective occupants, according to their extent, quality, and produce.

PALABHOGAM, the tenure by which the inhabitants of a village holds their lands severalty under an engagement among the coparceners, each being responsible for the revenue of his own holding, and receiving the surplus for his own use: such land may be held by the same individual in more than one village: also, a village or lands so held; the term is also explained to signify merely possession by more than one individual, distinguished as *Samudayam*, or where the lands are cultivated jointly, and the produce is divided: and *Arudi-karai*, where the lands are divided amongst the proprietors, and cultivated severally.

PALAKA, or PALAKA-PUTRA, an adopted son; sometimes applied to a boy who has been bought of his parents and is considered a slave.

PALIA, stones marking the boundary of a field.

PALISA-MADAKA-OLAKARANAM, a deed of a species of mortgage in which the rent of the estate transferred to the mortgagee is equal to the interest of the loan.

PALNUK, exemption from tax; remission of tax or duty.

PALPATTI, a tax or quit-rent imposed upon the holders of rent-free lands.

PALU, a share; a portion; the cultivator's share of the crop, in opposition to the *Ambaramu*, or Government share.

PALUGENICHITTU, an agreement for a fixed term for an equal

division of the crop between the proprietor and the cultivator or renter.

PALUN, a dower; a marriage portion given to the bride by the bridegroom or his father.

PAMPA, an agreement; a written order for taking an oath.

PANAYAKARAN, a mortgagee; a mortgagor; one who borrows or lends on mortgage.

PANAYAM, a mortgage; a pawn; a pledge.

PANAYAPATTAM, a mortgage lease, or one in which a sum of money considered as the equivalent of two-thirds of the estimated nett produce or rent, is advanced to the proprietor in consideration of his relinquishing the estate to the lender for his usufruct, in lieu of interest on his loan.

PANCHAKI-JAMA, rent payable on land otherwise rent-free, a sort of quit rent.

PANCHAYUT, a jury of five; a committee of five held in towns and villages to try all questions affecting caste, usages, and occupation. Municipal questions are thus settled amongst the natives in India.

PANDARA-KATTAR, a parcel of land in a village paying revenue direct to the Government.

PANDYA, the writer or accountant of a village or district; an officer employed in the customs: in Madras, it is sometimes applied to the head man of a district.

PANGUPIRINDAVARGAL, joint heirs; persons who have divided amongst them patrimonial property.

PANGUVALI, a village held in common by a certain number of coparceners, amongst whom the lands are distributed at various times, according to the votes of the majority of the sharers, and are held in severalty for a given time under such distribution.

PARACOODY, a temporary ryot from another village. He has no prescriptive right like the Oolcoody, but at the expiration of his lease his rent may be increased, or be ousted by the Meerasidar. Where mirasi is not recognized, the term is used to denote any ryot not resident in the village.

PARAJA, born of another father; the son of a wife appointed to raise issue to a deceased or impotent husband.

PARAPURVA, a woman re-married; one who was formerly the

wife of another; seven cases of second marriage, or rather of cohabitation, are acknowledged in Hindu law, but in practice they are restricted to the *Sudra* castes—(1), when the first marriage has not been consummated; (2), when a girl has been unchaste and is married to another than the gallant; (3), when a widow is married to a kinsman to raise issue for her deceased husband: in each of these the woman is termed *Punar-bhu*, she who is (wedded) again: in the other four cases she is termed *Swairini*, independent, uncontrolled; as (4), when she cohabits with another man during her husband's life; (5), when she has deserted her husband for another man, but has been taken back by the former; (6), when she cohabits with a stranger after her husband's death, for her own pleasure; and (7), when she does so under the pressure of some urgent motive, as that of poverty.

PARAMPA, high ground not admitting of irrigation; also land raised and drained.

PARATANA, the extent of land that may be annually ploughed by the single going and returning of a plough, hence implying a small field or strip of land, usually about four or five begahs.

PARGANAT-I-NIRKH, the rates of the valuation of the crops and the assessment of the revenue and other items of expense and receipt which ordinarily prevail or are established in a district.

PARIWALA, a hired ploughman who is bound, by an advance which he cannot repay, to labor gratuitously during a portion of his time, for the benefit of the lender.

PARWANA, an order, a written precept or command, a letter from a man in power to a dependent, a custom-house permit or pass, an order for the possession of an estate or an assignment of revenue; a warrant, a license, a writ; a paper of permission from a Zemindar to a cultivator to take up lands, leaving the rent to be subsequently settled.

PASUNKARAI, equitable distribution, the joint proprietary of the lands of a village by a number of coparceners, who may either cultivate them in common or parcel them out from time to time among the coparceners for their several cultivation, the right of each being to a definite proportion of the whole, but not to any one field or piece of land in particular: it is not in his power, therefore, to sell any actual piece of the village land,

although he may, with the consent of the other coparceners, sell his share.

PAT, a written paper; a bill; a draft on a banker; a promissory note or engagement to pay a sum of money at a stipulated time.

PATAN, the portion of the crop given to the reapers in pay of their labor.

PATITABADI-GIRD-KAMI, diminution or deficit of rent on waste lands brought into cultivation, in comparison with that levied on neighbouring lands.

PATITABADI, leases of land which, from its being covered with jungle is given free for a term of years and is afterwards subject to a progressive rate.

PATRA, a fit person; a person of capacity.

PATTA, or **PATTAYAM**, a deed of lease; a document given by the Collector to the ryot, or by some other receiver of revenue, to the cultivator or under-tenant, specifying the condition on which the lands are held, and the value or proportion of the produce to be paid to the authority or person from whom the lands are held; the term is laxly applied to a variety of deeds securing rights or property in land, also to a deed of gift in general.

PATTANI, a tenure by which the occupant holds of a Zemindar a portion of the Zemindari in perpetuity, with the right of hereditary succession, and of letting or selling the whole or part so long as a stipulated amount of rent is paid to the Zemindar, who retains the power of sale for arrears, and is entitled to a regulated fee or fine upon any transfer.

PATTA-CHITTA, a deed of lease, the written engagement given by the landlord to the tenant, also by the tenant to the landlord, agreeing to pay a certain amount of rent.

PATTAKARAN, a lease-holder.

PATTATALUK, a dependent *taluk* or estate held on lease or *patta*, from a Zemindar: such a tenure is generally heritable, but not transferable, and the land lapses to the Zemindar on failure of male heirs.

PATTIDARI, a tenure of a coparcenary nature, but in which the lands are divided and held in severalty by the different proprietors, each person managing his own lands, and paying

his fixed share of the Government revenue, through an accredited representative of the whole, being jointly responsible in the event of any one sharer being unable to fulfil his engagements.

PATTIYAM, affinity, connection entitling to a share, inheritance; bail, security.

PAUNARBHAVA, the son of a twice-married woman.

PAUTRA, a grandson, a granddaughter, the son or daughter of a son.

PEDDA-PANTA, the first or best crop, either in time or quality; the rice or *Jawari* harvest.

PENMUL, settlement or assignment of property to a female.

PEON, a messenger; a porter; a police officer.

PERGUNNAH, a small district or division of country containing several villages.

PESHANUM, a coarse kind of rice ripening late; also applied to the harvest or gathering of that sort of rice.

PESHCUSH, the fixed payment made to Government by Zemindars.

PESHKAR, an officer of revenue, inferior to the Tahsildar.

PETBHATA, a rent-free tenure of Kuch Berar granted by the raja for the maintenance of his relations. The grant lapses on the death of the holder unless it is expressly renewed in favour of his heirs.

PHALABHOGA, usufruct, receiving the profit or produce of any thing.

PIDAR-MAJAZI, a representative father, an adoptive father, or one who has adopted a son.

PIH, PEEH, land in cultivation which has been cultivated for three successive years.

PILLAI, a child; a respectable adjunct to Tamil names in some of the agricultural tribes.

PINATALLI, a mother's younger sister; the wife of a father's younger brother.

PINATANDRI, a father's younger brother; the husband of a mother's younger sister.

PIRAUTI, land allowed to lie fallow occasionally.

PITBHARI, an allowance of grain made by a Zemindar to the head of a village.

PODU, land or lands recently cleared from thicket and prepared for cultivation.

POGANDA, a boy, one between five and fifteen.

POLEYAN, or **POLAYAN**, a caste of domestic or agrestic slaves, or a member of such caste, in Malabar; the husband in this caste resides with his wife, although she belong to a different master, and their children inherit the rights of the mother.

POLIGAR, a chieftain, or head of a tract of country.

POLLIEM, the country of a Poligar.

PONUM, high land overrun with underwood, but which is capable of cultivation, after long intervals, with particular kinds of grain sown in holes dug with a spade.

POOLLAREE. Tax on pasture for cattle annually collected.

POTEL, **POTAIL**, the head man of a village. He is head of the Police, and acts to a limited extent as Magistrate; the term is current in the countries subject to the Mahrattas.

PRAJABHAG, the share of the produce assigned to the cultivator.

PRAJAWAT, a quit-rent; a cess levied by Zemindars upon the ryots on festive occasions, as at marriages; a house-tax levied by the Zemindars upon the inhabitants of a village, not cultivators, for the ground on which their houses stand; ground-rent.

PRAKARSHIT, surplus produce of a thing pledged for usufruct above the interest of the loan, which is to be re-paid to the borrower.

PRAPANCHARTHA, land exempted from revenue attached to some secular function, as that of *Potel*, or any village officer, or for the purpose of keeping up useful constructions, as reservoirs or embankments, &c.

PRAPITA, a paternal grandfather.

PRAPITAMAHA, a paternal great-grandfather.

PRAPITAMAHI, a paternal great-grandmother.

PRATILOMAJA, born or begotten in the inverse order of the

tribes, as the offspring of a Kshetriya man and Brahmin woman, of a Vaisya female and a Sudra father, &c.

PRATIVESIKATWAM, neighbourship; in law, pre-emption from vicinage, or the right of a neighbour or coparcener to purchase any property in his vicinage which is for sale, in preference to a stranger, on agreeing to give the same price.

PRATYAYA-PRATIBHU, a surety for confidence; one who engages for the general honesty and responsibility of another.

PRITIDATTA, property or valuables presented to a female by her relations and friends at the time of her marriage, constituting part of her peculiar property.

PULLUM, low-lying ground.

PUNARBHU, a woman married a second time.

PUNARVIVAHA, the first-crop of the year, which consists of the smaller grains cultivable on dry soils.

PUNASA, the first crop of the year, which consists of the smaller grains cultivable on dry soils.

PUNCHANILAM, wet land, or land capable of irrigation and bearing rice crops.

PUNCHAYET. A native jury or court of arbitration, consisting of five persons, to whom civil causes are referred for investigation, but from whose award there is an appeal to the regularly constituted tribunals or courts of justice.

PUNDIT, a Brahmin learned in the law and shasters; a law officer formerly attached to the courts in India.

PUNJAH, land fit for dry grain cultivation, not being irrigated.

PURAMKADAM, final payment or loan on which the proprietary right of the owner is transferred to the lender or mortgagee.

PURDA-NUSHEEN, seated behind a screen; a lady, as one who observes the rules of seclusion.

PUSHTA, a bank; a buttress; an embankment; a wall or building of masonry on the bank of a river, or a piece of water.

PUSHTABANDI, an embankment; repairing embankments; an extra cess imposed formerly upon the revenue payers for the expense of keeping embankments in repair.

PUTKUT. A lease for all the land held by one Ryot; the assessment being fixed on each field exclusively. It is the principle of the Putkut system that the aggregate farm of every ryot should consist of an equitable proportion of good and bad, highly and lowly assessed soils.

PUTRAPRATINIDHI, any affiliated son other than the son begotten; an illegitimate son, or one who, without being legally adopted, is treated as a child.

PUTTAH, a yearly lease given by the Collector to each ryot, stating the particulars of the land he is charged for, and the amount to be paid.

PUTTAHDAR, one who holds a *Puttah* for his lands.

PUTTAMONIGAR, a principal inhabitant appointed for the collection of the revenue and management of village affairs.

PUTTRA, one who delivers from *Put*, a place of torment; a son.

PUTTY, a part or portion; a division of a village; a division of land into separate portions or strips. It is sometimes applied to a measure of land about eight acres.

R.

RAHDARI, a passport, a permit; also transit duties, tolls.

RAHIN, a borrower on a pledge or pawn.

RAHN, a pledge; a pawn; property given as security for a loan, but of which the usufruct is not enjoyed by the lender, nor can it be transferred or sold.

RAJABHENT, a present to a great man on waiting on him, or a fee paid to a public functionary for permission to begin to reap.

RAJASWA, tax or revenue due to the Government, royal or public revenue.

RAJDHUTI, a piece of cloth, such as is worn round the loins, presented to a Zemindar by a tenant on receiving permission to marry.

RAKAM SIWAI, what is over or in excess of the stipulated sum or revenue.

RAKHAT, lands set apart for grazing.

RAKHT-O-MATAA, personal property exclusive of cash or bullion, or negociable stock; more properly denominated *Mal*, although *Mal*, used in a comprehensive sense, includes all personal property.

RAM-BAN, an arrow; an engagement or promise that will certainly be kept.

RAMBUTTAI. The system of sharing the crops equally between the landlord and tenant.

RASAD-BESHI, an increase of revenue, a gradual increase in the amount of assessment.

RAWANA, a passport; a pass; a certificate from a Collector of Customs authorizing goods to pass without payment of further duty.

RAWANAGI-CHITHI, a pass; a passport; a port clearance.

RAZDARI-MAJARA, cognizance of a criminal transaction, being accessory to a crime.

RAZINAMAH, a deed or paper of consent; an acquittance for resignation; the settlement of a dispute or suit by mutual agreement.

REDDI, a chief farmer or cultivator, especially the head man of a village in the Telingana country.

RIBA, illegal excess in exchange between articles of a similar kind which may be weighed or measured: this comprises interest on money, or increase of the sum borrowed, which is considered usurious and unlawful.

RIJAT, restitution, return; in Mahomedan law, the receiving back of a divorced wife, and restoring to her her legal rights according to the circumstances of her repudiation.

RISALADAR, a native officer commanding a troop of irregular horse.

ROODRA ABISHEGUM, a ceremony performed in August when rain is required for cultivation; it consists in certain ablutions and anointings in honor of Siva.

ROSAL, light soil of a good quality, though mixed with a considerable portion of sand: sometimes considered little inferior to the first quality, or *dakar*, and assessed at the same rate.

RULLA, land that requires to be left fallow for a year or two to recover its vigour.

RUSSOOM, customary gratuities, fees, or perquisites, either in kind or money.

RYOT, a cultivator of the soil.

RYOTWAR, according to or with *Raiyats*, familiarly applied to the revenue settlement which is made by the Government officers with each actual cultivator of the soil for a given term, usually a twelve-month, at a stipulated money rent, without the intervention of a third party: it is the mode of assessment which prevails chiefly, although not exclusively, in the provinces of the Madras Presidency.

RYOTWAREE, relating to ryots; the revenue settlement and assessment made directly with the cultivator of the soil.

S.

SABHAKRAYASASANAM, a deed of corporate sale, in which the mirasidars of a village divest one of their number, who may be a defaulter, of his share, and divide it amongst themselves, having been made responsible for the revenue due.

SABIK, former, prior, past, as time; an old established rate of assessment.

SADAR KISTBANDI, the engagement for revenue instalments payable to Government by the principal revenue payer, as distinguished from those entered into with him by his underpayers.

SADERWARED, contingent charges; *formerly* ready money collections made in each village from the ryots for supplying the cutcherry or office of public business with lamps, oil, and stationery.

SADHANA, accomplishing, effecting, the means of accomplishment, instrument, materials; in law, also execution, enforcing the delivery of a thing, inflicting and levying a fine; also, proving, substantiating; also means of proof, a voucher, a document, a deed, a bond; also, in Tamil, a village exempt from taxation, a royal grant or patent, the same as *Sasanam*.

SADHARANOPARJANA, joint earnings properly acquired by brethren living together as an undivided family.

SADKÂFARZ, ordained or obligatory alms.

SAFEENAMAH, SAFOE NAMAH, a release or acquittance; a testimonial given by the defendant upon the final settlement of a cause, that the matter in dispute has been cleared up or settled.

SAFI-NAMA, a deed of acquittance, a deed of release or of acquiescence in the terms of a *Razinama*, of which it is the counterpart; the latter, or deed of consent, being executed by the plaintiff, the *Safi-nama*, or deed of acquiescence, by the defendant.

SAGABHAI, own brother; one by the same father and mother.

SAGCHIT, a deed under which land is held; a lease especially one for a stipulated term.

SAGUBADI-DITTAM, statement of lands settled to be cultivated in the course of the year, if the season permits; settlement of, or order for, cultivation.

SAHAMARANA, the burning of a widow with the corpse of her husband.

SAHIB, a master, a lord, a companion; in Hindustani, the usual designation and address of a respectable European, like Mister, Sir, &c.; when European authorities are spoken of collectively, they are sometimes termed *Sahiban-aalishan*, most exalted gentlemen; an Assistant Judge or Collector is termed in native patois, *Sahib-shistant*.

SAHIBA, a lady, mistress, madam.

SAHODARA, uterine; a brother of whole blood.

SAHODARI, a sister by the same mother.

SAJALU, labourers in salt works.

SAJAVALI, restraint on a person to enforce payment of a debt or prevent his running away.

SAKKA, a water-bearer, sometimes one of the village servants in Hindustan who supplies the villagers and travellers with water, and is paid by an allowance of grain at harvest.

SALAHIYAT, information sent by the Village Accountant or Collector to the chief Police Authority of any criminal occurrence in the village.

SALGIRA, the anniversary of a person's nativity, when a knot is tied on a string or thread kept as a record of his age.

SAMANODACAS, remoter grade of relatives who do not offer the rice balls, but the water only. They extend to the sixth male below and the sixth above the male sapindas, and the direct male descendants of the latter six to the sixth degree.

SAMATUDARUDU, a revenue officer employed by the Government or by a Zemindar to superintend the tillage of a district, or of a certain number of villages, to settle disputes among the cultivators, and communicate with the District Collector.

SAMBA, a superior kind of rice with white and well-flavored grains, it is sown in July, transplanted in October, and reaped in February.

SAMBANDHA, relationship, affinity, connection: although not exclusive of relationship by descent, it is more correctly applicable to that by connection, as by marriage, &c.

SAMMANAM, lands exempt from all tax.

SAMUDAYA-GRAMAM, a village held or cultivated in common; also one in which the produce, as before, is equally divided between the proprietors and cultivators.

SAMUDAYAM, the tenure by which the members of a village community, or Mirasidars, hold the lands in common, each occupying an assigned share, but having no permanently exclusive right to it, and holding it only for a given period until a fresh partition and distribution take place: it also designates lands not allotted to individuals, but cultivated in common; and again, it may mean a village, the produce of which is equally divided between the proprietor and the cultivators when they are distinct.

SANKHAT, in Gujarat, a mortgage unaccompanied with possession.

SANTANA, offspring; progeny; descendants.

SAPINDAS, the term is derived from *pinda*, the funeral rice ball or cake, and is descriptive of that grade of heirs who participate in offering it to the deceased. The *sapindas* extend to the sixth male in direct descent from the person to be traced from, and the sixth male in direct ascent, and the direct male descendants of these latter, to the sixth degree.

SAPTHAPATHI, (*seven steps*,) one of the ceremonies rendering a marriage binding. It is performed by the bridegroom placing the bride's foot successively on seven lines drawn on rice in a platter.

SARAI, a palace, a large edifice, a building for the shelter and accommodation of travellers, usually a quadrangle surrounded by low chambers opening internally, and backed by a dead wall, the square, in the centre of which are the heavy luggage and beasts of burden, being entered by a gateway, the gate of which is closed at night; an inn, a caravanserai.

SARAKATI, a term applied to villages or estates, the revenues of which are shared by Government with others. A tenure under which a share, commonly a third, of the revenue and the whole management of a village is given to a person who, for the want of a more special name, is usually called jagirdar.

SARANA, a fine levied upon persons stealing ears of corn, also on cattle trespassing on corn-fields.

SARAYA-GUTTIGE, a tax levied on spirituous liquors.

SARDAR, a chief, a head man, a commander; the head of a set of palanquin bearers.

SARHANG, a commander, but generally applied in India to the head man of a native crew, whether on board a ship or a boat; also to the head man of a gang of natives attached to artillery, dragging guns, or to the army in general, as tent-pitchers and the like, or to the head of gangs of a superior order of laborers employed in public or private works, in docks, buildings, &c.

SARKHAT, a written agreement, a receipt, a bill of sale, a deed of lease; a note of acknowledgment from the Government to payers of the revenue, bearing upon it the successive instalments paid into the treasury.

SARKIL, a minister, a chamberlain.

SAR-PATIL, the head man of a district, the chief *Patil*; it applied also to a sort of petty Zemindar, or an officer who superintended the assessment and collection of the rents of a district, and received a percentage on their realization.

SARVAMANIYAM, land granted in free tenure, or exempt entirely from payment of revenue or rent to the grantor, whether the individual proprietor or the Government.

SARVA ENAM, an entire enam. A grant of the entire revenues of a village or tract of land.

SARVA MOCASSA, land granted in absolute and freemocassa tenure, not resumable, or of which not a part but the whole of the Government share is transferred to the *Mocassadar*.

SASANA, an order, an edict; a royal grant or charter often inscribed on stone or copper.

SASWATA SAGUBADI, right of perpetual cultivation, with exemption from the landlord's rent, but liability to the Government revenue.

SATTRAM, sacrifice, oblation; liberality, giving alms, distribution of food to Brahmins and mendicants; the place or building where it is so distributed; also, a choultry for travellers; also, a house, an edifice.

SAUDAYIKA, property derived from kindred as an affectionate gift; the property which a man receives with his wife; the property given to a woman, by her kindred or her husband at the time of her marriage, becoming her exclusive right.

SAUDRA, relating or belonging to a Sudra or the Sudra caste; the son of a Sudra woman by a man of either of the three superior castes.

SAVATRA, sprung from, or relating to, a rival wife; a half brother, *i.e.*, by the same father but different mother.

SAWARI, a number of persons mounted, especially on state occasions; equipage, retinue, cavalcade, a troop of horsemen.

SAWMY BOGUM, the lord's enjoyment or possession; the lord's right as proprietor. Quit-rent or acknowledgment of proprietory right in the Peninsula.

SAYER, transit duties; under former Governments it also included all imposts that were not actually land revenue, such as tolls, licenses, motusha, &c., miscellaneous revenue.

SEBUNDY, irregular native soldiers, employed chiefly in the service of the revenue and police departments.

SERISHTADAR, the head native officer of the Hoozoor cutcherry or court; also, a native taluk officer under the Tahsildar.

SHABB, a young man; one under 34 years of age.

SHAFIA-I-JAR, a person having right of pre-emption from occupying property in the neighbourhood of that which is for sale.

SHAGIRD-PESHA, a menial servant; also retinue, attendance; a pensioner; expense of servants and dependents.

SHAHIDI, evidence; testimony; deposition.

SHAHNA, a watchman; a village watchman; a person employed to watch the crops and prevent any fraudulent abstraction of the grain.

SHAHPRIJA, a cultivator holding direct from the Zemindar, as distinguished from a kurfa or sub-tenant.

SHAMILUT BUYRICE, deduction from the rent of land, in consideration of parts left uncultivated.

SHAMILAUT BUNZUR, the uncultivated portion of a field.

SHAMILUT DUSTOORDUN, deductions allowed to cultivators of Government land, in consideration of works executed or improvements made by cultivators.

SHANDY, a market; a fair; an annual fair.

SHEYCAL, land fit for cultivation, and which is generally cultivated.

SHIKAMI-ASAMI, or—RAIAT, a subordinate cultivator; one who pays the revenue through a superior shareholder, and whose name is not entered in the original assessment.

SHOLA, a plant of which the wood is light and spongy, and is used for making toys, artificial flowers, &c.

SHROFF, an examiner and sorter of coins; a money-changer.

SHROTRIEM, a village or certain extent of land granted on easy rent in perpetuity, or for so many lives, generally as a reward for public service.

SHROTRIEMDAR, the holder of a *shotriem*.

SHUBHA, doubt, suspicion; in law, a legal defect, a flaw; what may be pleaded in bar of punishment; also any thing which may appear lawful but is really unlawful.

SHUD-MUL-GUENY, a tenant by simple purchase in Canara.

SILEKBUNDEE, an account of the daily receipts of revenue made out at the end of the month, when they are added together, and formed into one total.

SIMANA, a person well acquainted with the boundaries of a village or estate; one who watches that they are not trespassed or encroached upon.

SINDH-KATHI, an instrument for making a hole in the wall, usually an iron pin about six or eight inches long, for picking out the clay or mortar in mud or brick walls: used by burglars for effecting an entrance into dwelling houses.

SIRAYAT, contagion; in law, an incidental or additional result, as when a person intending to do one thing does something more, as, designing to wound one man, he unintentionally wounds another.

SIR-SAJHI, the Zemindar's own land, cultivated by tenants at will for a share of the produce.

SMASANA, a place set apart in which the dead are burned; a cemetery.

SMRITI, the body of the recorded or remembered law; the ceremonial and legal institutes of the Hindus.

SOBAH, or **SOOBAH**, a province; a large division of territory.

SODHAPATRA, a written agreement or acknowledgment; a receipt; a deed of acquittance.

SOOLNAMAH, a deed or contract by means of which litigation is prevented or stopped; a deed of compromise of a law-suit.

SRENI, a row, a line; a corporation or association of persons following the same trade or occupation; a court of arbitration formed of persons in the same line of business.

STAVARAM, immoveable property; land, houses, tanks, rivers, and whatsoever cannot be removed, or only so by an act of destruction, as well as tenures on land of a permanent character, as right acquired by sale, gift or on perpetual lease.

STRIDHANA, woman's wealth; the peculiar property of a woman or wife over which, under ordinary circumstances, she has independent control, and which descends to her daughter or next of kin; her power to dispose of it during her husband' slife is subject to his will, and he has a right to use it in cases of distress or necessity; the rights of both husband and wife to this description of property depend, however, very much upon the customs that prevail in different places.

SUDDER AMEEN, a chief commissioner or arbitrator; the title of a class of native civil judges under the British Government, distinguished as *Sudder Ameens* and *Principal Sudder Ameens*.

SUDDER DEWANNY UDALUT, the chief civil court.

SUDDER NIZAMUT UDALUT, the chief criminal court.

SUDDER UDALUT, the chief court of justice, both civil and criminal; the Company's Supreme Court, and Court of Final Appeal in India, and now the High Court.

SUNNAH, traditional law; a compilation of the sayings and practices of Mahomed, supplemental to the Koran when that was found insufficient to regulate the affairs of the then greatly extended empire.

SUNNI, a follower of the sunnah; the name of the first great division of the Mahomedans. The other division is the Shiahs.

SUNNUD, a patent or written authority from the ruling power to hold land or office.

SUNNUD-I-MILKEUT ISTIMRAR, deed of permanent lordship given by Government to a Zemindar.

SWAMY BOGUM, the landlord's share of the produce of enam land cultivated by a tenant.

SWARUPAM, natural form, inherent property or nature: it is sometimes used in the dialects for property in land or money; an estate.

SWASTIYAMDAR, the holder of hereditary property and privileges.

SWASTRIUM, SWASTWAM, one's own property. Landed property or inheritance, answering to caniachy, in the Tamil, and Meerassee in the Persian languages.

SWATANTRA, one who is independent, or acts for himself; one who is legally entitled to act without control or guardianship.

SWAYAMDATTA, self-given, applied to a son by one form of adoption.

SWECHCHHA, or SWAICHCHA, a son adopted by a woman of her own accord and authority, without permission from her husband.

T.

TADAL-PUNJAI, a patch of land above the level of the surrounding rice-fields, but capable of bearing a similar crop.

TAGABEY, money lent at interest to a husbandman, to enable him to cultivate his land, for payment of which the ensuing crop is bound. (See TUCKAVY.)

TAHALIF, the swearing of both the plaintiff and the defendant.

TAHARI-O-PHALI, a phrase in a lease of a mango orchard implying transfer of the ground as well as the fruit.

TAHSILDAR, a native Collector in charge of a *taluk*; an *Amildar*.

TAKADEM, such a distance of time as suffices to exempt from punishment, operating in a way similar to statutory limitations in England.

TAKEED, injunction, warning, direction, an order from a superior.

TAKSIM-NAMA, a deed of partition amongst joint proprietors when ceasing to hold their estate in common.

TALAK, divorce; dissolution of marriage, whether reversible or irreversible, besides a divorce justified by bodily or mental diseases or defects.

TALIARY, the village watchman, whose duty is to give information of offences, guide travellers, &c.

TALUK, a dependency; a division of a district under the management of a Tahsildar.

TALUKDAR, the holder of a taluk; a petty Zemindar.

TAMASSUK-JAIDADI, a bond hypothecating property.

TAMASUL, equality; in Mahomedan law, the division of an inheritance among the legal sharers when their number and that of the shares is the same; as, for instance, where there are four sharers having equal rights severally to four shares, such numbers are termed *Mutamasul*: other terms describe various modifications of the principle of allotment.

TAMLIK-WA-TAULIAT-NAMA, a deed of gift and trusteeship which assigns property in trust to a particular person, with the proceeds of which he is to defray the expenses of a religious establishment, and, if there be any surplus, he may apply it to his private use.

TANTAKURA, inheritance by the father's side.

TAPA, a group of villages, a sub-division of a pargunah or taluk.

TAPPAL, the post; the carriage and delivery of letters, &c.

TARAWATA, or **TARAWADA**, a house, a family: especially a united family whose affairs are managed by one or more of the chief members: the union may be broken up altogether or sub-divided by mutual consent: the family are bound by the acts

of the recognized manager; the institution appears to be in some respects peculiar to Malabar, and to present some singular provisions, as, where the property is considered as restricted to the females of the *Tarwad*, and the males have no power of alienating it.

TARAWATTUKARAN, an householder; a man of family; the managing member of a united family.

TARI-BAGHAYAT, garden or orchard ground irrigated by tanks as opposed to *Kushki-baghayat* or similar land watered by wells.

TARIF, determination; ascertainment; a table of rates of export and import duties.

TARIKA, property of every description left by a person deceased: inheritance of such property, whether by succession or bequest.

TARUM, sort, kind, class; applied to designate the different classes of village lands, and the heads under which they are arranged in the village accounts.

TARWADS, a united family community who are adherents to Maroomakatayan.

TASARRUF, possession, property, ownership, holding anything at one's own disposal: in law, any act of ownership, the rights of a proprietor over his property, as sale, lease, mortgage, &c.

TAULIAT, trusteeship or superintendence of a religious foundation; the management of the funds appropriated to its support; appointing a person to such an office, transferring property to him for such a trust; the term is principally used in these senses in India; in Mahomedan law, it also signifies a sale in which the owner disposes of the article sold at the price which he originally paid for it.

TAULIAT-NAMA, deed of trusteeship, one appointing a person to the management of a religious endowment.

TAZKEEUT, is where a certain number of witnesses bear testimony to the competency of other witnesses who are giving evidence in any cause; the former being denominated the mazakkes, or purgators.

TEERWA, money rent, assessment or tax on land.

TEERWA JASTY, the additional *Teerwa* levied on land assessed in the accounts as "dry," but which has been irrigated by Circar water. It is also sometimes imposed when *Nunjah* land is cultivated with garden produce, as Betel, Plantain, &c.

THALKARI, the landed proprietor; the owner of the land, whether he cultivate or let it; the reverse of the *Upari* or tenant cultivator.

THANA, a station, a military post, a police-station; under the native Governments it was a military post or garrison, a place, sometimes with a small fort, where a petty officer, with a small irregular force, was posted to protect the country, preserve the peace, and to aid in making the collections.

THUG, a cheat, a knave; applied now to the highway plundering associations who invariably garotte their victims before robbing them. These assassins have laws, rank, and superstitions of the most extraordinary kinds, which regulate all their expeditions; their correct appellation is *Phansigar*.

TIP, a note of hand, a promissory note or bill, a bond, a cheque, besides these meanings, which are common to all the dialects, it has special applications in some.

TIRAIT, an umpire, an arbitrator, any third person, a stranger, a *Panchayat* collectively.

TOLAH, a petty tax on articles exposed for sale in a *hath* or temporary market, levied by the proprietor of the ground.

TOORHADI, an agreement; a contract. Applied specially in Canara to a species of mortgage which does not give the mortgagee any right of interference in the management of the estate, but entitles him to a quantity of rice equal to the interest due on his loan.

TOPE, a grove of trees, properly of those that bear fruit, as mango, tamarind, cocoanut, &c.

TOTACAL, land appropriated to the cultivation of garden produce, as various kinds of fruit, betel, edible vegetables, and other articles of value, and, therefore, subject to a higher rate of assessment.

TOTY, the inferior village public servant; a kind of *Under-Taliary*.

TUCCAVY, advances of money to ryots to enable them to buy seed and stock for cultivation.

TUCKEYA, a Fakeer's residence.

TUMBAMARI, certificate given by a proprietor to the holder of his land on lease or mortgage, that he has sold his right to another, or one which the holder gives to the owner, if he transfers his occupancy to another tenant.

TURRY, wet cultivation.

TUSHI, the iron style used in writing; the fee paid to the writer who draws up the mortgage deed.

U.

UDADJAMABANDI, a jamabandi or settlement made in the lump, the whole assessment being paid by one person or one joint body.

UDAVARAM, a fixed estimate of average amount of gross grain produce.

UDDHARA, a deduction, a portion deducted; the first division of an estate; portion of the paternal estate assigned to the eldest son in excess over the shares of the others; a debt, a loan, especially one not bearing interest.

UDUVU, clothes belonging to another person borrowed for wear from the washerman.

UKR, a woman's dower, or the money paid as her portion; also, a sum of money which is paid by a man to a woman, with whom he has had illicit intercourse, by way of dower.

ULANGU, a standard rate for assessment, or for the price of grain, &c.; a detailed account of the lands of a village.

ULCUDI, a permanent cultivating tenant, one who, by himself or his forefathers, has been settled in a village and carried on cultivation in it for a considerable time, although not one of the original coparceners: he cannot be dispossessed as long as he pays the stipulated rent to the proprietor or proprietors, usually a quit-rent, and his proportion of the Government assessment: he has the right of hereditary succession and independent cultivation, but cannot mortgage or sell the land, and is not entitled to the emoluments and privileges considered as the right of the *Mirasidars*.

ULLITTAR, partners, all concerned in the same bargain or business, coparceners in land; it is sometimes restricted to descendants of the original holder or grantee, but this seems questionable: it is also sometimes extended to heirs generally.

UMBALIGE, land granted by Government rent-free as a reward for, or in consideration of, public services.

UMEDWAR, an expectant, a candidate for employment; an unpaid probationer.

UMUDAIN, in Mahomedan law, the pillars or supporters of a family, designation of the children of a kinsman, however distant, and whether in the ascending or descending line, ancestors or descendants in the direct line.

UNDARATI, a form of mortgage in which the mortgagee occupies the estate at a fixed stipulated rent, out of which he pays himself the amount of the interest on his loan, and such proportion of the principal as shall liquidate the principal in a specified number of years: if the holder throws up the property before the stipulated time expires, he has to allow to the proprietor a further deduction from the principal of 20 per cent. as *Sakshi*, and 3 per cent. for *Tushi*, or drawing up the deeds: it is a disputed question whether, in such case, the mortgagee is entitled to claim any allowance on the profits of cultivation.

UNKUVA, a marriage portion, properly given to a woman at her marriage by her relatives; an item of woman's wealth.

UPANAYANA, the solemn investiture of youths of the three first tribes, Brahmin, Kshatriya, and Vaisya, with a peculiar thread or cord worn over the left shoulder, by which they are considered as regenerated and admitted to all the privileges of their original birth; as the Brahmin is the only one of the three original tribes remaining, the ceremony is properly confined to the youth of that caste, and should be performed not earlier than eight, nor later than sixteen years of age: in various parts of India, however, different Sudra and mixed castes assume the right of wearing the Brahminical cord.

UPARI, a cultivator not belonging originally to a village, but residing and occupying land in it, either upon a lease for a stipulated term of years, or at the pleasure of the proprietor; a tenant, a temporary occupant, a tenant-at-will; it may be also applied, as in distinction to the *Thalkari* or proprietor, to tenants whose ancestors have held the lands for many generations, but

who are not considered to have a proprietary right in the soil: also an officer employed to supervise the crops when brought to the threshing-floor when the Government dues are not paid in kind; an overseer, a superintendent.

UPEKSHA, neglect, disregard; in law, laches, silent neglect of a right, which is held to constitute or amount to its forfeiture.

URALAN, guardian or manager of a temple, whether singly or in partnership with others.

URZEE, an address or application in writing.

UTBANDI, land held for a season only and usually on verbal permission.

UTBANDI JAMA, a method of holding by which the cultivator pays each year for the land actually cultivated and not for the fallows.

UTKAR, land held by a tenant-at-will.

UTTARA, remission, deduction; land given at a reduced assessment or rent-free, either for service or to a temple.

V.

VADA, speech; discourse; argument; dispute; pleading in court a law-suit.

VAGAIRAGUTTA, rent of a village engaged for by several persons.

VAIPPUMANIYAM, a grant of a portion of the Government revenue claimable from the estate of an individual.

VAKALUTNAMA, a power of attorney; letter of authority; an instrument giving a vakeel authority to plead in a particular suit.

VAKDANA, a verbal or promised gift; affiance, betrothal, promise to give a boy in adoption, or a daughter in marriage.

VAKEEL, one endowed with authority to act for another; an ambassador; an agent; an authorized attorney; a pleader in a court of justice.

VANCHI-VIRUTTI, land granted rent-free in Malabar, on condition of providing boats for the state when required.

VARADITTAM, adjustment of the shares of the produce belonging to each party interested; a register kept by the village

accountant of the respective shares of the produce assignable to the cultivator and proprietor, or the state.

VASEL, land which is allowed to lie a year fallow, in contradistinction to bhoot, which the tenants till every season.

VATTACHCHITTU, a bond with premium granted for goods exchanged or money lent on interest.

VELLALAN, a man of the agricultural caste, which constitutes a numerous body of the cultivators of Southern India.

VELLAMAI, agriculture, husbandry: as depending especially upon irrigation.

VET-KANAM, a mortgage-lease engaging to reimburse the mortgagee for any improvements he may make on the lands he holds, in lieu of interest; a lease on favorable terms on condition of clearing and bringing waste land into cultivation.

VIBHAGA, according to law, either the simple apportionment of the property of a deceased person amongst his heirs, who may nevertheless hold the whole in common, or, as more usually employed, the several distribution of the shares amongst the sharers, and their mutual separation.

VIBHAGA-BHAK, one who shares in property already distributed, as a son born subsequently to the partition of the paternal inheritance.

VIBHAGA-PATRIKA, a deed of partition; the deed drawn up at the time of partition, which should specify whether the property is ancestral or acquired, the particulars of its acquisition, the names of the sharers with their respective shares: it should be signed by the parties witnessed and dated.

VIJI, a sower; a progenitor; the kinsman appointed by a childless man to raise up issue by his wife; the father of a son legally begotten on another's wife.

VILATIRVA, a bill of sale transferring property without any reservation of future claim.

VILATTARAM, price or value of corn levied as tax or rent.

VIRUDDHASAMBANDHA, degree of consanguinity or relationship, within which marriage is prohibited, extending to seven degrees, or all connected by offerings of the funeral cake or *Sapindas*.

VISHAMA-VIBHAGA, division of the property by the father in his life-time amongst his sons in different proportions, which may take place with property self-acquired, not with ancestral property.

VISSABADY, assessed with revenue according to a survey valuation.

VITTUPATI, an agreement between the cultivator and proprietor, by which the latter allows the former half the seed, and receives half the produce.

VYAVASTHA, separating; setting apart; settlement, arrangement; a written opinion in points of law, with citation of the original texts on which it is based.

VYAVASTHA-PATRA, the written dictum or opinion of a Hindu lawyer.

W.

WALA, in Mahomedan law, a peculiar relation voluntarily established, and conferring a right of inheritance on one or both of the parties so connected: it is of two kinds—

WALA-ATAKAT, or—MIAMAT, relationship between a master and a manumitted slave, in which the former inherits any property the latter may acquire after emancipation.

WALA-MUWALAT, the connection arising out of mutual friendship, especially between a Mahomedan and a convert.

WALAD-MAGHRUR, in law, the son of a person who has mistaken the condition of the mother, as begotten on a female within the prohibited degrees of relationship without his being aware of it, or on a female slave supposing her to be a free woman: in the latter, the child is the property of the master of the slave, but the father may redeem it.

WALI-BAID, a legal guardian of a more remote degree than father, brother, or uncle.

WALI-JABIR, or—MAJBIR, an authoritative guardian recognized by the law.

WANTNIPATRA, a writing or document exhibiting the proportions in which patrimonial or other property is to be distributed.

WARIS, a claim or title; a right resting on the ground of inheritance from ancestors.

WARUM, share; share of the produce, or the rate according to which the division is made between the cultivator and the Government.

WASAIA, in law, a will or testament defined to be the endowment of anything or person with his property by an individual, after his demise.

WASILAT, the proceeds of an estate, the mesne profits of land.

WATANBANDHU, a coheir; a joint inheritor; also a fellow-hereditary officer, one who holds an office jointly with another.

WATANPATRA, title-deed of hereditary property.

WATANWARI, a patrimonial estate; patrimonial lands and tenements.

WUJUHAT-PARWANA, an order or authority from a Zemindar to his ryots to pay their rents or other collections to his agent or representative.

WUSSOOL BAKEE, demand, collection, and balance.

WUTTUNDAREE, a species of tenure, differing from the Mirassi tenures chiefly in this, that the former (wuttundaree) exists only by sufferance, whilst the latter are positive and permanent rights.

Y.

YACHITA, a particular form of deposit, in Hindu law, in which the holder of the deposit may have the use of it.

YADASTU, a note; a memorandum; a memorial; a petition; a certificate.

YAUMIA, a daily allowance to pensioners of any kind.

YAUTAKA, a nuptial gift; presents made to a woman at her marriage, becoming her property; a marriage dower or portion; also, a gift to a youth or child at any of the initiatory ceremonies or *Sanskaras*.

YEDARU-CHITU, a counterpart agreement; an engagement given by the tenant of an estate held under lease or mortgage, to pay a consideration annually for its occupancy; also a writing given by the purchaser of land to the proprietor, engaging to give it back on receiving his money again within a stipulated period.

YEOMIAH, a money allowance or pension, calculated originally at so much per diem.

YEOMIAHDAR, a person in receipt of a *Yeomiah*.

YETMAUMBUNDY, an account of the pergunnahs and other sub-divisions of a province, with the names of the Zemindars, and the nature of separated land, where alienated, and where annexed.

YOUTACA, a woman's separate property, obtained by gift of the bridegroom at the time of the marriage.

Z.

ZABTI, sequestrated, attached: applied to lands taken possession of by the Government officers, or to rent-free lands which have been subjected to assessment.

ZAIL, it is especially applied to a specification of the different rates in which the rent was to be paid, whether in money or kind, by the *Ryots* annexed to the *Patta* granted by the Zemindar.

ZAMAN, surety, bail, security in general, answering or being surety for another, either for person or property.

ZAMANAT-NAMA, a deed of surety by which a person makes himself answerable for the debts of another.

ZAWI-UL-ARHAM, uterine relations, kindred between whose affinity a female intervenes; they are considered as distant kindred in Mahomedan law, because, under the rules of inheritance, a share rarely comes to them.

ZEBAN BUNDY, examination of a witness; the document that contains the questions put to a witness, and his answers.

ZEMINDAR, an occupant of land; a landholder.

ZEMINDARY, an estate held by a Zemindar; the revenue settlement made with Zemindars, in contradistinction to *Ryotwary*.

ZENANA, the female apartments, used for the females of the family.

ZIHAR, a formula of divorce, such as saying to a wife, "You are my mother," *i.e.*, "Our marriage is within the prohibited degrees, and is therefore dissolved."

ZILLAH, side, part, a division, a district; under the British administration, a province, a tract of country constituting the jurisdiction of a Commissioner or Circuit Judge, and the extent of a chief collectorate.

ZIMMA-NAMA, a deed of trust; authority to have charge and make the collections of an estate.

ZUBTEE, one who cultivates the land of the village where he constantly resides, and is considered in the light of an hereditary landholder. The villages where such cultivators reside are also called Zubtee.

ZUPT, or ZABT, occupation, seizure; in law, attachment, distraint, sequestration, confiscation.

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