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C. The initial letter of the word "*Codex*," used by some writers in citing the Code of Justinian. Tayl. Civil Law, 24.

It was also the letter inscribed on the ballots by which, among the Romans, jurors voted to condemn an accused party. It was the initial letter of *condemno*, I condemn. Tayl. Civil Law, 192.

C, as the third letter of the alphabet, is used as a numeral, in like manner with that use of A and B, (*q. v.*)

The letter is also used to designate the *third* of a series of propositions, sections, etc., as A, B, and the others are used as numerals.

It is used as an abbreviation of many words of which it is the initial letter; such as cases, civil, circuit, code, common, court, criminal, chancellor, crown.

C. A. V. An abbreviation for *curia advisari vult*, the court will be advised, will consider, will deliberate.

C. B. In reports and legal documents, an abbreviation for common bench. Also an abbreviation for chief baron.

C. C. Various terms or phrases may be denoted by this abbreviation; such as circuit court, (or city or county court;) criminal cases, (or crown or civil or chancery cases;) civil code; chief commissioner; and the return of *cepi corpus*.

C. C. P. An abbreviation for Code of Civil Procedure; also for court of common pleas.

C. J. An abbreviation for chief justice; also for circuit judge.

C. L. An abbreviation for civil law.

C. L. P. Common law procedure, in reference to the English acts so entitled.

C. O. D. "Collect on delivery." These letters are not cabalistic, but have a determinate meaning. They import the carrier's liability to return to the consignor either the goods or the charges. 59 Ind. 263.

C. P. An abbreviation for common pleas.

C. R. An abbreviation for *curia regis*; also for chancery reports.

C. T. A. An abbreviation for *cum testamento annexo*, in describing a species of administration.

CABAL. A small association for the purpose of intrigue; an intrigue. This name was given to that ministry in the reign of Charles II. formed by Clifford, Ashley, Buckingham, Arlington, and Lauderdale, who concerted a scheme for the restoration of popery. The initials of these five names form the word "cabal;" hence the appellation. Hume, Hist. Eng. ix. 69.

CABALIST. In French commercial law. A factor or broker.

CABALLARIA. Pertaining to a horse. It was a feudal tenure of lands, the tenant furnishing a horseman suitably equipped in time of war, or when the lord had occasion for his service.

CABALLERIA. In Spanish law. An allotment of land acquired by conquest, to a horse soldier. It was a strip one hundred feet wide by two hundred feet deep. The term has been sometimes used in those parts of the United States which were derived from Spain. See 12 Pet. 444, note.

CABALLERO. In Spanish law. A knight. So called on account of its being more honorable to go on horseback (*à caballo*) than on any other beast.

CABINET. The advisory board or council of a king or other chief executive. In the government of the United States the cabinet is composed of the secretary of state, the secretary of the treasury, the secretary of the interior, the secretary of war, the secretary of the navy, the secretary of agriculture, the attorney general, and the postmaster general.

The select or secret council of a prince or executive government; so called from the apartment in which it was originally held. Webster.

CABINET COUNCIL. In English law. A private and confidential assembly of the most considerable ministers of state, to concert measures for the administration of public affairs; first established by Charles I. Wharton.

CABLE. The great rope of a ship, to which the anchor is fastened.

CABLISH. Brush-wood, or more properly windfall-wood.

CACHEPOLUS, or CACHERELLAS. An inferior bailiff, or catchpoll. Jacob.

CACHET, LETTRES DE. Letters issued and signed by the kings of France, and countersigned by a secretary of state, authorizing the imprisonment of a person. Abolished during the revolution of 1789.

CACICAZGOS. In Spanish-American law. Property entailed on the *caciques*, or heads of Indian villages, and their descendants. Schm. Civil Law, 309.

CADASTRE. In Spanish law. An official statement of the quantity and value of real property in any district, made for the purpose of justly apportioning the taxes payable on such property. 12 Pet. 428, note.

CADASTU. In French law. An official statement of the quantity and value of realty made for purposes of taxation; same as *cadastre*, (*q. v.*)

CADERE. Lat. To end; cease; fail. As in the phrases *cadit actio*, (or *breve*,) the action (or writ) fails; *cadit assisa*, the assise abates; *cadit questio*, the discussion ends, there is no room for further argument.

To be changed; to be turned into. *Cadit assisa in juratum*, the assise is changed into a jury.

CADET. In the United States laws, students in the military academy at West Point are styled "cadets;" students in the naval academy at Annapolis, "cadet midshipmen." Rev. St. §§ 1309, 1512.

In England. The younger son of a gentleman; particularly applied to a volunteer in the army, waiting for some post. Jacob.

CADI. The name of a Turkish civil magistrate.

CADIT. It falls, abates, fails, ends, ceases. See **CADERE**.

CADUCA. In the civil law. Property of an inheritable quality; property such as descends to an heir. Also the lapse of a testamentary disposition or legacy. Also an escheat; escheated property.

CADUCARY. Belating to or of the nature of escheat, forfeiture, or confiscation. 2 Bl. Comm. 245.

CÆDUA. In the civil and old common law. Kept for cutting; intended or used to be cut. A term applied to wood.

CÆSAR. In the Roman law. A cognomen in the Gens Julia, which was assumed by the successors of Julius. Tayl. Civil Law, 31.

CÆSAREAN OPERATION. A surgical operation whereby the fœtus, which can neither make its way into the world by the ordinary and natural passage, nor be extracted by the attempts of art, whether the mother and fœtus be yet alive, or whether either of them be dead, is, by a cautious and well-timed operation, taken from the mother, with a view to save the lives of both, or either of them. If this operation be performed after the mother's death, the husband cannot be tenant by the curtesy; since his right begins from the birth of the issue, and is consummated by the death of the wife; but, if mother and child are saved, then the husband would be entitled after her death. Wharton.

CÆTERIS PARIBUS. Other things being equal.

CÆTERIS TACENTIBUS. Lat. The others being silent; the other judges expressing no opinion. Comb. 186.

CÆTERORUM. When a limited administration has been granted, and all the property cannot be administered under it, administration *cæterorum* (as to the residue) may be granted.

CAHIER. In old French law. A list of grievances prepared for deputies in the states-general. A petition for the redress of grievances enumerated.

CAIRNS' ACT. An English statute for enabling the court of chancery to award damages. 21 & 22 Vict. c. 27.

CALCETUM, CALCEA. A causeway, or common hard-way, maintained and repaired with stones and rubbish.

CALE. In old French law. A punishment of sailors, resembling the modern "keel-hauling."

CALEFAGIUM. In old law. A right to take fuel yearly. Cowell.

CALENDAR. The established order of the division of time into years, months, weeks, and days; or a systematized enumeration of such arrangement; an almanac.

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CALENDAR MONTH. One of the months of the year as enumerated in the calendar, — January, February, March, etc., — without reference to the number of days it may contain; as distinguished from a lunar month, of twenty-eight days, or a month for business purposes, which may contain thirty, at whatever part of the year it occurs.

CALENDAR OF CAUSES. In practice. A list of the causes instituted in the particular court, and now ready for trial, drawn up by the clerk shortly before the beginning of the term, exhibiting the titles of the suits, arranged in their order for trial, with the nature of each action, the date of issue, and the names of the counsel engaged; designed for the information and convenience of the court and bar. It is sometimes called the "trial-list," or "docket."

CALENDAR OF PRISONERS. In English practice. A list kept by the sheriffs containing the names of all the prisoners in their custody, with the several judgments against each in the margin. Staundef. P. C. 182; 4 Bl. Comm. 403.

CALENDIS. Among the Romans the first day of every month, being spoken of by itself, or the very day of the new moon, which usually happen together. And if *prædie*, the day before, be added to it, then it is the last day of the foregoing month, as *prædie calend. Septemb.* is the last day of August. If any number be placed with it, it signifies that day in the former month which comes so much before the month named, as the tenth calends of October is the 20th day of September; for if one reckons backwards, beginning at October, that 20th day of September makes the 10th day before October. In March, May, July, and October, the calends begin at the sixteenth day, but in other months at the fourteenth; which calends must ever bear the name of the month following, and be numbered backwards from the first day of the said following months. Jacob.

CALENDIS, GREEK. A metaphorical expression for a time never likely to arrive.

CALL. 1. In English law. The election of students to the degree of barrister at law, hence the ceremony or epoch of election, and the number of persons elected.

2. In conveyancing. A visible natural object or landmark designated in a patent, entry, grant, or other conveyance of lands, as a limit or boundary to the land described, with which the points of surveying must

correspond. Also the courses and distances designated.

3. In corporation law. A demand made by the directors of a stock company upon the persons who have subscribed for shares, requiring a certain portion or installment of the amount subscribed to be paid in. The word, in this sense, is synonymous with "assessment," (*q. v.*)

A call is an assessment on shares of stock, usually for unpaid installments of the subscription thereto. The word is said to be capable of three meanings: (1) The resolution of the directors to levy the assessment; (2) its notification to the persons liable to pay; (3) the time when it becomes payable. 4 Exch. 543.

4. In the language of the stock exchange, a "call" is an option to claim stock at a fixed price on a certain day. Bid. Stock-Brok. 70.

CALL OF THE HOUSE. A call of the names of all the members of a legislative body, made by the clerk in pursuance of a resolution requiring the attendance of members. The names of absentees being thus ascertained, they are imperatively summoned (and, if necessary, compelled) to attend the session.

CALLING A SUMMONS. In Scotch practice. See this described in Bell, Dict.

CALLING THE JURY. Successively drawing out of a box into which they have been previously put the names of the jurors on the panels annexed to the *nisi prius* record, and calling them over in the order in which they are so drawn. The twelve persons whose names are first called, and who appear, are sworn as the jury, unless some just cause of challenge or excuse, with respect to any of them, shall be brought forward.

CALLING THE PLAINTIFF. In practice. A formal method of causing a nonsuit to be entered.

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 nonsuited, the jurors are discharged without giving a verdict, the action is at an end, and the defendant recovers his costs.

CALLING TO THE BAR. In English practice. Conferring the dignity or degree

of barrister at law upon a member of one of the inns of court. Holthouse.

CALLING UPON A PRISONER. When a prisoner has been found guilty on an indictment, the clerk of the court addresses him and calls upon him to say why judgment should not be passed upon him.

CALPES. In Scotch law. A gift to the head of a clan, as an acknowledgment for protection and maintenance.

CALUMNIA. In the civil law. Calumny, malice, or ill design; a false accusation; a malicious prosecution.

In the old common law. A claim, demand, challenge to jurors.

CALUMNIÆ JURAMENTUM. In the old canon law. An oath similar to the *calumniæ jusjurandum*, (q. v.)

CALUMNIÆ JUSJURANDUM. The oath of calumny. An oath imposed upon the parties to a suit that they did not sue or defend with the intention of calumniating, (*calumniandi animo*,) i. e., with a malicious design, but from a firm belief that they had a good cause. Inst. 4, 16.

CALUMNIATOR. In the civil law. One who accused another of a crime without cause; one who brought a false accusation. Cod. 9, 46.

CALUMNY. Defamation; slander; false accusation of a crime or offense. "There was a word called 'calumny' in the civil law, which signified an unjust prosecution or defense of a suit, and the phrase is said to be still used in the courts of Scotland and the ecclesiastical and admiralty courts of England, though we do not find cases of the kind in the reports." 30 Ohio St. 117.

CAMARA. In Spanish law. A treasury. Las Partidas, pt. 6, tit. 3, l. 2.

The exchequer. White, New Recop. b. 3, tit. 8, c. 1.

CAMBELLANUS, or CAMBELLARIUS. A chamberlain. Spelman.

CAMBIATOR. In old English law. An exchanger. *Cambiatores moneta*, exchangers of money; money-changers.

CAMBIO. In Spanish law. Exchange. Schm. Civil Law, 148.

CAMBIPARTIA. Champerty; from *campus*, a field, and *partus*, divided. Spelman.

CAMBIPARTICEPS. A champertor.

CAMBIST. In mercantile law. A person skilled in exchanges; one who trades in promissory notes and bills of exchange.

CAMBIUM. In the civil law. Change or exchange. A term applied indifferently to the exchange of land, money, or debts.

Cambium reale or *manuale* was the term generally used to denote the technical common-law exchange of lands; *cambium locale, mercantile*, or *trajectitium*, was used to designate the modern mercantile contract of exchange, whereby a man agrees, in consideration of a sum of money paid him in one place, to pay a like sum in another place. Poth. *de Change*, n. 12; Story, Bills, § 2, et seq.

CAMERA. In old English law. A chamber, room, or apartment; a judge's chamber; a treasury; a chest or coffer. Also, a stipend payable from vassal to lord; an annuity. D

CAMERA REGIS. In old English law. A chamber of the king; a place of peculiar privileges especially in a commercial point of view. E

CAMERA SCACCARII. The old name of the exchequer chamber, (q. v.) F

CAMERA STELLATA. The star chamber, (q. v.) G

CAMERALISTICS. The science of finance or public revenue, comprehending the means of raising and disposing of it.

CAMERARIUS. A chamberlain; a keeper of the public money; a treasurer. Also a bailiff or receiver. H

CAMINO. In Spanish law. A road or highway. Las Partidas, pt. 3, tit. 2, l. 6. I

CAMPANA. In old European law. A bell. Spelman.

CAMPANA BAJULA. A small hand-bell used in the ceremonies of the Romish church; and, among Protestants, by sextons, parish clerks, and criers. Cowell. J

CAMPANARIUM, CAMPANILE. A belfry, bell tower, or steeple; a place where bells are hung. Spelman; Townsh. Pl. 191, 213. K

CAMPARTUM. A part of a larger field or ground, which would otherwise be in gross or in common. L

CAMPBELL'S (LORD) ACTS. English statutes, for amending the practice in prosecutions for libel, 9 & 10 Vict. c. 93; also 6 & 7 Vict. c. 96, providing for compensation to relatives in the case of a person hav- M

ing been killed through negligence; also 20 & 21 Vict. c. 83, in regard to the sale of obscene books, etc.

CAMPERS. A share; a champertor's share; a champertous division or sharing of land.

CAMPERTUM. A corn-field; a field of grain. Blount; Cowell; Jacob.

CAMPFIGHT. In old English law. The fighting of two champions or combatants in the field; the judicial combat, or *duellum*. 3 Inst. 221.

CAMPUS. In old European law. An assembly of the people; so called from being anciently held in the open air, in some plain capable of containing a large number of persons.

In feudal and old English law. A field, or plain. The field, ground, or lists marked out for the combatants in the *duellum*, or trial by battle.

CAMPUS MAII. L. Lat. The field of May. An anniversary assembly of the Saxons, held on May-day, when they confederated for the defense of the kingdom against all its enemies.

CAMPUS MARTII. The field of March. See **CHAMP DE MARS**.

CAN. A promise to pay as soon as the debtor possibly *can* is in contemplation of law a promise to pay presently; the law supposes every man able to pay his debts. 1 Bibb, 396.

CANA. A distance in the measure of ground.

CANAL. An artificial ditch or trench in the earth, for confining water to a defined channel, to be used for purposes of transportation.

The meaning of this word, when applied to artificial passages for water, is a trench or excavation in the earth, for conducting water and confining it to narrow limits. It is unlike the words "river," "pond," "lake," and other words used to designate natural bodies of water, the ordinary meaning of which is confined to the water itself; but it includes also the banks, and has reference rather to the excavation or channel as a receptacle for the water; it is an artificial thing. 18 Conn. 394. See, also, 103 U. S. 604.

CANCEL. To obliterate, strike, or cross out; to destroy the effect of an instrument

by defacing, obliterating, expunging, or erasing it. See 18 Cal. 451.

In equity. Courts of equity frequently cancel instruments which have answered the end for which they were created, or instruments which are void or voidable, in order to prevent them from being vexatiously used against the person apparently bound by them. Snell, Eq. 498.

CANCELLARIA. Chancery; the court of chancery. *Curia cancellaria* is also used in the same sense. See 4 Bl. Comm. 46; Cowell.

Cancellarii Angliæ dignitas est, ut secundus a rege in regno habetur. The dignity of the chancellor of England is that he is deemed the second from the sovereign in the kingdom. 4 Inst. 78.

CANCELLARIUS. A chancellor; a scrivener, or notary. A janitor, or one who stood at the door of the court and was accustomed to carry out the commands of the judges.

CANCELLATION. The act of crossing out a writing. The manual operation of tearing or destroying a written instrument. 1 Eq. Cas. Abr. 409; Rob. Wills, 367, n.

According to Bartolus, an expunging or wiping out of the contents of an instrument by two lines drawn in the manner of a cross; also used to signify any manner of obliteration and defacement.

CANCELLATURA. In old English law. A cancelling. Bract. 398*b*.

CANCELLI. The rails or lattice work or balusters inclosing the bar of a court of justice or the communion table. Also the lines drawn on the face of a will or other writing, with the intention of revoking or annulling it.

CANDIDATE. A person who offers himself, or is presented by others, to be elected to an office. Derived from the Latin *candidus*, (white,) because in Rome it was the custom for those who sought office to clothe themselves in white garments.

One who seeks or aspires to some office or privilege, or who offers himself for the same. A man is a candidate for an office when he is seeking such office. It is not necessary that he should have been *nominated* for the office. 112 Pa. St. 624, 4 Atl. Rep. 607.

CANDLEMAS-DAY. A festival appointed by the church to be observed on the second day of February in every year, in

honor of the purification of the Virgin Mary, being forty days after her miraculous delivery. At this festival, formerly, the Protestants went, and the Papists now go, in procession with lighted candles; they also consecrate candles on this day for the service of the ensuing year. It is the fourth of the four cross quarter-days of the year. Wharton.

CANFARA. In old records. A trial by hot iron, formerly used in England. Whishaw.

CANON. A law, rule, or ordinance in general, and of the church in particular. An ecclesiastical law or statute.

One of the dignitaries of the English church; being a prebendary or member of a chapter.

In the civil, Spanish, and Mexican law. An annual charge or rent; an emphyteutic rent. See 15 Cal. 556.

In old English records. A prestation, pension, or customary payment. Cowell.

CANON LAW. A body of ecclesiastical jurisprudence which, in countries where the Roman Catholic church is established, is composed of maxims and rules drawn from patristic sources, ordinances and decrees of general councils, and the decretals and bulls of the popes. In England, according to Blackstone, there is a kind of national canon law, composed of legatine and provincial constitutions enacted in England prior to the reformation, and adapted to the exigencies of the English church and kingdom. 1 Bl. Comm. 82.

The canon law consists partly of certain rules taken out of the Scripture, partly of the writings of the ancient fathers of the church, partly of the ordinances of general and provincial councils, and partly of the decrees of the popes in former ages; and it is contained in two principal parts,—the decrees and the decretals. The decrees are ecclesiastical constitutions made by the popes and cardinals. The decretals are canonical epistles written by the pope, or by the pope and cardinals, at the suit of one or more persons, for the ordering and determining of some matter of controversy, and have the authority of a law. As the decrees set out the origin of the canon law, and the rights, dignities, and decrees of ecclesiastical persons, with their manner of election, ordination, etc., so the decretals contain the law to be used in the ecclesiastical courts. Jacob.

CANON RELIGIOSORUM. Lat. In ecclesiastical records. A book wherein the religious of every greater convent had a fair transcript of the rules of their order, frequently read among them as their local statutes. Kennett, Gloss.; Cowell.

CANONICAL. Pertaining to, or in conformity to, the canons of the church.

CANONICAL OBEDIENCE. That duty which a clergyman owes to the bishop who ordained him, to the bishop in whose diocese he is beneficed, and also to the metropolitan of such bishop. Wharton.

CANONICUS. In old English law. A canon. Fleta, lib. 2, c. 69, § 2.

CANONIST. One versed and skilled in the canon law; a professor of ecclesiastical law.

CANONRY. In English ecclesiastical law. An ecclesiastical benefice, attaching to the office of canon. Holthouse.

CANONS OF DESCENT. The legal rules by which inheritances are regulated, and according to which estates are transmitted by descent from the ancestor to the heir.

CANONS OF INHERITANCE. The legal rules by which inheritances are regulated, and according to which estates are transmitted by descent from the ancestor to the heir. 2 Bl. Comm. 208.

CANT. In the civil law. A method of dividing property held in common by two or more joint owners. See 9 Mart. (La.) 87.

CANTEL, or CANTLE. A lump, or that which is added above measure; also a piece of anything, as "canel of bread," or the like. Blount.

CANTERBURY, ARCHBISHOP OF. In English ecclesiastical law. The primate of all England; the chief ecclesiastical dignitary in the church. His customary privilege is to crown the kings and queens of England; while the Archbishop of York has the privilege to crown the queen consort, and be her perpetual chaplain. The Archbishop of Canterbury has also, by 25 Hen. VIII. c. 21, the power of granting dispensations in any case not contrary to the holy scriptures and the law of God, where the pope used formerly to grant them, which is the foundation of his granting special licenses to marry at any place or time; to hold two livings, (which must be confirmed under the great seal,) and the like; and on this also is founded the right he exercises of conferring degrees in prejudice of the two universities. Wharton.

CANTRED. A district comprising a hundred villages; a hundred. A term used in Wales in the same sense as "hundred" is in England. Cowell; Termes de la Ley.

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CANUM. In feudal law. A species of duty or tribute payable from tenant to lord, usually consisting of produce of the land.

CANVASS. The act of examining and counting the returns of votes cast at a public election.

CAP OF MAINTENANCE. One of the regalia or ornaments of state belonging to the sovereigns of England, before whom it is carried at the coronation and other great solemnities. Caps of maintenance are also carried before the mayors of several cities in England. Enc. Lond.

CAPACITY. Legal capacity is the attribute of a person who can acquire new rights, or transfer rights, or assume duties, according to the mere dictates of his own will, as manifested in juristic acts, without any restraint or hindrance arising from his *status* or legal condition.

Ability; qualification; legal power or right. Applied in this sense to the attribute of persons (natural or artificial) growing out of their *status* or juristic condition, which enables them to perform civil acts; as capacity to hold lands, capacity to devise, etc.

CAPAX DOLI. Lat. Capable of committing crime, or capable of criminal intent. The phrase describes the condition of one who has sufficient intelligence and comprehension to be held criminally responsible for his deeds.

CAPAX NEGOTII. Competent to transact affairs; having business capacity.

CAPE. In English practice. A judicial writ touching a plea of lands or tenements, divided into *cape magnum*, or the *grand cape*, which lay before appearance to summon the tenant to answer the default, and also over to the demandant; the *cape ad valentiam* was a species of grand cape; and *cape parvum*, or *petit cape*, after appearance or view granted, summoning the tenant to answer the default only. *Termes de la Ley*; 3 Steph. Comm. 606, note.

CAPE AD VALENTIAM. A species of *cape magnum*. See **CAPE**.

CAPELLA. In old records. A box, cabinet, or repository in which were preserved the relics of martyrs. Spelman. A small building in which relics were preserved; an oratory or chapel. Id.

In old English law. A chapel. *Fleta*, lib. 5, c. 12, § 1; Spelman; Cowell.

CAPERS. Vessels of war owned by private persons, and different from ordinary privateers only in size, being smaller. Beawes, *Lex Merc.* 230.

CAPIAS. Lat. "That you take." The general name for several species of writs, the common characteristic of which is that they require the officer to take the body of the defendant into custody; they are writs of attachment or arrest.

In English practice. A *capias* is the process on an indictment when the person charged is not in custody, and in cases not otherwise provided for by statute. 4 Steph. Comm. 388.

CAPIAS AD AUDIENDUM JUDICIUM. In practice. A writ issued, in a case of misdemeanor, after the defendant has appeared and is found guilty, to bring him to hear judgment if he is not present when called. 4 Bl. Comm. 368.

CAPIAS AD COMPUTANDUM. In the action of account render, after judgment of *quod computet*, if the defendant refuses to appear personally before the auditors and make his account, a writ by this name may issue to compel him.

CAPIAS AD RESPONDENDUM. In practice. A judicial writ, (usually simply termed a "*capias*,") by which actions at law were frequently commenced; and which commands the sheriff to *take* the defendant, and him safely keep, so that he may have his body before the court on a certain day, to *answer* the plaintiff in the action. 3 Bl. Comm. 282; 1 Tidd, Pr. 128. The name of this writ is commonly abbreviated to *ca. resp.*

CAPIAS AD SATISFACIENDUM. In practice. A writ of execution, (usually termed, for brevity, a "*ca. sa.*,") which a party may issue after having recovered judgment against another in certain actions at law. It commands the sheriff to *take* the party named, and keep him safely, so that he may have his body before the court on a certain day, to *satisfy* the party by whom it is issued, the damages or debt and damages recovered by the judgment. Its effect is to deprive the party taken of his liberty until he makes the satisfaction awarded. 3 Bl. Comm. 414, 415; 2 Tidd, Pr. 993, 1025; Litt. § 504; Co. Litt. 289a.

CAPIAS EXTENDI FACIAS. A writ of execution issuable in England against a debtor to the crown, which commands the sheriff to "take" or arrest the body, and

CAPITAL PUNISHMENT. The punishment of death.

CAPITAL STOCK. The common stock or fund of a corporation. The sum of money raised by the subscriptions of the stockholders, and divided into shares. It is said to be the sum upon which calls may be made upon the stockholders, and dividends are to be paid. 1 Sandf. Ch. 280; Ang. & A. Corp. §§ 151, 556.

Originally "the capital stock of the bank" was all the property of every kind, everything, which the bank possessed. And this "capital stock," all of it, in reality belonged to the contributors, it being intrusted to the bank to be used and traded with for their exclusive benefit; and thus the bank became the agent of the contributors, so that the transmutation of the money originally advanced by the subscribers into property of other kinds, though it altered the form of the investment, left its beneficial ownership unaffected; and every new acquisition of property, by exchange or otherwise, was an acquisition for the original subscribers or their representatives, their respective interests in it all always continuing in the same proportion as in the aggregate capital originally advanced. So that, whether in the form of money, bills of exchange, or any other property in possession or in action into which the money originally contributed has been changed, or which it has produced, all is, as the original contribution was, the capital stock of the bank, held, as the original contribution was, for the exclusive benefit of the original contributors and those who represent them. The original contributors and those who represent them are the stockholders. 31 Conn. 109.

Capital stock, as employed in acts of incorporation, is never used to indicate the value of the property of the company. It is very generally, if not universally, used to designate the amount of capital prescribed to be contributed at the outset by the stockholders, for the purposes of the corporation. The value of the corporate assets may be greatly increased by surplus profits, or be diminished by losses, but the amount of the capital stock remains the same. The funds of the company may fluctuate; its capital stock remains invariable, unless changed by legislative authority. 23 N. J. Law, 195.

CAPITALE. A thing which is stolen, or the value of it. Blount.

CAPITALE VIVENS. Live cattle. Blount.

CAPITALIS. In old English law. Chief, principal; at the *head*. A term applied to persons, places, judicial proceedings, and some kinds of property.

CAPITALIS BARO. In old English law. Chief baron. *Capitalis baro scaccarii domini regis*, chief baron of the exchequer. Townsh. Pl. 211.

CAPITALIS CUSTOS. Chief warden or magistrate; mayor. Fleta, lib. 2, c. 64, § 2.

CAPITALIS DEBITOR. The chief or principal debtor, as distinguished from a surety, (*plegius*.)

CAPITALIS DOMINUS. Chief lord. Fleta, lib. 1, c. 12, § 4; Id. c. 28, § 5.

CAPITALIS JUSTICIARIUS. The chief justiciary; the principal minister of state, and guardian of the realm in the king's absence.

This office originated under William the Conqueror; but its power was greatly diminished by *Magna Charta*, and finally distributed among several courts by Edward I. Spelman; 3 Bl. Comm. 38.

CAPITALIS JUSTICIARIUS AD PLACITA CORAM REGE TENENDA. Chief justice for holding pleas before the king. The title of the chief justice of the king's bench, first assumed in the latter part of the reign of Henry III. 2 Reeve, Eng. Law, 91, 285.

CAPITALIS JUSTICIARIUS BANCII. Chief justice of the bench. The title of the chief justice of the (now) court of common pleas, first mentioned in the first year of Edward I. 2 Reeve, Eng. Law, 48.

CAPITALIS JUSTICIARIUS TOTIUS ANGLIÆ. Chief justice of all England. The title of the presiding justice in the court of *aula regis*. 3 Bl. Comm. 38; 1 Reeve, Eng. Law, 48.

CAPITALIS PLEGIUS. A chief pledge; a head borough. Townsh. Pl. 35.

CAPITALIS REDITUS. A chief rent.

CAPITALIS TERRA. A head-land. A piece of land lying at the head of other land.

CAPITANEUS. A tenant *in capite*. He who held his land or title directly from the king himself. A captain; a naval commander.

CAPITARE. In old law and surveys. To head, front, or abut; to touch at the head, or end.

CAPITATIM. Lat. By the head; by the poll; severally to each individual.

CAPITATION. (Lat. *caput*, head.) A poll-tax. An imposition periodically laid upon each person.

A tax or imposition raised on each person in consideration of his labor, industry,

CAPITAL PUNISHMENT. The punishment of death.

CAPITAL STOCK. The common stock or fund of a corporation. The sum of money raised by the subscriptions of the stockholders, and divided into shares. It is said to be the sum upon which calls may be made upon the stockholders, and dividends are to be paid. 1 Sandf. Ch. 280; Ang. & A. Corp. §§ 151, 556.

Originally "the capital stock of the bank" was all the property of every kind, everything, which the bank possessed. And this "capital stock," all of it, in reality belonged to the contributors, it being intrusted to the bank to be used and traded with for their exclusive benefit; and thus the bank became the agent of the contributors, so that the transmutation of the money originally advanced by the subscribers into property of other kinds, though it altered the form of the investment, left its beneficial ownership unaffected; and every new acquisition of property, by exchange or otherwise, was an acquisition for the original subscribers or their representatives, their respective interests in it all always continuing in the same proportion as in the aggregate capital originally advanced. So that, whether in the form of money, bills of exchange, or any other property in possession or in action into which the money originally contributed has been changed, or which it has produced, all is, as the original contribution was, the capital stock of the bank, held, as the original contribution was, for the exclusive benefit of the original contributors and those who represent them. The original contributors and those who represent them are the stockholders. 81 Conn. 109.

Capital stock, as employed in acts of incorporation, is never used to indicate the value of the property of the company. It is very generally, if not universally, used to designate the amount of capital prescribed to be contributed at the outset by the stockholders, for the purposes of the corporation. The value of the corporate assets may be greatly increased by surplus profits, or be diminished by losses, but the amount of the capital stock remains the same. The funds of the company may fluctuate; its capital stock remains invariable, unless changed by legislative authority. 23 N. J. Law, 195.

CAPITALE. A thing which is stolen, or the value of it. Blount.

CAPITALE VIVENS. Live cattle. Blount.

CAPITALIS. In old English law. Chief, principal; at the *head*. A term applied to persons, places, judicial proceedings, and some kinds of property.

CAPITALIS BARO. In old English law. Chief baron. *Capitalis baro scaccarii domini regis*, chief baron of the exchequer. Townsh. Pl. 211.

CAPITALIS CUSTOS. Chief warden or magistrate; mayor. Fleta, lib. 2, c. 64, § 2.

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CAPITATIM. Lat. By the head; by the poll; severally to each individual.

CAPITATION. (Lat. *caput*, head.) A poll-tax. An imposition periodically laid upon each person.

A tax or imposition raised on each person in consideration of his labor, industry,

office, rank, etc. 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 merchandise, called "*vectigalia*." Wharton.

CAPITATION TAX. One which is levied upon the person simply, without any reference to his property, real or personal, or to any business in which he may be engaged, or to any employment which he may follow. Pbillips, 22.

CAPITE. By the head. Tenure *in capite* was an ancient feudal tenure, whereby a man held lands of the king immediately. It was of two sorts,—the one, principal and general, or of the king as the source of all tenure; the other, special and subaltern, or of a particular subject. It is now abolished. Jacob. As to distribution *per capita*, see **CAPITA**.

CAPITE MINUTUS. In the civil law. One who had suffered *capitis diminutio*, one who lost *status* or legal attributes. See Dig. 4. 5.

CAPITIS DIMINUTIO. In Roman law. A diminishing or abridgment of personality. This was a loss or curtailment of a man's *status* or aggregate of legal attributes and qualifications, following upon certain changes in his civil condition. It was of three kinds, enumerated as follows:

Capitis diminutio maxima. The highest or most comprehensive loss of *status*. This occurred when a man's condition was changed from one of freedom to one of bondage, when he became a slave. It swept away with it all rights of citizenship and all family rights.

Capitis diminutio media. A lesser or medium loss of *status*. This occurred where a man lost his rights of citizenship, but without losing his liberty. It carried away also the family rights.

Capitis diminutio minima. The lowest or least comprehensive degree of loss of *status*. This occurred where a man's family relations alone were changed. It happened upon the arrogation of a person who had been his own master, (*sui juris*.) or upon the emancipation of one who had been under the *patria potestas*. It left the rights of liberty and citizenship unaltered. See Inst. 1, 16, pr.; 1, 2, 3; Dig. 4, 5, 11; Mackeld. Rom Law, § 144.

CAPITITIUM. A covering for the head, mentioned in St. 1 Hen. IV. and other

old statutes, which prescribe what dresses shall be worn by all degrees of persons. Jacob.

CAPITULA. Collections of laws and ordinances drawn up under heads of divisions. Spelman.

The term is used in the civil and old English law, and applies to the ecclesiastical law also, meaning chapters or assemblies of ecclesiastical persons. Du Cange.

CAPITULA CORONÆ. Chapters of the crown. Chapters or heads of inquiry, resembling the *capitula itineris*, (*q.v.*) but of a more minute character.

CAPITULA DE JUDÆIS. A register of mortgages made to the Jews. 2 Bl. Comm. 343; Crabb, Eng. Law, 130, et seq.

CAPITULA ITINERIS. Articles of inquiry which were anciently delivered to the justices in eyre when they set out on their circuits. These schedules were designed to include all possible varieties of crime. 2 Reeve, Eng. Law, p. 4, c. 8.

CAPITULA RURALIA. Assemblies or chapters, held by rural deans and parochial clergy, within the precinct of every deanery; which at first were every three weeks, afterwards once a month, and subsequently once a quarter. Cowell.

CAPITULARY. In French law. A collection and code of the laws and ordinances promulgated by the kings of the Merovingian and Carlovingian dynasties.

Any orderly and systematic collection or code of laws.

In ecclesiastical law. A collection of laws and ordinances orderly arranged by divisions. A book containing the beginning and end of each Gospel which is to be read every day in the ceremony of saying mass. Du Cange.

CAPITULATION. In military law. The surrender of a fort or fortified town to a besieging army; the treaty or agreement between the commanding officers which embodies the terms and conditions on which the surrender is made.

In the civil law. An agreement by which the prince and the people, or those who have the right of the people, regulate the manner in which the government is to be administered. Wolfius, § 989.

CAPITULI AGRARI. Head-fields; lands lying at the head or upper end of furrows etc.

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Capitulum est clericorum congregatio sub uno decano in ecclesia cathedrali. A chapter is a congregation of clergy under one dean in a cathedral church. Co. Litt. 98.

CAPPA. In old records. A cap. *Cappa honoris*, the cap of honor. One of the solemnities or ceremonies of creating an earl or marquis.

CAPTAIN. A head-man; commander; commanding officer. The captain of a war-vessel is the officer first in command. In the United States navy, the rank of "captain" is intermediate between that of "commander" and "commodore." The governor or controlling officer of a vessel in the merchant service is usually styled "captain" by the inferior officers and seamen, but in maritime business and admiralty law is more commonly designated as "master." In foreign jurisprudence his title is often that of "patron." In the United States army (and the militia) the captain is the commander of a company of soldiers, one of the divisions of a regiment. The term is also used to designate the commander of a squad of municipal police.

CAPTATION. In French law. The act of one who succeeds in controlling the will of another, so as to become master of it; used in an invidious sense.

CAPTATOR. A person who obtains a gift or legacy through artifice.

CAPTIO. In old English law and practice. A taking or seizure; arrest; receiving; holding of court.

CAPTION. In practice. That part of a legal instrument, as a commission, indictment, etc., which shows where, when, and by what authority it is taken, found, or executed.

When used with reference to an indictment, caption signifies the style or preamble or commencement of the indictment; when used with reference to a commission, it signifies the certificate to which the commissioners' names are subscribed, declaring when and where it was executed. Brown.

The caption of a pleading, deposition, or other paper connected with a case in court, is the heading or introductory clause which shows the names of the parties, name of the court, number of the case on the docket or calendar, etc.

Also signifies a taking, seizure, or arrest of a person. 2 Salk. 498. The word in this sense is now obsolete in English law.

In Scotch law. Caption is an order to incarcerate a debtor who has disobeyed an

order, given to him by what are called "letters of horning," to pay a debt or to perform some act enjoined thereby. Bell.

CAPTIVES. Prisoners of war. As in the goods of an enemy, so also in his person, a sort of qualified property may be acquired, by taking him a prisoner of war, at least till his ransom be paid. 2 Bl. Comm. 402.

CAPTOR. In international law. One who takes or seizes property in time of war; one who takes the property of an enemy. In a stricter sense, one who takes a prize at sea. 2 Bl. Comm. 401; 1 Kent, Comm. 86, 96, 103.

CAPTURE. In international law. The taking or wresting of property from one of two belligerents by the other. It occurs either on land or at sea. In the former case, the property captured is called "booty;" in the latter case, "prize."

Capture, in technical language, is a taking by military power; a seizure is a taking by civil authority. 35 Ga. 344.

In some cases, this is a mode of acquiring property. Thus, everyone may, as a general rule, on his own land, or on the sea, capture any wild animal, and acquire a qualified ownership in it by confining it, or absolute ownership by killing it. 2 Steph. Comm. 79.

CAPUT. A head; the head of a person; the whole person; the life of a person; one's personality; *status*; civil condition.

At common law. A head.

Caput comitatus, the head of the county; the sheriff; the king. Spelman.

A person; a life. The upper part of a town. Cowell. A castle. Spelman.

In the civil law. It signified a person's civil condition or *status*, and among the Romans consisted of three component parts or elements,—*libertas*, liberty; *civitas*, citizenship; and *familia*, family.

CAPUT ANNI. The first day of the year.

CAPUT BARONIÆ. The castle or chief seat of a baron.

CAPUT JEJUNII. The beginning of the Lent fast, *i. e.*, Ash Wednesday.

CAPUT LOCI. The head or upper part of a place.

CAPUT LUPINUM. In old English law. A wolf's head. An outlawed felon was said to be *caput lupinum*, and might be knocked on the head, like a wolf.

CAPUT MORTUUM. A dead head; lead; obsolete.

CAPUT PORTUS. In old English law. The head of a port. The town to which a port belongs, and which gives the denomination to the port, and is the head of it. Hale de Jure Mar. pt. 2, (*de portibus maris*), c. 2.

CAPUT, PRINCIPIUM, ET FINIS. The head, beginning, and end. A term applied in English law to the king, as head of parliament. 4 Inst. 3; 1 Bl. Comm. 188.

CAPUTAGIUM. In old English law. Head or poll money, or the payment of it. Cowell; Blount.

CAPUTIUM. In old English law. A head of land; a headland. Cowell.

CARABUS. In old English law. A kind of raft or boat. Spelman.

CARAT. A weight of four grains, used in weighing diamonds. Webster. A weight equal to three and one-sixth grains. Wharton.

CARCAN. In French law. An instrument of punishment, somewhat resembling a pillory. It sometimes signifies the punishment itself. Biret, Vocab

CARCANUM. A gaol; a prison.

CARCARE. In old English law. To load; to load a vessel; to freight.

CARCATUS. Loaded; freighted, as a ship.

CARCEL-AGE. Gaol-dues; prison-fees.

CARCER. A prison or gaol. Strictly, a place of detention and safe-keeping, and not of punishment. Co. Litt. 620.

Carcer ad homines custodiendos, non ad puniendos, dari debet. A prison should be used for keeping persons, not for punishing them. Co. Litt. 260a.

Carcer non supplicii causâ sed custodiæ constitutus. A prison is ordained not for the sake of punishment, but of detention and guarding. Lofft, 119.

CARDINAL. In ecclesiastical law. A dignitary of the court of Rome, next in rank to the pope.

CARDS. In criminal law. Small papers or pasteboards of an oblong or rectangular shape, on which are printed figures or points,

used in playing certain games. See 2 Humph. 496; 4 Pick. 251; 19 Mo. 377; 12 Wis. 434.

CARE. As a legal term, this word means diligence, prudence, discretion, attentiveness, watchfulness, vigilance. It is the opposite of negligence or carelessness.

There are three degrees of care in the law, corresponding (inversely) to the three degrees of negligence, viz.: slight care, ordinary care, and great care.

Slight care or diligence is such as persons of ordinary prudence usually exercise about their own affairs of slight importance; ordinary care or diligence is such as they usually exercise about their own affairs of ordinary importance; and great care or diligence is such as they usually exercise about their own affairs of great importance. Civil Code Dak. § 2100.

The exact boundaries between the several degrees of care, and their correlative degrees of carelessness, or negligence, are not always clearly defined or easily pointed out. We think, however, that by "ordinary care" is meant that degree of care which may reasonably be expected from a person in the party's situation,—that is, "reasonable care;" and that "gross negligence" imports not a malicious intention or design to produce a particular injury, but a thoughtless disregard of consequences, the absence, rather than the actual exercise, of volition with reference to results. 23 Conn. 443.

Slight care is such as is usually exercised by persons of common sense, but careless habits, under circumstances similar to those of the particular case in which the question arises, and where their own interests are to be protected from a similar injury.

Ordinary care is such as is usually exercised in the like circumstances by the majority of the community, or by persons of careful and prudent habits.

Great care is such as is exercised under such circumstances by persons of unusually careful and prudent habits. Abbott.

CARENA. A term used in the old ecclesiastical law to denote a period of forty days.

CARENCE. In French law. A *procès-verbal de carence* is a document setting out that the *huissier* attended to issue execution upon a judgment, but found nothing upon which to levy. Arg. Fr. Merc. Law, 547.

CARETA, (spelled, also, *Carreta* and *Carrecta*.) A cart; a cart-load.

CARETORIUS, or CARECTARIUS. A carter. Blount.

CARGA. In Spanish law. An incumbence; a charge. White, New Recop. b. 2, tit. 13, c. 2, § 2.

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CARGAISON. In French commercial law. Cargo; lading.

CARGARE. In old English law. To charge. Spelman.

CARGO. In mercantile law. The load or lading of a vessel; goods and merchandise put on board a ship to be carried to a certain port.

The lading or freight of a ship; the goods, merchandise, or whatever is conveyed in a ship or other merchant vessel. See 1 Mason, 142; 4 Pick. 429; 9 Metc. (Mass.) 366; 103 Mass. 406.

A cargo is the loading of a ship or other vessel, the bulk of which is to be ascertained from the capacity of the ship or vessel. The word embraces all that the vessel is capable of carrying. 3 Rob. (N. Y.) 173.

The term may be applied in such a sense as to include passengers, as well as freight, but in a technical sense it designates goods only.

CARIAGIUM. In old English law. Carriage; the carrying of goods or other things for the king.

CARISTIA. Dearth, scarcity, dearthness. Cowell.

CARK. In old English law. A quantity of wool, whereof thirty make a sarplar. (The latter is equal to 2,240 pounds in weight.) St. 27 Hen. VI. c. 2. Jacob.

CARLISLE TABLES. Life and annuity tables, compiled at Carlisle, England, about 1780. Used by actuaries, etc.

CARMEN. In the Roman law. Literally, a verse or song. A formula or form of words used on various occasions, as of divorce. Tayl. Civil Law, 349.

CARNAL. Of the body; relating to the body; fleshly; sexual.

CARNAL KNOWLEDGE. The act of a man in having sexual bodily connection with a woman.

Carnal knowledge and sexual intercourse held equivalent expressions. 22 Ohio St. 541.

From very early times, in the law, as in common speech, the meaning of the words "carnal knowledge" of a woman by a man has been sexual bodily connection; and these words, without more, have been used in that sense by writers of the highest authority on criminal law, when undertaking to give a full and precise definition of the crime of rape, the highest crime of this character. 97 Mass. 61.

CARNALITER. In old criminal law. Carnally. *Carnaliter cognovit*, carnally

knew. Technical words in indictments for rape, and held essential. 1 Hale, P. C. 637-639.

CARNALLY KNEW. In pleading. A technical phrase essential in an indictment to charge the defendant with the crime of rape.

CARNO. In old English law. An immunity or privilege. Cowell.

CAROOME. In English law. A license by the lord mayor of London to keep a cart.

CARPEMEALS. Cloth made in the northern parts of England, of a coarse kind, mentioned in 7 Jac. 1. c. 16. Jacob.

CARRERA. In Spanish law. A carriage-way; the right of a carriage-way. *Las Partidas*, pt. 3, tit. 31, l. 3.

CARRIAGE. A vehicle used for the transportation of persons either for pleasure or business, and drawn by horses or other draught animals over the ordinary streets and highways of the country; not including cars used exclusively upon railroads or street railroads expressly constructed for the use of such cars. 63 Wis. 97, 23 N. W. Rep. 425; 8 Kan. 84; 47 N. Y. 122; 46 N. H. 523; 5 Q. B. Div. 176.

The act of carrying, or a contract for transportation of persons or goods.

The contract of carriage is a contract for the conveyance of property, persons, or messages from one place to another. Civil Code Cal. § 2085; Civil Code Dak. § 1208.

CARRICLE, or CARRACLE. A ship of great burden.

CARRIER. One who undertakes to transport goods from one place to another. 1 Pars. Cont. 632.

One who carries or agrees to carry the goods of another, from one place to another, for hire, or without hire.

Carriers are either common or private. Private carriers are persons who undertake for the transportation in a particular instance only, not making it their vocation, nor holding themselves out to the public as ready to act for all who desire their services.

To bring a person within the description of a common carrier, he must exercise it as a public employment; he must undertake to carry goods for persons generally; and he must hold himself out as ready to transport goods for hire, as a business, not as a casual occupation, *pro hac vice*.

"CARRY AWAY." A technical phrase in an indictment for larceny, translating the Lat. *asportavit*. 7 Gray, 45.

CARRYING AWAY. In criminal law. The act of removal or asportation, by which the crime of larceny is completed, and which is essential to constitute it.

CARRYING AWAY INFANT FEMALES. See ABDUCTION.

CARRYING COSTS. A verdict is said to carry costs when the party for whom the verdict is given becomes entitled to the payment of his costs as incident to such verdict.

CART. A carriage for luggage or burden, with two wheels, as distinguished from a wagon, which has four wheels. The vehicle in which criminals are taken to execution.

This word, in its ordinary and primary acceptation, signifies a carriage with two wheels; yet it has also a more extended signification, and may mean a carriage in general. 22 Ala. 624.

CART BOTE. Wood or timber which a tenant is allowed by law to take from an estate, for the purpose of repairing instruments, (including necessary vehicles,) of husbandry. 2 Bl. Comm. 35.

CARTA. In old English law. A charter, or deed. Any written instrument.

In Spanish law. A letter; a deed; a power of attorney. Las Partidas, pt. 3, tit. 18, l. 30.

CARTA DE FORESTA. In old English law. The charter of the forest. More commonly called "*Charta de Foresta*," (g. v.)

CARTE. In French marine law. A chart.

CARTE BLANCHE. A white sheet of paper; an instrument signed, but otherwise left blank. A sheet given to an agent, with the principal's signature appended, to be filled up with any contract or engagement as the agent may see fit. Hence, metaphorically, unlimited authority.

CARTEL. An agreement between two hostile powers for the delivery of prisoners or deserters. Also a written challenge to fight a duel.

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. Enc. Lond.

CARTMEN. Carriers who transport goods and merchandise in carts, usually for short distances, for hire.

CARTULARY. A place where papers or records are kept.

CARUCA, or CARUA. A plow.

CARUCAGE. In old English law. A kind of tax or tribute anciently imposed upon every plow, (*carue* or plow-land,) for the public service. Spelman. **D**

CARUCATA. A certain quantity of land used as the basis for taxation. As much land as may be tilled by a single plow in a year and a day. Also, a team of cattle, or a cart-load. **E**

CARUCATARIUS. One who held lands in *carvage*, or plow-tenure. Cowell.

CARUE. A carve of land; plow-land. **F**
Britt. c. 84.

CARVAGE. The same as *carucage*, (g. v.) Cowell.

CARVE. In old English law. A *carucate* or plow-land. **G**

CAS FORTUIT. Fr. In the law of insurance. A fortuitous event; an inevitable accident. **H**

CASATA. In old English law. A house with land sufficient for the support of one family. Otherwise called "*hida*," a bide of land. and by Bede, "*familia*." Spelman. **I**

CASATUS. A vassal or feudal tenant possessing a *casata*; that is, having a house, household, and property of his own.

CASE. 1. A general term for an action, cause, suit, or controversy, at law or in equity. A question contested before a court of justice. **J**

The primary meaning of "case" is "cause." **K**
When applied to legal proceedings, it imports a state of facts which furnishes occasion for the exercise of the jurisdiction of a court of justice. In its generic sense, the word includes all cases, special or otherwise. 12 N. Y. 592, 596.

2. A statement of the facts involved in a transaction or series of transactions, drawn up in writing in a technical form, for submission to a court or judge for decision or opinion. Under this meaning of the term are included a "case made" for a motion for new trial, a "case reserved" on the trial of **M**

a cause, an "agreed case" for decision without trial, etc.

3. A form of action which lies to recover damages for injuries for which the more ancient forms of action will not lie. Steph. Pl. 15. See TRESPASS ON THE CASE.

CASE AGREED ON. A formal written enumeration of the facts in a case, assented to by both parties as correct and complete, and submitted to the court by their agreement, in order that a decision may be rendered, without a trial, upon the court's conclusions of law upon the facts as stated.

CASE FOR MOTION. In English divorce and probate practice, when a party desires to make a motion, he must file, among other papers, a case for motion, containing an abstract of the proceedings in the suit or action, a statement of the circumstances on which the motion is founded, and the prayer, or nature of the decree or order desired. Browne, Div. 251; Browne, Prob. Pr. 295.

CASE LAW. A professional name for the aggregate of reported cases as forming a body of jurisprudence; or for the law of a particular subject as evidenced or formed by the adjudged cases; in distinction to statutes and other sources of law.

CASE ON APPEAL. In American practice. Before the argument in the appellate court of a case brought there for review, the appellant's counsel prepares a document or brief, bearing this name, for the information of the court, detailing the testimony and the proceedings below.

In English practice. The "case on appeal" is a printed statement prepared by each of the parties to an appeal to the house of lords or the privy council, setting out methodically the facts which make up his case, with appropriate references to the evidence printed in the "appendix." The term also denotes a written statement, prepared and transmitted by an inferior court or judge, raising a question of law for the opinion of a superior court.

CASE RESERVED. A statement in writing of the facts proved on the trial of a cause, drawn up and settled by the attorneys and counsel for the respective parties under the supervision of the judge, for the purpose of having certain points of law, which arose at the trial, and could not then be satisfactorily decided, determined upon full argument before the court in *banc*. This is otherwise called a "special case;" and it is usual

for the parties, where the law of the case is doubtful, to agree that the jury shall find a general verdict for the plaintiff, subject to the opinion of the court upon such a case to be made, instead of obtaining from the jury a special verdict. 3 Bl. Comm. 378; 3 Steph. Comm. 621; Steph. Pl. 92, 93; 1 Burrill, Pr. 242, 463.

CASE STATED. In practice. An agreement in writing, between a plaintiff and defendant, that the facts in dispute between them are as therein agreed upon and set forth. 3 Whart. 143. A case agreed upon. See **CASE AGREED ON**.

CASE TO MOVE FOR NEW TRIAL. In practice. A case prepared by the party against whom a verdict has been given, upon which to move the court to set aside the verdict and grant a new trial.

CASH. Ready money; whatever can be used as money without being converted into another form; that which circulates as money, including bank-bills.

Cash payment means the opposite of credit 6 Md. 37; 24 N. J. Law, 96.

CASH-ACCOUNT. A record, in book-keeping, of all cash transactions; an account of moneys received and expended.

CASH-BOOK. In book-keeping, an account-book in which is kept a record of all cash transactions, or all cash received and expended. The object of the cash-book is to afford a constant facility to ascertain the true state of a man's cash. Pardessus, n. 87.

CASH-NOTE. In England. A bank-note of a provincial bank or of the Bank of England.

CASH-PRICE. A price payable in cash at the time of sale of property, in opposition to a barter or a sale on credit.

CASHIER, n. An officer of a moneyed institution, or commercial house, or bank, who is intrusted with, and whose duty it is to take care of, the cash or money of such institution or bank.

The cashier of a bank is the executive officer, through whom the whole financial operations of the bank are conducted. He receives and pays out its moneys, collects and pays its debts, and receives and transfers its commercial securities. Tellers and other subordinate officers may be appointed, but they are under his direction, and are, as it were, the arms by which designated portions of his various functions are discharged. The

directors may limit his authority as they deem proper, but this would not affect those to whom the limitation was unknown. 10 Wall. 650.

CASHIER, v. In military law. To deprive a military officer of his rank and office.

CASHLITE. An amercement or fine; a mulct.

CASSABE. To quash; to render void; to break.

CASSATION. In French law. Annuling; reversal; breaking the force and validity of a judgment. A decision emanating from the sovereign authority, by which a decree or judgment in the court of last resort is broken or annulled. Merl. Repert.

CASSATION, COURT OF. (Fr. *cour de cassation*.) The highest court in France; so termed from possessing the power to quash (*casser*) the decrees of inferior courts. It is a court of appeal in criminal as well as civil cases.

CASSETUR BILLA. (Lat. That the bill be quashed.) In practice. The form of the judgment for the defendant on a plea in abatement, where the action was commenced by bill, (*bill*.) 3 Bl. Comm. 303; Steph. Pl. 128, 131. The form of an entry made by a plaintiff on the record, after a plea in abatement, where he found that the plea could not be confessed and avoided, nor traversed, nor demurred to; amounting in fact to a discontinuance of the action. 2 Archb. Pr. K. B. 3, 236; 1 Tidd, Pr. 683.

CASSETUR BREVE. (Lat. That the writ be quashed.) In practice. The form of the judgment for the defendant on a plea in abatement, where the action was commenced by original writ, (*breve*.) 3 Bl. Comm. 303; Steph. Pl. 107, 109.

CASSOCK, or CASSULA. A garment worn by a priest.

CAST, v. In old English practice. To allege, offer, or present; to proffer by way of excuse, (as to "cast an essoin.")

This word is now used as a popular, rather than a technical, term, in the sense of to overcome, overthrow, or defeat in a civil action at law.

CAST, p. p. Overthrown, worsted, or defeated in an action.

CASTEL, or CASTLE. A fortress in a town; the principal mansion of a nobleman. 3 Inst. 31.

CASTELLAIN. In old English law. The lord, owner, or captain of a castle; the constable of a fortified house; a person having the custody of one of the crown mansions; an officer of the forest.

CASTELLANUS. A castellan; the keeper or constable of a castle. Spelman.

CASTELLARIUM, CASTELLATUS. In old English law. The precinct or jurisdiction of a castle. Blount.

CASTELLORUM OPERATIO. In Saxon and old English law. Castle work. Service and labor done by inferior tenants for the building and upholding castles and public places of defense. One of the three necessary charges, (*trinoda necessitas*), to which all lands among the Saxons were expressly subject. Cowell.

CASTIGATORY. An engine used to punish women who have been convicted of being common scolds. It is sometimes called the "trebucket," "tumbrel," "ducking-stool," or "cucking-stool."

CASTING. Offering; alleging by way of excuse. Casting an essoin was alleging an excuse for not appearing in court to answer an action. Holthouse.

CASTING VOTE. Where the votes of a deliberative assembly or legislative body are equally divided on any question or motion, it is the privilege of the presiding officer to cast one vote (if otherwise he would not be entitled to any vote) on either side, or to cast one additional vote, if he has already voted as a member of the body. This is called the "casting vote."

By the common law, a casting vote sometimes signifies the single vote of a person who never votes; but, in the case of an equality, sometimes the double vote of a person who first votes with the rest, and then, upon an equality, creates a majority by giving a second vote. 48 Barb. 606.

CASTLEGUARD. In feudal law. An imposition anciently laid upon such persons as lived within a certain distance of any castle, towards the maintenance of such as watched and warded the castle.

CASTLEGUARD RENTS. In old English law. Rents paid by those that dwelt within the precincts of a castle, towards the maintenance of such as watched and warded it.

CASTRATION. The act of depriving a man of the testicles.

CASTRENSIS. In the Roman law. Relating to the camp or military service.

Castrense peculium, a portion of property which a son acquired in war, or from his connection with the camp. Dig. 49, 17.

CASTRUM. Lat. In Roman law. A camp.

In old English law. A castle. Bract. fol. 69b. A castle, including a manor. 4 Coke, 88.

CASU CONSIMILI. In old English law. A writ of entry, granted where tenant by the curtesy, or tenant for life, alienated in fee, or in tail, or for another's life, which was brought by him in reversion against the party to whom such tenant so alienated to his prejudice, and in the tenant's life-time. *Termines de la Ley*.

CASU PROVISIO. A writ of entry framed under the provisions of the statute of Gloucester, (6 Edw. I.,) c. 7, which lay for the benefit of the reversioner when a tenant in dower aliened in fee or for life.

CASUAL. That which happens accidentally, or is brought about by causes unknown; fortuitous; the result of chance.

CASUAL EJECTOR. In practice. The nominal defendant in an action of ejectment; so called because, by a fiction of law peculiar to that action, he is supposed to come *casually* or by accident upon the premises, and to turn out or eject the lawful possessor. 3 Bl. Comm. 203; 3 Steph. Comm. 670.

CASUAL EVIDENCE. A phrase used to denote (in contradistinction to "preappointed evidence") all such evidence as happens to be admissible of a fact or event, but which was not prescribed by statute or otherwise arranged beforehand to be the evidence of the fact or event. Brown.

CASUAL PAUPER. A poor person who, in England, applies for relief in a parish other than that of his settlement. The ward in the work-house to which they are admitted is called the "casual ward."

CASUAL POOR. In English law. Those who are not settled in a parish.

Such poor persons as are suddenly taken sick, or meet with some accident, when away from home, and who are thus providentially thrown upon the charities of those among whom they happen to be. 17 N. J. Law, 405.

CASUALTIES OF SUPERIORITY. In Scotch law. Payments from an inferior

to a superior, that is, from a tenant to his lord, which arise upon uncertain events, as opposed to the payment of rent at fixed and stated times. Bell.

CASUALTIES OF WARDS. In Scotch law. The mails and duties due to the superior in ward-holdings.

CASUALTY. Inevitable accident; an event not to be foreseen or guarded against. A loss from such an event or cause; as by fire, shipwreck, lightning, etc. Story, Bailm. § 240.

CASUS. Lat. Chance; accident; an event; a case; a case contemplated.

CASUS BELLII. An occurrence giving rise to or justifying war.

CASUS FŒDERIS. In international law. The case of the treaty. The particular event or situation contemplated by the treaty, or stipulated for, or which comes within its terms.

In commercial law. The case or event contemplated by the parties to an individual contract, or stipulated for by it, or coming within its terms.

CASUS FORTUITUS. Lat. An inevitable accident, a chance occurrence, or fortuitous event. A loss happening in spite of all human effort and sagacity. 3 Kent, Comm. 217, 300; Whart. Neg. §§ 113, 553.

Casus fortuitus non est sperandus, et nemo tenetur devinare. A fortuitous event is not to be expected, and no one is bound to foresee it. 4 Coke, 66.

Casus fortuitus non est supponendus. A fortuitous event is not to be presumed. Hardr. 82, arg.

CASUS MAJOR. In the civil law. A casualty; an extraordinary casualty, as fire, shipwreck, etc. Dig. 44, 7, 1, 4.

CASUS OMISSUS. A case omitted; an event or contingency for which no provision is made; particularly a case not provided for by the statute on the general subject, and which is therefore left to be governed by the common law.

Casus omissus et oblivioni datus dispositioni juris communis relinquitur. A case omitted and given to oblivion (forgotten) is left to the disposal of the common law. 5 Coke, 38. A particular case, left unprovided for by statute, must be disposed of according to the law as it existed prior to such statute. Broom, Max. 46.

Casus omisus pro omisso habendus est. A case omitted is to be held as (intentionally) omitted. Tray. Lat. Max. 67.

CAT. An instrument with which criminals are flogged. It consists of nine lashes of whip-cord, tied on to a wooden handle.

CATALLA. In old English law. Chattels. The word among the Normans primarily signified only beasts of husbandry, or, as they are still called, "cattle," but, in a secondary sense, the term was applied to all movables in general, and not only to these, but to whatever was not a fief or feud. Wharton.

Catalla juste possessa amitti non possunt. Chattels justly possessed cannot be lost. Jenk. Cent. 28.

CATALLA OTIOSA. Dead goods or chattels, as distinguished from animals. Idle cattle, that is, such as were not used for working, as distinguished from beasts of the plow; called also *animalia otiosa*. Bract. fols. 217, 217b; 3 Bl. Comm. 9.

Catalla reputantur inter minima in lege. Chattels are considered in law among the least things. Jenk. Cent. 52.

CATALLACTICS. The science of political economy.

CATALLIS CAPTIS NOMINE DISTRICTIONIS. An obsolete writ that lay where a house was within a borough, for rent issuing out of the same, and which warranted the taking of doors, windows, etc., by way of distress.

CATALLIS REDDENDIS. For the return of the chattels; an obsolete writ that lay where goods delivered to a man to keep till a certain day were not upon demand re-delivered at the day. Reg. Orig. 39.

CATALLUM. A chattel. Most frequently used in the plural form, *catalla*, (q. v.)

CATALS. Goods and chattels. See **CATALLA**.

CATANEUS. A tenant *in capite*. A tenant holding immediately of the crown. Spelman.

CATAPULTA. A catapult. A warlike engine to shoot darts; a cross-bow.

CATASCOPUS. An old name for an archdeacon.

CATCHING BARGAIN. A bargain by which money is loaned, at an extortionate or

extravagant rate, to an heir or any one who has an estate in reversion or expectancy, to be repaid on the vesting of his interest; or a similar unconscionable bargain with such person for the purchase outright of his expectancy.

CATCHINGS. Things caught, and in the possession, custody, power, and dominion of the party, with a present capacity to use them for his own purposes. The term includes blubber, or pieces of whale flesh cut from the whale, and stowed on or under the deck of a ship. A policy of insurance upon outfits, and catchings substituted for the outfits, in a whaling voyage, protects the blubber. 1 Story, 603; 4 Law Rep. 297. **D**

CATCHLAND. Land in Norfolk, so called because it is not known to what parish it belongs, and the minister who first seizes the tithes of it, by right of preoccupation, enjoys them for that year. Cowell. **E**

CATCHPOLL. A name formerly given to a sheriff's deputy, or to a constable, or other officer whose duty it is to arrest persons. He was a sort of serjeant. The word is not now in use as an official designation. Minshew. **F**

CATEGORICAL. A term of logic, meaning direct; unqualified; unconditional. **G**

CATEGORY. In logic. A series or order of all the predicates or attributes contained under a genus. **H**

CATER COUSIN. A expression used to designate a very distant relation.

CATHEDRAL. In English ecclesiastical law. The church of the bishop of the diocese, in which is his *cathedra*, or throne, and his special jurisdiction; in that respect the principal church of the diocese. **I**

CATHEDRAL PREFERMENTS. In English ecclesiastical law. All deaneries, archdeaconries, and canonries, and generally all dignities and offices in any cathedral or collegiate church, below the rank of a bishop. **J**

CATHEDRATIC. In English ecclesiastical law. A sum of 2s. paid to the bishop by the inferior clergy; but from its being usually paid at the bishop's *synod*, or visitation, it is commonly named *synodals*. Wharton. **K**

CATHOLIC CREDITOR. In Scotch law. A creditor whose debt is secured on all or several distinct parts of the debtor's property. Bell. **L**

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CATHOLIC EMANCIPATION ACT. The statute of 10 Geo. IV. c. 7, by which Roman Catholics were restored, in general, to the full enjoyment of all civil rights, except that of holding ecclesiastical offices, and certain high appointments in the state. 3 Steph. Comm. 109.

CATONIANA REGULA. In Roman law. The rule which is commonly expressed in the maxim, *Quod ab initio non valet tractu temporis non convalebit*, meaning that what is at the beginning void by reason of some technical (or other) legal defect will not become valid merely by length of time. The rule applied to the institution of *heredes*, the bequest of legacies, and such like. The rule is not without its application also in English law; e. g., a married woman's will (being void when made) is not made valid merely because she lives to become a widow. Brown.

CATTLE. A term which includes the domestic animals generally; all the animals used by man for labor or food.

Animals of the bovine genus. In a wider sense, all domestic animals used by man for labor or food, including sheep, (2 Sawy. 148,) and hogs, (21 Wall. 294.)

CATTLE-GATE. In English law. A right to pasture cattle in the land of another. It is a distinct and several interest in the land, passing by lease and release. 13 East, 159; 5 Taunt. 811.

CATTLE-GUARD. A device to prevent cattle from straying along a railroad-track at a highway-crossing. Century Dict. See 31 Kan. 337, 2 Pac. Rep. 800.

CAUDA TERRÆ. A land's end, or the bottom of a ridge in arable land. Cowell.

CAULCEIS. Highroads or ways pitched with flint or other stones.

CAUPO. In the civil law. An innkeeper. Dig. 4, 9, 4, 5.

CAUPONA. In the civil law. An inn or tavern. Inst. 4, 5, 3.

CAUPONES. In the civil law. Innkeepers. Dig. 4, 9; Id. 47, 5; Story, Ag. § 458.

CAURSINES. Italian merchants who came into England in the reign of Henry III., where they established themselves as money lenders, but were soon expelled for their usury and extortion. Cowell; Blount.

CAUSA. 1. A cause, reason, occasion, motive, or inducement.

2. In the civil law and in old English law. The word signified a source, ground, or mode of acquiring property; hence a title; one's title to property. Thus, "*Titulus est justa causa possidendi id quod nostrum est*;" title is the lawful ground of possessing that which is ours. 8 Coke, 153. See Mackeld. Rom. Law, §§ 242, 283.

3. A condition; a consideration; motive for performing a juristic act. Used of contracts, and found in this sense in the Scotch law also. Bell.

4. In old English law. A cause; a suit or action pending. *Causa testamentaria*, a testamentary cause. *Causa matrimonialis*, a matrimonial cause. Bract. fol. 61.

5. In old European law. Any movable thing or article of property.

6. Used with the force of a preposition, it means by virtue of, on account of. Also with reference to, in contemplation of. *Causa mortis*, in anticipation of death.

Causa causæ est causa causati. The cause of a cause is the cause of the thing caused. 12 Mod. 639. The cause of the cause is to be considered as the cause of the effect also.

CAUSA CAUSANS. The immediate cause; the last link in the chain of causation.

Causa causantis, causa est causati. The cause of the thing causing is the cause of the effect. 4 Camp. 284; 4 Gray, 398.

CAUSA DATA ET NON SECUTA. In the civil law. Consideration given and not followed, that is, by the event upon which it was given. The name of an action by which a thing given in the view of a certain event was reclaimed if that event did not take place. Dig. 12, 4; Cod. 4, 6.

Causa ecclesiæ publicis æquiparatur; et summa est ratio quæ pro religione facit. The cause of the church is equal to public cause; and paramount is the reason which makes for religion. Co. Litt. 341.

Causa et origo est materia negotii. The cause and origin is the substance of the thing; the cause and origin of a thing are a material part of it. The law regards the original act. 1 Coke, 99.

CAUSA HOSPITANDI. For the purpose of being entertained as a guest. 4 Mauls & S. 310.

CAUSA JACTITATIONIS MARITALI. A form of action which anciently lay against a party who boasted or gave out that he or she was married to the plaintiff, whereby a common reputation of their marriage might ensue. 3 Bl. Comm. 93.

CAUSA MATRIMONII PRÆLOCUTI. A writ lying where a woman has given lands to a man in fee-simple with the intention that he shall marry her, and he refuses so to do within a reasonable time, upon suitable request. Cowell. Now obsolete. 3 Bl. Comm. 183, note.

CAUSA MORTIS. In contemplation of approaching death. In view of death. Commonly occurring in the phrase *donatio causa mortis*, (q. v.)

CAUSA PATET. The reason is open, obvious, plain, clear, or manifest. A common expression in old writers. Perk. c. 1, §§ 11, 14, 97.

CAUSA PROXIMA. The immediate, nearest, or latest cause.

Causa proxima, non remota, spectatur. The immediate, not the remote, cause, is looked at, or considered. 12 East, 648; 3 Kent, Comm. 302; Story, Bailm. § 515; Bac. Max. reg. 1.

CAUSA REI. In the civil law. The accessions, appurtenances, or fruits of a thing; comprehending all that the claimant of a principal thing can demand from a defendant in addition thereto, and especially what he would have had, if the thing had not been withheld from him. Inst. 4, 17, 3; Mackeld. Rom. Law, § 166.

CAUSA REMOTA. A remote or mediate cause; a cause operating indirectly by the intervention of other causes.

CAUSA SCIENTIÆ PATET. The reason of the knowledge is evident. A technical phrase in Scotch practice, used in depositions of witnesses.

CAUSA SINE QUA NON. A necessary or inevitable cause; a cause without which the effect in question could not have happened.

CAUSA TURPIS. A base (immoral or illegal) cause or consideration.

Causa vaga et incerta non est causa rationabilis. 5 Coke, 57. A vague and uncertain cause is not a reasonable cause.

Causæ dotis, vitæ, libertatis, fisci sunt inter favorabilia in lege. Causes of dower, life, liberty, revenue, are among the things favored in law. Co. Litt. 341.

CAUSAM NOBIS SIGNIFICES QUARE. A writ addressed to a mayor of a town, etc., who was by the king's writ commanded to give seisin of lands to the king's grantee, on his delaying to do it, requiring him to show cause why he so delayed the performance of his duty. Blount; Cowell.

CAUSARE. In the civil and old English law. To be engaged in a suit; to litigate; to conduct a cause. D

CAUSATOR. In old European law. One who manages or litigates another's cause. Spelman.

CAUSE. That which produces an effect; whatever moves, impels, or leads. The origin or foundation of a thing, as of a suit or action; a ground of action. 1 N. Y. 47. E

The consideration of a contract, that is, the inducement to it, or motive of the contracting party for entering into it, is, in the civil and Scotch law, called the "cause." F

The civilians use the term "cause," in relation to obligations, in the same sense as the word "consideration" is used in the jurisprudence of England and the United States. It means the motive, the inducement to the agreement,—*id quod inducet ad contrahendum*. In contracts of mutual interest, the cause of the engagement is the thing given or done, or engaged to be given or done, or the risk incurred by one of the parties. 1 La. Ann. 192. G

In pleading. Reason; motive; matter of excuse or justification. H

In practice. A suit, litigation, or action. Any question, civil or criminal, contested before a court of justice. I

Cause imports a judicial proceeding entire, and is nearly synonymous with *lit* in Latin, or suit in English. Although allied to the word "case," it differs from it in the application of its meaning. A cause is pending, postponed, appealed, gained, lost, etc.; whereas a case is made, rested, argued, decided, etc. Case is of a more limited signification, importing a collection of facts, with the conclusion of law thereon. Both terms may be used with propriety in the same sentence; e. g., on the trial of the *cause*, the plaintiff introduced certain evidence, and there rested his *case*. 18 Conn. 10. J

A distinction is sometimes taken between "cause" and "action." Burrill observes that a cause is not, like an action or suit, said to be commenced, nor is an action, like a cause, said to be tried. But, if there is any substantial difference between these terms, it must lie in the fact that "action" refers more peculiarly to the *legal procedure* of a controversy; "cause" to its *merits* or the state of facts involved. Thus, we cannot say "the *cause* should have been replevin." Nor K

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would it be correct to say "the plaintiff pleaded his own *action*."

CAUSE-BOOKS. Books kept in the central office of the English supreme court, in which are entered all writs of summons issued in the office. Rules of Court, v 8.

CAUSE LIST. In English practice. A printed roll of actions, to be tried in the order of their entry, with the names of the solicitors for each litigant. Similar to the calendar of causes, or docket, used in American courts.

CAUSE OF ACTION. Matter for which an action may be brought. The ground on which an action may be sustained. The right to bring a suit.

Cause of action is properly the ground on which an action can be maintained; as when we say that such a person has no cause of action. But the phrase 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 & Whitley.

It sometimes means a person having a right of action. Thus, where a legacy is left to a married woman, and she and her husband bring an action to recover it, she is called in the old books the "meritorious cause of action." 1 H. Bl. 108.

The term is synonymous with right of action, right of recovery. 26 How. Pr. 501.

Cause of action is not synonymous with chose in action; the latter includes debts, etc., not due, and even stocks. 10 How. Pr. 1.

CAUSES CÉLÈBRES. Celebrated cases. A work containing reports of the decisions of interest and importance in French courts in the seventeenth and eighteenth centuries.

Secondarily a single trial or decision is often called a "*cause célèbre*," when it is remarkable on account of the parties involved, or the unusual, interesting, or sensational character of the facts.

CAUSIDICUS. In the civil law. A pleader; one who argued a cause *ore tenus*.

CAUTELA. Lat. Care; caution; vigilance; prevision.

CAUTIO. In the civil and French law. Security given for the performance of any thing; bail; a bond or undertaking by way of surety. Also the person who becomes a surety.

In Scotch law. A pledge, bond, or other security for the performance of an obligation, or completion of the satisfaction to be obtained by a judicial process. Bell.

CAUTIO FIDEJUSSORIA. Security by means of bonds or pledges entered into by third parties. Du Cange.

CAUTIO PIGNORATITIA. Security given by pledge, or deposit, as plate, money, or other goods.

CAUTIO PRO EXPENSIS. Security for costs, charges, or expenses.

CAUTIO USUFRUCTUARIA. Security, which tenants for life give, to preserve the property rented free from waste and injury. Ersk. Inst. 2, 9, 59.

CAUTION. In Scotch law, and in admiralty law. Surety; security; bail; an undertaking by way of surety. 6 Mod. 162. See CAUTIO.

CAUTION JURATORY. In Scotch law. Security given by oath. That which a suspender swears is the best he can afford in order to obtain a suspension. Ersk. Pract. 4, 3, 6.

CAUTIONARY. In Scotch law. An instrument in which a person binds himself as surety for another.

CAUTIONE ADMITTENDA. In English ecclesiastical law. 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; Cowell.

CAUTIONER. In Scotch law. A surety; a bondsman. One who binds himself in a bond with the principal for greater security. He is still a cautioner whether the bond be to pay a debt, or whether he undertake to produce the person of the party for whom he is bound. Bell.

CAUTIONNEMENT. In French law. The same as becoming surety in English law.

CAUTIONRY. In Scotch law. Suretyship.

CAVEAT. Lat. Let him beware. A formal notice or warning given by a party interested to a court, judge, or ministerial officer against the performance of certain acts within his power and jurisdiction. This process may be used in the proper courts to prevent (temporarily or provisionally) the proving of a will or the grant of administration, or to arrest the enrollment of a decree in chancery when the party intends to take

an appeal, to prevent the grant of letters patent, etc. It is also used, in the American practice, as a kind of equitable process, to stay the granting of a patent for lands.

In patent law. A caveat is a formal written notice given to the officers of the patent-office, requiring them to refuse letters patent on a particular invention or device to any other person, until the party filing the caveat (called the "caveator") shall have an opportunity to establish his claim to priority of invention.

CAVEAT ACTOR. Let the doer, or actor, beware.

CAVEAT EMPTOR. Let the buyer take care. This maxim summarizes the rule that the purchaser of an article must examine, judge, and test it for himself, being bound to discover any obvious defects or imperfections. Hob. 99; Co. Litt. 102a.

Caveat emptor, qui ignorare non debuit quod jus alienum emit. Hob. 99. Let a purchaser beware, who ought not to be ignorant that he is purchasing the rights of another.

CAVEAT VENDITOR. In Roman law. A maxim, or rule, casting the responsibility for defects or deficiencies upon the seller of goods, and expressing the exact opposite of the common law rule of *caveat emptor*. See 18 Wend. 449.

In English and American jurisprudence. *Caveat venditor* is sometimes used as expressing, in a rough way, the rule which governs all those cases of sales to which *caveat emptor* does not apply.

CAVEAT VIATOR. Let the traveler beware. This phrase has been used as a concise expression of the duty of a traveler on the highway to use due care to detect and avoid defects in the way. 10 Exch. 771, 774.

CAVEATOR. One who files a caveat.

Cavendum est a fragmentis. Beware of fragments. Bac. Aph. 26.

CAVERE. In the civil and common law. To take care; to exercise caution; to take care or provide for; to provide by law; to provide against; to forbid by law; to give security; to give caution or security on arrest.

CAVERS. Persons stealing ore from mines in Derbyshire, punishable in the bergh-

mote or miners' court; also officers belonging to the same mines. Wharton.

CAYA. In old English law. A quay, kay, key, or wharf. Cowell.

CAYAGIUM. In old English law. Cayage or kayage; a toll or duty anciently paid for landing goods at a quay or wharf. Cowell.

CEAP. A bargain; anything for sale; a chattel; also cattle, as being the usual medium of barter. Sometimes used instead of *ceapgild*, (*q. v.*)

CEAPGILD. Payment or forfeiture of an animal. An ancient species of forfeiture. **D**

CEDE. To yield up; to assign; to grant. Generally used to designate the transfer of territory from one government to another. **E**

CEDENT. In Scotch law. An assignor. One who transfers a chose in action.

CEDO. I grant. The word ordinarily used in Mexican conveyances to pass title to lands. 26 Cal. 88, 108. **F**

CEDULA. In old English law. A schedule. **G**

In Spanish law. An act under private signature, by which a debtor admits the amount of the debt, and binds himself to discharge the same on a specified day or on demand. **H**

Also the notice or citation affixed to the door of a fugitive criminal requiring him to appear before the court where the accusation is pending. **I**

CEDULE. In French law. The technical name of an act under private signature. 3 La. Ann. 458.

CELATION. In medical jurisprudence. Concealment of pregnancy or delivery. **J**

CELDRA. In old English law, a chaldron. In old Scotch law, a measure of grain, otherwise called a "chalder." See 1 Kames, Eq. 215. **K**

CELEBRATION OF MARRIAGE. The formal act by which a man and woman take each other for husband and wife, according to law; the solemnization of a marriage. The term is usually applied to a marriage ceremony attended with ecclesiastical functions. **L**

CELIBACY. The condition or state of life of an unmarried person. **M**

CELLERARIUS. A butler in a monastery; sometimes in universities called "maniple" or "caterer."

CEMETERY. A place of burial, differing from a churchyard by its locality and incidents,—by its locality, as it is separate and apart from any sacred building used for the performance of divine service; by its incidents that, inasmuch as no vault or burying-place in an ordinary churchyard can be purchased for a perpetuity, in a cemetery a permanent burial place can be obtained. Wharton.

Six or more human bodies being buried at one place constitutes the place a cemetery. Pol. Code Cal. § 3106.

CENDULÆ. Small pieces of wood laid in the form of tiles to cover the roof of a house; shingles. Cowell.

CENEGILD. In Saxon law. An expiatory mulct or fine paid to the relations of a murdered person by the murderer or his relations. Spelman.

CENELLÆ. In old records. Acorns.

CENNINGA. A notice given by a buyer to a seller that the things which had been sold were claimed by another, in order that he might appear and justify the sale. Blount; Whishaw.

CENS. In French Canadian law. An annual tribute or due reserved to a seignior or lord, and imposed merely in recognition of his superiority. Guyot, Inst. c. 9.

CENSARIA. In old English law. A farm, or house and land let at a standing rent. Cowell.

CENSARII. In old English law. Farmers, or such persons as were liable to pay a census, (tax.) Blount; Cowell.

CENSERE. In the Roman law. To ordain; to decree. Dig. 50, 16, 111.

CENSITAIRE. In Canadian law. A tenant by *cens*, (*q. v.*)

CENSIVE. In Canadian law. Tenure by *cens*, (*q. v.*)

CENSO. In Spanish and Mexican law. An annuity. A ground rent. The right which a person acquires to receive a certain annual pension, for the delivery which he makes to another of a determined sum of money or of an immovable thing. Civil Code Mex. art. 3206. See Schm. Civil Law,

149, 309; White, New Recop. bk. 2, c. 7, § 4; 13 Tex. 655.

CENSO CONSIGNATIVO. In Spanish and Mexican law. A *censo* (*q. v.*) is called "*consignativo*" when he who receives the money assigns for the payment of the pension (annuity) the estate the fee in which he reserves. Civil Code Mex. art. 3207.

CENSO ENFITEUTICO. In Spanish and Mexican law. An emphyteutic annuity. That species of *censo* (annuity) which exists where there is a right to require of another a certain canon or pension annually, on account of having transferred to that person forever certain real estate, but reserving the fee in the land. The owner who thus transfers the land is called the "*censualista*," and the person who pays the annuity is called the "*censatario*." Hall, Mex. Law, § 756.

CENSUALES. In old European law. A species of *oblati* or voluntary slaves of churches or monasteries; those who, to procure the protection of the church, bound themselves to pay an annual tax or quit-rent only of their estates to a church or monastery.

CENSUERE. In Roman law. They have decreed. The term of art, or technical term for the judgment, resolution, or decree of the senate. Tayl. Civil Law, 566.

CENSUMETHIDUS, or CENSUMORTHIDUS. A dead rent, like that which is called "mortmain." Blount; Cowell.

CENSURE. In ecclesiastical law. A spiritual punishment, consisting in withdrawing from a baptized person (whether belonging to the clergy or the laity) a privilege which the church gives him, or in wholly expelling him from the Christian communion. The principal varieties of censures are admonition, degradation, deprivation, excommunication, penance, sequestration, suspension. Phillim. Ecc. Law, 1367.

A custom observed in certain manors in Devon and Cornwall, where all persons above the age of sixteen years are cited to swear fealty to the lord, and to pay 11d. per poll, and 1d. per annum.

CENSUS. The official counting or enumeration of the people of a state or nation, with statistics of wealth, commerce, education, etc.

In Roman law. A numbering or enrollment of the people, with a valuation of their fortunes.

In old European law. A tax, or tribute; a toll. Montesq. *Esprit des Loix*, liv. 30, c. 14.

CENSUS REGALIS. In English law. The annual revenue or income of the crown.

CENT. A coin of the United States, the least in value of those now minted. It is the one-hundredth part of a dollar. Its weight is 72 gr., and it is composed of copper and nickel in the ratio of 88 to 12.

CENTENA. A hundred. A district or division containing originally a hundred freemen, established among the Goths, Germans, Franks, and Lombards, for military and civil purposes, and answering to the Saxon "hundred." Spelman; 1 Bl. Comm. 115.

Also, in old records and pleadings, a hundred weight.

CENTENARIUM. Petty judges, under-sheriffs of counties, that had rule of a hundred, (*centena*), and judged smaller matters among them. 1 Vent. 211.

CENTENI. The principal inhabitants of a *centena*, or district composed of different villages, originally in number a hundred, but afterwards only called by that name.

CENTESIMA. In Roman law. The hundredth part.

Usuræ centesimæ. Twelve per cent. per annum; that is, a hundredth part of the principal was due each month,—the month being the unit of time from which the Romans reckoned interest. 2 Bl. Comm. 462, note.

CENTIME. The name of a denomination of French money, being the one-hundredth part of a franc.

CENTRAL CRIMINAL COURT. An English court, having jurisdiction for the trial of crimes and misdemeanors committed in London and certain adjoining parts of Kent, Essex, and Sussex, and of such other criminal cases as may be sent to it out of the queen's bench, though arising beyond its proper jurisdiction. It was constituted by the acts 4 & 5 Wm. IV. c. 36, and 19 & 20 Vict. c. 16, and superseded the "Old Bailey."

CENTRAL OFFICE. The central office of the supreme court of judicature in England is the office established in pursuance of the recommendation of the legal departments commission in order to consolidate the offices of the masters and associates of the common-law divisions, the crown office of the queen's bench division, the record and

writ clerk's report, and enrollment offices of the chancery division, and a few others. The central office is divided into the following departments, and the business and staff of the office are distributed accordingly: (1) Writ, appearance, and judgment; (2) summons and order, for the common-law divisions only; (3) filing and record, including the old chancery report office; (4) taxing, for the common-law divisions only; (5) enrollment; (6) judgments, for the registry of judgments, executions, etc.; (7) bills of sale; (8) married women's acknowledgments; (9) queen's remembrancer; (10) crown office; and (11) associates. Sweet.

CENTRALIZATION. This word is used to express the system of government prevailing in a country where the management of local matters is in the hands of functionaries appointed by the ministers of state, paid by the state, and in constant communication and under the constant control and inspiration of the ministers of state, and where the funds of the state are largely applied to local purposes. Wharton.

CENTUMVIRI. In Roman law. The name of an important court consisting of a body of one hundred and five judges. It was made up by choosing three representatives from each of the thirty-five Roman tribes. The judges sat as one body for the trial of certain important or difficult questions, (called, "*causæ centumvirales*,") but ordinarily they were separated into four distinct tribunals.

CENTURY. One hundred. A body of one hundred men. The Romans were divided into *centuries*, as the English were divided into hundreds.

Also a cycle of one hundred years.

CEORL. In Anglo Saxon law. The freemen were divided into two classes,—thanes and ceorls. The thanes were the proprietors of the soil, which was entirely at their disposal. The ceorls were men personally free, but possessing no landed property. Guizot, Rep. Govt.

A tenant at will of free condition, who held land of the thane on condition of paying rent or services. Cowell.

A freeman of inferior rank occupied in husbandry. Spelman.

CEPI. Lat. I have taken. This word was of frequent use in the returns of sheriffs when they were made in Latin.

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CEPI CORPUS. I have taken the body. The return of a sheriff who has arrested a person upon a *capias*.

CEPI CORPUS ET PARATUM HABEO. I have taken the body and have it ready. A return made by the sheriff upon an attachment, *capias*, etc., when he has the person against whom the process was issued in custody.

CEPIT. In civil practice. He took. This was the characteristic word employed in (Latin) writs of trespass for goods taken, and in declarations in trespass and replevin.

Replevin *in the cepit* is a form of replevin which is brought for carrying away goods merely. Wells, Repl. § 53.

In criminal practice. This was a technical word necessary in an indictment for larceny. The charge must be that the defendant took the thing stolen with a felonious design. Bac. Abr. "Indictment," G, 1.

CEPIT ET ABDUXIT. He took and led away. The emphatic words in writs in trespass or indictments for larceny, where the thing taken was a living chattel, *i. e.*, an animal.

CEPIT ET ASPORTAVIT. He took and carried away. Applicable in a declaration in trespass or an indictment for larceny where the defendant has carried away goods without right. 4 Bl. Comm. 231.

CEPIT IN ALIO LOCO. In pleading. A plea in replevin, by which the defendant alleges that he took the thing replevied in another place than that mentioned in the declaration. 1 Chit. Pl. 490.

CEPPAGIUM. In old English law. The stumps or roots of trees which remain in the ground after the trees are felled. Fleta, lib. 2, c. 41, § 24.

CERA, or CERE. In old English law. Wax; a seal.

CERAGRUM. In old English law. A payment to provide candles in the church. Blount.

CEREVISIA. In old English law. Ale or beer.

CERT MONEY. In old English law. Head money or common fine. Money paid yearly by the residents of several manors to the lords thereof, for the certain keeping of the leet, (*pro certo leet*;) and sometimes to the hundred. Blount; 6 Coke, 78.

Certa debet esse intentio, et narratio, et certum fundamentum, et certa res quæ deducitur in iudicium. The design and narration ought to be certain, and the foundation certain, and the matter certain, which is brought into court to be tried. Co. Litt. 303a.

CERTA RES. In old English law. A certain thing. Fleta, lib. 2, c. 60, §§ 24, 25.

CERTAIN SERVICES. In feudal and old English law. Such services as were stinted (limited or defined) in quantity, and could not be exceeded on any pretense; as to pay a stated annual rent, or to plow such a field for three days. 2 Bl. Comm. 61.

CERTAINTY. In pleading. Distinctness; clearness of statement; particularity. Such precision and explicitness in the statement of alleged facts that the pleader's averments and contention may be readily understood by the pleader on the other side, as well as by the court and jury.

This word is technically used in pleading in two different senses, signifying either distinctness, or particularity, as opposed to undue generality.

Certainty is said to be of three sorts: (1) *Certainty to a common intent* is such as is attained by using words in their ordinary meaning, but is not exclusive of another meaning which might be made out by argument or inference. (2) *Certainty to a certain intent in general* is that which allows of no misunderstanding if a fair and reasonable construction is put upon the language employed without bringing in facts which are possible, but not apparent. (3) *Certainty to a certain intent in particular* is the highest degree of technical accuracy and precision. Co. Litt. 303; 2 H. Bl. 530; 9 Johns. 317.

In contracts. The quality of being specific, accurate, and distinct.

A thing is certain when its essence, quality, and quantity are described, distinctly set forth, etc. Dig. 12, 1, 6. It is uncertain when the description is not that of an individual object, but designates only the kind. Civil Code La. art. 3522, no. 8; 5 Coke, 121.

CERTIFICANDO DE RECOGNITIONE STAPULÆ. In English law. A writ commanding the mayor of the staple to certify to the lord chancellor a statute-staple taken before him where the party himself detains it, and refuses to bring in the same. There is a like writ to certify a statute-merchant, and in divers other cases. Reg. Orig. 148, 151, 152.

CERTIFICATE. A written assurance, or official representation, that some act has or has not been done, or some event occurred, or some legal formality been complied with. Particularly, such written assurance made or issuing from some court, and designed as a notice of things done therein, or as a warrant or authority, to some other court, judge, or officer.

A document in use in the English custom-house. No goods can be exported by *certificates*, except foreign goods formerly imported, on which the whole or a part of the customs paid on importation is to be drawn back. Wharton.

CERTIFICATE FOR COSTS. In English practice. A certificate or memorandum drawn up and signed by the judge before whom a case was tried, setting out certain facts the existence of which must be thus proved before the party is entitled, under the statutes, to recover costs.

CERTIFICATE INTO CHANCERY. In English practice. This is a document containing the opinion of the common-law judges on a question of law submitted to them for their decision by the chancery court.

CERTIFICATE OF DEPOSIT. In the practice of bankers. This is a writing acknowledging that the person named has deposited in the bank a specified sum of money, and that the same is held subject to be drawn out on his own check or order, or that of some other person named in the instrument as payee.

CERTIFICATE OF HOLDER OF ATTACHED PROPERTY. A certificate required by statute, in some states, to be given by a third person who is found in possession of property subject to an attachment in the sheriff's hands, setting forth the amount and character of such property and the nature of the defendant's interest in it. Code Civil Proc. N. Y. § 650.

CERTIFICATE OF REGISTRY. In maritime law. A certificate of the registration of a vessel according to the registry acts, for the purpose of giving her a national character. 3 Steph. Comm. 274; 3 Kent, Comm. 139-150.

CERTIFICATE OF STOCK. A certificate of a corporation or joint-stock company that the person named is the owner of a designated number of shares of its stock; given when the subscription is fully paid and the "scrip-certificate" taken up.

CERTIFICATE, TRIAL BY. This is a mode of trial now little in use; it is resorted to in cases where the fact in issue lies out of the cognizance of the court, and the judges, in order to determine the question, are obliged to rely upon the solemn averment or information of persons in such a station as affords them the clearest and most competent knowledge of the truth. Brown.

CERTIFICATION. In Scotch practice. This is the assurance given to a party of the course to be followed in case he does not appear or obey the order of the court.

CERTIFICATION OF ASSISE. In English practice. A writ anciently granted for the re-examining or retrial of a matter passed by assise before justices, now entirely superseded by the remedy afforded by means of a new trial.

CERTIFICATS DE COÛTUME. In French law. Certificates given by a foreign lawyer, establishing the law of the country to which he belongs upon one or more fixed points. These certificates can be produced before the French courts, and are received as evidence in suits upon questions of foreign law. Arg. Fr. Merc. Law, 548.

CERTIFIED CHECK. In the practice of bankers. This is a depositor's check recognized and accepted by the proper officer of the bank as a valid appropriation of the amount specified to the payee named, and as drawn against funds of such depositor held by the bank. The usual method of certification is for the cashier or teller to write his name across the face of the check.

CERTIFIED COPY. A copy of a document, signed and certified as a true copy by the officer to whose custody the original is intrusted.

CERTIORARI. Lat. (To be informed of, to be made certain in regard to.) The name of a writ issued by a superior court directing an inferior court to send up to the former some pending proceeding, or all the record and proceedings in a cause before verdict, with its certificate to the correctness and completeness of the record, for review or trial; or it may serve to bring up the record of a case already terminated below, if the inferior court is one not of record, or in cases where the procedure is not according to the course of the common law.

Originally, and in English practice, a *certiorari* is an original writ, issuing out of the court of chancery or the king's bench, and directed in the

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king's name to the judges or officers of inferior courts, commanding them to certify or to return the records or proceedings in a cause depending before them, for the purpose of a judicial review of their action. Jacob.

In Massachusetts it is defined by statute as a writ issued by the supreme judicial court to any inferior tribunal, commanding it to certify and return to the supreme judicial court its records in a particular case, in order that any errors or irregularities which appear in the proceedings may be corrected. Pub. St. Mass. 1882, p. 1288.

CERTIORARI, BILL OF. In English chancery practice. An original bill praying relief. It was 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 or inconvenience.

Certum est quod certo reddi potest. That is certain which can be reduced to a certainty. 3 Rep. Ch. 142.

Certum est quod certum reddi potest. That is certain which can be rendered certain. 9 Coke, 47; Broom, Max. 623.

CERURA. A mound, fence, or inclosure.

CERVISARII. In Saxon law. Tenants who were bound to supply drink for their lord's table. Cowell.

CERVISIA. Ale, or beer. Sometimes spelled "*cerevisia*."

CERVISIARIUS. In old records. An ale-house keeper. A beer or ale brewer. Blount.

CERVUS. Lat. A stag or deer.

CESIONARIO. In Spanish law. An assignee. White, New Recop. b. 3, tit. 10, c. 1, § 3.

CESS, v. In old English law. To cease, stop, determine, fail.

CESS, n. An assessment or tax. In Ireland, it was anciently applied to an exaction of victuals, at a certain rate, for soldiers in garrison.

Cessa regnare, si non vis judicare. Cease to reign, if you wish not to adjudicate. Hoh. 155.

Cessante causa, cessat effectus. The cause ceasing, the effect ceases. Broom, Max. 160.

Cessante ratione legis, cessat et ipsa lex. The reason of the law ceasing, the law itself ceases also. Co. Litt. 70b; 2 Bl. Comm. 390, 391; Broom, Max. 159.

Cessante statu primitivo, cessat derivativus. When the primitive or original estate determines, the derivative estate determines also. 8 Coke, 34; Broom, Max. 495.

CESSARE. L. Lat. To cease, stop, or stay.

CESSAVIT PER BIENNIUM. In practice. An obsolete writ, which could formerly have been sued out when the defendant had for two years *ceased* or neglected to perform such service or to pay such rent as he was bound to do by his tenure, and had not upon his lands sufficient goods or chattels to be distrained. Fitzh. Nat. Brev. 208. It also lay where a religious house held lands on condition of performing certain spiritual services which it failed to do. 3 Bl. Comm. 232.

CESSE. (1) An assessment or tax; (2) a tenant of land was said to *cesse* when he neglected or *ceased* to perform the services due to the lord. Co. Litt. 373a, 380b.

CESSER. Neglect; a ceasing from, or omission to do, a thing. 3 Bl. Comm. 232.

The determination of an estate. 1 Coke, 84; 4 Kent, Comm. 33, 90, 105, 295.

The "cesser" of a term, annuity, or the like, takes place when it determines or comes to an end. The expression is chiefly used (in England) with reference to long terms of a thousand years or some similar period, created by a settlement for the purpose of securing the income, portions, etc., given to the objects of the settlement. When the trusts of a term of this kind are satisfied, it is desirable that the term should be put an end to, and with this object it was formerly usual to provide in the settlement itself that, as soon as the trusts of the term had been satisfied, it should cease and determine. This was called a "proviso for cesser." Sweet.

CESSER, PROVISO FOR. Where terms for years are raised by settlement, it is usual to introduce a proviso that they shall *cease* when the trusts end. This proviso generally expresses three events: (1) The trusts never arising; (2) their becoming unnecessary or incapable of taking effect; (3) the performance of them. Sugd. Vend. (14th Ed.) 621-623.

CESSET EXECUTIO. (Let execution stay.) In practice. A stay of execution; or an order for such stay; the entry of such stay on record. 2 Tidd, Pr. 1104.

CESSET PROCESSUS. (Let process stay.) A stay of proceedings entered on the record.

CESSIO. Lat. A cession; a giving up, or relinquishment; a surrender; an assignment.

CESSIO BONORUM. In Roman law. Cession of goods. A surrender, relinquishment, or assignment of all his property and effects made by an insolvent debtor for the benefit of his creditors. The effect of this voluntary action on the debtor's part was to secure him against imprisonment or any bodily punishment, and from infamy, and to cancel his debts to the extent of the property ceded. It much resembled our voluntary bankruptcy or assignment for creditors. The term is commonly employed in modern continental jurisprudence to designate a bankrupt's assignment of property to be distributed among his creditors, and is used in the same sense by some English and American writers, but here rather as a convenient than as a strictly technical term. See 2 Bl. Comm. 473; 1 Kent, Comm. 247, 422; Ersk. Inst. 4, 3, 26.

CESSIO IN JURE. In Roman law. 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 (*addebat*) of the claimant. Sandars' Just. Inst. (5th Ed.) 89, 122.

CESSION. The act of ceding; a yielding or giving up; surrender; relinquishment of property or rights.

In the civil law. An assignment. The act by which a party transfers property to another. The surrender or assignment of property for the benefit of one's creditors.

In ecclesiastical law. A giving up or vacating a benefice, by accepting another without a proper dispensation. 1 Bl. Comm. 392; Latch, 284.

In public law. The assignment, transfer, or yielding up of territory by one state or government to another.

CESSION DES BIENS. In French law. The surrender which a debtor makes of all his goods to his creditors, when he finds himself in insolvent circumstances. It

is of two kinds, either voluntary or compulsory, (*judiciaire*), corresponding very nearly to liquidation by arrangement and bankruptcy in English and American law.

CESSION OF GOODS. The surrender of property; the relinquishment that a debtor makes of all his property to his creditors, when he finds himself unable to pay his debts. Civil Code La. art. 2170.

CESSIONARY. In Scotch law. An assignee. Bell.

CESSIONARY BANKRUPT. One who gives up his estate to be divided among his creditors. **D**

CESSMENT. An assessment, or tax.

CESSOR. One who ceases or neglects so long to perform a duty that he thereby incurs the danger of the law. O. N. B. 136. **E**

CESSURE. L. Fr. A receiver; a bailiff. Kelham.

C'EST ASCAVOIR. L. Fr. That is to say, or to-wit. Generally written as one word, *cestascavoir*, *cestascavoire*. **F**

C'est le crime qui fait la honte, et non pas l'échafaud. It is the offense which causes the shame, and not the scaffold. **G**

CESTUI, CESTUY. He. Used frequently in composition in law French phrases. **H**

CESTUI QUE TRUST. He who has a right to a beneficial interest in and out of an estate the legal title to which is vested in another. 2 Washb. Real Prop. 163.

The person who possesses the equitable right to property and receives the rents, issues, and profits thereof, the legal estate of which is vested in a trustee. **I**

It has been proposed to substitute for this uncouth term the English word "beneficiary," and the latter, though still far from universally adopted, has come to be quite frequently used. It is equal in precision to the antiquated and unwieldy Norman phrase, and far better adapted to the genius of our language. **J**

CESTUI QUE USE. He for whose use and benefit lands or tenements are held by another. The *cestui que use* has the right to receive the profits and benefits of the estate, but the legal title and possession (as well as the duty of defending the same) reside in the other. **K**

CESTUI QUE VIE. He whose life is the measure of the duration of an estate. 1 Washb. Real Prop. 88. **L**

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The person for whose life any lands, tenements, or hereditaments are held.

Cestuy que doit inheriter al père doit inheriter al fils. He who would have been heir to the father of the deceased shall also be heir of the son. Fitzh. Abr. "Descent," 2; 2 Bl. Comm. 239, 250.

CF. An abbreviated form of the Latin word *conferre*, meaning "compare." Directs the reader's attention to another part of the work, to another volume, case, etc., where contrasted, analogous, or explanatory views or statements may be found.

CH. This abbreviation most commonly stands for "chapter," or "chancellor," but it may also mean "chancery," or "chief."

CHACE. L. Fr. A chase or hunting ground.

CHACEA. In old English law. A station of game, more extended than a park, and less than a forest; also the liberty of chasing or hunting within a certain district; also the way through which cattle are driven to pasture, otherwise called a "drove-way." Blount.

Chacea est ad communem legem. A chase is by common law. Reg. Brev. 806.

CHACEABLE. L. Fr. That may be chased or hunted.

CHACER. To drive, compel, or oblige; also to chase or hunt.

CHACURUS. A horse for the chase, or a hound, dog, or courser.

CHAFEWAX. An officer in the English chancery whose duty was to fit the wax to seal the writs, commissions, and other instruments thence issuing. The office was abolished by St. 15 & 16 Vict. c. 87, § 23.

CHAFFERS. An ancient term for goods, wares, and merchandise.

CHAFFERY. Traffic; the practice of buying and selling.

CHAIN. A measure used by engineers and surveyors, being twenty-two yards in length.

CHAIRMAN. A name given to the presiding officer of an assembly, public meeting, convention, deliberative or legislative body, board of directors, committee, etc.

CHAIRMAN OF COMMITTEES OF THE WHOLE HOUSE. In English parliamentary practice. In the commons, this officer, always a member, is elected by the

house on the assembling of every new parliament. When the house is in committee on bills introduced by the government, or in committee of ways and means, or supply, or in committee to consider preliminary resolutions, it is his duty to preside.

CHALDRON, CHALDERN, or CHALDER. Twelve sacks of coals, each holding three bushels, weighing about a ton and a half. In Wales they reckon 12 barrels or pitchers a ton or chaldron, and 29 cwt. of 120 lbs. to the ton. Wharton.

CHALKING, or CAULKING. The process or method of stopping the seams in a ship or a vessel.

CHALLENGE. 1. To object or except to; to prefer objections to a person, right, or instrument; to formally call into question the capability of a person for a particular function, or the existence of a right claimed, or the sufficiency or validity of an instrument.

2. As a noun, the word signifies the objection or exception so advanced.

3. An exception taken against legal documents, as a declaration, count, or writ. But this use of the word is now obsolescent.

4. An exception or objection preferred against a person who presents himself at the polls as a voter, in order that his right to cast a ballot may be inquired into.

5. An objection or exception to the personal qualification of a judge or magistrate about to preside at the trial of a cause; as on account of personal interest, his having been of counsel, bias, etc.

6. An exception or objection taken to the jurors summoned and returned for the trial of a cause, either individually, (to the polls,) or collectively, (to the array.)

AT COMMON LAW. The causes for principal challenges fall under four heads: (1) *Propter honoris respectum*. On account of respect for the party's social rank. (2) *Propter defectum*. On account of some legal disqualification, such as infancy or alienage. (3) *Propter affectum*. On account of partiality; that is, either expressed or implied bias or prejudice. (4) *Propter delictum*. On account of crime; that is, disqualification arising from the conviction of an infamous crime.

CHALLENGE FOR CAUSE. A challenge to a juror for which some cause or reason is alleged. *Termes de la Ley*; 4 Bl. Comm. 353. Thus distinguished from a peremptory challenge.

CHALLENGE PEREMPTORY. A privilege allowed to a prisoner in criminal cases, of challenging peremptorily a certain number of jurors, without assigning any

cause. *Termes de la Ley*; 4 Bl. Comm. 353; Co. Litt. 156b.

CHALLENGE, PRINCIPAL. Such as is made for a cause which when substantiated is of itself sufficient evidence of bias in favor of or against the party challenging. Co. Litt. 156b. See 3 Bl. Comm. 363; 4 Bl. Comm. 353.

CHALLENGE TO FIGHT. A summons or invitation, given by one person to another, to engage in a personal combat; a request to fight a duel. A criminal offense. See Steph. Crim. Dig. 40; 3 East, 581; 6 Blackf. 20.

CHALLENGE TO THE ARRAY. An exception to the whole panel in which the jury are *arrayed*, or set in order by the sheriff in his return, upon account of partiality, or some default in the sheriff, coroner, or other officer who arrayed the panel or made the return. 3 Bl. Comm. 359; Co. Litt. 155b.

CHALLENGE TO THE FAVOR. Is where the party has no principal challenge, but objects only some probable circumstances of suspicion, as acquaintance, and the like, the validity of which must be left to the determination of triers, whose office it is to decide whether the juror be favorable or unfavorable. 3 Bl. Comm. 363; 4 Bl. Comm. 353.

CHALLENGE TO THE POLL. A challenge made separately to an individual juror; as distinguished from a challenge to the array.

CHAMBER. A room or apartment in a house. A private repository of money; a treasury. Sometimes used to designate a court, a commission, or an association of persons habitually meeting together in an apartment, *e. g.*, the "star chamber," "chamber of deputies," "chamber of commerce."

CHAMBER OF ACCOUNTS. In French law. A sovereign court, of great antiquity, in France, which took cognizance of and registered the accounts of the king's revenue; nearly the same as the English court of exchequer. Enc. Brit.

CHAMBER OF COMMERCE. An association (which may or may not be incorporated) comprising the principal merchants, manufacturers, and traders of a city, designed for convenience in buying, selling, and exchanging goods, and to foster the commercial and industrial interests of the place.

CHAMBER, WIDOW'S. A portion of the effects of a deceased person, reserved for the use of his widow, and consisting of her apparel, and the furniture of her bed-chamber, is called in London the "widow's chamber." 2 Bl. Comm. 518.

CHAMBERDEKINS, or CHAMBER DEACONS. In old English law. Certain poor Irish scholars, clothed in mean habit, and living under no rule; also beggars banished from England. (1 Hen. V. cc. 7, 8.) Wharton.

CHAMBERLAIN. Keeper of the chamber. Originally the chamberlain was the keeper of the treasure chamber (*camera*) of the prince or state; otherwise called "treasurer." Cowell.

The name of several high officers of state in England, as the lord great chamberlain of England, lord chamberlain of the household, chamberlain of the exchequer. Cowell; Blount.

The word is also used in some American cities as the title of an officer corresponding to "treasurer."

CHAMBERLARIA. Chamberlainship; the office of a chamberlain. Cowell.

CHAMBERS. In practice. The private room or office of a judge; any place in which a judge hears motions, signs papers, or does other business pertaining to his office, when he is not holding a session of court. Business so transacted is said to be done "in chambers." The term is also applied, in England, to the private office of a barrister.

In international law. Portions of the sea cut off by lines drawn from one promontory to another, or included within lines extending from the point of one cape to the next, situate on the sea-coast of the same nation, and which are claimed by that nation as asylums for merchant vessels, and exempt from the operations of belligerents.

CHAMBIUM. In old English law. Change, or exchange. Bract. fols. 117, 118.

CHAMBRE DEPEINTE. A name anciently given to St. Edward's chamber, called the "Painted Chamber," destroyed by fire with the houses of parliament.

CHAMPDEMAI. (Lat. *Campus Maii*.) The field or assembly of May. The national assembly of the Franks, held in the month of May.

CHAMP DE MARS. (Lat. *Campus Martii*.) The field or assembly of March.

The national assembly of the Franks, held in the month of March, in the open air.

CHAMPART. In French law. The grant of a piece of land by the owner to another, on condition that the latter would deliver to him a portion of the crops. 18 Toul-lier, n. 182.

CHAMPERT. In old English law. A share or division of land; champerty.

In old Scotch law. A gift or bribe, taken by any great man or judge from any person, for delay of just actions, or furthering of wrongous actions, whether it be lands or any goods movable. Skene.

CHAMPERTOR. In criminal law. One who makes pleas or suits, or causes them to be moved, either directly or indirectly, and sues them at his proper costs, upon condition of having a part of the gain. One guilty of champerty. St. 33 Edw. I. c. 2.

CHAMPERTOUS. Of the nature of champerty; affected with champerty.

CHAMPERTY. A bargain made by a stranger with one of the parties to a suit, by which such third person undertakes to carry on the litigation at his own cost and risk, in consideration of receiving, if he wins the suit, a part of the land or other subject sought to be recovered by the action.

The purchase of an interest in a thing in dispute, with the object of maintaining and taking part in the litigation. 7 Bing. 378.

The act of assisting the plaintiff or defendant in a legal proceeding in which the person giving the assistance has no valuable interest, on an agreement that, if the proceeding is successful, the proceeds shall be divided between the plaintiff or defendant, as the case may be, and the assisting person. Sweet.

Champerty is the carrying on a suit in the name of another, but at one's own expense, with the view of receiving as compensation a certain share of the avails of the suit. 4 Duer, 275.

The distinction between *champerty* and *maintenance* lies in the interest which the interfering party is to have in the issue of the suit. In the former case, he is to receive a share or portion of what may be recovered; in the latter case, he is in no way benefited by the success of the party aided, but simply intermeddles officiously. Thus every champerty includes maintenance, but not every maintenance is champerty. See 2 Inst. 208.

CHAMPION. A person who fights a combat in his own cause, or in place of another. The person who, in the trial by bat-

tel, fought either for the tenant or demandant. 3 Bl. Comm. 339.

CHAMPION OF THE KING OR QUEEN. An ancient officer, whose duty it was to ride armed *cap-à-piè*, into Westminster Hall at the coronation, while the king was at dinner, and, by the proclamation of a herald, make a challenge "that, if any man shall deny the king's title to the crown, he is there ready to defend it in single combat." The king drank to him, and sent him a gilt cup covered, full of wine, which the champion drank, retaining the cup for his fee. This ceremony, long discontinued, was revived at the coronation of George IV., but not afterwards. Wharton.

CHANCE. In criminal law. An accident; an unexpected, unforeseen, or unintended consequence of an act; a fortuitous event. The opposite of intention, design, or contrivance.

There is a wide difference between *chance* and *accident*. The one is the intervention of some unlooked-for circumstance to prevent an expected result; the other is the uncalculated effect of mere luck. The shot discharged at random strikes its object by chance; that which is turned aside from its well-directed aim by some unforeseen circumstance misses its mark by accident. Pure chance consists in the entire absence of all the means of calculating results; accident, in the unusual prevention of an effect naturally resulting from the means employed. Morris, (Iowa,) 173.

CHANCE-MEDLEY. In criminal law. A sudden affray. This word is sometimes applied to any kind of homicide by misadventure, but in strictness it is applicable to such killing only as happens in defending one's self. 4 Bl. Comm. 184.

CHANCEL. In ecclesiastical law. The part of a church in which the communion table stands; it belongs to the rector or the impropriator. 2 Broom & H. Comm. 420.

CHANCELLOR. In American law, this is the name given in some states to the judge (or the presiding judge) of a court of chancery. In England, besides being the designation of the chief judge of the court of chancery, the term is used as the title of several judicial officers attached to bishops or other high dignitaries and to the universities. (See the following titles.) In Scotch practice, it denotes the foreman of an assise or jury.

CHANCELLOR OF A CATHEDRAL. In English ecclesiastical law. One of the *quatuor personæ*, or four chief dignitaries of the cathedrals of the old foundation. The duties assigned to the office by the statutes of the different chapters vary, but they are chiefly of an educational character, with a special reference to the cultivation of theology.

CHANCELLOR OF A DIOCESE. In ecclesiastical law. Is the officer appointed to assist a bishop in matters of law, and to hold his consistory courts for him. 1 Bl. Comm. 382; 2 Steph. Comm. 672.

CHANCELLOR OF A UNIVERSITY. In English law. The official head of a university. His principal prerogative is to hold a court with jurisdiction over the members of the university, in which court the vice-chancellor presides. The office is for the most part honorary.

CHANCELLOR OF THE DUCHY OF LANCASTER. In English law. An officer before whom, or his deputy, the court of the duchy chamber of Lancaster is held. This is a special jurisdiction concerning all manner of equity relating to lands holden of the king in right of the duchy of Lancaster. Hob. 77; 3 Bl. Comm. 78.

CHANCELLOR OF THE EXCHEQUER. In English law. A high officer of the crown, who formerly sat in the exchequer court, and, together with the regular judges of the court, saw that things were conducted to the king's benefit. In modern times, however, his duties are not of a judicial character, but such as pertain to a minister of state charged with the management of the national revenue and expenditure.

CHANCELLOR OF THE ORDER OF THE GARTER, and other military orders, in England, is an officer who seals the commissions and the mandates of the chapter and assembly of the knights, keeps the register of their proceedings, and delivers their acts under the seal of their order.

CHANCELLOR, THE LORD HIGH. In England, this is the highest judicial functionary in the kingdom, and superior, in point of precedency, to every temporal lord. He is appointed by the delivery of the queen's great seal into his custody. He may not be a Roman Catholic. He is a cabinet minister, a privy counsellor, and prolocutor of the house of lords by prescription, (but not necessarily, though usually, a peer of the realm,)

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and vacates his office with the ministry by which he was appointed. To him belongs the appointment of all justices of the peace throughout the kingdom. Being, in the earlier periods of English history, usually an ecclesiastic, (for none else were then capable of an office so conversant in writings,) and presiding over the royal chapel, he became keeper of the sovereign's conscience, visitor, in right of the crown, of the hospitals and colleges of royal foundation, and patron of all the crown livings under the value of twenty marks *per annum* in the king's books. He is the general guardian of all infants, idiots, and lunatics, and has the general superintendence of all charitable uses, and all this, over and above the vast and extensive jurisdiction which he exercises in his judicial capacity in the supreme court of judicature, of which he is the head. Wharton.

CHANCELLOR'S COURTS IN THE TWO UNIVERSITIES. In English law. Courts of local jurisdiction in and for the two universities of Oxford and Cambridge in England.

CHANCERY. Equity; equitable jurisdiction; a court of equity; the system of jurisprudence administered in courts of equity. See COURT OF CHANCERY.

CHANGE. 1. An alteration; substitution of one thing for another. This word does not connote either improvement or deterioration as a result. In this respect it differs from *amendment*, which, in law, always imports a change for the better.

2. Exchange of money against money of a different denomination. Also small coin. Also an abbreviation of *exchange*.

CHANGER. An officer formerly belonging to the king's mint, in England, whose business was chiefly to *exchange* coin for bullion brought in by merchants and others.

CHANNEL. This term refers rather to the bed in which the main stream of a river flows than to the deep water of the stream as followed in navigation. 55 Iowa, 558, 8 N. W. Rep. 443.

The "main channel" of a river is that bed of the river over which the principal volume of water flows. Many great rivers discharge themselves into the sea through more than one channel. They all, however, have a main channel, through which the principal volume of water passes. 81 Fed. Rep. 757.

CHANTER. The chief singer in the choir of a cathedral. Mentioned in 13 Eliz. c. 10.

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CHANTRY. A church or chapel endowed with lands for the maintenance of priests to say mass daily for the souls of the donors. *Termes de la Ley*; Cowell.

CHAPEL. A place of worship; a lesser or inferior church, sometimes a part of or subordinate to another church. Webster.

CHAPEL OF EASE. In English ecclesiastical law. A chapel founded in general at some period later than the parochial church itself, and designed for the accommodation of such of the parishioners as, in course of time, had begun to fix their residence at some distance from its site; and so termed because built *in aid* of the original church. 3 Steph. Comm. 151.

CHAPELRY. The precinct and limits of a chapel. The same thing to a chapel as a parish is to a church. Cowell; Blount.

CHAPERON. A hood or bonnet anciently worn by the Knights of the Garter, as part of the habit of that order; also a little escutcheon fixed in the forehead of horses drawing a hearse at a funeral. Wharton.

CHAPITRE. A summary of matters to be inquired of or presented before justices in eyre, justices of assise, or of the peace, in their sessions. Also articles delivered by the justice in his charge to the inquest. Brit. c. iii.

CHAPLAIN. An ecclesiastic who performs divine service in a chapel; but it more commonly means one who attends upon a king, prince, or other person of quality, for the performance of clerical duties in a private chapel. 4 Coke, 90.

A clergyman officially attached to a ship of war, to an army, (or regiment,) or to some public institution, for the purpose of performing divine service. Webster.

CHAPMAN. An itinerant vendor of small wares. A trader who trades from place to place. Say. 191. 192.

CHAPTER. In ecclesiastical law. A congregation of ecclesiastical persons in a cathedral church, consisting of canons, or prebendaries, whereof the dean is the head, all subordinate to the bishop, to whom they act as assistants in matters relating to the church, for the better ordering and disposing the things thereof, and the confirmation of such leases of the temporalty and offices relating to the bishopric, as the bishop shall make from time to time. And they are termed "*capitulum*," as a kind of head, in-

stituted not only to assist the bishop in manner aforesaid, but also anciently to rule and govern the diocese in the time of vacation. Burn, Dict.

CHARACTER. The aggregate of the moral qualities which belong to and distinguish an individual person; the general result of the one's distinguishing attributes.

That moral predisposition or habit, or aggregate of ethical qualities, which is believed to attach to a person, on the strength of the common opinion and report concerning him.

The opinion generally entertained of a person derived from the common report of the people who are acquainted with him. 3 Serg. & R. 336; 3 Mass. 192.

Character and *reputation* are not synonymous terms. Character is what a man or woman is morally, while reputation is what he or she is reputed to be. Yet reputation is the estimate which the community has of a person's character; and it is the belief that moral character is wanting in an individual that renders him unworthy of belief; that is to say, that reputation is evidence of character, and if the reputation is bad for truth, or reputation is bad in other respects affecting the moral character, then the jury may infer that the character is bad and the witness not reliable. General character has always been proved by proving general reputation. 6 Or. 213.

The word "character" no doubt has an objective and subjective import, which are quite distinct. As to the object, character is its quality. As to man, it is the quality of his mind, and his affections, his capacity and temperament. But as a subjective term, certainly in the minds of others, one's character is the aggregate, or the abstract, of other men's opinions of one. And in this sense, when a witness speaks of the character of another witness for truth, he draws not upon his memory alone, but his judgment also. It is the conclusion of the mind of the witness, in summing up the amount of all the reports he has heard of the man, and declaring his character for truth, as held in the minds of his neighbors and acquaintances, and in this sense character, general character, and general report or reputation are the same, as held in the books. 26 Vt. 278.

CHARGE, v. To impose a burden, obligation, or lien; to create a claim against property; to claim, to demand; to accuse; to instruct a jury on matters of law.

CHARGE, n. In general. An incumbrance, lien, or burden; an obligation or duty; a liability; an accusation.

In contracts. An obligation, binding upon him who enters into it, which may be removed or taken away by a discharge. *Termes de la Ley*.

An undertaking to keep the custody of another person's goods.

An obligation entered into by the owner of an estate, which binds the estate for its per-

formance. Com. Dig. "Rent," c. 6; 2 Ball & B. 223.

In the law of wills. A responsibility or liability imposed by the testator upon a devisee personally, or upon the land devised.

In equity pleading. An allegation in the bill of matters which disprove or avoid a defense which it is alleged the defendant is supposed to pretend or intend to set up. Story, Eq. Pl. § 31.

In equity practice. A paper presented to a master in chancery by a party to a cause, being a written statement of the items with which the opposite party should be debited or should account for, or of the claim of the party making it. It is more comprehensive than a *claim*, which implies only the amount due to the person producing it, while a charge may embrace the whole liabilities of the accounting party. Hoff. Mast. 36.

In common-law practice. The final address made by a judge to the jury trying a case, before they make up their verdict, in which he sums up the case, and instructs the jury as to the rules of law which apply to its various issues, and which they must observe, in deciding upon their verdict, when they shall have determined the controverted matters of fact. The term also applies to the address of the court to a grand jury, in which the latter are instructed as to their duties.

In Scotch law. The command of the king's letters to perform some act; as a *charge* to enter heir. Also a messenger's execution, requiring a person to obey the order of the king's letters; as a *charge* on letters of horning, or a *charge* against a superior. Bell.

CHARGE AND DISCHARGE. Under the former system of equity practice, this phrase was used to characterize the usual method of taking an account before a master. After the plaintiff had presented his "charge," a written statement of the items of account for which he asked credit, the defendant filed a counter-statement, called a "discharge," exhibiting any claims or demands he held against the plaintiff. These served to define the field of investigation, and constituted the basis of the report.

CHARGÉ DES AFFAIRES, or CHARGÉ D'AFFAIRES. The title of a diplomatic representative of inferior rank. He has not the title or dignity of a minister, though he may be charged with the functions and offices of the latter, either as a temporary substitute for a minister or at a court to

which his government does not accredit a minister.

CHARGE-SHEET. A paper kept at a police-station to receive each night the names of the persons brought and given into custody, the nature of the accusation, and the name of the accuser in each case. It is under the care of the inspector on duty. Wharton.

CHARGE TO ENTER HEIR. In Scotch law. A writ commanding a person to enter heir to his predecessor within forty days, otherwise an action to be raised against him as if he had entered.

CHARGEABLE. This word, in its ordinary acceptation, as applicable to the imposition of a duty or burden, signifies capable of being charged, subject to be charged, liable to be charged, or proper to be charged. 46 Vt. 625; 107 Mass. 419.

CHARGEANT. Weighty; heavy; penal; expensive. Kelham.

CHARGES. The expenses which have been incurred, or disbursements made, in connection with a contract, suit, or business transaction. Spoken of an action, it is said that the term includes more than what falls under the technical description of "costs."

CHARGING ORDER. The name bestowed, in English practice, upon an order allowed by St. 1 & 2 Vict. c. 110, § 14, and 3 & 4 Vict. c. 82. to be granted to a judgment creditor, that the property of a judgment debtor in government stock, or in the stock of any public company in England, corporate or otherwise, shall (whether standing in his own name or in the name of any person in trust for him) stand charged with the payment of the amount for which judgment shall have been recovered, with interest. 3 Steph. Comm. 587, 588.

CHARITABLE USES, CHARITIES. Gifts to general public uses, which may extend to the rich, as well as the poor. Amb. 651; 2 Sneed, 305.

Gifts to such purposes as are enumerated in the act 43 Eliz. c. 4, or which, by analogy, are deemed within its spirit or intendment. Boyle, Char. 17.

CHARITY. Subjectively, the sentiment or motive of benevolence and philanthropy; the disposition to relieve the distressed. Objectively, alms-giving; acts of benevolence; relief, assistance, or services accorded to the needy without return. Also gifts for the

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promotion of philanthropic and humanitarian purposes.

The meaning of the word "charity," in its legal sense, is different from the signification which it ordinarily bears. In its legal sense, it includes not only gifts for the benefit of the poor, but endowments for the advancement of learning, or institutions for the encouragement of science and art, and, it is said, for any other useful and public purpose. 25 Ohio St. 243.

Charity, in its widest sense, denotes all the good affections men ought to bear towards each other; in a restricted and common sense, relief of the poor. 9 Ves. 399.

Charity, as used in the Massachusetts Sunday law, includes whatever proceeds from a sense of moral duty or a feeling of kindness and humanity, and is intended wholly for the purpose of the relief or comfort of another, and not for one's own benefit or pleasure. 118 Mass. 195, 197.

CHARRE OF LEAD. A quantity consisting of 36 pigs of lead, each pig weighing about 70 pounds.

CHART. The word "chart," as used in the copyright law, does not include sheets of paper exhibiting tabulated or methodically arranged information. 24 Fed. Rep. 632.

CHARTA. In old English law. A charter or deed; an instrument written and sealed; the formal evidence of conveyances and contracts. Also any signal or token by which an estate was held. The term came to be applied, by way of eminence, to such documents as proceeded from the sovereign, granting liberties or privileges, and either where the recipient of the grant was the whole nation, as in the case of *Magna Charta*, or a public body, or private individual, in which case it corresponded to the modern word "charter."

In the civil law. Paper, suitable for the inscription of documents or books; hence, any instrument or writing. See Dig. 32, 52, 6; Nov. 44, 2.

CHARTA COMMUNIS. In old English law. A common or mutual charter or deed; one containing mutual covenants, or involving mutuality of obligation; one to which both parties might have occasion to refer, to establish their respective rights. Bract. fols. 33b, 34.

CHARTA CYROGRAPHATA. In old English law. A chirographed charter; a charter executed in two parts, and cut through the middle, (*scinditur per medium*.) where the word "chirographum," or "chirographum," was written in large letters. Bract. fol. 34; Fleta, lib. 3, c. 14, § 3.

CHARTA DE FORESTA. A collection of the laws of the forest, made in the 9th Hen. III., and said to have been originally a part of *Magna Charta*.

Charta de non ente non valet. Co. Litt. 36. A charter concerning a thing not in existence avails not.

CHARTA DE UNA PARTE. A deed-poll.

Charta non est nisi vestimentum donationis. A deed is nothing else than the vestment of a gift. Co. Litt. 36.

CHARTA PARTITA. (Literally, a deed divided.) A charter-party. 3 Kent, Comm. 201.

CHARTÆ LIBERTATUM. These are *Magna Charta* and *Charta de Foresta*.

Chartarum super fidem, mortuis testibus, ad patriam de necessitudine recurrendum est. Co. Litt. 36. The witnesses being dead, the truth of charters must of necessity be referred to the country, *i. e.*, a jury.

CHARTE. A chart, or plan, which mariners use at sea.

CHARTE-PARTIE. Fr. In French marine law. A charter-party.

CHARTEL. A challenge to a single combat; also an instrument or writing between two states for settling the exchange of prisoners of war.

CHARTER, v. In mercantile law. To hire or lease a vessel for a voyage. A "chartered" is distinguished from a "seeking" ship. 7 East, 24.

CHARTER, n. An instrument emanating from the sovereign power, in the nature of a grant, either to the whole nation, or to a class or portion of the people, or to a colony or dependency, and assuring to them certain rights, liberties, or powers. Such was the "Great Charter" or "*Magna Charta*," and such also were the charters granted to certain of the English colonies in America. See Story, Const. § 161.

An act of the legislative department of government, creating a corporation, is called the "charter" of the corporation.

In old English law. The term denoted a deed or other written instrument under seal; a conveyance, covenant, or contract.

In old Scotch law. A disposition made by a superior to his vassal, for something to

be performed or paid by him. 1 Forb. Inst. pt. 2, b. 2, c. 1, tit. 1. A writing which contains the grant or transmission of the feudal right to the vassal. Ersk. Inst. 2, 3, 19.

CHARTER-HOUSE. Formerly a convent of Carthusian monks in London; now a college founded and endowed by Thomas Sutton. The governors of the charter-house are a corporation aggregate without a head, president, or superior, all the members being of equal authority. 3 Steph. Comm. (7th Ed.) 14, 97.

CHARTER-LAND. Otherwise called "book-land," is property held by deed under certain rents and free services. It, in effect, differs nothing from the free socage lands, and hence have arisen most of the freehold tenants, who hold of particular manors, and owe suit and service to the same. 2 Bl. Comm. 90.

CHARTER OF PARDON. In English law. An instrument under the great seal, by which a pardon is granted to a man for a felony or other offense.

CHARTER OF THE FOREST. See **CHARTA DE FORESTA.**

CHARTER-PARTY. A contract by which an entire ship, or some principal part thereof, is let to a merchant for the conveyance of goods on a determined voyage to one or more places. Abb. Shipp. (241,) 315. A contract of affreightment in writing, by which the owner of a ship lets the whole or a part of her to a merchant, for the conveyance of goods on a particular voyage, in consideration of the payment of freight. 3 Kent, Comm. 201.

A written agreement, not usually under seal, by which a ship-owner lets an entire ship, or a part of it, to a merchant for the conveyance of goods, binding himself to transport them to a particular place for a sum of money which the merchant undertakes to pay as freight for their carriage. Maude & P. Mer. Shipp. 227.

The contract by which a ship is let is termed a "charter-party." By it the owner may either let the capacity or burden of the ship, continuing the employment of the owner's master, crew, and equipments, or may surrender the entire ship to the charterer, who then provides them himself. The master or part owner may be a charterer. Civil Code Cal. § 1959; Civil Code Dak. § 1127.

CHARTER ROLLS. Ancient English records of royal charters, granted between the years 1199 and 1516.

CHARTERED SHIP. A ship hired or freighted; a ship which is the subject-matter of a charter-party.

CHARTERER. In mercantile law. One who charters (*i. e.*, hires or engages) a vessel for a voyage; a freighter. 2 Steph. Comm. 184; 3 Kent, Comm. 137.

CHARTIS REDDENDIS. (For returning the charters.) An ancient writ which lay against one who had charters of feoffment intrusted to his keeping and refused to deliver them. Reg. Orig. 159.

CHARTOPHYLAX. In old European law. A keeper of records or public instruments; a chartulary; a registrar. Spelman.

CHARUE. In old English law. A plow. *Bestes des charues*; beasts of the plow.

CHASE. The liberty or franchise of hunting, one's self, and keeping protected against all other persons, beasts of the chase within a specified district, without regard to the ownership of the land. 2 Bl. Comm. 414-416.

A privileged place for the preservation of deer and beasts of the forest, of a middle nature between a forest and a park. It is commonly less than a forest, and not endowed with so many liberties, as officers, laws, courts; and yet it is of larger compass than a park, having more officers and game than a park. Every forest is a chase, but every chase is not a forest. It differs from a park in that it is not inclosed, yet it must have certain metes and bounds, but it may be in other men's grounds, as well as in one's own. Manwood, 49.

CHASTITY. Purity; continence. That virtue which prevents the unlawful intercourse of the sexes. Also the state of purity or abstinence from unlawful sexual connection.

CHATTEL. An article of personal property; any species of property not amounting to a freehold or fee in land.

The name given to things which in law are deemed personal property. Chattels are divided into chattels real and chattels personal; chattels real being interests in land which devolve after the manner of personal estate, as leaseholds. As opposed to freeholds, they are regarded as personal estate. But, as being interests in real estate, they are called "chattels real," to distinguish them

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from movables, which are called "chattels personal." Mozley & Whitley.

Chattels personal are movables only; chattels real are such as savor only of the realty. 19 Johns. 73.

The term "chattels" is a more comprehensive one than "goods," as it includes animate as well as inanimate property. 2 Chit. Bl. Comm. 383, note. In a devise, however, they seem to be of the same import. Shep. Touch. 447; 2 Fonbl. Eq. 335.

CHATTEL INTEREST. An interest in corporeal hereditaments less than a freehold. 2 Kent, Comm. 342.

CHATTEL MORTGAGE. An instrument of sale of personalty conveying the title of the property to the mortgagee with terms of defeasance; and, if the terms of redemption are not complied with, then, at common law, the title becomes absolute in the mortgagee.

A transfer of personal property as security for a debt or obligation in such form that, upon failure of the mortgagor to comply with the terms of the contract, the title to the property will be in the mortgagee. Thomas, Mortg. 427.

An absolute pledge, to become an absolute interest if not redeemed at a fixed time. 2 Caines Cas. 200, per Kent, Ch.

A conditional sale of a chattel as security for the payment of a debt or the performance of some other obligation. Jones, Chat. Mortg. § 1.

A chattel mortgage is a conditional transfer or conveyance of the property itself. The chief distinctions between it and a pledge are that in the latter the title, even after condition broken, does not pass to the pledgee, who has only a lien on the property, but remains in the pledgeor, who has the right to redeem the property at any time before its sale. Besides, the possession of the property must, in all cases, accompany the pledge, and, at a sale thereof by the pledgee to satisfy his demand, he cannot become the purchaser; while by a chattel mortgage the title of the mortgagee becomes absolute at law, on the default of the mortgagor, and it is not essential to the validity of the instrument that possession of the property should be delivered, and, on the foreclosure of the mortgage, the mortgagee is at liberty to become the purchaser. 36 Cal. 414, 423, 441.

The material distinction between a pledge and a mortgage of chattels is that a mortgage is a conveyance of the legal title upon condition, and it becomes absolute in law if not redeemed by a given time; a pledge is a deposit of goods, redeemable on certain terms, either with or without a fixed period for redemption. In pledge, the general property does not pass, as in the case of mortgage, and the pawnee has only a special property in the thing deposited. The pawnee must choose between two remedies,—a bill in chancery for a judicial sale under a decree of foreclosure, or a sale without judicial process, on the refusal of

the debtor to redeem, after reasonable notice to do so. 5 Blackf. 320. See, also, 3 Blackf. 309.

In a *conditional sale* the purchaser has merely a right to repurchase, and no debt or obligation exists on the part of the vendor; this distinguishes such a sale from a mortgage. 40 Miss. 462; 4 Daly, 77.

CHAUD-MEDLEY. A homicide committed in the heat of an affray 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-defense. 4 Bl. Comm. 184. See 1 Russ. Crimes, 660.

CHAUMPERT. A kind of tenure mentioned in a patent of 35 Edw. III. Cowell; Blount.

CHAUNTRY RENTS. Money paid to the crown by the servants or purchasers of chantry-lands. See CHANTRY.

CHEAT. Swindling; defrauding. "Deceitful practices in defrauding or endeavoring to defraud another of his known right, by some *willful device*, contrary to the plain rules of common honesty." Hawk. P. C. b. 2, c. 23, § 1. "The fraudulent obtaining the property of another by any deceitful and illegal practice or token (short of felony) which affects or may affect the public." Steph. Crim. Law, 93.

Cheats, punishable at common law, are such cheats (not amounting to felony) as are effected by deceitful or illegal symbols or tokens which may affect the public at large, and against which common prudence could not have guarded. 2 Whart. Crim. Law, § 1116; 2 East, P. C. 818.

CHEATERS, or ESCHEATORS, were officers appointed to look after the king's escheats, a duty which gave them great opportunities of fraud and oppression, and in consequence many complaints were made of their misconduct. Hence it seems that a *cheater* came to signify a fraudulent person, and thence the verb *to cheat* was derived. Wharton.

CHECK, v. To control or restrain; to hold within bounds. To verify or audit. Particularly used with reference to the control or supervision of one department, bureau, or office over another.

CHECK, n. A draft or order upon a bank or banking-house, purporting to be drawn upon a deposit of funds, for the payment at all events of a certain sum of money to a certain person therein named, or to him or his order, or to bearer, and payable in-

stantly on demand. 2 Daniel, Neg. Inst. § 1566.

A check is a bill of exchange drawn upon a bank or banker, or a person described as such upon the face thereof, and payable on demand, without interest. Civil Code Cal. § 3254; Civil Code Dak. § 1933.

A check differs from an ordinary bill of exchange in the following particulars: (1) It is drawn on a bank or bankers, and is payable immediately on presentment, without any days of grace. (2) It is payable immediately on presentment, and no acceptance as distinct from payment is required. (3) By its terms it is supposed to be drawn upon a previous deposit of funds, and is an absolute appropriation of so much money in the hands of the bankers to the holder of the check, to remain there until called for, and cannot after notice be withdrawn by the drawer. 2 Story, 502; 8 Bush, 357.

CHECK-BOOK. A book containing blank checks on a particular bank or banker, with an inner margin, called a "stub," on which to note the number of each check, its amount and date, and the payee's name, and a memorandum of the balance in bank.

CHECK-ROLL. In English law. A list or book, containing the names of such as are attendants on, or in the pay of, the queen or other great personages, as their household servants.

CHECKER. The old Scotch form of exchequer.

CHEFE. In Anglo-Norman law. Were or weregild; the price of the head or person, (*capitis pretium.*)

CHEMERAGE. In old French law. The privilege or prerogative of the eldest. A provincial term derived from *chemier*, (*q. v.*) Guyot, Inst.

CHEMIER. In old French law. The eldest born. A term used in Poitou and other places. Guyot, Inst.

CHEMIN. The road wherein every man goes; the king's highway.

CHEMIS. In old Scotch law. A chief dwelling or mansion house.

CHEVAGE. A sum of money paid by villeins to their lords in acknowledgment of their bondage.

Chevage seems also to have been used for a sum of money yearly given to a man of power for his countenance and protection as a chief or leader. Termes de la Ley; Cowell.

CHEVANTIA. In old records. A loan or advance of money upon credit. Cowell.

CHEVISANCE. An agreement or composition; an end or order set down between a creditor or debtor; an indirect gain in point of usury, etc.; also an unlawful bargain or contract. Wharton.

CHEVITIÆ. In old records. Pieces of ground, or *heads* at the end of plowed lands. Cowell.

C H E Z É . A homestead or homesfall which is accessory to a house.

CHICANE. Swindling; shrewd cunning. The use of tricks and artifice.

CHIEF. Principal; leading; head; eminent in power or importance; the most important or valuable of several.

Declaration in chief is a declaration for the principal cause of action. 1 Tidd, Pr. 419.

Examination in chief is the first examination of a witness by the party who produces him. 1 Greenl. Ev. § 445.

CHIEF BARON. The presiding judge of the English court of exchequer; answering to the chief justice of other courts. 3 Bl. Comm. 44; 3 Steph. Comm. 401.

CHIEF CLERK. The principal clerical officer of a bureau or department, who is generally charged, subject to the direction of his superior officer, with the superintendence of the administration of the business of the office.

CHIEF JUDGE. The judge of the London bankruptcy court is so called.

CHIEF JUSTICE. The presiding, eldest, or principal judge of a court of justice.

CHIEF JUSTICE OF ENGLAND. The presiding judge in the queen's bench division of the high court of justice, and, in the absence of the lord chancellor, president of the high court, and also an *ex officio* judge of the court of appeals. The full title is "Lord Chief Justice of England."

CHIEF JUSTICE OF THE COMMON PLEAS. In England. The presiding judge in the court of common pleas, and afterwards in the common pleas division of the high court of justice, and one of the *ex officio* judges of the high court of appeal.

CHIEF JUSTICIAR. In old English law. A high judicial officer and special magistrate, who presided over the *aula regis* of the Norman kings, and who was also the principal minister of state, the second man in the

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kingdom, and, by virtue of his office, guardian of the realm in the king's absence. 3 Bl. Comm. 38.

CHIEF LORD. The immediate lord of the fee, to whom the tenants were directly and personally responsible.

CHIEF PLEDGE. The borsholder, or chief of the borough. Spelman.

CHIEF RENTS. In English law. Were the annual payments of freeholders of manors; and were also called "quit-rents," because by paying them the tenant was freed from all other rents or services. 2 Bl. Comm. 42.

CHIEF, TENANT IN. In English feudal law. All the land in the kingdom was supposed to be holden mediately or immediately of the king, who was styled the "Lord Paramount," or "Lord Above All;" and those that held immediately under him, in right of his crown and dignity, were called his tenants "*in capite*" or "in chief," which was the most honorable species of tenure, but at the same time subjected the tenant to greater and more burdensome services than inferior tenures did. Brown.

CHIEFRIE. In feudal law. A small rent paid to the lord paramount.

CHILD. This word has two meanings in law: (1) In the law of the domestic relations, and as to descent and distribution, it is used strictly as the correlative of "parent," and means a son or daughter considered as in relation with the father or mother. (2) In the law of negligence, and in laws for the protection of children, etc., it is used as the opposite of "adult," and means the young of the human species, (generally under the age of puberty,) without any reference to parentage and without distinction of sex.

CHILDREN. Offspring; progeny. Legitimate offspring; children born in wedlock. 7 Ves. 458; 5 Scott, N. R. 990.

The general rule is that "children," in a bequest or devise, means legitimate children. Under a devise or bequest to children, as a class, natural children are not included, unless the testator's intention to include them is manifest, either by express designation or necessary implication. 14 N. J. Eq. 159; 2 Paige, 11.

In deeds, the word "children" signifies the immediate descendants of a person, in the ordinary sense of the word, as contradistinguished from *issue*; unless there be some accompanying expressions, evidencing that the word is used in an enlarged sense. Lewis, Perp. 196.

In wills, where greater latitude of construction is allowed, in order to effect the obvious intention of the testator, the meaning of the word has sometimes been extended, so as to include *grandchildren*, and it has been held to be synonymous with *issue*. Lewis, Perp. 195, 196; 2 Crabb, Real Prop. pp. 38, 39, §§ 988, 989; 4 Kent, Comm. 345, 346, note.

The word "heirs," in its natural signification, is a word of limitation; and it is presumed to be used in that sense, unless a contrary intention appears. But the term "children," in its natural sense, is a word of purchase, and is to be taken to have been used as such, unless there are other expressions in the will showing that the testator intended to use it as a word of limitation only. 4 Paige, 293; 3 Wend. 503.

In the natural and primary sense of the word "children," it implies immediate offspring, and, in its legal acceptation, is not a word of limitation, unless it is absolutely necessary so to construe it in order to give effect to the testator's intention. 39 Ala. 24.

"Children" is ordinarily a word of description, limited to persons standing in the same relation, and has the same effect as if all the names were given; but heirs, in the absence of controlling or explanatory words, includes more remote descendants, and is to be applied *per stirpes*. 14 Allen, 204.

CHILDWIT. In Saxon law. The right which a lord had of taking a fine of his bondswoman gotten with child without his license. *Termes de la Ley*; Cowell.

CHILTERN HUNDREDS. In English law. The stewardship of the Chiltern Hundreds is a nominal office in the gift of the crown, usually accepted by members of the house of commons desirous of vacating their seats. By law a member once duly elected to parliament is compelled to discharge the duties of the trust conferred upon him, and is not enabled at will to resign it. But by statute, if any member accepts any office of profit from the crown, (except officers in the army or navy accepting a new commission,) his seat is vacated. If, therefore, any member wishes to retire from the representation of the county or borough by which he was sent to parliament, he applies to the lords of the treasury for the stewardship of one of the Chiltern Hundreds, which having received, and thereby accomplished his purpose, he again resigns the office. Brown.

CHIMIN. In old English law. A road, way, highway. It is either the queen's highway (*chiminus reginae*) or a private way. The first is that over which the subjects of the realm, and all others under the protection of the crown, have free liberty to pass, though the property in the soil itself belong to some private individual; the last is that in which one person or more have lib-

erty to pass over the land of another, by prescription or charter. Wharton.

CHIMINAGE. A toll for passing on a way through a forest; called in the civil law "*pedagium*." Cowell.

CHIMINUS. The way by which the king and all his subjects and all under his protection have a right to pass, though the property of the soil of each side where the way lieth may belong to a private man. Cowell.

CHIMNEY MONEY, or HEARTH MONEY. A tax upon chimneys or hearths; an ancient tax or duty upon houses in England, now repealed.

CHIPPINGAVEL. In old English law. A tax upon trade; a toll imposed upon traffic, or upon goods brought to a place to be sold.

CHIRGEMOT, CHIRCHGEMOT. In Saxon law. An ecclesiastical assembly or court. Spelman. A synod or meeting in a church or vestry. 4 Inst. 321.

CHIROGRAPH. In old English law. A deed or indenture; also the last part of a fine of land.

An instrument of gift or conveyance attested by the subscription and crosses of the witnesses, which was in Saxon times called "*chirographum*," and which, being somewhat changed in form and manner by the Normans, was by them styled "*charta*." Anciently when they made a chirograph or deed which required a counterpart, as we call it, they engrossed it twice upon one piece of parchment contrariwise, leaving a space between, in which they wrote in capital letters the word "chirograph," and then cut the parchment in two through the middle of the word, giving a part to each party. Cowell.

In Scotch law. A written voucher for a debt. Bell.

In civil and canon law. An instrument written out and subscribed by the hand of the party who made it, whether the king or a private person. Cowell.

CHIROGRAPHIA. In Roman law. Writings emanating from a single party, the debtor.

CHIROGRAPHER OF FINES. In English law. The title of the officer of the common pleas who engrossed fines in that court so as to be acknowledged into a perpetual record. Cowell.

CHIROGRAPHUM. In Roman law. A handwriting; that which was written with

a person's own hand. An obligation which a person wrote or subscribed with his own hand; an acknowledgment of debt, as of money received, with a promise to repay.

An evidence or voucher of debt; a security for debt. Dig. 26, 7, 57, pr.

A right of action for debt.

Chirographum apud debitorem repertum præsumentur solutum. An evidence of debt found in the debtor's possession is presumed to be paid. Halk. Max. 20: Bell, Dict.

Chirographum non extans præsumentur solutum. An evidence of debt not existing is presumed to have been discharged. Tray. Lat. Max. 73.

CHIRURGEON. The ancient denomination of a surgeon.

CHIVALRY. In feudal law. Knight-service. Tenure in chivalry was the same as tenure by knight-service. 2 Bl. Comm. 61, 62.

CHIVALRY, COURT OF. In English law. The name of a court anciently held as a court of honor merely, before the earl-marshal, and as a criminal court before the lord high constable, jointly with the earl-marshal. It had jurisdiction as to contracts and other matters touching deeds of arms or war, as well as pleas of life or member. It also corrected encroachments in matters of coat-armor, precedency, and other distinctions of families. It is now grown entirely out of use, on account of the feebleness of its jurisdiction and want of power to enforce its judgments, as it could neither fine nor imprison, not being a court of record. 3 Bl. Comm. 68; 4 Broom. & H. Comm. 360, note.

CHOP-CHURCH. A word mentioned in 9 Hen. VI. c. 65, by the sense of which it was in those days a kind of trade, and by the judges declared to be lawful. But Brooke, in his abridgment, says it was only permissible by law. It was, without doubt, a nickname given to those who used to change benefices, as to "chop and change" is a common expression. Jacob.

CHOPS. The mouth of a harbor. Pub. St. Mass. 1882, p. 1288.

CHORAL. In ancient times a person admitted to sit and worship in the choir; a chorister.

CHOREPISCOPUS. In old European law. A rural bishop, or bishop's vicar. Spelman; Cowell.

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CHOSE. A thing; an article of property. A chose is a chattel personal, (Williams, Pers. Prop. 4,) and is either in possession or in action.

CHOSE IN ACTION. A right to personal things of which the owner has not the possession, but merely a right of action for their possession. 2 Bl. Comm. 389, 397; 1 Chit. Pr. 99.

A right to receive or recover a debt, demand, or damages on a cause of action *ex contractu*, or for a tort connected with contract, but which cannot be made available without recourse to an action.

Personalty to which the owner has a right of possession in future, or a right of immediate possession, wrongfully withheld, is termed by the law a "chose in action." Code Ga. 1882, § 2239.

Chose in action is a phrase which is sometimes used to signify a right of bringing an action, and, at others, the thing itself which forms the subject-matter of that right, or with regard to which that right is exercised; but it more properly includes the idea both of the thing itself and of the right of action as annexed to it. Thus, when it is said that a debt is a chose in action, the phrase conveys the idea, not only of the thing itself, *i. e.*, the debt, but also of the right of action or of recovery possessed by the person to whom the debt is due. When it is said that a chose in action cannot be assigned, it means that a thing to which a right of action is annexed cannot be transferred to another, together with such right. Brown.

A chose in action is any right to damages, whether arising from the commission of a tort, the omission of a duty, or the breach of a contract. 4 Ala. 350; 8 Port. 36.

CHOSE IN POSSESSION. A thing in possession, as distinguished from a thing in action. See **CHOSE IN ACTION**. Taxes and customs, if paid, are a chose in possession; if unpaid, a chose in action. 2 Bl. Comm. 408.

CHOSE LOCAL. A local thing; a thing annexed to a place, as a mill. Kitchin, fol. 18; Cowell; Blount.

CHOSE TRANSITORY. A thing which is movable, and may be taken away or carried from place to place. Cowell; Blount.

CHOSEN FREEHOLDERS. Under the municipal organization of the state of New Jersey, each county has a board of officers, called by this name, composed of representatives from the cities and townships within its limits, and charged with administering the revenues of the county. They correspond to the "county commissioners" or "supervisors" in other states.

CHOUT. In Hindu law. A fourth, a fourth part of the sum in litigation. The "Mahratta chout" is a fourth of the revenues exacted as tribute by the Mahrattas.

CHREMATISTICS. The science of wealth.

CHRENECRUDA. Under the Salic law. This was a ceremony performed by a person who was too poor to pay his debt or fine, whereby he applied to a rich relative to pay it for him. It consisted (after certain preliminaries) in throwing green herbs upon the party, the effect of which was to bind him to pay the whole demand.

CHRISTIAN. Pertaining to Jesus Christ or the religion founded by him; professing Christianity. The adjective is also used in senses more remote from its original meaning. Thus a "court Christian" is an ecclesiastical court; a "Christian name" is that conferred upon a person at baptism into the Christian church. As a noun, it signifies one who accepts and professes to live by the doctrines and principles of the Christian religion.

CHRISTIAN NAME. The baptismal name distinct from the surname. It has been said from the bench that a Christian name may consist of a single letter. Wharton.

CHRISTIANITATIS CURIA. The court Christian. An ecclesiastical court, as opposed to a civil or lay tribunal. Cowell.

CHRISTIANITY. The religion founded and established by Jesus Christ.

Christianity has been judicially declared to be a part of the common law:

CHRISTMAS-DAY. A festival of the Christian church, observed on the 25th of December, in memory of the birth of Jesus Christ.

CHRYSOLOGY. That branch of the science of political economy which relates to the production of wealth.

CHURCH. In its most general sense, the religious society founded and established by Jesus Christ, to receive, preserve, and propagate his doctrines and ordinances.

A body or community of Christians, united under one form of government by the profession of the same faith, and the observance of the same ritual and ceremonies.

The term may denote either a society of persons who, professing Christianity, hold certain doctrines or observances which differentiate them from other like groups, and

who use a common discipline, or the building in which such persons habitually assemble for public worship.

The body of communicants gathered into church order, according to established usage in any town, parish, precinct, or religious society, established according to law, and actually connected and associated therewith for religious purposes, for the time being, is to be regarded as the church of such society, as to all questions of property depending upon that relation. 10 Pick. 193. See, also, 3 Me. 247.

A congregational church is a voluntary association of Christians united for discipline and worship, connected with, and forming a part of, some religious society, having a legal existence. 3 Me. 248.

In English ecclesiastical law. An institution established by the law of the land in reference to religion. 3 Steph. Comm. 54. The word "church" is said to mean, in strictness, not the material fabric, but the cure of souls and the right of tithes. 1 Mod. 201.

CHURCH BUILDING ACTS. Statutes passed in England in and since the year 1818, with the object of extending the accommodation afforded by the national church, so as to make it more commensurate with the wants of the people. 3 Steph. Comm. 152-164.

CHURCH DISCIPLINE ACT. The statute 3 & 4 Vict. c. 86, containing regulations for trying clerks in holy orders charged with offenses against ecclesiastical law, and for enforcing sentences pronounced in such cases. Phillim. Ecc. Law, 1814.

CHURCH OF ENGLAND. The Church of England is a distinct branch of Christ's church, and is also an institution of the state, (see the first clause of *Magna Charta*,) of which the sovereign is the supreme head by act of parliament, (26 Hen. VIII. c. 1,) but in what sense is not agreed. The sovereign must be a member of the church, and every subject is in theory a member. Wharton.

CHURCH RATE. In English law. A sum assessed for the repair of parochial churches by the representatives of the parishioners in vestry assembled.

CHURCH REEVE. A church warden; an overseer of a church. Now obsolete. Cowell.

CHURCH-SCOT. In old English law. Customary obligations paid to the parish priest; from which duties the religious some-

times purchased an exemption for themselves and their tenants.

CHURCH WARDENS. A species of ecclesiastical officers who are intrusted with the care and guardianship of the church building and property. These, with the rector and vestry, represent the parish in its corporate capacity.

CHURCHESSET. In old English law. A certain portion or measure of wheat, anciently paid to the church on St. Martin's day; and which, according to Fleta, was paid as well in the time of the Britons as of the English. Fleta, lib. 1, c. 47, § 28.

CHURCHYARD. See CEMETERY.

CHURL. In Saxon law. A freeman of inferior rank, chiefly employed in husbandry. 1 Reeve, Eng. Law, 5. A tenant at will of free condition, who held land from a thane, on condition of rents and services. Cowell. See CEORL.

CI. Fr. So; here. *Ci Dieu vous eyde*, so help you God. *Ci devant*, heretofore. *Ci bien*, as well.

CIBARIA. Lat. In the civil law. Food; victuals. Dig. 34, 1.

CINQUE PORTS. Five (now seven) ports or havens on the south-east coast of England, towards France, formerly esteemed the most important in the kingdom. They are Dover, Sandwich, Romney, Hastings, and Hythe, to which Winchelsea and Rye have been since added. They had similar franchises, in some respects, with the counties palatine, and particularly an exclusive jurisdiction, (before the mayor and jurats, corresponding to aldermen, of the ports,) in which the king's ordinary writ did not run. 3 Bl. Comm. 79.

The 18 & 19 Vict. c. 48, (amended by 20 & 21 Vict. c. 1,) abolishes all jurisdiction and authority of the lord warden of the Cinque Ports and constable of Dover Castle, in or in relation to the administration of justice in actions, suits, or other civil proceedings at law or in equity.

CIPPI. An old English law term for the stocks, an instrument in which the wrists or ankles of petty offenders were confined.

CIRCADA. A tribute anciently paid to the bishop or archbishop for visiting churches. Du Fresne.

CIRCAR. In Hindu law. Head of affairs; the state or government; a grand division of a province; a headman. A name

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used by Europeans in Bengal to denote the Hindu writer and accountant employed by themselves, or in the public offices. Whar-ton.

CIRCUIT. A division of the country, appointed for a particular judge to visit for the trial of causes or for the administration of justice. Bouvier.

Circuits, as the term is used in England, may be otherwise defined to be *the periodical progresses of the judges* of the superior courts of common law, through the several counties of England and Wales, for the purpose of administering civil and criminal justice.

CIRCUIT COURTS. The name of a system of courts of the United States, invested with general original jurisdiction of such matters and causes as are of Federal cognizance, except the matters specially delegated to the district courts.

The United States circuit courts are held by one of the justices of the supreme court appointed for the circuit, (and bearing the name, in that capacity, of *circuit justice*,) together with the circuit judge and the district judge of the district in which they are held. Their business is not only the supervision of trials of issues in fact, but the hearing of causes as a court in *banc*; and they have equity as well as common-law jurisdiction, together with appellate jurisdiction from the decrees and judgments of the district courts. 1 Kent, Comm. 301-303.

In several of the states, *circuit court* is the name given to a tribunal, the territorial jurisdiction of which comprises several counties or districts, and whose sessions are held in such counties or districts alternately. These courts usually have general original jurisdiction.

CIRCUIT COURTS OF APPEALS. A system of courts of the United States (one in each circuit) created by act of congress of March 3, 1891, composed of the circuit justice, the circuit judge, and an additional circuit judge appointed for each such court, and having appellate jurisdiction from the circuit and district courts except in certain specified classes of cases.

CIRCUIT PAPER. In English practice. A paper containing a statement of the time and place at which the several assises will be held, and other statistical information connected with the assises. Holthouse.

Circuitus est evitandus; et boni iudicis est lites dirimere, ne lis ex lite oriatur. 5 Coke, 31. Circuitry is to be avoided; and it is the duty of a good judge to deter-

mine litigations, lest one lawsuit arise out of another.

CIRCUITY OF ACTION. This occurs where a litigant, by a complex, indirect, or roundabout course of legal proceeding, makes two or more actions necessary, in order to effect that adjustment of rights between all the parties concerned in the transaction which, by a more direct course, might have been accomplished in a single suit.

CIRCULAR NOTES. Similar instruments to "letters of credit." They are drawn by resident bankers upon their foreign correspondents, in favor of persons traveling abroad. The correspondents must be satisfied of the identity of the applicant, before payment; and the requisite proof of such identity is usually furnished, upon the applicant's producing a letter with his signature, by a comparison of the signatures. Brown.

CIRCULATING MEDIUM. This term is more comprehensive than the term "money," as it is the medium of exchanges, or purchases and sales, whether it be gold or silver coin or any other article.

CIRCUMDUCTION. In Scotch law. A closing of the period for lodging papers, or doing any other act required in a cause. Paters. Comp.

CIRCUMDUCTION OF THE TERM. In Scotch practice. The sentence of a judge, declaring the time elapsed within which a proof ought to have been led, and precluding the party from bringing forward any further evidence. Bell.

CIRCUMSPECTE AGATIS. The title of a statute passed 13 Edw. I., A. D. 1285, and so called from the initial words of it, the object of which was to ascertain the boundaries of ecclesiastical jurisdiction in some particulars, or, in other words, to regulate the jurisdiction of the ecclesiastical and temporal courts. 2 Reeve, Eng. Law, 215, 216.

CIRCUMSTANCES. A principal fact or event being the object of investigation, the *circumstances* are the related or accessory facts or occurrences which attend upon it, which closely precede or follow it, which surround and accompany it, which depend upon it, or which support or qualify it.

The terms "circumstance" and "fact" are, in many applications, synonymous; but the true distinction of a circumstance is its *relative* character. "Any fact may be a circumstance with referenc

to any other fact." 1 Benth. Jud. Evid. 42, note; id. 142.

Thrift, integrity, good repute, business capacity, and stability of character, for example, are "circumstances" which may be very properly considered in determining the question of "adequate security." 5 Redf. Sur. 600.

CIRCUMSTANTIAL EVIDENCE.

Evidence directed to the attending circumstances; evidence which inferentially proves the principal fact by establishing a condition of surrounding and limiting circumstances, whose existence is a premise from which the existence of the principal fact may be concluded by necessary laws of reasoning.

When the existence of any fact is attested by witnesses, as having come under the cognizance of their senses, or is stated in documents, the genuineness and veracity of which there seems no reason to question, the evidence of that fact is said to be direct or positive. When, on the contrary, the existence of the principal fact is only inferred from one or more circumstances which have been established directly, the evidence is said to be circumstantial. And when the existence of the principal fact does not follow from the evidentiary facts as a necessary consequence of the law of nature, but is deduced from them by a process of probable reasoning, the evidence and proof are said to be presumptive. Best, Pres. 246; Id. 12.

All presumptive evidence is circumstantial, because necessarily derived from or made up of *circumstances*, but all circumstantial evidence is not presumptive, that is, it does not operate in the way of *presumption*, being sometimes of a higher grade, and leading to necessary conclusions, instead of probable ones. Burrill.

CIRCUMSTANTIBUS, TALES DE.

See TALES.

CIRCUMVENTION.

In Scotch law. Any act of fraud whereby a person is reduced to a deed by decret. It has the same sense in the civil law. Dig. 50, 17, 49, 155.

CIRIC-BRYCE.

In old English law. Any violation of the privileges of a church.

CIRIC SCEAT.

In old English law. Church-scot, or sbot; an ecclesiastical due, payable on the day of St. Martin, consisting chiefly of corn.

CIRLISCUS.

A ceorl, (*q. v.*)

CISTA.

A box or chest for the deposit of charters, deeds, and things of value.

CITACION.

In Spanish law. Citation; summons; an order of a court requiring a person against whom a suit has been brought to appear and defend within a given time.

CITATIO.

A citation or summons to court.

CITATIO AD REASSUMENDAM CAUSAM.

A summons to take up the cause. A process, in the civil law, which issued when one of the parties to a suit died before its determination, for the plaintiff against the defendant's heir, or for the plaintiff's heir against the defendant, as the case might be; analogous to a modern bill of revivor.

Citatio est de juri naturali. A summons is by natural right. Cases in Banco Regis Wm. III. 453.

CITATION. In practice. A writ issued out of a court of competent jurisdiction, commanding a person therein named to appear on a day named and do something therein mentioned, or show cause why he should not. Proc. Prac.

The act by which a person is so summoned or cited.

It is used in this sense, in American law, in the practice upon writs of error from the United States supreme court, and in the proceedings of courts of probate in many of the states.

This is also the name of the process used in the English ecclesiastical, probate, and divorce courts to call the defendant or respondent before them. 3 Bl. Comm. 100; 3 Steph. Comm. 720.

In Scotch practice. The calling of a party to an action done by an officer of the court under a proper warrant.

The service of a writ or bill of summons. Paters. Comp.

CITATION OF AUTHORITIES. The reading of, or reference to, legal authorities and precedents, (such as constitutions, statutes, reported cases, and elementary treatises,) in arguments to courts, or in legal text-books, to establish or fortify the propositions advanced.

Citationes non concedantur priusquam exprimatur super qua re fieri debet citatio. Citations should not be granted before it is stated about what matter the citation is to be made. A maxim of ecclesiastical law. 12 Coke, 44.

CITE. L. Fr. City; a city. *Cite de Loundr'*, city of London.

CITE. To summon; to command the presence of a person; to notify a person of legal proceedings against him and require his appearance thereto.

To read or refer to legal authorities, in an argument to a court or elsewhere, in support

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of propositions of law sought to be established.

CITIZEN. In general. A member of a free city or jural society, (*civitas*), possessing all the rights and privileges which can be enjoyed by any person under its constitution and government, and subject to the corresponding duties.

In American law. One who, under the constitution and laws of the United States, has a right to vote for civil officers, and himself is qualified to fill elective offices.

One of the sovereign people. A constituent member of the sovereignty, synonymous with the people. 19 How. 404.

A member of the civil state entitled to all its privileges. Cooley, Const. Law, 77.

The term "citizen" has come to us derived from antiquity. It appears to have been used in the Roman government to designate a person who had the freedom of the city, and the right to exercise all political and civil privileges of the government. There was also, at Rome, a partial citizenship, including civil, but not political, rights. Complete citizenship embraced both. 15 Ind. 451.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. Amend. XIV. Const. U. S.

There is in our political system a government of each of the several states, and a government of the United States. Each is distinct from the others, and has citizens of its own, who owe it allegiance, and whose rights, within its jurisdiction, it must protect. The same person may be at the same time a citizen of the United States and a citizen of a state; but his rights of citizenship under one of these governments will be different from those he has under the other. The government of the United States, although it is, within the scope of its powers, supreme and beyond the states, can neither grant nor secure to its citizens rights or privileges which are not expressly or by implication placed under its jurisdiction. All that cannot be so granted or secured are left to the exclusive protection of the states. 92 U. S. 542.

"Citizen" and "inhabitant" are not synonymous. One may be a citizen of a state without being an inhabitant, or an inhabitant without being a citizen. 4 Har. (Del.) 383.

"Citizen" is sometimes used as synonymous with "resident;" as in a statute authorizing funds to be distributed among the religious societies of a township, proportionably to the number of their members who are citizens of the township. 11 Ohio, 24.

In English law. An inhabitant of a city. 1 Rolle, 138. The representative of a city, in parliament. 1 Bl. Comm. 174. It will be perceived that, in the English usage, the word adheres closely to its original meaning, as shown by its derivation, (*civis*, a free

inhabitant of a city.) When it is designed to designate an inhabitant of the *country*, or one amenable to the laws of the nation, "subject" is the word there employed.

CITIZENSHIP. The *status* of being a citizen, (*q. v.*)

CITY. In England. An incorporated town or borough which is or has been the see of a bishop. Co. Litt. 108; 1 Bl. Comm. 114; Cowell.

A large town incorporated with certain privileges. The inhabitants of a city. The citizens. Worcester.

In America. A city is a municipal corporation of a larger class, the distinctive feature of whose organization is its government by a chief executive (usually called "mayor") and a legislative body, composed of representatives of the citizens, (usually called a "council" or "board of aldermen,") and other officers having special functions.

CITY OF LONDON COURT. A court having a local jurisdiction within the city of London. It is to all intents and purposes a county court, having the same jurisdiction and procedure.

CIVIL. In its original sense, this word means pertaining or appropriate to a member of a *civitas* or free political community; natural or proper to a *citizen*. Also, relating to the community, or to the policy and government of the citizens and subjects of a state.

In the language of the law, it has various significations. In contradistinction to *barbarous* or *savage*, it indicates a state of society reduced to order and regular government; thus, we speak of civil life, civil society, civil government, and civil liberty. In contradistinction to *criminal*, it indicates the private rights and remedies of men, as members of the community, in contrast to those which are public and relate to the government; thus, we speak of civil process and criminal process, civil jurisdiction and criminal jurisdiction.

It is also used in contradistinction to *military* or *ecclesiastical*, to *natural* or *foreign*; thus, we speak of a civil station, as opposed to a military or an ecclesiastical station; a civil death, as opposed to a natural death; a civil war, as opposed to a foreign war. Story, Const. § 791.

CIVIL ACTION. In the civil law. A personal action which is instituted to compel payment, or the doing some other thing which is purely civil.

At common law. As distinguished from a *criminal* action, it is one which seeks the establishment, recovery, or redress of private and civil rights.

Civil suits relate to and affect, as to the parties against whom they are brought, only individual rights which are within their individual control, and which they may part with at their pleasure. The design of such suits is the enforcement of merely private obligations and duties. Criminal prosecutions, on the other hand, involve public wrongs, or a breach and violation of public rights and duties, which affect the whole community, considered as such in its social and aggregate capacity. The end they have in view is the prevention of similar offenses, not atonement or expiation for crime committed. 18 N. Y. 128.

Civil cases are those which involve disputes or contests between man and man, and which only terminate in the adjustment of the rights of plaintiffs and defendants. They include all cases which cannot legally be denominated "criminal cases." T. U. P. Charl. 175.

In code practice. A civil action is a proceeding in a court of justice in which one party, known as the "plaintiff," demands against another party, known as the "defendant," the enforcement or protection of a private right, or the prevention or redress of a private wrong. It may also be brought for the recovery of a penalty or forfeiture. Rev. Code Iowa 1880, § 2505.

The distinction between actions at law and suits in equity, and the forms of all such actions and suits, heretofore existing, is abolished; and there shall be in this state, hereafter, but one form of action for the enforcement or protection of private rights and the redress of private wrongs, which shall be denominated a "civil action." Code N. Y. § 69.

CIVIL BILL COURT. A tribunal in Ireland with a jurisdiction analogous to that of the county courts in England. The judge of it is also chairman of quarter sessions, (where the jurisdiction is more extensive than in England,) and performs the duty of revising barrister. Wharton.

CIVIL COMMOTION. An insurrection of the people for general purposes, though it may not amount to rebellion where there is a usurped power. 2 Marsh. Ins. 793.

CIVIL CORPORATIONS. An old English term for all lay corporations which are not eleemosynary or charitable.

Civil corporations are those which relate to temporal police; such are the corporations of the cities, the companies for the advancement of commerce and agriculture, literary societies, colleges or universities founded for the instruction of youth, and the like. Re-

ligious corporations are those whose establishment relates only to religion; such are the congregations of the different religious persuasions. Civil Code La. art. 431.

CIVIL DAMAGE ACTS. Acts passed in many of the United States which provide an action for damages against a vendor of intoxicating liquors, (and, in some cases, against his lessor,) on behalf of the wife or family of a person who has sustained injuries by reason of his intoxication.

CIVIL DEATH. That change in a person's legal and civil condition which deprives him of civic rights and juridical capacities and qualifications, as natural death extinguishes his natural condition. It follows as a consequence of being attainted of treason or felony, in English law, and anciently of entering a monastery or abjuring the realm. The person in this condition is said to be *civilitur mortuus*, civilly dead, or dead in law.

CIVIL INJURY. Injuries to person or property, resulting from a breach of contract, delict, or criminal offense, which may be redressed by means of a civil action.

CIVIL LAW. 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."

The word "civil," as applied to the laws in force in Louisiana, before the adoption of the Civil Code, is not used in contradistinction to the word "criminal," but must be restricted to the Roman law. It is used in contradistinction to the laws of England and those of the respective states. 5 La. 493.

1. The system of jurisprudence held and administered in the Roman empire, particularly as set forth in the compilation of Justinian and his successors,—comprising the Institutes, Code, Digest, and Novels, and collectively denominated the "*Corpus Juris Civilis*,"—as distinguished from the common law of England and the canon law.

2. That rule of action which every particular nation, commonwealth, or city has established peculiarly for itself; more properly called "municipal" law, to distinguish it from the "law of nature," and from international law.

The law which a people enacts is called the "civil law" of that people, but that law which natural reason appoints for all mankind is called the "law of nations," because all nations use it. Bowyer, Mod. Civil Law, 19.

3. That division of municipal law which is occupied with the exposition and enforce-

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ment of *civil rights*, as distinguished from *criminal law*.

CIVIL LIBERTY. The liberty of a member of society, being a man's natural liberty, so far restrained by human laws (and no further) as is necessary and expedient for the general advantage of the public. 1 Bl. Comm. 125; 2 Steph. Comm. 487. The power of doing whatever the laws permit. 1 Bl. Comm. 6; Inst. 1, 3, 1. See LIBERTY.

CIVIL LIST. In English public law. An annual sum granted by parliament, at the commencement of each reign, for the expense of the royal household and establishment, as distinguished from the general exigencies of the state, being a provision made for the crown out of the taxes in lieu of its proper patrimony, and in consideration of the assignment of that patrimony to the public use. 2 Steph. Comm. 591; 1 Bl. Comm. 332.

CIVIL OBLIGATION. An obligation binding in law, and enforceable in a court of justice. Poth. Obl. 173, 191.

CIVIL OFFICER. Any officer of the United States who holds his appointment under the national government, whether his duties are executive or judicial, in the highest or the lowest departments of the government, with the exception of officers of the army and navy. 1 Story, Const. § 792.

CIVIL REMEDY. The remedy afforded by law to a private person in the civil courts in so far as his private and individual rights have been injured by a delict or crime; as distinguished from the remedy by criminal prosecution for the injury to the rights of the public.

CIVIL RESPONSIBILITY. The liability to be called upon to respond to an action at law for an injury caused by a delict or crime, as opposed to criminal responsibility, or liability to be proceeded against in a criminal tribunal.

CIVIL RIGHTS. Rights appertaining to a person in virtue of his citizenship in a state or community. Rights capable of being enforced or redressed in a civil action. Also a term applied to certain rights secured to citizens of the United States by the thirteenth and fourteenth amendments to the constitution, and by various acts of congress made in pursuance thereof.

CIVIL SERVICE. This term properly includes all functions under the government, except military functions. In general it is

confined to functions in the great administrative departments of state. Wharton.

CIVIL SIDE. When the same court has jurisdiction of both civil and criminal matters, proceedings of the first class are often said to be on the civil side; those of the second, on the criminal side.

CIVIL WAR. An internecine war. A war carried on between opposing masses of citizens of the same country or nation.

Before the declaration of independence, the war between Great Britain and the United Colonies was a civil war; but instantly on that event the war changed its nature, and became a public war between independent governments. 3 Dall. 199, 224.

CIVILIAN. One who is skilled or versed in the civil law. A doctor, professor, or student of the civil law. Also a private citizen, as distinguished from such as belong to the army and navy or (in England) the church.

CIVILIS. Civil, as distinguished from criminal. *Civilis actio*, a civil action. Bract. fol. 101b.

CIVILISTA. In old English law. A civil lawyer, or civilian. Dyer, 267.

CIVILITER. Civilly. In a person's civil character or position, or by civil (not criminal) process or procedure. This term is used in distinction or opposition to the word "*criminaliter*,"—criminally,—to distinguish civil actions from criminal prosecutions.

CIVILITER MORTUUS. Civilly dead; dead in the view of the law. The condition of one who has lost his civil rights and capacities, and is accounted dead in law.

CIVILIZATION. In practice. 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. Wharton.

In public law. This is a term which covers several states of society; it is relative, and has not a fixed sense, but it implies an improved and progressive condition of the people, living under an organized government, with systematized labor, individual ownership of the soil, individual accumulations of property, humane and somewhat cultivated manners and customs, the institution of the family, with well-defined and respected domestic and social relations, institutions of learning, intellectual activity, etc. 19 Ind. 56.

CIVIS. Lat. In the Roman law. A citizen; as distinguished from *incola*, (an inhabitant;) origin or birth constituting the former, domicile the latter. Code, 10, 40, 7.

CIVITAS. Lat. In the Roman law. Any body of people living under the same laws; a state. *Jus civitatis*, the law of a state; civil law. Inst. 1, 2, 1, 2. *Civitates federatae*, towns in alliance with Rome, and considered to be free. Butl. Hor. Jur. 29.

Citizenship; one of the three *status*, conditions, or qualifications of persons. Mac-keld. Rom. Law, § 131.

Civitas et urbs in hoc differunt, quod incolæ dicuntur civitas, urbs vero complectitur ædificia. Co. Litt. 409. A city and a town differ, in this: that the inhabitants are called the "city," but town includes the buildings.

CLAIM, v. To demand as one's own; to assert a personal right to any property or any right; to demand the possession or enjoyment of something rightfully one's own, and wrongfully withheld.

CLAIM, n. 1. A challenge of the property or ownership of a thing which is wrongfully withheld from the possession of the claimant. Plowd. 359.

A claim is a right or title, actual or supposed, to a debt, privilege, or other thing in the possession of another; not the possession, but the means by or through which the claimant obtains the possession or enjoyment. 2 N. Y. 245, 254.

A claim is, in a just, juridical sense, a demand of some matter as of right made by one person upon another, to do or to forbear to do some act or thing as a matter of duty. A more limited, but at the same time an equally expressive, definition was given by Lord Dyer, that "a claim is a challenge by a man of the propriety or ownership of a thing, which he has not in possession, but which is wrongfully detained from him." 16 Pet. 615.

"Claim" has generally been defined as a demand for a thing, the ownership of which, or an interest in which, is in the claimant, but the possession of which is wrongfully withheld by another. But a broader meaning must be accorded to it. A demand for damages for criminal conversation with plaintiff's wife is a claim; but it would be doing violence to language to say that such damages are property of plaintiff which defendant withholds. In common parlance the noun "claim" means an assertion, a pretension; and the verb is often used (not quite correctly) as a synonym for "state," "urge," "insist," or "assert." In a statute authorizing the courts to order a bill of particulars of the "claim" of either party, "claim" is co-extensive with "case," and embraces all causes of action and all grounds of defense, the pleas of both parties, and pleas in confession and avoidance, no less than complaints and counter-claims. It warrants the court in requiring a defendant who justifies

in a libel suit to furnish particulars of the facts relied upon in justification. 6 Daly, 446.

2. Under the mechanic's lien law of Pennsylvania, a demand put on record by a mechanic or material-man against a building for work or material contributed to its erection is called a "claim."

3. Under the land laws of the United States, the tract of land taken up by a pre-emptioner or other settler (and also his possession of the same) is called a "claim."

CLAIM IN EQUITY. In English practice. In simple cases, where there was not any great conflict as to facts, and a discovery from a defendant was not sought, but a reference to chambers was nevertheless necessary before final decree, which would be as of course, all parties being before the court, the summary proceeding by claim was sometimes adopted, thus obviating the recourse to plenary and protracted pleadings. This summary practice was created by orders 22d April, 1850, which came into operation on the 22d May following. See Smith, Ch. Pr. 664. By Consolid. Ord. 1860, viii. r. 4, claims were abolished. Wharton.

CLAIM OF CONUSANCE. In practice. An intervention by a third person in a suit, claiming that he has rightful jurisdiction of the cause which the plaintiff has commenced out of the claimant's court. Now obsolete. 2 Wils. 409; 3 Bl. Comm. 298.

CLAIM OF LIBERTY. In English practice. A suit or petition to the queen, in the court of exchequer, to have liberties and franchises confirmed there by the attorney general.

CLAIMANT. In admiralty practice. The name given to a person who lays claim to property seized on a libel *in rem*, and who is authorized and admitted to defend the action.

CLAM. In the civil law. Covertly; secretly.

Clam delinquentes magis puniuntur quam palam. 8 Coke, 127. Those sinning secretly are punished more severely than those sinning openly.

CLAM, VI, AUT PRECARIO. A technical phrase of the Roman law, meaning by force, stealth, or importunity.

CLAMEA ADMITTENDA IN ITINERE PER ATTORNATUM. An ancient writ by which the king commanded the justices in eyre to admit the claim by attorney

of a person who was in the royal service, and could not appear in person. Reg. Orig. 19.

CLAMOR. In old English law. A claim or complaint; an outcry; clamor.

In the civil law. A claimant. A debt; anything claimed from another. A proclamation; an accusation. Du Cange.

CLARE CONSTAT. (It clearly appears.) In Scotch law. The name of a precept for giving seisin of lands to an heir; so called from its initial words. Ersk. Inst. 3, 8, 71.

CLAREMETHEN. In old Scotch law. The warranty of stolen cattle or goods; the law regulating such warranty. Skene.

CLARENDON, CONSTITUTIONS OF. The constitutions of Clarendon were certain statutes made in the reign of Henry II. of England, at a parliament held at Clarendon, (A. D. 1164,) by which the king checked the power of the pope and his clergy, and greatly narrowed the exemption they claimed from secular jurisdiction. 4 Bl. Comm. 422.

CLARIFICATIO. Lat. In old Scotch law. A making clear; the purging or clearing (clenging) of an assise. Skene.

CLASS. The order or rank according to which persons or things are arranged or assorted. Also a group of persons or things, taken collectively, having certain qualities in common, and constituting a unit for certain purposes; *e. g.*, a class of legatees.

CLASSIARIUS. A seaman or soldier serving at sea.

CLASSICI. In the Roman law. Persons employed in servile duties on board of vessels. Cod. 11, 12.

CLASSIFICATION. In the practice of the English chancery division, where there are several parties to an administration action, including those who have been served with notice of the decree or judgment, and it appears to the judge (or chief clerk) that any of them form a class having the same interest, (*e. g.*, residuary legatees,) he may require them to be represented by one solicitor, in order to prevent the expense of each of them attending by separate solicitors. This is termed "classifying the interests of the parties attending," or, shortly, "classifying," or "classification." In practice the term is also applied to the directions given by the chief clerk as to which of the parties are

to attend on each of the accounts and inquiries directed by the judgment. Sweet.

CLAUSE. A single paragraph or subdivision of a legal document, such as a contract, deed, will, constitution, or statute. Sometimes a sentence or part of a sentence.

CLAUSE IRRITANT. In Scotch law. By this clause, in a deed or settlement, the acts or deeds of a tenant for life or other proprietor, contrary to the conditions of his right, become null and void; and by the "resolutive" clause such right becomes resolved and extinguished. Bell.

CLAUSE POTESTATIC. In French law. The name given to the clause whereby one party to a contract reserves to himself the right to annul it.

CLAUSE ROLLS. In English Law. Rolls which contain all such matters of record as were committed to close writs; these rolls are preserved in the Tower.

CLAUSULA. A clause; a sentence or part of a sentence in a written instrument or law.

Clausula generalis de residuo non ea complectitur quæ non ejusdem sint generis cum iis quæ speciatim dicta fuerant. A general clause of remainder does not embrace those things which are not of the same kind with those which had been specially mentioned. Lofft, Appendix, 419.

Clausula generalis non refertur ad expressa. 8 Coke, 154. A general clause does not refer to things expressed.

Clausula quæ abrogationem excludit ab initio non valet. A clause [in a law] which precludes its abrogation is void from the beginning. Bac. Max. 77.

Clausula vel dispositio inutilis per presumptionem remotam, vel causam ex post facto non fulcitur. A useless clause or disposition [one which expresses no more than the law by intendment would have supplied] is not supported by a remote presumption, [or foreign intendment of some purpose, in regard whereof it might be material,] or by a cause arising afterwards, [which may induce an operation of those idle words.] Bac. Max. 82, regula 21.

Clausulæ inconsuetæ semper inducunt suspicionem. Unusual clauses [in an instrument] always induce suspicion. 3 Coke. 81.

CLAUSUM. Close, closed up, sealed. Inclosed, as a parcel of land.

CLAUSUM FREGIT. L. Lat. (He broke the close.) In pleading and practice. Technical words formerly used in certain actions of trespass, and still retained in the phrase *quare clausum fregit*, (q. v.)

CLAUSUM PASCHIZÆ. In English law. The morrow of the *utias*, or eight days of Easter; the end of Easter; the Sunday after Easter-day. 2 Inst. 157.

CLAUSURA. In old English law. An inclosure. *Clausura heyæ*, the inclosure of a hedge. Cowell.

CLAVES CURIÆ. The keys of the court. They were the officers of the Scotch courts, such as clerk, doomster, and serjeant. Burrill.

CLAVES INSULÆ. In Manx law. The keys of the Island of Man, or twelve persons to whom all ambiguous and weighty causes are referred.

CLAVIA. In old English law. A club or mace; tenure *per serjeantiam claviæ*, by the serjeanty of the club or mace. Cowell.

CLAVIGERATUS. A treasurer of a church.

CLAWA. A close, or small inclosure. Cowell.

CLEAN HANDS. It is a rule of equity that a plaintiff must come with "clean hands," *i. e.*, he must be free from reproach in his conduct. But there is this limitation to the rule: that his conduct can only be excepted to in respect to the subject-matter of his claim; everything else is immaterial.

CLEAR. In a devise of money for the purchase of an annuity, this term means free from taxes. 2 Atk. 376.

In the phrase "clear yearly value," clear means free from all outgoings like a rent-charge, as losses by tenants and management, to which a rent charge is not liable. 2 Ves. 499.

CLEAR DAYS. If a certain number of clear days be given for the doing of any act, the time is to be reckoned exclusively, as well of the first day as the last.

CLEARANCE. In maritime law. A document in the nature of a certificate given by the collector of customs to an outward-bound vessel, to the effect that she has com-

plied with the law, and is duly authorized to depart.

CLEARING. The departure of a vessel from port, after complying with the customs and health laws and like local regulations.

In mercantile law. A method of making exchanges and settling balances, adopted among banks and bankers.

CLEARING-HOUSE. An institution organized by the banks of a city, where their messengers may meet daily, adjust balances of accounts, and receive and pay differences.

CLEMENTINES. In canon law. The collection of decretals or constitutions of Pope Clement V., made by order of John XXII., his successor, who published it in 1317.

CLEMENT'S INN. An inn of chancery. See INNS OF CHANCERY.

CLERGE. In old Scotch law. To clear or acquit of a criminal charge. Literally, to cleanse or clean.

CLEP AND CALL. In old Scotch practice. A solemn form of words prescribed by law, and used in criminal cases, as in pleas of wrong and unlaw.

CLERGY. The whole body of clergymen or ministers of religion. Also an abbreviation for "benefit of clergy."

CLERGYABLE. In old English law. Admitting of clergy, or benefit of clergy. A clergyable felony was one of that class in which clergy was allowable. 4 Bl. Comm. 371-373.

CLERICAL. Pertaining to clergymen; or pertaining to the office or labor of a clerk.

CLERICAL ERROR. A mistake in writing or copying; the mistake of a clerk or writer. 1 Ld. Raym. 183.

CLERICAL TONSURE. The having the head shaven, which was formerly peculiar to clerks, or persons in orders, and which the coifs worn by serjeants at law are supposed to have been introduced to conceal. 1 Bl. Comm. 24, note *t*; 4 Bl. Comm. 367.

CLERICAL PRIVILEGIUM. In old English law. The clerical privilege; the privilege or benefit of clergy.

CLERICI DE CANCELLARIA. Clerks of the chancery.

Clerici non ponantur in officiis. Co. Litt. 96. Clergymen should not be placed in offices; *i. e.*, in secular offices. See I.oft, 508.

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CLERICI PRÆNOTARII. The six clerks in chancery. 2 Reeve, Eng. Law, 251.

CLERICO ADMITTENDO. See **ADMITTENDO CLERICO.**

CLERICO CAPTO PER STATUTUM MERCATORUM. A writ for the delivery of a clerk out of prison, who was taken and incarcerated upon the breach of a statute merchant. Reg. Orig. 147.

CLERICO CONVICTO COMMISSO GAOLÆ IN DEFECTU ORDINARI DELIBERANDO. An ancient writ, that lay for the delivery to his ordinary of a clerk convicted of felony, where the ordinary did not challenge him according to the privilege of clerks. Reg. Orig. 69.

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

CLERICUS. In Roman law. A minister of religion in the Christian church; an ecclesiastic or priest. Cod. 1, 3; Nov. 3, 123, 137. A general term, including bishops, priests, deacons, and others of inferior order. Brissonius.

In old English law. A clerk or priest; a person in holy orders; a secular priest; a clerk of a court.

An officer of the royal household, having charge of the receipt and payment of moneys, etc. Fleta enumerates several of them, with their appropriate duties; as *clericus coquinae*, clerk of the kitchen; *clericus panetr' et butelr'*, clerk of the pantry and buttery. Lib. 2, cc. 18, 19.

Clericus et agricola et mercator, tempore belli, ut oret, colat, et commutet, pace fruuntur. 2 Inst. 58. Clergymen, husbandmen, and merchants, in order that they may preach, cultivate, and trade, enjoy peace in time of war.

CLERICUS MERCATI. In old English law. Clerk of the market. 2 Inst. 543.

Clericus non connumeretur in duas ecclesias. 1 Rolle. A clergyman should not be appointed to two churches.

CLERICUS PAROCHIALIS. In old English law. A parish clerk.

CLERIGOS. In Spanish law. Clergy; men chosen for the service of God. White, New Recop. b. 1, tit. 5, ch. 4.

CLERK. In ecclesiastical law. A person in holy orders; a clergyman; an individual attached to the ecclesiastical state, and who has the clerical tonsure. See 4 Bl. Comm. 366, 367.

In practice. A person employed in a public office, or as an officer of a court, whose duty is to keep records or accounts.

In commercial law. A person employed by a merchant, or in a mercantile establishment, as a salesman, book-keeper, accountant, amanuensis, etc., invested with more or less authority in the administration of some branch or department of the business, while the principal himself superintends the whole.

CLERK OF ARRAIGNS. In English law. An assistant to the clerk of assise. His duties are in the crown court on circuit.

CLERK OF ASSISE. In English law. Officers who officiate as associates on the circuits. They record all judicial proceedings done by the judges on the circuit.

CLERK OF COURT. An officer of a court of justice who has charge of the clerical part of its business, who keeps its records and seal, issues process, enters judgments and orders, gives certified copies from the records, etc.

CLERK OF ENROLLMENTS. In English law. The former chief officer of the English enrollment office, (*q. v.*) He now forms part of the staff of the central office.

CLERK OF THE CROWN IN CHANCERY. See **CROWN OFFICE IN CHANCERY.**

CLERK OF THE HOUSE OF COMMONS. An important officer of the English house of commons. He is appointed by the crown as under-clerk of the parliaments to attend upon the commons. He makes a declaration, on entering upon his office, to make true entries, remembrances, and journals of the things done and passed in the house. He signs all orders of the house, indorses the bills sent or returned to the lords, and reads whatever is required to be read in the house. He has the custody of all records and other documents. May, Parl. Pr. 236.

CLERK OF THE MARKET. The overseer or superintendent of a public market. In old English law, he was a quasi-judicial officer, having power to settle controversies arising in the market between

persons dealing there. Called "*clericus mercati*." 4 Bl. Comm. 275.

CLERK OF THE PARLIAMENTS.

One of the chief officers of the house of lords. He is appointed by the crown, by letters patent. On entering office he makes a declaration to make true entries and records of the things done and passed in the parliaments, and to keep secret all such matters as shall be treated therein. May, Parl. Pr. 238.

CLERK OF THE PEACE. In English law. An officer whose duties are to officiate at sessions of the peace, to prepare indictments, and to record the proceedings of the justices, and to perform a number of special duties in connection with the affairs of the county.

CLERK OF THE PETTY BAG. See PETTY BAG.

CLERK OF THE PRIVY SEAL.

There are four of these officers, who attend the lord privy seal, or, in the absence of the lord privy seal, the principal secretary of state. Their duty is to write and make out all things that are sent by warrant from the signet to the privy seal, and which are to be passed to the great seal; and also to make out privy seals (as they are termed) upon any special occasion of his majesty's affairs, as for the loan of money and such like purposes. Cowell.

CLERK OF THE SIGNET. An officer, in England, whose duty it is to attend on the king's principal secretary, who always has the custody of the privy signet, as well for the purpose of sealing his majesty's private letters, as also grants which pass his majesty's hand by bill signed; there are four of these officers. Cowell.

CLERKS OF INDICTMENTS. Officers attached to the central criminal court in England, and to each circuit. They prepare and settle indictments against offenders, and assist the clerk of arraigns.

CLERKS OF RECORDS AND WRITS.

Officers formerly attached to the English court of chancery, whose duties consisted principally in sealing bills of complaint and writs of execution, filing affidavits, keeping a record of suits, and certifying office copies of pleadings and affidavits. They were three in number, and the business was distributed among them according to the letters of the alphabet. By the judicature acts, 1873, 1875, they were

transferred to the chancery division of the high court. Now, by the judicature (officers') act, 1879, they have been transferred to the central office of the supreme court, under the title of "Masters of the Supreme Court," and the office of clerk of records and writs has been abolished. Sweet.

CLERKS OF SEATS, in the principal registry of the probate division of the English high court, discharge the duty of preparing and passing the grants of probate and letters of administration, under the supervision of the registrars. There are six seats, the business of which is regulated by an alphabetical arrangement, and each seat has four clerks. They have to take bonds from administrators, and to receive *caveats* against a grant being made in a case where a will is contested. They also draw the "acts," *i. e.*, a short summary of each grant made, containing the name of the deceased, amount of assets, and other particulars. Sweet.

CLERKSHIP. The period which must be spent by a law-student in the office of a practising attorney before admission to the bar. 1 Tidd, Pr. 61, et seq.

In old English practice. The art of drawing pleadings and entering them on record in Latin, in the ancient court hand; otherwise called "skill of pleading in actions at the common law."

CLIENS. Lat. In the Roman law. A client or dependent. One who depended upon another as his patron or protector, adviser or defender, in suits at law and other difficulties; and was bound, in return, to pay him all respect and honor, and to serve him with his life and fortune in any extremity. Dionys. ii. 10; Adams, Rom. Ant. 33.

CLIENT. A person who employs or retains an attorney, or counsellor, to appear for him in courts, advise, assist, and defend him in legal proceedings, and to act for him in any legal business.

CLIENTELA. In old English law. Clientship, the state of a client; and, correlatively, protection, patronage, guardianship.

CLIFFORD'S INN. An inn of chancery. See INNS OF CHANCERY.

CLITO. In Saxon law. The son of a king or emperor. The next heir to the throne; the Saxon adeling. Spelman.

CLOERE. A gaol; a prison or dungeon.

CLOSE, *adj.* In practice. Close or sealed up. A term applied to writs and letters, as

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distinguished from those that are open or patent.

CLOSE, n. A portion of land, as a field, inclosed, as by a hedge, fence, or other visible inclosure. 3 Bl. Comm. 209. The interest of a person in any particular piece of ground, whether actually inclosed or not. 7 East, 207.

The noun "close," in its legal sense, imports a portion of land inclosed, but not necessarily inclosed by actual or visible barriers. The invisible, ideal boundary, founded on limit of title, which surrounds every man's land, constitutes it his close, irrespective of walls, fences, ditches, or the like.

In practice. The word means termination; winding up. Thus the close of the pleadings is where the pleadings are finished, *i. e.*, when issue has been joined.

CLOSE COPIES. Copies of legal documents which might be written closely or loosely at pleasure; as distinguished from *office* copies, which were to contain only a prescribed number of words on each sheet.

CLOSE-HAULED. In admiralty law, this nautical term means the arrangement or trim of a vessel's sails when she endeavors to make a progress in the nearest direction possible towards that point of the compass from which the wind blows. But a vessel may be considered as close-hauled, although she is not quite so near to the wind as she could possibly lie. 6 El. & Bl. 771.

CLOSE ROLLS. Rolls containing the record of the close writs (*littera clausæ*) and grants of the king, kept with the public records. 2 Bl. Comm. 346.

CLOSE WRITS. In English law. Certain letters of the king, sealed with his great seal, and directed to particular persons and for particular purposes, which, not being proper for public inspection, are closed up and sealed on the outside, and are thence called "writs close." 2 Bl. Comm. 346; Sewell, Sheriffs, 372.

Writs directed to the sheriff, instead of to the lord. 3 Reeve, Eng. Law, 45.

CLOTURE. The procedure in deliberative assemblies whereby debate is closed. Introduced in the English parliament in the session of 1882.

CLOUD ON TITLE. An outstanding claim or incumbrance which, if valid, would affect or impair the title of the owner of a particular estate, and which apparently and on its face has that effect, but which can be

shown by extrinsic proof to be invalid or inapplicable to the estate in question. A conveyance, mortgage, judgment, tax-levy, etc., may all, in proper cases, constitute a cloud on title.

CLOUGH. A valley. Also an allowance for the turn of the scale, on buying goods wholesale by weight.

CLUB. A voluntary, unincorporated association of persons for purposes of a social, literary, or political nature, or the like. A club is not a partnership. 2 Mees. & W. 172.

The word "club" has no very definite meaning. Clubs are formed for all sorts of purposes, and there is no uniformity in their constitutions and rules. It is well known that clubs exist which limit the number of the members and select them with great care, which own considerable property in common, and in which the furnishing of food and drink to the members for money is but one of many conveniences which the members enjoy. 137 Mass. 567.

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

CLYPEUS, or CLIPEUS. In old English law. A shield; metaphorically one of a noble family. *Clypei prostrati*, noble families extinct. Mat. Paris, 463.

CO. A prefix to words, meaning "with" or "in conjunction" or "joint;" *e. g.*, co-trustees, co-executors.

COACH. Coach is a generic term. It is a kind of carriage, and is distinguished from other vehicles, chiefly, as being a covered box, hung on leathers, with four wheels. 9 Ohio, 12.

COADJUTOR. An assistant, helper, or ally; particularly a person appointed to assist a bishop who from age or infirmity is unable to perform his duty. Also an overseer, (coadjutor of an executor,) and one who disposes a person of land not to his own use, but to that of another.

CO-ADMINISTRATOR. One who is a joint administrator with one or more others.

COADUNATIO. A uniting or combining together of persons; a conspiracy. 3 Coke, 56.

COAL NOTE. A species of promissory note, formerly in use in the port of London, containing the phrase "value received in coals." By the statute 3 Geo. II. c. 26, §§ 7, 8, these were to be protected and noted as inland bills of exchange. But this was repealed by the statute 47 Geo. III. sess. 2, c. 68, § 28.

COALITION. In French law. An unlawful agreement among several persons not to do a thing except on some conditions agreed upon; particularly, industrial combinations, strikes, etc.; a conspiracy.

CO-ASSIGNEE. One of two or more assignees of the same subject-matter.

COAST. The edge or margin of a country bounding on the sea. It is held that the term includes small islands and reefs naturally connected with the adjacent land, and rising above the surface of the water, although their composition may not be sufficiently firm and stable to admit of their being inhabited or fortified; but not shoals which are perpetually covered by the water. 5 C. Rob. Adm. 385c.

This word is particularly appropriate to the edge of the sea, while "shore" may be used of the margins of inland waters.

COAST-GUARD. In English law. A body of officers and men raised and equipped by the commissioners of the admiralty for the defense of the coasts of the realm, and for the more ready manning of the navy in case of war or sudden emergency, as well as for the protection of the revenue against smugglers. Mozley & Whitley.

COASTING TRADE. In maritime law. Commerce and navigation between different places along the coast of the United States, as distinguished from commerce with ports in foreign countries.

Commercial intercourse carried on between different districts in different states, different districts in the same state, or different places in the same district, on the sea-coast or on a navigable river. 3 Cow. 713; 1 Newb. Adm. 241.

COASTWISE. Vessels "plying coastwise" are those which are engaged in the domestic trade, or plying between port and port in the United States, as contradistinguished from those engaged in the foreign trade, or plying between a port of the United States and a port of a foreign country. 10 Cal. 504.

COAT ARMOR. Heraldic ensigns, introduced by Richard I. from the Holy Land, where they were first invented. Originally they were painted on the shields of the Christian knights who went to the Holy Land during the crusades, for the purpose of identifying them, some such contrivance being necessary in order to distinguish knights

when clad in armor from one another. Wharton.

COCKBILL. To place the yards of a ship at an angle with the deck. Pub. St. Mass. 1882, p. 1288.

COCKET. In English law. A seal belonging to the custom-house, or rather a scroll of parchment, sealed and delivered by the officers of the custom-house to merchants, as a warrant that their merchandises are entered; likewise a sort of measure. Fleta, lib. 2, c. ix.

COCKPIT. A name which used to be given to the judicial committee of the privy council, the council-room being built on the old cockpit of Whitehall Place.

COCKSETUS. A boatman; a cocks wain. Cowell.

CODE. A collection or compendium of laws. A complete system of positive law, scientifically arranged, and promulgated by legislative authority.

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. See CODE OF JUSTINIAN.

A body of law established by the legislative authority, and intended to set forth, in generalized and systematic form, the principles of the entire law, whether written or unwritten, positive or customary, derived from enactment or from precedent. Abbott.

A code is to be distinguished from a *digest*. The subject-matter of the latter is usually reported decisions of the courts. But there are also digests of statutes. These consist of an orderly collection and classification of the existing statutes of a state or nation, while a code is promulgated as one new law covering the whole field of jurisprudence.

CODE CIVIL. The code which embodies the civil law of France. Framed in the first instance by a commission of jurists appointed in 1800. This code, after having passed both the tribunate and the legislative body, was promulgated in 1804 as the "Code Civil des Français." When Napoleon became emperor, the name was changed to that of "Code Napoleon," by which it is still often designated, though it is now officially styled by its original name of "Code Civil."

CODE DE COMMERCE. A French code, enacted in 1807, as a supplement to the Code Napoleon, regulating commercial transactions, the laws of business, bankruptcies,

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and the jurisdiction and procedure of the courts dealing with these subjects.

CODE DE PROCÉDURE CIVIL. That part of the Code Napoleon which regulates the system of courts, their organization, civil procedure, special and extraordinary remedies, and the execution of judgments.

CODE D'INSTRUCTION CRIMINELLE. A French code, enacted in 1808, regulating criminal procedure.

CODE NAPOLEON. See **CODE CIVIL.**

CODE OF JUSTINIAN. The Code of Justinian (*Codex Justinianus*) was a collection of imperial constitutions, compiled, by order of that emperor, by a commission of ten jurists, including Tribonian, and promulgated A. D. 529. It comprised twelve books, and was the first of the four compilations of law which make up the *Corpus Juris Civilis*.

This name is often met in a connection indicating that the entire *Corpus Juris Civilis* is intended, or, sometimes, the *Digest*; but its use should be confined to the *Codex*.

CODE PÉNAL. The penal or criminal code of France, enacted in 1810.

CODEX. Lat. A code or collection of laws; particularly the Code of Justinian. Also a roll or volume, and a book written on paper or parchment.

CODEX GREGORIANUS. A collection of imperial constitutions made by Gregorius, a Roman jurist of the fifth century, about the middle of the century. It contained the constitutions from Hadrian down to Constantine. Mackeld. Rom. Law, § 63.

CODEX HERMOGENIANUS. A collection of imperial constitutions made by Hermogenes, a jurist of the fifth century. It was nothing more than a supplement to the Codex Gregorianus, (*supra*), containing the constitutions of Diocletian and Maximilian. Mackeld. Rom. Law, § 63.

CODEX JUSTINIANEUS. A collection of imperial constitutions, made by a commission of ten persons appointed by Justinian, A. D. 528.

CODEX REPETITÆ PRÆLECTIONIS. The new code of Justinian; or the new edition of the first or old code, promulgated A. D. 534, being the one now extant. Mackeld. Rom. Law, § 78. Tayl. Civil Law, 22.

CODEX THEODOSIANUS. A code compiled by the emperor Theodosius the younger, A. D. 438, being a methodical collection, in sixteen books, of all the imperial constitutions then in force. It was the only body of civil law publicly received as authentic in the western part of Europe till the twelfth century, the use and authority of the Code of Justinian being during that interval confined to the East. 1 Bl. Comm. 81.

CODEX VETUS. The old code. The first edition of the Code of Justinian; now lost. Mackeld. Rom. Law, § 70.

CODICIL. A testamentary disposition subsequent to a will, and by which the will is altered, explained, added to, subtracted from, or confirmed by way of republication, but in no case totally revoked. 2 Woodd. Lect. 284.

A codicil is an addition or supplement to a will, either to add to, take from, or alter the provisions of the will. It must be executed with the same formality as a will, and, when admitted to probate, forms a part of the will. Code Ga. 1882, § 2404.

CODICILLUS. In the Roman law. A codicil; an informal and inferior kind of will, in use among the Romans.

CODIFICATION. The process of collecting and arranging the laws of a country or state into a code, *i. e.*, into a complete system of positive law, scientifically ordered, and promulgated by legislative authority.

COEMPTIO. Mutual purchase. One of the modes in which marriage was contracted among the Romans. The man and the woman delivered to each other a small piece of money. The man asked the woman whether she would become to him a *materfamilias*, (mistress of his family,) to which she replied that she would. In her turn she asked the man whether he would become to her a *paterfamilias*, (master of a family.) On his replying in the affirmative, she delivered her piece of money and herself into his hands, and so became his wife. Adams, Rom. Ant. 50L.

CO-EMPTION. The act of purchasing the whole quantity of any commodity. Wharton.

COERCION. Compulsion; force; duress. It may be either *actual*, (direct or positive,) where physical force is put upon a man to compel him to do an act against his will, or *implied*, (legal or constructive,) where the relation of the parties is such that one is un-

der subjection to the other, and is thereby constrained to do what his free will would refuse.

CO-EXECUTOR. One who is a joint executor with one or more others.

COFFEE-HOUSE. A house of entertainment where guests are supplied with coffee and other refreshments, and sometimes with lodging. Century Dict. A coffee-house is not an inn. 4 Camp. 76.

COFFERER OF THE QUEEN'S HOUSEHOLD. In English law. A principal officer of the royal establishment, next under the controller, who, in the counting-house and elsewhere, had a special charge and oversight of the other officers, whose wages he paid.

Cogitationis pœnam nemo patitur. No one is punished for his thoughts. Dig. 48, 19, 18.

COGNATES. (Lat. *cognati.*) Relations by the mother's side, or by females. Mac-keld. Rom. Law, § 144. A common term in Scotch law. Ersk. Inst. 1, 7, 4.

COGNATI. Lat. In the civil law. Cognates relations by the mother's side. 2 Bl. Comm. 235. Relations in the line of the mother. Hale. Com. Law, c. xi. Relations by or through females.

COGNATIO. Lat. In the civil law. Cognation. Relationship, or kindred generally. Dig. 38, 10, 4, 2; Inst. 3, 6, pr.

Relationship through females, as distinguished from *agnatio*, or relationship through males. *Agnatio a patre sit, cognatio a matre.* Inst. 3, 5, 4. See **AGNATIO**.

In canon law. Consanguinity, as distinguished from affinity. 4 Reeve, Eng. Law, 56-58.

Consanguinity, as including affinity. *Id.*

COGNATION. In the civil law. Signifies generally the kindred which exists between two persons who are united by ties of blood or family, or both.

COGNATUS. Lat. In the civil law. A relation by the mother's side; a cognate. A relation, or kinsman, generally.

COGNITIO. In old English law. The acknowledgment of a fine; the certificate of such acknowledgment.

In the Roman law. The judicial examination or hearing of a cause.

COGNITIONES. Ensigns and arms, or a military coat painted with arms. Mat. Par. 1250.

COGNITIONIBUS MITTENDIS. In English law. A writ to a justice of the common pleas, or other, who has power to take a fine, who, having taken the fine, defers to certify it, commanding him to certify it. Now abolished. Reg. Orig. 68.

COGNITIONIS CAUSÆ. In Scotch practice. A name given to a judgment or decree pronounced by a court, ascertaining the amount of a debt against the estate of a deceased landed proprietor, on cause shown, or after a due investigation. Bell. D

COGNITOR. In the Roman law. An advocate or defender in a private cause; one who defended the cause of a person who was present. Calvin. Lex. Jurid. E

COGNIZANCE. In old practice. That part of a fine in which the defendant acknowledged that the land in question was the right of the complainant. From this the fine itself derived its name, as being *sur cognizance de droit*, etc., and the parties their titles of *cognizor* and *cognizee*. F

In modern practice. Judicial notice or knowledge; the judicial hearing of a cause; jurisdiction, or right to try and determine causes; acknowledgment; confession; recognition. G

Of pleas. Jurisdiction of causes. A privilege granted by the king to a city or town to hold pleas within the same. H

Claim of cognizance (or of conusance) is an intervention by a third person, demanding judicature in the cause against the plaintiff, who has chosen to commence his action out of claimant's court. 2 Wils. 409; 2 Bl. Comm. 350, note. I

In pleading. A species of answer in the action of replevin, by which the defendant acknowledges the taking of the goods which are the subject-matter of the action, and also that he has no title to them, but justifies the taking on the ground that it was done by the command of one who was entitled to the property. J

In the process of levying a fine, it is an acknowledgment by the deforciant that the lands in question belong to the complainant. K

In the language of American jurisprudence, this word is used chiefly in the sense of jurisdiction, or the exercise of jurisdiction; the judicial examination of a matter, or power and authority to make it. L

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Judicial cognizance is judicial notice, or knowledge upon which a judge is bound to act without having it proved in evidence.

COGNIZEE. The party to whom a fine was levied. 2 Bl. Comm. 351.

COGNIZOR. In old conveyancing. The party levying a fine. 2 Bl. Comm. 350, 351.

COGNOMEN. In Roman law. A man's family name. The first name (*prænomen*) was the proper name of the individual; the second (*nomen*) indicated the gens or tribe to which he belonged; while the third (*coynomen*) denoted his family or house.

In English law. A surname. A name added to the *nomen* proper, or name of the individual; a name descriptive of the family.

Cognomen majorum est ex sanguine tractum, hoc intrinsecum est; agnomen extrinsecum ab eventu. 6 Coke. 65. The cognomen is derived from the blood of ancestors, and is intrinsic; an agnomen arises from an event, and is extrinsic.

COGNOVIT ACTIONEM. (He has confessed the action.) A defendant's written confession of an action brought against him, to which he has no available defense. It is usually upon condition that he shall be allowed a certain time for the payment of the debt or damages, and costs. It is supposed to be given in court, and it impliedly authorizes the plaintiff's attorney to sign judgment and issue execution.

COHABIT. To live together as husband and wife; to live together at bed and board. Burrows, Sett. Cas. 26.

To live together, as in the same house. "That his sisters, the Lady Turner and Arabella Clerk, might *cohabit* in the capital house." 2 Vern. 323.

COHABITATION. Living together; living together as husband and wife.

Cohabitation means having the same habitation, not a sojourn, a habit of visiting or remaining for a time; there must be something more than mere meretricious intercourse. 75 Pa. St. 207.

Cohæredes una persona censentur, propter unitatem juris quod habent. Co. Litt. 163. Co-heirs are deemed as one person, on account of the unity of right which they possess.

COHÆRES. In old English law. A co-heir, or joint heir.

CO-HEIR. One of several to whom an inheritance descends.

CO-HEIRESS. A joint heiress. A woman who has an equal share of an inheritance with another woman.

COHUAGIUM. A tribute made by those who meet promiscuously in a market or fair. Du Cange.

COIF. A title given to serjeants at law, who are called "serjeants of the coif," from the coif they wear on their heads. The use of this coif at first was to cover the clerical tonsure, many of the practising serjeants being clergymen who had abandoned their profession. It was a thin linen cover, gathered together in the form of a skull or helmet; the material being afterwards changed into white silk, and the form eventually into the black patch at the top of the forensic wig, which is now the distinguishing mark of the degree of serjeant at law. (Cowell; Foss, Judg.; 3 Steph. Comm. 272, note.) Brown.

COIN, v. To fashion pieces of metal into a prescribed shape, weight, and degree of fineness, and stamp them with prescribed devices, by authority of government, in order that they may circulate as money. See 2 Duv. 29; 22 Ind. 306; 25 How. Pr. 105.

COIN, n. Pieces of gold, silver, or other metal, fashioned into a prescribed shape, weight, and degree of fineness, and stamped, by authority of government, with certain marks and devices, and put into circulation as money at a fixed value.

Strictly speaking, coin differs from money, as the species differs from the genus. Money is any matter, whether metal, paper, beads, shells, etc., which has currency as a medium in commerce. Coin is a particular species, always made of metal, and struck according to a certain process called "coinage." Wharton.

COINAGE. The process or the function of coining metallic money; also the great mass of metallic money in circulation.

COJUDICES. Lat. In old English law. Associate judges having equality of power with others.

COLD WATER ORDEAL. The trial which was anciently used for the common sort of people, who, having a cord tied about them under their arms, were cast into a river; if they sank to the bottom until they were drawn up, which was in a very short time, then were they held guiltless; but such as did remain upon the water were held cul-

pable, being, as they said, of the water rejected and kept up. Wharton.

COLIBERTUS. In feudal law. One who, holding in free socage, was obliged to do certain services for the lord. A middle class of tenants between servile and free, who held their freedom of tenure on condition of performing certain services. Said to be the same as the *conditionales*. Cowell.

COLLATERAL. By the side; at the side; attached upon the side. Not lineal, but upon a parallel or diverging line. Additional or auxiliary; supplementary; co-operating.

COLLATERAL ACT. In old practice. The name "collateral act" was given to any act (except the payment of money) for the performance of which a bond, recognizance, etc., was given as security.

COLLATERAL ANCESTORS A phrase sometimes used to designate uncles and aunts, and other collateral antecessors, who are not strictly ancestors. 3 Barb. Ch. 438, 446.

COLLATERAL ASSURANCE. That which is made over and above the principal assurance or deed itself.

COLLATERAL CONSANGUINITY. That relationship which subsists between persons who have the same ancestors but not the same descendants, who do not descend one from the other. 2 Bl. Comm. 203.

Lineal consanguinity being usually represented by a perpendicular or *right line*, (*linea recta*), in which the kindred are ranked relatively, one above or below the other, as father, son, grandson, *collateral* consanguinity is properly denoted by one or more *transverse* lines, crossing this, or proceeding *obliquely* from it *on the side* (*a latere*) upon which the kindred are ranked in their order. Burrill.

COLLATERAL DESCENT. Descent in a collateral or oblique line, *i. e.*, up through the common ancestor and then down from him; descent to collaterals.

COLLATERAL ESTOPPEL. The collateral determination of a question by a court having general jurisdiction of the subject. See 26 Vt. 209.

COLLATERAL FACTS. Such as are outside the controversy, or are not directly connected with the principal matter or issue in dispute.

COLLATERAL IMPEACHMENT. A collateral impeachment of a judgment or de-

cre is an attempt made to destroy or evade its effect as an estoppel, by reopening the merits of the cause or by showing reasons why the judgment should not have been rendered or should not have a conclusive effect, in a *collateral* proceeding, *i. e.*, in any action other than that in which the judgment was rendered; for, if this be done upon appeal, error, or *certiorari*, the impeachment is *direct*.

COLLATERAL INHERITANCE TAX. A tax levied upon the collateral devolution of property by will or under the intestate law.

COLLATERAL ISSUE. In practice. An issue taken upon matter *aside* from the intrinsic merits of the action, as upon a plea in abatement; or *aside* from the direct and regular order of the pleadings, as on a demurrer. 2 Archb. Pr. K. B. 1, 6, bk. 2, pts. 1, 2.

The term "collateral" is also applied in England to an issue raised upon a plea of diversity of person, pleaded by a criminal who has been tried and convicted, in bar of execution, viz., that he is not the same person who was attainted, and the like. 4 Bl. Comm. 396.

COLLATERAL KINSMEN. Those who descend from one and the same common ancestor, but not from one another.

COLLATERAL LIMITATION. One which gives an interest in an estate for a specified period, but makes the right of enjoyment to depend on some collateral event, as an estate to A. till B. shall go to Rome. Park, Dower, 163; 4 Kent, Comm. 128.

COLLATERAL SECURITY. A security given in addition to the direct security, and subordinate to it, intended to guaranty its validity or convertibility or insure its performance; so that, if the direct security fails, the creditor may fall back upon the collateral security.

Collateral security, in bank phraseology, means some security additional to the personal obligation of the borrower. 2 Abb. (U. S.) 423.

COLLATERAL UNDERTAKING. "Collateral" and "original" have become the technical terms whereby to distinguish promises that are within, and such as are not within, the statute of frauds. 7 Har. & J. 391.

COLLATERAL WARRANTY, in old conveyancing, was where the heir's title to

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the land neither was nor could have been derived from the warranting ancestor. Thus where a younger brother released to his father's disseisor, with warranty, this was collateral to the elder brother. The whole doctrine of collateral warranty seems repugnant to plain and unsophisticated reason and justice; and even its technical grounds are so obscure that the ablest legal writers are not agreed upon the subject. Wharton.

COLLATERALIS ET SOCII. The ancient title of masters in chancery.

COLLATIO BONORUM. A joining together or contribution of goods into a common fund. This occurs where a portion of money, advanced by the father to a son or daughter, is brought into *hotchpot*, in order to have an equal distributory share of his personal estate at his death. See **COLLATION**.

COLLATIO SIGNORUM. In old English law. A comparison of marks or seals. A mode of testing the genuineness of a seal, by comparing it with another known to be genuine. Adams. See Bract. fol. 389b.

COLLATION. In the civil law. The collation of goods is the supposed or real return to the mass of the succession which an heir makes of property which he received in advance of his share or otherwise, in order that such property may be divided together with the other effects of the succession. Civil Code La. art. 1227.

The term is sometimes used also in common-law jurisdictions in the sense given above. It is synonymous with "hotchpot."

In practice. The comparison of a copy with its original to ascertain its correctness; or the report of the officer who made the comparison.

COLLATION OF SEALS. When upon the same label one seal was set on the back or reverse of the other. Wharton.

COLLATION TO A BENEFICE. In ecclesiastical law. This occurs where the bishop and patron are one and the same person, in which case the bishop cannot present the clergyman to himself, but 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. Comm. 22.

COLLATIONE FACTÂ 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.

COLLATIONE HEREMITAGII. In old English law. A writ whereby the king conferred the keeping of an hermitage upon a clerk. Reg. Orig. 303, 308.

COLLECT. To gather together; to bring scattered things (assets, accounts, articles of property) into one mass or fund.

To collect a debt or claim is to obtain payment or liquidation of it, either by personal solicitation or legal proceedings.

COLLECTOR. One authorized to receive taxes or other impositions; as "collector of taxes." A person appointed by a private person to collect the credits due him.

COLLECTOR OF DECEDENT'S ESTATE. A person temporarily appointed by the probate court to collect rents, assets, interest, bills receivable, etc., of a decedent's estate, and act for the estate in all financial matters requiring immediate settlement. Such collector is usually appointed when there is protracted litigation as to the probate of the will, or as to the person to take out administration, and his duties cease as soon as an executor or administrator is qualified.

COLLECTOR OF THE CUSTOMS. An officer of the United States, appointed for the term of four years. Act May 15, 1820, § 1; 3 Story, U. S. Laws, 1790.

COLLEGA. In the civil law. One invested with joint authority. A colleague; an associate.

COLLEGATARIUS. Lat. In the civil law. A co-legatee. Inst. 2, 20, 8.

COLLEGATORY. A co-legatee; a person who has a legacy left to him in common with other persons.

COLLEGE. An organized assembly or collection of persons, established by law, and empowered to co-operate for the performance of some special function or for the promotion of some common object, which may be educational, political, ecclesiastical, or scientific in its character.

The assemblage of the cardinals at Rome is called a "college." So, in the United States, the body of presidential electors is called the "electoral college."

In the most common use of the word, it designates an institution of learning (usually incorporated) which offers instruction in the liberal arts and humanities and in scientific branches, but not in the technical arts or those studies preparatory to admission to the professions.

In England, it is a civil corporation, company or society of men, having certain privileges, and endowed with certain revenues, founded by royal license. An assemblage of several of these colleges is called a "university." Wharton.

COLLEGIA. In the civil law. The guild of a trade.

COLLEGIALITER. In a corporate capacity. 2 Kent, Comm. 296.

COLLEGIATE CHURCH. In English ecclesiastical law. A church built and endowed for a society or body corporate of a dean or other president, and secular priests, as canons or prebendaries in the said church; such as the churches of Westminster, Windsor, and others. Cowell.

COLLEGIUM. In the civil law. A word having various meanings; *e. g.*, an assembly, society, or company; a body of bishops; an army; a class of men. But the principal idea of the word was that of an association of individuals of the same rank and station, or united for the pursuit of some business or enterprise.

COLLEGIUM AMMIRALITATIS. The college or society of the admiralty.

Collegium est societas plurium corporum simul habitantium. Jenk. Cent. 229. A college is a society of several persons dwelling together.

COLLEGIUM ILLICITUM. One which abused its right, or assembled for any other purpose than that expressed in its charter.

COLLEGIUM LICITUM. An assemblage or society of men united for some useful purpose or business, with power to act like a single individual. 2 Kent, Comm. 269.

COLLIERY. This term is sufficiently wide to include all contiguous and connected veins and seams of coal which are worked as one concern, without regard to the closes or pieces of ground under which they are carried, and apparently also the engines and machinery in such contiguous and connected veins. MacSwain. Mines, 25. See 58 Pa. St. 85.

COLLIGENDUM BONA DEFUNCTI.
See AD COLLIGENDUM, etc.

COLLISION. In maritime law. The act of ships or vessels striking together.

In its strict sense, collision means the impact of two vessels both moving, and is distinguished from *allision*, which designates the striking of a moving vessel against one that is stationary. But collision is used in a broad sense, to include *allision*, and perhaps other species of encounters between vessels.

The term is not inapplicable to cases where a stationary vessel is struck by one under way, strictly termed "*allision*;" or where one vessel is brought into contact with another by swinging at anchor. And even an injury received by a vessel at her moorings, in consequence of being violently rubbed or pressed against by a second vessel lying along-side of her, in consequence of a collision against such second vessel by a third one under way, may be compensated for, under the general head of "*collision*," as well as an injury which is the direct result of a "*blow*," properly so called. Abb. Adm. 73. D
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COLLISTRIGIUM. The pillory.

COLLITIGANT. One who litigates with another. F

COLLOBIUM. A hood or covering for the shoulders, formerly worn by serjeants at law. G

COLLOCATION. In French law. The arrangement or marshaling of the creditors of an estate in the order in which they are to be paid according to law. Merl. Repert. H

COLLOQUIUM. One of the usual parts of the declaration in an action for slander. It is a general averment that the words complained of were spoken "of and concerning the plaintiff," or concerning the extrinsic matters alleged in the inducement, and its office is to connect the whole publication with the previous statement. I

An averment that the words in question are spoken of or concerning some usage, report, or fact which gives to words otherwise indifferent the peculiar defamatory meaning assigned to them. 16 Pick. 6. J
K

COLLUSION. A deceitful agreement or compact between two or more persons, for the one party to bring an action against the other for some evil purpose, as to defraud a third party of his right. Cowell. L

A secret arrangement between two or more persons, whose interests are apparently conflicting, to make use of the forms and proceedings of law in order to defraud a third person, or to obtain that which justice M

would not give them, by deceiving a court or its officers.

In divorce proceedings, collusion is an agreement between husband and wife that one of them shall commit, or appear to have committed, or be represented in court as having committed, acts constituting a cause of divorce, for the purpose of enabling the other to obtain a divorce. Civil Code Cal. § 114. But it also means connivance or conspiracy in initiating or prosecuting the suit, as where there is a compact for mutual aid in carrying it through to a decree.

COLLYBISTA. In the civil law. A money-changer; a dealer in money.

COLLYBUM. In the civil law. Exchange.

COLNE. In Saxon and old English law. An account or calculation.

COLONIAL LAWS. In America, this term designates the body of law in force in the thirteen original colonies before the Declaration of Independence. In England, the term signifies the laws enacted by Canada and the other present British colonies.

COLONIAL OFFICE. In the English government, this is the department of state through which the sovereign appoints colonial governors, etc., and communicates with them. Until the year 1854, the secretary for the colonies was also secretary for war.

COLONUS. In old European law. A husbandman; an inferior tenant employed in cultivating the lord's land. A term of Roman origin, corresponding with the Saxon *ceorl*. 1 Spence, Ch. 51.

COLONY. A dependent political community, consisting of a number of citizens of the same country who have emigrated therefrom to people another, and remain subject to the mother-country. 3 Wash. C. C. 287.

A settlement in a foreign country possessed and cultivated, either wholly or partially, by immigrants and their descendants, who have a political connection with and subordination to the mother-country, whence they emigrated. In other words, it is a place peopled from some more ancient city or country. Wharton.

COLOR. An appearance, semblance, or *simulacrum*, as distinguished from that which is real. A *prima facie* or apparent right. Hence, a deceptive appearance; a plausible,

assumed exterior, concealing a lack of reality; a disguise or pretext.

In pleading. Ground of action admitted to subsist in the opposite party by the pleading of one of the parties to an action, which is so set out as to be apparently valid, but which is in reality legally insufficient.

This was a term of the ancient rhetoricians, and early adopted into the language of pleading. It was an apparent or *prima facie* right; and the meaning of the rule that pleadings in confession and avoidance should give color was that they should confess the matter adversely alleged, to such an extent, at least, as to admit some apparent right in the opposite party, which required to be encountered and avoided by the allegation of new matter. Color was either express, *i. e.*, inserted in the pleading, or implied, which was naturally inherent in the structure of the pleading. Steph. Pl. 233.

The word also means the dark color of the skin showing the presence of negro blood; and hence it is equivalent to African descent or parentage.

COLOR OF OFFICE. An act unjustly done by the countenance of an office, being grounded upon corruption, to which the office is as a shadow and color. Plow. 64.

A claim or assumption of right to do an act by virtue of an office, made by a person who is legally destitute of any such right.

The phrase implies, we think, some official power vested in the actor,—he must be at least officer *de facto*. We do not understand that an act of a mere pretender to an office, or false personator of an officer, is said to be done by color of office. And it implies an illegal claim of authority, by virtue of the office, to do the act or thing in question. 23 Wend. 606.

COLOR OF TITLE. The appearance, semblance, or *simulacrum* of title. Any fact, extraneous to the act or mere will of the claimant, which has the appearance, on its face, of supporting his claim of a present title to land, but which, for some defect, in reality falls short of establishing it.

"Color of title is anything in writing purporting to convey title to the land, which defines the extent of the claim, it being immaterial how defective or imperfect the writing may be, so that it is a sign, semblance, or color of title." 70 Ga. 809.

Color of title is that which the law considers *prima facie* a good title, but which, by reason of some defect, not appearing on its face, does not in fact amount to title. An absolute nullity, as a void deed, judgment, etc., will not constitute color of title. 33 Cal. 668.

"Any instrument having a grantor and grantee, and containing a description of the lands intended to be conveyed, and apt words for their convey-

ance, gives color of title to the lands described. Such an instrument purports to be a conveyance of the title, and because it does not, for some reason, have that effect, it passes only color or the semblance of a title." 35 Ill. 392.

It is not synonymous with "claim of title." To the former, a paper title is requisite; but the latter may exist wholly in parol. 30 Iowa. 480.

COLORABLE. That which has or gives color. That which is in appearance only, and not in reality, what it purports to be.

COLORABLE ALTERATION. One which makes no real or substantial change, but is introduced only as a subterfuge or means of evading the patent or copyright law.

COLORABLE IMITATION. In the law of trade-marks, this phrase denotes such a close or ingenious imitation as to be calculated to deceive ordinary persons.

COLORABLE PLEADING. The practice of giving *color* in pleading.

COLORE OFFICII. By color of office.

"COLORED MAN." There is no legal, technical signification in this phrase which the courts are bound judicially to know. 31 Tex. 74.

COLORED PERSON. A person of African descent or negro blood.

COLPICES. Young poles, which, being cut down, are made levers or lifters. Blount.

COLPINDACH. In old Scotch law. A young beast or cow, of the age of one or two years; in later times called a "cowlash."

COLT. An animal of the horse species, whether male or female, not more than four years old. Russ. & R. 416.

COMBARONES. In old English law. Fellow-barons; fellow-citizens. The citizens or freemen of the Cinque Ports being anciently called "barons;" the term "*combarones*" is used in this sense in a grant of Henry III. to the barons of the port of Fevresham. Cowell.

COMBAT. A forcible encounter between two or more persons; a battle; a duel. Trial by battel.

COMBATERRÆ. A valley or piece of low ground between two hills. Kennett, Gloss.

COMBE. A small or narrow valley.

COMBINATION. A conspiracy, or confederation of men for unlawful or violent deeds.

A union of different elements. A patent may be taken out for a new combination of existing machines. 2 Mason, 112.

COMBUSTIO. Burning.

In old English law. The punishment inflicted upon apostates.

COMBUSTIO DOMORUM. House-burning; arson. 4 Bl. Comm. 272.

COMBUSTIO PECUNIÆ. Burning of money; the ancient method of testing mixed and corrupt money, paid into the exchequer, by melting it down.

COME. To present oneself; to appear in court. In modern practice, though such presence may be constructive only, the word is still used to indicate participation in the proceedings. Thus, a pleading may begin, "Now *comes* the defendant," etc. In case of a default, the technical language of the record is that the party "*comes* not, but makes default."

COMES, v. A word used in a pleading to indicate the defendant's presence in court. See **COME**.

COMES, n. Lat. A follower or attendant; a count or earl.

COMES AND DEFENDS. This phrase, anciently used in the language of pleading, and still surviving in some jurisdictions, occurs at the commencement of a defendant's plea or demurrer; and of its two verbs the former signifies that he appears in court, the latter that he defends the action.

COMINUS. Lat. Immediately; hand-to-hand; in personal contact.

COMITAS. Lat. Comity, courtesy, civility. *Comitas inter communitates*; or *comitas inter gentes*; comity between communities or nations; comity of nations. 2 Kent, Comm. 457.

COMITATU COMMISSO. A writ or commission, whereby a sheriff is authorized to enter upon the charges of a county. Reg. Orig. 295.

COMITATU ET CASTRO COMMISSO. A writ by which the charge of a county, together with the keeping of a castle, is committed to the sheriff.

COMITATUS. In old English law. A county or shire; the body of a county. The territorial jurisdiction of a *comes*, *i. e.*, count or earl. The county court, a court of great antiquity and of great dignity in early times.

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Also, the retinue or train of a prince or high governmental official.

COMITES. Counts or earls. Attendants or followers. Persons composing the retinue of a high functionary. Persons who are attached to the suite of a public minister.

COMITES PALEYS. Counts or earls palatine; those who had the government of a county palatine.

COMITIA. In Roman law. An assembly, either (1) of the Roman curiæ, in which case it was called the "*comitia curiata vel calata*;" or (2) of the Roman centuries, in which case it was called the "*comitia centuriata*;" or (3) of the Roman tribes, in which case it was called the "*comitia tributa*." Only patricians were members of the first *comitia*, and only plebians of the last; but the *comitia centuriata* comprised the entire populace, patricians and plebians both, and was the great legislative assembly passing the *leges*, properly so called, as the senate passed the *senatus consulta*, and the *comitia tributa* passed the *plebiscita*. Under the *Lex Hortensia*, 287 B. C., the *plebiscitum* acquired the force of a *lex*. Brown.

COMITISSA. In old English law. A countess; an earl's wife.

COMITIVA. In old English law. The dignity and office of a *comes*, (count or earl;) the same with what was afterwards called "*comitatus*."

Also a companion or fellow-traveler; a troop or company of robbers. Jacob.

COMITY. Courtesy; complaisance; respect; a willingness to grant a privilege, not as a matter of right, but out of deference and good will. See next title.

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 silence 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, or prejudicial to its interests. It is not the comity 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 principles of the municipal law are ascertained and guided. Story, Conf. Laws, § 38.

The comity of nations (*comitas gentium*) is that body of rules which states observe towards one another from courtesy or mutual convenience, although they do not form part of international law. Holtz. Enc. s. v.

COMMAND. An order, imperative direction, or behest.

COMMANDEMENT. In French law. A writ served by the *huissier* pursuant to a judgment or to an executory notarial deed. Its object is to give notice to the debtor that if he does not pay the sum to which he has been condemned by the judgment, or which he engaged to pay by the notarial deed, his property will be seized and sold. Arg. Fr. Merc. Law, 550.

COMMANDER IN CHIEF. By article 2, § 2, of the constitution it is declared that the president shall be commander in chief of the army and navy of the United States. The term implies supreme control of military operations during the progress of a war, not only on the side of strategy and tactics, but also in reference to the political and international aspects of the war.

COMMANDERY. In old English law. A manor or chief messuage with lands and tenements thereto appertaining, which belonged to the priory of St. John of Jerusalem, in England; he who had the government of such a manor or house was styled the "commander," who could not dispose of it, but to the use of the priory, only taking thence his own sustenance, according to his degree. The manors and lands belonging to the priory of St. John of Jerusalem were given to Henry the Eighth by 32 Hen. VIII. c. 20, about the time of the dissolution of abbeys and monasteries; so that the name only of commanderies remains, the power being long since extinct. Wharton.

COMMANDITAIRES. Special partners; partners *en commandité*. See **COMMANDITÉ**.

COMMANDITÉ. In French law. A special or limited partnership, where the contract is between one or more persons who are general partners, and jointly and severally responsible, and one or more other persons who merely furnish a particular fund or capital stock, and thence are called "*commanditaires*," or "*commendataires*," or "partners *en commandité*;" the business being carried

on under the social name or firm of the general partners only, composed of the names of the general or complementary partners, the partners in *commandité* being liable to losses only to the extent of the funds or capital furnished by them. Story, Partn. § 78; 3 Kent, Comm. 34.

COMMANDMENT. In practice. An authoritative order of a judge or magisterial officer.

In criminal law. The act or offense of one who commands another to transgress the law, or do anything contrary to law, as theft, murder, or the like. Particularly applied to the act of an accessory before the fact, in inciting, procuring, setting on, or stirring up another to do the fact or act. 2 Inst. 182.

COMMARCHIO. A boundary; the confines of land.

COMMENDA. In French law. The delivery of a benefice to one who cannot hold the legal title, to keep and manage it for a time limited and render an account of the proceeds. Guyot, Rép. Univ.

In mercantile law. An association in which the management of the property was intrusted to individuals. Troub. Lim. Partn. c. 3, § 27.

Commenda est facultas recipiendi et retinendi beneficium contra jus positivum à supremâ potestate. Moore, 905. A *commendam* is the power of receiving and retaining a benefice contrary to positive law, by supreme authority.

COMMENDAM. In ecclesiastical law. The appointment of a suitable clerk to hold a void or vacant benefice or church living until a regular pastor be appointed. Hob. 144; Latch, 236.

In commercial law. The limited partnership (or *Société en commandité*) of the French law has been introduced into the Code of Louisiana under the title of "Partnership in *Commendam*." Civil Code La. art. 2810.

COMMENDATIO. In the civil law. Commendation, praise, or recommendation.

COMMENDATION. In feudal law. This was the act by which an owner of allodial land placed himself and his land under the protection of a lord, so as to constitute himself his vassal or feudal tenant.

COMMENDATORS. Secular persons upon whom ecclesiastical benefices were be-

stowed in Scotland; called so because the benefices were commended and intrusted to their supervision.

COMMENDATORY. He who holds a church living or preferment in *commendam*.

COMMENDATORY LETTERS. In ecclesiastical law. Such as are written by one bishop to another on behalf of any of the clergy, or others of his diocese traveling thither, that they may be received among the faithful, or that the clerk may be promoted, or necessities administered to others, etc. Wharton.

COMMENDATUS. In feudal law. One who intrusts himself to the protection of another. Spelman. A person who, by voluntary homage, put himself under the protection of a superior lord. Cowell.

COMMERCE. The various agreements which have for their object facilitating the exchange of the products of the earth or the industry of man, with an intent to realize a profit. Pard. Droit Com. n. 1. A general term including the specific contracts of sale and exchange.

The intercourse of nations in each other's produce and manufactures, in which the superfluities of one are given for those of another, and then re-exchanged with other nations for mutual wants. Wharton.

Commerce is the interchange or mutual change of goods, productions, or property of any kind between nations or individuals. Transportation is the means by which commerce is carried on. 45 Iowa, 338.

Commerco is a term of the largest import. It comprehends intercourse for the purposes of trade in any and all its forms, including the transportation, purchase, sale, and exchange of commodities between the citizens of our country and the citizens or subjects of other countries, and between the citizens of different states. The power to regulate it embraces all the instruments by which such commerce may be conducted. 91 U. S. 275.

Commerce is not limited to an exchange of commodities only, but includes, as well, intercourse with foreign nations and between the states; and includes the transportation of passengers. 3 Cow. 713; 34 Cal. 492.

The words "commerce" and "trade" are synonymous, but not identical. They are often used interchangeably; but, strictly speaking, commerce relates to intercourse or dealings with foreign nations, states, or political communities, while trade denotes business intercourse or mutual traffic within the limits of a state or nation, or the buying, selling, and exchanging of articles between members of the same community. See 4 Denio, 353; Jacob; Wharton.

COMMERCIA BELLI. War contracts. Compacts entered into by belligerent nations to secure a temporary and limited peace. 1 Kent, Comm. 159. Contracts between nations at war, or their subjects.

COMMERCIAL LAW. A phrase used to designate the whole body of substantive jurisprudence applicable to the rights, intercourse, and relations of persons engaged in commerce, trade, or mercantile pursuits. It is not a very scientific or accurate term. As foreign commerce is carried on by means of shipping, the term has come to be used occasionally as synonymous with "maritime law;" but, in strictness, the phrase "commercial law" is wider, and includes many transactions or legal questions which have nothing to do with shipping or its incidents.

COMMERCIAL PAPER. The term "commercial paper" means bills of exchange, promissory notes, bank-checks, and other negotiable instruments for the payment of money, which, by their form and on their face, purport to be such instruments as are, by the law-merchant, recognized as falling under the designation of "commercial paper." 6 N. B. R. 338.

Commercial paper means negotiable paper given in due course of business, whether the element of negotiability be given it by the law-merchant or by statute. A note given by a merchant for money loaned is within the meaning. 5 Biss. 113.

COMMERCIAL TRAVELER. Where an agent simply exhibits samples of goods kept for sale by his principal, and takes orders from purchasers for such goods, which goods are afterwards to be delivered by the principal to the purchasers, and payment for the goods is to be made by the purchasers to the principal on such delivery, such agent is generally called a "drummer" or "commercial traveler." 34 Kan. 434, 8 Pac. Rep. 865; 93 N. C. 511.

COMMERCIIUM. Lat. In the civil law. Commerce; business; trade; dealings in the nature of purchase and sale; a contract.

Commercium jure gentium commune esse debet, et non in monopolium et privatum paucorum quæstum convertendum. 3 Inst. 181. Commerce, by the law of nations, ought to be common, and not converted to monopoly and the private gain of a few.

COMMINALTY. The commonality or the people.

COMMUNATORIUM. In old practice. A clause sometimes added at the end of writs, admonishing the sheriff to be faithful in executing them. Bract. fol. 398.

COMMISE. In old French law. Forfeiture; the forfeiture of a fief; the penalty attached to the ingratitude of a vassal. Guyot, Inst. Feod. c. 12.

COMMISSAIRE. In French law. A person who receives from a meeting of shareholders a special authority, viz., that of checking and examining the accounts of a manager or of valuing the *apports en nature*, (q. v.) The name is also applied to a judge who receives from a court a special mission, e. g., to institute an inquiry, or to examine certain books, or to supervise the operations of a bankruptcy. Arg. Fr. Merc. Law, 551.

COMMISSAIRES-PRISEURS. In French law. Auctioneers, who possess the exclusive right of selling personal property at public sale in the towns in which they are established; and they possess the same right concurrently with notaries, *greffiers*, and *huissiers*, in the rest of the arrondissement. Arg. Fr. Merc. Law, 551.

COMMISSARIAT. The whole body of officers who make up the commissaries' department of an army.

COMMISSARY. In ecclesiastical law. One who is sent or delegated to execute some office or duty as the representative of his superior; an officer of the bishop, who exercises spiritual jurisdiction in distant parts of the diocese.

In military law. An officer whose principal duties are to supply an army with provisions and stores.

COMMISSARY COURT. A Scotch ecclesiastical court of general jurisdiction, held before four commissioners, members of the Faculty of Advocates, appointed by the crown.

COMMISSION. A warrant or authority or letters patent, issuing from the government, or one of its departments, or a court, empowering a person or persons named to do certain acts, or to exercise jurisdiction, or to perform the duties and exercise the authority of an office, (as in the case of an officer in the army or navy.)

Also, in private affairs, it signifies the authority or instructions under which one person transacts business or negotiates for another.

In a derivative sense, a body of persons to whom a commission is directed. A board or committee officially appointed and empowered to perform certain acts or exercise certain jurisdiction of a public nature or relation; as a "commission of assise."

In the civil law. A species of bailment, being an undertaking, without reward, to do something in respect to an article bailed; equivalent to "mandate."

In commercial law. The recompense or reward of an agent, factor, broker, or bailee, when the same is calculated as a percentage on the amount of his transactions or on the profit to the principal. But in this sense the word occurs more frequently in the plural.

In criminal law. Doing or perpetration; the performance of an act.

In practice. An authority or writ issuing from a court, in relation to a cause before it, directing and authorizing a person or persons named to do some act or exercise some special function; usually to take the depositions of witnesses.

A commission is a process issued under the seal of the court and the signature of the clerk, directed to some person designated as commissioner, authorizing him to examine the witness upon oath on interrogatories annexed thereto, to take and certify the deposition of the witness, and to return it according to the directions given with the commission. Pen. Code Cal. § 1351.

COMMISSION DAY. In English practice. The opening day of the assises.

COMMISSION DEL CREDERE, in commercial law, is where an agent of a seller undertakes to guaranty to his principal the payment of the debt due by the buyer. The phrase "*del credere*" is borrowed from the Italian language, in which its signification is equivalent to our word "guaranty" or "warranty." Story, Ag. 28.

COMMISSION MERCHANT. A term which is synonymous with "factor." It means one who receives goods, chattels, or merchandise for sale, exchange, or other disposition, and who is to receive a compensation for his services, to be paid by the owner, or derived from the sale, etc., of the goods. 50 Ala. 154.

COMMISSION OF ANTICIPATION. In English law. An authority un-

der the great seal to collect a tax or subsidy before the day.

COMMISSION OF APPRAISEMENT AND SALE. Where property has been arrested in an admiralty action *in rem* and ordered by the court to be sold, the order is carried out by a commission of appraisement and sale; in some cases (as where the property is to be released on bail and the value is disputed) a commission of appraisement only is required. Sweet.

COMMISSION OF ARRAY. In English law. A commission issued to send into every county officers to muster or set in military order the inhabitants. The introduction of commissions of lieutenantancy, which contained, in substance, the same powers as these commissions, superseded them. 2 Steph. Comm. (7th Ed.) 582.

COMMISSION OF ASSISE. Those issued to judges of the high court or court of appeal, authorizing them to sit at the assises for the trial of civil actions.

COMMISSION OF BANKRUPT. A commission or authority formerly granted by the lord chancellor to such persons as he should think proper, to examine the bankrupt in all matters relating to his trade and effects, and to perform various other important duties connected with bankruptcy matters. But now, under St. 1 & 2 Wm. IV. c. 56, § 12, a fiat issues instead of such commission.

COMMISSION OF CHARITABLE USES. This commission issues out of chancery to the bishop and others, where lands given to charitable uses are misemployed, or there is any fraud or dispute concerning them, to inquire of and redress the same, etc.

COMMISSION OF DELEGATES. When any sentence was given in any ecclesiastical cause by the archbishop, this commission, under the great seal, was directed to certain persons, usually lords, bishops, and judges of the law, to sit and hear an appeal of the same to the king, in the court of chancery. But latterly the judicial committee of the privy council has supplied the place of this commission. Brown.

COMMISSION OF LUNACY. A writ issued out of chancery, or such court as may have jurisdiction of the case, directed to a proper officer, to inquire whether a person named therein is a lunatic or not. 1 Bouv. Inst. n. 382, et seq.

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COMMISSION OF PARTITION. In the former English equity practice, this was a commission or authority issued to certain persons, to effect a division of lands held by tenants in common desiring a partition; when the commissioners reported, the parties were ordered to execute mutual conveyances to confirm the division.

COMMISSION OF REBELLION. In English law. An attaching process, formerly issuable out of chancery, to enforce obedience to a process or decree; abolished by order of 26th August, 1841.

COMMISSION OF REVIEW. In English ecclesiastical law. A commission formerly sometimes granted in extraordinary cases, to revise the sentence of the court of delegates. 3 Bl. Comm. 67. Now out of use, the privy council being substituted for the court of delegates, as the great court of appeal in all ecclesiastical causes. 3 Steph. Comm. 432.

COMMISSION OF THE PEACE. In English law. A commission from the crown, appointing certain persons therein named, jointly and severally, to keep the *peace*, etc. Justices of the peace are always appointed by special commission under the great seal, the form of which was settled by all the judges, A. D. 1590, and continues with little alteration to this day. 1 Bl. Comm. 351; 3 Steph. Comm. 39, 40.

COMMISSION OF TREATY WITH FOREIGN PRINCES. Leagues and arrangements made between states and kingdoms, by their ambassadors and ministers, for the mutual advantage of the kingdoms in alliance. Wharton.

COMMISSION OF UNLIVERY. In an action in the English admiralty division, where it is necessary to have the cargo in a ship unladen in order to have it appraised, a commission of unlivery is issued and executed by the marshal. Williams & B. Adm. Jur. 233.

COMMISSION TO EXAMINE WITNESSES. In practice. A commission issued out of the court in which an action is pending, to direct the taking of the depositions of witnesses who are beyond the territorial jurisdiction of the court.

COMMISSION TO TAKE ANSWER IN CHANCERY. In English law. A commission issued when defendant lives abroad to swear him to such answer. 15 &

16 Vict. c. 86, § 21. Obsolete. See Jud. Acts, 1873, 1875.

COMMISSION TO TAKE DEPOSITIONS. A written authority issued by a court of justice, giving power to take the testimony of witnesses who cannot be personally produced in court.

COMMISSIONER. A person to whom a commission is directed by the government or a court.

In the governmental system of the United States, this term denotes an officer who is charged with the administration of the laws relating to some particular subject-matter, or the management of some bureau or agency of the government. Such are the commissioners of education, of patents, of pensions, of fisheries, of the general land-office, of Indian affairs, etc.

In the state governmental systems, also, and in England, the term is quite extensively used as a designation of various officers having a similar authority and similar duties.

COMMISSIONER OF PATENTS. An officer of the United States government, being at the head of the bureau of the patent-office.

COMMISSIONERS OF BAIL. Officers appointed to take recognizances of bail in civil cases.

COMMISSIONERS OF BANKRUPTCY. The name given, under the former English practice in bankruptcy, to the persons appointed under the great seal to execute a commission of bankruptcy, (*q. v.*)

COMMISSIONERS OF CIRCUIT COURTS. Officers appointed by and attached to the circuit courts of the United States, performing functions partly ministerial and partly judicial. To a certain extent they represent the judge in his absence. In the examination of persons arrested for violations of the laws of the United States they have the powers of committing magistrates. They also take bail, recognizances, affidavits, etc., and hear preliminary proceedings for foreign extradition.

COMMISSIONERS OF DEEDS. Officers empowered by the government of one state to reside in another state, and there take acknowledgments of deeds and other papers which are to be used as evidence or put on record in the former state.

COMMISSIONERS OF HIGHWAYS. Officers appointed in each county or town-

ship, in many of the states, with power to take charge of the altering, opening, repair, and vacating of highways within such county or township.

COMMISSIONERS OF SEWERS. In English law. Commissioners appointed under the great seal, and constituting a court of special jurisdiction; which is to overlook the repairs of the banks and walls of the sea-coast and navigable rivers, or, with consent of a certain proportion of the owners and occupiers, to make new ones, and to cleanse such rivers, and the streams communicating therewith. St. 3 & 4 Wm. IV. c. 22, § 10; 3 Steph. Comm. 442.

COMMISSIONS. The compensation or reward paid to a factor, broker, agent, bailee, executor, trustee, receiver, etc., when the same is calculated as a percentage on the amount of his transactions or the amount received or expended.

COMMISSORIA LEX. In Roman law. A clause which might be inserted in an agreement for a sale upon credit, to the effect that the vendor should be freed from his obligation, and might rescind the sale, if the vendee did not pay the purchase price at the appointed time. Also a similar agreement between a debtor and his pledgee that, if the debtor did not pay at the day appointed, the pledge should become the absolute property of the creditor. This, however, was abolished by a law of Constantine. Cod. 8, 35, 3. See Dig. 18, 3; Mackeld. Rom. Law, §§ 447, 461; 2 Kent, Comm. 583.

COMMIT. In practice. To send a person to prison by virtue of a lawful authority, for any crime or contempt. 4 Bl. Comm. 295, 300; 1 Tidd, Pr. 479, 481.

To deliver a defendant to the custody of the sheriff or marshal, on his surrender by his bail. 1 Tidd, Pr. 285, 287.

COMMITMENT. In practice. The warrant or *mittimus* by which a court or magistrate directs an officer to take a person to prison.

The act of sending a person to prison by means of such a warrant or order. 9 N. H. 204.

COMMITTEE. In practice. An assembly or board of persons to whom the consideration or management of any matter is committed or referred by some court.

An individual or body to whom others have delegated or committed a particular duty, or who have taken on themselves to perform it

In the expectation of their act being confirmed by the body they profess to represent or act for. 15 Mees. & W. 529.

The term is especially applied to the person or persons who are invested, by order of the proper court, with the guardianship of the person and estate of one who has been adjudged a lunatic.

In parliamentary law. A portion of a legislative body, comprising one or more members, who are charged with the duty of examining some matter specially referred to them by the house, or of deliberating upon it, and reporting to the house the result of their investigations or recommending a course of action. A committee may be appointed for one special occasion, or it may be appointed to deal with all matters which may be referred to it during a whole session or during the life of the body. In the latter case, it is called a "standing committee." It is usually composed of a comparatively small number of members, but may include the whole house.

COMMITTITUR. In practice. An order or minute, setting forth that the person named in it *is committed* to the custody of the sheriff.

COMMITTITUR PIECE. An instrument in writing on paper or parchment, which charges a person, already in prison, in execution at the suit of the person who arrested him. 2 Chit. Archb. Pr. (12th Ed.) 1208.

COMMIXTIO. In the civil law. The mixing together or confusion of things, dry or solid, belonging to different owners, as distinguished from *confusio*, which has relation to liquids.

COMMODATE. In Scotch law. A gratuitous loan for use. Ersk. Inst. 3, 1, 20. Closely formed from the Lat. *commodatum*, (*q. v.*)

COMMODATI ACTIO. Lat. In the civil law. An action of loan; an action for a thing lent. An action given for the recovery of a thing loaned, (*commodatum*,) and not returned to the lender. Inst. 3, 15, 2; Id. 4, 1, 16.

COMMODATO. In Spanish law. A contract by which one person lends gratuitously to another some object not consumable, to be restored to him in kind at a given period; the same contract as *commodatum*, (*q. v.*)

COMMODATUM. In the civil law. He who lends to another a thing for a definite

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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, 6; Inst. 3, 2, 14; Story, Bailm. § 221.

COMMODITIES. Goods, wares, and merchandise of any kind; movables; articles of trade or commerce.

Commodum ex injuria sua nemo habere debet. Jenk. Cent. 161. No person ought to have advantage from his own wrong.

COMMON. As an *adjective*, this word denotes usual, ordinary, accustomed; shared among several; owned by several jointly.

COMMON, n. An incorporeal hereditament which consists in a profit which one man has in connection with one or more others in the land of another. 12 Serg. & R. 32; 10 Wend. 647; 11 Johns. 498.

Common, in English law, is an incorporeal right which lies in grant, originally commencing on some agreement between lords and tenants, which by time has been formed into prescription, and continues good, although there be no deed or instrument to prove the original contract. 4 Coke, 37; 1 Crabb, Real Prop. p. 258, § 268.

Common, or a right of common, is a right or privilege which several persons have to the produce of the lands or waters of another. Thus, common of pasture is a right of feeding the beasts of one person on the lands of another; common of estovers is the right a tenant has of taking necessary wood and timber from the woods of the lord for fuel, fencing, etc. 10 Wend. 647.

The word "common" also denotes an uninclosed piece of land set apart for public or municipal purposes, in many cities and villages of the United States.

COMMON APPENDANT. A right annexed to the possession of arable land, by which the owner is entitled to feed his beasts on the lands of another, usually of the owner of the manor of which the lands entitled to common are a part. 10 Wend. 648; 2 Bl. Comm. 33.

COMMON APPURTENANT. A right of feeding one's beasts on the land of another, (in common with the owner or with others,) which is founded on a grant, or a prescription which supposes a grant. 1 Crabb, Real Prop. p. 264, § 277. This kind of common arises from no connection of

tenure, and is against common right; it may commence by grant within time of memory, or, in other words, may be created at the present day; it may be claimed as annexed to any kind of land, and may be claimed for beasts not commonable, as well as those that are. 2 Bl. Comm. 33.

COMMON ASSURANCES. The several modes or instruments of conveyance established or authorized by the law of England. Called "common" because thereby *every man's* estate is assured to him. 2 Bl. Comm. 294.

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. Wharton.

COMMON BAIL. In practice. The form of entering merely fictitious bail, in cases where special bail is not required. A species of bail intended only to express the appearance of a defendant.

COMMON BAR. In pleading. (Otherwise called "blank bar.") A plea to compel the plaintiff to assign the particular place where the trespass has been committed. Steph. Pl. 256.

COMMON BARRETOR. In criminal law. One who frequently excites and stirs up groundless suits and quarrels, either at law or otherwise.

COMMON BECAUSE OF VICINAGE is where the inhabitants of two townships which lie contiguous to each other have usually intercommoned with one another, the beasts of the one straying mutually into the other's fields, without any molestation from either. This is, indeed, only a permissive right, intended to excuse what, in strictness, is a trespass in both, and to prevent a multiplicity of suits, and therefore either township may inclose and bar out the other, though they have intercommoned time out of mind. 2 Bl. Comm. 33; Co. Litt. 122a.

COMMON BENCH. The English court of common pleas was formerly so called. Its original title appears to have been simply "The Bench," but it was designated "Common Bench" to distinguish it from the "King's Bench," and because in it were tried and determined the causes of *common* persons, *i. e.*, causes between subject and subject, in which the crown had no interest.

COMMON CARRIERS. A common carrier is one whose regular business or call-

ing it is to carry chattels for all persons who may choose to employ and remunerate him. Schouler, Bailm. 297.

Every one who offers to the public to carry persons, property, or messages, excepting only telegraphic messages, is a common carrier of whatever he thus offers to carry. Civil Code Cal. § 2168.

A common carrier is one who holds himself out to the public to carry persons or freight for hire. 24 Conn. 479.

At common law, a common carrier is an insurer of the goods intrusted to him, and he is responsible for all losses of the same, save such as are occasioned by the act of God or the public enemy. 15 Minn. 276, (Gil. 208.)

Common carriers are of two kinds,—by *land*, as owners of stages, stage-wagons, railroad cars, teamsters, cartmen, draymen, and porters; and by *water*, as owners of ships, steam-boats, barges, ferrymen, lightermen, and canal boatmen. 2 Kent, Comm. 597.

COMMON CARRIERS OF PASSENGERS. Common carriers of passengers are such as undertake for hire to carry all persons indifferently who may apply for passage. Thomp. Carr. p. 26, n. § 1.

COMMON CHASE. In old English law. A place where all alike were entitled to hunt wild animals.

COMMON COUNCIL. In American law. The lower or more numerous branch of the legislative assembly of a city.

In English law. The councillors of the city of London. The parliament, also, was anciently called the "common council of the realm." Fleta, 2, 13.

COMMON COUNTS. Certain general counts or forms inserted in a declaration in an action to recover a money debt, not founded on the circumstances of the individual case, but intended to guard against a possible variance, and to enable the plaintiff to take advantage of any ground of liability which the proof may disclose, within the general scope of the action. In the action of *assumpsit*, these counts are as follows: For goods sold and delivered, or bargained and sold; for work done; for money lent; for money paid; for money received to the use of the plaintiff; for interest; or for money due on an account stated.

COMMON DAY. In old English practice. An ordinary day in court. Cowell; Termes de la Ley.

COMMON DEBTOR. In Scotch law. A debtor whose effects have been arrested by

several creditors. In regard to these creditors, he is their common debtor, and by this term is distinguished in the proceedings that take place in the competition. Bell.

COMMON ERROR. (Lat. *communis error*, *q. v.*) An error for which there are many precedents. "Common error goeth for a law." Finch, Law, b. 1, c. 3, no. 54.

COMMON FINE. In old English law. A certain sum of money which the residents in a leet paid to the lord of the leet, otherwise called "head silver," "cert money," (*q. v.*) or "*certum letæ*." Termes de la Ley; Cowell. A sum of money paid by the inhabitants of a manor to their lord, towards the charge of holding a court leet. Bailey, Dict. D

COMMON FISHERY. A fishing ground where all persons have a right to take fish. Not to be confounded with "common of fishery," as to which see **COMMON OF PISCARY**. E

COMMON FORM. A will is said to be proved in common form when the executor proves it on his own oath; as distinguished from "proof by witnesses," which is necessary when the paper propounded as a will is disputed. F

COMMON HALL. A court in the city of London, at which all the citizens, or such as are free of the city, have a right to attend. G

COMMON HIGHWAY. By this term is meant a road to be used by the community at large for any purpose of transit or traffic. Ham. N. P. 239. H

COMMON IN GROSS, OR A LARGE. A species of common which is neither appendant nor appurtenant to *land*, but is annexed to a man's *person*, being granted to him and his heirs by deed; or it may be claimed by prescriptive right, as by a parson of a church or the like corporation sole. 2 Bl. Comm. 34. It is a separate inheritance, entirely distinct from any other landed property, vested in the person to whom the common right belongs. 2 Steph. Comm. 6. I

COMMON INFORMER. A common prosecutor. A person who habitually ferrets out crimes and offenses and lays information thereof before the ministers of justice, in order to set a prosecution on foot, not because of his office or any special duty in the matter, but for the sake of the share of the J
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fine or penalty which the law allots to the informer in certain cases.

COMMON INTENDMENT. The natural and usual sense; the common meaning or understanding; the plain meaning of any writing as apparent on its face without straining or distorting the construction.

COMMON INTENT. The natural sense given to words.

COMMON JURY. In practice. The ordinary kind of jury by which issues of fact are generally tried, as distinguished from a *special jury*, (*q. v.*)

COMMON LAW 1. As distinguished from the Roman law, the modern civil law, the canon law, and other systems, the common law is that body of law and juristic theory which was originated, developed, and formulated and is administered in England, and has obtained among most of the states and peoples of Anglo-Saxon stock.

2. As distinguished from law created by the enactment of legislatures, the common law comprises the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs; and, in this sense, particularly the ancient unwritten law of England.

3. As distinguished from equity law, it is a body of rules and principles, written or unwritten, which are of fixed and immutable authority, and which must be applied to controversies rigorously and in their entirety, and cannot be modified to suit the peculiarities of a specific case, or colored by any judicial discretion, and which rests confessedly upon custom or statute, as distinguished from any claim to ethical superiority.

4. As distinguished from ecclesiastical law, it is the system of jurisprudence administered by the purely secular tribunals.

5. As concerns its force and authority in the United States, the phrase designates that portion of the common law of England (including such acts of parliament as were applicable) which had been adopted and was in force here at the time of the Revolution. This, so far as it has not since been expressly abrogated, is recognized as an organic part of the jurisprudence of most of the United States.

6. In a wider sense than any of the fore-

going, the "common law" may designate all that part of the positive law, juristic theory, and ancient custom of any state or nation which is of general and universal application, thus marking off special or local rules or customs.

COMMON-LAW PROCEDURE ACTS. Three acts of parliament, passed in the years 1852, 1854, and 1860, respectively, for the amendment of the procedure in the common-law courts. The common-law procedure act of 1852 is St. 15 & 16 Vict. c. 76; that of 1854, St. 17 & 18 Vict. c. 125, and that of 1860, St. 23 & 24 Vict. c. 126. Mozley & Whitley.

COMMON LAWYER. A lawyer learned in the common law.

COMMON LEARNING. Familiar law or doctrine. Dyer, 276, 33.

COMMON NUISANCE. One which affects the public in general, and not merely some particular person. 1 Hawk. P. C. 197. See **NUISANCE**.

COMMON OF DIGGING. Common of digging, or common in the soil, is the right to take for one's own use part of the soil or minerals in another's land; the most usual subjects of the right are sand, gravel, stones, and clay. It is of a very similar nature to common of estovers and of turbary. Elton, Com. 109.

COMMON OF ESTOVERS. A liberty of taking necessary wood for the use or furniture of a house or farm from off another's estate, in common with the owner or with others. 2 Bl. Comm. 35. It may be claimed, like common of pasture, either by grant or prescription. 2 Steph. Comm. 10.

COMMON OF FOWLING. In some parts of the country a right of taking wild animals (such as conies or wildfowl) from the land of another has been found to exist; in the case of wildfowl, it is called a "common of fowling." Elton, Com, 118.

COMMON OF PASTURE. The right or liberty of pasturing one's cattle upon another man's land. It may be either appendant, appurtenant, in gross, or because of vicinage.

COMMON OF PISCARY, or FISHERY. The right or liberty of fishing in another man's water, in common with the owner or with other persons. 2 Bl. Comm. 34. A liberty or right of fishing in the water covering the soil of another person, or in a

river running through another's land. 3 Kent, Comm. 409. It is quite different from a common fishery, with which, however, it is frequently confounded.

COMMON OF SHACK. A species of common by vicinage prevailing in the counties of Norfolk, Lincoln, and Yorkshire, in England; being the right of persons occupying lands lying together in the same common field to turn out their cattle after harvest to feed promiscuously in that field. 2 Steph. Comm. 6, 7; 5 Coke, 65.

COMMON OF TURBARY. Common of turbary, in its modern sense, is the right of taking peat or turf from the waste land of another, for fuel in the commoner's house. Williams, Common, 187.

Common opinion is good authority in law. Co. Litt. 186a; 3 Barb. Ch. 528, 577.

COMMON PLACE. Common pleas. The English court of common pleas is sometimes so called in the old books.

COMMON PLEAS. The name of a court of record having general original jurisdiction in civil suits.

Common causes or suits. A term anciently used to denote civil actions, or those depending between subject and subject, as distinguished from *pleas of the crown*.

COMMON PLEAS, THE COURT OF. In English law. (So called because its original jurisdiction was to determine controversies between subject and subject.) One of the three superior courts of common law at Westminster, presided over by a lord chief justice and five (formerly four, until 31 & 32 Vict. c. 125, § 11, subsec. 8) *puisné* judges. It was detached from the king's court (*aula regis*) as early as the reign of Richard I., and the fourteenth clause of *Magna Charta* enacted that it should not follow the king's court, but be held in some certain place. Its jurisdiction was altogether confined to civil matters, having no cognizance in criminal cases, and was concurrent with that of the queen's bench and exchequer in personal actions and ejectment. Wharton.

COMMON PRAYER. The liturgy, or public form of prayer prescribed by the Church of England to be used in all churches and chapels, and which the clergy are enjoined to use under a certain penalty.

COMMON RECOVERY. In conveyancing. A species of common assurance, or mode of conveying lands by matter of rec-

ord, formerly in frequent use in England. It was in the nature and form of an action at law, carried regularly through, and ending in a *recovery* of the lands against the tenant of the freehold; which recovery, being a supposed adjudication of the right, bound all persons, and vested a free and absolute fee-simple in the recoverer. 2 Bl. Comm. 357. Common recoveries were abolished by the statute 3 & 4 Wm. IV. c. 74.

COMMON SANS NOMBRE. Common without number, that is, without *limit* as to the *number* of cattle which may be turned on; otherwise called "common without stint." Bract. fols. 53b, 222b; 2 Steph. Comm. 6, 7; 2 Bl. Comm. 34.

COMMON SCHOOLS. Schools maintained at the public expense and administered by a bureau of the state, district, or municipal government, for the gratuitous education of the children of all citizens without distinction.

COMMON SCOLD. One who, by the practice of frequent scolding, disturbs the neighborhood. Bish. Crim. Law, § 147. A quarrelsome, brawling, vituperative person.

COMMON SEAL. A seal adopted and used by a corporation for authenticating its corporate acts and executing legal instruments.

COMMON SENSE. Sound practical judgment; that degree of intelligence and reason, as exercised upon the relations of persons and things and the ordinary affairs of life, which is possessed by the generality of mankind, and which would suffice to direct the conduct and actions of the individual in a manner to agree with the behavior of ordinary persons.

COMMON SERJEANT. A judicial officer attached to the corporation of the city of London, who assists the recorder in disposing of the criminal business at the Old Bailey sessions, or central criminal court. Brown.

COMMON, TENANTS IN. See **TENANTS IN COMMON**.

COMMON TRAVERSE. See **TRAVERSE**.

COMMON VOUCHEE. In common recoveries, the person who is vouched to warranty. In this fictitious proceeding the crier of the court usually performs the office of a common vouchee. 2 Bl. Comm. 358; 2 Bouv. Inst. n. 2093.

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COMMON WEAL. The public or common good or welfare.

COMMONABLE. Entitled to common. Commonable beasts are either beasts of the plow, as horses and oxen, or such as manure the land, as kine and sheep. Beasts not commonable are swine, goats, and the like. Co. Litt. 122a; 2 Bl. Comm. 33.

COMMONAGE. In old deeds. The right of common. See **COMMON**.

COMMONALTY. In English law. The great body of citizens; the mass of the people, excluding the nobility.

In American law. The body of people composing a municipal corporation, excluding the corporate officers.

COMMONANCE. The commoners, or tenants and inhabitants, who have the right of common or commoning in open field. Cowell.

COMMONERS. In English law. Persons having a right of *common*. So called because they have a right to pasture on the waste, in common with the lord. 2 H. Bl. 389.

COMMONS. 1. The class of subjects in Great Britain exclusive of the royal family and the nobility. They are represented in parliament by the house of commons.

2. Part of the demesneland of a manor, (or land the property of which was in the lord,) which, being uncultivated, was termed the "lord's waste," and served for public roads and for common of pasture to the lord and his tenants. 2 Bl. Comm. 90.

COMMONS HOUSE OF PARLIAMENT. In the English parliament. The lower house, so called because the commons of the realm, that is, the knights, citizens, and burgesses returned to parliament, representing the whole body of the commons, sit there.

COMMONTY. In Scotch law. Land possessed in common by different proprietors, or by those having acquired rights of servitude. Bell.

COMMONWEALTH. The public or common weal or welfare. This cannot be regarded as a technical term of public law, though often used in political science. It generally designates, when so employed, a republican frame of government,—one in which the welfare and rights of the entire mass of people are the main consideration,

rather than the privileges of a class or the will of a monarch; or it may designate the body of citizens living under such a government. Sometimes it may denote the corporate entity, or the government, of a jurat society (or state) possessing powers of self-government in respect of its immediate concerns, but forming an integral part of a larger government, (or nation.) In this latter sense, it is the official title of several of the United States, (as Pennsylvania and Massachusetts,) and would be appropriate to them all. In the former sense, the word was used to designate the English government during the protectorate of Cromwell. See **GOVERNMENT**; **NATION**; **STATE**.

COMMORANCY. The dwelling in any place as an inhabitant; which consists in usually lying there. 4 Bl. Comm. 273. In American law it is used to denote a mere temporary residence. 19 Pick. 247, 248.

COMMORANT. Staying or abiding; dwelling temporarily in a place.

COMMORIENTES. Several persons who perish at the same time in consequence of the same calamity.

COMMORTH, or COMORTH. A contribution which was gathered at marriages, and when young priests said or sung the first masses. Prohibited by 26 Hen. VIII. c. 6. Cowell.

COMMOTE. Half a cantred or hundred in Wales, containing fifty villages. Also a great seignory or lordship, and may include one or divers manors. Co. Litt. 5.

COMMUNE. A self-governing town or village. The name given to the committee of the people in the French revolution of 1793; and again, in the revolutionary uprising of 1871, it signified the attempt to establish absolute self-government in Paris, or the mass of those concerned in the attempt. In old French law, it signified any municipal corporation. And in old English law, the commonalty or common people.

COMMUNE CONCILIIUM REGNI. The common council of the realm. One of the names of the English parliament.

COMMUNE FORUM. The common place of justice. The seat of the principal courts, especially those that are fixed.

COMMUNE PLACITUM. In old English law. A common plea or civil action, such as an action of debt.

COMMUNE VINCULUM. A common or mutual bond. Applied to the common stock of consanguinity, and to the feudal bond of fealty, as the common bond of union between lord and tenant. 2 Bl. Comm. 250; 3 Bl. Comm. 230.

COMMUNI CUSTODIA. In English law. An obsolete writ which anciently lay for the lord, whose tenant, holding by knight's service, died, and left his eldest son under age, against a stranger that entered the land, and obtained the ward of the body. Reg. Orig. 161.

COMMUNI DIVIDUNDO. In the civil law. An action which lies for those who have property in common, to procure a division. It lies where parties hold land in common but not in partnership. Calvin.

COMMUNIA. In old English law. Common things, *res communes*. Such as running water, the air, the sea, and sea shores. Bract. fol. 7b.

COMMUNIA PLACITA. In old English law. Common pleas or actions; those between one subject and another, as distinguished from pleas of the crown.

COMMUNIA PLACITA NON TENENDA IN SCACCARIO. An ancient writ directed to the treasurer and barons of the exchequer, forbidding them to hold pleas between common persons (*i. e.*, not debtors to the king, who alone originally sued and were sued there) in that court, where neither of the parties belonged to the same. Reg. Orig. 187.

COMMUNIÆ. In feudal law on the continent of Europe, this name was given to towns enfranchised by the crown, about the twelfth century, and formed into free corporations by grants called "charters of community."

COMMUNIBUS ANNIS. In ordinary years; on the annual average.

COMMUNICATION. Information given; the sharing of knowledge by one with another; conference; consultation or bargaining preparatory to making a contract. Also intercourse; connection.

In French law. The production of a merchant's books, by delivering them either to a person designated by the court, or to his adversary, to be examined in all their parts, and as shall be deemed necessary to the suit. Arg. Fr. Merc. Law, 552.

COMMUNINGS. In Scotch law. The negotiations preliminary to the entering into a contract.

COMMUNIO BONORUM. In the civil law. A term signifying a community (*q. v.*) of goods.

COMMUNION OF GOODS. In Scotch law. The right enjoyed by married persons in the movable goods belonging to them. Bell.

Communis error facit jus. Common error makes law. 4 Inst. 240; Noy, Max. p. 37, max. 27. Common error goeth for a law. Finch. Law, b. 1, c. 3, no. 54. Common errors sometimes pass current as law. Broom, Max. 139, 140.

COMMUNIS OPINIO. Common opinion; general professional opinion. According to Lord Coke, (who places it on the footing of observance or usage,) common opinion is good authority in law. Co. Litt. 186a.

COMMUNIS PARIES. In the civil law. A common or party wall. Dig. 8, 2, 8, 13.

COMMUNIS RIXATRIX. In old English law. A common scold, (*q. v.*) 4 Bl. Comm. 168.

COMMUNIS SCRIPTURA. In old English law. A common writing; a writing common to both parties; a chirograph. Glan. lib. 8, c. 1.

COMMUNIS STIPES. A common stock of descent; a common ancestor.

COMMUNISM. A name given to proposed systems of life or social organization based upon the fundamental principle of the non-existence of private property and of a community of goods in a society.

An equality of distribution of the physical means of life and enjoyment as a transition to a still higher standard of justice that all should work according to their capacity and receive according to their wants. 1 Mill, Pol. Ec. 243.

COMMUNITAS REGNI ANGLIÆ. The general assembly of the kingdom of England. One of the ancient names of the English parliament. 1 Bl. Comm. 148.

COMMUNITY. A society of people living in the same place, under the same laws and regulations, and who have common rights and privileges.

In the civil law. A corporation or body politic. Dig. 3, 4.

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In French law. A species of partnership which a man and a woman contract when they are lawfully married to each other.

COMMUNITY PROPERTY. Community property is property acquired by husband and wife, or either, during marriage, when not acquired as the separate property of either. Civil Code Cal. § 687.

This partnership or community consists of the profits of all the effects of which the husband has the administration and enjoyment, either of right or in fact, of the produce of the reciprocal industry and labor of both husband and wife, and of the estates which they may acquire during the marriage, either by donations made jointly to them both, or by purchase, or in any other similar way, even although the purchase be only in the name of one of the two, and not of both, because in that case the period of time when the purchase is made is alone attended to, and not the person who made the purchase. Civil Code La. art. 2402.

COMMUTATION. In criminal law. Change; substitution. The substitution of one punishment for another, after conviction of the party subject to it. The change of a punishment from a greater to a less; as from hanging to imprisonment.

Commutation of a punishment is not a conditional pardon, but the substitution of a lower for a higher grade of punishment, and is presumed to be for the culprit's benefit. 31 Ohio St. 206; 1 Nev. 321.

In civil matters. The conversion of the right to receive a variable or periodical payment into the right to receive a fixed or gross payment. Commutation may be effected by private agreement, but it is usually done under a statute.

COMMUTATION OF TITHES. Signifies the conversion of tithes into a fixed payment in money.

COMMUTATIVE CONTRACT. In the civil law. One in which each of the contracting parties gives and receives an equivalent.

Commutative contracts are those in which what is done, given, or promised by one party is considered as equivalent to, or a consideration for, what is done, given, or promised by the other. Civil Code La. art. 1768.

COMMUTATIVE JUSTICE. See JUSTICE.

COMPACT. An agreement or contract. Usually applied to conventions between nations or sovereign states.

A compact is a mutual consent of parties concerned respecting some property or right that is the object of the stipulation, or something that is to be done or forborne. 4 Gill & J. 1.

The terms "compact" and "contract" are synonymous. 8 Wheat. 1, 92.

COMPANAGE. All kinds of food, except bread and drink. Spelman.

COMPANIES CLAUSES CONSOLIDATION ACT. An English statute, (8 Vict. c. 16,) passed in 1845, which consolidated the clauses of previous laws still remaining in force on the subject of public companies. It is considered as incorporated into all subsequent acts authorizing the execution of undertakings of a public nature by companies, unless expressly excepted by such later acts. Its purpose is declared by the preamble to be to avoid repeating provisions as to the constitution and management of the companies, and to secure greater uniformity in such provisions. Wharton.

COMPANION OF THE GARTER. One of the knights of the Order of the Garter.

COMPANIONS. In French law. A general term, comprehending all persons who compose the crew of a ship or vessel. Poth. Mar. Cont. no. 163.

COMPANY. A society or association of persons, in considerable number, interested in a common object, and uniting themselves for the prosecution of some commercial or industrial undertaking, or other legitimate business.

The proper signification of the word "company," when applied to persons engaged in trade, denotes those united for the same purpose or in a joint concern. It is so commonly used in this sense, or as indicating a partnership, that few persons accustomed to purchase goods at shops, where they are sold by retail, would misapprehend that such was its meaning. 33 Me. 32.

Joint stock companies. Joint stock companies are those having a joint stock or capital, which is divided into numerous transferable shares, or consists of transferable stock. Lindl. Partn. 6.

The term is not identical with "partnership," although every unincorporated society is, in its legal relations, a partnership. In common use a distinction is made, the name "partnership" being reserved for business associations of a limited number of persons

(usually not more than four or five) trading under a name composed of their individual names set out in succession; while "company" is appropriated as the designation of a society comprising a larger number of persons, with greater capital, and engaged in more extensive enterprises, and trading under a title not disclosing the names of the individuals.

Sometimes the word is used to represent those members of a partnership whose names do not appear in the name of the firm. See 12 Toullier, 97.

COMPARATIO LITERARUM. In the civil law. Comparison of writings, or handwritings. A mode of proof allowed in certain cases.

COMPARATIVE JURISPRUDENCE. The study of the principles of legal science by the comparison of various systems of law.

COMPARATIVE NEGLIGENCE. That doctrine in the law of negligence by which the negligence of the parties is compared, in the degrees of "slight," "ordinary," and "gross" negligence, and a recovery permitted, notwithstanding the contributory negligence of the plaintiff, when the negligence of the plaintiff is slight and the negligence of the defendant gross, but refused when the plaintiff has been guilty of a want of ordinary care, thereby contributing to his injury, or when the negligence of the defendant is not gross, but only ordinary or slight, when compared, under the circumstances of the case, with the contributory negligence of the plaintiff. 3 Amer. & Eng. Enc. Law, 367. See 103 Ill. 512; 115 Ill. 358, 3 N. E. Rep. 456; 82 Ill. 198; 1 Shear. & R. Neg. §§ 102, 103; Whart. Neg. § 334.

COMPARISON OF HANDWRITING. A comparison by the juxtaposition of two writings, in order, by such comparison, to ascertain whether both were written by the same person.

A method of proof resorted to where the genuineness of a written document is disputed; it consists in comparing the handwriting of the disputed paper with that of another instrument which is proved or admitted to be in the writing of the party sought to be charged, in order to infer, from their identity or similarity in this respect, that they are the work of the same hand.

COMPASCUUM. Belonging to commonage. *Jus compascuum*, the right of common of pasture.

COMPASS, THE MARINER'S. An instrument used by mariners to point out the course of a ship at sea. It consists of a magnetized steel bar called the "needle," attached to the under side of a card, upon which are drawn the points of the compass, and supported by a fine pin, upon which it turns freely in a horizontal plane.

COMPASSING. Imagining or contriving, or plotting.

COMPATERNITAS. In the canon law. A kind of spiritual relationship contracted by baptism.

COMPATERNITY. Spiritual affinity, contracted by sponsorship in baptism. **D**

COMPATIBILITY. Such relation and consistency between the duties of two offices that they may be held and filled by one person. **E**

COMPEAR. In Scotch law. To appear.

COMPEARANCE. In Scotch practice. Appearance; an appearance made for a defendant; an appearance by counsel. Bell. **F**

COMPELLATIVUS. An adversary or accuser.

Compendia sunt dispendia. Co. Litt. 305. Abbreviations are detriments.

COMPENDIUM. An abridgment, synopsis, or digest.

COMPENSACION. In Spanish law. Compensation; set-off. The extinction of a debt by another debt of equal dignity. **H**

COMPENSATIO. In the civil law. Compensation, or set-off. A proceeding resembling a set-off in the common law, being a claim on the part of the defendant to have an amount due to him from the plaintiff deducted from his demand. Dig. 16, 2; Inst. 4, 6, 30, 39; 3 Bl. Comm. 305. **I**

COMPENSATIO CRIMINIS. (Set-off of crime or guilt.) In practice. The plea of recrimination in a suit for a divorce; that is, that the complainant is guilty of the same kind of offense with which the respondent is charged. **J**

COMPENSATION. Indemnification; payment of damages; making amends; that which is necessary to restore an injured party to his former position. An act which a court orders to be done, or money which a court orders to be paid, by a person whose acts or omissions have caused loss or injury to another, in order that thereby the person dam- **K**
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nified may receive equal value for his loss, or be made whole in respect of his injury.

Also that equivalent in money which is paid to the owners and occupiers of lands taken or injuriously affected by the operations of companies exercising the power of eminent domain.

In the constitutional provision for "just compensation" for property taken under the power of eminent domain, this term means a payment in money. Any benefit to the remaining property of the owner, arising from public works for which a part has been taken, cannot be considered as compensation. 42 Ala. 83.

As compared with consideration and damages, compensation, in its most careful use, seems to be between them. Consideration is an amends for something given by consent, or by the owner's choice. Damages is an amends exacted from a wrong-doer for a tort. Compensation is an amends for something which was taken without the owner's choice, yet without commission of a tort. Thus, one should say, consideration for land sold; compensation for land taken for a railway; damages for a trespass. But such distinctions are not uniform. Land damages is a common expression for compensation for lands taken for public use. Abbott.

The word also signifies the remuneration or wages given to an employe or officer. But it is not exactly synonymous with "salary." See 76 Ill. 548.

In the civil, Scotch, and French law. Recoupment; set-off. The meeting of two debts due by two parties, where the debtor in the one debt is the creditor in the other; that is to say, where one person is both debtor and creditor to another, and therefore, to the extent of what is due to him, claims allowance out of the sum that he is due. Bell; 1 Kames, Eq. 395, 396.

Compensation is of three kinds,—legal, or by operation of law; compensation by way of exception; and by reconvention. 16 La. Ann. 181.

COMPERENDINATIO. In the Roman law. The adjournment of a cause, in order to hear the parties or their advocates a second time; a second hearing of the parties to a cause. Calvin.

COMPERTORIUM. In the civil law. A judicial inquest made by delegates or commissioners to find out and relate the truth of a cause.

COMPERUIT AD DIEM. In practice. A plea in an action of debt on a bail bond that the defendant appeared at the day required.

COMPETENCY. In the law of evidence. The presence of those characteris-

tics, or the absence of those disabilities, which render a witness legally fit and qualified to give testimony in a court of justice. The term is also applied, in the same sense, to documents or other written evidence.

Competency differs from credibility. The former is a question which arises before considering the evidence given by the witness; the latter concerns the degree of credit to be given to his story. The former denotes the personal qualification of the witness; the latter his veracity. A witness may be competent, and yet give incredible testimony; he may be incompetent, and yet his evidence, if received, be perfectly credible. Competency is for the court; credibility for the jury. Yet in some cases the term "credible" is used as an equivalent for "competent." Thus, in a statute relating to the execution of wills, the term "credible witness" is held to mean one who is entitled to be examined and to give evidence in a court of justice; not necessarily one who is personally worthy of belief, but one who is not disqualified by imbecility, interest, crime, or other cause. 1 Jarm. Wills, 124; 23 Pick. 18.

In French law. Competency, as applied to a court, means its right to exercise jurisdiction in a particular case.

COMPETENT AND OMITTED. In Scotch practice. A term applied to a plea which might have been urged by a party during the dependence of a cause, but which had been omitted. Bell.

COMPETENT EVIDENCE. That which the very nature of the thing to be proven requires, as the production of a writing where its contents are the subject of inquiry. 1 Greenl. Ev. § 2; 1 Lea, 504.

COMPETENT WITNESS. One who is legally qualified to be heard to testify in a cause. See **COMPETENCY**.

COMPETITION. In Scotch practice. The contest among creditors claiming on their respective diligences, or creditors claiming on their securities. Bell.

COMPILE. To compile is to copy from various authors into one work. Between a compilation and an abridgment there is a clear distinction. A compilation consists of selected extracts from different authors; an abridgment is a condensation of the views of one author. 4 McLean, 306, 314.

COMPILATION. A literary production, composed of the works of others and arranged in a methodical manner.

COMPLAINANT. In practice. One who applies to the courts for legal redress; one who exhibits a bill of complaint. This 's the proper designation of one suing in equity, though "plaintiff" is often used in equity proceedings as well as at law.

COMPLAINT. In civil practice. In those states having a Code of Civil Procedure, the complaint is the first or initiatory pleading on the part of the plaintiff in a civil action. It corresponds to the declaration in the common-law practice. Code N. Y. § 141.

The complaint shall contain: (1) The title of the cause, specifying the name of the court in which the action is brought, the name of the county in which the trial is required to be had, and the names of the parties to the action, plaintiff and defendant. (2) A plain and concise statement of the facts constituting a cause of action, without unnecessary repetition; and each material allegation shall be distinctly numbered. (3) A demand of the relief to which the plaintiff supposes himself entitled. If the recovery of money be demanded, the amount thereof must be stated. Code N. C. 1883, § 238.

In criminal law. A charge, preferred before a magistrate having jurisdiction, that a person named (or an unknown person) has committed a specified offense, with an offer to prove the fact, to the end that a prosecution may be instituted. It is a technical term, descriptive of proceedings before a magistrate. 11 Pick. 436.

The complaint is an allegation, made before a proper magistrate, that a person has been guilty of a designated public offense. Code Ala. 1886, § 4255.

COMPLICE. One who is united with others in an ill design; an associate; a confederate; an accomplice.

COMPOS MENTIS. Sound of mind. Having use and control of one's mental faculties.

COMPOS SUI. Having the use of one's limbs, or the power of bodily motion. *Si fuit ita compos sui quod itinerare potuit de loco in locum.* if he had so far the use of his limbs as to be able to travel from place to place. Bract. fol. 14b.

COMPOSITIO MENSURARUM. The ordinance of measures. The title of an ancient ordinance, not printed, mentioned in the statute 23 Hen. VIII. c. 4; establishing a standard of measures. 1 Bl. Comm. 275.

**COMPOSITIO ULNARUM ET PER-
TICARUM.** The statute of ells and perches. The title of an English statute establishing a standard of measures. 1 Bl. Comm. 275.

COMPOSITION. An agreement, made upon a sufficient consideration, between an insolvent or embarrassed debtor and his creditors, whereby the latter, for the sake of immediate payment, agree to accept a dividend less than the whole amount of their claims, to be distributed *pro rata*, in discharge and satisfaction of the whole.

"Composition" should be distinguished from "accord." The latter properly denotes an arrangement between a debtor and a single creditor for a discharge of the obligation by a part payment or on different terms. The former designates an arrangement between a debtor and the whole body of his creditors (or at least a considerable proportion of them) for the liquidation of their claims by the dividend offered.

In ancient law. Among the Franks, Goths, Burgundians, and other barbarous peoples, this was the name given to a sum of money paid, as satisfaction for a wrong or personal injury, to the person harmed, or to his family if he died, by the aggressor. It was originally made by mutual agreement of the parties, but afterwards established by law, and took the place of private physical vengeance.

COMPOSITION DEED. An agreement embodying the terms of a composition between a debtor and his creditors.

COMPOSITION IN BANKRUPTCY. An arrangement between a bankrupt and his creditors, whereby the amount he can be expected to pay is liquidated, and he is allowed to retain his assets, upon condition of his making the payments agreed upon.

COMPOSITION OF MATTER. A mixture or chemical combination of materials.

**COMPOSITION OF TITHES, or
REAL COMPOSITION.** This arises in English ecclesiastical law, when an agreement is made between the owner of lands and the incumbent of a benefice, with the consent of the ordinary and the patron, that the lands shall, for the future, be discharged from payment of tithes, by reason of some land or other real recompense given in lieu and satisfaction thereof. 2 Bl. Comm. 28; 3 Steph. Comm. 129.

COMPOST. Several sorts of soil or earth and other matters mixed, in order to make a fine kind of mould for fertilizing lands.

COMPOTARIUS. In old English law. A party accounting. Fleta, lib. 2, c. 71, § 17.

COMPOUND. To compromise; to effect a composition with a creditor; to obtain dis-

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charge from a debt by the payment of a smaller sum.

COMPOUND INTEREST. Interest upon interest, *i. e.*, when the interest of a sum of money is added to the principal, and then bears interest, which thus becomes a sort of secondary principal.

COMPOUNDER. In Louisiana. The maker of a composition, generally called the "amicable compounder."

COMPOUNDING A FELONY. The offense committed by a person who, having been directly injured by a felony, agrees with the criminal that he will not prosecute him, on condition of the latter's making reparation, or on receipt of a reward or bribe not to prosecute.

The offense of taking a reward for forbearing to prosecute a felony; as where a party robbed takes his goods again, or other amends, upon an agreement not to prosecute. 29 Ark. 301; 4 Steph. Comm. 259.

COMPRA Y VENTA. In Spanish law. Purchase and sale.

COMPRINT. A surreptitious printing of another book-seller's copy of a work, to make gain thereby, which was contrary to common law, and is illegal. Wharton.

COMPRIVIGNI. In the civil law. Children by a former marriage, (individually called "*privigni*," or "*privignæ*,") considered relatively to each other. Thus, the son of a husband by a former wife, and the daughter of a wife by a former husband, are the *comprivigni* of each other. Inst. 1, 10, 8.

COMPROMISE. An arrangement arrived at, either in court or out of court, for settling a dispute upon what appears to the parties to be equitable terms, having regard to the uncertainty they are in regarding the facts, or the law and the facts together. Brown.

An agreement between two or more persons, who, for preventing or putting an end to a lawsuit, adjust their difficulties by mutual consent in the manner which they agree on, and which every one of them prefers to the hope of gaining, balanced by the danger of losing. 4 La. 456.

In the civil law. An agreement whereby two or more persons mutually bind themselves to refer their legal dispute to the decision of a designated third person, who is termed "umpire" or "arbitrator." Dig. 4, 8; Mackeld. Rom. Law, § 471.

Compromissarii sunt iudices. Jenk. Cent. 128. Arbitrators are judges.

COMPROMISSARIUS. In the civil law. An arbitrator.

COMPROMISSUM. A submission to arbitration.

Compromissum ad similitudinem iudiciorum redigitur. A compromise is brought into affinity with judgments. 9 Cush. 571.

COMPTE ARRÊTÉ. Fr. A *compte arrêté* is an account stated in writing, and acknowledged to be correct on its face by the party against whom it is stated. 9 La. Ann. 484.

COMPTER. In Scotch law. An accounting party.

COMPTROLLER. A public officer of a state or municipal corporation, charged with certain duties in relation to the fiscal affairs of the same, principally to examine and audit the accounts of collectors of the public money, to keep records, and report the financial situation from time to time. There are also officers bearing this name in the treasury department of the United States.

COMPTROLLER IN BANKRUPTCY. An officer in England, whose duty it is to receive from the trustee in each bankruptcy his accounts and periodical statements showing the proceedings in the bankruptcy, and also to call the trustee to account for any misfeasance, neglect, or omission in the discharge of his duties. Robs. Bankr. 13; Bankr. Act 1869, § 55.

COMPTROLLERS OF THE HANAPER. In English law. Officers of the court of chancery; their offices were abolished by 5 & 6 Vict. c. 103.

COMPULSION. Constraint; objective necessity. Forcible inducement to the commission of an act.

COMPULSORY. In ecclesiastical procedure, a compulsory is a kind of writ to compel the attendance of a witness, to undergo examination. Phillim. Ecc. Law, 1258.

COMPURGATOR. One of several neighbors of a person accused of a crime, or charged as a defendant in a civil action, who appeared and swore that they believed him on his oath. 3 Bl. Comm. 341.

COMPUTATION. The act of computing, numbering, reckoning, or estimating.

The account or estimation of time by rule of law, as distinguished from any arbitrary construction of the parties. Cowell.

COMPUTUS. A writ to compel a guardian, bailiff, receiver, or accountant to yield up his accounts. It is founded on the statute Westm. 2, c. 12; Reg. Orig. 135.

COMTE. Fr. A count or earl. In the ancient French law, the *comte* was an officer having jurisdiction over a particular district or territory, with functions partly military and partly judicial.

CON BUENA FE. In Spanish law. With (or in) good faith.

CONACRE. In Irish practice. The payment of wages in land, the rent being worked out in labor at a money valuation. Wharton.

Conatus quid sit, non definitur in jure. 2 Bulst. 277. What an attempt is, is not defined in law.

CONCEAL. To hide; secrete; withhold from the knowledge of others.

The word "conceal," according to the best lexicographers, signifies to withhold or keep secret mental facts from another's knowledge, as well as to hide or secrete physical objects from sight or observation. 57 Me. 339.

CONCEALED. The term "concealed" is not synonymous with "lying in wait." If a person conceals himself for the purpose of shooting another unawares, he is lying in wait; but a person may, while concealed, shoot another without committing the crime of murder. 55 Cal. 207.

The term "concealed weapons" means weapons willfully or knowingly covered or kept from sight. 31 Ala. 387.

CONCEALERS. In old English law. Such as find out concealed lands; that is, lands privily kept from the king by common persons having nothing to show for them. They are called "a troublesome, disturbant sort of men; turbulent persons." Cowell.

CONCEALMENT. The improper suppression or disguising of a fact, circumstance, or qualification which rests within the knowledge of one only of the parties to a contract, but which ought in fairness and good faith to be communicated to the other, whereby the party so concealing draws the other into an engagement which he would not make but for his ignorance of the fact concealed.

A neglect to communicate that which a

party knows, and ought to communicate, is called a "concealment." Civil Code Cal § 2561.

The terms "misrepresentation" and "concealment" have a known and definite meaning in the law of insurance. Misrepresentation is the statement of something as fact which is untrue in fact, and which the assured states, knowing it to be not true, with an intent to deceive the underwriter, or which he states positively as true, without knowing it to be true, and which has a tendency to mislead, such fact in either case being material to the risk. Concealment is the designed and intentional withholding of any fact material to the risk, which the assured, in honesty and good faith, ought to communicate to the underwriter; mere silence on the part of the assured, especially as to some matter of fact which he does not consider it important for the underwriter to know, is not to be considered as such concealment. If the fact so untruly stated or purposely suppressed is not material, that is, if the knowledge or ignorance of it would not naturally influence the judgment of the underwriter in making the contract, or in estimating the degree and character of the risk, or in fixing the rate of the premium, it is not a "misrepresentation" or "concealment," within the clause of the conditions annexed to policies. 12 Cush. 416.

CONCEDO. I grant. A word used in old Anglo-Saxon grants, and in statutes merchant.

CONCEPTUM. In the civil law. A theft (*furtum*) was called "*conceptum*," when the thing stolen was searched for, and found upon some person in the presence of witnesses. Inst. 4, 1, 4.

CONCESSI. Lat. I have granted. At common law, in a feoffment or estate of inheritance, this word does not imply a warranty; it only creates a covenant in a lease for years. Co. Litt. 384a; 2 Caines, 194.

CONCESSIMUS. Lat. We have granted. A term used in conveyances, the effect of which was to create a joint covenant on the part of the grantors.

CONCESSIO. In old English law. A grant. One of the old common assurances, or forms of conveyance.

Concessio per regem fieri debet de certitudine. 9 Coke, 46. A grant by the king ought to be made from certainty.

Concessio versus concedentem latam interpretationem habere debet. A grant ought to have a broad interpretation (to be liberally interpreted) against the grantor. Jenk. Cent. 279.

CONCESSION. A grant; ordinarily applied to the grant of specific privileges by a

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government; French and Spanish grants in Louisiana.

CONCESSIT SOLVERE. (He granted and agreed to pay.) In English law. An action of debt upon a simple contract. It lies by custom in the mayor's court, London, and Bristol city court.

CONCESSOR. In old English law. A grantor.

CONCESSUM. Accorded; conceded. This term, frequently used in the old reports, signifies that the court admitted or assented to a point or proposition made on the argument.

CONCESSUS. A grantee.

CONCILIABULUM. A council house.

CONCILIATION. In French law. The formality to which intending litigants are subjected in cases brought before the *juge de paix*. The judge convenes the parties and endeavors to reconcile them. Should he not succeed, the case proceeds. In criminal and commercial cases, the preliminary of conciliation does not take place. Arg. Fr. Merc. Law, 552.

CONCILIUM. A council. Also argument in a cause, or the sitting of the court to hear argument; a day allowed to a defendant to present his argument; an imparlance.

CONCILIUM ORDINARIUM. In Anglo-Norman times. An executive and residuary judicial committee of the *Aula Regis*, (*q. v.*)

CONCILIUM REGIS. An ancient English tribunal, existing during the reigns of Edward I. and Edward II., to which was referred cases of extraordinary difficulty. Co. Litt. 304.

CONCIONATOR. In old records. A common council man; a freeman called to a legislative hall or assembly. Cowell.

CONCLUDE. To finish; determine; to estop; to prevent.

CONCLUDED. Ended; determined; estopped; prevented from.

CONCLUSION. The end; the termination; the act of finishing or bringing to a close. The conclusion of a declaration or complaint is all that part which follows the statement of the plaintiff's cause of action. The conclusion of a plea is its final clause, in which the defendant either "puts himself upon the country" (where a material aver-

ment of the declaration is traversed and issue tendered) or offers a verification, which is proper where new matter is introduced.

In trial practice. It signifies making the final or concluding address to the jury or the court. This is, in general, the privilege of the party who has to sustain the burden of proof.

Conclusion also denotes a bar or estoppel; the consequence, as respects the individual, of a judgment upon the subject-matter, or of his confession of a matter or thing which the law thenceforth forbids him to deny.

CONCLUSION AGAINST THE FORM OF THE STATUTE. The proper form for the conclusion of an indictment for an offense created by statute is the technical phrase "against the form of the statute in such case made and provided;" or, in Latin, *contra formam statuti*.

CONCLUSION TO THE COUNTRY. In pleading. The tender of an issue to be tried by jury. Steph. Pl. 230.

CONCLUSIVE. Shutting up a matter; shutting out all further evidence; not admitting of explanation or contradiction; putting an end to inquiry; final; decisive.

CONCLUSIVE EVIDENCE. Evidence which, in its nature, does not admit of explanation or contradiction; such as what is called "certain circumstantial" evidence. Burrill, Circ. Ev. 89.

Evidence which, of itself, whether contradicted or uncontradicted, explained or unexplained, is sufficient to determine the matter at issue. 6 Lond. Law Mag. 373.

CONCLUSIVE PRESUMPTION. A rule of law determining the quantity of evidence requisite for the support of a particular averment which is not permitted to be overcome by any proof that the fact is otherwise. 1 Greenl. Ev. § 15.

CONCORD. In the old process of levying a fine of lands, the concord was an agreement between the parties (real or feigned) in which the deforciant (or he who keeps the other out of possession) acknowledges that the lands in question are the right of complainant; and, from the acknowledgment or admission of right thus made, the party who levies the fine is called the "cognizor," and the person to whom it is levied the "cognizee." 2 Bl. Comm. 350.

The term also denotes an agreement between two persons, one of whom has a right of action against the other, settling what

amends shall be made for the breach or wrong; a compromise or an accord.

In old practice. An agreement between two or more, upon a trespass committed, by way of amends or satisfaction for it. Plowd. 5, 6, 8.

Concordare leges legibus est optimus interpretandi modus. To make laws agree with laws is the best mode of interpreting them. Halk. Max. 70.

CONCORDAT. In public law. A compact or convention between two or more independent governments.

An agreement made by a temporal sovereign with the pope, relative to ecclesiastical matters.

In French law. A compromise effected by a bankrupt with his creditors, by virtue of which he engages to pay within a certain time a certain proportion of his debts, and by which the creditors agree to discharge the whole of their claims in consideration of the same. Arg. Fr. Merc. Law, 553.

CONCORDIA. Lat. In old English law. An agreement, or concord. Fleta, lib. 5, c. 3, § 5. The agreement or unanimity of a jury. *Compellere ad concordiam.* Fleta, lib. 4, c. 9, § 2.

CONCORDIA DISCORDANTIUM CANONUM. The harmony of the discordant canons. A collection of ecclesiastical constitutions made by Gratian, an Italian monk, A. D. 1151; more commonly known by the name of "*Decretum Gratiani.*"

Concordia parvæ res crescunt et opulentia lites. 4 Inst. 74. Small means increase by concord and litigations by opulence.

CONCUBARIA. A fold, pen, or place where cattle lie. Cowell.

CONCUBEANT. Lying together, as cattle.

CONCUBINAGE. A species of loose or informal marriage which took place among the ancients, and which is yet in use in some countries. See **CONCUBINATUS.**

The act or practice of cohabiting, in sexual commerce, without the authority of law or a legal marriage.

An exception against a woman suing for dower, on the ground that she was the concubine, and not the wife, of the man of whose land she seeks to be endowed. Britt. c. 107.

CONCUBINATUS. In Roman law. An informal, unsanctioned, or "natural" marriage, as contradistinguished from the *justa nuptiæ*, or *justum matrimonium*, the civil marriage.

CONCUBINE. (1) A woman who cohabits with a man to whom she is not married. (2) A sort of inferior wife, among the Romans, upon whom the husband did not confer his rank or quality.

CONCUR. In Louisiana. To join with other claimants in presenting a demand against an insolvent estate.

CONCURATOR. In the civil law. A joint or co-curator, or guardian.

CONCURRENCE. In French law. The possession, by two or more persons, of equal rights or privileges over the same subject-matter.

CONCURRENT. Having the same authority; acting in conjunction; agreeing in the same act; contributing to the same event; contemporaneous.

CONCURRENT JURISDICTION. The jurisdiction of several different tribunals, both authorized to deal with the same subject-matter at the choice of the suitor.

CONCURRENT WRITS. Duplicate originals, or several writs running at the same time for the same purpose, for service on or arrest of a person, when it is not known where he is to be found; or for service on several persons, as when there are several defendants to an action. Mozley & Whitley.

CONCURSUS. In the civil law. (1) A running together; a collision, as *concursum creditorum*, a conflict among creditors. (2) A concurrence, or meeting, as *concursum actionum*, concurrence of actions.

CONCUSS. In Scotch law. To coerce.

CONCUSSIO. In the civil law. The offense of extortion by threats of violence. Dig. 47, 13.

CONCUSSION. In the civil law. The unlawful forcing of another by threats of violence to give something of value. It differs from robbery, in this: that in robbery the thing is taken by force, while in concussion it is obtained by threatened violence. Heinec. Elem. § 1071.

CONDEDIT. In ecclesiastical law. The name of a plea entered by a party to a libel filed in the ecclesiastical court, in which

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It is pleaded that the deceased made the will which is the subject of the suit, and that he was of sound mind. 2 Eng. Ecc. R. 438; 6 Eng. Ecc. R. 431.

CONDEMN. To find or adjudge guilty. 3 Leon. 68. To adjudge or sentence. 3 Bl. Comm. 291. To adjudge (as an admiralty court) that a vessel is a prize, or that she is unfit for service. 1 Kent, Comm. 102; 5 Esp. 65. To set apart or expropriate property for public use, in the exercise of the power of eminent domain.

CONDEMNATION. In admiralty law. The judgment or sentence of a court having jurisdiction and acting *in rem*, by which (1) it is declared that a vessel which has been captured at sea as a prize was lawfully so seized and is liable to be treated as prize; or (2) that property which has been seized for an alleged violation of the revenue laws, neutrality laws, navigation laws, etc., was lawfully so seized, and is, for such cause, forfeited to the government; or (3) that the vessel which is the subject of inquiry is unfit and unsafe for navigation.

In the civil law. A sentence or judgment which condemns some one to do, to give, or to pay something, or which declares that his claim or pretensions are unfounded.

CONDEMNATION MONEY. In practice. The damages which the party failing in an action is adjudged or *condemned* to pay; sometimes simply called the "condemnation."

As used in an appeal-bond, this phrase means the damages which should be awarded against the appellant by the judgment of the court. It does not embrace damages not included in the judgment. 6 Blackf. 8.

CONDESCENDENCE. In the Scotch law. A part of the proceedings in a cause, setting forth the facts of the case on the part of the pursuer or plaintiff.

CONDICTIO. In Roman law. A general term for actions of a personal nature, founded upon an obligation to give or do a certain and defined thing or service. It is distinguished from *vindicatio rei*, which is an action to vindicate one's right of property in a thing by regaining (or retaining) possession of it against the adverse claim of the other party.

CONDICTIO CERTI. In the civil law. An action which lies upon a promise to do a thing, where such promise or stipulation is

certain, (*si certa sit stipulatio.*) Inst. 3, 16, pr.; Id. 3, 15, pr.; Dig. 12, 1; Bract. fol. 103b.

CONDICTIO EX LEGE. In the civil law. An action arising where the law gave a remedy, but provided no appropriate form of action. Calvin.

CONDICTIO INDEBITATI. In the civil law. An action which lay to recover anything which the plaintiff had given or paid to the defendant, by mistake, and which he was not bound to give or pay, either in fact or in law.

CONDICTIO REI FURTIVÆ. In the civil law. An action which lay to recover a thing stolen, against the thief himself, or his heir. Inst. 4, 1, 19.

CONDICTIO SINE CAUSA. In the civil law. An action which lay in favor of a person who had given or promised a thing without consideration, (*causa.*) Dig. 12, 7; Cod. 4, 9.

CONDITIO. Lat. A condition.

Conditio beneficialis, quæ statum construit, benignè secundum verborum intentionem est interpretanda; odiosa autem, quæ statum destruit, stricte secundum verborum proprietatem accipienda. 8 Coke, 90. A beneficial condition, which creates an estate, ought to be construed favorably, according to the intention of the words; but a condition which destroys an estate is odious, and ought to be construed strictly according to the letter of the words.

Conditio dicitur, cum quid in casum incertum qui potest tendere ad esse aut non esse, confertur. Co. Litt. 201. It is called a "condition," when something is given on an uncertain event, which may or may not come into existence.

Conditio illicita habetur pro non adjectâ. An unlawful condition is deemed as not annexed.

Conditio præcedens adimpleri debet prius quam sequatur effectus. Co. Litt. 201. A condition precedent must be fulfilled before the effect can follow.

CONDITION. In the civil law. The rank, situation, or degree of a particular person in some one of the different orders of society.

An agreement or stipulation in regard to some uncertain future event, not of the essential nature of the transaction, but an-

nexed to it by the parties, providing for a change or modification of their legal relations upon its occurrence. Mackeld. Rom. Law, § 184.

In the civil law, conditions are of the following several kinds:

The *casual* condition is that which depends on chance, and is in no way in the power either of the creditor or of the debtor. Civil Code La. art. 2023.

A *mixed* condition is one that depends at the same time on the will of one of the parties and on the will of a third person, or on the will of one of the parties and also on a casual event. Civil Code La. art. 2025.

The *potestative* condition is that which makes the execution of the agreement depend on an event which it is in the power of the one or the other of the contracting parties to bring about or to hinder. Civil Code La. art. 2024.

A *resolatory* condition is one which destroys or releases an obligation already vested, as soon as the condition is fulfilled.

A *suspensive* condition is one which postpones the obligation until the happening of a future and uncertain event, or a present but unknown event.

In French law. In French law, the following peculiar distinctions are made: (1) A condition is *casuelle* when it depends on a chance or hazard; (2) a condition is *potestative* when it depends on the accomplishment of something which is in the power of the party to accomplish; (3) a condition is *mixte* when it depends partly on the will of the party and partly on the will of others; (4) a condition is *suspensive* when it is a future and uncertain event, or present but unknown event, upon which an obligation takes or fails to take effect; (5) a condition is *resolutoire* when it is the event which undoes an obligation which has already had effect as such. Brown.

In common law. The rank, situation, or degree of a particular person in some one of the different orders of society; or his *status* or situation, considered as a juridical person, arising from positive law or the institutions of society.

A clause in a contractor agreement which has for its object to suspend, rescind, or modify the principal obligation, or, in case of a will, to suspend, revoke, or modify the devise or bequest. 1 Bouv. Inst. no. 730.

A *modus* or quality annexed by him that hath an estate, or interest or right to the same, whereby an estate, etc., may either be

defeated, enlarged, or created upon an uncertain event. Co. Litt. 201e.

A qualification or restriction annexed to a conveyance of lands, whereby it is provided that in case a particular event does or does not happen, or in case the grantor or grantee does or omits to do a particular act, an estate shall commence, be enlarged, or be defeated. Greenl. Cruise, Dig. tit. xiii. c. i. § 1.

The different kinds of conditions known to the common law are defined under their appropriate names in the following titles. A further classification is, however, here subjoined:

Conditions are either *express* or *implied*. They are express when they appear in the contract; they are implied whenever they result from the operation of law, from the nature of the contract, or from the presumed intent of the parties. Civil Code La. art. 2026.

They are *possible* or *impossible*; the former when they admit of performance in the ordinary course of events; the latter when it is contrary to the course of nature or human limitations that they should ever be performed.

They are *lawful* or *unlawful*; the former when their character is not in violation of any rule, principle, or policy of law; the latter when they are such as the law will not allow to be made.

They are *consistent* or *repugnant*; the former when they are in harmony and concord with the other parts of the transaction; the latter when they contradict, annul, or neutralize the main purpose of the contract. Repugnant conditions are also called "insensible."

They are *independent*, *dependent*, or *mutual*; the first when each of the two conditions must be performed without any reference to the other; the second when the performance of one is not obligatory until the actual performance of the other; the third when neither party need perform his condition unless the other is ready and willing to perform his.

Synonyms distinguished. A "condition" is to be distinguished from a *limitation*, in that the latter may be to or for the benefit of a stranger, who may then take advantage of its determination, while only the grantor, or those who stand in his place, can take advantage of a condition, (16 Me. 158;) and in that a limitation ends the estate without entry or claim, which is not true of a condition. It also differs from a *conditional limitation*:

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for in the latter the estate is limited over to a third person, while in case of a simple condition it reverts to the grantor, or his heirs or devisees. It differs also from a *covenant*, which can be made by either grantor or grantee, while only the grantor can make a condition, (Co. Litt. 70.) A *charge* is a devise of land with a bequest out of the subject-matter, and a charge upon the devisee personally, in respect of the estate devised, gives him an estate on condition. A condition also differs from a *remainder*; for, while the former may operate to defeat the estate before its natural termination, the latter cannot take effect until the completion of the preceding estate.

CONDITION AFFIRMATIVE. A condition which consists in doing a thing; as provided that the lessee shall pay rent, etc. Shep. Touch. 118.

CONDITION COLLATERAL. A condition where the act to be done is a collateral act. Shep. Touch. 118.

CONDITION COMPULSORY. A condition expressly requiring a thing to be done; as that a lessee shall pay £10 such a day, or his lease shall be void. Shep. Touch. 118.

CONDITION COPULATIVE. A condition to do divers things. Shep. Touch. 118.

CONDITION DISJUNCTIVE. A condition requiring one of several things to be done. Shep. Touch. 118.

CONDITION EXPRESSED. A condition expressed in the deed by which it is created, (*conditio expressa*.) 2 Crabb, Real Prop. p. 792, § 2127; Bract. fol. 47. A condition annexed, by express words, to any feoffment, lease, or grant. *Termes de la Ley*.

CONDITION IMPLIED. One which the law infers or presumes, from the nature of the transaction or the conduct of the parties, to have been tacitly understood between them as a part of the agreement, although not expressly mentioned.

CONDITION IN DEED. Fr. *condition en fait*. A condition expressed in a deed. (as a feoffment, lease, or grant,) in plain words, or legal terms of law. Cowell; Co. Litt. 201a. See **CONDITION EXPRESSED**.

CONDITION IN LAW. A condition tacitly created or annexed to a grant, by law,

without any words used by the party. Co. Litt. 201a. See **CONDITION IMPLIED**.

CONDITION INHERENT. A condition annexed to the rent reserved out of the land whereof the estate is made; or rather to the estate in the land, in respect of rent, etc. Shep. Touch. 118.

CONDITION NEGATIVE. A condition which consists in not doing a thing; as provided that the lessee shall not alien, etc. Shep. Touch. 118.

CONDITION POSITIVE. One which requires that an event shall happen or an act be done.

CONDITION PRECEDENT. A condition precedent is one which is to be performed before some right dependent thereon accrues, or some act dependent thereon is performed. Civil Code Cal. § 1436.

A condition which must happen or be performed *before* the estate to which it is annexed can vest or be enlarged.

Conditions may be precedent or subsequent. In the former, the condition must be performed before the contract becomes absolute and obligatory upon the other party. In the latter, the breach of the condition may destroy the party's rights under the contract, or may give a right to damages to the other party, according to a true construction of the intention of the parties. Code Ga. 1882, § 2722.

CONDITION RESTRICTIVE. A condition for not doing a thing; as that the lessee shall not alien or do waste, or the like. Shep. Touch. 118.

CONDITION SINGLE. A condition to do one thing only. Shep. Touch. 118.

CONDITION SUBSEQUENT. A condition subsequent is one referring to a future event, upon the happening of which the obligation becomes no longer binding upon the other party, if he chooses to avail himself of the condition. Civil Code Cal. § 1438.

A condition annexed to an estate already vested, by the performance of which such estate is kept and continued, and by the failure or non-performance of which it is defeated. Co. Litt. 201; 2 Bl. Comm. 154.

CONDITIONAL. That which is dependent upon or granted subject to a condition.

CONDITIONAL CREDITOR. In the civil law. A creditor having a future right of action, or having a right of action in expectancy. Dig. 50, 16, 54.

CONDITIONAL DEVISE. A conditional disposition is one which depends upon

the occurrence of some uncertain event, by which it is either to take effect or be defeated. Civil Code Cal. § 1345.

CONDITIONAL FEE. An estate restrained to some particular heirs, exclusive of others, as to the heirs of a man's body, by which only his lineal descendants were admitted, in exclusion of collateral; or to the heirs male of his body, in exclusion of heirs female, whether lineal or collateral. It was called a "conditional fee," by reason of the condition expressed or implied in the donation of it that, if the donee died without such particular heirs, the land should revert to the donor. 2 Bl. Comm. 110.

CONDITIONAL LEGACY. One which is liable to take effect or to be defeated according to the occurrence or non-occurrence of some uncertain event.

CONDITIONAL LIMITATION. A condition followed by a limitation over to a third person in case the condition be not fulfilled or there be a breach of it.

A conditional limitation is where an estate is so expressly defined and limited by the words of its creation that it cannot endure for any longer time than till the contingency happens upon which the estate is to fail. 1 Steph. Comm. 309. Between conditional limitations and estates depending on conditions subsequent there is this difference: that in the former the estate determines as soon as the contingency happens; but in the latter it endures until the grantor or his heirs take advantage of the breach. Id. 310.

CONDITIONAL OBLIGATION. An obligation is conditional when the rights or duties of any party thereto depend upon the occurrence of an uncertain event. Civil Code Cal. § 1434.

The Louisiana Code defines conditional obligations as those which result from the operation of law, from the nature of the contract, or from the presumed intent of the parties. 2 La. Ann. 989.

CONDITIONAL SALE. A sale in which the transfer of title is made to depend upon the performance of a condition.

Conditional sales are distinguishable from mortgages. They are to be taken strictly as independent dealings between strangers. A mortgage is a security for a debt, while a conditional sale is a purchase for a price paid, or to be paid, to become absolute on a particular event; or a purchase accompanied by an agreement to resell upon particular terms. 9 Ala. 24.

CONDITIONAL STIPULATION. In the civil law. A stipulation to do a thing upon condition, as the happening of any event.

Conditiones quælibet odiosæ; maxime autem contra matrimonium et commercium. Any conditions are odious, but especially those which are against [in restraint of] marriage and commerce. Lofft, Appendix, 644.

CONDITIONS CONCURRENT. Conditions concurrent are those which are mutually dependent, and are to be performed at the same time. Civil Code Cal. § 1437.

CONDITIONS OF SALE. The terms upon which sales are made at auction; usually written or printed and exposed in the auction room at the time of sale.

CONDOMINIA. In the civil law. Co-ownerships or limited ownerships, such as *emphyteusis*, *superficies*, *pignus*, *hypotheca*, *usufructus*, *usus*, and *habitatio*. These were more than mere *jura in re alienâ*, being portion of the *dominium* itself, although they are commonly distinguished from the *dominium* strictly so called. Brown.

CONDONACION. In Spanish law. The remission of a debt, either expressly or tacitly.

CONDONATION. The conditional remission or forgiveness, by one of the married parties, of a matrimonial offense committed by the other, and which would constitute a cause of divorce; the condition being that the offense shall not be repeated. See Civil Code Cal. § 115; 3 Hagg. Ecc. 351, 629.

"A blotting out of an offense [against the marital relation] imputed so as to restore the offending party to the same position he or she occupied before the offense was committed." 1 Swab. & T. 334.

Condonation is a conditional forgiveness founded on a full knowledge of all antecedent guilt. 36 Ga. 286.

CONDONE. To make condonation of.

CONDUCT MONEY. In English practice. Money paid to a witness who has been subpoenaed on a trial, sufficient to defray the reasonable expenses of going to, staying at, and returning from the place of trial. Lush, Pr. 460; Archb. New Pr. 639.

CONDUCTI ACTIO. In the civil law. An action which the hirer (*conductor*) of a thing might have against the letter, (*locator*.) Inst. 3, 25, pr. 2.

CONDUCTIO. In the civil law. A hiring. Used generally in connection with the term *locatio*, a letting. *Locatio et conductio*, (sometimes united as a compound word, "*locatio-conductio*,") a letting and hiring

Inst. 3, 25; Bract. fol. 62, c. 28; Story, Bailm. §§ 8, 368.

CONDUCTOR. In the civil law. A hirer.

CONDUCTOR OPERARUM. in the civil law. A person who engages to perform a piece of work for another, at a stated price.

CONDUCTUS. A thing hired.

CONE AND KEY. In old English law. A woman at fourteen or fifteen years of age may take charge of her house and receive *cone* and *key*; that is, keep the accounts and keys. Cowell. Said by Lord Coke to be *cover* and *keye*, meaning that at that age a woman knew what in her house should be kept under lock and key. 2 Inst. 203.

CONFARREATIO. In Roman law. A sacrificial rite resorted to by marrying persons of high patrician or priestly degree, for the purpose of clothing the husband with the *manus* over his wife; the civil modes of effecting the same thing being *coemptio*, (formal,) and *usus mulieris*, (informal.) Brown.

CONFECTIO. The making and completion of a written instrument. 5 Coke, 1.

CONFEDERACY. In criminal law. The association or banding together of two or more persons for the purpose of committing an act or furthering an enterprise which is forbidden by law, or which, though lawful in itself, becomes unlawful when made the object of the confederacy. *Conspiracy* is a more technical term for this offense.

The act of two or more who combine together to do any damage or injury to another, or to do any unlawful act. Jacob. See 52 How. Pr. 353; 41 Wis. 284.

In equity pleading. An improper combination alleged to have been entered into between the defendants to a bill in equity.

In international law. A league or agreement between two or more independent states whereby they unite for their mutual welfare and the furtherance of their common aims. The term may apply to a union so formed for a temporary or limited purpose, as in the case of an offensive and defensive alliance; but it is more commonly used to denote that species of political connection between two or more independent states by which a central government is created, invested with certain powers of sovereignty, (mostly external,) and acting upon the several component states as its units, which,

however, retain their sovereign powers for domestic purposes and some others. See FEDERAL GOVERNMENT.

CONFEDERATION. A league or compact for mutual support, particularly of princes, nations, or states. Such was the colonial government during the Revolution.

CONFERENCE. A meeting of several persons for deliberation, for the interchange of opinion, or for the removal of differences or disputes. Thus, a meeting between a counsel and solicitor to advise on the cause of their client.

In the practice of legislative bodies, when the two houses cannot agree upon a pending measure, each appoints a committee of "conference," and the committees meet and consult together for the purpose of removing differences, harmonizing conflicting views, and arranging a compromise which will be accepted by both houses.

In international law. A personal meeting between the diplomatic agents of two or more powers, for the purpose of making statements and explanations that will obviate the delay and difficulty attending the more formal conduct of negotiations.

In French law. A concordance or identity between two laws or two systems of laws.

CONFESS. To admit the truth of a charge or accusation. Usually spoken of charges of tortious or criminal conduct.

CONFESSING ERROR. A plea to an assignment of error, admitting the same.

CONFESSIO. Lat. A confession. *Confessio in judicio*, a confession made in or before a court.

Confessio facta in judicio omni probatione major est. A confession made in court is of greater effect than any proof. Jenk. Cent. 102.

CONFESSION. In criminal law. A voluntary statement made by a person charged with the commission of a crime or misdemeanor, communicated to another person, wherein he acknowledges himself to be guilty of the offense charged, and discloses the circumstances of the act or the share and participation which he had in it.

Also the act of a prisoner, when arraigned for a crime or misdemeanor, in acknowledging and avowing that he is guilty of the offense charged.

Judicial confessions are those made before

a magistrate or in court in the due course of legal proceedings.

Extra-judicial confessions are those made by the party elsewhere than before a magistrate or in open court. 1 Greenl. Ev. § 216.

CONFESSION AND AVOIDANCE.

A plea in confession and avoidance is one which avows and confesses the truth of the averments of fact in the declaration, either expressly or by implication, but then proceeds to allege new matter which tends to deprive the facts admitted of their ordinary legal effect, or to obviate, neutralize, or *avoid* them.

CONFESSION OF DEFENSE. In English practice. Where defendant alleges a ground of defense arising since the commencement of the action, the plaintiff may deliver confession of such defense and sign judgment for his costs up to the time of such pleading, unless it be otherwise ordered. Jud. Act 1875, Ord. XX. r. 3.

CONFESSION OF JUDGMENT. The act of a debtor in permitting judgment to be entered against him by his creditor, for a stipulated sum, by a written statement to that effect or by warrant of attorney, without the institution of legal proceedings of any kind.

CONFESSO. BILL TAKEN PRO. In equity practice. An order which the court of chancery makes when the defendant does not file an answer, that the plaintiff may take such a decree as the case made by his bill warrants.

CONFESSOR An ecclesiastic who receives auricular confessions of sins from persons under his spiritual charge, and pronounces absolution upon them. The secrets of the confessional are not privileged communications at common law, but this has been changed by statute in some states. See 1 Greenl. Ev. §§ 247, 248.

CONFESSORIA ACTIO. Lat. In the civil law. An action for enforcing a servitude Mackeld. Rom. Law, § 324.

Confessus in iudicio pro iudicato habetur, et quodammodo sua sententiâ damnatur. 11 Coke, 30. A person confessing his guilt when arraigned is deemed to have been found guilty, and is, as it were, condemned by his own sentence.

CONFIDENCE. Trust; reliance; ground of trust. In the construction of wills, this word is considered peculiarly ap-

propriate to create a trust. "It is as applicable to the subject of a trust, as nearly a synonym, as the English language is capable of. Trust is a confidence which one man reposes in another, and confidence is a trust." 2 Pa. St. 133.

CONFIDENTIAL COMMUNICATIONS. These are certain classes of communications, passing between persons who stand in a confidential or fiduciary relation to each other, (or who, on account of their relative situation, are under a special duty of secrecy and fidelity,) which the law will not permit to be divulged, or allow them to be inquired into in a court of justice, for the sake of public policy and the good order of society. Examples of such privileged relations are those of husband and wife and attorney and client.

CONFIDENTIAL RELATION. A fiduciary relation. These phrases are used as convertible terms. It is a peculiar relation which exists between client and attorney, principal and agent, principal and surety, landlord and tenant, parent and child, guardian and ward, ancestor and heir, husband and wife, trustee and *cestui que trust*, executors or administrators and creditors, legatees, or distributees, appointer and appointee under powers, and partners and part owners. In these and like cases, the law, in order to prevent undue advantage from the unlimited confidence or sense of duty which the relation naturally creates, requires the utmost degree of good faith in all transactions between the parties. 57 Cal. 497; 1 Story, Eq. Jur. 218.

CONFINEMENT. Confinement may be by either a moral or a physical restraint, by threats of violence with a present force, or by physical restraint of the person. 1 Sum. 171.

CONFIRM. To complete or establish that which was imperfect or uncertain; to ratify what has been done without authority or insufficiently.

Confirmare est id firmum facere quod prius infirmum fuit. Co. Litt. 295. To confirm is to make firm that which was before infirm.

Confirmare nemo potest prius quam jus ei acciderit. No one can confirm before the right accrues to him. 10 Coke, 48.

Confirmat usum qui tollit abusum. He confirms the use [of a thing] who removes the abuse, [of it.] Moore, 764.

CONFIRMATIO. The conveyance of an estate, or the communication of a right that one hath in or unto lands or tenements, to another that hath the possession thereof, or some other estate therein, whereby a voidable estate is made sure and unavoidable, or whereby a particular estate is increased or enlarged. Shep. Touch. 311; 2 Bl. Comm. 325.

CONFIRMATIO CHARTARUM. Lat. Confirmation of the charters. A statute passed in the 25 Edw. I., whereby the Great Charter is declared to be allowed as the common law; all judgments contrary to it are declared void; copies of it are ordered to be sent to all cathedral churches and read twice a year to the people; and sentence of excommunication is directed to be as constantly denounced against all those that, by word or deed or counsel, act contrary there-to or in any degree infringe it. 1 Bl. Comm. 128.

CONFIRMATIO CRESCENS. An enlarging confirmation; one which enlarges a rightful estate. Shep. Touch. 311.

CONFIRMATIO DIMINUENS. A diminishing confirmation. A confirmation which tends and serves to diminish and abridge the services whereby a tenant doth hold, operating as a release of part of the services. Shep. Touch. 311.

Confirmatio est nulla ubi donum præcedens est invalidum. Moore, 764; Co. Litt. 295. Confirmation is void where the preceding gift is invalid.

Confirmatio omnes supplet defectus, licet id quod actum est ab initio non valuit. Co. Litt. 295b. Confirmation supplies all defects, though that which had been done was not valid at the beginning.

CONFIRMATIO PERFICIENS. A confirmation which makes valid a wrongful and defeasible title, or makes a conditional estate absolute. Shep. Touch. 311.

CONFIRMATION. A contract by which that which was infirm, imperfect, or subject to be avoided is made firm and unavoidable.

A conveyance of an estate or right *in esse*, whereby a voidable estate is made sure and unavoidable, or whereby a particular estate is increased. Co. Litt. 295b.

In English ecclesiastical law. The ratification by the archbishop of the election of a bishop by dean and chapter under the king's letter missive prior to the investment and

consecration of the bishop by the archbishop. 25 Hen. VIII. c. 20.

CONFIRMAVI. Lat. I have confirmed. The emphatic word in the ancient deeds of confirmation. Fleta, lib. 3, c. 14, § 5.

CONFIRMEE. The grantee in a deed of confirmation.

CONFIRMOR. The grantor in a deed of confirmation.

CONFISCARE. In civil and old English law. To confiscate; to claim for or bring into the fisc, or treasury. Bract. fol. 150.

CONFISCATE. To appropriate property to the use of the state. To adjudge property to be forfeited to the public treasury; to seize and condemn private forfeited property to public use.

Formerly, it appears, this term was used as synonymous with "forfeit," but at present the distinction between the two terms is well marked. Confiscation supervenes upon forfeiture. The person, by his act, forfeits his property; the state thereupon appropriates it, that is, confiscates it. Hence, to confiscate property implies that it has first been forfeited; but to forfeit property does not necessarily imply that it will be confiscated.

"Confiscation" is also to be distinguished from "condemnation" as prize. The former is the act of the sovereign against a rebellious subject; the latter is the act of a belligerent against another belligerent. Confiscation may be effected by such means, summary or arbitrary, as the sovereign, expressing its will through lawful channels, may please to adopt. Condemnation as prize can only be made in accordance with principles of law recognized in the common jurisprudence of the world. Both are proceedings *in rem*, but confiscation recognizes the title of the original owner to the property, while in prize the tenure of the property is qualified, provisional, and destitute of absolute ownership. 14 Ct. Cl. 48.

CONFISCATION. The act of confiscating; or of condemning and adjudging to the public treasury.

CONFISK. An old form of *confiscate*.

CONFITENS REUS. An accused person who admits his guilt.

CONFLICT OF LAWS. 1. An opposition, conflict, or antagonism between different laws of the same state or sovereignty upon the same subject-matter.

2. A similar inconsistency between the municipal laws of different states or countries, arising in the case of persons who have acquired rights or a *status*, or made contracts, or incurred obligations, within the territory of two or more states.

3. That branch of jurisprudence, arising from the diversity of the laws of different na-

tions in their application to rights and remedies, which reconciles the inconsistency, or decides which law or system is to govern in the particular case, or settles the degree of force to be accorded to the law of a foreign country, (the acts or rights in question having arisen under it,) either where it varies from the domestic law, or where the domestic law is silent or not exclusively applicable to the case in point. In this sense, it is more properly called "private international law."

CONFLICT OF PRESUMPTIONS. In this conflict certain rules are applicable, viz.: (1) Special take precedence of general presumptions; (2) constant of casual ones; (3) presume in favor of innocence; (4) of legality; (5) of validity; and, when these rules fail, the matter is said to be at large. Brown.

CONFORMITY. In English ecclesiastical law. Adherence to the doctrines and usages of the Church of England.

CONFORMITY, BILL OF. See **BILL OF CONFORMITY.**

CONFRAIRIE. Fr. In old English law. A fraternity, brotherhood, or society. Cowell.

CONFRERES. Brethren in a religious house; fellows of one and the same society. Cowell.

CONFRONTATION. In criminal law. The act of setting a witness face to face with the prisoner, in order that the latter may make any objection he has to the witness, or that the witness may identify the accused.

CONFUSIO. In the civil law. The inseparable intermixture of property belonging to different owners; it is properly confined to the pouring together of fluids, but is sometimes also used of a melting together of metals or any compound formed by the irrecoverable commixture of different substances.

It is distinguished from *commixtion* by the fact that in the latter case a separation may be made, while in a case of *confusio* there cannot be. 2 Bl. Comm. 405.

CONFUSION. In Roman and French law. A mode of extinguishing a debt, by the concurrence in the same person of two qualities which mutually destroy one another. This may occur in several ways, as where the creditor becomes the heir of the debtor, or the debtor the heir of the creditor, or either accedes to the title of the other by any other mode of transfer.

This term, as used in the civil law, is syn-

onymous with "merger," as used in the common law. It arises where two titles to the same property unite in the same person. 1 Woods, 182.

CONFUSION OF BOUNDARIES. The title of that branch of equity jurisdiction which relates to the discovery and settlement of conflicting, disputed, or uncertain boundaries.

CONFUSION OF GOODS. The inseparable intermixture of property belonging to different owners; properly confined to the pouring together of fluids, but used in a wider sense to designate any indistinguishable compound of elements belonging to different owners. D

The term "confusion" is applicable to a mixing of chattels of one and the same general description, differing thus from "accession," which is where various materials are united in one product. Confusion of goods arises wherever the goods of two or more persons are so blended as to have become undistinguishable. 1 Schouler, Pers. Prop. 41. E

CONFUSION OF RIGHTS. A union of the qualities of debtor and creditor in the same person. The effect of such a union is, generally, to extinguish the debt. 1 Salk. 306; Cro. Car. 551. F

CONFUSION OF TITLES. A civil-law expression, synonymous with "merger," as used in the common law, applying where two titles to the same property unite in the same person. 1 Woods, 179. G

CONGÉ. In the French law. Permission, leave, license; a passport or clearance to a vessel; a permission to arm, equip, or navigate a vessel. H

CONGÉ D'ACCORDER. Leave to accord. A permission granted by the court, in the old process of levying a fine, to the defendant to agree with the plaintiff. I

CONGÉ D'EMPARLER. Fr. Leave to imparl. The privilege of an imparlance, (*licentia loquendi.*) 3 Bl. Comm. 299. J

CONGÉ D'ESLIRE. A permission or license from the British sovereign to a dean and chapter to elect a bishop, in time of vacation; or to an abbey or priory which is of royal foundation, to elect an abbot or prior. K

CONGEABLE. L. Fr. Lawful; permissible; allowable. "Disseisin is properly where a man entereth into any lands or tenements where his entry is not *congeable*, and putteth out him that hath the freehold." Litt. § 279. See 7 Wheat. 107. L

M

CONGILDONES. In Saxon law. Fellow-members of a guild.

CONGIUS. An ancient measure containing about a gallon and a pint. Cowell.

CONGREGATION. An assembly or society of persons who together constitute the principal supporters of a particular parish, or habitually meet at the same church for religious exercises.

In the ecclesiastical law, this term is used to designate certain bureaus at Rome, where ecclesiastical matters are attended to.

CONGRESS. In international law. An assembly of envoys, commissioners, deputies, etc., from different sovereignties who meet to concert measures for their common good, or to adjust their mutual concerns.

In American law. The name of the legislative assembly of the United States, composed of the senate and house of representatives, (*q. v.*)

CONGRESSUS. The extreme practical test of the truth of a charge of impotence brought against a husband by a wife. It is now disused. *Causes Célèbres*, 6, 183.

CONJECTIO. In the civil law of evidence. A throwing together. Presumption; the putting of things together, with the inference drawn therefrom.

CONJECTIO CAUSÆ. In the civil law. A statement of the case. A brief synopsis of the case given by the advocate to the judge in opening the trial. Calvin.

CONJECTURE. A slight degree of credence, arising from evidence too weak or too remote to cause belief.

Supposition or surmise. The idea of a fact, suggested by another fact; as a possible cause, concomitant, or result. *Burrill*, *Circ. Ev.* 27.

CONJOINTS. Persons married to each other. *Story*, *Conf. Laws*, § 71.

CONJUDEX. In old English law. An associate judge. *Bract*. 403.

CONJUGAL RIGHTS. Matrimonial rights; the right which husband and wife have to each other's society, comfort, and affection.

CONJUGIUM. One of the names of marriage, among the Romans. *Tayl. Civil Law*, 284.

CONJUNCT. In Scotch law. Joint.

CONJUNCTA. In the civil law. Things joined together or united; as distinguished from *disjuncta*, things disjoined or separated. *Dig.* 50, 16, 53.

CONJUNCTIM. Lat. In old English law. Jointly. *Inst.* 2, 20, 8.

CONJUNCTIM ET DIVISIM. L. Lat. In old English law. Jointly and severally.

CONJUNCTIO. In the civil law. Conjunction; connection of words in a sentence. See *Dig.* 50, 16, 29, 142.

Conjunctio mariti et feminae est de jure naturæ. The union of husband and wife is of the law of nature.

CONJUNCTIVE. A grammatical term for particles which serve for joining or connecting together. Thus, the conjunction "and" is called a "conjunctive," and "or" a "disjunctive," conjunction.

CONJUNCTIVE OBLIGATION. A conjunctive obligation is one in which the several objects in it are connected by a copulative, or in any other manner which shows that all of them are severally comprised in the contract. This contract creates as many different obligations as there are different objects; and the debtor, when he wishes to discharge himself, may force the creditor to receive them separately. *Civil Code La. art.* 2063.

CONJURATIO. In old English law. A swearing together; an oath administered to several together; a combination or confederacy under oath. Cowell.

In old European law. A compact of the inhabitants of a commune, or municipality, confirmed by their oaths to each other and which was the basis of the commune. *Steph. Lect.* 119.

CONJURATION. In old English law. A plot or compact made by persons combining by oath to do any public harm. Cowell.

The offense of having conference or commerce with evil spirits, in order to discover some secret, or effect some purpose. *Id.* Classed by Blackstone with witchcraft, enchantment, and sorcery, but distinguished from each of these by other writers. 4 *Bl. Comm.* 60; Cowell.

CONJURATOR. In old English law. One who swears or is sworn with others; one bound by oath with others; a compurgator; a conspirator.

CONNECTIONS. Relations by blood or marriage, but more commonly the relations of a person with whom one is connected by marriage. In this sense, the relations of a wife are "connections" of her husband. The term is vague and indefinite. See 1 Pa. St. 507.

CONNEXITÉ. In French law. This exists when two actions are pending which, although not identical as in *lis pendens*, are so nearly similar in object that it is expedient to have them both adjudicated upon by the same judges. Arg. Fr. Merc. Law, 553.

CONNIVANCE. The secret or indirect consent or permission of one person to the commission of an unlawful or criminal act by another.

Literally, a winking at; intentional forbearance to see a fault or other act; generally implying consent to it. Webster.

Connivance is the corrupt consent of one party to the commission of the acts of the other, constituting the cause of divorce. Civil Code Cal. § 112.

Connivance differs from condonation, though the same legal consequences may attend it. Connivance necessarily involves criminality on the part of the individual who connives; condonation may take place without imputing the slightest blame to the party who forgives the injury. Connivance must be the act of the mind before the offense has been committed; condonation is the result of a determination to forgive an injury which was not known until after it was inflicted. 3 Hagg. Ecc. 350.

CONNOISSEMENT. In French law. An instrument similar to our bill of lading.

CONNUBIUM. In the civil law. Marriage. Among the Romans, a lawful marriage as distinguished from "concubinage," (*q. v.*) which was an inferior marriage.

CONOCIAMENTO. In Spanish law. A recognizance. White, New Recop. b. 3, tit. 7, c. 5, § 3.

CONOCIMIENTO. In Spanish law. A bill of lading. In the Mediterranean ports it is called "*poliza de cargamiento*."

CONPOSSESSIO. In modern civil law. A joint possession. Mackeld. Rom. Law, § 245.

CONQUEREUR. In Norman and old English law. The first purchaser of an estate; he who first brought an estate into his family.

CONQUEROR. In old English and Scotch law. The first purchaser of an estate;

he who brought it into the family owning it. 2 Bl. Comm. 242, 243.

CONQUEST. In feudal law. Conquest; acquisition by purchase; any method of acquiring the ownership of an estate other than by descent. Also an estate acquired otherwise than by inheritance.

In international law. The acquisition of the sovereignty of a country by force of arms, exercised by an independent power which reduces the vanquished to the submission of its empire.

In Scotch law. Purchase. Bell.

CONQUESTOR. Conqueror. The title given to William of Normandy. **D**

CONQUÊTS. In French law. The name given to every acquisition which the husband and wife, jointly or severally, make during the conjugal community. Thus, whatever is acquired by the husband and wife, either by his or her industry or good fortune, inures to the extent of one-half for the benefit of the other. Merl. Repert. "*Conquêt*." **E**

CONQUISITIO. In feudal and old English law. Acquisition. 2 Bl. Comm. 242. **F**

CONQUISITOR. In feudal law. A purchaser, acquirer, or conqueror. 2 Bl. Comm. 242, 243. **G**

CONSANGUINEUS. A person related by blood; a person descended from the same common stock. **H**

Consanguineus est quasi eodem sanguine natus. Co. Litt. 157. A person related by consanguinity is, as it were, sprung from the same blood.

CONSANGUINEUS FRATER. In civil and feudal law. A half-brother by the father's side, as distinguished from *frater uterinus*, a brother by the mother's side. **I**

CONSANGUINITY. The connection or relation of persons descended from the same stock or common ancestor. It is either lineal or collateral. Lineal is that which subsists between persons of whom one is descended in a direct line from the other, as between son, father, grandfather, great-grandfather, and so upwards in the direct ascending line; or between son, grandson, great-grandson, and so downwards in the direct descending line. Collateral agree with the lineal in this, that they descend from the same stock or ancestor; but differ in this, that they do not descend one from the other. 2 Bl. Comm. 202. **J**
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CONSCIENCE. This term is not synonymous with "principle." An "objection on principle" is not the same thing as a "conscientious scruple" or opinion. 7 Cal. 140.

CONSCIENCE, COURTS OF. Courts, not of record, constituted by act of parliament in the city of London, and other towns, for the recovery of small debts; otherwise and more commonly called "Courts of Requests." 3 Steph. Comm. 451.

Conscientia dicitur a con et scio, quasi scire cum Deo. 1 Coke, 100. Conscience is called from *con* and *scio*, to know, as it were, with God.

CONSCIENTIA REI ALIENI. In Scotch law. Knowledge of another's property; knowledge that a thing is not one's own, but belongs to another. He who has this knowledge, and retains possession, is chargeable with "violent profits."

CONSCRIPTION. Drafting into the military service of the state; compulsory service falling upon all male subjects evenly, within or under certain specified ages.

CONSECRATE. In ecclesiastical law. To dedicate to sacred purposes, as a bishop by imposition of hands, or a church or churchyard by prayers, etc. Consecration is performed by a bishop or archbishop.

Consecratio est periodus electionis; electio est præambula consecrationis. 2 Rolle, 102. Consecration is the termination of election; election is the preamble of consecration.

CONSEIL DE FAMILLE. In French law. A family council. Certain acts require the sanction of this body. For example, a guardian can neither accept nor reject an inheritance to which the minor has succeeded without its authority, (Code Nap. 461;) nor can he accept for the child a gift *inter vivos* without the like authority, (Id. 463.)

CONSEIL JUDICIAIRE. In French law. When a person has been subjected to an interdiction on the ground of his insane extravagance, but the interdiction is not absolute, but limited only, the court of first instance, which grants the interdiction, appoints a council, called by this name, with whose assistance the party may bring or defend actions, or compromise the same, alienate his estate, make or incur loans, and the like. Brown.

CONSEILS DE PRUDHOMMES. In French law. A species of trade tribunals,

charged with settling differences between masters and workmen. They endeavor, in the first instance, to conciliate the parties. In default, they adjudicate upon the questions in dispute. Their decisions are final up to 200*fr.* Beyond that amount, appeals lie to the tribunals of commerce. Arg. Fr. Merc. Law, 553.

CONSENSUAL CONTRACT. A term derived from the civil law, denoting a contract founded upon and completed by the mere consent of the contracting parties, without any external formality or symbolic act to fix the obligation.

Consensus est voluntas plurium ad quos res pertinet, simul juncta. Lofft, 514. Consent is the conjoint will of several persons to whom the thing belongs.

Consensus facit legem. Consent makes the law. (A contract is law between the parties agreeing to be bound by it.) Branch, Princ.

Consensus, non conubitus, facit nuptias vel matrimonium, et consentire non possunt ante annos nubiles. 6 Coke, 22. Consent, and not cohabitation, constitutes nuptials or marriage, and persons cannot consent before marriageable years. 1 Bl. Comm. 434.

Consensus tollit errorem. Co. Litt. 126. Consent (acquiescence) removes mistake.

Consensus voluntas multorum ad quos res pertinet, simul juncta. Consent is the united will of several interested in one subject-matter. Davis, 48; Branch, Princ.

CONSENT. A concurrence of wills. *Express consent* is that directly given, either *viva voce* or in writing.

Implied consent is that manifested by signs, actions, or facts, or by inaction or silence, which raise a presumption that the consent has been given.

Consent is an act of reason, accompanied with deliberation, the mind weighing as in a balance the good or evil on each side. 1 Story, Eq. Jur. § 222.

There is a difference between consenting and submitting. Every consent involves a submission; but a mere submission does not necessarily involve consent. 9 Car. & P. 722.

CONSENT-RULE. In English practice. A superseded instrument, in which a defendant in an action of ejectment specified for what purpose he intended to defend, and un-

dertook to confess not only the fictitious lease, entry, and ouster, but that he was in possession.

Consentientes et agentes pari pœna plectentur. They who consent to an act, and they who do it, shall be visited with equal punishment. 5 Coke, 80.

Consentire matrimonio non possunt infra [ante] annos nubiles. Parties cannot consent to marriage within the years of marriage, [before the age of consent.] 6 Coke, 22.

Consequentia non est consequentia. Bac. Max. The consequence of a consequence exists not.

CONSEQUENTIAL DAMAGE. Such damage, loss, or injury as does not flow directly and immediately from the act of the party, but only from some of the consequences or results of such act.

The term "consequential damage" means sometimes damage which is so remote as not to be actionable; sometimes damage which, though somewhat remote, is actionable; or damage which, though actionable, does not follow immediately, in point of time, upon the doing of the act complained of. 51 N. H. 504.

CONSEQUENTS. In Scotch law. Implied powers or authorities. Things which follow, usually by implication of law. A commission being given to execute any work, every power necessary to carry it on is implied. 1 Kames, Eq. 242.

CONSERVATOR. A guardian; protector; preserver.

"When any person having property shall be found to be incapable of managing his affairs, by the court of probate in the district in which he resides, * * * it shall appoint some person to be his conservator, who, upon giving a probate bond, shall have the charge of the person and estate of such incapable person." Gen. St. Conn. 1875, p. 346, § 1.

CONSERVATORS OF RIVERS. Commissioners or trustees in whom the control of a certain river is vested, in England, by act of parliament.

CONSIDERATIO CURIÆ. The judgment of the court.

CONSIDERATION. The inducement to a contract. The cause, motive, price, or impelling influence which induces a contracting party to enter into a contract. The reason or material cause of a contract.

Any benefit conferred, or agreed to be con-

ferred, upon the promisor, by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered, or agreed to be suffered, by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor, is a good consideration for a promise. Civil Code Cal. § 1605.

Any act of the plaintiff from which the defendant or a stranger derives a benefit or advantage, or any labor, detriment, or inconvenience sustained by the plaintiff, however small, if such act is performed or inconvenience suffered by the plaintiff by the consent, express or implied, of the defendant. 3 Scott, 250.

Considerations are classified and defined as follows:

They are either *express* or *implied*; the former when they are specifically stated in a deed, contract, or other instrument; the latter when inferred or supposed by the law from the acts or situation of the parties.

They are either *executed* or *executory*; the former being acts done or values given before or at the time of making the contract; the latter being promises to give or do something in future.

They are either *good* or *valuable*. A good consideration is such as is founded on natural duty and affection, or on a strong moral obligation. A valuable consideration is founded on money, or something convertible into money, or having a value in money, except marriage, which is a valuable consideration. Code Ga. 1882, § 2741. See Chit. Cont. 7.

A *continuing* consideration is one consisting in acts or performances which must necessarily extend over a considerable period of time.

Concurrent considerations are those which arise at the same time or where the promises are simultaneous.

Equitable or *moral* considerations are devoid of efficacy in point of strict law, but are founded upon a moral duty, and may be made the basis of an express promise.

A *gratuitous* consideration is one which is not founded upon any such loss, injury, or inconvenience to the party to whom it moves as to make it valid in law.

Past consideration is an act done before the contract is made, and is really by itself no consideration for a promise. Anson, Cont. 82.

CONSIDERATUM EST PER CURIAM. (It is considered by the court.) The formal and ordinary commencement of a judgment.

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CONSIDERATUR. L. Lat. It is considered. Held to mean the same with *consideratum est*. 2 Strange, 874.

CONSIGN. In the civil law. To deposit in the custody of a third person a thing belonging to the debtor, for the benefit of the creditor, under the authority of a court of justice. Poth. Obl. pt. 3, c. 1, art. 8.

In commercial law. To deliver goods to a carrier to be transmitted to a designated factor or agent.

To deliver or transfer as a charge or trust; to commit, intrust, give in trust; to transfer from oneself to the care of another; to send or transmit goods to a merchant or factor for sale. 4 Daly, 320.

CONSIGNATION. In Scotch law. The payment of money into the hands of a third party, when the creditor refuses to accept of it. The person to whom the money is given is termed the "consignatory." Bell.

In French law. A deposit which a debtor makes of the thing that he owes into the hands of a third person, and under the authority of a court of justice. 1 Poth. Obl. 536; 1 N. H. 304.

CONSIGNEE. In mercantile law. One to whom a consignment is made. The person to whom goods are shipped for sale.

CONSIGNMENT. The actor process of consigning goods; the transportation of goods consigned; an article or collection of goods sent to a factor to be sold; goods or property sent, by the aid of a common carrier, from one person in one place to another person in another place. See **CONSIGN.**

CONSIGNOR. One who sends or makes a consignment. A shipper of goods.

Consilia multorum quærentur in magnis. 4 Inst. 1. The counsels of many are required in great things.

CONSILIARIUS. In the civil law. A counsellor, as distinguished from a pleader or advocate. An assistant judge. One who participates in the decisions. Du Cange.

CONSILIUM. A day appointed to hear the counsel of both parties. A case set down for argument.

It is commonly used for the day appointed for the argument of a demurrer, or errors assigned. 1 Tidd, Pr. 438.

CONSIMILI CASU. In practice. A writ of entry, framed under the provisions of the statute Westminster 2, (13 Edw. I.,)

c. 24, which lay for the benefit of the reversioner, where a tenant by the curtesy aliened in fee or for life.

CONSISTING. Being composed or made up of. This word is not synonymous with "including;" for the latter, when used in connection with a number of specified objects, always implies that there may be others which are not mentioned. 6 Mo. App. 331.

CONSISTORIUM. The state council of the Roman emperors. Mackeld. Rom. Law, § 58.

CONSISTORY. In ecclesiastical law. An assembly of cardinals convoked by the pope.

CONSISTORY COURTS. Courts held by diocesan bishops within their several cathedrals, for the trial of ecclesiastical causes arising within their respective dioceses. The bishop's chancellor, or his commissary, is the judge; and from his sentence an appeal lies to the archbishop. Mozley & Whitley.

CONSOBRINI. In the civil law. Cousins-german, in general; brothers' and sisters' children, considered in their relation to each other.

CONSOLATO DEL MARE. The name of a code of sea-laws, said to have been compiled by order of the kings of Arragon (or, according to other authorities, at Pisa or Barcelona) in the fourteenth century, which comprised the maritime ordinances of the Roman emperors, of France and Spain, and of the Italian commercial powers. This compilation exercised a considerable influence in the formation of European maritime law.

CONSOLIDATE. To consolidate means something more than rearrange or redivide. In a general sense, it means to unite into one mass or body, as to consolidate the forces of an army, or various funds. In parliamentary usage, to consolidate two bills is to unite them into one. In law, to consolidate benefices is to combine them into one. 45 Iowa, 56.

CONSOLIDATED FUND. In England. A fund for the payment of the public debt.

CONSOLIDATED ORDERS. The orders regulating the practice of the English court of chancery, which were issued, in 1860, in substitution for the various orders which had previously been promulgated from time to time.

CONSOLIDATION. In the civil law. The union of the usufruct with the estate out of which it issues, in the same person; which happens when the usufructuary acquires the estate, or *vice versa*. In either case the usufruct is extinct. Lec. El. Dr. Rom. 424.

In Scotch law. The junction of the property and superiority of an estate, where they have been disjoined. Bell.

CONSOLIDATION OF ACTIONS. The act or process of uniting several actions into one trial and judgment, by order of a court, where all the actions are between the same parties, pending in the same court, and turning upon the same or similar issues; or the court may order that one of the actions be tried, and the others decided without trial according to the judgment in the one selected.

CONSOLIDATION OF BENEFICES. The act or process of uniting two or more of them into one.

CONSOLIDATION OF CORPORATIONS. The union or merger into one corporate body of two or more corporations which had been separately created for similar or connected purposes. In England this is termed "amalgamation."

When the rights, franchises, and effects of two or more corporations are, by legal authority and agreement of the parties, combined and united into one whole, and committed to a single corporation, the stockholders of which are composed of those (so far as they choose to become such) of the companies thus agreeing, this is in law, and according to common understanding, a consolidation of such companies, whether such single corporation, called the consolidated company, be a new one then created, or one of the original companies, continuing in existence with only larger rights, capacity, and property. 64 Ala. 656.

CONSOLIDATION RULE. In practice. A rule or order of court requiring a plaintiff who has instituted separate suits upon several claims against the same defendant, to consolidate them in one action, where that can be done consistently with the rules of pleading.

CONSOLS. An abbreviation of the expression "consolidated annuities," and used in modern times as a name of various funds united in one for the payment of the British national debt.

Consortio malorum me quoque malum facit. Moore, 817. The company of wicked men makes me also wicked.

CONSORTIUM. In the civil law. A union of fortunes; a lawful Roman marriage. Also, the joining of several persons as parties to one action. In old English law, the term signified company or society. In the language of pleading, (as in the phrase *per quod consortium amisit*) it means the companionship or society of a wife.

CONSPIRACY. In criminal law. A combination or confederacy between two or more persons formed for the purpose of committing, by their joint efforts, some unlawful or criminal act, or some act which is innocent in itself, but becomes unlawful when done by the concerted action of the conspirators, or for the purpose of using criminal or unlawful means to the commission of an act not in itself unlawful.

The agreement or engagement of persons to co-operate in accomplishing some unlawful purpose, or some purpose which may not be unlawful, by unlawful means. 48 Me. 218.

Conspiracy is a consultation or agreement between two or more persons, either falsely to accuse another of a crime punishable by law; or wrongfully to injure or prejudice a third person, or any body of men, in any manner; or to commit any offense punishable by law; or to do any act with intent to prevent the course of justice; or to effect a legal purpose with a corrupt intent, or by improper means. Hawk. P. C. c. 72, § 2; Archb. Crim. Pl. 390, adding also combinations by journeymen to raise wages. 6 Ala. 765.

CONSPIRATIONE. An ancient writ that lay against conspirators. Reg. Orig. 134; Fitzh. Nat. Brev. 114.

CONSPIRATORS. Persons guilty of a conspiracy.

Those who bind themselves by oath, covenant, or other alliance that each of them shall aid the other falsely and maliciously to indict persons; or falsely to move and maintain pleas, etc. 33 Edw. I. St. 2. Besides these, there are conspirators in treasonable purposes; as for plotting against the government. Wharton.

CONSTABLE. In medieval law. The name given to a very high functionary under the French and English kings, the dignity and importance of whose office was only second to that of the monarch. He was in general the leader of the royal armies, and had cognizance of all matters pertaining to war and arms, exercising both civil and military

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jurisdiction. He was also charged with the conservation of the peace of the nation. Thus there was a "Constable of France" and a "Lord High Constable of England."

In English law. A public civil officer, whose proper and general duty is to keep the peace within his district, though he is frequently charged with additional duties. 1 Bl. Comm. 356.

High constables, in England, are officers appointed in every hundred or franchise, whose proper duty seems to be to keep the king's peace within their respective hundreds. 1 Bl. Comm. 356; 3 Steph. Comm. 47.

Petty constables are inferior officers in every town and parish, subordinate to the high constable of the hundred, whose principal duty is the preservation of the peace, though they also have other particular duties assigned to them by act of parliament, particularly the service of the summonses and the execution of the warrants of justices of the peace. 1 Bl. Comm. 356; 3 Steph. Comm. 47, 48.

Special constables are persons appointed (with or without their consent) by the magistrates to execute warrants on particular occasions, as in the case of riots, etc.

In American law. An officer of a municipal corporation (usually elected) whose duties are similar to those of the sheriff, though his powers are less and his jurisdiction smaller. He is to preserve the public peace, execute the process of magistrates' courts, and of some other tribunals, serve writs, attend the sessions of the criminal courts, have the custody of juries, and discharge other functions sometimes assigned to him by the local law or by statute.

CONSTABLE OF A CASTLE. In English law. An officer having charge of a castle; a warden, or keeper; otherwise called a "castellain."

CONSTABLE OF ENGLAND. (Called, also, "Marshal.") His office consisted in the care of the common peace of the realm in deeds of arms and matters of war. Lamb. Const. 4.

CONSTABLE OF SCOTLAND. An officer who was formerly entitled to command all the king's armies in the absence of the king, and to take cognizance of all crimes committed within four miles of the king's person or of parliament, the privy council, or any general convention of the states of the kingdom. The office was hereditary in the family of Errol, and was abolished by the 20 Geo. III. c. 43. Bell.; Ersk. Inst. 1, 3, 37.

CONSTABLE OF THE EXCHEQUER. An officer mentioned in Fleta, lib. 2, c. 31.

CONSTABLEWICK. In English law. The territorial jurisdiction of a constable; as bailiwick is of a bailiff or sheriff. 5 Nev. & M. 261.

CONSTABULARIUS. An officer of horse; an officer having charge of foot or horse; a naval commander; an officer having charge of military affairs generally. Spelman.

CONSTAT. It is clear or evident; it appears; it is certain; there is no doubt. *Non constat*, it does not appear.

A certificate which the clerk of the pipe and auditors of the exchequer made, at the request of any person who intended to plead or move in that court, for the discharge of anything. The effect of it was the certifying what appears (*constat*) upon record, touching the matter in question. Wharton.

CONSTAT D'HUISSIER. In French law. An affidavit made by a *huissier*, setting forth the appearance, form, quality, color, etc., of any article upon which a suit depends. Arg. Fr. Merc. Law, 554.

CONSTATE. To establish, constitute, or ordain. "Constating instruments" of a corporation are its charter, organic law, or the grant of powers to it. See examples of the use of the term, Green's Brice, Ultra Vires, p. 39; 37 N. J. Eq. 363.

CONSTITUENT. A word used as a correlative to "attorney," to denote one who constitutes another his agent or invests the other with authority to act for him.

It is also used in the language of politics, as a correlative to "representative," the constituents of a legislator being those whom he represents and whose interests he is to care for in public affairs; usually the electors of his district.

CONSTITUERE. To appoint, constitute, establish, ordain, or undertake. Used principally in ancient powers of attorney, and now supplanted by the English word "constitute."

CONSTITUIMUS. A Latin term, signifying *we constitute* or *appoint*.

CONSTITUTED AUTHORITIES. Officers properly appointed under the constitution for the government of the people.

CONSTITUTIO. In the civil law. An imperial ordinance or constitution, distinguished from *Lex*, *Senatus-Consultum*, and other kind of law, and having its effect from the sole will of the emperor.

An establishment or settlement. Used of controversies settled by the parties without a trial. Calvin.

A sum paid according to agreement. Du Cange.

In old English law. An ordinance or statute. A provision of a statute.

CONSTITUTIO DOTIS. Establishment of dower.

CONSTITUTION. In public law. The organic and fundamental law of a nation or state, which may be written or unwritten, establishing the character and conception of its government, laying the basic principles to which its internal life is to be conformed, organizing the government, and regulating, distributing, and limiting the functions of its different departments, and prescribing the extent and manner of the exercise of sovereign powers.

In a more general sense, any fundamental or important law or edict; as the Novel Constitutions of Justinian; the Constitutions of Clarendon.

In American law. The written instrument agreed upon by the people of the Union or of a particular state, as the absolute rule of action and decision for all departments and officers of the government in respect to all the points covered by it, which must control until it shall be changed by the authority which established it, and in opposition to which any act or ordinance of any such department or officer is null and void. Cooley, Const. Lim. 3.

CONSTITUTIONAL. Consistent with the constitution; authorized by the constitution; not conflicting with any provision of the constitution or fundamental law of the state. Dependent upon a constitution, or secured or regulated by a constitution; as "constitutional monarchy," "constitutional rights."

CONSTITUTIONAL LAW. 1. That branch of the public law of a state which treats of the organization and frame of government, the organs and powers of sovereignty, the distribution of political and governmental authorities and functions, the fundamental principles which are to regulate the relations of government and subject, and which prescribes generally the plan and method according to which the public affairs of the state are to be administered.

2. That department of the science of law which treats of constitutions, their establish-

ment, construction, and interpretation, and of the validity of legal enactments as tested by the criterion of conformity to the fundamental law.

3. A constitutional law is one which is consonant to, and agrees with, the constitution; one which is not in violation of any provision of the constitution of the particular state.

CONSTITUTIONES. Laws promulgated, *i. e.*, enacted, by the Roman Emperor. They were of various kinds, namely, the following: (1) *Edicta*; (2) *decreta*; (3) *rescripta*, called also "*epistolæ*." Sometimes they were general, and intended to form a precedent for other like cases; at other times they were special, particular, or individual, (*personales*,) and not intended to form a precedent. The emperor had this power of irresponsible enactment by virtue of a certain *lex regia*, whereby he was made the fountain of justice and of mercy. Brown.

Constitutiones tempore posteriores potiores sunt his quæ ipsas præcesserunt. Dig. 1, 4, 4. Later laws prevail over those which preceded them.

CONSTITUTIONS OF CLARENDON. See CLARENDON.

CONSTITUTOR. In the civil law. One who, by a simple agreement, becomes responsible for the payment of another's debt.

CONSTITUTUM. In the civil law. An agreement to pay a subsisting debt which exists without any stipulation, whether of the promisor or another party. It differs from a stipulation in that it must be for an existing debt. Du Cange.

Constitutum esse eam domum unicuique nostrum debere existimari, ubi quisque sedes et tabulas haberet, suarumque rerum constitutionem fecisset. It is settled that that is to be considered the home of each one of us where he may have his habitation and account-books, and where he may have made an establishment of his business. Dig. 50, 16, 203.

CONSTRAINT. This term is held to be exactly equivalent with "restraint." 2 Tenn. Ch. 427.

In Scotch law. Constraint means duress.

CONSTRUCT. To build; erect; put together; make ready for use.

Constructio legis non facit injuriam. The construction of the law (a construction

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made by the law) works no injury. Co. Litt. 183; Broom, Max. 603. The law will make such a construction of an instrument as not to injure a party.

CONSTRUCTION. The process, or the art, of determining the sense, real meaning, or proper explanation of obscure or ambiguous terms or provisions in a statute, written instrument, or oral agreement, or the application of such subject to the case in question, by reasoning in the light derived from extraneous connected circumstances or laws or writings bearing upon the same or a connected matter, or by seeking and applying the probable aim and purpose of the provision.

It is to be noted that this term is properly distinguished from *interpretation*, although the two are often used synonymously. In strictness, interpretation is limited to exploring the written text, while construction goes beyond and may call in the aid of extrinsic considerations, as above indicated.

CONSTRUCTION, COURT OF. A court of equity or of common law, as the case may be, is called the court of construction with regard to wills, as opposed to the court of probate, whose duty is to decide whether an instrument be a will at all. Now, the court of probate may decide that a given instrument is a will, and yet the court of construction may decide that it has no operation, by reason of perpetuities, illegality, uncertainty, etc. Wharton.

CONSTRUCTIVE. That which is established by the mind of the law in its act of *construing* facts, conduct, circumstances, or instruments; that which has not the character assigned to it in its own essential nature, but acquires such character in consequence of the way in which it is regarded by a rule or policy of law; hence, inferred, implied, made out by legal interpretation.

CONSTRUCTIVE ASSENT. An assent or consent imputed to a party from a construction or interpretation of his conduct; as distinguished from one which he actually expresses.

CONSTRUCTIVE BREAKING INTO A HOUSE. A breaking made out by construction of law. As where a burglar gains an entry into a house by threats, fraud, or conspiracy. 2 Russ. Crimes, 9, 10.

CONSTRUCTIVE FRAUD. Constructive fraud consists (1) in any breach of duty which, without an actually fraudulent

intent, gains an advantage to the person in fault, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him; or (2) in any such act or omission as the law specially declares to be fraudulent, without respect to actual fraud. Civil Code Cal. § 1573.

By *constructive frauds* are meant 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, are yet, by their tendency to deceive or mislead other persons, or to violate private or public confidence, or to impair or injure the public interests, 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*. 1 Story, Eq. Jur. § 258.

CONSTRUCTIVE LARCENY. One where the felonious intent to appropriate the goods to his own use, at the time of the asportation, is made out by construction from the defendant's conduct, although, originally, the taking was not apparently felonious. 2 East, P. C. 685; 1 Leach, 212.

CONSTRUCTIVE MALICE. Implied malice; malice inferred from acts; malice imputed by law; malice which is not shown by direct proof of an intention to do injury, (express malice,) but which is inferentially established by the necessarily injurious results of the acts shown to have been committed.

CONSTRUCTIVE NOTICE. Information or knowledge of a fact imputed by law to a person, (although he may not actually have it,) because he could have discovered the fact by proper diligence, and his situation was such as to cast upon him the duty of inquiring into it.

CONSTRUCTIVE TAKING. A phrase used in the law to characterize an act not amounting to an actual appropriation of chattels, but which shows an intention to convert them to his use; as if a person intrusted with the possession of goods deals with them contrary to the orders of the owner.

CONSTRUCTIVE TOTAL LOSS. In marine insurance. This occurs where the loss or injury to the vessel insured does not amount to its total disappearance or destruction, but where, although the vessel still re-

mains, the cost of repairing or recovering it would amount to more than its value when so repaired, and consequently the insured abandons it to the underwriters. See ACTUAL TOTAL LOSS.

CONSTRUCTIVE TREASON. Treason imputed to a person by law from his conduct or course of actions, though his deeds taken severally do not amount to actual treason. This doctrine is not known in the United States.

CONSTRUCTIVE TRUST. A trust raised by construction of law, or arising by operation of law, as distinguished from an express trust.

Wherever the circumstances of a transaction are such that the person who takes the legal estate in property cannot also enjoy the beneficial interest without necessarily violating some established principle of equity, the court will immediately raise a *constructive trust*, and fasten it upon the conscience of the legal owner, so as to convert him into a trustee for the parties who in equity are entitled to the beneficial enjoyment. Hill, Trustees, 116; 1 Spence, Eq. Jur. 511.

CONSTRUE. To put together; to arrange or marshal the words of an instrument. To ascertain the meaning of language by a process of arrangement and inference.

CONSUE TUDINARIUS. In ecclesiastical law. A ritual or book, containing the rites and forms of divine offices, or the customs of abbeys and monasteries.

CONSUE TUDINARY LAW. Customary law. Law derived by oral tradition from a remote antiquity. Bell.

CONSUE TUDINES. In old English law. Customs. Thus, *consuetudines et assisa forestæ*, the customs and assise of the forest.

CONSUE TUDINES FEUDORUM. (Lat. feudal customs.) A compilation of the law of feuds or fiefs in Lombardy, made A. D. 1170.

CONSUE TUDINIBUS ET SERVICIIS. In old English law. A writ of right close, which lay against a tenant who deforced his lord of the rent or service due to him. Reg. Orig. 159; Fitzh. Nat. Brev. 151.

CONSUE TUDO. Lat. A custom; an established usage or practice. Co. Litt. 58. Tolls; duties; taxes. Id. 58b.

CONSUE TUDO ANGLICANA. The custom of England; the ancient common law, as distinguished from *lex*, the Roman or civil law.

Consuetudo contra rationem introducta potius usurpatio quam consuetudo appellari debet. A custom introduced against reason ought rather to be called a "usurpation" than a "custom." Co. Litt. 113.

CONSUE TUDO CURIÆ. The custom or practice of a court. Hardr. 141.

Consuetudo debet esse certa; nam incerta pro nullâ habetur. Dav. 33. A custom should be certain; for an uncertain custom is considered null. D

Consuetudo est altera lex. Custom is another law. 4 Coke, 21. E

Consuetudo est optimus interpret legum. 2 Inst. 18. Custom is the best expounder of the laws. F

Consuetudo et communis assuetudo vincit legem non scriptam, si sit specialis; et interpretatur legem scriptam, si lex sit generalis. Jenk. Cent. 273. Custom and common usage overcomes the unwritten law, if it be special; and interprets the written law, if the law be general. G

Consuetudo ex certa causa rationabili usitata privat communem legem. A custom, grounded on a certain and reasonable cause, supersedes the common law. Litt. § 169; Co. Litt. 113; Broom, Max. 919. H

Consuetudo, licet sit magnæ auctoritatis, nunquam tamen præjudicat manifestæ veritati. A custom, though it be of great authority, should never prejudice manifest truth. 4 Coke, 18. I

Consuetudo loci observanda est. Litt. § 169. The custom of a place is to be observed. J

Consuetudo manerii et loci observanda est. 6 Coke, 67. A custom of a manor and place is to be observed. K

CONSUE TUDO MERCATORUM. Lat. The custom of merchants, the same with *lex mercatoria*.

Consuetudo neque injuriâ oriri neque tolli potest. Lofft, 340. Custom can neither arise from nor be taken away by injury. L

Consuetudo non trahitur in consequentiam. 3 Keb. 499. Custom is not M

drawn into consequence. 4 Jur. (N. S.) Ex. 139.

Consuetudo præscripta et legitima vincit legem. A prescriptive and lawful custom overcomes the law. Co. Litt. 113; 4 Coke, 21.

Consuetudo regni Angliæ est lex Angliæ. Jenk. Cent. 119. The custom of the kingdom of England is the law of England. See 2 Bl. Comm. 422.

Consuetudo semel reprobata non potest amplius induci. A custom once disallowed cannot be again brought forward, [or relied on.] Dav. 33.

Consuetudo tollit communem legem. Co. Litt. 33b. Custom takes away the common law.

Consuetudo volentes ducit, lex nolentes trahit. Custom leads the willing, law compels [drags] the unwilling. Jenk. Cent. 274.

CONSUL. In Roman law. During the republic, the name "consul" was given to the chief executive magistrate, two of whom were chosen annually. The office was continued under the empire, but its powers and prerogatives were greatly reduced. The name is supposed to have been derived from *consulo*, to consult, because these officers consulted with the senate on administrative measures.

In old English law. An ancient title of an earl.

In international law. An officer of a commercial character, appointed by the different states to watch over the mercantile interests of the appointing state and of its subjects in foreign countries. There are usually a number of consuls in every maritime country, and they are usually subject to a chief consul, who is called a "consul general." Brown.

The word "consul" has two meanings: (1) It denotes an officer of a particular grade in the consular service; (2) it has a broader generic sense, embracing all consular officers. 15 Ct. Cl. 64.

The official designations employed throughout this title shall be deemed to have the following meanings, respectively: *First*. "Consul general," "consul," and "commercial agent" shall be deemed to denote full, principal, and permanent consular officers, as distinguished from subordinates and substitutes. *Second*. "Deputy-consul" and "consular agent" shall be deemed to denote consular officers subordinate to such principals, exercising the powers and performing the duties within the lim-

its of their consulates or commercial agencies respectively, the former at the same ports or places and the latter at ports or places different from those at which such principals are located respectively. *Third*. "Vice-consuls" and "vice-commercial agents" shall be deemed to denote consular officers who shall be substituted, temporarily, to fill the places of consuls general, consuls, or commercial agents, when they shall be temporarily absent or relieved from duty. *Fourth*. "Consular officer" shall be deemed to include consuls general, consuls, commercial agents, deputy-consuls, vice-consuls, vice-commercial agents, and consular agents, and none others. *Fifth*. "Diplomatic officer" shall be deemed to include ambassadors, envoys extraordinary, ministers plenipotentiary, ministers resident, commissioners, chargés d'affaires, agents, and secretaries of legation, and none others. Rev. St. U. S. § 1674.

CONSULAR COURTS. Courts held by the consuls of one country, within the territory of another, under authority given by treaty, for the settlement of civil cases between citizens of the country which the consul represents. In some instances they have also a criminal jurisdiction, but in this respect are subject to review by the courts of the home government. See Rev. St. U. S. § 4083.

CONSULTA ECCLESIA. In ecclesiastical law. A church full or provided for. Cowell.

CONSULTARY RESPONSE. The opinion of a court of law on a special case.

CONSULTATION. A writ whereby a cause which has been wrongfully removed by prohibition out of an ecclesiastical court to a temporal court is returned to the ecclesiastical court. Phillim. Ecc. Law, 1439.

A conference between the counsel engaged in a case, to discuss its questions or arrange the method of conducting it.

In French law. The opinion of counsel upon a point of law submitted to them.

CONSULTO. In the civil law. Designedly; intentionally. Dig. 28, 41.

CONSUMMATE. Completed; as distinguished from *initiate*, or that which is merely begun. The husband of a woman seised of an estate of inheritance becomes, by the birth of a child, tenant by the curtesy *initiate*, and may do many acts to charge the lands, but his estate is not *consummate* till the death of the wife. 2 Bl. Comm. 126, 128; Co. Litt. 50a.

CONSUMMATION. The completion of a thing; the completion of a marriage between two affianced persons by cohabitation.

CONTAGIOUS DISORDERS. Diseases which are capable of being transmitted by mediate or immediate contact.

CONTANGO. In English law. The commission received for carrying over or putting off the time of execution of a contract to deliver stocks or pay for them at a certain time. Wharton.

CONTEK. L. Fr. A contest, dispute, disturbance, opposition. Britt. c. 42; Kellham. *Contekours*; brawlers; disturbers of the peace. Britt. c. 29.

CONTEMNER. One who has committed contempt of court.

CONTEMPLATION. The act of the mind in considering with attention. Continued attention of the mind to a particular subject. Consideration of an act or series of acts with the intention of doing or adopting them. The consideration of an event or state of facts with the expectation that it will transpire.

CONTEMPLATION OF BANKRUPTCY. Contemplation of a *state* of bankruptcy or a known insolvency and inability to carry on business, and a stoppage of business. 5 Reporter, 295, 299.

Something more is meant by the phrase than the expectation of insolvency; it includes the making provision against the results of it. 13 How. 150; 8 Bosw. 194.

By contemplation of bankruptcy is meant a contemplation of the breaking up of one's business, or an inability to continue it. Crabbe, 529.

CONTEMPORANEA EXPOSITIO. Lat. Contemporaneous exposition, or construction; a construction drawn from the *time* when, and the circumstances under which, the subject-matter to be construed, as a statute or custom, originated.

Contemporanea expositio est optima et fortissima in lege. Contemporaneous exposition is the best and strongest in the law. 2 Inst. 11. A statute is best explained by following the construction put upon it by judges who lived at the *time* it was made, or soon after. 10 Coke, 70; Broom, Max. 682.

CONTEMPT. Contumacy; a willful disregard of the authority of a court of justice or legislative body or disobedience to its lawful orders.

Contempt of court is committed by a person who does any act in willful contravention of its authority or dignity, or tending to

impede or frustrate the administration of justice, or by one who, being under the court's authority as a party to a proceeding therein, willfully disobeys its lawful orders or fails to comply with an undertaking which he has given.

The disobedience of the defendant to the decree of that court, in this instance, is palpable, willful, and utterly inexcusable; and therefore constitutes, beyond a doubt, what is termed a "contempt," which is well described by an eminent jurist as "a disobedience to the court, by acting in opposition to the authority, justice, and dignity thereof," adding that "it commonly consists in a party doing otherwise than he is enjoined to do, or not doing what he is commanded or required by the process, order, or decree of the court; in all which cases the party disobeying is liable to be attached and committed for the contempt." 21 Conn. 199.

Contempts are of two kinds,—criminal and constructive. Criminal contempts are those committed in the immediate view and presence of the court, such as insulting language or acts of violence, which interrupt the regular proceedings in courts. Constructive contempts are those which arise from matters not transpiring in court, but in reference to failures to comply with the orders and decrees issued by the court, and to be performed elsewhere. 49 Me. 392.

Or they may be divided into such as are committed in the face of the court (*in facie curiæ*) which are punishable by commitment and fine, and such as are committed out of court, which are punishable by attachment. 1 Tidd, Pr. 479, 480. 4 Bl. Comm. 285, 286; 4 Steph. Comm. 348-358.

CONTEMPT OF CONGRESS, LEGISLATURE, or PARLIAMENT. Whatever obstructs or tends to obstruct the due course of proceeding of either house, or grossly reflects on the character of a member of either house, or imputes to him what it would be a libel to impute to an ordinary person, is a contempt of the house, and thereby a breach of privilege. Sweet.

CONTEMPTIBILITER. Lat. Contemptuously.

In old English law. Contempt, contempts. Fleta, lib. 2, c. 60, § 35.

CONTENTIOUS. Contested; adversary; litigated between adverse or contending parties; a judicial proceeding not merely *ex parte* in its character, but comprising attack and defense as between opposing parties, is so called. The litigious proceedings in ecclesiastical courts are sometimes said to belong to its "contentious" jurisdiction, in contradistinction to what is called its "voluntary" jurisdiction, which is exercised in the granting of licenses, probates of wills, dispensations, faculties, etc.

CONTENTIOUS JURISDICTION. In English ecclesiastical law. That branch

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of the jurisdiction of the ecclesiastical courts which is exercised upon adversary or *contentious* proceedings. See **CONTENTIOUS**.

CONTENTMENT, 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; Cowell.

CONTENTS AND NOT-CONTENTS. In parliamentary law. The "contents" are those who, in the house of lords, express assent to a bill; the "not" or "non contents" dissent. May, Parl. Law, cc. 12, 357.

"CONTENTS UNKNOWN." Words sometimes annexed to a bill of lading of goods in cases. Their meaning is that the master only means to acknowledge the shipment, in good order, of the cases, as to their external condition. 12 How. 273.

CONTERMINOUS. Adjacent; adjoining; having a common boundary; coterminous.

CONTEST. To make defense to an adverse claim in a court of law; to oppose, resist, or dispute the case made by a plaintiff.

CONTESTATIO LITIS. In Roman law. Contestation of suit; the framing an issue; joinder in issue. The formal act of both the parties with which the proceedings *in jure* were closed when they led to a judicial investigation, and by which the neighbors whom the parties brought with them were called to testify. Mackeld. Rom. Law, § 219.

In old English law. Coming to an issue; the issue so produced. Crabb, Eng. Law, 216.

Contestatio litis eget terminos contradictorios. An issue requires terms of contradiction. Jenk. Cent. 117. To constitute an issue, there must be an affirmative on one side and a negative on the other.

CONTESTATION OF SUIT. In an ecclesiastical cause, that stage of the suit which is reached when the defendant has answered the libel by giving in an allegation.

CONTESTED ELECTION. This phrase has no technical or legally defined meaning. An election may be said to be contested whenever an objection is formally urged against it which, if found to be true in fact, would invalidate it. This is true both as to objections founded upon

some constitutional provision and to such as are based on statutes. 109 Ind. 116, 10 N. E. Rep. 600.

CONTEXT. The context of a particular sentence or clause in a statute, contract, will, etc., comprises those parts of the text which immediately precede and follow it. The context may sometimes be scrutinized, to aid in the interpretation of an obscure passage.

CONTIGUOUS. In close proximity; in actual close contact. 69 N. Y. 191. Touching; bounded or traversed by. The term is not synonymous with "vicinal." 32 La. Ann. 435.

CONTINENCIA. In Spanish law. Continuity or unity of the proceedings in a cause. White, New Recop. b. 3, tit. 6, c. 1.

CONTINENS. In the Roman law. Continuing; holding together. Adjoining buildings were said to be *continentia*.

CONTINENTIA. In old English practice. Continuance or connection. Applied to the proceedings in a cause. Bract. fol. 362b.

CONTINGENCY. An event that may or may not happen, a doubtful or uncertain future event. The quality of being contingent.

A fortuitous event, which comes without design, foresight, or expectation. A contingent expense must be deemed to be an expense depending upon some future uncertain event. 39 Barb. 272.

CONTINGENCY OF A PROCESS. In Scotch law. Where two or more processes are so connected that the circumstances of the one are likely to throw light on the others, the process first enrolled is considered as the leading process, and those subsequently brought into court, if not brought in the same division, may be remitted to it, *ob contingentiam*, on account of their nearness or proximity in character to it. The effect of remitting processes in this manner is merely to bring them before the same division of the court or same lord ordinary. In other respects they remain distinct. Bell.

CONTINGENCY WITH DOUBLE ASPECT. A remainder is said to be "in a contingency with double aspect," when there is another remainder limited on the same estate, not in derogation of the first, but as a substitute for it in case it should fail. Fearne, Rem. 373.

CONTINGENT. Possible, but not assured; doubtful or uncertain; conditioned upon the occurrence of some future event which is itself uncertain or questionable.

This term, when applied to a use, remainder, devise, bequest, or other legal right or interest, implies that no present interest exists, and that whether such interest or right ever will exist depends upon a future uncertain event. 5 Barb. 692.

CONTINGENT DAMAGES. Where a demurrer has been filed to one or more counts in a declaration, and its consideration is postponed, and meanwhile other counts in the same declaration, not demurred to, are taken as issues, and tried, and damages awarded upon them, such damages are called "contingent damages."

CONTINGENT ESTATE. An estate which depends for its effect upon an event which may or may not happen; as an estate limited to a person not *in esse*, or not yet born. 2 Crabb, Real Prop. p. 4, § 946.

CONTINGENT INTEREST IN PERSONAL PROPERTY. It may be defined as a future interest not transmissible to the representatives of the party entitled thereto, in case he dies before it vests in possession. Thus, if a testator leaves the income of a fund to his wife for life, and the capital of the fund to be distributed among such of his children as shall be living at her death, the interest of each child during the widow's life-time is *contingent*, and in case of his death is not transmissible to his representatives. Mozley & Whitley.

CONTINGENT LEGACY. A legacy given to a person at a future uncertain time, that may or may not arrive; as "at his age of twenty-one," or "if" or "when he attains twenty-one." 2 Bl. Comm. 513; 2 Steph. Comm. 259.

A legacy made dependent upon some uncertain event. 1 Rep. Leg. 506.

A legacy which has not vested.

CONTINGENT REMAINDER. An estate in remainder which is limited to take effect either to a dubious and uncertain person, or upon a dubious and uncertain event, by which no present or particular interest passes to the remainder-man, so that the particular estate may chance to be determined and the remainder never take effect. 2 Bl. Comm. 169.

A remainder limited so as to depend upon an event or condition which may never hap-

pen or be performed, or which may not happen or be performed till after the determination of the preceding estate. Fearne, Rem. 3.

CONTINGENT USE. A use limited to take effect upon the happening of some future contingent event; as where lands are conveyed to the use of A. and B., after a marriage shall be had between them. 2 Bl. Comm. 334.

CONTINUAL CLAIM. In old English law. A formal claim made by a party entitled to enter upon any lands or tenements, but deterred from such entry by menaces, or bodily fear, for the purpose of preserving or keeping alive his right. It was called "continual," because it was required to be repeated once in the space of every year and day. It had to be made as near to the land as the party could approach with safety, and, when made in due form, had the same effect with, and in all respects amounted to, a legal entry. Litt. §§ 419-423; Co. Litt. 250a; 3 Bl. Comm. 175.

CONTINUANCE. The adjournment or postponement of an action pending in a court, to a subsequent day of the same or another term.

Also the entry of a continuance made upon the record of the court, for the purpose of formally evidencing the postponement, or of connecting the parts of the record so as to make one continuous whole.

CONTINUANDO. In pleading. A word which was formerly 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 might 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 was in this form: *Continuando* (by continuing) the trespasses aforesaid, etc., from the day aforesaid, etc., until such a day, including the last trespass. Termes de la Ley.

CONTINUING CONSIDERATION. See CONSIDERATION.

CONTINUING DAMAGES. See DAMAGES.

CONTINUOUS ADVERSE USE. Is interchangeable with the term "uninterrupted adverse use." 59 Ind. 411.

CONTINUOUS EASEMENT. One the enjoyment of which is or may be contin-

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ual, without the necessity of any actual interference by man, as a water-spout, or a right of light or air; as distinguished from a *discontinuous* easement, which is one the enjoyment of which can be had only by the interference of man, as a right of way, or a right to draw water. Washb., Easem. 13; Gale, Easem. 16; 21 N. Y. 505; 60 Mich. 252, 27 N. W. Rep. 512. This distinction is derived from the French law. See Civil Code, art. 688.

CONTRA. Against, confronting, opposite to; on the other hand; on the contrary. The word is used in many Latin phrases, as appears by the following titles. In the books of reports, *contra*, appended to the name of a judge or counsel, indicates that he held a view of the matter in argument *contrary* to that next before advanced. Also, after citation of cases in support of a position, *contra* is often prefixed to citations of cases opposed to it.

CONTRA BONOS MORES. Against good morals. Contracts *contra bonos mores* are void.

CONTRA FORMAM COLLATIONIS. In old English law. A writ that issued where lands given in perpetual alms to lay houses of religion, or to an abbot and convent, or to the warden or master of an hospital and his convent, to find certain poor men with necessaries, and do divine service, etc., were alienated, to the disherison of the house and church. By means of this writ the donor or his heirs could recover the lands. Reg. Orig. 238; Fitzh. Nat. Brev. 210.

CONTRA FORMAM DONI. Against the form of the grant. See FORMEDON.

CONTRA FORMAM FEOFFAMENTI. In old English law. A writ that lay for the heir of a tenant, enfeoffed of certain lands or tenements, by charter of feoffment from a lord to make certain services and suits to his court, who was afterwards distrained for more services than were mentioned in the charter. Reg. Orig. 176; Old Nat. Brev. 162.

CONTRA FORMAM STATUTI. In criminal pleading. (Contrary to the form of the statute in such case made and provided.) The usual conclusion of every indictment, etc., brought for an offense created by statute.

CONTRA JUS BELLII. Lat. Against the law of war. 1 Kent, Comm. 6.

CONTRA JUS COMMUNE. Against common right or law; contrary to the rule of the common law. Bract. fol. 486.

Contra legem facit qui id facit quod lex prohibet; in fraudem vero qui, salvis verbis legis, sententiam ejus circumvenit. He does contrary to the law who does what the law prohibits; he acts in fraud of the law who, the letter of the law being inviolate, uses the law contrary to its intention. Dig. 1, 3, 29.

CONTRA LEGEM TERRÆ. Against the law of the land.

Contranegantem principia non est disputandum. There is no disputing against one who denies first principles. Co. Litt. 343.

Contra non valentem agere nulla currit præscriptio. No prescription runs against a person unable to bring an action. Broom, Max. 903.

CONTRA OMNES GENTES. Against all people. Formal words in old covenants of warranty. Fleta, lib. 3, c. 14, § 11.

CONTRA PACEM. Lat. Against the peace. A phrase used in the Latin forms of indictments, and also of actions for trespass, to signify that the offense alleged was committed against the public peace, *i. e.*, involved a breach of the peace. The full formula was *contra pacem domini regis*, against the peace of the lord the king. In modern pleading, in this country, the phrase "against the peace of the common wealth" or "of the people" is used.

CONTRA PROFERENTEM. Against the party who proffers or puts forward a thing.

CONTRA TABULAS. In the civil law. Against the will, (testament.) Dig. 37, 4.

CONTRA VADIUM ET PLEGIUM. In old English law. Against gage and pledge. Bract. fol. 156.

Contra veritatem lex nunquam aliquid permittit. The law never suffers anything contrary to truth. 2 Inst. 252.

CONTRABAND. Against law or treaty; prohibited. Goods exported from or imported into a country against its laws. Brande. Articles, the importation or exportation of which is prohibited by law. P. Enc.

CONTRABAND OF WAR. Certain classes of merchandise, such as arms and

ammunition, which, by the rules of international law, cannot lawfully be furnished or carried by a neutral nation to either of two belligerents; if found in transit in neutral vessels, such goods may be seized and condemned for violation of neutrality.

A recent American author on international law says that, "by the term 'contraband of war,' we now understand a class of articles of commerce which neutrals are prohibited from furnishing to either one of the belligerents, for the reason that, by so doing, injury is done to the other belligerent;" and he treats of the subject, chiefly, in its relation to commerce upon the high seas. (Hall, Int. Law, 570, 592.) 4 Heisk. 345.

CONTRACAUSATOR. A criminal; one prosecuted for a crime.

CONTRACT. An agreement, upon sufficient consideration, to do or not to do a particular thing. 2 Bl. Comm. 442; 2 Kent, Comm. 449.

A covenant or agreement between two or more persons, with a lawful consideration or cause. Jacob.

A deliberate engagement between competent parties, upon a legal consideration, to do, or abstain from doing, some act. Wharton.

A contract or agreement is either where a promise is made on one side and assented to on the other; or where two or more persons enter into engagement with each other by a promise on either side. 2 Steph. Comm. 54.

A contract is an agreement by which one person obligates himself to another to give, to do, or permit, or not to do, something expressed or implied by such agreement. Civil Code La. art. 1761.

A contract is an agreement to do or not to do a certain thing. Civil Code Cal. § 1549.

A contract is an agreement between two or more parties for the doing or not doing of some specified thing. Code Ga. 1882, § 2714.

A contract is an agreement between two or more persons to do or not to do a particular thing; and the *obligation* of a contract is found in the terms in which the contract is expressed, and is the duty thus assumed by the contracting parties respectively to perform the stipulations of such contract. When that duty is recognized and enforced by the municipal law, it is one of *perfect*, and when not so recognized and enforced, of *imperfect*, obligation. 31 Conn. 265.

The writing which contains the agreement of parties, with the terms and conditions, and which serves as a proof of the obligation.

Contracts may be classified on several different methods, according to the element in

them which is brought into prominence. The usual classifications are as follows:

Record, specialty, simple. Contracts are divided into three classes: (1) Contracts of record, such as judgments, recognizances, and statutes staple; (2) specialties, which are under seal, such as deeds and bonds; (3) simple contracts, or contracts by parol. There is no such fourth class as contracts in writing, distinct from verbal and sealed contracts; both verbal and written contracts are included in the class of simple contracts, and the only distinction between them is in regard to the mode of proof. Wharton.

Contracts of record are not really contracts at all, but are transactions which, being entered on the records of certain courts called "courts of record," are conclusive proof of the facts thereby appearing, and could formerly be enforced by action of law as if they had been put in the shape of a contract. They consist of judgments, recognizances, etc. Sweet.

Express and implied. When the agreement of the parties is definite and formal, and is stated either verbally or in writing, the contract is *express*; but when its terms have to be gathered by inference and deduction from facts or conduct, it is *implied*.

Executed and executory. Contracts are also distinguished into executed and executory; *executed*, where nothing remains to be done by either party, and where the transaction is completed at the moment that the arrangement is made, as where an article is sold and delivered, and payment therefor is made on the spot; *executory*, where some future act is to be done, as where an agreement is made to build a house in six months, or to do an act on or before some future day, or to lend money upon a certain interest, payable at a future time. Wharton.

An executed contract is one in which all the parties thereto have performed all the obligation which they have originally assumed. An executory contract is one in which something remains to be done by one or more parties. Code Ga. 1882, § 2715.

An executed contract is one the object of which is fully performed. All others are executory. Civil Code Cal. § 1661.

Entire and severable. An *entire* contract is one the consideration of which is entire on both sides. The entire fulfillment of the promise by either is a condition precedent to the fulfillment of any part of the promise by the other. Whenever, therefore, there is a contract to pay the gross sum for a certain and definite consideration, the contract is entire. A *severable* contract is one the consideration of which is, by its

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terms, susceptible of apportionment on either side, so as to correspond to the unascertained consideration on the other side, as a contract to pay a person the worth of his services so long as he will do certain work; or to give a certain price for every bushel of so much corn as corresponds to a sample. Wharton.

Principal and accessory. A *principal* contract is one which stands by itself, justifies its own existence, and is not subordinate or auxiliary to any other. *Accessory* contracts are those made for assuring the performance of a prior contract, either by the same parties or by others, such as suretyship, mortgage, and pledges. Civil Code La. art. 1764.

Unilateral and bilateral. A *unilateral* contract is one in which one party makes an express engagement or undertakes a performance, without receiving in return any express engagement or promise of performance from the other. *Bilateral* (or reciprocal) contracts are those by which the parties expressly enter into mutual engagements, such as sale or hire. Civil Code La. art. 1758; Poth. Obl. 1, 1, 1, 2.

Consensual and real. *Consensual* contracts are such as are founded upon and completed by the mere agreement of the contracting parties, without any external formality or symbolic act to fix the obligation. *Real* contracts are those in which it is necessary that there should be something more than mere consent, such as a loan of money, deposit, or pledge, which, from their nature, require a delivery of the thing, (*res.*)

Certain and hazardous. *Certain* contracts are those in which the thing to be done is supposed to depend on the will of the party, or when, in the usual course of events, it must happen in the manner stipulated. *Hazardous* contracts are those in which the performance of that which is one of its objects depends on an uncertain event. Civil Code La. 1769.

Commutative and independent. *Commutative* contracts are those in which what is done, given, or promised by one party is considered as an equivalent to or in consideration of what is done, given, or promised by the other. Civil Code La. 1761. *Independent* contracts are those in which the mutual acts or promises have no relation to each other, either as equivalents or as considerations. Civil Code La. 1762.

Gratuitous and onerous. *Gratuitous* contracts are those of which the object is the benefit of the person with whom it is made, without any profit or advantage received or promised as a consideration for it. It is not, however, the less gratuitous if it proceed either from gratitude for a benefit before received or from the hope of receiving one hereafter, although such benefit be of a pecuniary nature. Civil Code La. 1766. *Onerous* contracts are those in which something is given or promised as a consideration for the engagement or gift, or some service, interest, or condition is imposed on what is given or promised, although unequal to it in value.

Mutual interest, mixed, etc. Contracts of *mutual interest* are such as are entered into for the reciprocal interest and utility of each of the parties; as sales, exchange, partnership, and the like. *Mixed* contracts are those by which one of the parties confers a benefit on the other, receiving something of inferior value in return, such as a donation subject to a charge. Contracts of *benevolence* are those by which only one of the contracting parties is benefited; as, loans, deposit, and mandate. Poth. Obl. 1, 1, 1, 2.

CONTRACT OF BENEVOLENCE.

A contract made for the benefit of one of the contracting parties only, as a mandate or deposit.

CONTRACT OF RECORD. A contract of record is one which has been declared and adjudicated by a court having jurisdiction, or which is entered of record in obedience to, or in carrying out, the judgments of a court. Code Ga. 1882, § 2716.

CONTRACT OF SALE. A contract by which one of the contracting parties, called the "seller," enters into an obligation to the other to cause him to have freely, by a title of proprietor, a thing, for the price of a certain sum of money, which the other contracting party, called the "buyer," on his part obliges himself to pay. Poth. Cont.

CONTRACTION. Abbreviation; abridgment or shortening of a word by omitting a letter or letters or a syllable, with a mark over the place where the elision occurs. This was customary in records written in the ancient "court hand," and is frequently found in the books printed in black-letter.

CONTRACTOR. This term is strictly applicable to any person who enters into a contract, but is commonly reserved to desig

nate one who, for a fixed price, undertakes to procure the performance of works on a large scale, or the furnishing of goods in large quantities, whether for the public or a company or individual.

The primary meaning of the word is one who contracts; one of the parties to a bargain. He who agrees to do anything for another is a contractor. 12 N. Y. 628.

CONTRACTUS. Contract; a contract; contracts.

CONTRACTUS BONÆ FIDELI. In Roman law. Contracts of good faith. Those contracts which, when brought into litigation, were not determined by the rules of the strict law alone, but allowed the judge to examine into the *bona fides* of the transaction, and to hear equitable considerations against their enforcement. In this they were opposed to contracts *stricti juris*, against which equitable defenses could not be entertained.

CONTRACTUS CIVILES. In Roman law. Civil contracts. Those contracts which were recognized as actionable by the strict civil law of Rome, or as being founded upon a particular statute, as distinguished from those which could not be enforced in the courts except by the aid of the prætor, who, through his equitable powers, gave an action upon them. The latter were called "*contractus prætorii*."

Contractus est quasi actus contra actum. 2 Coke, 15. A contract is, as it were, act against act.

Contractus ex turpi causa, vel contra bonos mores, nullus est. A contract founded on a base consideration, or against good morals, is null. Hob. 167.

Contractus legem ex conventionione accipiunt. Contracts receive legal sanction from the agreement of the parties. Dig. 16, 3, 1, 6.

CONTRADICT. In practice. To disprove. To prove a fact contrary to what has been asserted by a witness.

CONTRADICTION IN TERMS. A phrase of which the parts are expressly inconsistent, as, *e. g.*, "an innocent murder;" "a fee-simple for life."

CONTRÆSCRITURA. In Spanish law. A counter-writing; counter-letter. A document executed at the same time with an act of sale or other instrument, and operating by way of defeasance or otherwise modifying

the apparent effect and purport of the original instrument.

CONTRAFACTIO. Counterfeiting; as *contrafactio sigilli regis*, counterfeiting the king's seal. Cowell.

CONTRAINTÉ PAR CORPS. In French law. The civil process of arrest of the person, which is imposed upon vendors falsely representing their property to be unincumbered, or upon persons mortgaging property which they are aware does not belong to them, and in other cases of moral heinousness. Brown.

CONTRALIGATIO. In old English law. Counter-obligation. Literally, counter-binding. *Est enim obligatio quasi contraligatio.* Fleta, lib. 2, c. 56, § 1. D

CONTRAMANDATIO. A countermanding. *Contramandatio placiti*, in old English law, was the respiting of a defendant, or giving him further time to answer, by countermanding the day fixed for him to plead, and appointing a new day; a sort of imparlance. E

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

CONTRAPLACITUM. In old English law. A counter-plea. Townsh. Pl. 61. G

CONTRAPOSITIO. In old English law. A plea or answer. Blount. A counter-position. H

CONTRARIENTS. This word was used in the time of Edw. II. to signify those who were opposed to the government, but were neither rebels nor traitors. Jacob. I

Contrariorum contraria est ratio. Hob. 344. The reason of contrary things is contrary. J

CONTRAROTULATOR. A controller. One whose business it was to observe the money which the collectors had gathered for the use of the king or the people. Cowell. K

CONTRAROTULATOR PIPÆ. An officer of the exchequer that writeth out summons twice every year, to the sheriffs, to levy the rents and debts of the pipe. Blount. L

CONTRAT. In French law. Contracts are of the following varieties: (1) *Bilateral*, or *synallagmatique*, where each party is bound to the other to do what is just and proper; or (2) *unilateral*, where the one M

side only is bound; or (3) *commutatif*, where one does to the other something which is supposed to be an equivalent for what the other does to him; or (4) *aléatoire*, where the consideration for the act of the one is a mere chance; or (5) *contrat de bienfaisance*, where the one party procures to the other a purely gratuitous benefit; or (6) *contrat à titre onéreux*, where each party is bound under some duty to the other. Brown.

CONTRATALLIA. In old English law. A counter-tally. A term used in the exchequer. Mem. in Scacc. M. 26 Edw. I.

CONTRATENERE. To hold against; to withhold. Whishaw.

CONTRAVENING EQUITY. A right or equity, in another person, which is inconsistent with and opposed to the equity sought to be enforced or recognized.

CONTRAVENTION. In French law. An act which violates the law, a treaty, or an agreement which the party has made. That infraction of the law punished by a fine which does not exceed fifteen francs and by an imprisonment not exceeding three days. Pen. Code, 1.

In Scotch law. The act of breaking through any restraint imposed by deed, by covenant, or by a court.

CONTRACTARE. Lat. In the civil law. To handle; to take hold of; to meddle with.

In old English law. To treat. *Vel malè contractet*; or shall ill treat. Fleta, lib. 1, c. 17, § 4.

CONTRACTATIO. In the civil and old English law. Touching; handling; meddling. The act of removing a thing from its place in such a manner that, if the thing be not restored, it will amount to theft.

Contractatio rei alienæ, animo furandi, est furtum. Jenk. Cent. 132. The touching or removing of another's property, with an intention of stealing, is theft.

CONTREFAÇON. In French law. The offense of printing or causing to be printed a book, the copyright of which is held by another, without authority from him. Merl. Repert.

CONTRE-MAITRE. In French marine law. The chief officer of a vessel, who, in case of the sickness or absence of the master, commanded in his place. Literally, the counter-master.

CONTRIBUTE. To supply a share or proportional part of money or property towards the prosecution of a common enterprise or the discharge of a joint obligation.

CONTRIBUTION. In common law. The sharing of a loss or payment among several. The act of any one or several of a number of co-debtors, co-sureties, etc., in reimbursing one of their number who has paid the whole debt or suffered the whole liability, each to the extent of his proportionate share.

In maritime law. Where the property of one of several parties interested in a vessel and cargo has been voluntarily sacrificed for the common safety, (as by throwing goods overboard to lighten the vessel,) such loss must be made good by the contribution of the others, which is termed "general average." 3 Kent, Comm. 232-244; 1 Story, Eq. Jur. § 490.

In the civil law. A partition by which the creditors of an insolvent debtor divide among themselves the proceeds of his property proportionably to the amount of their respective credits. Code La. art. 2522, no. 10.

Contribution is the division which is made among the heirs of the succession of the debts with which the succession is charged, according to the proportion which each is bound to bear. Civil Code La. art. 1420.

CONTRIBUTIONE FACIENDA. In old English law. A writ that lay where tenants in common were bound to do some act, and one of them was put to the whole burthen, to compel the rest to make contribution. Reg. Orig. 175; Fitzh. Nat. Brev. 162.

CONTRIBUTORY. A person liable to contribute to the assets of a company which is being wound up, as being a member or (in some cases) a past member thereof. Mozley & Whitley.

CONTRIBUTORY NEGLIGENCE. Contributory negligence, when set up as a defense to an action for injuries alleged to have been caused by the defendant's negligence, means any want of ordinary care on the part of the person injured, (or on the part of another whose negligence is imputable to him,) which combined and concurred with the defendant's negligence, and contributed to the injury as a proximate cause thereof, and as an element without which the injury would not have occurred.

CONTROLLER. A comptroller, which see.

CONTROLMENT. In old English law. The controlling or checking of another officer's account; the keeping of a counter-roll.

CONTROVER. In old English law. An inventor or deviser of false news. 2 Inst. 227.

CONTROVERSY. A litigated question; adversary proceeding in a court of law; a civil action or suit, either at law or in equity.

It differs from "case," which includes all suits, criminal as well as civil; whereas "controversy" is a civil and not a criminal proceeding. 2 Dall. 419, 431, 432.

CONTROVERT. To dispute; to deny; to oppose or contest; to take issue on.

CONTUBERNIUM. In Roman law. The marriage of slaves; a permitted cohabitation.

CONTUMACE CAPIENDO. In English law. Excommunication in all cases of contempt in the spiritual courts is discontinued by 53 Geo. III. c. 127, § 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. The refusal or intentional omission of a person who has been duly cited before a court to appear and defend the charge laid against him, or, if he is duly before the court, to obey some lawful order or direction made in the cause. In the former case it is called "presumed" contumacy; in the latter, "actual." The term is chiefly used in ecclesiastical law. See 3 Curt. Ecc. 1.

CONTUMAX. One accused of a crime who refuses to appear and answer to the charge. An outlaw.

CONTUSION. In medical jurisprudence. A bruise; a hurt or injury to the flesh or some part of the body by the blow of a blunt instrument, or by a fall, producing no severance of tissue or apparent wound. If the skin is broken, it is called a "contused wound."

CONTUTOR. Lat. In the civil law. A co-tutor, or co-guardian. Inst. 1, 24, 1.

CONUSANCE. In English law. Cognizance or jurisdiction. Conusance of pleas. Termes de la Ley.

CONUSANCE, CLAIM OF. See COGNIZANCE.

CONUSANT. One who knows; as, if a party knowing of an agreement in which he has an interest makes no objection to it, he is said to be conusant. Co. Litt. 157.

CONUSEE. See COGNIZEE.

CONUSOR. See COGNIZOR.

CONVENABLE. In old English law. Suitable; agreeable; convenient; fitting. D Litt. § 103.

CONVENE. In the civil law. To bring an action.

CONVENIENT. Proper; just; suitable. E

CONVENIT. In civil and old English law. It is agreed; it was agreed.

CONVENT. The fraternity of an abbey or priory, as *societas* is the number of fellows in a college. A religious house, now regarded as a merely voluntary association, not importing civil death. 33 Law J. Ch. 308. F

CONVENTICLE. A private assembly or meeting for the exercise of religion. The word was first an appellation of reproach to the religious assemblies of Wycliffe in the reigns of Edward III. and Richard II., and was afterwards applied to a meeting of dissenters from the established church. As this word in strict propriety denotes an unlawful assembly, it cannot be justly applied to the assembling of persons in places of worship licensed according to the requisitions of law. Wharton. G

CONVENTIO. In canon law. The act of summoning or calling together the parties by summoning the defendant. H

CONVENTION. In the civil law. A compact, agreement, or convention. An agreement between two or more persons respecting a legal relation between them. The term is one of very wide scope, and applies to all classes of subjects in which an engagement or business relation may be founded by agreement. It is to be distinguished from the negotiations or preliminary transactions on the object of the convention and fixing its extent, which are not binding so long as the convention is not concluded. Mackeld. Rom. Law, §§ 385, 386. I

CONTRACT. In contracts. An agreement; a covenant. Cowell. K

CONVENTIO IN UNUM. In the civil law. The agreement between the two parties to a contract upon the sense of the contract proposed. It is an essential part of the contract, following the solicitation or proposal emanating from the one, and followed by the consension or agreement of the other.

Conventio privatorum non potest publico juri derogare. The agreement of private persons cannot derogate from public right, *i. e.*, cannot prevent the application of general rules of law, or render valid any contravention of law. Co. Litt. 166a; Wing. Max. p. 746, max. 201.

Conventio vincit legem. The express agreement of parties overcomes [prevails against] the law. Story, Ag. § 368.

CONVENTION. In Roman law. An agreement between parties; a pact. A convention was a mutual engagement between two persons, possessing all the subjective requisites of a contract, but which did not give rise to an action, nor receive the sanction of the law, as bearing an "obligation," until the objective requisite of a solemn ceremonial, (such as *stipulatio*) was supplied. In other words, convention was the informal agreement of the parties, which formed the basis of a contract, and which became a contract when the external formalities were superimposed. See Maine, Anc. Law, 313.

"The division of conventions into contracts and pacts was important in the Roman law. The former were such conventions as already, by the older civil law, founded an obligation and action; all the other conventions were termed 'pacts.' These generally did not produce an actionable obligation. Actionability was subsequently given to several pacts, whereby they received the same power and efficacy that contracts received." Mackeld. Rom. Law, § 395.

In English law. An extraordinary assembly of the houses of lords and commons, without the assent or summons of the sovereign. It can only be justified *ex necessitate rei*, as the parliament which restored Charles II., and that which disposed of the crown and kingdom to William and Mary. Wharton.

Also the name of an old writ that lay for the breach of a covenant.

In legislation. An assembly of delegates or representatives chosen by the people for special and extraordinary legislative purposes, such as the framing or revision of a state constitution. Also an assembly of delegates chosen by a political party, or by the party organization in a larger or smaller ter-

ritory, to nominate candidates for an approaching election.

CONVENTIONAL. Depending on, or arising from, the mutual agreement of parties; as distinguished from *legal*, which means created by, or arising from, the act of the law.

CONVENTIONAL ESTATES. Those freeholds not of inheritance or estates for life, which are created by the express acts of the parties, in contradistinction to those which are legal and arise from the operation of law.

CONVENTIONAL MORTGAGE. The conventional mortgage is a contract by which a person binds the whole of his property, or a portion of it only, in favor of another, to secure the execution of some engagement, but without divesting himself of possession. Civil Code La. art. 3290.

CONVENTIONE. The name of a writ for the breach of any covenant in writing, whether real or personal. Reg. Orig. 115; Fitzh. Nat. Brev. 145.

CONVENTIONS. This name is sometimes given to compacts or treaties with foreign countries as to the apprehension and extradition of fugitive offenders. See **EXTRADITION**.

CONVENTUAL CHURCH. In ecclesiastical law. That which consists of regular clerks, professing some order or religion; or of dean and chapter; or other societies of spiritual men.

CONVENTUALS. Religious men united in a convent or religious house. Cowell.

CONVENTUS. A coming together; a convention or assembly. *Conventus magnatum vel procerum* (the assembly of chief men or peers) was one of the names of the English parliament. 1 Bl. Comm. 148.

In the civil law. The term meant a gathering together of people; a crowd assembled for any purpose; also a convention, pact, or bargain.

CONVENTUS JURIDICUS. In the Roman law. A court of sessions held in the Roman provinces, by the president of the province, assisted by a certain number of counsellors and assessors, at fixed periods, to hear and determine suits, and to provide for the civil administration of the province. Schm. Civil Law, Introd. 17.

CONVERSANT. One who is in the habit of being in a particular place is said to

be conversant there. Barnes, 162. Acquainted; familiar.

CONVERSANTES. In old English law. Conversant or dwelling; commorant.

CONVERSE. The transposition of the subject and predicate in a proposition, as: "Everything is good in its place." *Converse*, "Nothing is good which is not in its place." Wharton.

CONVERSION. In equity. The transformation of one species of property into another, as money into land or land into money; or, more particularly, a fiction of law, by which equity assumes that such a transformation has taken place (contrary to the fact) when it is rendered necessary by the equities of the case,—as to carry into effect the directions of a will or settlement,—and by which the property so dealt with becomes invested with the properties and attributes of that into which it is supposed to have been converted.

At law. An unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of their condition or the exclusion of the owner's rights. 44 Me. 197; 36 N. H. 311; 45 Wis. 262.

Conversion is defined to be an unauthorized assumption and exercise of the right of ownership over goods belonging to another to the exclusion of the owner's rights. A *constructive* conversion takes place when a person does such acts in reference to the goods of another as amount in law to appropriation of the property to himself. Every unauthorized taking of personal property, and all intermeddling with it, beyond the extent of the authority conferred, in case a limited authority has been given, with intent so to apply and dispose of it as to alter its condition or interfere with the owner's dominion, is a conversion. 63 N. Y. 624.

"Conversion" and "carrying away" are not synonymous nor convertible terms. There may be a conversion without any carrying away. 26 Ala. 101.

CONVEY. To pass or transmit the title to property from one to another; to transfer property or the title to property by deed or instrument under seal.

To convey real estate is, by an appropriate instrument, to transfer the legal title to it from the present owner to another. 29 Conn. 356.

Convey relates properly to the disposition of real property, not to personal. 21 Barb. 551, 561.

CONVEYANCE. In pleading. Introduction or inducement.

In real property law. The transfer of the title of land from one person or class of

persons to another. 21 Barb. 551; 29 Conn. 356.

An instrument in writing under seal, (anciently termed an "assurance,") by which some estate or interest in lands is transferred from one person to another; such as a deed, mortgage, etc. 2 Bl. Comm. 293, 295, 309.

Conveyance includes every instrument in writing by which any estate or interest in real estate is created, aliened, mortgaged, or assigned, or by which the title to any real estate may be affected in law or equity, except last wills and testaments, leases for a term not exceeding three years, and executory contracts for the sale or purchase of lands. 1 Rev. St. N. Y. p. 762, § 38; Gen. St. Minn. 1878, c. 40, § 26; How. St. Mich. 1882, § 5689.

The term "conveyance," as used in the California Code, embraces every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged, or incumbered, or by which the title to any real property may be affected, except wills. Civil Code Cal. § 1215.

CONVEYANCE OF VESSELS. The transfer of the title to vessels.

CONVEYANCER. One whose business it is to draw deeds, bonds, mortgages, wills, writs, or other legal papers, or to examine titles to real estate. 14 St. at Large, 118.

He who draws conveyances; especially a barrister who confines himself to drawing conveyances, and other chamber practice. Mozley & Whitley.

CONVEYANCING. A term including both the science and act of transferring titles to real estate from one man to another.

Conveyancing is that part of the lawyer's business which relates to the alienation and transmission of property and other rights from one person to another, and to the framing of legal documents intended to create, define, transfer, or extinguish rights. It therefore includes the investigation of the title to land, and the preparation of agreements, wills, articles of association, private statutes operating as conveyances, and many other instruments in addition to conveyances properly so called. Sweet.

CONVEYANCING COUNSEL TO THE COURT OF CHANCERY. Certain counsel, not less than six in number, appointed by the lord chancellor, for the purpose of assisting the court of chancery, or any judge thereof, with their opinion in matters of title and conveyancing. Mozley & Whitley.

Convicia si irascaris tua divulgata; sprete exolescunt. 3 Inst. 198. If you be moved to anger by insults, you publish them; if despised, they are forgotten.

CONVICIUM. In the civil law. The name of a species of slander or injury uttered in public, and which charged some one with some act *contra bonos mores*.

CONVICT, v. To condemn after judicial investigation; to find a man guilty of a criminal charge. The word was formerly used also in the sense of finding against the defendant in a civil case.

CONVICT, n. One who has been condemned by a court. One who has been adjudged guilty of a crime or misdemeanor. Usually spoken of condemned felons or the prisoners in penitentiaries.

Formerly a man was said to be convict when he had been found guilty of treason or felony, but before judgment had been passed on him, after which he was said to be at-taint, (*q. v.*) Co. Litt. 390b.

CONVICTED. This term has a definite signification in law, and means that a judgment of final condemnation has been pronounced against the accused. 10 Tex. App. 469.

CONVICTION. In practice. In a general sense, the result of a criminal trial which ends in a judgment or sentence that the prisoner is guilty as charged.

Finding a person guilty by verdict of a jury. 1 Bish. Crim. Law, § 223.

A record of the summary proceedings upon any penal statute before one or more justices of the peace or other persons duly authorized, in a case where the offender has been *convicted* and sentenced. Holthouse.

Summary conviction is one which takes place before an authorized magistrate without the intervention of a jury.

In ordinary phrase, the meaning of the word "conviction" is the finding by the jury of a verdict that the accused is guilty. But, in legal parlance, it often denotes the final judgment of the court. 69 N. Y. 109.

The ordinary legal meaning of "conviction," when used to designate a particular stage of a criminal prosecution triable by a jury, is the confession of the accused in open court, or the verdict returned against him by the jury, which ascertains and publishes the fact of his guilt; while "judgment" or "sentence" is the appropriate word to denote the action of the court before which the trial is had, declaring the consequences to the convict of the fact thus ascertained. A pardon granted after verdict of guilty, but before sentence, and pending a hearing

upon exceptions taken by the accused during the trial, is granted after conviction, within the meaning of a constitutional restriction upon granting pardon before conviction. When, indeed, the word "conviction" is used to describe the effect of the guilt of the accused as judicially proved in one case, when pleaded or given in evidence in another, it is sometimes used in a more comprehensive sense, including the judgment of the court upon the verdict or confession of guilt; as, for instance, in speaking of the plea of *autrefois convict*, or of the effect of guilt, judicially ascertained, as a disqualification of the convict. 109 Mass. 323. See 17 Pick. 380.

CONVIVIUM. A tenure by which a tenant was bound to provide meat and drink for his lord at least once in the year. Cowell.

CONVOCATION. In ecclesiastical law. The general assembly of the clergy to consult upon ecclesiastical matters.

CONVOY. A naval force, under the command of an officer appointed by government, for the protection of merchant-ships and others, during the whole voyage, or such part of it as is known to require such protection. Marsh. Ins. b. 1, c. 9, § 5; Park, Ins. 388; Peake, Add. Cas. 143n; 2 H. Bl. 551.

CO-OBLIGOR. A joint obligor; one bound jointly with another or others in a bond or obligation.

COOL BLOOD. In the law of homicide. Calmness or tranquillity; the undisturbed possession of one's faculties and reason; the absence of violent passion, fury, or uncontrollable excitement.

COOLING TIME. Time for the mind to become so calm and sedate as that it is supposed to contemplate, comprehend, and coolly act with reference to the consequences likely to ensue. 10 Tex. App. 447.

CO-OPERATION. The combined action of numbers. It is of two distinct kinds: (1) Such co-operation as takes place when several persons help each other in the same employment; (2) such co-operation as takes place when several persons help each other in different employments. These may be termed "simple co-operation" and "complex co-operation." Mill, Pol. Ec. 142.

COOPERTIO. In old English law. The head or branches of a tree cut down; though *coopertio arborum* is rather the bark of timber trees felled, and the chumps and broken wood. Cowell.

COOPERTUM. In forest law. A covert; a thicket (*dumetum*) or shelter for wild beasts in a forest. Spelman.

COOPERTURA. In forest law. A thicket, or covert of wood.

COOPERTUS. Covert; covered.

CO-OPTATION. A concurring choice; the election, by the members of a close corporation, of a person to fill a vacancy.

CO-ORDINATE and **SUBORDINATE** are terms often applied as a test to ascertain the doubtful meaning of clauses in an act of parliament. If there be two, one of which is grammatically governed by the other, it is said to be "subordinate" to it; but, if both are equally governed by some third clause, the two are called "co-ordinate." Wharton.

COPARCENARY. A species of estate, or tenancy, which exists where lands of inheritance descend from the ancestor to two or more persons. It arises in England either by common law or particular custom. By common law, as where a person, seised in fee-simple or fee-tail, dies, and his next heirs are two or more females, his daughters, sisters, aunts, cousins, or their representatives; in this case they all inherit, and these co-heirs are then called "coparceners," or, for brevity, "parceners" only. Litt. §§ 241, 242; 2 Bl. Comm. 187. By particular custom, as where lands descend, as in gavelkind, to all the males in equal degree, as sons, brothers, uncles, etc. Litt. § 265; 1 Steph. Comm. 319.

While joint tenancies refer to persons, the idea of coparcenary refers to the estate. The title to it is always by descent. The respective shares may be unequal; as, for instance, one daughter and two granddaughters, children of a deceased daughter, may take by the same act of descent. As to strangers, the tenants' seisin is a joint one, but, as between themselves, each is seised of his or her own share, on whose death it goes to the heirs, and not by survivorship. The right of possession of coparceners is in common, and the possession of one is, in general, the possession of the others. 1 Washb. Real Prop. *414.

COPARCENERS. Persons to whom an estate of inheritance descends jointly, and by whom it is held as an entire estate. 2 Bl. Comm. 187.

COPARTICEPS. In old English law. A coparcener.

COPARTNER. One who is a partner with one or more other persons; a member of a partnership.

COPARTNERSHIP. A partnership.

COPARTNERY. In Scotch law. The contract of copartnership. A contract by which the several partners agree concerning the communication of loss or gain, arising from the subject of the contract. Bell.

COPE. A custom or tribute due to the crown or lord of the soil, out of the lead mines in Derbyshire; also a hill, or the roof and covering of a house; a church vestment.

COPEMAN, or COPESMAN. A chapman, (*q. v.*)

COPESMATE. A merchant; a partner in merchandise. **D**

COPIA. Lat. In civil and old English law. Opportunity or means of access.

In old English law. A copy. *Copia libelli*, the copy of a libel. Reg. Orig. 58. **E**

COPIA LIBELLI DELIBERANDA. The name of a writ that lay where a man could not get a copy of a libel at the hands of a spiritual judge, to have the same delivered to him. Reg. Orig. 51. **F**

COPIA VERA. In Scotch practice. A true copy. Words written at the top of copies of instruments. **G**

COPPA. In English law. A crop or cock of grass, hay, or corn, divided into titheable portions, that it may be more fairly and justly tithed. **H**

COPPER AND SCALES. See **MANCIPIATIO**.

COPPICE, or COPSE. A small wood, consisting of underwood, which may be cut at twelve or fifteen years' growth for fuel. **I**

COPULA. The corporal consummation of marriage. *Copula*, (in logic,) the link between subject and predicate contained in the verb. **J**

Copulatio verborum indicat acceptationem in eodem sensu. Coupling of words together shows that they are to be understood in the same sense. 4 Bacon's Works, p. 26; Broom, Max. 588. **K**

COPULATIVE TERM. One which is placed between two or more others to join them together. **L**

COPY. The transcript or double of an original writing; as the copy of a patent, charter, deed, etc. **M**

Exemplifications are copies verified by the

great seal or by the seal of a court. 1 Gilb. Ev. 19.

Examined copies are those which have been compared with the original or with an official record thereof.

Office copies are those made by officers intrusted with the originals and authorized for that purpose.

COPYHOLD. A species of estate at will, or customary estate in England, the only visible title to which consists of the *copies* of the *court rolls*, which are made out by the steward of the manor, on a tenant's being admitted to any parcel of land, or tenement belonging to the manor. It is an estate at the *will* of the lord, yet such a will as is agreeable to the *custom* of the manor, which customs are preserved and evidenced by the *rolls* of the several courts baron, in which they are entered. 2 Bl. Comm. 95. In a larger sense, *copyhold* is said to import every *customary* tenure, (that is, every tenure pending on the particular custom of a manor,) as opposed to free socage, or *freehold*, which may now (since the abolition of knight-service) be considered as the general or common-law tenure of the country. 1 Steph. Comm. 210.

COPYHOLD COMMISSIONERS. Commissioners appointed to carry into effect various acts of parliament, having for their principal objects the compulsory commutation of manorial burdens and restrictions, (fines, heriots, rights to timber and minerals, etc.,) and the compulsory enfranchisement of copyhold lands. 1 Steph. Comm. 643; Elton, Copyh.

COPYHOLDER. A tenant by copyhold tenure, (by copy of court-roll.) 2 Bl. Comm. 95.

COPYRIGHT. The right of literary property as recognized and sanctioned by positive law. A right granted by statute to the author or originator of certain literary or artistic productions, whereby he is invested, for a limited period, with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them.

An incorporeal right, being the exclusive privilege of printing, reprinting, selling, and publishing his own original work, which the law allows an author. Wharton.

Copyright is the exclusive right of the owner of an intellectual production to multiply and dispose of copies; the sole right to the copy, or to copy it. The word is used indifferently to signify the statutory and the common-law right; or one right is sometimes called "copyright" after publication, or statutory copyright; the other copyright before

publication, or common-law copyright. The word is also used synonymously with "literary property;" thus, the exclusive right of the owner publicly to read or exhibit a work is often called "copyright." This is not strictly correct. Drone, Copyr. 100.

International copyright is the right of a subject of one country to protection against the republication in another country of a work which he originally published in his own country. Sweet.

CORAAGIUM, or CORAAGE. Measures of corn. An unusual and extraordinary tribute, arising only on special occasions. They are thus distinguished from services. Mentioned in connection with *hidage* and *carvage*. Cowell.

CORAM. Lat. Before; in presence of. Applied to persons only. Townsh. Pl. 22.

CORAM DOMINO REGE. Before our lord the king. *Coram domino rege ubicumque tunc fuerit Angliæ*, before our lord the king wherever he shall then be in England.

CORAM IPSO REGE. Before the king himself. The old name of the court of king's bench, which was originally held before the king in person. 3 Bl. Comm. 41.

CORAM NOBIS. Before us ourselves, (the king, *i. e.*, in the king's or queen's bench.) Applied to writs of error directed to another branch of the same court, *e. g.*, from the full bench to the court at *nisi prius*. 1 Archb. Pr. K. B. 234.

CORAM NON JUDICE. In presence of a person not a judge. When a suit is brought and determined in a court which has no jurisdiction in the matter, then it is said to be *coram non judice*, and the judgment is void.

CORAM PARIBUS. Before the peers or freeholders. The attestation of deeds, like all other solemn transactions, was originally done only *coram paribus*. 2 Bl. Comm. 307. *Coram paribus de vicineto*, before the peers or freeholders of the neighborhood. Id. 315.

CORAM SECTATORIBUS. Before the suitors. Cro. Jac. 582.

CORAM VOBIS. Before you. A writ of error directed by a court of review to the court which tried the cause, to correct an error in fact. 3 Md. 325; 3 Steph. Comm. 642.

CORD. A measure of wood, containing 128 cubic feet.

CO-RESPONDENT. A person summoned to answer a bill, petition, or libel, together with another respondent. Now chiefly used to designate the person charged with adultery with the respondent in a suit for divorce for that cause, and joined as a defendant with such party.

CORIUM FORISFACERE. To forfeit one's skin, applied to a person condemned to be whipped; anciently the punishment of a servant. *Corium perdere*, the same. *Corium redimere*, to compound for a whipping. Wharton.

CORN. In English law, a general term for any sort of grain; but in America it is properly applied only to maize. In the memorandum clause in policies of insurance it includes pease and beans, but not rice. Park, Ins. 112.

CORN LAWS. A species of protective tariff formerly in existence in England, imposing import-duties on various kinds of grain. The corn laws were abolished in 1846.

CORN RENT. A rent in wheat or malt paid on college leases by direction of St. 18 Eliz. c. 6. 2 Bl. Comm. 609.

CORNAGE. A species of tenure in England, by which the tenant was bound to blow a horn for the sake of alarming the country on the approach of an enemy. It was a species of grand serjeanty. Bac. Abr. "Tenure," N.

CORNER. A combination among the dealers in a specific commodity, or outside capitalists, for the purpose of buying up the greater portion of that commodity which is upon the market or may be brought to market, and holding the same back from sale, until the demand shall so far outrun the limited supply as to advance the price abnormally. 72 Pa. St. 158; 101 Mass. 145.

In surveying. An angle made by two boundary lines; the common end of two boundary lines, which run at an angle with each other.

CORNET. A commissioned officer of cavalry, abolished in England in 1871, and not existing in the United States army.

CORODIO HABENDO. The name of a writ to exact a corody of an abbey or religious house.

CORODIUM. In old English law. A corody.

CORODY. In old English law. A sum of money or allowance of meat, drink, and clothing due to the crown from the abbey or other religious house, whereof it was founder, towards the sustentation of such one of its servants as is thought fit to receive it. It differs from a pension, in that it was allowed towards the maintenance of any of the king's servants in an abbey; a pension being given to one of the king's chaplains, for his better maintenance, till he may be provided with a benefice. Fitzh. Nat. Brev. 250. See 1 Bl. Comm. 283.

COROLLARY. In logic. A collateral or secondary consequence, deduction, or inference. **D**

CORONA. The crown. *Placita corona*; pleas of the crown; criminal actions or proceedings, in which the crown was the prosecutor. **E**

CORONA MALA. In old English law. The clergy who abuse their character were so called. Blount. **F**

CORONARE. In old records. To give the tonsure, which was done on the crown, or in the form of a crown; to make a man a priest. Cowell. **G**

CORONARE FILIUM. To make one's son a priest. *Homo coronatus* was one who had received the first tonsure, as preparatory to superior orders, and the tonsure was in form of a corona, or crown of thorns. Cowell. **H**

CORONATION OATH. The oath administered to a sovereign at the ceremony of crowning or investing him with the insignia of royalty, in acknowledgment of his right to govern the kingdom, in which he swears to observe the laws, customs, and privileges of the kingdom, and to act and do all things conformably thereto. Wharton. **I**

CORONATOR. A coroner, (*q. v.*) Spelman. **J**

CORONATORE ELIGENDO. The name of a writ issued to the sheriff, commanding him to proceed to the election of a coroner. **K**

CORONATORE EXONERANDO. In English law. The name of a writ for the removal of a coroner, for a cause which is to be therein assigned, as that he is engaged in other business, or incapacitated by years or sickness, or has not a sufficient estate in the county, or lives in an inconvenient part of it. **L**
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CORONER. The name of an ancient officer of the common law, whose office and functions are continued in modern English and American administration. The coroner is an officer belonging to each county, and is charged with duties both judicial and ministerial, but chiefly the former. It is his special province and duty to make inquiry into the causes and circumstances of any death happening within his territory which occurs through violence or suddenly and with marks of suspicion. This examination (called the "coroner's inquest") is held with a jury of proper persons upon view of the dead body. See Bract. fol. 121; 1 Bl. Comm. 346-348; 3 Steph. Comm. 33. In England, another branch of his judicial office is to inquire concerning shipwrecks, and certify whether wreck or not, and who is in possession of the goods; and also to inquire concerning treasure trove, who were the finders, and where it is, and whether any one be suspected of having found and concealed a treasure. 1 Bl. Comm. 349. It belongs to the ministerial office of the coroner to serve writs and other process, and generally to discharge the duties of the sheriff, in case of the incapacity of that officer or a vacancy in his office.

CORONER'S COURT. In England. A tribunal of record, where a coroner holds his inquiries.

CORPORAL. Relating to the body; bodily. Should be distinguished from corporeal, (*q. v.*)

A non-commissioned officer of the lowest grade in a company of soldiers in the army.

CORPORAL OATH. An oath, the external solemnity of which consists in laying one's hand upon the Gospels while the oath is administered to him. More generally, a solemn oath.

The terms "corporal oath" and "solemn oath" are, in Indiana, at least, used synonymously; and an oath taken with the uplifted hand may be properly described by either term. 1 Ind. 184.

CORPORAL TOUCH. Bodily touch; actual physical contact; manual apprehension.

CORPORALE SACRAMENTUM. In old English law. A corporal oath.

Corporalis injuria non recipit æstimationem de futuro. A personal injury does not receive satisfaction from a future course of proceeding, [is not left for its satisfaction to a future course of proceeding.] Bac. Max. reg. 6; Broom, Max. 278.

CORPORATE. Belonging to a corporation; as a corporate name. Incorporated; as a corporate body.

CORPORATE NAME. When a corporation is erected, a name is always given to it, or, supposing none to be actually given, will attach to it by implication, and by that name alone it must sue and be sued, and do all legal acts, though a very minute variation therein is not material, and the name is capable of being changed (by competent authority) without affecting the identity or capacity of the corporation. Wharton.

CORPORATION. A franchise possessed by one or more individuals, who subsist as a body politic, under a special denomination, and are vested by the policy of the law with the capacity of perpetual succession, and of acting in several respects, however numerous the association may be, as a single individual. 2 Kent, Comm. 267.

An artificial person or being, endowed by law with the capacity of perpetual succession; consisting either of a single individual, (termed a "corporation sole,") or of a collection of several individuals, (which is termed a "corporation aggregate.") 3 Steph. Comm. 166; 1 Bl. Comm. 467, 469.

A corporation is an intellectual body, created by law, composed of individuals united under a common name, the members of which succeed each other, so that the body continues always the same, notwithstanding the change of the individuals who compose it, and which, for certain purposes, is considered a natural person. Civil Code La. art. 427.

A corporation is an artificial person created by law for specific purposes, the limit of whose existence, powers, and liabilities is fixed by the act of incorporation, usually called its "charter." Code Ga. 1882, § 1670.

Classification. According to the accepted classification of corporations, they are first divided into public and private.

A *public* corporation is one having for its object the administration of a portion of the powers of government delegated to it for that purpose; such are municipal corporations. All others are private. Code Ga. 1882, § 1672.

Corporations are either public or private. Public corporations are formed or organized for the government of a portion of the state; all other corporations are private. Civil Code Cal. § 284.

Public corporations are generally esteemed such as exist for political purposes only, such as towns, cities, parishes, and counties; and in many respects they are so, although they involve some private interest; but, strictly speaking, public cor-

porations are such only as are founded by the government for public purposes, where the whole interests belong also to the government. If, therefore, the foundation be private, though under the charter of the government, the corporation is private, however extensive the uses may be to which it is devoted, either by the bounty of the founder or the nature and objects of the institution. The uses may, in a certain sense, be called "public," but the corporations are private, as much so, indeed, as if the franchises were vested in a single person. 4 Wheat. 518, 562; 1 Wall. Jr. 275.

All *private* corporations are divided into *ecclesiastical* and *lay*; the former are such as are composed of religious persons organized for spiritual purposes, or for administering property held for religious uses; the latter are such as exist for secular or business purposes.

Lay corporations are classified as *eleemosynary* or *civil*; the former are such as are created for the distribution of charities or for purposes falling under the head of "charitable" in its widest sense, *e. g.*, hospitals, asylums, colleges; the latter are organized for the facilitating of business transactions and the profit of the members.

Corporations are also classed as *aggregate* or *sole*; as to this division, see CORPORATION AGGREGATE; CORPORATION SOLE.

CORPORATION ACT. In English law. The statute 13 Car. II. St. 2, c. 1; by which it was provided that no person should thereafter be elected to office in any corporate town that should not, within one year previously, have taken the sacrament of the Lord's Supper, according to the rites of the Church of England; and every person so elected was also required to take the oaths of allegiance and supremacy. 3 Steph. Comm. 103, 104; 4 Bl. Comm. 58. This statute is now repealed. 4 Steph. Comm. 511.

CORPORATION AGGREGATE. A collection of several individuals united into one body, under a special denomination, and having perpetual succession under an artificial form, and vested by the policy of the law with the capacity of acting in several respects as an individual. Shelf. Mortm. 22; 1 Kyd, Corp. 13; 2 Kent, Com. 267.

An aggregate corporation, at common law, is a collection of individuals, united into one collective body, under a special name, and possessing certain immunities, privileges, and capacities, in its collective character, which do not belong to the natural persons composing it. It is an artificial person, existing in contemplation of law, and endowed with certain powers and franchises, which, though they must be exercised through the medium of its natural members, are yet considered as subsisting in the corporation itself, as distinctly as if it were a real personage. 4 Wheat. 518, 561.

CORPORATION COURTS. Certain courts in Virginia described as follows: "For each city of the state, there shall be a court called a 'corporation court,' to be held by a judge, with like qualifications and elected in the same manner as judges of the county court." Code Va. 1887, § 3050.

CORPORATION SOLE. A corporation consisting of one person only, and his successors in some particular station, who are incorporated by law in order to give them some legal capacities and advantages, particularly that of perpetuity, which in their natural persons they could not have had. In this sense, the sovereign in England is a sole corporation, so is a bishop, so are some deans distinct from their several chapters, and so is every parson and vicar. 3 Steph. Comm. 168, 169; 2 Kent, Comm. 273.

A corporation sole consists of a single person, who is made a body corporate and politic, in order to give him some legal capacities and advantages, and especially that of perpetuity; as a bishop, dean, etc. 7 Abb. Pr. 134; 22 Pick. 122.

CORPORATOR. A member of a corporation aggregate. Grant, Corp. 48.

CORPORE ET ANIMO. Lat. By the body and by the mind; by the physical act and by the mental intent. Dig. 41, 2, 3.

CORPOREAL. A term descriptive of such things as have an objective, material existence; perceptible by the senses of sight and touch; possessing a real body. Opposed to incorporeal and spiritual.

There is a distinction between "corporeal" and "corporal." The former term means "possessing a body," that is, tangible, physical, material; the latter means "relating to or affecting a body," that is, bodily, external. Corporeal denotes the nature or physical existence of a body; corporal denotes its exterior or the co-ordination of it with some other body. Hence we speak of "corporeal hereditaments," but of "corporal punishment," "corporal touch," "corporal oath," etc.

CORPOREAL HEREDITAMENTS. Substantial permanent objects which may be inherited. The term "land" will include all such. 2 Bl. Comm. 17.

CORPOREAL PROPERTY. Such as affects the senses, and may be seen and handled by the body, as opposed to incorporeal property, which cannot be seen or handled, and exists only in contemplation. Thus a house is corporeal, but the annual rent payable for its occupation is incorporeal. Corporeal property is, if movable, capable of manual transfer; if immovable, possession of it may be delivered up. But incorporeal

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property cannot be so transferred, but some other means must be adopted for its transfer, of which the most usual is an instrument in writing. Mozley & Whitley.

CORPS DIPLOMATIQUE. In international law. Ambassadors and diplomatic persons at any court or capital.

CORPSE. The dead body of a human being.

CORPUS. (Lat.) Body; the body; an aggregate or mass, (of men, laws, or articles;) physical substance, as distinguished from intellectual conception; the principal sum or capital, as distinguished from interest or income.

A substantial or positive fact, as distinguished from what is equivocal and ambiguous. The *corpus delicti* (body of an offense) is the fact of its having been actually committed. Best, Pres. 269-279.

A corporeal act of any kind, (as distinguished from *animus* or mere intention,) on the part of him who wishes to acquire a thing, whereby he obtains the physical ability to exercise his power over it whenever he pleases. The word occurs frequently in this sense in the civil law. Mackeld. Rom. Law, § 248.

CORPUS CHRISTI DAY. In English law. A feast instituted in 1264, in honor of the sacrament. 32 Hen. VIII. c. 21.

CORPUS COMITATUS. The body of a county. The whole county, as distinguished from a part of it, or any particular place in it. 5 Mason, 290.

CORPUS CORPORATUM. A corporation; a corporate body, other than municipal.

CORPUS CUM CAUSA. (The body with the cause.) An English writ which issued out of chancery, to remove both the *body* and the record, touching the *cause* of any man lying in execution upon a judgment for debt, into the king's bench, there to remain until he satisfied the judgment. Cowell; Blount.

CORPUS DELICTI. The body of a crime. The body (material substance) upon which a crime has been committed, *e. g.*, the corpse of a murdered man, the charred remains of a house burned down. In a derivative sense, the substance or foundation of a crime; the substantial fact that a crime has been committed.

Corpus humanum non recipit æstimationem. The human body does not admit of valuation. Hob. 59.

CORPUS JURIS. A body of law. A term used to signify a book comprehending several collections of law. There are two principal collections to which this name is given; the *Corpus Juris Civilis*, and the *Corpus Juris Canonici*, (*q. v.*)

CORPUS JURIS CANONICI. The body of the canon law. A compilation of the canon law, comprising the decrees and canons of the Roman Church, constituting the body of ecclesiastical law of that church.

CORPUS JURIS CIVILIS. The body of the civil law. The system of Roman jurisprudence compiled and codified under the direction of the emperor Justinian, in A. D. 528-534. This collection comprises the Institutes, Digest, (or Pandects,) Code, and Novels. The name is said to have been first applied to this collection early in the seventeenth century.

CORPUS PRO CORPORE. Lat. In old records. Body for body. A phrase expressing the liability of manucaptors. 3 How. State Tr. 110.

CORRECTION. Discipline; chastisement administered by a master or other person in authority to one who has committed an offense, for the purpose of curing his faults or bringing him into proper subjection.

CORRECTION, HOUSE OF. A prison for the reformation of petty or juvenile offenders.

CORRECTOR OF THE STAPLE. In old English law. A clerk belonging to the staple, to write and record the bargains of merchants there made.

CORREGIDOR. In Spanish law. A magistrate who took cognizance of various misdemeanors, and of civil matters. 2 White, New Recop. 53.

CORREI. Lat. In the civil law. Co-stipulators; joint stipulators.

CORREI CREDENDI. Lat. In the civil and Scotch law. Joint creditors; creditors *in solido*. Poth. Obl. pt. 2, c. 4, art. 3, § 11.

CORREI DEBENDI. Lat. In Scotch law. Two or more persons bound as principal debtors to another. Ersk. Inst. 3, 3, 74.

CORRELATIVE. Having a mutual or reciprocal relation, in such sense that the existence of one necessarily implies the ex-

istence of the other. *Father* and *son* are correlative terms. *Right* and *duty* are correlative terms.

CORRESPONDENCE. Interchange of written communications. The letters written by a person and the answers written by the one to whom they are addressed.

CORROBORATE. To strengthen; to add weight or credibility to a thing by additional and confirming facts or evidence.

The expression "corroborating circumstances" clearly does not mean facts which, independent of a confession, will warrant a conviction; for then the verdict would stand not on the confession, but upon those independent circumstances. To corroborate is to strengthen, to confirm by additional security, to add strength. The testimony of a witness is said to be corroborated when it is shown to correspond with the representation of some other witness, or to comport with some facts otherwise known or established. Corroborating circumstances, then, used in reference to a confession, are such as serve to strengthen it, to render it more probable; such, in short, as may serve to impress a jury with a belief in its truth. 10 N. J. Law, 163.

Corruptio optimi est pessima. Corruption of the best is worst.

CORRUPTION. Illegality; a vicious and fraudulent intention to evade the prohibitions of the law.

The act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.

CORRUPTION OF BLOOD. In English law. This was the consequence of *attainder*. It meant that the attainted person could neither inherit lands or other hereditaments from his ancestor, nor retain those he already had, nor transmit them by descent to any heir, because his blood was considered in law to be corrupted. This was abolished by St. 3 & 4 Wm. IV. c. 106, and 33 & 34 Vict. c. 23; and is unknown in America. Const. U. S. art. 3, § 3.

CORSELET. Ancient armor which covered the body.

CORSE-PRESENT. A mortuary, thus termed because, when a mortuary became due on the death of a man, the best or second-best beast was, according to custom, offered or presented to the priest, and carried with the corpse. In Wales a corse-present was due upon the death of a clergyman to the bishop of the diocese, till abolished by 12 Anne St. 2, c. 6. 2 Bl. Comm. 426.

CORSNED. In Saxon law. The morsel of execration. A species of ordeal in use among the Saxons, performed by eating a piece of bread over which the priest had pronounced a certain imprecation. If the accused ate it freely, he was pronounced innocent; but, if it stuck in his throat, it was considered as a proof of his guilt. Crabb, Eng. Law, 30; 1 Reeve, Eng. Law, 21; 4 Bl. Comm. 345.

CORTES. The name of the legislative assemblies, the parliament or congress, of Spain and Portugal.

CORTEX. The bark of a tree; the outer covering of anything. **D**

CORTIS. A court or yard before a house. Blount.

CORTULARIUM, or CORTARIUM. In old records. A yard adjoining a country farm. **E**

CORVEE. In French law. Gratuitous labor exacted from the villages or communities, especially for repairing roads, constructing bridges, etc. **F**

COSA JUZGADA. In Spanish law. A cause or matter adjudged, (*res judicata*.) White, New Recop. b. 3, tit. 8, note. **G**

COSDUNA. In feudal law. A custom or tribute.

COSEN, COZEN. In old English law. To cheat. "A cosening knave." 3 Leon. 171. **H**

COSENAGE. In old English law. Kindred; cousinship. Also a writ that lay for the heir where the *tresail*, *i. e.*, the father of the *besail*, or great-grandfather, was seised of lands in fee at his death, and a stranger entered upon the land and abated. Fitzh. Nat. Brev. 221. **I**

COSENING. In old English law. An offense, mentioned in the old books, where anything was done deceitfully, whether belonging to contracts or not, which could not be properly termed by any special name. The same as the *stellionatus* of the civil law. Cowell. **J**

COSHERING. In old English law. A feudal prerogative or custom for lords to lie and feast themselves at their tenants' houses. Cowell. **K**

COSMUS. Clean. Blount. **L**

COSS. A term used by Europeans in India to denote a road-measure of about two **M**

miles, but differing in different parts. Wharton.

COST. The cost of an article purchased for exportation is the price paid, with all incidental charges paid at the place of exportation. 2 Wash. C. C. 493. Cost price is that actually paid for goods. 18 N. Y. 337.

COST-BOOK. A book in which a number of adventurers who have obtained permission to work a lode, and have agreed to share the enterprise in certain proportions, enter the agreement, and from time to time the receipts and expenditures of the mine, the names of the shareholders, their respective accounts with the mine, and transfers of shares. These associations are called "Cost-Book Mining Companies," and are governed by the general law of partnership. Lindl. Partn. *147.

CO-STIPULATOR. A joint promisor.

COSTS. A pecuniary allowance, made to the successful party, (and recoverable from the losing party,) for his expenses in prosecuting or defending a suit or a distinct proceeding within a suit.

Costs and fees were originally altogether different in their nature. The one is an allowance to a party for expenses incurred in prosecuting or defending a suit; the other, a compensation to an officer for services rendered in the progress of a cause. Therefore, while an executor or administrator was not personally liable to his adversary for costs, yet, if at his instance an officer performed services for him, he had a personal demand for his fees. 11 Serg. & R. 247. There is in our statute a manifest difference between costs and fees in another respect. Costs are an allowance to a party for the expenses incurred in prosecuting or defending a suit,—an incident to the judgment; while fees are compensation to public officers for services rendered individuals not in the course of litigation. 58 Ala. 579.

In England, the term is also used to designate the charges which an attorney or solicitor is entitled to make and recover from his client, as his remuneration for professional services, such as legal advice, attendances, drafting and copying documents, conducting legal proceedings, etc.

COSTS DE INCREMENTO. Increased costs, costs of increase. Costs adjudged by the court in addition to those assessed by the jury. 13 How. 372.

Those extra expenses incurred which do not appear on the face of the proceedings, such as witnesses' expenses, fees to counsel, attendances, court fees, etc. Wharton.

COSTS OF THE DAY. Costs which are incurred in preparing for the trial of a

cause on a specified *day*, consisting of witnesses' fees, and other fees of attendance. Archb. N. Prac. 281.

COSTUMBRE. In Spanish law. Custom; an unwritten law established by usage, during a long space of time. Las Partidas, pt. 1, tit. 2, l. 4.

CO-SURETIES. Joint sureties; two or more sureties to the same obligation.

COTA. A cot or hut. Blount.

COTAGIUM. In old English law. A cottage.

COTARIUS. In old English law. A cottager, who held in free socage, and paid a stated fine or rent in provisions or money, with some occasional personal services.

COTERELLI. Anciently, a kind of peasantry who were outlaws; robbers. Blount.

COTERELLUS. In feudal law. A servile tenant, who held in mere villenage; his person, issue, and goods were disposable at the lord's pleasure.

COTERIE. A fashionable association, or a knot of persons forming a particular circle. The origin of the term was purely commercial, signifying an association, in which each member furnished his part, and bore his share in the profit and loss. Wharton.

COTESWOLD. In old records. A place where there is no wood.

COTLAND. In old English law. Land held by a cottager, whether in socage or villenage. Cowell.

COTSETHLA. In old English law. The little seat or mansion belonging to a small farm.

COTSETHLAND. The seat of a cottage with the land belonging to it. Spelman.

COTSETUS. A cottager or cottage-holder who held by servile tenure and was bound to do the work of the lord. Cowell.

COTTAGE. In English law. A small dwelling-house that has no land belonging to it. Shep. Touch. 94; 1 Strange, 405; 2 Ld. Raym. 1015; 15 Ad. & El. (N. S.) 244.

COTTIER TENANCY. A species of tenancy in Ireland, constituted by an agreement in writing, and subject to the following terms: That the tenement consist of a dwelling-house with not more than half an acre of land; at a rental not exceeding £5 a

year; the tenancy to be for not more than a month at a time; the landlord to keep the house in good repair. Landlord and Tenant Act, Ireland, (23 & 24 Vict. c. 154, § 81.)

COTUCA. Coat armor.

COTUCHANS. A term used in Domesday for peasants, boors, husbandmen.

COUCHANT. Lying down; squatting. *Couchant and levant* (lying down and rising up) is a term applied to animals trespassing on the land of one other than their owner, for one night or longer. 3 Bl. Comm. 9.

COUCHER, or COURCHER. A factor who continues abroad for traffic, (37 Edw. III. c. 16;) also the general book wherein any corporation, etc., register their acts, (3 & 4 Edw. VI. c. 10.)

COUNCIL. An assembly of persons for the purpose of concerting measures of state or municipal policy; hence called "councillors."

In **American law.** The legislative body in the government of cities or boroughs. An advisory body selected to aid the executive.

COUNCIL OF CONCILIATION. By the Act 30 & 31 Vict. c. 105, power is given for the crown to grant licenses for the formation of councils of conciliation and arbitration, consisting of a certain number of masters and workmen in any trade or employment, having power to hear and determine all questions between masters and workmen which may be submitted to them by both parties, arising out of or with respect to the particular trade or manufacture, and incapable of being otherwise settled. They have power to apply to a justice to enforce the performance of their award. The members are elected by persons engaged in the trade. Davis, Bldg. Soc. 232; Sweet.

COUNCIL OF JUDGES. Under the English judicature act, 1873, § 75, an annual council of the judges of the supreme court is to be held, for the purpose of considering the operation of the new practice, offices, etc., introduced by the act, and of reporting to a secretary of state as to any alterations which they consider should be made in the law for the administration of justice. An extraordinary council may also be convened at any time by the lord chancellor. Sweet.

COUNCIL OF THE NORTH. A court instituted by Henry VIII., in 1537, to administer justice in Yorkshire and the four other northern counties. Under the presi-

dency of Stratford, the court showed great rigor, bordering, it is alleged, on harshness. It was abolished by 16 Car. I., the same act which abolished the Star Chamber. Brown.

COUNSEL. 1. In practice. An advocate, counsellor, or pleader. 3 Bl. Comm. 26; 1 Kent, Comm. 307. One who assists his client with advice, and pleads for him in open court. See **COUNSELLOR**.

Counsellors who are associated with those regularly retained in a cause, either for the purpose of advising as to the points of law involved, or preparing the case on its legal side, or arguing questions of law to the court, or preparing or conducting the case on its appearance before an appellate tribunal, are said to be "of counsel."

2. Knowledge. A grand jury is sworn to keep secret "the commonwealth's counsel, their fellows', and their own."

3. Advice given by one person to another in regard to a proposed line of conduct, claim, or contention.

COUNSEL'S SIGNATURE. This is required, in some jurisdictions, to be affixed to pleadings, as affording the court a means of judging whether they are interposed in good faith and upon legal grounds.

COUNSELLOR. An advocate or barrister. A member of the legal profession whose special function is to give counsel or advice as to the legal aspects of judicial controversies, or their preparation and management, and to appear in court for the conduct of trials, or the argument of causes, or presentation of motions, or any other legal business that takes him into the presence of the court.

In some of the states, the two words "counsellor" and "attorney" are used interchangeably to designate all lawyers. In others, the latter term alone is used, "counsellor" not being recognized as a technical name. In still others, the two are associated together as the full legal title of any person who has been admitted to practice in the courts; while in a few they denote different grades, it being prescribed that no one can become a counsellor until he has been an attorney for a specified time and has passed a second examination.

In the practice of the United States supreme court, the term denotes an officer who is employed by a party in a cause to conduct the same on its trial on his behalf. He differs from an attorney at law.

In the supreme court of the United States, the two degrees of attorney and counsel were

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at first kept separate, and no person was permitted to practice in both capacities, but the present practice is otherwise. Weeks, Attys. at Law, 54. It is the duty of the counsel to draft or review and correct the special pleadings, to manage the cause on trial, and, during the whole course of the suit, to apply established principles of law to the exigencies of the case. 1 Kent, Comm. 307.

COUNT, v. In pleading. To declare; to recite; to state a case; to narrate the facts constituting a plaintiff's cause of action. In a special sense, to set out the claim or count of the demandant in a real action.

To plead orally; to plead or argue a case in court; to recite or read in court; to recite a count in court.

COUNT, n. In pleading. The different parts of a declaration, each of which, if it stood alone, would constitute a ground for action, are the counts of the declaration. Used also to signify the several parts of an indictment, each charging a distinct offense.

COUNT. (Fr. *comte*; from the Latin *comes*.) An earl.

COUNT AND COUNT-OUT. These words have a technical sense in a count of the house of commons by the speaker.

COUNT-OUT. Forty members form a house of commons; and, though there be ever so many at the beginning of a debate, yet, if during the course of it the house should be deserted by the members, till reduced below the number of forty, any one member may have it adjourned upon its being counted; but a debate may be continued when only one member is left in the house, provided no one choose to move an adjournment. Wharton.

COUNTEE. In old English law. The most eminent dignity of a subject before the Conquest. He was *praefectus* or *praepositus comitatibus*, and had the charge and custody of the county; but this authority is now vested in the sheriff. 9 Coke, 46.

COUNTENANCE. In old English law. Credit; estimation. Wharton.

COUNTER. The name of two prisons formerly standing in London, but now demolished. They were the Poultry Counter and Wood Street Counter.

COUNTER-AFFIDAVIT. An affidavit made and presented in contradiction or opposition to an affidavit which is made the basis or support of a motion or application.

COUNTER-BOND. In old practice. A bond of indemnity. 2 Leon. 90.

COUNTER-CLAIM. A claim presented by a defendant in opposition to or deduction from the claim of the plaintiff. A species of set-off or recoupment introduced by the codes of civil procedure in several of the states, of a broad and liberal character.

A counter-claim must be one "existing in favor of a defendant and against a plaintiff, between whom a several judgment might be had in the action, and arising out of one of the following causes of action: (1) A cause of action arising out of the contract or transaction set forth in the complaint as the foundation of the plaintiff's claim, or connected with the subject of action; (2) in an action arising on contract, any other cause of action arising also on contract, and existing at the commencement of the action." Code Proc. N. Y. § 150.

The term "counter-claim," of itself, imports a claim opposed to, or which qualifies, or at least in some degree affects, the plaintiff's cause of action. 35 Wis. 626.

A counter-claim is an opposition claim, or demand of something due; a demand of something which of right belongs to the defendant, in opposition to the right of the plaintiff. 8 How. Pr. 122.

A counter-claim is that which might have arisen out of, or could have had some connection with, the original transaction, in view of the parties, and which, at the time the contract was made, they could have intended might, in some event, give one party a claim against the other for compliance or non-compliance with its provisions. 7 Ind. 523, 524.

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

COUNTERFEIT. In criminal law. To forge; to copy or imitate, without authority or right, and with a view to deceive or defraud, by passing the copy or thing forged for that which is original or genuine. Most commonly applied to the fraudulent and criminal imitation of money.

COUNTERFEIT COIN. Coin not genuine, but resembling or apparently intended to resemble or pass for genuine coin, including genuine coin prepared or altered so as to resemble or pass for coin of a higher denomination.

COUNTERFEITER. In criminal law. One who unlawfully makes base coin in imitation of the true metal, or forges false currency, or any instrument of writing, bearing a likeness and similitude to that which is

lawful and genuine, with an intention of deceiving and imposing upon mankind. 1 Stew. (Ala.) 384.

COUNTER-FESANCE. The act of forging.

COUNTER-LETTER. A species of instrument of defeasance common in the civil law. It is executed by a party who has taken a deed of property, absolute on its face, but intended as security for a loan of money, and by it he agrees to reconvey the property on payment of a specified sum. The two instruments, taken together, constitute what is known in Louisiana as an "*antichresis*," (*q. v.*)

COUNTERMAND. A change or revocation of orders, authority, or instructions previously issued. It may be either express or implied; the former where the order or instruction already given is explicitly annulled or recalled; the latter where the party's conduct is incompatible with the further continuance of the order or instruction, as where a new order is given inconsistent with the former order.

COUNTER-MARK. A sign put upon goods already marked; also the several marks put upon goods belonging to several persons, to show that they must not be opened, but in the presence of all the owners or their agents.

COUNTERPART. In conveyancing. The corresponding part of an instrument; a duplicate or copy. Where an instrument of conveyance, as a lease, is executed in parts, that is, by having several copies or duplicates made and interchangeably executed, that which is executed by the grantor is usually called the "original," and the rest are "counterparts;" although, where all the parties execute every part, this renders them all originals. 2 Bl. Comm. 296; Shep. Touch. 50. See **DUPLICATE**.

COUNTER-PLEA. In pleading. A plea to some matter incidental to the main object of the suit, and out of the direct line of pleadings.

In the more ancient system of pleading, counter-plea was applied to what was, in effect, a replication to aid prayer, (*q. v.*;) that is, where a tenant for life or other limited interest in land, having an action brought against him in respect to the title to such land, prayed in aid of the lord or reversioner for his better defense, that which the de-

mandant alleged against either request was called a "counter-plea." Cowell.

COUNTER-ROLLS. In English law. The rolls which sheriffs have with the coroners, containing particulars of their proceedings, as well of appeals as of inquests, etc. 3 Edw. I. c. 10.

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

COUNTERSIGN. The signature of a secretary or other subordinate officer to any writing signed by the principal or superior to vouch for the authenticity of it. **D**

COUNTERVAILING EQUITY. A contrary and balancing equity; an equity or right opposed to that which is sought to be enforced or recognized, and which ought not to be sacrificed or subordinated to the latter, because it is of equal strength and justice, and equally deserving of consideration. **E**

COUNTEZ. L. Fr. Count, or reckon. In old practice. A direction formerly given by the clerk of a court to the crier, after a jury was sworn, to *number* them; and which Blackstone says was given in his time, in good English, "count these." 4 Bl. Comm. 340, note (*u.*) **F**

COUNTORS. Advocates, or serjeants at law, whom a man retains to defend his cause and speak for him in court, for their fees. 1 Inst. 17. **H**

COUNTRY. The portion of the earth's surface occupied by an independent nation or people; or the inhabitants of such territory. **I**

In its primary meaning "country" signifies "place;" and, in a larger sense, the territory or dominions occupied by a community; or even waste and unpeopled sections or regions of the earth. But its metaphorical meaning is no less definite and well understood; and in common parlance, in historical and geographical writings, in diplomacy, legislation, treaties, and international codes, the word is employed to denote the population, the nation, the state, or the government, having possession and dominion over a territory. 1 Blatchf. 213, 225; 5 N. Y. Leg. Obs. 286. **J**

In pleading and practice. The inhabitants of a district from which a jury is to be summoned; pais; a jury. 3 Bl. Comm. 349; Steph. Pl. 73, 78, 230. **K**

COUNTY. The name given to the principal subdivisions of the kingdom of England and of most of the states of the American Union, denoting a distinct portion of territory organized by itself for political **L**

and judicial purposes. The etymology of the word shows it to have been the district anciently governed by a *count* or earl. In modern use, the word may denote either the territory marked off to form a county, or the citizens resident within such territory, taken collectively and considered as invested with political rights, or the county regarded as a municipal corporation possessing subordinate governmental powers, or an organized jural society invested with specific rights and duties.

COUNTY BRIDGE. A bridge of the larger class, erected by the county, and which the county is liable to keep in repair. 40 Iowa, 295.

COUNTY COMMISSIONERS. Officers of a county charged with a variety of administrative and executive duties, but principally with the management of the financial affairs of the county, its police regulations, and its corporate business. Sometimes the local laws give them limited judicial powers. In some states they are called "supervisors."

COUNTY CORPORATE. A city or town, with more or less territory annexed, having the privilege to be a county of itself, and not to be comprised in any other county; such as London, York, Bristol, Norwich, and other cities in England. 1 Bl. Comm. 120.

COUNTY COURT. A court of high antiquity in England, incident to the jurisdiction of the sheriff. It is not a court of record, but may hold pleas of debt or damages, under the value of forty shillings. The freeholders of the county (anciently termed the "suitors" of the court) are the real judges in this court, and the sheriff is the ministerial officer. See 3 Bl. Comm. 35, 36; 3 Steph. Comm. 395.

But in modern English law the name is appropriated to a system of tribunals established by the statute 9 & 10 Vict. c. 95, having a limited jurisdiction, principally for the recovery of small debts.

It is also the name of certain tribunals of limited jurisdiction in the county of Middlesex, established under the statute 22 Geo. II. c. 33.

In American law. The name is used in many of the states to designate the ordinary courts of record having jurisdiction for trials at *nisi prius*. Their powers generally comprise ordinary civil jurisdiction, also

the charge and care of persons and estates coming within legal guardianship, a limited criminal jurisdiction, appellate jurisdiction over justices of the peace, etc.

COUNTY PALATINE. A term bestowed upon certain counties in England, the lords of which in former times enjoyed especial privileges. They might pardon treasons, murders, and felonies. All writs and indictments ran in their names, as in other counties in the king's; and all offenses were said to be done against their peace, and not, as in other places, *contra pacem domini regis*. But these privileges have in modern times nearly disappeared.

COUNTY RATE. In English law. An imposition levied on the occupiers of lands, and applied to many miscellaneous purposes, among which the most important are those of defraying the expenses connected with prisons, reimbursing to private parties the costs they have incurred in prosecuting public offenders, and defraying the expenses of the county police. See 15 & 16 Vict. c. 81.

COUNTY-SEAT. A county-seat or county-town is the chief town of a county, where the county buildings and courts are located and the county business transacted.

COUNTYSESSIONS. In England, the court of general quarter sessions of the peace held in every county once in every quarter of a year. Mozley & Whitley.

COUPONS. Interest and dividend certificates; also those parts of a commercial instrument which are to be *cut*, and which are evidence of something connected with the contract mentioned in the instrument. They are generally attached to certificates of loan, where the interest is payable at particular periods, and, when the interest is paid, they are cut off and delivered to the payer. Wharton.

COUR DE CASSATION. The supreme judicial tribunal of France, having appellate jurisdiction only. For an account of its composition and powers, see Jones, French Bar, 22; Guyot, Repert. Univ.

COURIER. An express messenger of haste.

COURSE. A term used in surveying, meaning the direction of a line with reference to a meridian.

COURSE OF THE VOYAGE. By this term is understood the regular and customary

track, if such there be, which a ship takes in going from one port to another, and the shortest way. Marsh. Ins. 185.

COURSE OF TRADE. What is customarily or ordinarily done in the management of trade or business.

COURT. In legislation. A legislative assembly. Parliament is called in the old books a court of the king, nobility, and commons assembled. Finch. Law, b. 4, c. 1, p. 233; Fleta, lib. 2, c. 2.

This meaning of the word has been retained in the titles of some deliberative bodies, such as the general court of Massachusetts, (the legislature.)

In international law. The person and suite of the sovereign; the place where the sovereign sojourns with his regal retinue, wherever that may be. The English government is spoken of in diplomacy as the court of St. James, because the palace of St. James is the official palace.

In practice. An organ of the government, belonging to the judicial department, whose function is the application of the laws to controversies brought before it and the public administration of justice.

The presence of a sufficient number of the members of such a body regularly convened in an authorized place at an appointed time, engaged in the full and regular performance of its functions. 20 Ala. 446; 20 Ark. 77.

A court may be more particularly described as an organized body with defined powers, meeting at certain times and places for the hearing and decision of causes and other matters brought before it, and aided in this, its proper business, by its proper officers, viz., attorneys and counsel to present and manage the business, clerks to record and attest its acts and decisions, and ministerial officers to execute its commands, and secure due order in its proceedings. Burrill.

The place where justice is judicially administered. Co. Litt. 58a; 3 Bl. Comm. 23.

The judge, or the body of judges, presiding over a court.

The words "court" and "judge," or "judges," are frequently used in our statutes as synonymous. When used with reference to orders made by the court or judges, they are to be so understood. 3 Ind. 239.

The term "court" may be construed to mean the judges of the court, or to include the judges and jury, according to the connection and the object of its use. 19 Vt. 478.

Classification. Courts may be classified and divided according to several methods, the following being the more usual:

Courts of record and *courts not of record*; the former being those whose acts and ju-

dicial proceedings are enrolled, or recorded, for a perpetual memory and testimony, and which have power to fine or imprison for contempt. Error lies to their judgments, and they generally possess a seal. Courts not of record are those of inferior dignity, which have no power to fine or imprison, and in which the proceedings are not enrolled or recorded.

Superior and *inferior* courts; the former being courts of general original jurisdiction in the first instance, and which exercise a control or supervision over a system of lower courts, either by appeal, error, or *certiorari*; the latter being courts of small or restricted jurisdiction, and subject to the review or correction of higher courts. Sometimes the former term is used to denote a particular group or system of courts of high powers, and all others are called "inferior courts."

To constitute a court a superior court as to any class of actions, within the common-law meaning of that term, its jurisdiction of such actions must be unconditional, so that the only thing requisite to enable the court to take cognizance of them is the acquisition of jurisdiction of the persons of the parties. 4 Bosw. 547.

An inferior court is a court whose judgments or decrees can be reviewed, on appeal or writ of error, by a higher tribunal, whether that tribunal be the circuit or supreme court. 18 Ala. 521.

Civil and *criminal* courts; the former being such as are established for the adjudication of controversies between subject and subject, or the ascertainment, enforcement, and redress of private rights; the latter, such as are charged with the administration of the criminal laws, and the punishment of wrongs to the public.

Equity courts and *law* courts; the former being such as possess the jurisdiction of a chancellor, apply the rules and principles of chancery law, and follow the procedure in equity; the latter, such as have no equitable powers, but administer justice according to the rules and practice of the common law.

As to the division of courts according to their *jurisdiction*, see JURISDICTION.

COURT-BARON. In English law. A court which, although not one of record, is incident to every manor, and cannot be severed therefrom. It was ordained for the maintenance of the services and duties stipulated for by lords of manors, and for the purpose of determining actions of a personal nature, where the debt or damage was under forty shillings. Wharton.

Customary court-baron is one appertaining entirely to copyholders.

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Freeholders' court-baron is one held before the freeholders who owe suit and service to the manor. It is the court-baron proper.

COURT CHRISTIAN. The ecclesiastical courts in England are often so called, as distinguished from the civil courts. 1 Bl. Comm. 83; 3 Bl. Comm. 64; 3 Steph. Comm. 430.

COURT, CONSISTORY. See **CONSISTORY COURT**.

COURT FOR CONSIDERATION OF CROWN CASES RESERVED. A court established by St. 11 & 12 Vict. c. 78, composed of such of the judges of the superior courts of Westminster as were able to attend, for the consideration of questions of law reserved by any judge in a court of oyer and terminer, gaol delivery, or quarter sessions, before which a prisoner had been found guilty by verdict. Such question is stated in the form of a special case. Mozley & Whiteley; 4 Steph. Comm. 442.

COURT FOR DIVORCE AND MATRIMONIAL CAUSES. This court was established by St. 20 & 21 Vict. c. 85, which transferred to it all jurisdiction then exercisable by any ecclesiastical court in England, in matters matrimonial, and also gave it new powers. The court consisted of the lord chancellor, the three chiefs, and three senior puisne judges of the common-law courts, and the judge ordinary, who together constituted, and still constitute, the "full court." The judge ordinary heard almost all matters in the first instance. By the judicature act, 1873, § 3, the jurisdiction of the court was transferred to the supreme court of judicature. Sweet.

COURT FOR THE CORRECTION OF ERRORS. The style of a court having jurisdiction for review, by appeal or writ of error. The name was formerly used in New York and South Carolina.

COURT FOR THE RELIEF OF INSOLVENT DEBTORS. In English law. A local court which has its sittings in London only, which receives the petitions of insolvent debtors, and decides upon the question of granting a discharge.

COURT FOR THE TRIAL OF IMPEACHMENTS. A tribunal empowered to try any officer of government or other person brought to its bar by the process of impeachment. In England, the house of lords constitutes such a court; in the United States,

the senate; and in the several states, usually, the upper house of the legislative assembly.

COURT-HAND. In old English practice. The peculiar hand in which the records of courts were written from the earliest period down to the reign of George II. Its characteristics were great strength, compactness, and undeviating uniformity; and its use undoubtedly gave to the ancient record its acknowledged superiority over the modern, in the important quality of durability.

The writing of this hand, with its peculiar abbreviations and contractions, constituted, while it was in use, an art of no little importance, being an indispensable part of the profession of "clerkship," as it was called. Two sizes of it were employed, a large and a small hand; the former, called "great court-hand," being used for initial words or clauses, the *placita* of records, etc. Burrill.

COURT-HOUSE. The building occupied for the public sessions of a court, with its various offices. The term may be used of a place temporarily occupied for the sessions of a court, though not the regular court-house. 55 Mo. 181; 71 Ill. 350.

COURT-LANDS. Domains or lands kept in the lord's hands to serve his family.

COURT-LEET. The name of an English court of record held once in the year, and not oftener, within a particular hundred, lordship, or manor, before the steward of the leet; being the king's court granted by charter to the lords of those hundreds or manors. Its office was to view the frankpledges,—that is, the freemen within the liberty; to present by jury crimes happening within the jurisdiction; and to punish trivial misdemeanors. It has now, however, for the most part, fallen into total desuetude; though in some manors a court-leet is still periodically held for the transaction of the administrative business of the manor. Mozley & Whitley.

COURT-MARTIAL. A military court, convened under authority of government and the articles of war, for trying and punishing military offenses committed by soldiers or sailors in the army or navy.

COURT OF ADMIRALTY. A court having jurisdiction of causes arising under the rules of admiralty law. See **ADMIRALTY**.

COURT OF ANCIENT DEMESNE. In English law. A court of peculiar constitution, held by a bailiff appointed by the king, in which alone the tenants of the king's de-

mesne could be impleaded. 2 Burrows, 1046; 1 Spence, Eq. Jur. 100; 2 Bl. Comm. 99; 1 Steph. Comm. 224.

COURT OF APPEAL, HER MAJESTY'S. The chief appellate tribunal of England. It was established by the judicature acts of 1873 and 1875, and is invested with the jurisdiction formerly exercised by the court of appeal in chancery, the exchequer chamber, the judicial committee of the privy council in admiralty and lunacy appeals, and with general appellate jurisdiction from the high court of justice.

COURT OF APPEALS. In American law. An appellate tribunal which, in Kentucky, Maryland, and New York, is the court of last resort. In Delaware and New Jersey, it is known as the "court of errors and appeals;" in Virginia and West Virginia, the "supreme court of appeals." In Texas the court of appeals is inferior to the supreme court.

COURT OF APPEALS IN CASES OF CAPTURE. A court erected by act of congress under the articles of confederation which preceded the adoption of the constitution. It had appellate jurisdiction in prize causes.

COURT OF ARBITRATION OF THE CHAMBER OF COMMERCE. A court of arbitrators, created for the convenience of merchants in the city of New York, by act of the legislature of New York. It decides disputes between members of the chamber of commerce, and between members and outside merchants who voluntarily submit themselves to the jurisdiction of the court.

COURT OF ARCHDEACON. The most inferior of the English ecclesiastical courts, from which an appeal generally lies to that of the bishop. 3 Bl. Comm. 64.

COURT OF ARCHES. See ARCHES COURT.

COURTS OF ASSIZE AND NISI PRIUS. Courts in England composed of two or more commissioners, called "judges of assize," (or of "assize and *nisi prius*,") who are twice in every year sent by the queen's special commission, on circuits all round the kingdom, to try, by a jury of the respective counties, the truth of such matters of fact as are there under dispute in the courts of Westminster Hall. 3 Steph. Comm. 421, 422; 3 Bl. Comm. 57.

COURT OF ATTACHMENTS. The lowest of the three courts held in the forests. It has fallen into total disuse.

COURT OF AUDIENCE. Ecclesiastical courts, in which the primates once exercised in person a considerable part of their jurisdiction. They seem to be now obsolete, or at least to be only used on the rare occurrence of the trial of a bishop. Phillim. Ecc. Law, 1201, 1204.

COURT OF AUGMENTATION. An English court created in the time of Henry VIII., with jurisdiction over the property and revenue of certain religious foundations, which had been made over to the king by act of parliament, and over suits relating to the same.

COURT OF BANKRUPTCY. An English court of record, having original and appellate jurisdiction in matters of bankruptcy, and invested with both legal and equitable powers for that purpose.

COURT OF CHANCERY. A court having the jurisdiction of a chancellor; a court administering equity and proceeding according to the forms and principles of equity. In England, prior to the judicature acts, the style of the court possessing the largest equitable powers and jurisdiction was the "high court of chancery." In some of the United States, the title "court of chancery" is applied to a court possessing general equity powers, distinct from the courts of common law.

The terms "equity" and "chancery," "court of equity" and "court of chancery," are constantly used as synonymous in the United States. It is presumed that this custom arises from the circumstance that the equity jurisdiction which is exercised by the courts of the various states is assimilated to that possessed by the English courts of chancery. Indeed, in some of the states it is made identical therewith by statute, so far as conformable to our institutions. Bouvier.

COURT OF CHIVALRY, or COURT MILITARY, was a court not of record, held before the lord high constable and earl marshal of England. It had jurisdiction, both civil and criminal, in deeds of arms and war, armorial bearings, questions of precedence, etc., and as a court of honor. It has long been disused. 3 Bl. Comm. 103; 3 Steph. Comm. 335, note 1.

COURTS OF CINQUE PORTS. In English law. Courts of limited local jurisdiction formerly held before the mayor and jurats (aldermen) of the Cinque Ports.

COURT OF CLAIMS. One of the courts of the United States, erected by act of congress. It consists of a chief justice and four associates, and holds one annual session. It is located at Washington. Its jurisdiction extends to all claims against the United States arising out of any contract with the government or based on an act of congress or regulation of the executive, and all claims referred to it by either house of congress, as well as to claims for exoneration by a disbursing officer. Its judgments are, in certain cases, reviewable by the United States supreme court. It has no equity powers. Its decisions are reported and published.

COURT OF THE CLERK OF THE MARKET. An English court of inferior jurisdiction held in every fair or market for the punishment of misdemeanors committed therein, and the recognizance of weights and measures.

COURT OF COMMISSIONERS OF SEWERS. The name of certain English courts created by commission under the great seal pursuant to the statute of sewers, (23 Hen. VIII. c. 5.)

COURT OF COMMON PLEAS. The English court of common pleas was one of the four superior courts at Westminster, and existed up to the passing of the judicature acts. It was also styled the "Common Bench." It was one of the courts derived from the breaking up of the *aula regis*, and had exclusive jurisdiction of all real actions and of *communia placita*, or common pleas, *i. e.*, between subject and subject. It was presided over by a chief justice with four puisne judges. Appeals lay anciently to the king's bench, but afterwards to the exchequer chamber. See 3 Bl. Comm. 37, et seq.

In American law. The name sometimes given to a court of original and general jurisdiction for the trial of issues of fact and law according to the principles of the common law.

COURT OF COMMON PLEAS FOR THE CITY AND COUNTY OF NEW YORK. The oldest court in the state of New York. Its jurisdiction is unlimited as respects amount, but restricted to the city and county of New York as respects locality. It has also appellate jurisdiction of cases tried in the marine court and district courts of New York city. Rap. & L.

COURTS OF CONSCIENCE. These were the same as courts of request, (*q. v.*)

COURT OF CONVOCATION. In English ecclesiastical law. A court, or assembly, comprising all the high officials of each province and representatives of the minor clergy. It is in the nature of an ecclesiastical parliament; and, so far as its judicial functions extend, it has jurisdiction of cases of heresy, schism, and other purely ecclesiastical matters. An appeal lies to the queen in council.

COURT OF THE CORONER. In English law. A court of record, to inquire, when any one dies in prison, or comes to a violent or sudden death, by what manner he came to his end. 4 Steph. Comm. 323; 4 Bl. Comm. 274. See CORONER.

COURTS OF THE COUNTIES PALATINE. In English law. A species of private court which formerly appertained to the counties palatine of Lancaster and Durham.

COURT OF COUNTY COMMISSIONERS. There is in each county of Alabama a court of record, styled the "court of county commissioners," composed of the judge of probate, as principal judge, and four commissioners, who are elected at the times prescribed by law, and hold office for four years. Code Ala. 1886, § 819.

COURT OF DELEGATES. A tribunal composed of delegates appointed by royal commission, and formerly the great court of appeal in all ecclesiastical causes. The powers of the court were, by 2 & 3 Wm. IV. c. 92, transferred to the privy council. A commission of review was formerly granted, in extraordinary cases, to revise a sentence of the court of delegates, when that court had apparently been led into material error. Brown.

COURT OF THE DUCHY OF LANCASTER. A court of special jurisdiction, held before the chancellor of the duchy or his deputy, concerning all matters of equity relating to lands holden of the king in right of the duchy of Lancaster. 3 Bl. Comm. 78.

COURT OF EQUITY. A court which has jurisdiction in equity, which administers justice and decides controversies in accordance with the rules, principles, and precedents of equity, and which follows the forms and procedure of chancery; as distinguished from a court having the jurisdiction, rules, principles, and practice of the common law.

COURT OF ERROR. An expression applied especially to the court of exchequer

chamber and the house of lords, as taking cognizance of *error* brought. Mozley & Whitley. It is applied in some of the United States to the court of last resort in the state; and in its most general sense denotes any court having power to review the decisions of lower courts on appeal, error, *certiorari*, or other process.

COURT OF ERRORS AND APPEALS. The court of last resort in the state of New Jersey is so named. Formerly, the same title was given to the highest court of appeal in New York.

COURT OF EXCHEQUER. In English law. A very ancient court of record, set up by William the Conqueror as a part of the *aula regis*, and afterwards one of the four superior courts at Westminster. It was, however, inferior in rank to both the king's bench and the common pleas. It was presided over by a chief baron and four puisne barons. It was originally the king's treasury, and was charged with keeping the king's accounts and collecting the royal revenues. But pleas between subject and subject were anciently heard there, until this was forbidden by the *Articula super Chartas*, (1290,) after which its jurisdiction as a court only extended to revenue cases arising out of the non-payment or withholding of debts to the crown. But the privilege of suing and being sued in this court was extended to the king's accountants, and later, by the use of a convenient fiction to the effect that the plaintiff was the king's debtor or accountant, the court was thrown open to all suitors in personal actions. The exchequer had formerly both an equity side and a common-law side, but its equity jurisdiction was taken away by the statute 5 Vict. c. 5, (1842,) and transferred to the court of chancery. The judicature act (1873) transferred the business and jurisdiction of this court to the "Exchequer Division" of the "High Court of Justice."

In Scotch law. A court which formerly had jurisdiction of matters of revenue, and a limited jurisdiction over cases between the crown and its vassals where no questions of title were involved.

COURT OF EXCHEQUER CHAMBER. The name of a former English court of appeal, intermediate between the superior courts of common law and the house of lords. When sitting as a court of appeal from any one of the three superior courts of common law, it was composed of judges of the other two courts. 3 Bl. Comm. 56, 57;

3 Steph. Comm. 333, 356. By the judicature act (1873) the jurisdiction of this court is transferred to the court of appeal.

COURT OF GENERAL QUARTER SESSIONS OF THE PEACE. In American law. A court of criminal jurisdiction in New Jersey.

In English law. A court of criminal jurisdiction, in England, held in each county once in every quarter of a year, but in the county of Middlesex twice a month. 4 Steph. Comm. 317-320.

COURT OF GENERAL SESSIONS. The name given in some of the states (as New York) to a court of general original jurisdiction in criminal cases. **D**

COURT OF GREAT SESSIONS IN WALES. A court formerly held in Wales; abolished by 11 Geo. IV. and 1 Wm. IV. c. 70, and the Welsh judicature incorporated with that of England. 3 Steph. Comm. 317, note. **E**

COURT OF HUSTINGS. In English law. The county court of London, held before the mayor, recorder, and sheriff, but of which the recorder is, in effect, the sole judge. No actions can be brought in this court that are merely personal. 3 Steph. Comm. 449, note *L*. **G**

In American law. A local court in some parts of the state of Virginia. 6 Grat. 696. **H**

COURT OF INQUIRY. In English law. A court sometimes appointed by the crown to ascertain whether it be proper to resort to extreme measures against a person charged before a court-martial. **I**

In American law. A court constituted by authority of the articles of war, invested with the power to examine into the nature of any transaction, accusation, or imputation against any officer or soldier. The said court shall consist of one or more officers, not exceeding three, and a judge advocate, or other suitable person, as a recorder, to reduce the proceedings and evidence to writing; all of whom shall be sworn to the performance of their duty. Rev. St. § 1342, arts. 115, 116. **J**

COURT OF JUSTICE SEAT. In English law. The principal of the forest courts. **L**

COURT OF JUSTICIARY. A Scotch court of general criminal jurisdiction of all offenses committed in any part of Scotland. **M**

both to try causes and to review decisions of inferior criminal courts. It is composed of five lords of session with the lord president or justice-clerk as president. It also has appellate jurisdiction in civil causes involving small amounts. An appeal lies to the house of lords.

COURT OF KING'S BENCH. In English law. The supreme court of common law in the kingdom, now merged in the high court of justice under the judicature act of 1873, § 16.

COURT OF THE LORD HIGH STEWARD. In English law. A court instituted for the trial, during the recess of parliament, of peers indicted for treason or felony, or for misprision of either. This court is not a permanent body, but is created in modern times, when occasion requires, and for the time being, only; and the lord high steward, so constituted, with such of the temporal lords as may take the proper oath, and act, constitute the court.

COURT OF THE LORD HIGH STEWARD OF THE UNIVERSITIES. In English law. A court constituted for the trial of scholars or privileged persons connected with the university at Oxford or Cambridge who are indicted for treason, felony, or mayhem.

COURT OF MAGISTRATES AND FREEHOLDERS. In American law. The name of a court formerly established in South Carolina for the trial of slaves and free persons of color for criminal offenses.

COURT OF MARSHALSEA. A court which had jurisdiction of all trespasses committed within the verge of the king's court, where one of the parties was of the royal household; and of all debts and contracts, when both parties were of that establishment. It was abolished by 12 & 13 Vict. c. 101, § 13. Mozley & Whitley.

COURT OF NISI PRIUS. In American law. Though this term is frequently used as a general designation of any court exercising general, original jurisdiction in civil cases, (being used interchangeably with "trial-court,") it belonged as a legal title only to a court which formerly existed in the city and county of Philadelphia, and which was presided over by one of the judges of the supreme court of Pennsylvania. This court was abolished by the constitution of 1874. See COURTS OF ASSIZE AND NISI PRIUS.

COURT OF ORDINARY. In some of the United States (*e. g.*, Georgia) this name is given to the probate or surrogate's court, or the court having the usual jurisdiction in respect to the proving of wills and the administration of decedents' estates.

COURT OF ORPHANS. In English law. The court of the lord mayor and aldermen of London, which has the care of those orphans whose parent died in London and was free of the city.

In Pennsylvania (and perhaps some other states) the name "orphans' court" is applied to that species of tribunal which is elsewhere known as the "probate court" or "surrogate's court."

COURT OF OYER AND TERMINER. In English law. A court for the trial of cases of treason and felony. The commissioners of assize and *nisi prius* are judges selected by the queen and appointed and authorized under the great seal, including usually two of the judges at Westminster, and sent out twice a year into most of the counties of England, for the trial (with a jury of the county) of causes then depending at Westminster, both civil and criminal. They sit by virtue of several commissions, each of which, in reality, constitutes them a separate and distinct court. The commission of *oyer and terminer* gives them authority for the trial of treasons and felonies; that of *general gaol delivery* empowers them to try every prisoner then in gaol for whatever offense; so that, altogether, they possess full criminal jurisdiction.

In American law. This name is generally used (sometimes, with additions) as the title, or part of the title, of a state court of criminal jurisdiction, or of the criminal branch of a court of general jurisdiction, being commonly applied to such courts as may try *felonies*, or the higher grades of crime.

COURT OF OYER AND TERMINER AND GENERAL JAIL DELIVERY. In American law. A court of criminal jurisdiction in the state of Pennsylvania.

It is held at the same time with the court of quarter sessions, as a general rule, and by the same judges. See Brightly's *Purd. Dig. Pa.* pp. 26, 382, 1201.

COURT OF OYER AND TERMINER, GENERAL JAIL DELIVERY, AND COURT OF QUARTER SESSIONS OF THE PEACE, IN AND FOR THE CITY AND COUNTY OF PHILA-

DELPHIA. In American law. A court of record of general criminal jurisdiction in and for the city and county of Philadelphia, in the state of Pennsylvania.

COURT OF PALACE AT WESTMINSTER. This court had jurisdiction of personal actions arising within twelve miles of the palace at Whitehall. Abolished by 12 & 13 Vict. c. 101, 3 Steph. Comm. 317, note.

COURT OF PASSAGE. An inferior court, possessing a very ancient jurisdiction over causes of action arising within the borough of Liverpool. It appears to have been also called the "Borough Court of Liverpool." It has the same jurisdiction in admiralty matters as the Lancashire county court. Rosc. Adm. 75.

COURT OF PECULIARS. A spiritual court in England, being a branch of, and annexed to, the Court of Arches. It has a jurisdiction over all those parishes dispersed through the province of Canterbury, in the midst of other dioceses, which are exempt from the ordinary's jurisdiction, and subject to the metropolitan only. All ecclesiastical causes arising within these *peculiar* or exempt jurisdictions are originally cognizable by this court, from which an appeal lies to the Court of Arches. 3 Steph. Comm. 431; 4 Reeve, Eng. Law, 104.

COURT OF PIEPOUDRE. The lowest (and most expeditious) of the courts of justice known to the older law of England. It is supposed to have been so called from the dusty feet of the suitors. It was a court of record incident to every fair and market, was held by the steward, and had jurisdiction to administer justice for all commercial injuries and minor offenses done in that same fair or market, (not a preceding one.) An appeal lay to the courts at Westminster. This court long ago fell into disuse. 3 Bl. Comm. 32.

COURT OF PLEAS. A court of the county palatine of Durham, having a local common-law jurisdiction. It was abolished by the judicature act, which transferred its jurisdiction to the high court. Jud. Act 1373, § 16; 3 Bl. Comm. 79.

COURT OF POLICIES OF ASSURANCE. A court established by statute 43 Eliz. c. 12, to determine in a summary way all causes between merchants, concerning policies of insurance. Crabb, Eng. Law, 503.

COURTS OF PRINCIPALITY OF WALES. A species of private courts of a limited though extensive jurisdiction, which, upon the thorough reduction of that principality and the settling of its polity in the reign of Henry VIII., were erected all over the country. These courts, however, have been abolished by 1 Wm. IV. c. 70; the principality being now divided into two circuits, which the judges visit in the same manner as they do the circuits in England, for the purpose of disposing of those causes which are ready for trial. Brown.

COURT OF PROBATE. In English law. The name of a court established in 1857, under the probate act of that year, (20 & 21 Vict. c. 77,) to be held in London, to which court was transferred the testamentary jurisdiction of the ecclesiastical courts. 2 Steph. Comm. 192. By the judicature acts, this court is merged in the high court of justice.

In American law. A court having jurisdiction over the probate of wills, the grant of administration, and the supervision of the management and settlement of the estates of decedents, including the collection of assets, the allowance of claims, and the distribution of the estate. In some states the probate courts also have jurisdiction of the estates of minors, including the appointment of guardians and the settlement of their accounts, and of the estates of lunatics, habitual drunkards, and spendthrifts. And in some states these courts possess a limited jurisdiction in civil and criminal cases. They are also called "orphans' courts" and "surrogate's courts."

COURT OF QUARTER SESSIONS OF THE PEACE. In American law. A court of criminal jurisdiction in the state of Pennsylvania, having power to try misdemeanors, and exercising certain functions of an administrative nature. There is one such court in each county of the state. Its sessions are, in general, held at the same time and by the same judges as the *court of oyer and terminer and general jail delivery*. See Brightly's Purd. Dig. pp. 26, 383, § 35, p. 1198, § 1.

COURT OF QUEEN'S BENCH. See KING'S BENCH.

COURT OF RECORD. A court where the acts and judicial proceedings are enrolled on parchment or paper for a perpetual memorial and testimony; and which has power

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to fine and imprison for contempt of its authority. 3 Steph. Comm. 383; 3 Bl. Comm. 24.

A court which has jurisdiction to fine and imprison, or one having jurisdiction of civil causes above forty shillings, and proceeding according to the course of the common law. 37 Me. 29.

A judicial organized tribunal having attributes and exercising functions independently of the person of the magistrate designated generally to hold it, and proceeding according to the course of the common law. Bouvier.

Courts *not of record* are those of inferior dignity, which have no power to fine or imprison, and in which the proceedings are not enrolled or recorded. 3 Steph. Comm. 384.

COURT OF REGARD. In English law. One of the forest courts, in England, held every third year, for the lawing or expeditation of dogs, to prevent them from running after deer. It is now obsolete. 3 Steph. Comm. 440; 3 Bl. Comm. 71, 72.

COURTS OF REQUEST. Inferior courts, in England, having local jurisdiction in claims for small debts, established in various parts of the kingdom by special acts of parliament. They were abolished in 1846, and the modern county courts (*q. v.*) took their place. 3 Steph. Comm. 283.

COURT OF SESSION. The name of the highest court of civil jurisdiction in Scotland.

It was composed of fifteen judges, now of thirteen. It sits in two divisions. The lord president and three ordinary lords form the first division; the lord justice clerk and three other ordinary lords form the second division. There are five permanent lords ordinary attached equally to both divisions; the last appointed of whom officiates on the bills, *i. e.*, petitions preferred to the court during the session, and performs the other duties of junior lord ordinary. The chambers of the parliament house in which the first and second divisions hold their sittings are called the "inner house;" those in which the lords ordinary sit as single judges to hear motions and causes are collectively called the "outer house." The nomination and appointment of the judges is in the crown. Wharton.

COURT OF SESSIONS. Courts of criminal jurisdiction existing in California, New York, and one or two other of the United States.

COURT OF STANNARIES. In English law. A court established in Devonshire and Cornwall, for the administration of jus-

tice among the miners and tanners, and that they may not be drawn away from their business to attend suits in distant courts. The stannary court is a court of record, with a special jurisdiction. 3 Bl. Comm. 79.

COURT OF STAR CHAMBER. This was an English court of very ancient origin, but new-modeled by St. 3 Hen. VII. c. 1, and 21 Hen. VIII. c. 20, consisting of divers lords, spiritual and temporal, being privy councillors, together with two judges of the courts of common law, without the intervention of any jury. The jurisdiction extended legally over riots, perjury, misbehavior of sheriffs, and other misdemeanors contrary to the laws of the land; yet it was afterwards stretched to the asserting of all proclamations and orders of state, to the vindicating of illegal commissions and grants of monopolies; holding for honorable that which it pleased, and for just that which it profited, and becoming both a court of law to determine civil rights and a court of revenue to enrich the treasury. It was finally abolished by St. 16 Car. I. c. 10, to the general satisfaction of the whole nation. Brown.

COURT OF THE STEWARD AND MARSHAL. A high court, formerly held in England by the steward and marshal of the king's household, having jurisdiction of all actions against the king's peace within the bounds of the household for twelve miles, which circuit was called the "verge." Crabb, Eng. Law, 185. It had also jurisdiction of actions of debt and covenant, where both the parties were of the household. 2 Reeve, Eng. Law, 235, 247.

COURT OF THE STEWARD OF THE KING'S HOUSEHOLD. In English law. A court which had jurisdiction of all cases of treason, misprision of treason, murder, manslaughter, bloodshed, and other malicious striking whereby blood is shed, occurring in or within the limits of any of the palaces or houses of the king, or any other house where the royal person is abiding.

It was created by statute 33 Hen. VIII. c. 12, but long since fell into disuse. 4 Bl. Comm. 276, 277, and notes.

COURT OF SURVEY. A court for the hearing of appeals by owners or masters of ships, from orders for the detention of unsafe ships, made by the English board of trade, under the merchant shipping act, 1876, § 6.

COURT OF SWEINMOTE. In old English law. One of the forest courts, hav-

ing a somewhat similar jurisdiction to that of the court of attachments, (*q. v.*)

COURTS OF THE UNITED STATES comprise the following: The senate of the United States, sitting as a court of impeachment; the supreme court; the circuit courts; the circuit courts of appeals; the district courts; the supreme court of the District of Columbia; the territorial courts; and the court of claims. See the several titles.

COURTS OF THE UNIVERSITIES of Oxford and Cambridge have jurisdiction in all personal actions to which any member or servant of the respective university is a party, provided that the cause of action arose within the liberties of the university, and that the member or servant was resident in the university when it arose, and when the action was brought. 3 Steph. Comm. 299; St. 25 & 26 Vict. c. 26, § 12; St. 19 & 20 Vict. c. 17 Each university court also has a criminal jurisdiction in all offenses committed by its members. 4 Steph. Comm. 325.

COURT OF WARDS AND LIVERIES. A court of record, established in England in the reign of Henry VIII. For the survey and management of the valuable fruits of tenure, a court of record was created by St. 32 Hen. VIII. c. 46, called the "Court of the King's Wards." To this was annexed, by St. 33 Hen. VIII. c. 22, the "Court of Liveries;" so that it then became the "Court of Wards and Liveries." 4 Reeve, Eng. Law, 258. This court was not only for the management of "wards," properly so called, but also of idiots and natural fools in the king's custody, and for licenses to be granted to the king's widows to marry, and fines to be made for marrying without his license. *Id.* 259. It was abolished by statute 12 Car. II. c. 24. Crabb, Eng. Law, 468.

COURTS OF WESTMINSTER HALL. The superior courts, both of law and equity, were for centuries fixed at Westminster, an ancient palace of the monarchs of England. Formerly, all the superior courts were held before the king's capital judiciary of England, in the *aula regis*, or such of his palaces wherein his royal person resided, and removed with his household from one end of the kingdom to another. This was found to occasion great inconvenience to the suitors, to remedy which it was made an article of the great charter of liberties, both of King John and King Henry III., that "common pleas should no longer follow

the king's court, but be held in some certain place," in consequence of which they have ever since been held (a few necessary removals in times of the plague excepted) in the palace of Westminster only. The courts of equity also sit at Westminster, nominally, during term-time, although, actually, only during the first day of term, for they generally sit in courts provided for the purpose in, or in the neighborhood of, Lincoln's Inn. Brown.

COURT PREROGATIVE. See **PREROGATIVE COURT.**

COURT ROLLS. The rolls of a manor, containing all acts relating thereto. While belonging to the lord of the manor, they are not in the nature of public books for the benefit of the tenant. **D**

COURTESY. See **CURTESY.** **E**

COUSIN. Kindred in the fourth degree, being the issue (male or female) of the brother or sister of one's father or mother. **F**

Those who descend from the brother or sister of the father of the person spoken of are called "paternal cousins;" "maternal cousins" are those who are descended from the brothers or sisters of the mother. **G**

In English writs, commissions, and other formal instruments issued by the crown, the word signifies any peer of the degree of an earl. The appellation is as ancient as the reign of Henry IV., who, being related or allied to every earl then in the kingdom, acknowledged that connection in all his letters and public acts; from which the use has descended to his successors, though the reason has long ago failed. Mozley & Whitley. **H**

COUSINAGE. See **COSINAGE.** **I**

COUSTOM. Custom; duty; toll; tribute. 1 Bl. Comm. 314. **J**

COUSTOUMIER. (Otherwise spelled "Coustumier" or "Coutumier.") In old French law. A collection of customs, unwritten laws, and forms of procedure. Two such volumes are of especial importance in juridical history, viz., the *Grand Coustumier de Normandie*, and the *Coutumier de France* or *Grand Coutumier.* **K**

COUTHUTLAUGH. A person who willingly and knowingly received an outlaw, and cherished or concealed him; for which offense he underwent the same punishment as the outlaw himself. Bract. 128*b*; Spelman. **L**

COUVERTURE, in French law, is the deposit ("margin") made by the client in the hands of the broker, either of a sum of money **M**

or of securities, in order to guaranty the broker for the payment of the securities which he purchases for the client. Arg. Fr. Merc. Law, 555.

COVENABLE. A French word signifying convenient or suitable; as covenantably endowed. It is anciently written "convenable." *Termes de la Ley.*

COVENANT. In practice. The name of a common-law form of action *ex contractu*, which lies for the recovery of damages for breach of a covenant, or contract under seal.

In the law of contracts. An agreement, convention, or promise of two or more parties, *by deed* in writing, signed, sealed, and delivered, by which either of the parties pledges himself to the other that something is either done or shall be done, or stipulates for the truth of certain facts.

An agreement between two or more parties, reduced to writing and executed by a sealing and delivery thereof, whereby some of the parties named therein engage, or one of them engages, with the other, or others, or some of them, therein also named, that some act hath or hath not already been done, or for the performance or non-performance of some specified duty. 4 Whart. 71.

A promise by deed. 2 Steph. Comm. 108. A species of express contract, contained in a deed, to do a direct act, or to omit one. 3 Bl. Comm. 155.

Covenant is a contract, and is a writing obligatory, or parol promise, according as it is sealed or not. 8 Ala. 320.

Covenants may be classified according to several distinct principles of division. According as one or other of these is adopted, they are:

Express or implied; the former being those which are created by the express words of the parties to the deed declaratory of their intention, (Platt, Cov. 25;) while implied covenants are those which are inferred by the law from certain words in a deed which imply (though they do not express) them. Express covenants are also called covenants "in deed," as distinguished from covenants "in law."

Dependent, concurrent, and independent.

Covenants are either dependent, concurrent, or mutual and independent. The first depend on the prior performance of some act or condition, and, until the condition is performed, the other party is not liable to an action on his covenant. In the second, mutual acts are to be performed at the same time; and if one party is ready, and offers to

perform his part, and the other neglects or refuses to perform his, he who is ready and offers has fulfilled his engagement, and may maintain an action for the default of the other, though it is not certain that either is obliged to do the first act. The third sort is where either party may recover damages from the other for the injuries he may have received by a breach of the covenants in his favor; and it is no excuse for the defendant to allege a breach of the covenants on the part of the plaintiff. 3 Ala. 320.

Principal and auxiliary; the former being those which relate directly to the principal matter of the contract entered into between the parties; while auxiliary covenants are those which do not relate directly to the principal matter of contract between the parties, but to something connected with it.

Inherent or collateral; the former being such as affect the particular property immediately, while the latter affect some property collateral thereto.

Joint or several. The former bind both or all the covenantors together; the latter bind each of them separately. A covenant may be both joint and several at the same time, as regards the covenantors; but, as regards the covenantees, they cannot be joint and several for one and the same cause, (5 Coke, 19a,) but must be either joint or several only. Covenants are usually joint or several according as the interests of the covenantees are such; but the words of the covenant, where they are unambiguous, will decide, although, where they are ambiguous, the nature of the interests as being joint or several is left to decide. Brown.

General or specific. The former relate to land generally and place the covenantee in the position of a specialty creditor only; the latter relate to particular lands and give the covenantee a lien thereon. Brown.

Executed or executory; the former being such as relate to an act already performed; while the latter are those whose performance is to be future. Shep. Touch. 161.

Affirmative or negative; the former being those in which the party binds himself to the existence of a present state of facts as represented or to the future performance of some act; while the latter are those in which the covenantor obliges himself *not* to do or perform some act.

Declaratory or obligatory; the former being those which serve to limit or direct uses; while the latter are those which are binding on the party himself. 1 Sid. 27; 1 Keb. 337.

Real or personal; the former being such as bind the heirs of the covenantor, and passing to assignees, or to the purchaser; while a personal covenant affects only the covenantor and the assets in the hands of his representatives after his death. 4 Kent, Comm. 470, 471.

Transitive or intransitive; the former being those personal covenants the duty of performing which passes over to the representatives of the covenantor; while the latter are those the duty of performing which is limited to the covenantee himself, and does not pass over to his representative. Bac. Abr. Cov.

Disjunctive covenants. Those which are for the performance of one or more of several things at the election of the covenantor or covenantee, as the case may be. Platt, Cov. 21.

COVENANT AGAINST INCUMBRANCES. A covenant that there are no incumbrances upon the land conveyed.

COVENANT COLLATERAL. A covenant which is conversant about some collateral thing that doth nothing at all, or not so immediately concern the thing granted; as to pay a sum of money in gross, etc. Shep. Touch. 161.

COVENANT FOR FURTHER ASSURANCE. An undertaking, in the form of a covenant, on the part of the vendor of real estate to do such further acts for the purpose of perfecting the purchaser's title as the latter may reasonably require. This covenant is deemed of great importance, since it relates both to the title of the vendor and to the instrument of conveyance to the vendee, and operates as well to secure the performance of all acts necessary for supplying any defect in the former as to remove all objections to the sufficiency and security of the latter. Platt, Cov.; Rawle, Cov. §§ 98, 99.

COVENANT FOR QUIET ENJOYMENT. An assurance against the consequences of a defective title, and of any disturbances thereupon. Platt, Cov. 312; Rawle, Cov. 125.

COVENANT IN DEED. A covenant expressed in words, or inserted in a deed in specific terms.

COVENANT IN LAW. A covenant implied by law from certain words in a deed which do not express it. 1 Archb. N. P. 250.

COVENANT INHERENT. A covenant which is conversant about the land, and knit to the estate in the land; as that the thing demised shall be quietly enjoyed, shall be kept in reparation, shall not be aliened, etc. Shep. Touch. 161.

COVENANT NOT TO SUE. A covenant by one who had a right of action at the time of making it against another person, by which he agrees not to sue to enforce such right of action.

COVENANT OF NON-CLAIM. A covenant sometimes employed, particularly in the New England states, and in deeds of extinguishment of ground rents in Pennsylvania, that neither the vendor, nor his heirs, nor any other person, etc., shall claim any title in the premises conveyed. Rawle, Cov. § 22.

COVENANT OF RIGHT TO CONVEY. An assurance by the covenantor that the grantor has sufficient capacity and title to convey the estate which he by his deed undertakes to convey.

COVENANT OF SEISIN. An assurance to the purchaser that the grantor has the very estate in quantity and quality which he purports to convey. 11 East, 641; Rawle, Cov. § 58. It is said that the covenant of seisin is not now in use in England, being embraced in that of a right to convey; but it is used in several of the United States. 2 Washb. Real Prop. *648.

COVENANT OF WARRANTY. An assurance by the grantor of an estate that the grantee shall enjoy the same without interruption by virtue of paramount title.

COVENANT REAL. A covenant in a deed binding the heirs of the covenantor, and passing to assignees, or to the purchaser.

It is thus distinguished from a *personal* covenant, which affects only the covenantor, and the assets in the hands of his representatives after his death. 4 Kent, Comm. 470.

A covenant real has for its object something annexed to, or inherent in, or connected with, land or other real property, and runs with the land, so that the grantee of the land is invested with it, and may sue upon it for any breach happening in his time. 6 Conn. 249.

In the old books, a covenant real is also defined to be a covenant by which a man binds himself to pass a thing real, as lands or tenements. Termes de la Ley; 3 Bl. Comm. 156.

COVENANT RUNNING WITH LAND. A covenant which goes with the

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land, as being annexed to the estate, and which cannot be separated from the land, and transferred without it. 4 Kent, Comm. 472, note. A covenant is said to run with the land, when not only the original parties or their representatives, but each successive owner of the land, will be entitled to its benefit, or be liable (as the case may be) to its obligation. 1 Steph. Comm. 455. Or, in other words, it is so called when either the liability to perform it or the right to take advantage of it passes to the assignee of the land.

COVENANT TO CONVEY. A covenant by which the covenantor agrees to convey to the covenantee a certain estate, under certain circumstances.

COVENANT TO STAND SEISED. A conveyance adapted to the case where a person seised of land in possession, reversion, or vested remainder, proposes to convey it to his wife, child, or kinsman. In its terms it consists of a covenant by him, in consideration of his natural love and affection, to stand seised of the land to the use of the intended transferee. Before the statute of uses this would merely have raised a use in favor of the covenantee; but by that act this use is converted into the legal estate, and the covenant therefore operates as a conveyance of the land to the covenantee. It is now almost obsolete. 1 Steph. Comm. 532; Williams, Seis. 145.

COVENANTEE. The party to whom a covenant is made. Slep. Touch. 160.

COVENANTOR. The party who makes a covenant. Shep. Touch. 160.

COVENANTS FOR TITLE. Covenants usually inserted in a conveyance of land, on the part of the grantor, and binding him for the completeness, security, and continuance of the title transferred to the grantee. They comprise "covenants for seisin, for right to convey, against incumbrances, for quiet enjoyment, sometimes for further assurance, and almost always of warranty." Rawle, Cov. § 21.

COVENANTS IN GROSS. Such as do not run with the land.

COVENANTS PERFORMED. In Pennsylvania practice. This is the name of a plea to the action of covenant whereby the defendant, upon informal notice to the plaintiff, may give anything in evidence which he might have pleaded. 4 Dall. 439.

COVENT. A contraction, in the old books, of the word "convent."

COVENTRY ACT. The name given to the statute 22 & 23 Car. II. c. 1, which provided for the punishment of assaults with intent to maim or disfigure a person. It was so named from its being occasioned by an assault on Sir John Coventry in the street. 4 Bl. Comm. 207.

COVERT. Covered, protected, sheltered. A *pound covert* is one that is close or covered over, as distinguished from *pound overt*, which is open overhead. Co. Litt. 47b; 3 Bl. Comm. 12. A *feme covert* is so called, as being under the wing, protection, or cover of her husband. 1 Bl. Comm. 442.

COVERT BARON, or COVERT DE BARON. Under the protection of a husband; married. 1 Bl. Comm. 442. *La feme que est covert de baron*, the woman which is covert of a husband. Litt. § 670.

COVERTURE. The condition or state of a married woman. Sometimes used elliptically to describe the legal disability arising from a state of coverture.

COVIN. A secret conspiracy or agreement between two or more persons to injure or defraud another.

COVINOUS. Deceitful, fraudulent.

COWARDICE. Pusillanimity; fear; misbehavior through fear in relation to some duty to be performed before an enemy. O'Brien, Ct. M. 142.

CRAFT. A general term, now commonly applied to all kinds of sailing vessels, though formerly restricted to the smaller vessels. Worcester; 21 Grat. 693.

A guild.

CRANAGE. A liberty to use a crane for drawing up goods and wares of burden from ships and vessels, at any creek of the sea, or wharf, unto the land, and to make a profit of doing so. It also signifies the money paid and taken for the service. Tomlins.

CRASSA NEGLIGENTIA. Gross neglect; absence of ordinary care and diligence. 82 N. Y. 72.

CRASSUS. Large; gross; excessive; extreme. *Crassa ignorantia*, gross ignorance. Fleta, lib. 5, c. 22, § 18.

CRASTINO. The morrow, the day after. The return-day of writs; because the first day of the term was always some saint's day, and

writs were returnable on the day after. 2
Reeve, Eng. Law, 56.

CRATES. An iron gate before a prison.
1 Vent. 304.

CRAVE. To ask or demand; as to crave
oyer. See OYER.

CRAVEN. In old English law. A word
of disgrace and obloquy, pronounced on either
champion, in the ancient trial by battle, prov-
ing recreant, *i. e.*, yielding. Glanville calls
it "*infestum et invereundum verbum.*" His
condemnation was *amittere liberam legem,*
i. e., to become infamous, and not to be ac-
counted *liber et legalis homo*, being supposed
by the event to have been proved forsworn,
and not fit to be put upon a jury or admitted
as a witness. Wharton.

CREAMER. A foreign merchant, but
generally taken for one who has a stall in a
fair or market. Blount.

CREAMUS. We create. One of the
words by which a corporation in England
was formerly created by the king. 1 Bl.
Comm. 473.

CREANCE. In French law. A claim;
a debt; also belief, credit, faith.

CREANCER. One who trusts or gives
credit; a creditor. Britt. cc. 28, 78.

CREANSOR. A creditor. Cowell.

CREATE. To *create* a charter or a cor-
poration is to make one which never existed
before, while to *renew* one is to give vitality
to one which has been forfeited or has ex-
pired; and to *extend* one is to give an exist-
ing charter more time than originally limited.
21 Pa. St. 188.

CREDENTIALS. In international law.
The instruments which authorize and estab-
lish a public minister in his character with
the state or prince to whom they are addressed.
If the state or prince receive the minister,
he can be received only in the quality attrib-
uted to him in his credentials. They are, as
it were, his letter of attorney, his mandate
patent, *mandatum manifestum.* Vattel,
liv. 4, c. 6, § 76.

CREDIBILITY. Worthiness of belief;
that quality in a witness which renders his
evidence worthy of belief. After the com-
petence of a witness is allowed, the consid-
eration of his *credibility* arises, and not be-
fore. 1 Burrows, 414, 417; 3 Bl. Comm.
369.

As to the distinction between *competency*
and *credibility*, see COMPETENCY.

CREDIBLE. Worthy of belief; entitled
to credit. See COMPETENCY.

CREDIBLE WITNESS. One who, be-
ing competent to give evidence, is worthy of
belief. 5 Mass. 229; 17 Pick. 154; 2 Curt. Ecc.
336.

CREDIT. 1. The ability of a business man
to borrow money, or obtain goods on time, in
consequence of the favorable opinion held by
the community, or by the particular lender,
as to his solvency and reliability.

2. Time allowed to the buyer of goods by
the seller, in which to make payment for
them.

3. The correlative of a *debt*; that is, a debt
considered from the creditor's stand-point, or
that which is incoming or due to one.

4. That which is due to a merchant, as dis-
tinguished from debit, that which is due by
him.

5. That influence connected with certain
social positions. 20 Toullier, n. 19.

The credit of an individual is the trust reposed
in him by those who deal with him that he is of
ability to meet his engagements; and he is trusted
because through the tribunals of the country he
may be made to pay. The credit of a government
is founded on a belief of its ability to comply with
its engagements, and a confidence in its honor, that
it will do that voluntarily which it cannot be com-
pelled to do. 3 Ala. 258.

Credit is the capacity of being trusted. 3 N. Y.
344, 356.

CREDIT, BILLS OF. See BILLS OF
CREDIT.

CREDIT FONCIER. Fr. A company
or corporation formed for the purpose of car-
rying out improvements, by means of loans
and advances on real estate security.

CRÉDIT MOBILIER. Fr. A com-
pany or association formed for carrying on a
banking business, or for the construction of
public works, building of railroads, opera-
tion of mines, or other such enterprises, by
means of loans or advances on the security
of personal property.

CREDITOR. A person to whom a debt
is owing by another person, called the "debt-
or." The creditor is called a "simple contract
creditor," a "specialty creditor," a "bond
creditor," or a "judgment creditor," accord-
ing to the nature of the obligation giving
rise to the debt; and, if he has issued execu-
tion to enforce a judgment, he is called an
"execution creditor." He may also be a sole
or a joint creditor. Sweet.

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CREDITOR, JUDGMENT. One who has obtained a judgment against his debtor, under which he can enforce execution.

CREDITORS' BILL. In English practice. A bill in equity, filed by one or more creditors, for an account of the assets of a decedent, and a legal settlement and distribution of his estate among themselves and such other creditors as may come in under the decree.

In American practice. A proceeding to enforce the security of a judgment creditor against the property or interests of his debtor. This action proceeds upon the theory that the judgment is in the nature of a lien, such as may be enforced in equity.

A creditors' bill, strictly, is a bill by which a creditor seeks to satisfy his debt out of some equitable estate of the defendant, which is not liable to levy and sale under an execution at law. But there is another sort of a creditors' bill, very nearly allied to the former, by means of which a party seeks to remove a fraudulent conveyance out of the way of his execution. But a naked bill to set aside a fraudulent deed, which seeks no discovery of any property, chose in action, or other thing alleged to belong to the defendant, and which ought to be subjected to the payment of the judgment, is not a creditors' bill. 52 Ill. 98.

Creditorum appellatione non hi tantum accipiuntur qui pecuniam crediderunt, sed omnes quibus ex qualibet causa debetur. Under the head of "creditors" are included, not alone those who have lent money, but all to whom from any cause a debt is owing. Dig. 50, 16, 11.

CREDITRIX. A female creditor.

CREEK. In maritime law. Such little inlets of the sea, whether within the precinct or extent of a port or without, as are narrow passages, and have shore on either side of them. Call. Sew. 56.

A small stream less than a river. 12 Pick. 184.

The term imports a recess, cove, bay, or inlet in the shore of a river, and not a separate or independent stream; though it is sometimes used in the latter meaning. 38 N. Y. 103.

CREMENTUM COMITATÛS. The increase of a county. The sheriffs of counties anciently answered in their accounts for the improvement of the king's rents, above the *viscontiel* rents, under this title.

CREPARE OCULUM. In Saxon law. To put out an eye; which had a pecuniary punishment of fifty shillings annexed to it.

CREPUSCULUM. Twilight. In the law of burglary, this term means the presence of sufficient light to discern the face of a man; such light as exists immediately before the rising of the sun or directly after its setting.

Crescente malitiâ crescere debet et pœna. 2 Inst. 479. Vice increasing, punishment ought also to increase.

CREST. A term used in heraldry; it signifies the devices set over a coat of arms.

CRETINUS. In old records. A sudden stream or torrent; a rising or inundation.

CRETIO. Lat. In the civil law. A certain number of days allowed an heir to deliberate whether he would take the inheritance or not. Calvin.

CREW. The aggregate of seamen who man a ship or vessel, including the master and officers; or it may mean the ship's company, exclusive of the master, or exclusive of the master and all other officers. See 3 Sum. 209, et seq.

CREW LIST. In maritime law. A list of the crew of a vessel; one of a ship's papers. This instrument is required by act of congress, and sometimes by treaties. Rev. St. U. S. §§ 4374, 4375. It is necessary for the protection of the crews of every vessel, in the course of the voyage, during a war abroad. Jac. Sea Laws, 66, 69, note.

CRIER. An officer of a court, who makes proclamations. His principal duties are to announce the opening of the court and its adjournment and the fact that certain special matters are about to be transacted, to announce the admission of persons to the bar, to call the names of jurors, witnesses, and parties, to announce that a witness has been sworn, to proclaim silence when so directed, and generally to make such proclamations of a public nature as the judges order.

CRIZ LA PEEZ. Rehearse the concord, or peace. A phrase used in the ancient proceedings for levying fines. It was the form of words by which the justice before whom the parties appeared directed the serjeant or countor in attendance to recite or read aloud the *concord* or agreement between the parties, as to the lands intended to be conveyed. 2 Reeve, Eng. Law, 224, 225.

CRIM. CON. An abbreviation for "criminal conversation," of very frequent use, denoting adultery.

CRIME. A crime is an act committed or omitted, in violation of a public law, either forbidding or commanding it; a breach or violation of some public right or duty due to a whole community, considered as a community in its social aggregate capacity, as distinguished from a civil injury. "Crime" and "misdemeanor," properly speaking, are synonymous terms; though in common usage "crime" is made to denote such offenses as are of a deeper and more atrocious dye. 4 Bl. Comm. 5.

Crimes are those wrongs which the government notices as injurious to the public, and punishes in what is called a "criminal proceeding," in its own name. 1 Bish. Crim. Law, § 43.

A crime may be defined to be any act done in violation of those duties which an individual owes to the community, and for the breach of which the law has provided that the offender shall make satisfaction to the public. Bell.

A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments: (1) Death; (2) imprisonment; (3) fine; (4) removal from office; or (5) disqualification to hold and enjoy any office of honor, trust, or profit in this state. Pen. Code Cal. § 15.

A crime or misdemeanor shall consist in a violation of a public law, in the commission of which there shall be a union or joint operation of act and intention, or criminal negligence. Code Ga. 1882, § 4292.

According to Blackstone, the word "crime" denotes such offenses as are of a deeper and more atrocious dye, while smaller faults and omissions of less consequence are called "misdemeanors." But the better use appears to be to make *crime* a term of broad and general import, including both felonies and misdemeanors, and hence covering all infractions of the criminal law. In this sense it is not a technical phrase, strictly speaking, (as "felony" and "misdemeanor" are,) but a convenient general term. In this sense, also, "offense" or "public offense" should be used as synonymous with it.

The distinction between a *crime* and a *tort* or civil injury is that the former is a breach and violation of the public right and of duties due to the whole community considered as such, and in its social and aggregate capacity; whereas the latter

is an infringement or privation of the civil rights of individuals merely. Brown.

A crime, as opposed to a civil injury, is the violation of a right, considered in reference to the evil tendency of such violation, as regards the community at large. 4 Steph. Comm. 4.

CRIME AGAINST NATURE. The offense of buggery or sodomy.

CRIMEN. Lat. Crime. Also an accusation or charge of crime.

CRIMEN FALSI. In the civil law. The crime of falsifying; which might be committed either by writing, as by the forgery of a will or other instrument; by words, as by bearing false witness, or perjury; and by acts, as by counterfeiting or adulterating the public money, dealing with false weights and measures, counterfeiting seals, and other fraudulent and deceitful practices. Dig. 48, 10; Hallifax, Civil Law, b. 3, c. 12, nn. 56-59.

In Scotch law. It has been defined: "A fraudulent imitation or suppression of truth, to the prejudice of another." Ersk. Inst. 4, 4, 66.

At common law. Any crime which may injuriously affect the administration of justice, by the introduction of falsehood and fraud. 1 Greenl. Ev. § 373.

In modern law. This phrase is not used as a designation of any specific crime, but as a general designation of a class of offenses, including all such as involve deceit or falsification; *e. g.*, forgery, counterfeiting, using false weights or measures, perjury, etc.

Includes forgery, perjury, subornation of perjury, and offenses affecting the public administration of justice. 29 Ohio St. 358.

Crimen falsi dicitur, cum quis illicitus, cui non fuerit ad hæc data auctoritas, de sigillo regis, raptò vel invento, brevium, cartarum consignaverit. Fleta, lib. 1, c. 23. The crime of forgery is when any one illicitly, to whom power has not been given for such purposes, has signed writs or charters with the king's seal, either stolen or found.

CRIMEN FURTI. The offense of theft.

CRIMEN INCENDII. In old criminal law. The crime of burning, which included not only the modern crime of arson, (or burning of a house,) but also the burning of a man, beast, or other chattel. Britt. c. 9; Crabb, Eng. Law, 308.

CRIMEN INNOMINATUM. The nameless crime. A term for buggery or sodomy.

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CRIMEN LÆSÆ MAJESTATIS. In criminal law. The crime of *lese-majesty*, or injuring majesty or royalty; high treason. The term was used by the older English law-writers to denote any crime affecting the king's person or dignity.

It is borrowed from the civil law, in which it signified the undertaking of any enterprise against the emperor or the republic. Inst. 4, 18, 3.

Crimen læsæ majestatis omnia alia crimina excedit quoad pœnam. 3 Inst. 210. The crime of treason exceeds all other crimes in its punishment.

Crimen omnia ex se nata vitiat. Crime vitiates everything which springs from it. 5 Hill, 523, 531.

CRIMEN RAPTUS. The offense of rape.

CRIMEN ROBERIÆ. The offense of robbery.

Crimen trahit personam. The crime carries the person, (*i. e.*, the commission of a crime gives the courts of the place where it is committed jurisdiction over the person of the offender.) 3 Denio, 190, 210.

Crimina morte extinguuntur. Crimes are extinguished by death.

CRIMINAL. That which pertains to or is connected with the law of crimes, or the administration of penal justice, or which relates to or has the character of crime. Also a person who has committed a crime; one who is guilty of a felony or misdemeanor.

CRIMINAL ACT. A term which is equivalent to crime; or is sometimes used with a slight softening or glossing of the meaning, or as importing a possible question of the legal guilt of the deed.

CRIMINAL ACTION. The proceeding by which a party charged with a public offense is accused and brought to trial and punishment is known as a "criminal action." Pen. Code Cal. § 683.

A criminal action is (1) an action prosecuted by the state as a party, against a person charged with a public offense, for the punishment thereof; (2) an action prosecuted by the state, at the instance of an individual, to prevent an apprehended crime, against his person or property. Code N. C. 1883, § 129.

CRIMINAL CASE. An action, suit, or cause instituted to punish an infraction of the criminal laws.

CRIMINAL CONTEMPT. A contempt of court which consists in openly insulting or resisting the powers of the court or the persons of the judges who preside there. Otherwise called "direct" contempt. 4 Bl. Comm. 283.

CRIMINAL CONVERSATION. Adultery, considered in its aspect of a civil injury to the husband entitling him to damages; the tort of debauching or seducing of a wife. Often abbreviated to *crim. con.*

CRIMINAL INFORMATION. A criminal suit brought, without interposition of a grand jury, by the proper officer of the king or state. Cole, *Crim. Inf.*; 4 Bl. Comm. 398.

CRIMINAL INTENT. The intent to commit a crime; malice, as evidenced by a criminal act.

CRIMINAL LAW. That branch or division of law which treats of crimes and their punishments.

In the plural—"criminal laws"—the term may denote the laws which define and prohibit the various species of crimes and establish their punishments.

CRIMINAL LAW AMENDMENT ACT. This act was passed in 1871, (34 & 35 Vict. c. 32,) to prevent and punish any violence, threats, or molestation, on the part either of master or workmen, in the various relations arising between them. 4 Steph. Comm. 241.

CRIMINAL LAW CONSOLIDATION ACTS. The statutes 24 & 25 Vict. cc. 94-100, passed in 1861, for the consolidation of the criminal law of England and Ireland. 4 Steph. Comm. 297. These important statutes amount to a codification of the modern criminal law of England.

CRIMINAL LETTERS. In Scotch law. A process used as the commencement of a criminal proceeding, in the nature of a summons issued by the lord advocate or his deputy. It resembles a criminal information at common law.

CRIMINAL LIBEL. A libel which is punishable criminally; one which tends to excite a breach of the peace.

CRIMINAL PROCEDURE. The method pointed out by law for the apprehension, trial, or prosecution, and fixing the punishment, of those persons who have broken or violated, or are supposed to have

broken or violated, the laws prescribed for the regulation of the conduct of the people of the community, and who have thereby laid themselves liable to fine or imprisonment or other punishment. 4 Amer. & Eng. Enc. Law, 730.

CRIMINAL PROCESS. Process which issues to compel a person to answer for a crime or misdemeanor. 1 Stew. (Ala.) 27.

CRIMINAL PROSECUTION. An action or proceeding instituted in a proper court on behalf of the public, for the purpose of securing the conviction and punishment of one accused of crime.

CRIMINALITER. Criminally. This term is used, in distinction or opposition to the word "*civiliter*," civilly, to distinguish a criminal liability or prosecution from a civil one.

CRIMINATE. To charge one with crime; to furnish ground for a criminal prosecution; to expose a person to a criminal charge. A witness cannot be compelled to answer any question which has a tendency to *criminate* him.

CRIMP. One who decoys and plunders sailors under cover of harboring them. Wharton.

CRO, CROO. In old Scotch law. A weregild. A composition, satisfaction, or assything for the slaughter of a man.

CROCIA. The *crozier*, or pastoral staff.

CROCIARIUS. A cross-bearer, who went before the prelate. Wharton.

CROCKARDS, CROCARDS. A foreign coin of base metal, prohibited by statute 27 Edw. I. St. 3, from being brought into the realm. 4 Bl. Comm. 98; Crabb, Eng. Law, 176.

CROFT. A little close adjoining a dwelling-house, and inclosed for pasture and tillage or any particular use. Jacob. A small place fenced off in which to keep farm-cattle. Spelman. The word is now entirely obsolete.

CROISES. Pilgrims; so called as wearing the sign of the *cross* on their upper garments. Britt. c. 122. The knights of the order of St. John of Jerusalem, created for the defense of the pilgrims. Cowell; Blount.

CROITEIR. A crofter; one holding a croft.

CROP. The products of the harvest in corn or grain. Emblements.

CROPPER. One who, having no interest in the land, works it in consideration of receiving a portion of the crop for his labor. 2 Rawle, 11.

The difference between a tenant and a cropper is: A tenant has an estate in the land for the term, and, consequently, he has a right of property in the crops. Until division, the right of property and of possession in the whole is the tenant's. A cropper has no estate in the land; and, although he has in some sense the possession of the crop, it is the possession of a servant only, and is, in law, that of the landlord, who must divide off to the cropper his share. 71 N. C. 7.

CROSS. A mark made by persons who are unable to write, to stand instead of a signature; usually made in the form of a Maltese cross.

As an adjective, the word is applied to various demands and proceedings which are connected in subject-matter, but opposite or contradictory in purpose or object.

CROSS-ACTION. An action brought by one who is defendant in a suit against the party who is plaintiff in such suit, upon a cause of action growing out of the same transaction which is there in controversy, whether it be a contract or tort.

CROSS-APPEAL. Where both parties to a judgment appeal therefrom, the appeal of each is called a "cross-appeal" as regards that of the other. 3 Steph. Comm. 581.

CROSS-BILL. In equity practice. One which is brought by a defendant in a suit against a plaintiff in or against other defendants in the same suit, or against both, touching the matters in question in the original bill. Story, Eq. Pl. § 389; Mitf. Eq. Pl. 80.

A cross-bill is a bill brought by a defendant against a plaintiff, or other parties in a former bill depending, touching the matter in question in that bill. It is usually brought either to obtain a necessary discovery of facts in aid of the defense to the original bill, or to obtain full relief to all parties in reference to the matters of the original bill. It is to be treated as a mere auxiliary suit. 17 How. 591; 35 N. H. 235.

A cross-bill is a species of pleading, used for the purpose of obtaining a discovery necessary to the defense, or to obtain some relief founded on the collateral claims of the party defendant to the original suit. 14 Ga. 167.

Also, if a bill of exchange or promissory note be given in consideration of another bill or note, it is called a "cross" or "counter" bill or note.

CROSS-COMPLAINT. In code practice. Whenever the defendant seeks affirmative re-

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lie against any party, relating to or depending upon the contract or transaction upon which the action is brought, or affecting the property to which the action relates, he may, in addition to his answer, file at the same time, or by permission of the court subsequently, a cross-complaint. The cross-complaint must be served upon the parties affected thereby, and such parties may demur or answer thereto as to the original complaint. Code Civil Proc. Cal. § 442.

CROSS-DEMAND. Where a person against whom a demand is made by another, in his turn makes a demand against that other, these mutual demands are called "cross-demands." A *set-off* is a familiar example.

CROSS-ERRORS. Errors being assigned by the respondent in a writ of error, the errors assigned on both sides are called "cross-errors."

CROSS-EXAMINATION. In practice. The examination of a witness upon a trial or hearing, or upon taking a deposition, by the party opposed to the one who produced him, upon his evidence given in chief, to test its truth, to further develop it, or for other purposes.

CROSS-REMAINDER. Where land is devised or conveyed to two or more persons as tenants in common, or where different parts of the same land are given to such persons in severalty, with such limitations that, upon the determination of the particular estate of either, his share is to pass to the other, to the entire exclusion of the ultimate remainder-man or reversioner until all the particular estates shall be exhausted, the remainders so limited are called "cross-remainders." In wills, such remainders may arise by implication; but, in deeds, only by express limitation. See 2 Bl. Comm. 381; 2 Washb. Real Prop. 233; 1 Prest. Est. 94.

CROSS-RULES. These were rules where each of the opposite litigants obtained a rule *nisi*, as the plaintiff to increase the damages, and the defendant to enter a nonsuit. Wharton.

CROSSED CHECK. A check crossed with two lines, between which are either the name of a bank or the words "and company," in full or abbreviated. In the former case, the banker on whom it is drawn must not pay the money for the check to any other than the banker named; in the latter case, he must not pay it to any other than a banker. 2 Steph. Comm. 118, note c.

CROWN. The sovereign power in a monarchy, especially in relation to the punishment of crimes. "Felony is an offense of the crown." Finch. Law, b. 1, c. 16.

An ornamental badge of regal power worn on the head by sovereign princes. The word is frequently used when speaking of the sovereign herself, or the rights, duties, and prerogatives belonging to her. Also a silver coin of the value of five shillings. Wharton.

CROWN CASES. In English law. Criminal prosecutions on behalf of the crown, as representing the public; causes in the criminal courts.

CROWN CASES RESERVED. In English law. Questions of law arising in criminal trials at the assizes, (otherwise than by way of demurrer,) and not decided there, but reserved for the consideration of the court of criminal appeal.

CROWN COURT. In English law. The court in which the crown cases, or criminal business, of the assizes is transacted.

CROWN DEBTS. In English law. Debts due to the crown, which are put, by various statutes, upon a different footing from those due to a subject.

CROWN LANDS. The demesne lands of the crown.

CROWN LAW. Criminal law in England is sometimes so termed, the crown being always the prosecutor in criminal proceedings. 4 Bl. Comm. 2.

CROWN OFFICE. The criminal side of the court of king's bench. The king's attorney in this court is called "master of the crown office." 4 Bl. Comm. 308.

CROWN OFFICE IN CHANCERY. One of the offices of the English high court of chancery, now transferred to the high court of justice. The principal official, the clerk of the crown, is an officer of parliament, and of the lord chancellor, in his non-judicial capacity, rather than an officer of the courts of law.

CROWN PAPER. A paper containing the list of criminal cases which await the hearing or decision of the court, and particularly of the court of queen's bench; and it then includes all cases arising from informations *quo warranto*, criminal informations, criminal cases brought up from inferior courts by writ of *certiorari*, and cases from the sessions. Brown.

CROWN SIDE. The criminal department of the court of queen's bench; the civil department or branch being called the "plea side." 4 Bl. Comm. 265.

CROWN SOLICITOR. In England, the solicitor to the treasury acts, in state prosecutions, as solicitor for the crown in preparing the prosecution. In Ireland there are officers called "crown solicitors" attached to each circuit, whose duty it is to get up every case for the crown in criminal prosecutions. They are paid by salaries. There is no such system in England, where prosecutions are conducted by solicitors appointed by the parish, or other persons bound over to prosecute by the magistrates on each committal; but in Scotland the still better plan exists of a crown prosecutor (called the "procurator-fiscal," and being a subordinate of the lord-advocate) in every county, who prepares every criminal prosecution. Wharton.

CROWNER. In old Scotch law. Coroner; a coroner.

CROY. In old English law. Marsh land. Blount.

CRUCE SIGNATI. In old English law. Signed or marked with a cross. Pilgrims to the holy land, or crusaders; so called because they wore the sign of the cross upon their garments. Spelman.

CRUELTY. The intentional and malicious infliction of physical suffering upon living creatures, particularly human beings; or, as applied to the latter, the wanton, malicious, and unnecessary infliction of pain upon the body, or the feelings and emotions; abusive treatment; inhumanity; outrage.

Extreme cruelty is the infliction of grievous bodily injury or grievous mental suffering upon the other by one party to the marriage. Civil Code Cal. § 94.

As between husband and wife. Those acts which affect the life, the health, or even the comfort, of the party aggrieved, and give a reasonable apprehension of bodily hurt, are called "cruelty." What merely wounds the feelings is seldom admitted to be cruelty, unless the act be accompanied with bodily injury, either actual or menaced. Mere austerity of temper, petulance of manners, rudeness of language, a want of civil attention and accommodation, even occasional sallies of passion, will not amount to legal cruelty; *a fortiori*, the denial of little indulgences and particular accommodations, which the delicacy of the world is apt to number among its necessities, is not cruelty. The negative descriptions of cruelty are perhaps the best, under the infinite variety of cases that may occur, by showing what is not cruelty. 1 Hagg. Const. 35; 4 Eng. Ecc. 238, 311, 312.

AM. DICT. LAW.—20

Cruelty includes both willfulness and malicious temper of mind with which an act is done, as well as a high degree of pain inflicted. Acts merely accidental, though they inflict great pain, are not "cruel," in the sense of the word as used in statutes against cruelty. 101 Mass. 34.

CRUISE. A voyage undertaken for a given purpose; a voyage for the purpose of making captures *jure belli*. 2 Gall. 538.

A voyage or expedition in quest of vessels or fleets of the enemy which may be expected to sail in any particular track at a certain season of the year. The region in which these cruises are performed is usually termed the "rendezvous," or "cruising latitude." Bouvier.

Imports a definite place, as well as time of commencement and termination, unless such construction is repelled by the context. When not otherwise specially agreed, a cruise begins and ends in the country to which a ship belongs, and from which she derives her commission. 2 Gall. 526.

CRY. To call out aloud; to proclaim; to publish; to sell at auction. "To cry a tract of land." 1 Wash. (Va.) 335, (260.)

CRY DE PAIS, or CRI DE PAIS. The hue and cry raised by the people in ancient times, where a felony had been committed and the constable was absent.

CRYER. An auctioneer. 1 Wash. (Va.) 337, (262.) One who calls out aloud; one who publishes or proclaims. See CRIER.

CRYPTA. A chapel or oratory underground, or under a church or cathedral. Du Cange.

CUCKING-STOOL. An engine of correction for common scolds, which in the Saxon language is said to signify the scolding-stool, though now it is frequently corrupted into *ducking-stool*, because the judgment was that, when the woman was placed therein, she should be plunged in the water for her punishment. It was also variously called a "trebucket," "tumbrel," or "castigatory." 3 Inst. 219; 4 Bl. Comm. 169; Brown.

CUEILLETTE. A term of French maritime law. See A CUEILLETTE.

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 alienated them during the marriage, when she could not gainsay it. Reg. Orig. 233.

CUI BONO. For whose good; for whose use or benefit. "Cui bono is ever of great weight in all agreements." Parker, C. J.,

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10 Mod. 135. Sometimes translated, for what good, for what useful purpose.

Cuicunque aliquis quid concedit concedere videtur et id, sine quo res ipsa esse non potuit. 11 Coke, 52. Whoever grants anything to another is supposed to grant that also without which the thing itself would be of no effect.

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; Fitzh. Nat. Brev. 193.

Cui jurisdictio data est, ea quoque concessa esse videntur, sine quibus jurisdictio explicari non potest. To whomsoever a jurisdiction is given, those things also are supposed to be granted, without which the jurisdiction cannot be exercised. Dig. 2, 1, 2. The grant of jurisdiction implies the grant of all powers necessary to its exercise. 1 Kent, Comm. 339.

Cui jus est donandi, eidem et vendendi et concedendi jus est. He who has the right of giving has also the right of selling and granting. Dig. 50, 17, 163.

Cuilibet in arte sua perito est credendum. Any person skilled in his peculiar art or profession is to be believed, [*i. e.*, when he speaks of matters connected with such art.] Co. Litt. 125*a*; Shelf. Mar. & Div. 206. Credence should be given to one skilled in his peculiar profession. Broom, Max. 932.

Cuilibet licet juri pro se introducto renunciare. Any one may waive or renounce the benefit of a principle or rule of law that exists only for his protection.

Cui licet quod majus, non debet quod minus est non licere. He who is allowed to do the greater ought not to be prohibited from doing the less. He who has authority to do the more important act ought not to be debarred from doing what is of less importance. 4 Coke, 23.

Cui pater est populus non habet ille patrem. He to whom the people is father has not a father. Co. Litt. 123.

Cuique in sua arte credendum est. Every one is to be believed in his own art. 9 Mass. 227.

Cujus est commodum ejus debet esse incommodum. Whose is the advantage, his also should be the disadvantage.

Cujus est dare, ejus est disponere. Wing. Max. 53. Whose it is to give, his it is to dispose; or, as Broom says, "the bestower of a gift has a right to regulate its disposal." Broom, Max. 459, 461, 463, 464.

Cujus est divisio, alterius est electio. Whichever [of two parties] has the division, [of an estate,] the choice [of the shares] is the other's. Co. Litt. 166*b*. In partition between coparceners, where the division is made by the eldest, the rule in English law is that she shall choose her share last. Id.; 2 Bl. Comm. 189; 1 Steph. Comm. 323.

Cujus est dominium ejus est periculum. The risk lies upon the owner of the subject. Tray. Lat. Max. 114.

Cujus est instituere, ejus est abrogare. Whose right it is to institute, his right it is to abrogate. Broom, Max. 878, note.

Cujus est solum ejus est usque ad cælum. Whose is the soil, his it is up to the sky. Co. Litt. 4*a*. He who owns the soil, or surface of the ground, owns, or has an exclusive right to, everything which is upon or above it to an indefinite height. 9 Coke, 54; Shep. Touch. 90; 2 Bl. Comm. 18; 3 Bl. Comm. 217; Broom, Max. 395.

Cujus est solum, ejus est usque ad cælum et ad inferos. To whomsoever the soil belongs, he owns also to the sky and to the depths. The owner of a piece of land owns everything above and below it to an indefinite extent. Co. Litt. 4.

Cujus juris (*i. e.*, jurisdictionis) est principale, ejusdem juris erit accessorium. 2 Inst. 493. An accessory matter is subject to the same jurisdiction as its principal.

Cujus per errorem dati repetitio est, ejus consulto dati donatio est. He who gives a thing by mistake has a right to recover it back; but, if he gives designedly, it is a gift. Dig. 50, 17, 53.

Cujusque rei potissima pars est principium. The chiefest part of everything is the beginning. Dig. 1, 2, 1; 10 Coke, 49*a*.

CUL DE SAC. (Fr. the bottom of a sack.) A blind alley; a street which is open at one end only.

CULAGIUM. In old records. The laying up a ship in a dock, in order to be repaired. Cowell; Blount.

CULPA. A term of the civil law, meaning fault, neglect, or negligence. There are three degrees of *culpa*,—*lata culpa*, gross fault or neglect; *levis culpa*, ordinary fault or neglect; *levissima culpa*, slight fault or neglect,—and the definitions of these degrees are precisely the same as those in our law. Story, Bailm. § 18. This term is to be distinguished from *dolus*, which means fraud, guile, or deceit.

Culpa caret qui scit sed prohibere non potest. He is clear of blame who knows, but cannot prevent. Dig. 50, 17, 50.

Culpa est immiscere se rei ad se non pertinenti. 2 Inst. 208. It is a fault for any one to meddle in a matter not pertaining to him.

Culpa lata dolo æquiparatur. Gross negligence is held equivalent to intentional wrong.

Culpa tenet [teneat] suos auctores. Misconduct binds [should bind] its own authors. It is a never-failing axiom that every one is accountable only for his own delicts. Ersk. Inst. 4, 1, 14.

CULPABILIS. Lat. In old English law. Guilty. *Culpabilis de intrusione*,—guilty of intrusion. Fleta, lib. 4, c. 30, § 11.

CULPABLE. Means not only criminal, but censurable; and, when the term is applied to the omission by a person to preserve the means of enforcing his own rights, censurable is more nearly an equivalent. As he has merely lost a right of action which he might voluntarily relinquish, and has wronged nobody but himself, culpable neglect conveys the idea of neglect which exists where the loss can fairly be ascribed to the party's own carelessness, improvidence, or folly. 8 Allen, 121.

CULPABLE HOMICIDE. Described as a crime varying from the very lowest culpability, up to the very verge of murder. Lord Moncrieff, Arkley, 72.

Culpæ pœna par esto. Pœna ad mensuram delicti statuenda est. Let the punishment be proportioned to the crime. Punishment is to be measured by the extent of the offense.

CULPRIT. A person who is indicted for a criminal offense, but not yet convicted.

It is not, however, a technical term of the law; and in its vernacular usage it seems to imply only a light degree of censure or moral reprobation.

Blackstone believes it an abbreviation of the old forms of arraignment, whereby, on the prisoner's pleading not guilty, the clerk would respond, "*culpabilis, prit*," i. e., he is guilty and the crown is ready. It was (he says) the *viva voce* replication, by the clerk, on behalf of the crown, to the prisoner's plea of *non culpabilis*; *prit* being a technical word, anciently in use in the formula of joining issue. 4 Bl. Comm. 339.

But a more plausible explanation is that given by Donaldson, (cited Whart. Lex.) as follows: The clerk asks the prisoner, "Are you guilty, or not guilty?" Prisoner, "Not guilty." Clerk, "*Qu'il paroit*," [may it prove so.] How will you be tried?" Prisoner, "By God and my country." These words being hurried over, came to sound, "Culprit, how will you be tried?" The ordinary derivation is from *culpa*.

CULRACH. In old Scotch law. A species of pledge or cautioner, (Scotticé, *back borrh*,) used in cases of the replevin of persons from one man's court to another's. Skene.

CULTIVATED. A field on which a crop of wheat is growing is a cultivated field, although not a stroke of labor may have been done in it since the seed was put in the ground, and it is a cultivated field after the crop is removed. It is, strictly, a cultivated piece of ground. 13 Ired. 36.

CULTURA. A parcel of arable land. Blount.

CULVERTAGE. In old English law. A base kind of slavery. The confiscation or forfeiture which takes place when a lord seizes his tenant's estate. Blount; Du Cange.

Cum actio fuerit mere criminalis, institui poterit ab initio criminaliter vel civiliter. When an action is merely criminal, it can be instituted from the beginning either criminally or civilly. Bract. 102.

Cum adsunt testimonia rerum, quid opus est verbis? When the proofs of facts are present, what need is there of words? 2 Bulst. 53.

Cum aliquis renunciaverit societati, solvitur societas. When any partner renounces the partnership, the partnership is dissolved. Tray. Lat. Max. 118.

Cum confitente sponte mitius est agendum. 4 Inst. 66. One confessing willingly should be dealt with more leniently.

Cum de lucro duorum quæritur, melior est causa possidentis. When the question is as to the gain of two persons, the

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cause of him who is in possession is the better. Dig. 50, 17, 126.

Cum duo inter se pugnancia reperuntur in testamento, ultimum ratum est. Where two things repugnant to each other are found in a will, the last shall stand. Co. Litt. 112*b*; Shep. Touch. 451; Broom, Max. 583.

Cum duo jura concurrunt in una persona æquum est ac si essent in duobus. When two rights meet in one person, it is the same as if they were in two persons.

CUM GRANO SALIS. (With a grain of salt.) With allowance for exaggeration.

Cum in corpore dissentitur, apparet nullam esse acceptionem. When there is a disagreement in the substance, it appears that there is no acceptance. 12 Allen, 44.

Cum in testamento ambigue aut etiam perperam scriptum est benigne interpretari et secundum id quod credibile est cogitatum credendum est. Dig. 34, 5, 24. Where an ambiguous, or even an erroneous, expression occurs in a will, it should be construed liberally, and in accordance with the testator's probable meaning. Broom, Max. 568.

Cum legitimæ nuptiæ factæ sunt, patrem liberi sequuntur. Children born under a legitimate marriage follow the condition of the father.

CUM ONERE. With the burden; subject to an incumbrance or charge. What is taken *cum onere* is taken subject to an existing burden or charge.

Cum par delictum est duorum, semper oneratur petitor et melior habetur possessoris causa. Dig. 50, 17, 154. When both parties are in fault the plaintiff must always fail, and the cause of the person in possession be preferred.

CUM PERA ET LOCULO. With satchel and purse. A phrase in old Scotch law.

CUM PERTINENTIIS. With the appurtenances. Bract. fol. 73*b*.

CUM PRIVILEGIO. The expression of the monopoly of Oxford, Cambridge, and the royal printers to publish the Bible.

Cum quod ago non valet ut ago, valeat quantum valere potest. 4 Kent, Comm. 493. When that which I do is of no

effect as I do it, it shall have as much effect as it can; *i. e.*, in some other way.

CUM TESTAMENTO ANNEXO. L. Lat. With the will annexed. A term applied to administration granted where a testator makes an incomplete will, without naming any executors, or where he names incapable persons, or where the executors named refuse to act. 2 Bl. Comm. 503, 504.

CUMULATIVE. Additional; heaping up; increasing; forming an aggregate. The word signifies that two things are to be added together, instead of one being a repetition or in substitution of the other.

CUMULATIVE EVIDENCE. Additional or corroborative evidence to the same point. That which goes to prove what has already been established by other evidence. 20 Conn. 305; 28 Me. 376; 24 Pick. 246.

Additional evidence material to the issue, after any such evidence has been given, is in a certain sense cumulative; that is, is added to what has been given before. It tends to sustain the issue. But cumulative evidence, in legal phrase, means evidence from the same or a new witness, simply repeating, in substance and effect, or adding to, what has been before testified to. 43 Barb. 212.

Evidence is not cumulative merely because it tends to establish the same ultimate or principally controverted fact. Cumulative evidence is additional evidence of the same kind to the same point. 43 Iowa, 177.

CUMULATIVE LEGACIES. These are legacies so called to distinguish them from legacies which are merely *repeated*. In the construction of testamentary instruments, the question often arises whether, where a testator has twice bequeathed a legacy to the same person, the legatee is entitled to both, or only to one of them; in other words, whether the second legacy must be considered as a mere repetition of the first, or as cumulative, *i. e.*, additional. In determining this question, the intention of the testator, if it appears on the face of the instrument, prevails. Wharton.

CUMULATIVE REMEDY. A remedy created by statute in addition to one which still remains in force.

CUMULATIVE SENTENCES. Separate sentences (each additional to the others) imposed upon a defendant who has been convicted upon an indictment containing several counts, each of such counts charging a distinct offense.

CUMULATIVE VOTING. A system of voting, by which the elector, having a number of votes equal to the number of offi-

cers to be chosen, is allowed to concentrate the whole number of his votes upon one person, or to distribute them as he may see fit. For example, if ten directors of a corporation are to be elected, then, under this system, the voter may cast ten votes for one person, or five votes for each of two persons, etc. It is intended to secure representation of a minority.

CUNADES. In Spanish law. Affinity; alliance; relation by marriage. *Las Partidas*, pt. 4, tit. 6, l. 5.

CUNEATOR. A coiner. *Du Cange*. *Cunear*, to coin. *Cuneus*, the die with which to coin. *Cuneata*, coined. *Du Cange*; *Spelman*.

CUNTEY-CUNTEY. In old English law. A kind of trial, as appears from *Bract*. lib. 4, tract 3, ca. 18, and tract 4, ca. 2, where it seems to mean, one by the ordinary jury.

CUR. A common abbreviation of *curia*.

CURA. Lat. Care; charge; oversight; guardianship.

In the civil law. A species of guardianship which commenced at the age of puberty, (when the guardianship called "*tutela*" expired,) and continued to the completion of the twenty-fifth year. *Inst.* 1, 23, pr.; *Id.* 1, 25, pr.; *Hallifax*, *Civil Law*, b. 1, c. 9.

CURAGULOS. One who takes care of a thing.

CURATE. In ecclesiastical law. Properly, an incumbent who has the *cure* of souls, but now generally restricted to signify the spiritual assistant of a rector or vicar in his *cure*. An officiating temporary minister in the English church, who represents the proper incumbent; being regularly employed either to serve in his absence or as his assistant, as the case may be. 1 *Bl. Comm.* 393; 3 *Steph. Comm.* 88; *Brande*.

CURATEUR. In French law. A person charged with supervising the administration of the affairs of an emancipated minor, of giving him advice, and assisting him in the important acts of such administration. *Duverger*.

CURATIO. In the civil law. The power or duty of managing the property of him who, either on account of infancy or some defect of mind or body, cannot manage his own affairs. The duty of a curator or guardian. *Calvin*.

CURATOR. In the civil law. A person who is appointed to take care of anything for another. A guardian. One appointed to take care of the estate of a minor above a certain age, a lunatic, a spendthrift, or other person not regarded by the law as competent to administer it for himself. The title was also applied to a variety of public officers in Roman administrative law.

In Scotch law. The term means a guardian.

In Louisiana. A person appointed to take care of the estate of an absentee. *Civil Code La.* art. 50.

In Missouri. The term "curator" has been adopted from the civil law, and it is applied to the guardian of the estate of the ward as distinguished from the guardian of his person. 49 *Mo.* 117.

CURATOR AD HOC. In the civil law. A guardian for this purpose; a special guardian.

CURATOR AD LITEM. Guardian for the suit. In English law, the corresponding phrase is "guardian *ad litem*."

CURATOR BONIS. In the civil law. A guardian or trustee appointed to take care of *property* in certain cases; as for the benefit of creditors. *Dig.* 42, 7.

In Scotch law. The term is applied to guardians for minors, lunatics, etc.

CURATORES VIARUM. Surveyors of the highways.

CURATORSHIP. The office of a curator. Curatorship differs from tutorship, (*q.v.*) in this; that the latter is instituted for the protection of property in the first place, and, secondly, of the person; while the former is intended to protect, first, the person, and secondly, the property. 1 *Lec. El. Dr. Civ. Rom.* 241.

CURATRIX. A woman who has been appointed to the office of curator; a female guardian. 4 *Grat.* 227.

Curatus non habet titulum. A curate has no title, [to tithes.] 3 *Bulst.* 310.

CURE BY VERDICT. See **AIDER BY VERDICT**.

CURE OF SOULS. In ecclesiastical law. The ecclesiastical or spiritual charge of a parish, including the usual and regular duties of a minister in charge.

CURFEW. An institution supposed to have been introduced into England by order

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of William the Conqueror, which consisted in the ringing of a bell or bells at eight o'clock at night, at which signal the people were required to extinguish all lights in their dwellings, and to put out or rake up their fires, and retire to rest, and all companies to disperse. The word is probably derived from the French *couvre feu*, to cover the fire.

CURIA. In old European law. A court. The palace, household, or retinue of a sovereign. A judicial tribunal or court held in the sovereign's palace. A court of justice. The civil power, as distinguished from the ecclesiastical. A manor; a nobleman's house; the hall of a manor. A piece of ground attached to a house; a yard or court-yard. Spelman. A lord's court held in his manor. The tenants who did suit and service at the lord's court. A manse. Cowell.

In Roman law. A division of the Roman people, said to have been made by Romulus. They were divided into three tribes, and each tribe into ten *curiæ*, making thirty *curiæ* in all. Spelman.

The place or building in which each *curia* assembled to offer sacred rites.

The place of meeting of the Roman senate; the senate house.

The senate house of a province; the place where the *decuriones* assembled. Cod. 10, 31, 2. See DECURIO.

CURIA ADMIRALITATIS. The court of admiralty.

CURIA ADVISARI VULT. L. Lat. The court will advise; the court will consider. A phrase frequently found in the reports, signifying the resolution of the court to suspend judgment in a cause, after the argument, until they have deliberated upon the question, as where there is a new or difficult point involved. It is commonly abbreviated to *cur. adv. vult*, or *c. a. v.*

CURIA BARONIS, or BARONUM. In old English law. A court-baron. Fleta, lib. 2, c. 53.

Curia cancellariæ officina justitiæ. 2 Inst. 552. The court of chancery is the workshop of justice.

CURIA CHRISTIANITATIS. The ecclesiastical court.

CURIA CLAUDENDA. The name of a writ to compel another to make a fence or wall, which he was bound to make, between his land and the plaintiff's. Reg. Orig. 155. Now obsolete.

CURIA COMITATUS. The county court, (*q. v.*)

CURIA CURSUS AQUÆ. A court held by the lord of the manor of Gravesend for the better management of barges and boats plying on the river Thames between Gravesend and Windsor, and also at Gravesend bridge, etc. 2 Geo. II. c. 26.

CURIA DOMINI. In old English law. The lord's court, house, or hall, where all the tenants met at the time of keeping court. Cowell.

CURIA LEGITIME AFFIRMATA. A phrase used in old Scotch records to show that the court was opened in due and lawful manner.

CURIA MAGNA. In old English law. The great court; one of the ancient names of parliament.

CURIA MAJORIS. In old English law. The mayor's court. Calth. 144.

CURIA MILITUM. A court so called, anciently held at Carisbrook Castle, in the Isle of Wight. Cowell.

CURIA PALATII. The palace court. It was abolished by 12 & 13 Vict. c. 101.

Curia parliamenti suis propriis legibus subsistit. 4 Inst. 50. The court of parliament is governed by its own laws.

CURIA PEDIS PULVERIZATI. In old English law. The court of *piepoudres* or *piepouders*, (*q. v.*) 3 Bl. Comm. 32.

CURIA PENTICIARUM. A court held by the sheriff of Chester, in a place there called the "*Pendice*" or "*Pentice*," probably it was so called from being originally held under a pent-house, or open shed covered with boards. Blount.

CURIA PERSONÆ. In old records. A parsonage-house, or manse. Cowell.

CURIA REGIS. The king's court. A term applied to the *aula regis*, the *bancus*, or *communis bancus*, and the *iter* or *eyre*, as being courts of the king, but especially to the *aula regis*, (which title see.)

CURIÆ CHRISTIANITATIS. Courts of Christianity; ecclesiastical courts.

CURIALITY. In Scotch law. Curtesy. Also the privileges, prerogatives, or, perhaps, retinue, of a court.

Curiosa et captiosa interpretatio in lege reprobatur. A curious [overnice or

subtle] and captious interpretation is reprobated in law. 1 Bulst. 6.

CURNOCK. In old English law. A measure containing four bushels or half a quarter of corn. Cowell; Blount.

CURRENCY. Coined money and such bank-notes or other paper money as are authorized by law and do in fact circulate from hand to hand as the medium of exchange.

CURRENT. Running; now in transit; whatever is at present in course of passage; as "the current month." When applied to money, it means "lawful;" current money is equivalent to lawful money. 1 Dall. 124.

CURRENT FUNDS. This phrase means gold or silver, or something equivalent thereto, and convertible at pleasure into coined money. 4 Ala. 90.

CURRENT MONEY. The currency of the country; whatever is intended to and does actually circulate as currency; every species of coin or currency. 5 Lea, 96. In this phrase the adjective "current" is not synonymous with "convertible." It is employed to describe money which passes from hand to hand, from person to person, and circulates through the community, and is generally received. Money is current which is received as money in the common business transactions, and is the common medium in barter and trade. 41 Ala. 321.

CURRICULUM. The year; of the course of a year; the set of studies for a particular period, appointed by a university.

CURRIT QUATUOR PEDIBUS. L. Lat. It runs upon four feet; or, as sometimes expressed, it runs upon all fours. A phrase used in arguments to signify the entire and exact application of a case quoted. "It does not follow that they run *quatuor pedibus*." 1 W. Bl. 145.

Currit tempus contra desides et sui juris contemptores. Time runs against the slothful and those who neglect their rights. Bract. fols. 100b, 101.

CURSITOR BARON. An officer of the court of exchequer, who is appointed by patent under the great seal to be one of the barons of the exchequer. The office was abolished by St. 19 & 20 Vict. c. 86.

CURSITORS. Clerks in the chancery office, whose duties consisted in drawing up those writs which were of course, *de cursu*, whence their name. They were abolished by

St. 5 & 6 Wm. IV. c. 82. Spence, Eq. Jur. 238; 4 Inst. 82.

CURSO. In old records. A ridge. *Cursones terræ*, ridges of land. Cowell.

CUSOR. An inferior officer of the papal court.

Cursus curiæ est lex curiæ. 3 Bulst. 53. The practice of the court is the law of the court.

CURTESY. The estate to which by common law a man is entitled, on the death of his wife, in the lands or tenements of which she was seised in possession in fee-simple or in tail during their coverture, provided they have had lawful issue born alive which might have been capable of inheriting the estate. It is a freehold estate for the term of his natural life. 1 Washb. Real Prop. 127; 2 Bl. Comm. 126; Co. Litt. 30a.

CURTEYN. The name of King Edward the Confessor's sword. It is said that the point of it was broken, as an emblem of mercy. (Mat. Par. in Hen. III.) Wharton.

CURTILAGE. The inclosed space of ground and buildings immediately surrounding a dwelling-house.

In its most comprehensive and proper legal signification, it includes all that space of ground and buildings thereon which is usually inclosed within the *general fence* immediately surrounding a principal messuage and outbuildings, and yard closely adjoining to a dwelling-house, but it may be large enough for cattle to be levant and couchant therein. 1 Chit. Gen. Pr. 175.

The curtilage of a dwelling-house is a space, necessary and convenient and habitually used for the family purposes, and the carrying on of domestic employments. It includes the garden, if there be one, and it need not be separated from other lands by fence. 31 Me. 522; 10 Cush. 480; 29 N. J. Law, 474.

The curtilage is the court-yard in the front or rear of a house, or at its side, or any piece of ground lying near, inclosed and used with, the house, and necessary for the convenient occupation of the house. 10 Hun, 154.

In Michigan the meaning of curtilage has been extended to include more than an inclosure near the house. 2 Mich. 250.

CURTILES TERRÆ. In old English law. Court lands. Cowell. See COURT LANDS.

CURTILLIUM. A curtilage; the area or space within the inclosure of a dwelling-house. Spelman.

CURTIS. A garden; a space about a house; a house, or manor; a court, or palace; a court of justice; a nobleman's residence. Spelman.

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CUSSORE. A term used in Hindostan for the discount or allowance made in the exchange of rupees, in contradistinction to *batta*, which is the sum deducted. Enc. Lond.

CUSTA, CUSTAGIUM, CUSTANTIA. Costs.

CUSTODE ADMITTENDO, CUSTODE AMOVENDO. Writs for the admitting and removing of guardians.

CUSTODES. In Roman law. Guardians; observers; inspectors. Persons who acted as inspectors of elections, and who counted the votes given. Tayl. Civil Law, 193.

In old English law. Keepers; guardians; conservators.

Custodes pacis, guardians of the peace. 1 Bl. Comm. 349.

CUSTODES LIBERTATIS ANGLIÆ AUCTORITATE PARLIAMENTI. The style in which writs and all judicial processes were made out during the great revolution, from the execution of King Charles I. till Oliver Cromwell was declared protector.

CUSTODIA LEGIS. In the custody of the law.

CUSTODIAM LEASE. In English law. A grant from the crown under the exchequer seal, by which the custody of lands, etc., seised in the king's hands, is demised or committed to some person as custodee or lessee thereof. Wharton.

CUSTODY. The care and keeping of anything; as when an article is said to be "in the custody of the court." Also the detainer of a man's person by virtue of lawful process or authority; actual imprisonment. 59 Pa. St. 320.

In a sentence that the defendant "be in custody until," etc., this term imports actual imprisonment. The duty of the sheriff under such a sentence is not performed by allowing the defendant to go at large under his general watch and control, but so doing renders him liable for an escape. 59 Pa. St. 320.

CUSTOM. A usage or practice of the people, which, by common adoption and acquiescence, and by long and unvarying habit, has become compulsory, and has acquired the force of a law with respect to the place or subject-matter to which it relates.

A law not written, established by long usage, and the consent of our ancestors. Termes

de la Ley; Cowell; Bract. fol. 2. If it be universal, it is common law; if particular to this or that place, it is then properly *custom*. 3 Salk. 112.

Customs result from a long series of actions constantly repeated, which have, by such repetition, and by uninterrupted acquiescence, acquired the force of a tacit and common consent. Civil Code La. art. 3.

It differs from prescription, which is personal and is annexed to the person of the owner of a particular estate; while the other is local, and relates to a particular district. An instance of the latter occurs where the question is upon the manner of conducting a particular branch of trade at a certain place; of the former, where a certain person and his ancestors, or those whose estates he has, have been entitled to a certain advantage or privilege, as to have common of pasture in a certain close, or the like. The distinction has been thus expressed: "While prescription is the making of a right, custom is the making of a law." Lawson, Usages & Cust. 15, note 2.

Customs are either *general* or *particular*. General customs are such as prevail throughout a country and become the law of the country; and their existence is to be determined by the court. Particular customs are such as prevail in some county, city, town, parish, or place. 23 Me. 90.

CUSTOM-HOUSE. In administrative law. The house or office where commodities are entered for importation or exportation; where the duties, bounties, or drawbacks payable or receivable upon such importation or exportation are paid or received; and where ships are cleared out, etc.

CUSTOM-HOUSE BROKER. One whose occupation it is, as the agent of others, to arrange entries and other custom-house papers, or transact business, at any port of entry, relating to the importation or exportation of goods, wares, or merchandise. 14 St. at Large, 117.

A person authorized by the commissioners of customs to act for parties, at their option, in the entry or clearance of ships and the transaction of general business. Wharton.

Custom is the best interpreter of the law. 4 Inst. 75; 2 Eden, 74; 5 Cranch, 32; 1 Serg. & R. 106.

CUSTOM OF MERCHANTS. A system of customs or rules relative to bills of exchange, partnership, and other mercantile matters, and which, under the name of the "*lex mercatoria*," or "law-merchant," has been ingrafted into, and made a part of, the common law. 1 Bl. Comm. 75; 1 Steph. Comm. 54; 2 Burrows, 1226, 1228.

CUSTOM OF YORK. A custom of intestacy in the province of York similar to that of London. Abolished by 19 & 20 Vict. c. 94.

CUSTOMARY COURT-BARON. A court-baron at which copyholders might transfer their estates, and where other matters relating to their tenures were transacted. 3 Bl. Comm. 33.

CUSTOMARY ESTATES. Estates which owe their origin and existence to the custom of the manor in which they are held. 2 Bl. Comm. 149.

CUSTOMARY FREEHOLD. In English law. A variety of copyhold estate, the evidences of the title to which are to be found upon the court rolls; the entries declaring the holding to be according to the custom of the manor, but it is not said to be at the will of the lord. The incidents are similar to those of common or pure copyhold. 1 Steph. Comm. 212, 213, and note.

CUSTOMARY SERVICES. Such as are due by ancient custom or prescription only.

CUSTOMARY TENANTS. Tenants holding by custom of the manor.

Custome serra prise stricte. Custom shall be taken [is to be construed] strictly. Jenk. Cent. 83.

CUSTOMS. This term is usually applied to those taxes which are payable upon goods and merchandise imported or exported. Story, Const. § 949; Bac. Abr. "Smuggling."

The duties, toll, tribute, or tariff payable upon merchandise exported or imported. These are called "customs" from having been paid from time immemorial. Expressed in law Latin by *custuma*, as distinguished from *consuetudines*, which are usages merely. 1 Bl. Comm. 314.

CUSTOMS AND SERVICES annexed to the tenure of lands are those which the tenants thereof owe unto their lords, and which, if withheld, the lord might anciently have resorted to "a writ of customs and services" to compel them. Cowell. But at the present day he would merely proceed to eject the tenant as upon a forfeiture, or claim damages for the subtraction. Brown.

CUSTOMS CONSOLIDATION ACT. The statute 16 & 17 Vict. c. 107, which has been frequently amended. See 2 Steph. Comm. 563.

CUSTOMS OF LONDON. Particular customs within the city of London, with regard to trade, apprentices, widows, orphans, and a variety of other matters. 1 Bl. Comm. 75; 1 Steph. Comm. 54, 55.

CUSTOS. A custodian, guard, keeper, or warden; a magistrate.

CUSTOS BREVIUM. The keeper of the writs. A principal clerk belonging to the courts of queen's bench and common pleas, whose office it was to keep the writs returnable into those courts. The office was abolished by 1 Wm. IV. c. 5.

CUSTOS FERARUM. A gamekeeper. Townsh. Pl. 265.

CUSTOS HORREI REGII. Protector of the royal granary. 2 Bl. Comm. 394.

CUSTOS MARIS. In old English law. Warden of the sea. The title of a high naval officer among the Saxons and after the Conquest, corresponding with *admiral*.

CUSTOS MORUM. The guardian of morals. The court of queen's bench has been so styled. 4 Steph. Comm. 377.

CUSTOS PLACITORUM CORONÆ. In old English law. Keeper of the pleas of the crown. Bract. fol. 14b. Cowell supposes this office to have been the same with the *custos rotulorum*. But it seems rather to have been another name for "coroner." Crabb, Eng. Law, 150; Bract. fol. 136b.

CUSTOS ROTULORUM. Keeper of the rolls. An officer in England who has the custody of the rolls or records of the sessions of the peace, and also of the commission of the peace itself. He is always a justice of the quorum in the county where appointed and is the principal civil officer in the county. 1 Bl. Comm. 349; 4 Bl. Comm. 272.

CUSTOS SPIRITUALIUM. In English ecclesiastical law. Keeper of the spiritualities. He who exercises the spiritual jurisdiction of a diocese during the vacancy of the see. Cowell.

Custos statum hæredis in custodia existentis meliorem, non deteriore, facere potest. 7 Coke, 7. A guardian can make the estate of an existing heir under his guardianship better, not worse.

CUSTOS TEMPORALIUM. In English ecclesiastical law. The person to whom a vacant see or abbey was given by the king, as supreme lord. His office was, as steward of the goods and profits, to give an account

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to the escheator, who did the like to the exchequer.

CUSTOS TERRÆ. In old English law. Guardian, warden, or keeper of the land.

CUSTUMA ANTIQUA SIVE MAGNA. (Lat. Ancient or great duties.) The duties on wool, sheep-skin, or wool-pelts and leather exported were so called, and were payable by every merchant, stranger as well as native, with the exception that merchant strangers paid one-half as much again as natives. 1 Bl. Comm. 314.

CUSTUMA PARVA ET NOVA. (Small and new customs.) Imposts of 3d. in the pound, due formerly in England from merchant strangers only, for all commodities, as well imported as exported. This was usually called the "aliens duty," and was first granted in 31 Edw. I. 1 Bl. Comm. 314; 4 Inst. 29.

CUT. A wound made with a sharp instrument.

CUTCHERRY. In Hindu law. Corrupted from *Kachari*. A court; a hall; an office; the place where any public business is transacted.

CUTH, COUTH. Sax. Known, knowing. *Uncuth*, unknown. See **COUTHUTLAUGH, UNCUTH.**

CUTHRED. A knowing or skillful counsellor.

CUTPURSE. One who steals by the method of cutting purses; a common practice when men wore their purses at their girdles, as was once the custom. Wharton.

CUTTER OF THE TALLIES. In old English law. An officer in the exchequer, to whom it belonged to provide wood for the tallies, and to cut the sum paid upon them, etc.

CUTWAL, KATWAL. The chief officer of police or superintendent of markets in a large town or city in India.

CWT. A hundred-weight; one hundred and twelve pounds. 11 B. Mon. 64.

CY. In law French. Here. (*Cy-apres*, hereafter; *cy-devant*, heretofore.) Also as, so.

CYCLE. A measure of time; a space in which the same revolutions begin again; a periodical space of time. Enc. Lond.

CYNE-BOT, or CYNE-GILD. The portion belonging to the nation of the mulct for slaying the king, the other portion or *were* being due to his family. Blount.

CYNEBOTE. A mulct anciently paid by one who killed another, to the kindred of the deceased. Spelman.

CYPHONISM. That kind of punishment used by the ancients, and still used by the Chinese, called by Staunton the "wooden collar," by which the neck of the malefactor is bent or weighed down. Enc. Lond.

CY-PRES. As near as [possible.] The rule of *cy-pres* is a rule for the construction of instruments in equity, by which the intention of the party is carried out *as near as may be*, when it would be impossible or illegal to give it literal effect. Thus, where a testator attempts to create a perpetuity, the court will endeavor, instead of making the devise entirely void, to explain the will in such a way as to carry out the testator's general intention as far as the rule against perpetuities will allow. So in the case of bequests to charitable uses; and particularly where the language used is so vague or uncertain that the testator's design must be sought by construction. See 6 Cruise, Dig. 165; 1 Spence, Eq. Jur. 532; 3 Hare, 12.

CYRCE. In Saxon law. A church.

CYRICBRYCE. In Saxon law. A breaking into a church. Blount.

CYRICSCEAT. (From *cyric*, church, and *sceat*, a tribute.) In Saxon law. A tribute or payment due to the church. Cowell.

CYROGRAPHARIUS. In old English law. A cyrographer; an officer of the *bancus*, or court of common bench. Fleta, lib. 2, c. 36.

CYROGRAPHUM. A chirograph, (which see.)

CZAR. The title of the emperor of Russia, first assumed by Basil, the son of Basilides, under whom the Russian power began to appear, about 1740.

CZARINA. The title of the empress of Russia.

CZAROWITZ. The title of the eldest son of the czar and czarina.