BLACK'S LAW DICTIONARY

CONTAINING

DEFINITIONS OF THE TERMS AND PHRASES OF AMERICAN AND ENGLISH JURISPRUDENCE, ANCIENT AND MODERN

AND INCLUDING

THE PRINCIPAL TERMS OF INTERNATIONAL, CONSTITUTIONAL, ECCLESIASTICAL AND COMMERCIAL LAW, AND MEDICAL JURISPRUDENCE, WITH A COLLECTION OF LEGAL MAXIMS, NUMEROUS SELECT TITLES FROM THE ROMAN, MODERN CIVIL, SCOTCH, FRENCH, SPANISH, AND MEXICAN LAW, AND OTHER FOREIGN SYSTEMS, AND A TABLE OF ABBREVIATIONS

BY

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THIRD EDITION

BY

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PREFACE TO THE THIRD EDITION

TWENTY-THREE years have passed since the publication of the Second Edition of Black's Law Dictionary. These years, covering the period of the greatest war in history, followed by a period of prosperity never before equaled, and succeeded by the most widespread depression ever known, have of necessity been fraught with changes and complexities of law, which are reflected in legal nomenclature and definitions. New terms have come into use, and old terms have taken on new meaning.

In the present edition of this work, attempt has been made to meet changed conditions by adding new words and modernized definitions, together with illustrations and current authorities supporting new use of old terms.

The same general alphabetical plan pursued in the two former editions has been followed, but the separation of secondary headings from principal ones has been made clearer.

The publishers offer this work to the legal profession with the firm belief that it merits the same favorable reception accorded the earlier editions.

THE PUBLISHERS.

ST. PAUL, MINN.
July 27, 1933.

PREFACE TO THE SECOND EDITION.

IN THE preparation of the present edition of this work, the author has taken pains, in response to a general demand in that behalf, to incorporate a very great number of additional citations to decided cases, in which the terms or phrases of the law have been judicially defined. The general plan, however, has not been to quote seriatim a number of such judicial definitions under each title or heading, but rather to frame a definition, or a series of alternative definitions, expressive of the best and clearest thinking and most accurate statements in the reports, and to cite in support of it a liberal selection of the best decisions, giving the preference to those in which the history of the word or phrase, in respect to its origin and use, is reviewed, or in which a large number of other decisions are cited. The author has also taken advantage of the opportunity to subject the entire work to a thorough revision, and has entirely rewritten many of the definitions, either because his fresh study of the subject-matter or the helpful criticism of others had disclosed minor inaccuracies in them, or because he thought they could profitably be expanded or made more explicit, or because of new uses or meanings of the term. There have also been included a large number of new titles. Some of these are old terms of the law which had previously been overlooked, a considerable number are Latin and French words, ancient or modern, not heretofore inserted, and the remainder are terms new to the law, or which have come into use since the first edition was published, chiefly growing out of the new developments in the social, industrial, commercial, and political life of the people.

Particularly in the department of medical jurisprudence, the work has been enriched by the addition of a great number of definitions which are of constant interest and importance in the courts. Even in the course of the last few years medical science has made giant strides, and the new discoveries and theories have brought forth a new terminology, which is not only much more accurate but also much richer than the old; and in all the fields where law and medicine meet we now daily encounter a host of terms and phrases which, no more than a decade ago, were utterly unknown. This is true—to cite but a few examples—of the new terminology of insanity, of pathological and criminal psychology, the innumerable forms of nervous disorders, the new tests and reactions, bacteriology, toxicology, and so on. In this whole department I have received much valuable assistance from my friend Dr. Fielding H. Garrison, of this city, to whose wide and thorough scientific learning I here pay cheerful tribute, as well as to his constant and obliging readiness to place at the command of his friends the resources of his well-stored mind.

Notwithstanding all these additions, it has been possible to keep the work within the limits of a single volume, and even to avoid materially increasing its bulk, by a new system of arrangement, which involves grouping all compound and descriptive terms and phrases under the main heading or title from which they are radically derived or with which they are conventionally associated, substantially in accordance with the plan adopted in the Century Dictionary and most other modern works of reference.

H. C. B.

WASHINGTON, D. C., December 1, 1910.

PREFACE TO THE FIRST EDITION

THE dictionary now offered to the profession is the result of the author's endeavor to prepare a concise and yet comprehensive book of definitions of the terms, phrases, and maxims used in American and English law and necessary to be understood by the working lawyer and judge, as well as those important to the student of legal history or comparative jurisprudence. It does not purport to be an epitome or compilation of the body of the law. It does not invade the province of the text-books, nor attempt to supersede the institutional writings. Nor does it trench upon the field of the English dictionary, although vernacular words and phrases, so far as construed by the courts, are not excluded from its pages. Neither is the book encyclopædic in its character. It is chiefly required in a dictionary that it should be comprehensive. Its value is impaired if any single word that may reasonably be sought between its covers is not found there. But this comprehensiveness is possible (within the compass of a single volume) only on condition that whatever is foreign to the true function of a lexicon be rigidly excluded. The work must therefore contain nothing but the legitimate matter of a dictionary, or else it cannot include all the necessary terms. This purpose has been kept constantly in view in the preparation of the present work. Of the most esteemed law dictionaries now in use, each will be found to contain a very considerable number of words not defined in any other. None is quite comprehensive in itself. The author has made it his aim to include *all* these terms and phrases here, together with some not elsewhere defined.

For the convenience of those who desire to study the law in its historical development, as well as in its relations to political and social philosophy, place has been found for numerous titles of the old English law, and words used in old European and feudal law, and for the principal terminology of the Roman law. And in view of the modern interest in comparative jurisprudence and similar studies, it has seemed necessary to introduce a considerable vocabulary from the civil, canon, French, Spanish, Scotch, and Mexican law and other foreign systems. In order to further adapt the work to the advantage and convenience of all classes of users, many terms of political or public law are here defined, and such as are employed in trade, banking, and commerce, as also the principal phraseology of international and maritime law and forensic medicine. There have also been included numerous words taken from the vernacular, which, in consequence of their interpretation by the courts or in statutes, have acquired a quasi-technical meaning, or which, being frequently used in laws or private documents, have often been referred to the courts for construction. But the main body of the work is given to the definition of the technical terms and phrases used in modern American and English jurisprudence.

In searching for definitions suitable to be incorporated in the work, the author has carefully examined the codes, and the compiled or revised statutes, of the various states, and from these sources much valuable matter has been obtained. The definitions thus enacted by law are for the most part terse, practical, and of course authoritative. Most, if not all, of such statutory interpretations of words and phrases will be found under their appropriate titles. Due prominence has

also been given to definitions formulated by the appellate courts and embodied in the reports. Many of these judicial definitions have been literally copied and adopted as the author's definition of the particular term, of course with a proper reference. But as the constant aim has been to present a definition at once concise, comprehensive, accurate, and lucid, he has not felt bound to copy the language of the courts in any instance where, in his judgment, a better definition could be found in treatises of acknowledged authority, or could be framed by adaptation or re-arrangement. But many judicial interpretations have been added in the way of supplementary matter to the various titles.

The more important of the synonyms occurring in legal phraseology have been carefully discriminated. In some cases, it has only been necessary to point out the correct and incorrect uses of these pairs and groups of words. In other cases, the distinctions were found to be delicate or obscure, and a more minute analysis was required.

A complete collection of legal maxims has also been included, comprehending as well those in English and Law French as those expressed in the Latin. These have not been grouped in one body, but distributed in their proper alphabetical order through the book. This is believed to be the more convenient arrangement.

It remains to mention the sources from which the definitions herein contained have been principally derived. For the terms appertaining to old and middle English law and the feudal polity, recourse has been had freely to the older English law dictionaries, (such as those of Cowell, Spelman, Blount, Jacob, Cunningham, Whishaw, Skene, Tomlins, and the "Termes de la Ley,") as also to the writings of Bracton, Littleton, Coke, and the other sages of the early law. The authorities principally relied on for the terms of the Roman and modern civil law are the dictionaries of Calvinus, Scheller, and Vicat, (with many valuable suggestions from Brown and Burrill), and the works of such authors as Mackeldey, Hunter, Browne, Hallifax, Wolff, and Maine, besides constant reference to Gaius and the Corpus Juris Civilis. In preparing the terms and phrases of French, Spanish, and Scotch law, much assistance has been derived from the treatises of Pothier, Merlin, Toullier, Schmidt, Argles, Hall, White, and others, the commentaries of Erskine and Bell, and the dictionaries of Dalloz, Bell, and Escriche. For the great body of terms used in modern English and American law, the author, besides searching the codes and statutes and the reports, as already mentioned, has consulted the institutional writings of Blackstone, Kent, and Bouvier, and a very great number of text-books on special topics of the law. An examination has also been made of the recent English law dictionaries of Wharton, Sweet, Brown, and Mozley & Whitley, and of the American lexicographers, Abbott, Anderson, Bouvier, Burrill, and Rapalje & Lawrence. In each case where aid is directly levied from these sources, a suitable acknowledgment has been made. This list of authorities is by no means exhaustive, nor does it make mention of the many cases in which the definition had to be written entirely *de novo;* but it will suffice to show the general direction and scope of the author's researches.

H. C. B.

WASHINGTON, D. C., August 1, 1891.

A TABLE

OF

BRITISH REGNAL YEARS

Sovereign.	Accession.	Length of reign
William I.	Oct. 14, 1066.	21
William II.	Sept. 26, 1087.	13
Henry I.	Aug. 5, 1100.	36
Stephen	Dec. 26, 1135.	19
Henry II.	Dec. 19, 1154.	35
Richard I.	Sept. 23, 1189.	10
John	May 27, 1199.	18
Henry III.	Oct. 28, 1216.	57
Edward I.	Nov. 20, 1272.	35
Edward II.	July 8, 1307.	20
Edward III.	Jan. 25, 1326.	51
Richard II.	June 22, 1377.	23
Henry IV.	Sept. 30, 1399.	14
Henry V.	March 21, 1413.	10
Henry VI.	Sept. 1, 1422.	39
Edward IV.	March 4, 1461.	23
Edward V.	April 9, 1483.	—
Richard III.	June 26, 1483.	3
Henry VII.	Aug. 22, 1485.	24
Henry VIII.	April 22, 1509.	38
Edward VI.	Jan. 28, 1547.	7
Mary	July 6, 1553.	6
Elizabeth	Nov. 17, 1558.	45
James I.	March 24, 1603.	23
Charles I.	March 27, 1625.	24
The Commonwealth.	Jan. 30, 1649.	11
Charles II.	May 29, 1660.	37
James II.	Feb. 6, 1685.	4
William and Mary	Feb. 13, 1689.	14
Anne	March 8, 1702.	13
George I.	Aug. 1, 1714.	13
George II.	June 11, 1727.	34
George III.	Oct. 25, 1760.	60
George IV.	Jan. 29, 1820.	11
William IV.	June 26, 1830.	7
Victoria	June 20, 1837.	64
Edward VII.	Jan. 22, 1901.	9
George V.	May 6, 1910.	—

BLACK'S DICTIONARY OF LAW

THIRD EDITION

A

A. The first letter of the English alphabet; used to distinguish the first page of a folio from the second, marked b, thus: Coke, Litt. 114a, 114b; or the first page of a book, the first foot-note on a printed page, the first of a series of subdivisions, etc., from the following ones, which are marked b, c, d, e, etc.

It is also used as an abbreviation for many words of which it is the initial letter.

An abbreviation of *adversus* used for *versus*, indicating the parties to an action.

At Roman criminal trials the judge, on a table covered with wax, provided for the purpose, inscribed the letter A (absolvo) when he voted to acquit.

The letter A (i. e. *antiquo*, "for the old law") was inscribed upon Roman ballots to indicate a vote against a proposed law. Tayl. Civ. Law, 191, 192.

An adulteress among the Puritans was condemned to wear the initial letter "A" in red cloth on her dress.

In Latin phrases a preposition, denoting from, by, in, on, of, at, and is of common use as a part of a title.

In French phrases it is also a preposition, denoting of, at, to, for, in, with.

The article "a" is not necessarily a singular term, it is often used in the sense of "any," and is then applied to more than one individual object, National Union Bank v. Copeland, 141 Mass. 266, 4 N. E. 794; Snowden v. Guion, 101 N. Y. 458, 5 N. E. 322; Thompson v. Stewart, 60 Iowa, 225, 14 N. W. 247; Commonwealth v. Watts, 84 Ky. 537, 2 S. W. 123; Deutsch v. Mortgage Securities Co., 123 S. E. 793, 795, 96 W. Va. 676; Bourland v. First Nat. Bank Bldg. Co., 237 S. W. 681, 683, 152 Ark. 139; Philadelphia & R. R. Co. v. Green & Flinn, 119 A. 840, 846, 2 W. W. Harr. (Del.) 78; sometimes as "the," Ex parte Hill, 23 Ch. Div. 695, 701.

@. A symbol meaning "at." Bilford v. Beatty, 34 N. E. 254, 255, 145 Ill. 414.

A 1. Of the highest qualities. An expression which originated in a practice of underwriters of rating vessels in three classes,—A, B, and C; and these again in ranks numbered. Abbott. A description of a ship as "A 1" amounts to a warranty. Ollive v. Booker, 1 Exch. 423.

A/C. In bookkeeping it means account. As used in a check it has been held not a direction to the bank to credit the amount of the check to the person named but rather a memorandum to identify the transaction in which the check was issued. Marsh v. First State Bank & Trust Co. of Canton, 185 Ill. App. 29, 32.

A. D. Lat. Contraction for *Anno Domini*, (in the year of our Lord).

A. M. Lat. *Ante meridian.* After the general use of solar time became obsolete, the abbreviations "A. M." and "P. M." in designating time remained in use to distinguish between forenoon and afternoon. Orvik v. Casselman, 105 N. W. 1105, 1106, 15 N. D. 34.

A. R. *Anno regni*, the year of the reign; as, A. R. V. R. 22, (*Anno Regni Victoriæ Reginæ vicesimo secundo,*) in the twenty-second year of the reign of Queen Victoria.

A. U. C. Lat. *ab urbe condita.* From the foundation of the city, Rome. The era from which Romans computed time, being assumed to be 753 years before the Christian Era.

A AVER ET TENER. L. Fr. (L. Lat. *habendum et tenendum.*) To have and to hold. Co. Litt. §§ 523, 524. *A aver et tener a luy et a ses heires, a touts jours,*—to have and to hold to him and his heirs forever. Id. § 625. See Aver et Tener.

A CŒLO USQUE AD CENTRUM. From the heavens to the center of the earth.

A communi observantia non est recedendum. From common observance there should be no departure; there must be no departure from common usage. 2 Coke, 74; Co. Litt. 186*a*, 229*b*, 365*a*; Wing. Max. 752, max. 203. A maxim applied to the practice of the courts, to the ancient and established forms of pleading and conveyancing, and to professional usage generally. Id. 752–755. Lord Coke applies it to common professional opinion. Co. Litt. 186*a*, 364*b*.

A CONSILIIS. (Lat. *consilium*, advice.) Of counsel; a counsellor. The term is used in the civil law by some writers instead of *a responsis.* Spelman, "*Apocrisarius.*"

A CUEILLETTE. In French law. In relation to the contract of affreightment, signifies when the cargo is taken on condition that the master succeeds in completing his cargo from other sources. Arg. Fr. Merc. Law, 543.

A DATU. L. Lat. From the date. Haths v. Ash, 2 Salk. 413. *A dato*, from the date. Cro. Jac. 135.

A DIE DATUS. From the day of the date. Hatter v. Ash, 1 Ld. Raym. 84. Used in leases to determine the time or running of the estate, and when so used the time includes the day of the date. Doe v. Watton, 1 Cowp. 189, 191. But for contrary construction, see Haths v. Ash, 2 Salk. 413.

A digniori fieri debet denominatio. Denomination ought to be from the more worthy. The description (of a place) should be taken from the more worthy subject (as from a will). Fleta, lib. 4, c. 10, § 12.

A digniori fieri debet denominatio et resolutio. The title and exposition of a thing ought to be derived from, or given, or made with reference to, the more worthy degree, quality, or species of it. Wing. Max. 265, max. 75.

A FORFAIT ET SANS GARANTIE. In French law. A formula used in indorsing commercial paper, and equivalent to "without recourse."

A FORTIORI. With stronger reason; much more. A term used in logic to denote an argument to the effect that because one ascertained fact exists, therefore another, which is included in it, or analogous to it, and which is less improbable, unusual, or surprising, must also exist.

A GRATIA. From grace or favor; as a matter of indulgence, not of right.

A justitia (quasi a quodam fonte) omnia jura emanant. From justice, as a fountain, all rights flow. Brac. 2 *b*.

A LATERE. Lat. Collateral. Used in this sense in speaking of the succession to property. Bract. 20*b*, 62*b*. From, on, or at the side; collaterally. *A latere ascendit (jus).* The right ascends collaterally. Justices of the *Curia Regis* are described as *a latere regis residentes*, sitting at the side of the King; Bract. fol. 108*a*; 2 Reeve, Hist. Eng. L. 250.

In Civil Law and by Bracton, a synonym for *e transverso*, across. Bract. fol. 67*a*.

Applied also to a process or proceeding. Keilw. 159.

Out of the regular or lawful course; incidentally or casually. Bract. fol. 42*b*; Fleta, lib. 3, c. 15, § 13.

From the side of; denoting closeness of intimacy or connection; as a court held before auditors *specialiter a latere regis destinatis*. Fleta, lib. 2, c. 2, § 4.

Apostolic; having full powers to represent the Pope as if he were present. Du Cange, *Legati a latere;* 4 Bla. Com. 306.

A LIBELLIS. L. Lat. An officer who had charge of the *libelli* or petitions addressed to the sovereign. Calvin. A name sometimes given to a chancellor, (*cancellarius,*) in the early history of that office. Spelman, "*Cancellarius.*"

A l'impossible nul n'est tenu. No one is bound to do what is impossible.

A ME. (Lat. *ego*, I.) A term in feudal grants denoting direct tenure of the superior lord. 2 Bell, H. L. Sc. 133.

Unjustly detaining from me. He is said to withhold *a me* (from me) who has obtained possession of my property unjustly. Calvinus, Lex. To pay *a me*, is to pay from my money.

A MENSA ET THORO. Lat. From table and bed, but more commonly translated, from bed and board. A kind of divorce, which is rather a separation of the parties by law, than a dissolution of the marriage.

A NATIVITATE. From birth, or from infancy. Denotes that a disability, status, etc., is congenital. 3 Bla. Comm. 332; Reg. Orig. 266*b*.

A non posse ad non esse sequitur argumentum necessarie negative, licet non affirmative. From impossibility to non-existence the inference follows necessarily in the negative, though not in the affirmative. That which cannot be done is not done. Hob. 336*b*.

A PALATIO. L. Lat. From *palatium*, (a palace.) Counties palatine are hence so called. 1 Bl. Comm. 117. See Palatium.

A PRENDRE. L. Fr. To take; to seize. *Bref à prendre la terre*, a writ to take the land. Fet Ass. § 51. A right to take something out of the soil of another is a profit *à prendre*, or a right coupled with a profit. 1 Crabb, Real Prop. p. 125, § 115. Distinguished from an easement. 5 Adol. & E. 758. Sometimes written as one word, *apprendre*, *apprender*. See Profit à prendre.

Rightfully taken from the soil. 1 N. & P. 172; Waters v. Lilley, 4 Pick. (Mass.) 145, 16 Am. Dec. 333.

A piratis aut latronibus capti liberi permanent. Persons taken by pirates or robbers remain free. Dig. 49, 15, 19, 2; Gro. de J. B. lib. 3, c. 3, § 1.

A piratis et latronibus capta dominium non mutant. Things taken or captured by pirates and robbers do not change their ownership. Bynk. bk. 1, c. 17; 1 Kent, Comm. 108, 184. No right to the spoil vests in the piratical captors; no right is derivable from them to any recaptors in prejudice of the original owners. 2 Wood. Lect. 428.

A POSTERIORI. Lat. From the effect to the cause; from what comes after. A term used in logic to denote an argument founded on ex-

periment or observation, or one which, taking ascertained facts as an effect, proceeds by synthesis and induction to demonstrate their cause.

A PRIORI. Lat. From the cause to the effect; from what goes before. A term used in logic to denote an argument founded on analogy, or abstract considerations, or one which, positing a general principle or admitted truth as a cause, proceeds to deduce from it the effects which must necessarily follow.

A QUO. Lat. From which. A court *a quo* (also written "a qua") is a court from which a cause has been removed. The judge *a quo* is the judge in such court. Clegg v. Alexander, 6 La. 339.

A term used, with the correlative *ad quem* (to which), in expressing the computation of time, and also of distance in space. Thus, *dies a quo*, the day from which and *dies ad quem*, the day to which, a period of time is computed. So, *terminus a quo*, the point or limit from which, and *terminus ad quem*, the point or limit to which, a distance or passage in space is reckoned.

A RENDRE. (Fr. to render, to yield.) That which is to be rendered, yielded, or paid. *Profits à rendre* comprehend rents and services. Ham. N. P. 192.

A rescriptis valet argumentum. An argument from rescripts [*i. e.* original writs in the register] is valid. Co. Litt. 11 *a*.

A RESPONSIS. L. Lat. In ecclesiastical law. One whose office it was to give or convey answers; otherwise termed *responsalis*, and *apocrisiarius*. One who, being consulted on ecclesiastical matters, gave answers, counsel, or advice; otherwise termed *a consiliis*. Spelman, "*Apocrisiarius.*"

A RETRO. L. Lat. Behind; in arrear. *Et reditus proveniens inde à retro fuerit*, and the rent issuing therefrom be in arrear. Fleta, lib. 2, c. 55, § 2; c. 62, § 14.

A RUBRO AD NIGRUM. Lat. From the red to the black; from the rubric or title of a statute (which, anciently, was in *red* letters), to its body, which was in the ordinary *black*. Tray. Lat. Max.; Bell, "*Rubric;*" Erskine, Inst. 1, 1, 49.

A summo remedio ad inferiorem actionem non habetur regressus, neque auxilium. From (after using) the highest remedy, there can be no recourse (going back) to an inferior action, nor assistance, (derived from it.) Fleta, lib. 6, c. 1, § 2. A maxim in the old law of real actions, when there were grades in the remedies given; the rule being that a party who brought a writ of right, which was the highest writ in the law, could not afterwards resort or descend to an inferior remedy. Bract. 112*b*; 3 Bl. Comm. 193, 194.

A tempore cujus contrarii memoria non existet. From time of which memory to the contrary does not exist.

A verbis legis non est recedendum. From the words of the law there must be no departure. 5 Coke, 119; Wing. Max. 25. A court is not at liberty to disregard the express letter of a statute, in favor of a supposed intention. 1 Steph. Comm. 71; Broom, Max. 268.

A VINCULO MATRIMONII. Lat. from the bond of matrimony. A term descriptive of a kind of divorce, which effects a complete dissolution of the marriage contract. See Divorce.

Ab abusu ad usum non valet consequentia. A conclusion as to the use of a thing from its abuse is invalid. Broom, Max. 17.

AB ACTIS. Lat. An officer having charge of *acta*, public records, registers, journals, or minutes; an officer who entered on record the *acta* or proceedings of a court; a clerk of court; a notary or actuary. Calvin. Lex. Jurid. See "*Acta.*" This, and the similarly formed epithets *à cancellis*, *à secretis*, *à libellis*, were also anciently the titles of a chancellor, (*cancellarius*,) in the early history of that office. Spelman. "*Cancellarius.*"

AB AGENDO. Disabled from acting; unable to act; incapacitated for business or transactions of any kind.

AB ANTE. Lat. Before; in advance. Thus, a legislature cannot agree *ab ante* to any modification or amendment to a law which a third person may make. Allen v. McKean, 1 Sumn. 308, Fed. Cas. No. 229.

AB ANTECEDENTE. Lat. Beforehand; in advance. 5 M. & S. 110.

AB ANTIQUO. Of old; of an ancient date.

Ab assuetis non fit injuria. From things to which one is accustomed (or in which there has been long acquiescence) no legal injury or wrong arises. If a person neglect to insist on his right, he is deemed to have abandoned it. Amb. 645; 3 Brown, Ch. 639; Jenk. Cent. Introd. vi.

AB EPISTOLIS. Lat. An officer having charge of the correspondence (*epistolæ*) of his superior or sovereign; a secretary. Calvin.; Spiegelius.

AB EXTRA. (Lat. *extra*, beyond, without.) From without. Lunt v. Holland, 14 Mass. 151.

AB INCONVENIENTI. From hardship, or inconvenience. An argument founded upon the hardship of the case, and the inconvenience or disastrous consequences to which a different course of reasoning would lead. In re Halsey Electric Generator Co., 175 F. 825, aff State of New Jersey v. Lovell, 179 F. 321, 102 C. C. A. 505, 31 L. R. A. (N. S.) 988, cert den 31 S. Ct. 471, 219 U. S. 587, 55 L. Ed. 347; Barber As-

phalt Paving Co. v. Hayward, 154 S. W. 140, 248 Mo. 280.

AB INITIO. Lat. From the beginning; from the first act; entirely; as to all the acts done; in the inception. A party may be said to be a trespasser, an estate to be good, an agreement or deed to be void, a marriage or act to be unlawful, *ab initio.* Plow. 6*a*, 16*a*; 1 Bl. Comm. 440; 11 East 395; Sackrider v. M'Donald, 10 Johns. (N. Y.) 253; Hopkins v. Hopkins, 10 Johns. (N. Y.) 369; In re Millers' & Manufacturers' Ins. Co., 106 N. W. 485, 493, 97 Minn. 98; State v. Poulin, 74 A. 119, 105 Me. 224, 24 L. R. A. (N. S.) 408, 134 Am. St. Rep. 543; Bennett v. Bennett, 53 So. 986, 169 Ala. 618, L. R. A. 1916C, 693.

Before. Contrasted in this sense with *ex post facto*, 2 Shars. Bla. Comm. 308; or with *postea*, Calvinus, Lex., *initium.*

AB INITIO MUNDI. Lat. From the beginning of the world. *Ab initio mundi usque ad hodiernum diem*, from the beginning of the world to this day. Y. B. M. 1 Edw. III. 24.

AB INTESTAT. Intestate. 2 Low. Can. 219. Merlin, Répert.

AB INTESTATO. Lat. In the civil law. From an intestate; from the intestate; in case of intestacy. *Hæreditas ab intestato*, an inheritance derived from an intestate. Inst. 2, 9, 6. *Successio ab intestato*, succession to an intestate, or in case of intestacy. Id. 3, 2, 3; Dig. 38, 6, 1. This answers to the descent or inheritance of real estate at common law. 2 Bl. Comm. 490, 516; Story, Confl. Laws, § 480. "Heir *ab intestato.*" 1 Burr. 420. The phrase "*ab intestato*" is generally used as the opposite or alternative of *ex testamento*, (from, by, or under a will.) *Vel ex testamento, vel ab intestato* [*hæreditates*] *pertinent*,—inheritances are derived either from a will or from an intestate, (one who dies without a will.) Inst. 2, 9, 6; Dig. 29, 4; Cod. 6, 14, 2.

AB INVITO. Lat.. Unwillingly. By or from an unwilling party. A transfer *ab invito* is a compulsory transfer.

AB IRATO. Lat. By one who is angry. A devise or gift made by a man adversely to the interest of his heirs, on account of anger or hatred against them, is said to be made *ab irato.* A suit to set aside such a will is called an action *ab irato.* Merlin, Répert. *Ab irato.* See Robinson v. Duvall, 27 App. D. C. 535, aff 28 S. Ct. 260, 207 U. S. 583, 52 L. Ed. 351; Snell v. Weldon, 87 N. E. 1022, 239 Ill. 279.

AB URBE CONDITA. See A. U. C.

ABACTOR. In Roman law. A cattle thief. Also called *abigeus, q. v.*

ABADENGO. In Spanish law. Land owned by an ecclesiastical corporation, and therefore exempt from taxation. In particular, lands or towns under the dominion and jurisdiction of an abbot. Escriche, Dicc. Raz.

ABALIENATIO. In Roman law. The perfect conveyance or transfer of property from one Roman citizen to another. This term gave place to the simple *alienatio*, which is used in the Digest and Institutes, as well as in the feudal law, and from which the English "alienation" has been formed. Inst. 2, 8, pr.; Id. 2, 1, 40; Dig. 50, 16, 28; Calvinus, Lex., *Abalienatio.*

ABAMITA. Lat. In the civil law. A great-great-grandfather's sister, *(abavi soror.)* Inst. 3, 6, 6; Dig. 38, 10, 3; Calvinus, Lex. Called *amita maxima.* Id. 38, 10, 10, 17. Called, in Bracton, *abamita magna.* Bract. fol. 68*b.*

ABANDON. To desert, surrender, forsake, or cede. To relinquish or give up with intent of never again resuming one's right or interest. Burroughs v. Pacific Telephone & Telegraph Co., 220 P. 152, 155, 109 Or. 404. To give up or to cease to use. Southern Ry. Co. v. Commonwealth, 105 S. E. 65, 67, 128 Va. 176. To give up absolutely; to forsake entirely; to renounce utterly; to relinquish all connection with or concern in; to desert. Commonwealth v. Louisville & N. R. Co., 258 S. W. 101, 102, 201 Ky. 670. It includes the intention, and also the external act by which it is carried into effect.

ABANDONEE. A party to whom a right or property is abandoned or relinquished by another. Applied to the insurers of vessels and cargoes. Lord Ellenborough, C. J., 5 Maule & S. 82; Abbott, J., Id. 87; Holroyd, J., Id. 89.

ABANDONMENT. The surrender, relinquishment, disclaimer, or cession of property or of rights. Stephens v. Mansfield, 11 Cal. 363; Dikes v. Miller, 24 Tex. 417; Middle Creek Ditch Co. v. Henry, 15 Mont. 558, 39 P. 1054; Munsey v. Marnet Oil & Gas Co. (Tex. Civ. App.) 199 S. W. 686, 689; Shepard v. Alden, 201 N. W. 537, 539, 161 Minn. 135, 39 A. L. R. 1094; Union Grain & Elevator Co. v. McCammon Ditch Co., 240 P. 443, 445, 41 Idaho, 216; Talley v. Drumheller, 130 S. E. 385, 388, 143 Va. 439.

It is the relinquishing of all title, possession, or claim, or a virtual, intentional throwing away of property. Foulke v. New York Consol. R. Co., 127 N. E. 237, 238, 228 N. Y. 269, 9 A. L. R. 1384. Mere nonuser is not necessarily an abandonment. Barnett v. Dickinson, 93 Md. 258, 48 A. 838; Welsh v. Taylor, 134 N. Y. 450, 31 N. E. 896, 18 L. R. A. 535; Phillis v. Gross, 143 N. W. 373, 378, 32 S. D. 438. See, however, Corkran, Hill & Co. v. A. H. Kuhlemann Co., 111 A. 471, 474, 136 Md. 525. Distinguished from neglect: City of Vallezo v. Burrill, 221 P. 676, 64 Cal. App. 399.

The giving up of a thing absolutely, without reference to any particular person or purpose, as throwing a jewel into the highway; leaving a thing to itself, as a vessel at sea; vacating property with the intention of not returning, so that it may be appropriated by the next comer. 2 Bl. Comm. 9, 10; Pidge v. Pidge, 3 Metc. (Mass.) 265; Breedlove v.

Stump, 3 Yerg. (Tenn.) 257, 276; Richardson v. McNulty, 24 Cal. 339, 345; Judson v. Malloy, 40 Cal. 299, 310. Intention to forsake or relinquish the thing is an essential element, to be proved by visible acts. Sikes v. State (Tex. Cr. App.) 28 S. W. 688; Jordan v. State, 107 Tex. Cr. R. 414, 296 S. W. 585, 586; Kunst v. Mabie, 77 S. E. 987, 990, 72 W. Va. 202; Pocoke v. Peterson, 165 S. W. 1017, 1021, 256 Mo. 501; Doherty v. Russell, 101 A. 305, 306, 116 Me. 269; Dow v. Worley, 256 P. 56, 60, 126 Okl. 175; Duryea v. Elkhorn Coal & Coke Corporation, 124 A. 206, 208, 123 Me. 482.

"Abandonment" differs from surrender, in that surrender requires an agreement, Noble v. Sturm, 178 N. W. 99, 103, 210 Mich. 462; and from forfeiture, in that forfeiture may be against the intention of the party alleged to have forfeited, Gila Water Co. v. Green, 241 P. 307, 308, 29 Ariz. 304.

In the Civil and French Law

The act by which a debtor surrenders his property for the benefit of his creditors; Merlin, Répert. See Abandonment for Torts.

In Insurance

A relinquishment or cession of property by the owner to the insurer of it, in order to claim as for a total loss, when in fact it is so by construction only. 2 Steph. Comm. 178; Chicago S. S. Lines v. U. S. Lloyds (C. C. A. Ill.) 12 F. (2d) 733, 738; Dwpuy v. Ins. Co., 3 Johns. Cas. (N. Y.) 182; Allen v. Ins. Co., 1 Gray (Mass.) 154; St. Paul Fire & Marine Ins. Co. v. Beacham, 97 A. 708, 128 Ind. 414, L. R. A. 1916F, 1168.

The exercise of a right which a party having insured goods or vessels has to call upon the insurers, in cases where the property insured has, by perils of the sea, become so much damaged as to be of little value, to accept of what is or may be saved, and to pay the full amount of the insurance, as if a total loss had actually happened. Park, Ins. 143; 2 Marsh. Ins. 559; 3 Kent, Comm. 318–335, and notes; The St. Johns (D. C.) 101 Fed. 469; Roux v. Salvador, 3 Bing. N. C. 266, 284; Mellish v. Andrews, 15 East, 13; Cincinnati Ins. Co. v. Duffield, 6 Ohio St. 200, 67 Am. Dec. 339.

Abandonment is the act by which, after a constructive total loss, a person insured by contract of marine insurance declares to the insurer that he relinquishes to him his interest in the thing insured. Civil Code Cal. § 2716.

The term is used only in reference to risks in navigation; but the principle is applicable in fire insurance, where there are remnants, and sometimes, also, under stipulations in life policies in favor of creditors. Cooley's Briefs on Insurance, pp. 5025–5035; 3 Kent, 265; Cincinnati Ins. Co. v. Duffield, 6 Ohio St. 200, 67 Am. Dec. 339; 6 East 72; Klein v. Globe & Rutgers Ins. Co. of New York City, 2 F. (2d) 137. But see Hicks v. McGehee, 39 Ark. 264.

In Maritime Law

The act by which the owner of a ship surrenders the ship and freight to a trustee for the benefit of claimants. See 46 USCA § 185; Ohio Transp. Co. v. Davidson S. S. Co., 148 F. 185, 78 C. C. A. 319, aff 131 F. 373, cert den 27 S. Ct. 782, 203 U. S. 593, 51 L. Ed. 332.

In France and other countries it is the surrender of a vessel and freight by the owner of the same to a person having a claim arising out of a contract made with the master. American Transp. Co. v. Moore, 5 Mich. 368; Poth. Chart. § 2, art. 3, § 51.

In Patent Law

As applied to inventions, abandonment is the giving up of his rights by the inventor, as where he surrenders his idea or discovery or relinquishes the intention of perfecting his invention, and so throws it open to the public, or where he negligently postpones the assertion of his claims or fails to apply for a patent, and allows the public to use his invention without objection. Woodbury, etc., Machine Co. v. Keith, 101 U. S. 479, 485, 25 L. Ed. 939; American Hide, etc., Co. v. American Tool, etc., Co., 1 Fed. Cas. 647; Mast v. Dempster Mill Co. (C. C.) 71 Fed. 701; Bartlette v. Crittenden, 2 Fed. Cas. 981; Pitts v. Hall, 19 Fed. Cas. 754. There may also be an abandonment of a patent, where the inventor dedicates it to the public use; and this may be shown by his failure to sue infringers, to sell licenses, or otherwise to make efforts to realize a personal advantage from his patent. Ransom v. New York, 4 Blatchf. 157, 20 Fed. Cas. 286.

Of Rights in General

The relinquishment of a right. It implies some act of relinquishment done by the owner without regard to any future possession by himself, or by any other person, but with an intention to abandon; 14 M. & W. 789; Dyer v. Sanford, 9 Metc. (Mass.) 395, 43 Am. Dec. 399; Dawson v. Daniel, 2 Flip. 309, Fed. Cas. No. 3,669; Moore v. Sherman, 159 P. 966, 52 Mont. 542.

Abandonment is properly confined to incorporeal hereditaments, as legal rights once vested must be divested according to law, though equitable rights may be abandoned. Great Falls Co. v. Worster, 15 N. H. 412; Cox v. Colossal Cavern Co., 276 S. W. 540, 210 Ky. 612; Cringan v. Nicolson's Ex'rs, 1 Hen. & M. (Va.) 429; Barker v. Salmon, 2 Metc. (Mass.) 32; Inhabitants of School Dist. No. 4 v. Benson, 31 Me. 381, 52 Am. Dec. 618.

Of Easements in General

Permanent cessation of use or enjoyment with no intention to resume or reclaim. Welsh v. Taylor, 134 N. Y. 450, 31 N. E. 896, 18 L. R. A. 535; Corning v. Gould, 16 Wend. (N. Y.) 531; Tucker v. Jones, 8 Mont. 225, 19 P. 571; McClain v. Chicago, etc., R. Co., 90 Iowa, 646, 57 N. W. 594; Oviatt v. Big Four Min. Co., 39 Or. 118, 65 P. 811; Finch v. Unity Fee Co., 208 N. Y. S. 369, 211 App. Div. 430. Intention and completed act are both essential. Town of Orlando v. Stevens, 215 P. 1050, 1051, 90 Okl. 2; Goodman v. Brenner, 188 N. W. 377, 219 Mich. 55; Pascal v. Hynes, 152 N. W. 26, 27, 170 Iowa, 121.

Of Oil Lease

The relinquishment of a right, resting upon the intention of the parties. "Forfeiture," as distinguished from "abandonment," does not

rest upon the intent to release the premises, but is an enforced release. Fisher v. Crescent Oil Co. (Tex. Civ. App.) 178 S. W. 905, 908. There must be intention to abandon and actual relinquishment of the enterprise. Sigler Oil Co. v. W. T. Waggoner Estate (Tex. Civ. App.) 276 S. W. 936, 938; U. S. v. Brown (D. C. Okl.) 15 F.(2d) 565, 567; Chapman v. Ellis (Tex. Civ. App.) 254 S. W. 615, 618. The drawing of the casing from an oil or gas well with no intention of replacing it is an act of abandonment within Ky. St. § 3914a, requiring plugging of well. Seaboard Oil Co. v. Commonwealth, 237 S. W. 48, 50, 193 Ky. 629.

Of Right of Way

Mere nonuser is not an abandonment of a right of way acquired by grant. Burnham v. Mahoney, 111 N. E. 396, 398, 222 Mass. 524; Raleigh, C. & S. Ry. Co. v. McGuire, 88 S. E. 337, 339, 171 N. C. 277; Williams v. Atlantic Coast Line R. Co. (C. C. A. S. C.) 17 F.(2d) 17, 22; Western Union Telegraph Co. v. Louisville & N. R. Co., 81 So. 44, 202 Ala. 542.

Of Water Right

To "abandon" a water right means to desert or forsake it. The intent and an actual relinquishment must concur. In re Willow Creek, 144 P. 505, 522, 74 Or. 592; Central Trust Co. v. Culver, 129 P. 253, 254, 23 Colo. App. 317; Sander v. Bull, 135 P. 489, 492, 76 Wash. 1; O'Shea v. Doty, 218 P. 658, 659, 68 Mont. 316; Lindblom v. Round Valley Water Co., 173 P. 994, 996, 178 Cal. 450.

Of Mining Claim

Relinquishment of a claim held by location without patent, where the holder voluntarily leaves his claim to be appropriated by the next comer, without any intention to retake or resume it, and regardless of what may become of it in the future. McKay v. McDougall, 25 Mont. 258, 64 P. 669, 87 Am. St. Rep. 395; St. John v. Kidd, 26 Cal. 263, 272; Oreamuno v. Uncle Sam Min. Co., 1 Nev. 215; Derry v. Ross, 5 Colo. 295; Tripp v. Silver Dyke Mining Co., 224 P. 272, 274, 70 Mont. 120. The leaving of a claim by the owner with the express or implied intention of not returning to it, and the leaving it open to subsequent location. O'Hanlon v. Ruby Gulch Mining Co., 135 P. 913, 918, 48 Mont. 65. The term includes both the intention to abandon and the act by which the abandonment is carried into effect. Peachy v. Frisco Gold Mines Co. (D. C. Ariz.) 204 F. 659, 668. It differs from "forfeiture," which occurs by operation of law, without regard to the appropriator's intention, when he fails to comply with the statutory conditions. Shank v. Holmes, 137 P. 871, 875, 15 Ariz. 229.

Of Contract

To constitute "abandonment" of a contract by conduct, action relied on must be positive, unequivocal, and inconsistent with the existence of the contract. Mood v. Methodist Episcopal Church South (Tex. Civ. App.) 289 S. W. 461, 464.

Of Actions and Proceedings Therein

The result of a failure for an indefinite period to prosecute an action or suit, Morris v. Phifer State Bank, 105 So. 150, 90 Fla. 55, unless caused by an injunction, Barton v. Burbank, 71 So. 134, 138 La. 997. By statute in some states a definite time has been stated which will render a suit abandoned and subject to dismissal. City of Los Angeles v. Superior Court of California in and for Tuolumne County, 197 P. 79, 185 Cal. 405; Wheeler v. Whitney, 194 N. W. 777, 156 Minn. 362; Teutonia Loan & Building Co. v. Connolly, 63 So. 63, 64, 133 La. 401; Public Utilities Commission v. Smith, 131 N. E. 371, 375, 298 Ill. 151.

A failure to submit issue by instruction thereon constitutes "abandonment" of issue. Unterlachner v. Wells, 317 Mo. 181, 296 S. W. 755, 756.

Failure to perform the conditions necessary to a valid appeal or writ of error is usually considered the abandonment thereof. Lewis v. Martin, 98 So. 635, 210 Ala. 401. Taking out a second writ of error is an abandonment of the first. Board of Public Instruction for Marion County v. Goodwin, 104 So. 779, 89 Fla. 379.

Of Children

Separation from the child and failure to supply its needs. Brock v. Commonwealth, 268 S. W. 315, 316, 206 Ky. 621; Fry v. State, 136 S. E. 466, 467, 36 Ga. App. 312; State v. Clark, 182 N. W. 452, 453, 148 Minn. 389; Campbell v. State, 92 S. E. 951, 20 Ga. App. 190.

The "abandonment," which, in California (Civil Code, § 224), New York (Domestic Relations Law, § 111), North Carolina (Code 1931, § 189), Utah (Compiled Laws 1917, § 20) and Washington (Rem. Comp. St. Supp. 1927, § 1696) gives a right of adoption without the parents' consent, may consist of placing the child on some doorstep, or leaving it in some convenient place in the hope that some one will find and take charge of it, or abandonment entirely to chance or fate. Jensen v. Earley, 228 P. 217, 220, 63 Utah, 604. Abandonment in this connection does not mean that a parent has no interest in the child's welfare. It means rather a withdrawal or neglect of parental duties. In re Potter, 85 Wash. 617, 149 P. 23; In re Bistany, 201 N. Y. S. 684, 685, 121 Misc. 540; Truelove v. Parker, 132 S. E. 295, 299, 191 N. C. 430.

Of Domicile

Permanent removal from the place of one's domicile with the intention of taking up a residence elsewhere and with no intention of returning to the original home except temporarily. Stafford v. Mills, 31 A. 1023, 57 N. J. Law, 570; Mills v. Alexander, 21 Tex. 154; Jarvais v. Moe, 38 Wis. 440.

Of Office

Abandonment of a public office is a species of resignation, but differs from resignation in that resignation is a formal relinquishment, while abandonment is a voluntary relinquishment through nonuser. Steingruber v. City of San Antonio (Tex. Com. App.) 220 S. W. 77, 78; State v. Harmon, 98 A. 804, 805, 115 Me. 268. Abandonment of an office creating a vacancy is not wholly a matter of intention, but may result from the complete abandonment of duties of such a continuance that the law will infer a relinquishment. Wilkinson v. City of Birmingham, 68 So. 999, 1002, 193 Ala. 139.

By Husband or Wife

The act of a husband or wife who leaves his or her consort willfully, and with an intention of causing perpetual separation. Gay v. State, 105 Ga. 599, 31 S. E. 569, 70 Am. St. Rep. 68; People v. Cullen, 153 N. Y. 629, 47 N. E. 894, 44 L. R. A. 420; Domb v. Domb, 186 N. Y. S. 306, 308, 195 App. Div. 526; Heinmuller v. Heinmuller, 105 A. 745, 746, 133 Md. 491; Shockey v. Shockey, 231 S. W. 508, 191 Ky. 839.

ABANDONMENT FOR TORTS. In the civil law. The relinquishment of a slave or animal who had committed a trespass to the person injured, in discharge of the owner's liability for such trespass or injury. Just. Inst. 4, 8, 9. A similar right exists in Louisiana. Fitzgerald v. Ferguson, 11 La. Ann. 396; Civil Code, art. 2321.

ABANDUN, ABANDUM, or ABANDONUM. Anything sequestered, proscribed, or abandoned. *Abandon, i. e., in bannum res missa,* a thing banned or denounced as forfeited or lost, whence to *abandon, desert,* or *forsake,* as lost and gone. Cunningham; Cowell.

ABARNARE. Lat. To discover and disclose to a magistrate any secret crime. *Leges Canuti,* cap. 10.

ABATAMENTUM. L. Lat. In old English law. An abatement of freehold; an entry upon lands by way of interposition between the death of the ancestor and the entry of the heir. Co. Litt. 277*a*; Yel. 151.

ABATARE. To abate. Yel. 151.

ABATE. To throw down, to beat down, destroy, quash. 3 Shars. Bla. Com. 168; Case v. Humphrey, 6 Conn. 140; Klamath Lumber Co. v. Bamber, 142 P. 359, 74 Or. 287. See Abatement; Abatement and Revival.

ABATEMENT.

Of Debts

In equity, when equitable assets are insufficient to satisfy fully all the creditors, their debts must abate in proportion, and they must be content with a dividend, for *æquitas est quasi æqualitas.*

Of Freehold

The unlawful entry upon and keeping possession of an estate by a stranger, after the death of the ancestor and before the heir or devisee takes possession. Such an entry is technically called an "abatement," and the stranger an "abator." It is, in fact, a figurative expression, denoting that the rightful possession or freehold of the heir or devisee is overthrown by the unlawful intervention of a stranger. Abatement differs from intrusion, in that it is always to the prejudice of the heir or immediate devisee, whereas the latter is to the prejudice of the reversioner or remainder-man; and disseisin differs from them both, for to disseise is to put forcibly or fraudulently a person seised of the freehold out of possession. 1 Co. Inst. 277*a*; 3 Bl. Comm. 166; Brown v. Burdick, 25 Ohio St. 268. By the ancient laws of Normandy, this term was used to signify the act of one who, having an apparent right of possession to an estate, took possession of it immediately after the death of the actual possessor, before the heir entered. (Howard, Anciennes Lois des Français, tome 1, p. 539.)

Of Legacies

A proportional diminution or reduction of the pecuniary legacies, when the funds or assets out of which such legacies are payable are not sufficient to pay them in full. Ward, Leg. p. 369, c. 6, § 7; 1 Story, Eq. Jur. § 555; 2 Bl. Comm. 512, 513; Brown v. Brown, 79 Va. 648; Neistrath's Estate, 66 Cal. 330, 5 P. 507; Towle v. Swasey, 106 Mass. 100; Brant v. Brant, 40 Mo. 280; Armstrong's Appeal, 63 Pa. 312; In re Hawgood's Estate, 159 N. W. 117, 123, 37 S. D. 565.

Of Nuisance

The removal of a nuisance. 3 Bla. Comm. 5. See Nuisance.

In Contracts

A reduction made by the creditor for the prompt payment of a debt due by the payor or debtor. Wesk. Ins. 7.

In Mercantile or Revenue Law

A drawback or rebate allowed in certain cases on the duties due on imported goods, in consideration of their deterioration or damage suffered during importation, or while in store. A diminution or decrease in the amount of tax imposed upon any person. Varied remedies and procedure are provided by the different states for the abatement and equalization of taxes. Rogers v. Gookin, 85 N. E. 405, 198 Mass. 434; State v. McVey, 115 N. W. 647, 103 Minn. 485; Central National Bank v. City of Lynn, 259 Mass. 1, 156 N. E. 42.

ABATEMENT AND REVIVAL.

In Chancery Practice

A suspension of all proceedings in a suit, from the want of proper parties capable of proceeding therein. See 2 Tidd Pr. 932; Story Eq. Pl. § 354; Witt v. Ellis, 2 Cold. (Tenn.) 38.

It differs from an abatement at law in this; that in the latter the action is entirely dead and cannot be revived; but in the former the right to proceed is merely suspended, and may be revived; 3 Bla. Comm. 301; Boynton v. Boynton, 21 N. H. 246; Sto. Eq. Pl. § 20 n. § 354; Ad. Eq. 403; Mitf. Eq. Pl., by Jeremy 57; Brooks v. Jones, 5 Lea (Tenn.) 244; Clarke v. Mathewson, 12 Pet. 164, 9 L. Ed. 1041; Kronenberger v. Heinemann, 104 Ill. App. 156; Zoellner v. Zoellner, 46 Mich. 511, 9 N. W. 831; Spring v. Webb (D. C. Vt.) 227 F. 481, 483; F. A. Mfg. Co. v. Hayden & Clemons (U. S. C. C. A. Mass. 1921) 273 F. 374.

All declinatory and dilatory pleas in equity are said to be pleas in abatement, or in the nature thereof; see Story, Eq. Pl. § 708.

In England, in equity pleading, declinatory pleas to the jurisdiction and dilatory to the persons were (prior to the judicature act) sometimes, by analogy to common law, termed "pleas in abatement."

Of Actions at Law

The overthrow of an action caused by the defendant's pleading some matter of fact tending to impeach the correctness of the writ or declaration, which defeats the action for the present, but does not debar the plaintiff from recommencing it in a better way. 3 Bla. Comm. 301; 1 Chit. Pl. (6th Lond. Ed.) 446; Guild v. Richardson, 6 Pick. (Mass.) 370; Doe v. Penfield, 19 Johns. (N. Y.) 308; Sayles v. Daniels Sales Agency, 196 P. 465, 100 Or. 37; Wirtele v. Grand Lodge A. O. U. W., 111 Neb. 302, 196 N. W. 510. See Plea in Abatement.

ABATOR. In real property law, a stranger who, having no right of entry, contrives to get possession of an estate of freehold, to the prejudice of the heir or devisee, before the latter can enter, after the ancestor's death. Litt. § 397. In the law of torts, one who abates, prostrates, or destroys a nuisance.

ABATUDA. Anything diminished. *Moneta abatuda* is money clipped or diminished in value. Cowell; Dufresne.

ABAVIA. Lat. In the civil law. A great-great-grandmother. Inst. 3, 6, 4; Dig. 38, 10, 1, 6; Bract. fol. 68*b*.

ABAVITA. A great-great-grandfather's sister. Bract. fol. 68*b*. This is a misprint for *abamita* (q. v.). Burrill.

ABAVUNCULUS. Lat. In the civil law. A great-great-grandmother's brother (*abaviæ frater*). Inst. 3, 6, 6; Dig. 38, 10, 3; Calvinus, Lex. Called *avunculus maximus.* Id. 38, 10, 10, 17. Called by Bracton and Fleta *abavunculus magnus.* Bract. fol. 68*b*; Fleta, lib. 6, c. 2, § 19.

ABAVUS. Lat. In the civil law. A great-great-grandfather. Inst. 3, 6, 4; Dig. 38, 10, 1, 6; Bract. fol. 67*a*.

ABBACY. The government of a religious house, and the revenues thereof, subject to an abbot, as a bishopric is to a bishop. Cowell. The rights and privileges of an abbot.

ABBEY. A monastery or nunnery for the use of an association of religious persons, having an abbot or abbess to preside over them.

ABBOT. A prelate in the 13th century who had had an immemorial right to sit in the national assembly. Taylor, Science of Jurispr. 287.

ABBOT, ABBAT. The spiritual superior or governor of an abbey. Feminine, *Abbess.*

ABBREVIATE OF ADJUDICATION. In Scotch law. An abstract of the decree of adjudication, and of the lands adjudged, with the amount of the debt. Adjudication is that diligence (execution) of the law by which the real estate of a debtor is adjudged to belong to his creditor in payment of a debt; and the abbreviate must be recorded in the register of adjudications.

ABBREVIATIO PLACITORUM. An abstract of ancient judicial records, prior to the Year Books. See Steph. Pl. (7th Ed.) 410.

ABBREVIATIONS. Shortened conventional expressions, employed as substitutes for names, phrases, dates, and the like, for the saving of space, of time in transcribing, etc. Abbott. The abbreviations in common use in modern times consist of the initial letter or letters, syllable or syllables, of the word. Anciently, also, contracted forms of words, obtained by the omission of letters intermediate between the initial and final letters were much in use. These latter forms are now more commonly designated by the term *contraction.* Abbreviations are of frequent use in referring to text-books, reports, etc., and in indicating dates, but should be very sparingly employed, if at all, in formal and important legal documents. See 4 C. & P. 51; 9 Co. 48; 1 East 180, n. As to how far a judicial record may contain abbreviations of English words without invalidating it, see Stein v. Meyers, 253 Ill. 199, 97 N. E. 297.

For Table of Abbreviations, see Appendix.

Abbreviationum ille numerus et sensus accipiendus est, ut concessio non sit inanis. In abbreviations, such number and sense is to be taken that the grant be not made void. 9 Coke, 48.

ABBREVIATORS. In ecclesiastical law. Officers whose duty it is to assist in drawing up the Pope's briefs, and reducing petitions

into proper form to be converted into papal bulls.

ABBROCHMENT, or ABBROACHMENT. The act of forestalling a market, by buying up at wholesale the merchandise intended to be sold there, for the purpose of selling it at retail. See Forestalling the Market.

ABBUTTALS. See Abuttals.

ABDICATION. The act of a sovereign in renouncing and relinquishing his government or throne, so that either the throne is left entirely vacant, or is filled by a successor appointed or elected beforehand.

Also, where a magistrate or person in office voluntarily renounces or gives it up before the time of service has expired.

The act of abdicating; giving up of office, power or authority, right or trust; renunciation. McCormick v. Engstrom, 241 P. 685, 688, 119 Kan. 698.

It differs from resignation, in that resignation is made by one who has received his office from another and restores it into his hands, as an inferior into the hands of a superior; abdication is the relinquishment of an office which has devolved by act of law. It is said to be a renunciation, quitting, and relinquishing, so as to have nothing further to do with a thing, or the doing of such actions as are inconsistent with the holding of it. Chambers.

An instrument purporting to be a renunciation and "abdication" of rights to property may constitute in legal effect an "assignment." In re Johnston's Estate, 203 N. W. 376, 377, 186 Wis. 599.

ABDITORIUM. An abditory or hiding place, to hide and preserve goods, plate or money. Jacob.

ABDUCTION. In criminal law. The offense of taking away a man's wife, child, or ward, by fraud and persuasion, or open violence. 3 Bl. Comm. 139–141; Humphrey v. Pope, 122 Cal. 253, 54 P. 847; State v. George, 93 N. C. 567; State v. Chisenhall, 106 N. C. 676, 11 S. E. 518; People v. Seeley, 37 Hun (N. Y.) 190; State v. Hopper, 119 S. E. 769, 772, 186 N. C. 405.

The unlawful taking or detention of any female for purposes of marriage, concubinage, or prostitution. 4 Steph. Com. 84; People v. Crotty, 55 Hun, 611, 9 N. Y. S. 937. In many states this offence is created by statute and in most cases applies to females under a given age.

By statute in some states, abduction includes the withdrawal of a husband from his wife, as where another woman alienates his affection and entices him away and causes him to abandon his wife. King v. Hanson, 13 N. D. 85, 99 N. W. 1085.

ABEARANCE. Behavior; as a recognizance to be of good abearance signifies to be of good behavior. 4 Bl. Comm. 251, 256.

ABEREMURDER. (From Sax. *abere*, apparent, notorious; and *mord*, murder.) Plain or downright murder, as distinguished from the less heinous crime of manslaughter, or chance medley. It was declared a capital offense, without fine or commutation, by the laws of Canute, c. 93, and of Hen. I. c. 13. Spelman; Cowell; Blount.

ABESSE. Lat. In the civil law. To be absent; to be away from a place. Said of a person who was *extra continentia urbis*, (beyond the suburbs of the city.)

ABET. To encourage, incite, or set another on to commit a crime. This word is always applied to aiding the commission of a crime. To abet another to commit a murder is to command, procure, or counsel him to commit it. Old Nat. Brev. 21; Co. Litt. 475.

"Aid" and "abet" are nearly synonymous terms as generally used; but, strictly speaking, the former term does not imply guilty knowledge or felonious intent, whereas the word "abet" includes knowledge of the wrongful purpose and counsel and encouragement in the commission of the crime. People v. Dole, 122 Cal. 486, 55 P. 581, 68 Am. St. Rep. 50; People v. Morine, 138 Cal. 626, 72 P. 166; State v. Empey, 79 Iowa, 460, 44 N. W. 707; Raiford v. State, 59 Ala. 106; White v. People, 81 Ill. 333; State v. Ankrom, 103 S. E. 925, 927, 86 W. Va. 570; People v. William Yee, 174 P. 343, 345, 37 Cal. App. 579; State v. Start, 132 P. 512, 513, 65 Or. 178, 46 L. R. A. (N. S.) 266; People v. Powers, 127 N. E. 681, 682, 293 Ill. 600.

See Abettor; Aid and Abet.

ABETTATOR. L. Lat. In old English law. An abettor. Fleta, lib. 2, c. 65, § 7. See Abettor.

ABETTOR. In criminal law. An instigator, or setter on; one who promotes or procures a crime to be committed. Old Nat. Brev. 21. One who commands, advises, instigates, or encourages another to commit a crime; a person who, being present or in the neighborhood, incites another to commit a crime, and thus becomes a principal. See State v. Baldwin, 137 S. E. 590, 591, 193 N. C. 566.

The distinction between abettors and accessories is the presence or absence at the commission of the crime. Cowell; Fleta, lib. 1, c. 34. Presence and participation are necessary to constitute a person an abettor. 4 Sharsw. Bla. Comm. 33; Green v. State, 13 Mo. 382; State v. Teahan, 50 Conn. 92; Connaughty v. State, 1 Wis. 159, 60 Am. Dec. 370; Russ. & R. 99; 9 Bingh. N. C. 440; White v. People, 81 Ill. 333; Doan v. State, 26 Ind. 495; King v. State, 21 Ga. 220; Thompson v. State, 95 S. E. 292, 293, 147 Ga. 745; Bradley v. Commonwealth, 257 S. W. 11, 13, 201 Ky. 413.

ABEYANCE. In the law of estates. In expectation, remembrance, and contemplation of law; the condition of a freehold when there is no person in being in whom it is vested. In such cases the freehold has been said to be *in nubibus* (in the clouds), McKown v. Mc-

Kown, 117 S. E. 557, 559, 93 W. Va. 689; *in pendenti* (in suspension); and *in gremio legis* (in the bosom of the law). It has been denied by some that there is such a thing as an estate in abeyance; Fearne, Cont. Rem. 513. See also the note to 2 Sharsw. Bla. Comm. 107; 1 P. Wms. 516; 1 Plowd. 29. Where there is a tenant of the freehold, the remainder or reversion in fee may exist for a time without any particular owner, in which case it is said to be in abeyance; Lyle v. Richards, 9 S. & R. (Pa.) 367; 3 Plowd. 29 *a*, *b*, 35 *a*; 1 Washb. R. P. 47.

The term may also be applied to the franchise of a corporation; Trustees of Dartmouth College v. Woodward, 4 Wheat. (U. S.) 691, 4 L. Ed. 629. So, too, personal property may be in abeyance or legal sequestration, as in case of a vessel captured at sea from its captors until it becomes invested with the character of a prize; 1 Kent, 102; 1 C. Rob. Adm. 139; 3 *id.* 97, n.; or the rights of property of a bankrupt, pending adjudication; Bank v. Sherman, 101 U. S. 403, 25 L. Ed. 866. See Dillingham v. Snow, 5 Mass. 555; Jewett v. Burroughs, 15 Mass. 464.

Sometimes "abeyance" is used to denote a condition of being undetermined. Fenn v. American Rattan & Reed Mfg. Co., 130 N. E. 129, 130, 75 Ind. App. 146.

ABIATICUS, or AVIATICUS. L. Lat. In feudal law. A son's son; a grandson in the male line. Du Cange, *Avius;* Spelman; Lib. Feud., Baraterii, tit. 8, cited Id.

ABIDE. To accept the consequences of; to rest satisfied with.

With reference to an order, judgment, or decree of a court, to perform, to execute. Taylor v. Hughes, 3 Greenl. (Me.) 433; Hodge v. Hodgdon, 8 Cush. (Mass.) 294; Jackson v. State, 30 Kan. 88, 1 P. 317; Petition of Griswold, 13 R. I. 125. Where a statute provides for a recognizance "to *abide* the judgment of the court," one conditioned "to *await* the action of the court" is not sufficient; Wilson v. State, 7 Tex. App. 38. And under Alabama Code 1928, § 1943, defendant does not "abide the judgment" of the appellate court until costs of appeal are paid. Ex parte Tillery, 22 Ala. App. 193, 114 So. 15. And see State v. Gregory, 205 Iowa, 707, 216 N. W. 17, 19.

To abide and satisfy is used to express the execution or performance of a judgment or order by carrying it into complete effect; Erickson v. Elder, 34 Minn. 371, 25 N. W. 804. Cp. Woolfolk v. Jones (D. C. Va.) 216 F. 807, 809.

Where it is said by an appellate court that costs are to abide the final result, "abide" is synonymous with conform to. Getz v. Johnston, 125 A. 689, 691, 145 Md. 426.

To abide by an award means to await the award without revoking the submission. It does not mean to "acquiesce in" or "not dispute," in the sense of not being at liberty to contest the validity of the award when made; Hunt v. Wilson, 6 N. H. 36; Quimby v. Melvin, 35 N. H. 198; Marshall v. Reed, 48 N. H. 36, 40; Shaw v. Hatch, 6 N. H. 162; Weeks v. Trask, 16 A. 413, 81 Me. 127, 2 L. R. A. 532.

ABIDING BY. In Scotch law. A judicial declaration that the party abides by the deed on which he founds, in an action where the deed or writing is attacked as forged. Unless this be done, a decree that the deed is false will be pronounced. Pat. Comp. It has the effect of pledging the party to stand the consequences of founding on a forged deed. Bell.

ABIDING CONVICTION. A definite conviction of guilt derived from a thorough examination of the whole case. Hopt v. Utah, 120 U. S. 439, 7 S. Ct. 614, 30 L. Ed. 708. A settled or fixed conviction. Davis v. State, 62 So. 1027, 1033, 8 Ala. App. 147.

ABIGEATORES. See Abigeus.

ABIGEATUS. Lat. In the civil law. The offense of stealing or driving away cattle. See Abigeus.

ABIGEI. See Abigeus.

ABIGERE. Lat. In the civil law. To drive away. Applied to those who drove away animals with the intention of stealing them. Applied, also, to the similar offense of cattle stealing on the borders between England and Scotland. See Abigeus.

To drive out; to expel by force; to produce abortion. Dig. 47, 11, 4.

ABIGEUS. Lat. (Pl., *abigei*, or more rarely *abigeatores.)* In the civil law. A stealer of cattle; one who drove or drew away (*subtraxit)* cattle from their pastures, as horses or oxen from the herds, and made booty of them, and who followed this as a business or trade.

The term was applied also to those who drove away the smaller animals, as swine, sheep, and goats. In the latter case, it depended on the number taken, whether the offender was *fur* (a common thief) or *abigeus*. But the taking of a single horse or ox seems to have constituted the crime of *abigeatus*. And those who frequently did this were clearly *abigei*, though they took but an animal or two at a time. Dig. 47, 14, 3, 2. See Cod. 9, 37; Nov. 22, c. 15, § 1; 4 Bl. Comm. 239.

ABILITY. When the word is used in statutes, it is usually construed as referring to pecuniary ability, as in the construction of Tenterden's Act (*q. v.*); 1 M. & W. 101.

A Wisconsin Act (1885), making a husband "being of sufficient ability" liable for the support of an abandoned wife, contemplates earning capacity as well as property actually owned; State v. Witham, 70 Wis. 473, 35 N. W. 934; a contrary view was taken in Washburn v. Washburn, 9 Cal. 475, where the term was limited to the possession by the husband of the means in property to provide such neces-

saries, not to his capacity of acquiring such means by labor.

The ability to buy, required in a purchaser as a condition to the broker's right to a commission, is the financial ability to meet the required terms of the sale, and does not mean solvency or ability to respond in damages for a breach of the contract. Stewart v. Sisk, 114 S. E. 71, 29 Ga. App. 17. See Able to Purchase.

A voter's "ability to read" within meaning of election statutes is satisfied if he can read in a reasonably intelligent manner sentences composed of words in common use and of average difficulty, although each word may not be always accurately pronounced, and "ability to write" is satisfied if he can by use of alphabetical signs express in a fairly legible way words of common use and average difficulty, though each word may not be accurately spelled. Williams v. Hays, 193 S. W. 1046, 1047, 175 Ky. 170. But the mere ability to write one's name and post office address, and nothing more, is insufficient. Murrel v. Allen, 203 S. W. 313, 314, 180 Ky. 604.

ABISHERING, or ABISHERSING. Quit of amercements. It originally signified a forfeiture or amercement, and is more properly *mishering*, *mishersing*, or *miskering*, according to Spelman. It has since been termed a liberty of freedom, because, wherever this word is used in a grant, the persons to whom the grant is made have the forfeitures and amercements of all others, and are themselves free from the control of any within their fee. Termes de la Ley, 7.

ABJUDICATIO. In old English law. The depriving of a thing by the judgment of a court; a putting out of court; the same as *forisjudicatio*, forjudgment, forjudger. Co. Litt. 100*a*, *b*; Townsh. Pl. 49. A removal from court. Calvinus, Lex.

Used to indicate an adverse decision in a writ of right: Thus, the land is said to be *abjudged* from one of the parties and his heirs. 2 Poll. & Maitl. 62.

ABJURATION. A renunciation or abandonment by or upon oath.

In English Law

The oath by which any person holding office in England was formerly obliged to bind himself not to acknowledge any right in the Pretender to the throne of England; 1 Bla. Com. 368; 13 and 14 W. III, c. 6, repealed by 30 and 31 Vic. c. 59.

It also denotes an oath abjuring certain doctrines of the church of Rome.

ABJURATION OF ALLEGIANCE. In American law. Every alien, upon application to become a citizen of the United States, must declare on oath or affirmation before the court where the application is made, amongst other things, that he doth absolutely and entirely renounce and *abjure* all allegiance and fidelity which he owes to any foreign prince, state, etc. 8 USCA § 381.

ABJURATION OF THE REALM. In ancient English law. A renunciation of one's country, a species of self-imposed banishment, under an oath never to return to the kingdom unless by permission. This was formerly allowed to criminals, as a means of saving their lives, when they had confessed their crimes, and fled to sanctuary. See 4 Bl. Comm. 332; Avery v. Everett, 110 N. Y. 317, 18 N. E. 148, 1 L. R. A. 264, 6 Am. St. Rep. 368; 11 East, 301; 2 Kent, 156, n.; Termes de la Ley; 2 Poll. & Maitl. 588. See Abjure.

ABJURE. To renounce, or abandon, by or upon oath. See Abjuration.

"The decision in Arthur v. Broadnax, 3 Ala. 557, affirms that if the husband has *abjured* the state, and remains abroad, the wife, meanwhile trading as a *feme sole*, could recover on a note which was given to her as such. We must consider the term 'abjure,' as there used, as implying a total abandonment of the state; a departure from the state without the intention of returning, and not a renunciation of one's country, upon an oath of perpetual banishment, as the term originally implied." Mead v. Hughes, 15 Ala. 148, 1 Am. Rep. 123.

ABLE-BODIED. As used in a statute relating to service in the militia, this term does not imply an absolute freedom from all physical ailment. It imports an absence of those palpable and visible defects which evidently incapacitate the person from performing the ordinary duties of a soldier. Darling v. Bowen, 10 Vt. 152. Ability to perform ordinary labor is not the test. Town of Marlborough v. Sisson, 26 Conn. 57.

ABLE TO EARN. The phrase "able to earn," as used in the Workmen's Compensation Act in reference to wages an injured employee is able to earn subsequent to his injury, does not mean the maximum sum earned in any one week, but a fair average of the weekly wages which an employee is able to earn covering a sufficient period of time to determine his earning capacity. Reeves v. Dietz, 1 La. App. 501, 505. See also, Mt. Olive & Staunton Coal Co. v. Industrial Commission, 134 N. E. 16, 301 Ill. 521.

ABLE TO PURCHASE. One is able to purchase, within the requirement that a purchaser found by a broker, to entitle him to commission, must be ready, willing, and able to purchase, if one is financially able, that is to say, able to command the necessary funds to close the deal within the time required, even though part of the money must be obtained on the purchased property itself. Pellaton v. Brunski, 231 P. 583, 584, 69 Cal. App. 301. But see Bateman v. Richard, 232 P. 443, 445, 105 Okl. 272, and Reynor v. Mackrill, 164 N. W. 335, 181 Iowa, 210, 1 A. L. R. 523, holding that a person, to be able to purchase, must have the money for the cash payment, and not merely property on which he could raise it. See, also, Peters v. Mullins, 277 S. W. 316, 317, 211 Ky. 123. See Financially Able.

ABLEGATI. Papal ambassadors of the second rank, who are sent to a country where

there is not a nuncio, with a less extensive commission than that of a nuncio. This title is equivalent to *envoy*.

ABLOCATIO. A letting out to hire, or leasing for money. Calvin. Sometimes used in the English form "ablocation."

ABMATERTERA. Lat. In the civil law. A great-great-grandmother's sister, *(abaviæ soror)*. Inst. 3, 6, 6; Dig. 38, 10, 3. Called *matertera maxima*. Id. 38, 10, 10, 17. Called, by Bracton, *abmatertera magna*. Bract. fol. 68*b*.

ABNEPOS. Lat. A great-great-grandson. The grandson of a grandson or granddaughter. Calvinus, Lex.

ABNEPTIS. Lat. A great-great-granddaughter. The granddaughter of a grandson or granddaughter. Calvinus, Lex.

ABODE. The place where a person dwells. Dorsey v. Brigham, 177 Ill. 250, 52 N. E. 303, 42 L. R. A. 809, 69 Am. St. Rep. 228; Vanderpoel v. O'Hanlon, 53 Iowa, 246, 5 N. W. 119, 36 Am. Rep. 216. It is the criterion determining the residence of a legal voter. Fry's Election Case, 71 Pa. 302, 10 Am. Rep. 698; Dale v. Irwin, 78 Ill. 181.

One's home; habitation; place of dwelling or residence. The term is commonly so used in statutes relating to service of process. Camden Auto Co. v. Mansfield, 113 A. 175, 176, 120 Me. 187; De Laval Separator Co. v. Hofberger, 154 N. W. 387, 389, 161 Wis. 344; Armour & Co. v. Strahan, 93 So. 364, 130 Miss. 109; L. J. Mueller Furnace Co. v. Dreibelbis (Mo. App.) 229 S. W. 240, 241. See, also, In re Barklow (D. C. Or.) 282 F. 892, 894. See Domicile; Residence.

ABOGADO. Sp. An advocate. See Bozero.

ABOLISH. To do away with wholly; to annul. Webster. To dispense with. Alexander v. City of Lampasas (Tex. Civ. App.) 275 S. W. 614, 616. And see Reilly v. Smith, 156 N. Y. S. 684, 687, 92 Misc. 309.

ABOLITION. The destruction, annihilation, abrogation, or extinguishment of anything. Thus, authority to shorten a school year does not include authority to close a school, for the mere shortening of a term is to be distinguished from its abolition. Peterson v. Pratt, 167 N. W. 101, 183 Iowa, 462.

Also the leave given by the sovereign or judges to a criminal accuser to desist from further prosecution. 25 Hen. VIII. c. 21.

In the Civil, French and German law, abolition is used nearly synonymously with pardon, remission, grace. Dig. 39. 4. 3. 3. There is, however, this difference: *grace* is the generic term; *pardon*, according to those laws, is the clemency which the prince extends to a man who has participated in a crime, without being a principal or accomplice; *remission* is made in cases of involuntary homicides, and self-defence. *Abolition* is used when the crime cannot be remitted. The prince then may, by letters of abolition, remit the punishment, but the infamy remains, unless letters of abolition have been obtained before sentence. *Encycl. de D'Alembert.*

ABORDAGE. Fr. In French commercial law. Collision of vessels.

ABORTIFACIENT. In medical jurisprudence. A drug or medicine capable of, or used for, producing abortion.

ABORTION. The expulsion of the fœtus at a period of utero-gestation so early that it has not acquired the power of sustaining an independent life.

The unlawful destruction, or the bringing forth prematurely, of the human fœtus before the natural time of birth; State v. Magnell, 3 Pennewill (Del.) 307, 51 A. 606.

The act of bringing forth what is yet imperfect. Also the thing prematurely brought forth, or product of an untimely process. Sometimes loosely used for the offense of procuring a premature delivery; but strictly, the early delivering is the abortion; causing or procuring abortion is the full name of the offense. Abbott; Smith v. State, 33 Me. 48, 59, 54 Am. Dec. 607; State v. Crook, 16 Utah, 212, 51 P. 1091; Belt v. Spaulding, 17 Or. 130, 20 P. 827; Mills v. Commonwealth, 13 Pa. 631; Wells v. New England Mut. L. Ins. Co., 191 Pa. 207, 43 A. 126, 53 L. R. A. 327, 71 Am. St. Rep. 763.

ABORTIVE TRIAL. A term descriptive of the result when a case has gone off, and no verdict has been pronounced, without the fault, contrivance, or management of the parties. Jebb & B. 51.

ABORTUS. Lat. The fruit of an abortion; the child born before its time, incapable of life.

ABOUT. Almost or approximately; near in time, quantity, number, quality, or degree.

When used with reference to time, the term is of flexible significance, varying with the circumstances and the connection in which it is employed. Burlington Grocery Co. v. Heaphy's Estate, 126 A. 525, 528, 98 Vt. 122. But its use does not necessarily render time immaterial, nor make a contract one terminable at will. Costello v. Siems-Carey Co., 167 N. W. 551, 552, 140 Minn. 208. In a charter party, "about to sail" means just ready to sail. [1893] 2 Q. B. 274. And when it is said that one is "about" to board a street car, it means "in the act of." Fox v. Denver City Tramway Co., 143 P. 278, 280, 57 Colo. 511.

With relation to quantity, the term suggests only an estimate of probable amount. Barkemeyer Grain & Seed Co. v. Hannant, 213 P. 208, 210, 66 Mont. 120. Its import is that the actual quantity is a near approximation to that mentioned, and it has the effect of providing against accidental variations. Norrington v. Wright, 6 S. Ct. 12, 115 U. S. 188, 29 L. Ed. 366; Cavender v. B. Johnson & Son (Mo.

App.) 212 S. W. 53, 54. It may be given practically the same effect as the phrase more or less. Pierce v. Miller, 187 N. W. 105, 107, 107 Neb. 851.

As to number, it merely implies an estimate of a particular lot or class and not a warranty. Holland v. Rock, 50 Nev. 340, 259 P. 415.

In connection with distance or locality, the term is of relative significance, varying with the circumstances. Parker v. Town of Pittsfield, 92 A. 24, 26, 88 Vt. 155. Thus, an employee on an elevator on the employer's premises is "about the premises" within the Workmen's Compensation Act. Lienau v. Northwestern Telephone Exch. Co., 186 N. W. 945, 946, 151 Minn. 258; Novack v. Montgomery Ward & Co., 198 N. W. 290, 293, 158 Minn. 495. Likewise, a workman 200 feet from a factory at time of an injury was "about" the factory. Wise v. Central Dairy Co., 246 P. 501, 503, 121 Kan. 258.

"About" may be synonymous with "on" or "upon," as in a statute making it an offense to carry weapons concealed on or about the person. State v. Brunson, 111 So. 321, 323, 162 La. 902; State v. Scanlan, 273 S. W. 1062, 1065, 308 Mo. 683. The phrase, "about the person," is broad enough to include the carriage of a pistol or revolver in a grip, satchel, or hand bag held in the hand or connected with the person, State v. Blazovitch, 107 S. E. 291, 88 W. Va. 612, or on the running board of an automobile, Armstrong v. State, 265 S. W. 701, 98 Tex. Cr. R. 335. See, also, Livesey v. Helbig, 94 A. 47, 48, 87 N. J. Law, 303; Emerson v. State, 190 S. W. 485, 80 Tex. Cr. R. 354; Paulk v. State, 261 S. W. 779, 780, 97 Tex. Cr. R. 415. "About" means near by, close at hand, convenient of access, and within such distance of the party so having it as that such party could, without materially changing his position, get his hand on the pistol, etc. Welch v. State, 262 S. W. 485, 97 Tex. Cr. R. 617; People v. Niemoth, 152 N. E. 537, 322 Ill. 51.

ABOUTISSEMENT. Fr. An abuttal or abutment. See Guyot, Répert. Univ. "*Aboutissans.*"

ABOVE. Higher; superior. As, court above, plaintiff or defendant above. *Above all incumbrances* means in excess thereof; Williams v. McDonald, 42 N. J. Eq. 395, 7 A. 886.

Principal; as distinguished from what is auxiliary or instrumental. Bail to the action, or special bail, is otherwise termed bail *above.* 3 Bl. Comm. 291. See Below.

As used in an act establishing a city court with jurisdiction "above" the jurisdiction of justices of the peace, the word "above" was held synonymous with "without." Atlantic Coast Line R. Co. v. Nellwood Lumber Co., 94 S. E. 86, 87, 21 Ga. App. 209.

ABOVE CITED, or MENTIONED. Quoted before. A figurative expression taken from the ancient manner of writing books on scrolls, where whatever is mentioned or cited before in the same roll must be *above.* Encyc. Lond.

ABPATRUUS. Lat. A great-great-uncle; or, a great-great-grandfather's brother (*abavi frater*). Inst. 3, 6, 6; Dig. 38, 10, 3; Du Cange, Patruus. Called by Bracton and Fleta, *abpatruus magnus.* Bract. fol. 68*b*; Fleta, lib. 6, c. 2, § 17. It sometimes means uncle, and sometimes great-uncle.

ABRIDGE. To reduce or contract; usually spoken of written language.

In Copyright Law

To epitomize; to reduce; to contract. It implies preserving the substance, the essence, of a work, in language suited to such a purpose. In making extracts there is no condensation of the author's language, and hence no abridgment. To abridge requires the exercise of the mind; it is not copying. 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. Story v. Holcombe, 4 McLean, 306, 310, Fed. Cas. No. 13,497.

In Practice

To shorten a declaration or count by taking away or severing some of the substance of it. Brooke, Abr., Com., Dig. *Abridgment;* 1 Viner, Abr. 109. See Abridgment.

ABRIDGMENT. Condensation; contraction. An epitome or compendium of another and larger work, wherein the principal ideas of the larger work are summarily contained.

Abridgments of the law are brief digests of the law, arranged alphabetically. The oldest are those of Fitzherbert, Brooke, and Rolle; among somewhat more modern works are those of Viner, Comyns, and Bacon. (1 Steph. Comm. 51.) The term "digest" has now supplanted that of "abridgment." Sweet. With few exceptions, the old abridgments are not entitled to be considered authoritative. See 2 Wils. 1, 2; 1 Burr. 364; 1 W. Bla. 101; 3 Term 64, 241; and an article in the North American Review, July, 1826, p. 8, by Justice Story, which is reprinted in his "Miscellaneous Writings," p. 79. See Abridge.

ABRIDGMENT OF DAMAGES. The right of the court to reduce the damages in certain cases. *Vide* Brooke, tit. "Abridgment."

ABROAD. In English chancery law, beyond the seas.

ABROGATE. To annul, repeal, or destroy; to annul or repeal an order or rule issued by a subordinate authority; to repeal a former law by legislative act, or by usage.

ABROGATION. The destruction or annulling of a former law, by an act of the legislative power, by constitutional authority, or by usage.

It stands opposed to *rogation;* and is distinguished from *derogation,* which implies the taking away only some part of a law; from *subrogation,*

which denotes the adding a clause to it; from *dispensation,* which only sets it aside in a particular instance; and from *antiquation,* which is the refusing to pass a law. Encyc. Lond.

Express abrogation is that literally pronounced by the new law either in general terms, as when a final clause abrogates or repeals all laws contrary to the provisions of the new one, or in particular terms, as when it abrogates certain preceding laws which are named.

Implied abrogation takes place when the new law contains provisions which are positively contrary to former laws, without expressly abrogating such laws; De Armas' Case, 10 Mart. O. S. (La.) 172; Bernard v. Vignaud, 10 Mart. O. S. (La.) 560; and also when the order of things for which the law has been made no longer exists. See Ex parte Lum Poy (D. C.) 23 F.(2d) 690.

ABSCOND. To go in a clandestine manner out of the jurisdiction of the courts, or to lie concealed, in order to avoid their process. Malvin v. Christoph, 7 N. W. 6, 54 Iowa, 562.

To hide, conceal, or absent oneself clandestinely, with the intent to avoid legal process. Smith v. Johnson, 43 Neb. 754, 62 N. W. 217; Hoggett v. Emerson, 8 Kan. 262; Ware v. Todd, 1 Ala. 200; Kingsland v. Worsham, 15 Mo. 657; Johnstone v. Thompson, 2 La. 411. See Absconding Debtor.

ABSCONDING DEBTOR. One who absconds from his creditors. An absconding debtor is one who lives without the state, or who has intentionally concealed himself from his creditors, or withdrawn himself from the reach of their suits, with intent to frustrate their just demands. Thus, if a person departs from his usual residence, or remains absent therefrom, or conceals himself in his house, so that he cannot be served with process, with intent unlawfully to delay or defraud his creditors, he is an absconding debtor; but if he departs from the state or from his usual abode, with the intention of again returning, and without any fraudulent design, he has not absconded, nor absented himself, within the intendment of the law. Stafford v. Mills, 57 N. J. Law, 574, 32 A. 7; Fitch v. Waite, 5 Conn. 117; Martin v. Barrett (Mo. App.) 204 S. W. 410; Little v. Long, 107 A. 412, 93 N. J. Law, 99; Kershbaum v. London Guarantee & Accident Co., 133 A. 229, 232, 286 Pa. 213.

A party may abscond, and subject himself to the operation of the attachment law against absconding debtors, without leaving the limits of the state. Field v. Adreon, 7 Md. 209.

A debtor who is shut up from his creditors in his own house is an absconding debtor. Ives v. Curtiss, 2 Root (Conn.) 133; Bennett v. Avant, 2 Sneed (Tenn.) 152.

ABSENCE. The state of being absent, removed, or away from one's domicile, or usual place of residence. See Maley v. Pennsylvania R. Co., 101 A. 911, 914, 258 Pa. 73, L. R. A. 1918A, 563.

Absence is of a fivefold kind: (1) A *necessary absence,* as in banished or transported persons; this is entirely necessary. (2) *Necessary and voluntary,* as upon the account of the commonwealth, or in the service of the church. (3) A *probable absence,* according to the civilians, as that of students on the score of study. (4) *Entirely voluntary,* on account of trade, merchandise, and the like. (5) *Absence cum dolo et culpâ,* as not appearing to a writ, *subpœna,* citation, etc., or to delay or defeat creditors, or avoiding arrest, either on civil or criminal process. Ayliffe.

Where the statute allows the vacation of a judgment rendered against a defendant "in his absence," the term "absence" means nonappearance to the action, and not merely that the party was not present in court. Strine v. Kaufman, 12 Neb. 423, 11 N. W. 867; L. R. 1 P. & D. 169; 14 L. T. 604. But the word "absence," in its usual and natural signification, means physical absence. Inhabitants of Lanesborough v. Inhabitants of Ludlow, 145 N. E. 57, 58, 250 Mass. 99. See Cytacki v. Buscko, 197 N. W. 1021, 1022, 226 Mich. 524.

In Scotch Law

Want or default of appearance. A decree is said to be *in absence* where the defender (defendant) does not appear. Ersk. Inst. bk. 4, tit. 3, § 6.

ABSENT. Being away from; at a distance from; not in company with. Paine v. Drew, 44 N. H. 306, where it was held that the word when used as an adjective referred only to the condition or situation of the person or thing spoken of at the time of speaking without reference to any prior condition or situation of the same person or thing, but when used as a verb implies prior presence. It has also been held to mean "not being in a particular place at the time referred to," and *not* to import prior presence; [1893] A. C. 339; 62 L. J. C. P. 107; 62 L. T. 159.

The term *absent defendants* does not embrace non-resident defendants but has reference to parties resident in the state, but temporarily absent therefrom; Wash v. Heard, 27 Miss. 400; Wheeler v. Wheeler, 35 Ill. App. 123. See, however, Seimer v. James Dickinson Farm Mortg. Co. (D. C. Ill.) 299 F. 651, 658, holding that a foreign corporation is "absent" from the state, and limitation does not run in its favor.

A judge, disqualified to act in a case, is "absent from the county," within Kentucky Civ. Code Prac. § 273, authorizing the clerk of court to grant an injunction or temporary restraining order. Dark Tobacco Growers' Co-op. Ass'n v. Wilson, 267 S. W. 1092, 1093, 206 Ky. 550.

A deceased stockholder employee is not "absent" from duty so as to entitle his heirs or assigns, under a contract, to his share of the profits, etc., less the cost of a capable person to fill his position. Nichols v. Olympia Veneer Co., 236 P. 794, 796, 135 Wash. 8.

As a verb, "absent" means to take or withdraw to such a distance as to prevent intercourse; to depart from. People v. Day, 152 N. E. 495, 497, 321 Ill. 552.

ABSENT-MINDEDNESS. A state of mind in which the person affected fails to respond to the ordinary demands on his attention. Webster. See Racine Tire Co. v. Grady, 205 Ala. 423, 88 So. 337.

ABSENTE. Lat. Being absent; often used in the old reports of one of the judges not present at the hearing of a cause. 2 Mod. 14. *Absente Reo,* The defendant being absent.

ABSENTEE. One who dwells abroad; a landlord who resides in a country other than that from which he draws his rents. The discussions on the subject have generally had reference to Ireland. McCul. Pol. Econ.; 33 Brit. Quar. Rev. 455.

One who is absent from his usual place of residence or domicile.

In Louisiana law, one who has left his residence in a state leaving no one to represent him; Bartlett v. Wheeler, 31 La. Ann. 540; or who resides in another state but has property in Louisiana; Penn v. Evans, 28 *id.* 576. It has been also defined as one who has never been domiciled in the state and who resides abroad. Civil Code La. art. 3556; Dreville v. Cucullu, 18 La. Ann. 695; Morris v. Bienvenu, 30 La. Ann. 878. One person cannot be both, at the same time, in the meaning of the law, a resident and an absentee. Savant v. Mercadal, 66 So. 961, 962, 136 La. 248; Spence v. Spence, 105 So. 28, 29, 158 La. 961.

ABSENTEES, or DES ABSENTEES. A parliament so called was held at Dublin, 10th May, 8 Hen. VIII. It is mentioned in letters patent 29 Hen. VIII.

Absentem accipere debemus eum qui non est eo loci in quo petitur. We ought to consider him absent who is not in the place where he is demanded (or sought). Dig. 50, 16, 199.

Absentia ejus qui reipublicæ causâ abest, neque ei neque alii damnosa esse debet. The absence of him who is away in behalf of the republic (on business of the state) ought not to be prejudicial either to him or to another. Dig. 50, 17, 140.

ABSOILE, ASSOIL, ASSOILE. To pardon; to deliver from excommunication. Staunford, Pl. Cr. 72; Kelham; Cowell.

Absoluta sententia expositore non indiget. An absolute sentence or proposition (one that is plain without any scruple, or absolute without any saving) needs not an expositor. 2 Inst. 533.

ABSOLUTE. Complete; perfect; final; without any condition or incumbrance; as an absolute bond (*simplex obligatio*) in distinction from a conditional bond.

An absolute estate is one that is free from all manner of condition or incumbrance; an estate in fee simple; Johnson v. McIntosh, 8 Wheat. 543, 5 L. Ed. 681; Fuller v. Missroon, 35 S. C. 314, 14 S. E. 714; Columbia Water Power Co. v. Power Co., 172 U. S. 492, 19 S. Ct. 247, 43 L. Ed. 521; Bradford v. Martin, 201 N. W. 574, 576, 199 Iowa, 250; Middleton v. Dudding (Mo. Sup.) 183 S. W. 443, 444.

A rule is said to be absolute when on the hearing it is confirmed and made final.

A conveyance is said to be absolute, as distinguished from a mortgage or other conditional conveyance; 1 Powell, Mort. 125; Kaleialii v. Sullivan (C. C. A. Hawaii) 242 F. 446, 452; Gogarn v. Connors, 153 N. W. 1068, 188 Mich. 161.

Absolute property is where a man hath solely and exclusively the right and also the occupation of movable chattels; distinguished from a qualified property, as that of a bailee; 2 Sharsw. Bla. Com. 388; 2 Kent 347.

Absolute rights are such as appertain and belong to particular persons merely as individuals or single persons, as distinguished from relative rights, which are incident to them as members of society; 1 Sharsw. Bla. Com. 123; 1 Chit. Pr. 32.

An absolute duty is one that is free from every restriction; unconditional; determined; not merely provisional; irrevocable. Home Telephone Co. v. Weir, 101 N. E. 1020, 1021, 53 Ind. App. 466; Lehigh Valley R. Co. v. Beltz (C. C. A. N. Y.) 10 F.(2d) 74, 77; Scibilia v. City of Philadelphia, 124 A. 273, 275, 279 Pa. 549, 32 A. L. R. 981.

An "absolute power of disposition," in the absence of statute, would be one by which the holder of the power might dispose of the property as fully and in the same manner as he might dispose of his individual estate acquired by his own efforts. In re Briggs' Will, 167 N. Y. S. 632, 635, 101 Misc. 191.

In the law of insurance that is an *absolute interest* in property which is so completely vested in the individual that there could be no danger of his being deprived of it without his own consent; Hough v. Ins. Co., 29 Conn. 10, 76 Am. Dec. 581; Reynolds v. Ins. Co., 2 Grant, Cas. (Pa.) 326; Washington Fire Ins. Co. v. Kelly, 32 Md. 452, 3 Am. Rep. 149; Columbia Water Power Co. v. Power Co., 172 U. S. 492, 19 S. Ct. 247, 43 L. Ed. 521; Libby Lumber Co. v. Pacific States Fire Ins. Co., 79 Mont. 166, 255 P. 340, 345, 60 A. L. R. 1. It may be used in the sense of vested; Williams v. Ins. Co., 17 F. 65; Hough v. Ins. Co., 29 Conn. 20, 76 Am. Dec. 581.

"Absolute control" as used in Motor Vehicle Act means such control as makes the operation of the car safe, in view of, and as determined by, the apparent situation and surroundings, and does not require that it shall be susceptible of instant stoppage. Goff v. Clarksburg Dairy Co., 103 S. E. 58, 60, 86 W. Va. 237. As to absolute control of a mine, see People v. Boggess, 243 P. 478, 481, 75 Cal. App. 499; and of an estate, see Strickland v. Strickland, 111 N. E. 592, 594, 271 Ill. 614.

As to absolute "Conveyance," "Covenant," "Delivery," "Estate," "Gift," "Guaranty," "Interest," "Law," "Nullity," "Obligation,"

"Property," "Rights," "Rule," "Sale," "Title," "Warrandice," see those titles.

ABSOLUTELY. Completely; wholly; without qualification; without reference or relation to, or dependence upon, any other person, thing, or event. Thus, *absolutely void* means utterly void; Pearsoll v. Chapin, 44 Pa. 9. *Absolutely necessary* may be used to make the idea of necessity more emphatic; State v. Tetrick, 34 W. Va. 137, 11 S. E. 1002. An "absolutely necessary repair," within terms of Wisconsin St. 1925, § 85.02, prohibiting parking of vehicles except for making absolutely necessary repairs, includes repair of a punctured tire. Long v. Steffen, 194 Wis. 179, 215 N. W. 892, 893, 61 A. L. R. 1155.

A devise of property to have "absolutely" means without condition, exception, restriction, qualification or limitation, In re Darr's Estate, 206 N. W. 2, 3, 114 Neb. 116, and creates a fee-simple estate. Ryder v. Oates, 92 S. E. 508, 510, 173 N. C. 569; In re Reynold's Estate, 109 A. 60, 63, 94 Vt. 149.

ABSOLUTION.

In the Civil Law

A sentence whereby a party accused is declared innocent of the crime laid to his charge.

In Canon Law

A juridical act whereby the clergy declare that the sins of such as are penitent are remitted. Among Protestants it is chiefly used for a sentence by which a person who stands excommunicated is released or freed from that punishment. Encyc. Brit.

In French Law

The dismissal of an accusation.

The term *acquitment* is employed when the accused is declared not guilty, and *absolution* when he is recognized as guilty but the act is not punishable by law or he is exonerated by some defect of intention or will. Merlin, Répert.

ABSOLUTISM. In politics. A system of government in which public power is vested in some person or persons, unchecked and uncontrolled by any law, institution, constitutional device, or coordinate body.

ABSOLVITOR. In Scotch law. An acquittal; a decree in favor of the defender in any action.

ABSQUE. Without. Occurs in phrases taken from the Latin; such as those immediately following.

ABSQUE ALIQUO INDE REDENDO. Lat. Without reserving any rent therefrom; without rendering anything therefrom. A term used of a free grant by the crown. 2 Rolle, Abr. 502.

ABSQUE CONSIDERATIONE CURIÆ. In old practice. Without the consideration of the court; without judgment. Fleta, lib. 2, c. 47, § 13.

ABSQUE HOC. Without this. These are technical words of denial, used in pleading at common law by way of special traverse, to introduce the negative part of the plea, following the affirmative part or inducement. Martin v. Hammon, 8 Pa. 270; Zents v. Legnard, 70 Pa. 192; Hite v. Kier, 38 Pa. 72; Reiter v. Morton, 96 Pa. 229; Turnpike Co. v. McCullough, 25 Pa. 303. See, also, Traverse.

ABSQUE IMPETITIONE VASTI. Without impeachment of waste; without accountability for waste; without liability to suit for waste. A clause anciently often inserted in leases (as the equivalent English phrase sometimes is) signifying that the tenant or lessee shall not be liable to suit (*impetitio*) or challenged, or called to account, for committing waste. 2 Bl. Comm. 283; 4 Kent, Comm. 78; Co. Litt. 220*a*; Litt. § 352. See Waste.

ABSQUE TALI CAUSA. Lat. Without such cause. A form of replication, now obsolete, in an action *ex delicto* which works a general denial of the whole matter of the defendant's plea of *de injuria*. Gould, Pl. c. 7, § 10; Steph. Pl. 191.

ABSTENTION. In French law. Keeping an heir from possession; also tacit renunciation of a succession by an heir. Merl. Répert.

ABSTRACT, *n.* A less quantity containing the virtue and force of a greater quantity; an abridgment. Miller v. Kansas City Light & Power Co. (C. C. A.) 13 F.(2d) 723. A transcript is generally defined as a copy, and is more comprehensive than an abstract. Harrison v. Mfg. Co., 10 S. C. 278, 283; Hess v. Draffen, 99 Mo. App. 580, 74 S. W. 440; Dickinson v. Chesapeake & O. R. Co., 7 W. Va. 390, 413; Wilhite v. Barr, 67 Mo. 284.

ABSTRACT, *v.* To take or withdraw from; as, to abstract the funds of a bank. Sprague v. State, 206 N. W. 69, 70, 188 Wis. 432.

Under the National Bank Act, "abstraction" is the act of one who, being an officer of a national banking association, wrongfully takes or withdraws from it any of its moneys, funds, or credits, with intent to injure or defraud it or some other person or company, and, without its knowledge or consent or that of its board of directors, converts them to the use of himself or of some person or company other than the bank. It is not necessarily the same as embezzlement, larceny, or misapplication of funds. United States v. Harper (C. C.) 33 F. 471; United States v. Northway, 120 U. S. 327, 7 S. Ct. 580, 30 L. Ed. 664; United States v. Youtsey (C. C.) 91 F. 864; United States v. Taintor, 28 Fed. Cas. 7; United States v. Breese (D. C.) 131 F. 915; Chapman v. Nieman (Tex. Civ. App.) 276 S. W. 302, 303; Ferguson v. State, 189 S. W. 271, 273, 80 Tex. Cr. R. 333; State v. Hudson, 117 S. E. 122, 126, 93 W. Va. 435.

ABSTRACT OF A FINE. In old conveyancing. One of the parts of a fine, being an ab-

stract of the writ of covenant, and the concord, naming the parties, the parcels of land, and the agreement. 2 Bl. Comm. 351; Shep. Touch. 3. More commonly called the "note" of the fine. See Fine; Concord.

ABSTRACT OF RECORD. A complete history in short, abbreviated form of the case as found in the record, complete enough to show that the questions presented for review have been properly reserved. Poshek v. Marceline Coal & Mining Co. (Mo. App.) 231 S. W. 70; State ex rel. Wallace State Bank v. Trimble, 272 S. W. 72, 73, 308 Mo. 278. It should be a synopsis or summary of the facts, rather than a table of contents of the transcript. Wing v. Brasher, 194 P. 1106, 1108, 59 Mont. 10.

ABSTRACT OF TITLE. A condensed history of the title to land, consisting of a synopsis or summary of the material or operative portion of all the conveyances, of whatever kind or nature, which in any manner affect said land, or any estate or interest therein, together with a statement of all liens, charges, or liabilities to which the same may be subject, and of which it is in any way material for purchasers to be apprised. Warv. Abst. § 2. Stevenson v. Polk, 71 Iowa, 278, 32 N. W. 340; Union Safe Deposit Co. v. Chisholm, 33 Ill. App. 647; Banker v. Caldwell, 3 Minn. 94 (Gil. 46); Heinsen v. Lamb, 117 Ill. 549, 7 N. E. 75; Smith v. Taylor, 82 Cal. 533, 23 P. 217; Geithman v. Eichler, 107 N. E. 180, 183, 265 Ill. 579; Duncan v. Kelley, 229 P. 425, 426, 103 Okl. 74; Wright v. Bott (Tex. Civ. App.) 163 S. W. 360, 365; Sheehan v. McKinstry, 210 P. 167, 170, 105 Or. 473, 34 A. L. R. 1315. The term "abstract of title" refers to record title, and not to extrinsic evidence thereof, Upton v. Smith, 166 N. W. 268, 183 Iowa, 588; Danzer v. Moerschel (Mo. Sup.) 214 S. W. 849, 7 A. L. R. 1162; Savage v. Shields (C. C. A. Ark.) 293 F. 863, 866; Wright v. Glass (Tex. Civ. App.) 174 S. W. 717, 718; and a "proper abstract of title," must be held to be an abstract showing a marketable title, Morgan v. W. A. Howard Realty Co., 191 P. 114, 115, 68 Colo. 414.

Abundans cautela non nocet. Abundant or extreme caution does no harm. 11 Co. 6; Fleta, lib. 1, c. 28, § 1; 6 Wheat. 108. This principle is generally applied to the construction of instruments in which superfluous words have been inserted more clearly to express the intention.

ABSURDITY. That which is both physically and morally impossible; and that is to be regarded as morally impossible which is contrary to reason, so that it could not be imputed to a man in his right senses. State v. Hayes, 81 Mo. 574, 585. Anything which is so irrational, unnatural, or inconvenient that it cannot be supposed to have been within the intention of men of ordinary intelligence and discretion. Black, Interp. Laws, 104; Graves v. Scales, 90 S. E. 430, 172 N. C. 915.

Obviously and flatly opposed to the manifest truth; inconsistent with the plain dictates of common sense; logically contradictory; nonsensical; ridiculous. Wade v. Empire Dist. Electric Co., 158 P. 28, 30, 98 Kan. 366.

ABUSE, *n.* Everything which is contrary to good order established by usage. Merl. Répert. Departure from use; immoderate or improper use.

In the Civil Law

The destruction of the substance of a thing in using it. See Abuse, *v.*

Of Corporate Franchise or Entity

The abuse or misuse of its franchises by a corporation signifies any positive act in violation of the charter and in derogation of public right, willfully done or caused to be done; the use of rights or franchises as a pretext for wrongs and injuries to the public. Baltimore v. Pittsburgh, etc., R. Co., 3 Pittsb. R. (Pa.) 20, Fed. Cas. No. 827; Erie & N. E. R. Co. v. Casey, 26 Pa. 287, 318; Railroad Commission v. Houston, etc., R. Co., 90 Tex. 340, 38 S. W. 750; People v. Atlantic Ave. R. Co., 125 N. Y. 513, 26 N. E. 622; United States v. Reading Co. (D. C. Pa.) 226 F. 229, 277.

Of Female Child

An injury to the genital organs in an attempt at carnal knowledge, falling short of actual penetration. Dawkins v. State, 58 Ala. 376, 29 Am. Rep. 754; Miller v. State, 79 So. 314, 315, 16 Ala. App. 534. But, according to other authorities, "abuse" is here equivalent to ravishment or rape. Palin v. State, 38 Neb. 862, 57 N. W. 743; Commonwealth v. Roosnell, 143 Mass. 32, 8 N. E. 747; Chambers v. State, 46 Neb. 447, 64 N. W. 1078; 6 H. & N. 193.

Of Discretion

A discretion exercised to an end or purpose not justified by and clearly against reason and evidence. State v. Ferranto, 148 N. E. 362, 367, 112 Ohio St. 667; Bringhurst v. Harkins (Del.) 122 A. 783, 787, 2 W. W. Har. 324; Webber v. Webber, 196 N. W. 646, 648, 157 Minn. 422; Kinnear v. Dennis, 223 P. 383, 384, 97 Okl. 206. Unreasonable departure from considered precedents and settled judicial custom, constituting error of law. In re Horowitz (C. C. N. Y.) 250 F. 106, 107. See, also, Reid v. Ehr, 162 N. W. 903, 905, 36 N. D. 552; Lyles v. Williams, 80 S. E. 470, 471, 96 S. C. 290; State v. Robinson, 98 S. E. 329, 330, 111 S. C. 467.

The term is commonly employed to justify an interference by a higher court with the exercise of discretionary power by a lower court and is said by some authorities to imply not merely error of judgment, but perversity of will, passion, prejudice, partiality,

or moral delinquency. The exercise of an honest judgment, however erroneous it may appear to be, is not an abuse of discretion. People v. New York Cent. R. Co., 29 N. Y. 418, 431; Stroup v. Raymond, 183 Pa. 279, 38 A. 626, 63 Am. St. Rep. 758; Day v. Donohue, 62 N. J. Law, 380, 41 A. 934; Citizens' St. R. Co. v. Heath, 29 Ind. App. 395, 62 N. E. 107; Grayson County v. Harrell (Tex. Civ. App.) 202 S. W. 160; Deeds v. Deeds, 108 Kan. 770, 196 P. 1109. Where a court does not exercise a discretion in the sense of being discreet, circumspect, prudent, and exercising cautious judgment, it is an abuse of discretion. Murray v. Buell, 74 Wis. 14, 41 N. W. 1010; Sharon v. Sharon, 75 Cal. 1, 16 P. 345; State Board of Medical Examiners v. Spears, 247 P. 563, 565, 79 Colo. 588.

Of Distress

The using an animal or chattel distrained, which makes the distrainer liable as for a conversion.

Of Process

There is said to be an abuse of process when an adversary, through the malicious and unfounded use of some regular legal proceeding, obtains some advantage over his opponent. Wharton.

A malicious abuse of legal process occurs where the party employs it for some unlawful object, not the purpose which it is intended by the law to effect; in other words, a perversion of it. Lauzon v. Charroux, 18 R. I. 467, 28 A. 975; Mayer v. Walter, 64 Pa. 283; Bartlett v. Christhilf, 69 Md. 219, 14 A. 518; King v. Johnston, 81 Wis. 578, 51 N. W. 1011; Kline v. Hibbard, 80 Hun, 50, 29 N. Y. S. 807; Porter v. Johnson, 96 Ga. 145, 23 S. E. 123; McKellar v. Moynihan, 111 S. E. 580, 28 Ga. App. 431; Dixon v. Smith-Wallace Shoe Co., 119 N. E. 265, 268, 283 Ill. 234; Assets Collecting Co. v. Myers, 152 N. Y. S. 930, 933, 167 App. Div. 133; Griffin v. Baker, 134 S. E. 651, 192 N. C. 297; Carpenter, Baggott & Co. v. Hanes, 83 S. E. 577, 579, 167 N. C. 551; Glidewell v. Murray-Lacy & Co., 98 S. E. 665, 667, 124 Va. 563, 4 A. L. R. 225. Thus, where the purpose of a prosecution for issuance of a check without funds was to collect a debt, the prosecution constituted an abuse of criminal process. Hotel Supply Co. v. Reid, 80 So. 137, 138, 16 Ala. App. 563.

ABUSE, *v.* To make excessive or improper use of a thing, or to employ it in a manner contrary to the natural or legal rules for its use; to make an extravagant or excessive use, as to abuse one's authority.

In the civil law, the borrower of a chattel which, in its nature, cannot be used without consuming it, such as wine or grain, is said to abuse the thing borrowed if he uses it.

It has been held to include misuse; Erie & North-East R. Co. v. Casey, 26 Pa. 287; to signify to injure, diminish in value, or wear away by improper use; *id.*; to be synonymous with injure; Dawkins v. State, 58 Ala. 376, 29 Am. Rep. 754.

ABUSIVE. Tending to deceive; practicing abuse; prone to ill treat by coarse, insulting words. U. S. v. Strong (D. C. Wash.) 263 F. 789, 796; U. S. v. Ault (D. C. Wash.) 263 F. 800, 810. Using ill treatment, injurious, improper, hurtful, offensive, reproachful. People on Complaint of Wilson v. Sinclair, 149 N. Y. S. 54, 56, 86 Misc. 426; State v. Pape, 96 A. 313, 314, 90 Conn. 98.

ABUT. To reach, to touch. In old law, the ends were said to abut, the sides to adjoin. Cro. Jac. 184. And see Lawrence v. Killam, 11 Kan. 499, 511; Springfield v. Green, 120 Ill. 269, 11 N. E. 261.

To take a new direction; as where a bounding line changes its course. Spelman, Gloss. *Abuttare.*

To touch at the end; be contiguous; join at a border or boundary; terminate; to end at; to border on; to reach or touch with an end. Hensler v. City of Anacortes, 248 P. 406, 407, 140 Wash. 184; People ex rel. New York, W. & B. Ry. Co. v. Waldorf, 153 N. Y. S. 1072, 1075, 168 App. Div. 473. See Kingshighway Supply Co. v. Banner Iron Works, 181 S. W. 30, 32, 266 Mo. 138; Boonville Mercantile Co. v. Hogan, 226 S. W. 620, 621, 205 Mo. App. 594. The term "abutting" implies a closer proximity than the term "adjacent." City of Hutchinson v. Danley, 129 P. 163, 164, 88 Kan. 437.

Though the usual meaning of the word is that the things spoken of do actually adjoin, "bounding and abutting" have no such inflexible meaning as to require lots assessed actually to touch the improvement; Cohen v. Cleveland, 43 Ohio St. 190, 1 N. E. 589; Cincinnati v. Batsche, 52 Ohio St. 324, 40 N. E. 21, 27 L. R. A. 536; Chicago, B. & Q. R. Co. v. City of Quincy, 27 N. E. 192, 136 Ill. 563, 29 Am. St. Rep. 334; 1 Ex. D. 336; *contra*, Holt v. City Council, 127 Mass. 408. See, also, Board of Com'rs of Licking County v. Bolin, 124 N. E. 45, 46, 99 Ohio St. 117; Anderson v. Town of Albermarle, 109 S. E. 262, 264, 182 N. C. 434.

ABUTMENTS. The walls of a bridge adjoining the land which support the end of the roadway and sustain the arches. The ends of a bridge, or those parts of it which touch the land. Board of Chosen Freeholders of Sussex County v. Strader, 18 N. J. Law, 108, 35 Am. Dec. 530; Bardwell v. Town of Jamaica, 15 Vt. 438.

ABUTTALS. Fr. The buttings or boundings of lands, showing to what other lands, highways, or places they belong or are abutting. Termes de la Ley; Cowell; Toml. It has been used to express the end boundary lines as distinguished from those on the sides, as "buttals and sidings"; Cro. Jac. 183.

ABUTTER. One whose property abuts, is contiguous, or joins at a border or boundary,

as where no other land, road, or street intervenes.

ABUTTING OWNER. An owner of land which abuts or adjoins. The term usually implies that the relative parts actually adjoin, but is sometimes loosely used without implying more than close proximity. See Abut.

AC ETIAM. (Lat. And also.) The introduction of the statement of the real cause of action, used in those cases where it was necessary to allege a fictitious cause of action to give the court jurisdiction, and also the real cause in compliance with the statutes. It is sometimes written *acetiam*. 2 Stra. 922. This clause is no longer used in the English courts. 2 Will. IV. c. 39. 3 Bla. Comm. 288. See Bill of Middlesex under Bill, definition 2.

AC ETIAM BILLÆ. And also to a bill. See Ac Etiam.

AC SI. (Lat. As if.) Townsh. Pl. 23, 27. These words frequently occur in old English statutes. Lord Bacon expounds their meaning in the statute of uses: "The statute gives entry, not *simpliciter*, but with an ac si." Bac. Read. Uses, Works, iv. 195.

ACADEMY. An institution of learning. An association of experts in some particular branch of art, literature, or science.

In its original meaning, an association formed for mutual improvement, or for the advancement of science or art; in later use, a species of educational institution, of a grade between the common school and the college. Academy of Fine Arts v. Philadelphia County, 22 Pa. 496; Commonwealth v. Banks, 198 Pa. 397, 48 A. 277; Blackwell v. State, 36 Ark. 178; Mary S. Fithian Night School & Academy v. College Board of Presbyterian Church in United States, 102 A. 855, 856, 88 N. J. Eq. 468. See School.

ACAPTE. In French feudal law. A species of relief; a seignorial right due on every change of a tenant. A feudal right which formerly prevailed in Languedoc and Guyenne, being attached to that species of heritable estates which were granted on the contract of *emphyteusis*. Guyot, Inst. Feod. c. 5, § 12.

ACCEDAS AD CURIAM. (Lat. That you go to court.) An original writ out of chancery directed to the sheriff, for the purpose of removing a replevin suit from a Court Baron or a hundred court to one of the superior courts of law. It directs the sheriff *to go to the lower court*, and enroll the proceedings and send up the record. See Fitzh. Nat. Brev. 18; Dy. 169; 3 Bl. Comm. 34.

ACCEDAS AD VICE COMITEM. L. Lat. (You go to the sheriff.) A writ formerly directed to the coroners of a county in England, commanding them to go to the sheriff, where the latter had suppressed and neglected to return a writ of *pone*, and to deliver a writ to him requiring him to return it. Reg. Orig. 83. See Pone.

ACCELERATION. The shortening of the time for the vesting in possession of an expectant interest. Wharton.

The word is also used in reference to contracts for payment of money in what is usually called an "acceleration clause" by which the time for payment of the debt is hastened or advanced because of breach of some condition such as failure to pay interest when due, McCormick v. Daggett, 162 Ark. 16, 257 S. W. 358; Stern v. Rainier, 193 Iowa, 665, 187 N. W. 442; insolvency of the maker, Wright v. Seaboard Steel & Manganese Corporation (C. C. A.) 272 F. 807; or failure to keep mortgaged premises insured, Porter v. Schroll, 93 Kan. 297, 144 P. 216.

ACCEPT. To receive with approval or satisfaction; to receive with intent to retain. See Fleming v. Law, 28 Cal. App. 110, 151 P. 385, 389; Morris v. State, 102 Ark. 513, 145 S. W. 213, 214. Also, in the capacity of drawee of a bill, to recognize the draft, and engage to pay it when due. It is not equivalent to "acquiesce." Applett v. Empire Inv. Co., 194 P. 461, 462, 99 Or. 533. For its meaning under certain statutes, see Lee v. Continental Ins. Co. (D. C. Ky.) 292 F. 408, 411; State v. Miller, 181 N. W. 745, 746, 173 Wis. 412; Northwestern Consol. Milling Co. v. Rosenberg (C. C. A. Pa.) 287 F. 785, 788; Ruediger v. Dennis, 201 S. W. 943, 199 Mo. App. 102; Davis v. State, 275 S. W. 1060, 1061, 101 Tex. Cr. R. 243.

ACCEPTANCE. The taking and receiving of anything in good part, and as it were a tacit agreement to a preceding act, which might have been defeated or avoided if such acceptance had not been made. Brooke, Abr.

The act of a person to whom a thing is offered or tendered by another, whereby he receives the thing with the intention of retaining it, such intention being evidenced by a sufficient act.

In the Law of Sales

An acceptance implies, not only the physical fact of receiving the goods, but also the intention of retaining them. Omaha Beverage Co. v. Temp Brew Co., 171 N. W. 704, 707, 185 Iowa, 1189; Mueller v. Simon (Tex. Civ. App.) 183 S. W. 63, 64. If an article is found defective, but is retained and used, it may be held to be a sufficient acceptance; Logan v. Berkshire Apartment Ass'n, 3 Misc. 296, 22 N. Y. S. 776; Noel & McGinnis v. Kauffman Buggy Co., 106 S. W. 237, 32 Ky. Law Rep. 576; Edwards v. Wooldridge, 52 Tex. Civ. App. 512, 115 S. W. 920; Ohio Electric Co. v. Wisconsin-Minnesota Light & Power Co., 155 N. W. 112, 113, 161 Wis. 632.

The acceptance of goods sold under a contract which would be void by the statute of

frauds without delivery and acceptance involves something more than the act of the vendor in the delivery. It requires that the vendee should also act, and that his act should be of such a nature as to indicate that he receives and accepts the goods delivered as his property. He must receive and retain the articles delivered, intending thereby to assume the title to them, to constitute the acceptance mentioned in the statute. Rodgers v. Phillips, 40 N. Y. 524. See, also, Snow v. Warner, 10 Metc. (Mass.) 132, 43 Am. Dec. 417. There must be some unequivocal act, with intent to take possession as owner. Vacuum Ash & Soot Conveyor Co. v. Huyler's, 127 A. 203, 204, 101 N. J. Law, 147.

A "conditional acceptance" is in effect a statement that the offeree is willing to enter into a bargain differing in some respects from that proposed in the original offer. The conditional acceptance is, therefore, itself a counter offer and rejects the original offer, so that thereafter even an unqualified acceptance of that offer will not form a contract. Hoskins v. Michener, 197 P. 724, 33 Idaho, 681.

In Marine Insurance

The acceptance of an abandonment by the underwriter is his assent, either express or to be implied from the surrounding circumstances, to the sufficiency and regularity of the abandonment. Its effect is to perfect the insured's right of action as for a total loss, if the cause of loss and circumstances have been truly disclosed. Rap. & Law.

Of Bills of Exchange

An engagement to pay the bill in money when due. 4 East 72; Hunt v. Security State Bank, 179 P. 248, 251, 91 Or. 362. The act by which the person on whom a bill of exchange is drawn (called the "drawee") assents to the request of the drawer to pay it, or, in other words, engages, or makes himself liable, to pay it when due. 2 Bl. Comm. 469; Cox v. National Bank, 100 U. S. 704, 25 L. Ed. 739; Bell-Wayland Co. v. Bank of Sugden, 218 P. 705, 95 Okl. 67. It may be by parol or in writing, and either general or special, absolute or conditional; and it may be impliedly, as well as expressly, given. 3 Kent, Comm. 83, 85; Story, Bills, §§ 238, 251. But the usual and regular mode of acceptance is by the drawee's writing across the face of the bill the word "accepted," and subscribing his name; after which he is termed the *acceptor*. Id. § 243.

The following are the principal varieties of acceptances:

Absolute. An express and positive agreement to pay the bill according to its tenor.

Conditional. An engagement to pay the bill on the happening of a condition. Todd v. Bank of Kentucky, 3 Bush (Ky.) 628; Mo. St. Ann. § 2769.

For some examples of what do and what do not constitute conditional acceptances, see 6 C. & P. 218; 3 C. B. 841; Heaverin v. Donnell, 7 Smedes & M. (Miss.) 245, 45 Am. Dec. 302; Campbell v. Pettengill, 7 Greenl. (Me.) 126, 20 Am. Dec. 349; Swansey v. Breck, 10 Ala. 533; Hunton v. Ingraham, 1 Strob. (S. C.) 271; Tassey v. Church, 4 W. & S. (Pa.) 346; Cook v. Wolfendale, 105 Mass. 401; Marshall v. Clary, 44 Ga. 513; Ray v. Faulkner, 73 Ill. 469; Stevens v. Power Co., 62 Me. 498; Pope v. Huth, 14 Cal. 407; Palmer v. Rice, 36 Neb. 844, 55 N. W. 256; Vanstrum v. Liljengren, 37 Minn. 191, 33 N. W. 555; Gerow v. Riffe, 29 W. Va. 462, 2 S. E. 104; Ensign v. Clark Bros. Cutlery Co., 193 S. W. 961, 962, 195 Mo. App. 584.

Express. An undertaking in direct and express terms to pay the bill; an absolute acceptance.

Implied. An undertaking to pay the bill inferred from acts of the drawee of a character which fairly warrant such an inference.

Partial. An acceptance varying from the tenor of the bill.

An acceptance to pay part of the amount for which the bill is drawn, 1 Strange 214; Freeman v. Perot, 2 Wash. C. C. 485, Fed. Cas. No. 5,087; or to pay at a different time, 14 Jur. 806; Hatcher v. Stolworth, 25 Miss. 376; Molloy, b. 2, c. 10, § 20; or at a different place, 4 M. & S. 462, would be partial.

Qualified. One either conditional or partial, and which introduces a variation in the sum, time, mode, or place of payment.

Supra protest. An acceptance by a third person, after protest of the bill for non-acceptance by the drawee, to save the honor of the drawer or some particular indorser.

A general acceptance is an absolute acceptance precisely in conformity with the tenor of the bill itself, and not qualified by any statement, condition, or change. Rowe v. Young, 2 Brod. & B. 180; Todd v. Bank of Kentucky, 3 Bush (Ky.) 628.

A special acceptance is the qualified acceptance of a bill of exchange, as where it is accepted as payable at a particular place "and not elsewhere." Rowe v. Young, 2 Brod. & B. 180. See Trade Acceptance.

ACCEPTANCE AU BESOIN. Fr. In French law. Acceptance in case of need; an acceptance by one on whom a bill is drawn *au besoin*, that is, in case of refusal or failure of the drawee to accept. Story, Bills, §§ 65, 254, 255.

ACCEPTARE. Lat.

In Old Pleading

To accept. *Acceptavit*, he accepted. 2 Strange, 817. *Non acceptavit*, he did not accept. 4 Man. & G. 7.

In the Civil Law

To accept; to assent; to assent to a promise made by another. Gro. de J. B. lib. 2, c. 11, § 14.

ACCEPTEUR PAR INTERVENTION. In French law. Acceptor of a bill for honor.

ACCEPTILATION. In the civil and Scotch law. A release made by a creditor to his debtor of his debt, without receiving any consideration. Ayl. Pand. tit. 26, p. 570. It is a species of donation, but not subject to the forms of the latter, and is valid unless in fraud of creditors. Merl. Répert.

The verbal extinction of a verbal contract, with a declaration that the debt has been paid when it has not; or the acceptance of something merely imaginary in satisfaction of a verbal contract. Sanders' Just. Inst. (5th Ed.) 386.

ACCEPTOR. The person who accepts a bill of exchange, (generally the drawee,) or who engages to be primarily responsible for its payment.

ACCEPTOR SUPRA PROTEST. One who accepts a bill which has been protested, for the honor of the drawer or any one of the indorsers.

ACCESS. Approach; or the means, power, or opportunity of approaching. Sometimes importing the occurrence of sexual intercourse; otherwise as importing opportunity of communication for that purpose as between husband and wife.

In real property law, the term "access" denotes the right vested in the owner of land which adjoins a road or other highway to go and return from his own land to the highway without obstruction. Chicago, etc., R. Co. v. Milwaukee, etc., R. Co., 95 Wis. 561, 70 N. W. 678, 37 L. R. A. 856, 60 Am. St. Rep. 136; Ferguson v. Covington, etc., R. Co., 108 Ky. 662, 57 S. W. 460; Reining v. New York, etc., R. Co. (Super. Buff.) 13 N. Y. S. 238. See, also, Cobb v. Commissioners of Lincoln Park, 67 N. E. 5, 6, 8, 202 Ill. 427, 63 L. R. A. 264, 95 Am. St. Rep. 258. "Access" to property does not necessarily carry with it possession. People v. Brenneauer, 166 N. Y. S. 801, 806, 101 Misc. 156. A deed, however, which conveys land and "also the right of access to the adjoining park and use of spring on same," may be deemed to convey not merely the right to pass through the park in order to reach the spring, but to convey a right of entry into the park as a park and by implication, the right to the use and enjoyment of the park. Goetz v. Knoxville Power & Light Co., 290 S. W. 409, 414, 154 Tenn. 545.

The right of "access to public records" includes not only a legal right of access, but a reasonable opportunity to avail oneself of the same. American Surety Co. of New York v. Sandberg (D. C. Wash.) 225 F. 150, 155.

In Canon Law

The right to some benefice at some future time.

ACCESS (EASEMENT OF). An "easement of access" is the right which an abutting owner has of ingress to and egress from his premises, in addition to the public easement in the street. Chicago & N. W. Ry. Co. v. Milwaukee R. & K. Electric Ry. Co., 70 N. W. 678, 680, 95 Wis. 561, 37 L. R. A. 856, 60 Am. St. Rep. 136; Chambersburg Shoe Mfg. Co. v. Cumberland Valley R. Co., 87 A. 968, 970, 240 Pa. 519. "Access to an underground sewer" means more than a right to open the surface to make repairs, and implies the right of connection by branches. Heyman v. Biggs, 150 N. Y. S. 246, 247, 164 App. Div. 430.

ACCESSARY. See Accessory.

ACCESSIO. In Roman law. An increase or addition; that which lies next to a thing, and is supplementary and necessary to the principal thing; that which arises or is produced from the principal thing; an "accessory obligation" (*q. v.*). Calvinus, Lex. Jurid.

One of the modes of acquiring property, being the extension of ownership over that which grows from, or is united to, an article which one already possesses. Mather v. Chapman, 40 Conn. 382, 397, 16 Am. Rep. 46.

Accessio includes both accession and accretion as used in the common law. See Adjunctio.

ACCESSION. Coming into possession of a right or office; increase; augmentation; addition.

The right to all which one's own property produces, whether that property be movable or immovable; and the right to that which is united to it by accession, either naturally or artificially. 2 Kent, 360; 2 Bl. Comm. 404.

A principle derived from the civil law, by which the owner of property becomes entitled to all which it produces, and to all that is added or united to it, either naturally or artificially, (that is, by the labor or skill of another,) even where such addition extends to a change of form or materials; and by which, on the other hand, the possessor of property becomes entitled to it, as against the original owner, where the addition made to it by his skill and labor is of greater value than the property itself, or where the change effected in its form is so great as to render it impossible to restore it to its original shape. Burrill. Betts v. Lee, 5 Johns. (N. Y.) 348, 4 Am. Dec. 368; Lampton v. Preston, 1 J. J. Marsh. (Ky.) 454, 19 Am. Dec. 104; Eaton v. Munroe, 52 Me. 63; Pulcifer v. Page, 32 Me. 404, 54 Am. Dec. 582; Wetherbee v. Green, 22 Mich. 311, 7 Am. Rep. 653. In Blackwood Tire & Vulcanizing Co. v. Auto Storage Co., 182 S. W. 576, 133 Tenn. 515, L. R. A. 1916E, 254, Ann. Cas. 1917C, 1168, this principle was applied in favor of the conditional seller who, on nonpayment, retook the automobile sold, together with tire casings which the buyer had fitted thereto.

In International Law

The absolute or conditional acceptance by one or several states of a treaty already concluded between other sovereignties. Merl. Répert. It may be of two kinds: *First*, the formal entrance of a third state into a treaty so that such state becomes a party to it; and this can only be with the consent of the original parties. *Second*, a state may accede to a treaty between other states solely for the pur-

pose of guarantee, in which case, though a party, it is affected by the treaty only as a guarantor. 1 Oppenheim, Int. L. sec. 532. See Adhesion.

Also, the commencement or inauguration of a sovereign's reign.

ACCESSION, DEED OF. In Scotch law. A deed executed by the creditors of a bankrupt or insolvent debtor, by which they approve of a trust given by their debtor for the general behoof, and bind themselves to concur in the plans proposed for extricating his affairs. Bell, Dict.

Accessorium non ducit, sed sequitur suum principale. Co. Litt. 152*a*, 389*a*. That which is the accessory or incident does not lead, but follows, its principal.

Accessorius sequitur naturam sui principalis. An accessary follows the nature of his principal. 3 Inst. 139. One who is accessary to a crime cannot be guilty of a higher degree of crime than his principal.

ACCESSORY. Anything which is joined to another thing as an ornament, or to render it more perfect, or which accompanies it, or is connected with it, as an incident, or as subordinate to it, or which belongs to or with it; for example, the halter of a horse, the frame of a picture, the keys of a house.

Under Civ. Code La. art. 2461, a sale of land carries with it the standing timber as an "accessory." Woollums v. Hewitt, 77 So. 295, 296, 142 La. 597.

Storage batteries were held not to be automobile accessories under the Revenue Act. Philadelphia Storage Battery Co. v. Lederer (D. C. Pa.) 21 F.(2d) 320, 321; McCaughn v. Electric Storage Battery Co. (C. C. A.) 63 F.(2d) 715.

In Criminal Law

Contributing to or aiding in the commission of a crime. One who, without being present at the commission of a felonious offense, becomes guilty of such offense, not as a chief actor, but as a participator, as by command, advice, instigation, or concealment; either before or after the fact or commission; a *particeps criminis*. 4 Bl. Comm. 35; Cowell. One who is not the chief actor in the offense, nor present at its performance, but in some way concerned therein, either *before* or *after* the act committed. Code Ga. 1882, § 4306 (Pen. Code 1926, § 44). People v. Schwartz, 32 Cal. 160; Fixmer v. People, 153 Ill. 123, 38 N. E. 667; State v. Berger, 121 Iowa, 581, 96 N. W. 1094; People v. Ah Ping, 27 Cal. 489; United States v. Hartwell, 26 Fed. Cas. 198; Hitt v. Commonwealth, 109 S. E. 597, 600, 131 Va. 752; State v. Thomas, 136 A. 475, 477, 105 Conn. 757.

An "accessory" to a crime is always an "accomplice." People v. Ah Gee, 174 P. 371, 373, 37 Cal. App. 1. In certain crimes, there can be no accessories; all who are concerned are principals. These are (according to many authorities) treason, and all offenses below the degree of felony; 4 Bla. Comm. 35; Com. v. McAtee, 8 Dana (Ky.) 28; Williams v. State, 12 Smedes & M. (Miss.) 58; Com. v. Ray, 3 Gray (Mass.) 448; Schmidt v. State, 14 Mo. 137; Sanders v. State, 18 Ark. 198; Stevens v. People, 67 Ill. 587; Griffith v. State, 90 Ala. 583, 8 So. 812; U. S. v. Boyd, 45 F. 851; In re Burr, 4 Cr. 472, 501; U. S. v. Fries, Fed. Cas. No. 5127.

—Accessory before the fact. One who, being absent at the time a crime is committed, yet procures, counsels, or commands another to commit it; and, in this case, absence is necessary to constitute him an accessory, for, if he be present at any time during the transaction, he is guilty as principal. Plow. 97; 1 Hale, P. C. 615, 616; 4 Steph. Comm. 90, note n.

An accessory before the fact is one who, being absent at the time of the crime committed, doth yet procure, counsel, or command another to commit a crime. Code Ga. 1882, § 4307 (Pen. Code 1926, § 45); United States v. Hartwell, 26 Fed. Cas. 196; Griffith v. State, 90 Ala. 583, 8 South. 812; Spear v. Hiles, 67 Wis. 361, 30 N. W. 511; Com. v. Hollister, 157 Pa. 13, 27 A. 386, 25 L. R. A. 349; People v. Sanborn, 14 N. Y. St. Rep. 123; Daniels v. U. S. (C. C. A. Cal.) 17 F.(2d) 339, 345; Krueger v. State, 177 N. W. 917, 922, 171 Wis. 566; Pierce v. State, 168 S. W. 851, 856, 130 Tenn. 24, Ann. Cas. 1916B, 137; Rhea v. State, 131 P. 729, 730, 9 Okl. Cr. 220; People v. Owen, 216 N. W. 434, 435, 241 Mich. 111. In Texas, by virtue of Pen. Code 1911, art. 79 (Vernon's Ann. P. C. art. 70), an "accessory before the fact" is no longer an accessory, but is an "accomplice." Fondren v. State, 169 S. W. 411, 414, 74 Tex. Cr. R. 552.

—Accessory during the fact. One who stands by without interfering or giving such help as may be in his power to prevent the commission of a criminal offense. Farrell v. People, 8 Colo. App. 524, 46 P. 841.

—Accessory after the fact. One who, having full knowledge that a crime has been committed, conceals it from the magistrate, and harbors, assists, or protects the person charged with, or convicted of, the crime. Code Ga. 1882, § 4308 (Pen. Code 1926, § 47); Pen. Code Cal. § 32; Code Cr. Proc. Tex. 1911, art. 86 (Vernon's Ann. C. C. P. art. 53).

All persons who, after the commission of any felony, conceal or aid the offender, with knowledge that he has committed a felony, and with intent that he may avoid or escape from arrest, trial, conviction, or punishment, are accessories. Comp. Laws N. D. 1913, § 9219; Rev. Code S. D. 1919, § 3595.

An accessory *after the fact* is a person who, knowing a felony to have been committed by another, receives, relieves, comforts or assists the felon, in order to enable him to escape from punishment, or the like. 4 Bla. Comm. 37; 1 Russ. Crimes, 171; United States v. Hartwell, 26 Fed. Cas. 196; Albritton v. State,

32 Fla. 358, 13 So. 955; State v. Davis, 14 R. I. 281; People v. Sanborn, 14 N. Y. St. Rep. 123; Loyd v. State, 42 Ga. 221; Carroll v. State, 45 Ark. 545; Schleeter v. Commonwealth, 290 S. W. 1075, 1079, 218 Ky. 72; Bielich v. State, 126 N. E. 220, 221, 189 Ind. 127; Buck v. Commonwealth, 83 S. E. 390, 393, 116 Va. 1031.

ACCESSORY ACTION. In Scotch practice. An action which is subservient or auxiliary to another. Of this kind are actions of "proving the tenor," by which lost deeds are restored; and actions of "transumpts," by which copies of principal deeds are certified. Bell, Dict.

ACCESSORY CONTRACT. In the civil law. A contract which is incident or auxiliary to another or principal contract; such as the engagement of a surety. Poth. Obl. pt. 1, c. 1, § 1, art. 2.

A principal contract is one entered into by both parties on their own accounts, or in the several qualities they assume. An accessory contract is made for assuring the performance of a prior contract, either by the same parties or by others; such as suretyship, mortgage, and pledge. Civil Code La. art. 1771. Waring v. Smyth, 2 Barb. Ch. (N. Y.) 119, 47 Am. Dec. 299; Ackla v. Ackla, 6 Pa. 228; Blaisdell v. Coe, 83 N. H. 167, 139 A. 758, 65 A. L. R. 626.

ACCESSORY OBLIGATION.

In the Civil Law

An obligation which is incident to another or principal obligation; the obligation of a surety. Poth. Obl. pt. 2, c. 1, § 6.

In Scotch Law

Obligations to antecedent or primary obligations, such as obligations to pay interest, etc. Ersk. Inst. lib. 3, tit. 3, § 60.

See, further, Obligation.

ACCESSORY TO ADULTERY. A phrase used in the law of divorce, and derived from the criminal law. It implies more than connivance, which is merely knowledge with consent. A conniver abstains from interference; an accessory directly commands, advises, or procures the adultery. A husband or wife who has been accessory to the adultery of the other party to the marriage cannot obtain a divorce on the ground of such adultery. 20 & 21 Vict. c. 85, §§ 29, 31.

ACCIDENT. An unforeseen event, occurring without the will or design of the person whose mere act causes it; an unexpected, unusual, or undesigned occurrence; the effect of an unknown cause, or, the cause being known, an unprecedented consequence of it; a casualty. Burkhard v. Travelers' Ins. Co., 102 Pa. 262, 48 Am. Rep. 205; Ætna L. Ins. Co. v. Vandecar, 86 F. 282, 30 C. C. A. 48; Carnes v. Iowa Traveling Men's Ass'n, 106 Iowa, 281, 76 N. W. 683, 68 Am. St. Rep. 306; Atlanta Acc. Ass'n v. Alexander, 104 Ga. 709, 30 S. E. 939, 42 L. R. A. 188; Crutchfield v. Richmond & D. R. Co., 76 N. C. 320; Dozier v. Fidelity & Casualty Co. (C. C.) 46 F. 446, 13 L. R. A. 114; Fidelity & Casualty Co. v. Johnson, 72 Miss. 333, 17 So. 2, 30 L. R. A. 206; Wabash St. L. & Pac. Ry. Co. v. Locke, 112 Ind. 404, 14 N. E. 391, 2 Am. St. Rep. 193; Thomas v. Ford Motor Co., 242 P. 765, 766, 114 Okl. 3; Chapin v. Ocean Accident & Guarantee Corporation, 147 N. W. 465, 467, 96 Neb. 213, 52 L. R. A. (N. S.) 227; Dondeneau v. State Industrial Accident Commission of Oregon, 249 P. 820, 822, 119 Or. 357, 50 A. L. R. 1129; United States Mut. Acc. Ass'n v. Barry, 131 U. S. 100, 9 S. Ct. 755, 33 L. Ed. 60; Stasmas v. State Industrial Commission, 195 P. 762, 763, 80 Okl. 221, 15 A. L. R. 576.

In its proper use the term excludes negligence; that is, an accident is an event which occurs without the fault, carelessness, or want of proper circumspection of the person affected, or which could not have been avoided by the use of that kind and degree of care necessary to the exigency and in the circumstances in which he was placed. Brown v. Kendall, 6 Cush. (Mass.) 292; United States v. Boyd (C. C.) 45 F. 851; Armijo v. Abeytia, 5 N. M. 533, 25 P. 777; St. Louis, etc., R. Co. v. Barnett, 65 Ark. 255, 45 S. W. 550; Aurora Branch R. Co. v. Grimes, 13 Ill. 585; Sprecher v. Ensminger, 149 N. W. 97, 99, 167 Iowa, 118; Hoffman v. Peerless White Lime Co., 317 Mo. 86, 296 S. W. 764, 772; Industrial Commission of Ohio v. Roth, 120 N. E. 172, 174, 98 Ohio St. 34, 6 A. L. R. 1463. But see Schneider v. Provident L. Ins. Co., 24 Wis. 28, 1 Am. Rep. 157. It has been said, moreover, that the word "accident" does not have a settled legal signification; Klopfenstein v. Union Traction Co., 212 P. 1097, 1098, 112 Kan. 770; and that in its ordinary meaning it does not negative the idea of negligence on the part of the person whose physical act caused the occurrence. Campbell v. Jones, 132 P. 635, 636, 73 Wash. 688.

See Act of God.

In Equity

Such an unforeseen event, misfortune, loss, act, or omission as is not the result of any negligence or misconduct in the party. Fran. Max. 87; Story, Eq. Jur. § 78; Eaton on Equity § 109; Engler v. Knoblaugh, 110 S. W. 16, 131 Mo. App. 481.

The meaning to be attached to the word "accident," in relation to equitable relief, is any unforeseen and undesigned event, productive of disadvantage. Wharton.

An accident relievable in equity is such an occurrence, not the result of negligence or misconduct of the party seeking relief in relation to a contract, as was not anticipated by the parties when the same was entered into, and which gives an undue advantage to one of them over another in a court of law. Code Ga. 1882, § 3112 (Civ. Code 1926, § 4567). And see Bostwick v. Stiles, 35 Conn. 195;

Kopper v. Dyer, 59 Vt. 477, 9 A. 4, 59 Am. Rep. 742; Magann v. Segal, 92 F. 252, 34 C. C. A. 323; Bucki, etc., Lumber Co. v. Atlantic Lumber Co., 116 F. 1, 53 C. C. A. 513; Zimmerer v. Fremont Nat. Bank, 59 Neb. 661, 81 N. W. 849; Pickering v. Cassidy, 93 Me. 139, 44 A. 683; City of Bloomington v. Smith, 23 N. E. 972, 123 Ind. 41, 18 Am. St. Rep. 310; White & Hamilton Lumber Co. v. Foster, 122 S. E. 29, 30, 157 Ga. 493.

The word "surprise" is used interchangeably with accident. State ex rel. Hartley v. Innes, 118 S. W. 1168, 137 Mo. App. 420.

In Practice

That which ordinary prudence could not have guarded against. Cupples v. Zupan, 207 P. 328, 329, 35 Idaho, 458. An event happening unexpectedly and without fault; an undesigned and unforeseen occurrence of an afflictive or unfortunate character; a casualty or mishap. Allen v. State, 165 P. 748, 13 Okl. Cr. 533; Callahan Gonst. Co. v. Williams, 170 S. W. 203, 204, 160 Ky. 814; Huffman v. Commonwealth, 234 S. W. 962, 964, 193 Ky. 79; Hoppe v. Boulevard Transp. Co., 172 Minn. 516, 215 N. W. 852.

In Maritime Law and Marine Insurance

"Accidents of navigation" or "accidents of the sea" are such as are peculiar to the sea or to usual navigation or the action of the elements, which do not happen by the intervention of man, and are not to be avoided by the exercise of proper prudence, foresight, and skill. The Miletus, 17 Fed. Cas. 288; The G. R. Booth, 171 U. S. 450, 19 S. Ct. 9, 43 L. Ed. 234; The Carlotta, 5 Fed. Cas. 76; Bazin v. Steamship Co., 2 Fed. Cas. 1,097. See also Perils of the Sea.

ACCIDENTAL KILLING. One resulting from an act which is lawful and lawfully done under a reasonable belief that no harm is possible;—distinguished from "involuntary manslaughter," which is the result of an unlawful act, or of a lawful act done in an unlawful way. Rowe v. Commonwealth, 268 S. W. 571, 573, 206 Ky. 803.

ACCIDENTAL VEIN. See Vein.

ACCIDERE. Lat. To fall; fall in; come to hand; happen. Judgment is sometimes given against an executor or administrator to be satisfied out of assets *quando acciderint; i. e.*, when they shall come to hand. See Quando Acciderint.

ACCION. In Spanish law. A right of action; also the method of judicial procedure for the recovery of property or a debt. Escriche, Dic. Leg. 49. Wilder v. Lambert, 44 S. W. 281, 284, 91 Tex. 510.

Accipere quid ut justitiam facias, non est tam accipere quam extorquere. To accept anything as a reward for doing justice is rather extorting than accepting. Lofft, 72.

ACCIPITARE. To pay relief to lords of manors. *Capitali domino accipitare, i. e.*, to pay a relief, homage, or obedience to the chief lord on becoming his vassal. Fleta, lib. 2, c. 50.

ACCOLA.

In the Civil Law

One who inhabits or occupies land near a place, as one who dwells by a river, or on the bank of a river. Dig. 43, 13, 3, 6.

In Feudal Law

A husbandman; an agricultural tenant; a tenant of a manor. Spelman. A name given to a class of villeins in Italy. Barr. St. 302.

ACCOMENDA. In maritime law. A contract between the owner of goods and the master of a ship, by which the former intrusts the property to the latter to be sold by him on their joint account.

In such case, two contracts take place: First, the contract called *mandatum*, by which the owner of the property gives the master power to dispose of it; and the contract of partnership, in virtue of which the profits are to be divided between them. One party runs the risk of losing his capital; the other, his labor. If the sale produces no more than first cost, the owner takes all the proceeds. It is only the profits which are to be divided. Emerig. Mar. Loans, § 5.

ACCOMMODATED PARTY. One to whom the credit of the accommodation party is loaned, and is not necessarily the payee, since the inquiry always is as to whom did the maker of the paper loan his credit as a matter of fact. Wilhoit v. Seavall, 246 P. 1013, 1015, 121 Kan. 239, 48 A. L. R. 1273; German American State Bank v. Watson, 163 P. 637, 638, 99 Kan. 686; Neylon v. Liberty Nat. Bank of Pawhuska, 259 P. 545, 546, 126 Okl. 188.

ACCOMMODATION. An arrangement or engagement made as a favor to another, not upon a consideration received; something done to oblige, usually spoken of a loan of money or commercial paper; also a friendly agreement or composition of differences. Abbott; Geller, Ward & Hasner Hardware Co. v. Drozda, 217 S. W. 557, 558, 203 Mo. App. 91; Sales v. Martin, 191 S. W. 480, 482, 173 Ky. 616. The word implies no consideration. William D. Seymour & Co. v. Castell, 107 So. 143, 145, 160 La. 371.

ACCOMMODATION BILL OR NOTE. See Accommodation Paper.

ACCOMMODATION INDORSEMENT. See Indorsement.

ACCOMMODATION LANDS. Land bought by a builder or speculator, who erects houses thereon, and then leases portions thereof upon an improved ground-rent.

ACCOMMODATION MAKER. One who puts his name to a note without any consideration

with the intention of lending his credit to the accommodated party, and in this connection "without consideration" means "without consideration to the accommodating party directly." Warren Nat. Bank, Warren, Pa., v. Suerken, 188 P. 613, 614, 45 Cal. App. 736; Exum v. Mayfield (Tex. Civ. App.) 286 S. W. 481, 482; State Bank of Omaha v. Huffman, 160 N. W. 115, 117, 100 Neb. 396. One who receives no part of the proceeds, which are used exclusively for another maker's benefit, as in discharging his own personal obligation. Backer v. Grummett, 178 P. 312, 313, 39 Cal. App. 101.

ACCOMMODATION PAPER. An accommodation bill or note is one to which the accommodating party, be he acceptor, drawer, or indorser, has put his name, without consideration, for the purpose of benefiting or accommodating some other party who desires to raise money on it, and is to provide for the bill when due. Miller v. Larned, 103 Ill. 562; Jefferson County v. Burlington & M. R. Co., 66 Iowa, 385, 16 N. W. 561, 23 N. W. 899; Gillmann v. Henry, 53 Wis. 465, 10 N. W. 692; Peale v. Addicks, 174 Pa. 543, 34 A. 201; Warren Nat. Bank, Warren, Pa., v. Suerken, 188 P. 613, 45 Cal. App. 736; Farmers' Loan & Trust Co. v. Brown, 165 N. W. 70, 182 Iowa, 1044; State Bank of Omaha v. Huffman, 160 N. W. 115, 100 Neb. 396; State Banking Board v. James (Tex. Civ. App.) 264 S. W. 145, 149; Stubbins Hotel Co. v. Beissbarth, 174 N. W. 217, 218, 43 N. D. 191; Gardiner v. Holcomb, 82 Cal. App. 342, 255 P. 523, 527; Smith v. Funston, 208 N. W. 776, 777, 50 S. D. 175; Exum v. Mayfield (Tex. Civ. App.) 286 S. W. 481, 482.

ACCOMMODATION PARTY. One who has signed an instrument as maker, drawer, acceptor, or indorser without receiving value therefor, and for purpose of lending his name to some other person as means of securing credit. Boone Nat. Bank v. Evans (Iowa) 213 N. W. 786, 790; Miller v. White, 50 Utah, 145, 258 P. 565, 569; Patrick v. Arkansas Nat. Bank, 292 S. W. 143, 148, 172 Ark. 1103; Columbia Motor Truck & Trailer Co. v. Bamlet, 199 N. W. 612, 227 Mich. 651. The term therefore does not include one who, for the accommodation of the maker, guaranteed the payment of a note. Noble v. Beeman-Spaulding-Woodward Co., 131 P. 1006, 1010, 65 Or. 93.

ACCOMMODATION TRAIN. One designed to accommodate local travel by stopping at most stations. Gray v. Chicago, M. & St. P. R. Co., 59 N. E. 950, 951, 189 Ill. 400. In another aspect it is a train designed to carry passengers as well as freight. White v. Ill. Cent. R. Co., 55 So. 593, 595, 99 Miss. 651; Thacker v. Ill. Cent. R. Co. (Miss.) 55 So. 595.

ACCOMMODATION WORKS. Works which a railway company is required to make and maintain for the accommodation of the owners or occupiers of land adjoining the railway; *e. g.*, gates, bridges, culverts, fences, etc. 8 Vict. c. 20, § 68.

ACCOMMODATUM. The same as *commodatum, q. v.*

ACCOMPANY. To go along with. Webster's Dict. The word has been defined judicially in cases involving varied facts; thus, a boy driver was held not accompanying the team when he was running to stop it. Willis v. Semmes, 71 So. 865, 866, 111 Miss. 589. A motion based on answer already deposited with the clerk of court is accompanied with copy of answer. Los Angeles County v. Lewis, 177 P. 154, 155, 179 Cal. 398. An automobile driver under sixteen is not accompanied by an adult person unless the latter exercises supervision over the driver. Rush v. McDonnell, 106 So. 175, 179, 214 Ala. 47. An unlicensed driver is not accompanied by a licensed driver unless the latter is near enough to render advice and assistance. Hughes v. New Haven Taxicab Co., 87 A. 721, 87 Conn. 416.

ACCOMPLICE. In criminal law. A person who knowingly, voluntarily, and with common intent with the principal offender unites in the commission of a crime. Clapp v. State, 94 Tenn. 186, 30 S. W. 214; People v. Bolanger, 71 Cal. 17, 11 P. 799; State v. Umble, 115 Mo. 452, 22 S. W. 378; Carroll v. State, 45 Ark. 539; State v. Light, 17 Or. 358, 21 P. 132; People v. Seiffert, 81 Cal. App. 195, 253 P. 189, 190; Hewett v. State, 38 Okl. Cr. 105, 259 P. 144, 146; Minter v. State, 159 S. W. 286, 300, 70 Tex. Cr. R. 634; Singer v. U. S. (C. C. A. N. J.) 278 F. 415, 419. One who is in some way concerned or associated in commission of crime; partaker of guilt; one who aids or assists, or is an accessory. McLendon v. U. S. (C. C. A. Mo.) 19 F.(2d) 465, 466.

As specifically applied to witnesses for the state and the necessity for corroborating them, "accomplice" includes all persons connected with the offense by an unlawful act or omission either before, at the time of, or after the commission of the offense, whether such witness was present or participated in the crime or not. Chandler v. State, 230 S. W. 1002, 1003, 89 Tex. Cr. R. 309; Scales v. State, 217 S. W. 149, 150, 86 Tex. Cr. R. 433; State v. Price, 160 N. W. 677, 679, 135 Minn. 159.

The term includes all the *participes criminis*, Darden v. State, 68 So. 550, 551, 12 Ala. App. 165, whether they are considered, in strict legal propriety, as principals in the first or second degree, or merely as accessories before or after the fact. In re Rowe, 77 F. 161, 23 C. C. A. 103; People v. Bolanger, 71 Cal. 17, 11 P. 799; Armstrong v. State, 33 Tex. Cr. R. 417, 26 S. W. 829; Cross v. People, 47 Ill. 152, 95 Am. Dec. 474; Norris v. State, 269 S. W. 46, 47, 168 Ark. 151; Stevens v. State, 163 S. W. 778, 780, 111 Ark. 299. But in Kentucky it has been held that "accomplice" does not include an accessory after the fact, El-

mendorf v. Commonwealth, 188 S. W. 483, 489, 171 Ky. 410; Marcum v. Commonwealth, 4 S.W.(2d) 728, 223 Ky. 831; see, however, Commonwealth v. Barton, 156 S. W. 113, 114, 153 Ky. 465. And the same rule has been announced elsewhere. State v. Lyons, 175 N. W. 689, 691, 144 Minn. 348; People v. Sapp, 118 N. E. 416, 421, 282 Ill. 51; State v. Seward (Mo. Sup.) 247 S. W. 150, 154.

A feigned accomplice has been defined as one who co-operates with view of aiding justice to detect a crime. State v. Verganadis, 50 Nev. 1, 248 P. 900, 903. See, also, Savage v. State, 170 S. W. 730, 736, 75 Tex. Cr. R. 213; Smith v. U. S. (C. C. A. Okl.) 17 F.(2d) 723, 724.

ACCORD, *n.* A satisfaction agreed upon between the party injuring and the party injured which, when performed, is a bar to all actions upon this account. Kromer v. Heim, 75 N. Y. 576, 31 Am. Rep. 491; Hargrave v. City of Colfax, 154 P. 824, 829, 89 Wash. 467. An agreement to accept, in extinction of an obligation, something different from or less than that to which the person agreeing to accept is entitled. Civ. Code Cal. § 1521; Comp. Laws N. D. 1913, § 5825; Rev. Code S. D. 1919, § 784; Reilly v. Barrett, 115 N. E. 453, 454, 220 N. Y. 170.

It may arise both where the demand itself is unliquidated or in dispute, and where the amount and nature of the demand is undisputed, and it is agreed to give and take less than the demand. J. F. Morgan Paving Co. v. Carroll, 211 Ala. 121, 99 So. 640, 641.

"Payment," as distinguished from accord, means full satisfaction. State v. Tyler County State Bank (Tex. Com. App.) 277 S. W. 625, 627, 42 A. L. R. 1347.

See Accord and Satisfaction; Compromise and Settlement.

ACCORD, *v.* In practice. To agree or concur, as one judge with another. "I accord." Eyre, C. J., 12 Mod. 7. "The rest accorded." 7 Mod. 361.

ACCORD AND SATISFACTION. An agreement between two persons, one of whom has a right of action against the other, that the latter should do or give, and the former accept, something in satisfaction of the right of action different from, and usually less than, what might be legally enforced. When the agreement is executed, and satisfaction has been made, it is called "accord and satisfaction." 3 Blackstone's Comm. 15; Franklin Fire Ins. Co. v. Hamill, 5 Md. 170; Rogers v. Spokane, 9 Wash. 168, 37 P. 300; Davis v. Noaks, 3 J. J. Marsh. (Ky.) 494; Lytle v. Clopton, 261 S. W. 664, 666, 149 Tenn. 655; Buford v. Inge Const. Co. (Tex. Civ. App.) 279 S. W. 513, 515; McPike Drug Co. v. Williams, 230 P. 904, 104 Okl. 244; In re Trexler Co. of America, 15 Del. Ch. 76, 132 A. 144, 145; Reliance Life Ins. Co. of Pittsburgh, Pa., v. Garth, 68 So. 871, 872, 192 Ala. 91; Reilly v. Barrett, 115 N. E. 453, 454, 220 N. Y. 170; Walker v. Burt, 109 S. E. 43, 44, 182 N. C. 325. See, also, Civ. Code Cal. §§ 1521, 1523, quoted and applied in Sierra & San Francisco Power Co. v. Universal Electric & Gas Co., 241 P. 76, 80, 197 Cal. 376.

More recently, a broader application of the doctrine has been made, where one promise or agreement is set up in satisfaction of another. The rule is that an agreement or promise of the same grade will not be held to be in satisfaction of a prior one, unless it has been expressly accepted as such; as, where a new promissory note has been given in lieu of a former one, to have the effect of a satisfaction of the former, it must have been accepted on an express agreement to that effect. Pulliam v. Taylor, 50 Miss. 251; Continental Nat. Bank v. McGeoch, 92 Wis. 286, 66 N. W. 606; Heath v. Vaughn, 11 Colo. App. 384, 53 P. 229; Story v. Maclay, 6 Mont. 492, 13 P. 198; Swofford Bros. Dry Goods Co. v. Goss, 65 Mo. App. 55; Rogers v. Spokane, 9 Wash. 168, 37 P. 300; Heavenrich v. Steele, 57 Minn. 221, 58 N. W. 982; Newman v. Nickell, 194 P. 710, 50 Cal. App. 138; Andrews v. First Nat. Bank, 203 P. 156, 55 Cal. App. 138; Anglo-California Trust Co. v. Wallace, 209 P. 78, 58 Cal. App. 625; People's State Bank v. Penello, 210 P. 432, 59 Cal. App. 174; Niotaze State Bank v. Cooper, 162 P. 1169, 99 Kan. 731; Auld v. Walker, 186 N. W. 1008, 107 Neb. 676; First Nat. Bank v. Schultz, 203 N. W. 496, 113 Neb. 346; Jackson v. Home Nat. Bank of Baird (Tex. Civ. App.) 185 S. W. 893; Hill v. Texas Trust Co. of Austin (Tex. Civ. App.) 236 S. W. 767. See Acceptance; Composition; Compromise; Novation.

ACCORDANCE. Agreement; harmony; concord; conformity. Webster, Dict.

In Accordance With

An act done in accordance with a purpose once formed is not necessarily an act done in pursuance of such purpose, for the purpose may have been abandoned before the act was done. State v. Robinson, 20 W. Va. 713, 742. A charter providing that a city's power of taxation shall be exercised "in accordance with" the state Constitution and laws means in a manner not repugnant to or in conflict or inconsistent therewith. City of Norfolk v. Norfolk Landmark Pub. Co., 28 S. E. 959, 960, 95 Va. 564. The words "in accordance with this act" as used in N. M. Laws 1899, c. 22, § 25, dealing with validity of tax titles, was not improperly interpreted as meaning "under this act." Straus v. Foxworth, 34 S. Ct. 42, 44, 231 U. S. 162, 58 L. Ed. 168.

ACCORDANT. Fr. and Eng. Agreeing; concurring. "Baron Parker, *accordant*," Hardr. 93; "Holt, C. J., *accordant*," 6 Mod. 299; "Powys, J., *accord*," "Powell, J., *accord*," Id. 298.

ACCOUCHEMENT. The act of a woman in giving birth to a child. The fact of the accouchement, which may be proved by the direct testimony of one who was present, as a

physician or midwife, is often important evidence in proving parentage.

ACCOUNT. A detailed statement of the mutual demands in the nature of debt and credit between parties, arising out of contracts or some fiduciary relation. Whitwell v. Willard, 1 Metc. (Mass.) 216; Blakeley v. Biscoe, 1 Hempst. 114, Fed. Cas. No. 18,239; Portsmouth v. Donaldson, 32 Pa. 202, 72 Am. Dec. 782.

A statement in writing, of debts and credits, or of receipts and payments; a list of items of debts and credits, with their respective dates. Rensselaer Glass Factory v. Reid, 5 Cow. (N. Y.) 593.

The word is sometimes used to denote the balance, or the right of action for the balance, appearing due upon a statement of dealings; as where one speaks of an assignment of accounts; but there is a broad distinction between an account and the mere balance of an account, resembling the distinction in logic between the premises of an argument and the conclusions drawn therefrom. A balance is but the conclusion or result of the debit and credit sides of an account. It implies mutual dealings, and the existence of debt and credit, without which there could be no balance. McWilliams v. Allan, 45 Mo. 574.

The word "account" is flexible in meaning, meaning, among other things, valuation; worth; value. Ex parte Means, 200 Ala. 378, 76 So. 294. It has no inflexible technical meaning; In re McLean (D. C. Wash.) 270 F. 348, 350, and may refer either to past or future indebtedness. Semel v. Braun, 157 N. Y. S. 907, 908, 94 Misc. 238. It means invariably in mercantile transactions an itemized account, Brooks v. International Shoe Co., 132 Ark. 386, 200 S. W. 1027, and a suit on a quantum meruit is not a suit on an account, Pollard v. Carlisle (Mo. App.) 218 S. W. 921, 922.

—Account closed. An account to which no further additions can be made on either side, but which remains still open for adjustment and set-off, which distinguishes it from an account stated. Bass v. Bass, 8 Pick. (Mass.) 187; Volkening v. De Graaf, 81 N. Y. 268; Mandeville v. Wilson, 5 Cranch, 15, 3 L. Ed. 23.

—Account current. An open or running or unsettled account between two parties; the antithesis of an account stated. See Watson v. Gillespie, 200 N. Y. S. 191, 198, 205 App. Div. 613; Caffarelli Bros. v. Lyons Bros. Co. (Tex. Civ. App.) 199 S. W. 685, 686; Continental Casualty Co. v. Easley (Tex. Civ. App.) 290 S. W. 251, 253. An "account current" is an active checking account, through which credit and debit items are constantly passing. In re Fricke's Will, 202 N. Y. S. 906, 912, 122 Misc. 427.

—Account duties. Duties payable by the English customs and inland revenue act, 1881, (44 Vict. c. 12, § 38,) on a *donatio mortis causa*, or on any gift, the donor of which dies within three months after making it, or on joint property voluntarily so created, and taken by survivorship, or on property taken under a voluntary settlement in which the settlor had a life-interest.

—Account payable. "Accounts payable" are contract obligations owing by a person on open account. West Virginia Pulp & Paper Co. v. Karnes, 137 Va. 714, 120 S. E. 321, 322.

—Account rendered. An account made out by the creditor, and presented to the debtor for his examination and acceptance. When accepted, it becomes an account stated. Wiggins v. Burkham, 10 Wall. 129, 19 L. Ed. 884; Stebbins v. Niles, 25 Miss. 267; Freeland v. Cocke, 17 Va. (3 Munf.) 352.

—Account settled. One in which the balance has been in fact paid, thereby differing from an account stated. See Dempsey v. McGinnis, 219 S. W. 148, 150, 203 Mo. App. 494; McCarty v. Chalfant, 14 W. Va. 531, 549.

—Account stated. The settlement of an account between the parties, with a balance struck in favor of one of them; an account rendered by the creditor, and by the debtor assented to as correct, either expressly, or by implication of law from the failure to object. Preston v. La Belle View Corporation, 212 N. W. 286, 288, 192 Wis. 168; Cutino Co. v. Weeks, 213 N. W. 413, 414, 203 Iowa, 581; McMahon v. Brown, 106 N. E. 576, 578, 219 Mass. 23; Harrison v. Henderson, 72 P. 878, 67 Kan. 202; Dettmer v. Fulls, 251 P. 396, 397, 122 Kan. 98; Lowry v. Law, 150 P. 660, 663, 27 Cal. App. 483. No particular form is necessary; it may be oral, written, partly oral and partly written. Murphy v. Smith, 226 P. 206, 208, 26 Ariz. 394. An account stated is not ordinarily recognized in Virginia and West Virginia, except as between merchant and merchant, and principal and agent, with mutual accounts. Price Hill Colliery Co. v. Pinkney, 122 S. E. 434, 436, 96 W. Va. 74; Ivy Coal Co. v. Long, 139 Ala. 535, 36 So. 722; Zacarino v. Pallotti, 49 Conn. 36; McLellan v. Crofton, 6 Me. 307; James v. Fellowes, 20 La. Ann. 116; Lockwood v. Thorne, 18 N. Y. 285; Holmes v. Page, 19 Or. 232, 23 P. 961; Philips v. Belden, 2 Edw. Ch. (N. Y.) 1; Ware v. Manning, 86 Ala. 238, 5 So. 682; Morse v. Minton, 101 Iowa, 603, 70 N. W. 691; Patillo v. Allen-West Commission Co. (C. C. A. Ark. 1904) 131 F. 680. This was also a common count in a declaration upon a contract under which the plaintiff might prove an absolute acknowledgment by the defendant of a liquidated demand of a fixed amount, which implies a promise to pay on request. It might be joined with any other count for a money demand. The acknowledgment or admission must have been made to the plaintiff or his agent. Wharton.

—Mutual accounts. Accounts comprising mutual credits between the parties; or an existing credit on one side which constitutes a ground for credit on the other, or where there

is an understanding that mutual debts shall be a satisfaction or set-off *pro tanto* between the parties. McConnell v. Arkansas Coffin Co., 287 S. W. 1007, 172 Ark. 87; McNeil v. Garland, 27 Ark. 343.

—Open account. An account which has not been finally settled or closed, but is still running or open to future adjustment or liquidation. Open account, in legal as well as in ordinary language, means an indebtedness subject to future adjustment, and which may be reduced or modified by proof. James v. Lederer-Strauss & Co., 233 P. 137, 139, 32 Wyo. 377; Scofield v. Lilienthal (Tex. Civ. App.) 268 S. W. 1047, 1049; Connor Live Stock Co. v. Fisher, 32 Ariz. 80, 255 P. 996, 997, 57 A. L. R. 196; Griggs-Paxton Shoe Co. v. A. Friedheim & Bro., 131 S. E. 620, 624, 133 S. C. 458; Sabin v. Blake-McFall Co. (C. C. A. Or.) 223 F. 501, 504; Nisbet v. Lawson, 1 Ga. 275; Gayle v. Johnston, 72 Ala. 254, 47 Am. Rep. 405; McCamant v. Batsell, 59 Tex. 368; Purvis v. Kroner, 18 Or. 414, 23 P. 260. An open account can become an account stated only by the debtor's admission of liability, or failure to deny liability for a reasonable time after receipt of account. Brooks v. White, 122 S. E. 561, 187 N. C. 656.

—Public accounts. The accounts kept by officers of the nation, state, or kingdom, of the receipt and expenditure of the revenues of the government.

ACCOUNT, or ACCOUNT RENDER. In practice. "Account," sometimes called "account render," was a form of action at common law against a person who by reason of some fiduciary relation (as guardian, bailiff, receiver, etc.) was bound to render an account to another, but refused to do so. Fitzh. Nat. Brev. 116; Co. Litt. 172; Griffith v. Willing, 3 Bin. (Pa.) 317; Travers v. Dyer, 24 Fed. Cas. 142; Stevens v. Coburn, 71 Vt. 261, 44 Atl. 354; Portsmouth v. Donaldson, 32 Pa. 202, 72 Am. Dec. 782.

In England, this action early fell into disuse; and as it is one of the most dilatory and expensive actions known to the law, and the parties are held to the ancient rules of pleading, and no discovery can be obtained, it never was adopted to any great extent in the United States. But in some states this action was employed, chiefly because there were no chancery courts in which a bill for an accounting would lie. The action is peculiar in the fact that two judgments are rendered, a preliminary judgment that the defendant do account with the plaintiff (*quod computet*) and a final judgment (*quod recuperet*) after the accounting for the balance found due. Field v. Brown, 146 Ind. 293, 45 N. E. 464; Travers v. Dyer, 24 Fed. Cas. 142.

ACCOUNT-BOOK. A book kept by a merchant, trader, mechanic, or other person, in which are entered from time to time the transactions of his trade or business. Such books, when regularly kept, may be admitted in evidence. Greenl. Ev. §§ 115–118.

ACCOUNT IN BANK. See Bank Account.

ACCOUNTABLE. Subject to pay; responsible; liable. Where one indorsed a note "A. C. accountable," it was held that, under this form of indorsement, he had waived demand and notice. Furber v. Caverly, 42 N. H. 74.

ACCOUNTABLE RECEIPT. An instrument acknowledging the receipt of money or personal property, coupled with an obligation to account for or pay or deliver the whole or some part of it to some person. State v. Riebe, 27 Minn. 315, 7 N. W. 262.

ACCOUNTANT. One who keeps accounts; a person skilled in keeping books or accounts; an expert in accounts or bookkeeping. See U. S. ex rel. Liebmann v. Flynn (D. C. N. Y.) 16 F.(2d) 1006, 1007; Frazer v. Shelton, 150 N. E. 696, 701, 320 Ill. 253, 43 A. L. R. 1086.

A person who renders an account. When an executor, guardian, etc., renders an account of the property in his hands and his administration of the trust, either to the beneficiary or to a court, he is styled, for the purpose of that proceeding, the "accountant."

ACCOUNTANT GENERAL, or ACCOMPTANT GENERAL. An officer of the court of chancery, appointed by act of parliament to receive all money lodged in court, and to place the same in the Bank of England for security. 12 Geo. I. c. 32; 1 Geo. IV. c. 35; 15 & 16 Vict. c. 87, §§ 18–22, 39. See Daniell, Ch. Pr. (4th Ed.) 1607 et seq. The office, however, has been abolished by 35 & 36 Vict. c. 44, and the duties transferred to her majesty's paymaster general.

ACCOUNTANTS, CHARTERED. Persons skilled in the keeping and examination of accounts, who are employed for the purpose of examining and certifying to the correctness of accounts of corporations and others. The business is usually carried on by corporations. See Auditor.

ACCOUNTING. The making up and rendition of an account, either voluntarily or by order of a court. Buxton v. Edwards, 134 Mass. 567, 578. In the latter case, it imports a rendition of a judgment for the balance ascertained to be due. Apple v. Smith, 190 P. 8, 10, 106 Kan. 717. The term may include payment of the amount due. Pyatt v. Pyatt, 46 N. J. Eq. 285, 18 A. 1048.

ACCOUNTS RECEIVABLE. Contract obligations owing to a person on open account. West Virginia Pulp & Paper Co. v. Karnes, 120 S. E. 321, 322, 137 Va. 714; State ex rel. Globe-Democrat Pub. Co. v. Gehner, 316 Mo. 694, 294 S. W. 1017, 1018.

ACCOUPLE. To unite; to marry. *Ne unques accouple*, never married.

ACCREDIT. In international law. (1) To acknowledge; to receive as an envoy in his public character, and give him credit and rank accordingly. Burke. (2) To send with credentials as an envoy. Webst. Dict. This latter use is now the accepted one.

ACCREDULITARE. L. Lat. In old records. To purge an offense by oath. Blount; Whishaw.

ACCRESCERE. In the civil and old English law. To grow to; to increase; to pass to, and become united with, as soil to land *per alluvionem.* Dig. 41, 1, 30, pr. The term is used in speaking of islands which are formed in rivers by deposit; Calvinus, Lex.; 3 Kent 428. It is used in a related sense in the common-law phrase *jus accrescendi,* the right of survivorship; 1 Washb. R. P. 426.

In Pleading

To commence; to arise; to accrue. *Quod actio non accrevit infra sex annos,* that the action did not accrue within six years; 3 Chit. Pl. 914.

ACCRETION. The act of growing to a thing; usually applied to the gradual and imperceptible accumulation of land by natural causes, as out of the sea or a river. Accretion of land is of two kinds: By *alluvion, i. e.,* by the washing up of sand or soil, so as to form firm ground; or by *dereliction,* as when the sea shrinks below the usual water-mark.

The increase of real estate by the addition of portions of soil, by gradual deposition through the operation of natural causes, to that already in possession of the owner. 2 Washb. Real Prop. 451. Jefferis v. East Omaha Land Co., 134 U. S. 178, 10 Sup. Ct. 518, 33 L. Ed. 872; New Orleans v. United States, 10 Pet. 662, 717, 9 L. Ed. 573; Baumhart v. McClure, 153 N. E. 211, 21 Ohio App. 491; Irvin v. Crammond, 108 N. E. 539, 540, 58 Ind. App. 540; Bigelow v. Herrink, 205 N. W. 531, 533, 200 Iowa, 830; Lammers v. Nissen, 4 Neb. 245; Mulry v. Norton, 100 N. Y. 424, 3 N. E. 581, 53 Am. Rep. 206; Nebraska v. Iowa, 143 U. S. 359, 12 S. Ct. 396, 36 L. Ed. 186; Ewing v. Burnet, 11 Pet. 41, 9 L. Ed. 624; St. Louis, etc., R. Co. v. Ramsey, 53 Ark. 314, 13 S. W. 931, 8 L. R. A. 559, 22 Am. St. Rep. 195; 51 L. R. A. 425, n.

As used in a mortgage on cattle, with all increase thereof and accretions thereto, the word "accretions" is not confined to the results of natural growth, but includes the additions of parts from without, i. e., of cattle subsequently added to the herd. Stockyards Loan Co. v. Nichols (C. C. A. Okl.) 243 F. 511, 513, 1 A. L. R. 547.

See Accrue; Avulsion; Alluvion; Relliction.

In the Civil Law

The right of heirs or legatees to unite or aggregate with their shares or portions of the estate the portion of any co-heir or legatee who refuses to accept it, fails to comply with a condition, becomes incapacitated to inherit, or dies before the testator. In this case, his portion is said to be "vacant," and is added to the corpus of the estate and divided with it, the several shares or portions of the other heirs or legatees being thus increased by "accretion." Anderson v. Lucas, 204 S. W. 989, 993, 140 Tenn. 336; Emeric v. Alvarado, 64 Cal. 529, 2 P. 418; Succession of Hunter, 45 La. Ann. 262, 12 So. 312. Under a deed of trust: Miller v. Douglass, 213 N. W. 320, 322, 192 Wis. 486.

ACCROACH. To encroach; to exercise power without due authority.

To attempt to exercise royal power. 4 Bl. Comm. 76. A knight who forcibly assaulted and detained one of the king's subjects till he paid him a sum of money was held to have committed treason, on the ground of accroachment. 1 Hale, P. C. 80.

In French Law

To delay. Whishaw.

ACCROCHER. Fr. In French law. To delay; retard; put off. *Accrocher un procès,* to stay the proceedings in a suit.

ACCRUAL, CLAUSE OF. See Accruer, Clause of.

ACCRUAL BASIS. Books are kept on an accrual rather than cash basis where books show sales by accounts receivable and purchases by accounts payable, and set up inventories at beginning and end of year. Consolidated Tea Co. v. Bowers (D. C. N. Y.) 19 F.(2d) 382.

ACCRUE. To grow to; to be added to; to attach itself to; as a subordinate or accessory claim or demand arises out of, and is joined to, its principal; thus, costs accrue to a judgment, and interest to the principal debt.

The term is also used of independent or original demands, and then means to arise, to happen, to come into force or existence; to vest; as in the phrase, "The right of action did not *accrue* within six years." Amy v. Dubuque, 98 U. S. 470, 476, 25 L. Ed. 228; Grand Lodge, Colored Knights of Pythias of Texas, v. Hill (Tex. Civ. App.) 277 S. W. 797, 798; Henderson v. Fielder, 215 S. W. 187, 188, 185 Ky. 482; Oklahoma Farm Mortgage Co. v. Jordan, 168 P. 1029, 1030, 67 Okl. 69; Eising v. Andrews, 66 Conn. 58, 33 A. 585, 50 Am. St. Rep. 75; Napa State Hospital v. Yuba County, 138 Cal. 378, 71 P. 450. A cause of action *accrues* when suit may be commenced for a breach of contract. Amy v. Dubuque, 98 U. S. 470, 25 L. Ed. 228; International-Great Northern R. Co. v. Texas Co. (Tex. Civ. App.) 280 S. W. 282, 285. It is distinguished from sustain; Adams v. Brown, 4 Litt. (Ky.) 7; and from owing; 6 C. B. N. S. 429; Gross v. Partenheimer, 159 Pa. 556, 28 A. 370; but see Cutcliff v. McAnally, 88 Ala. 507, 7 So. 331; Fay v. Holloran, 35

Barb. (N. Y.) 295; it is also distinguished from arise; State v. Circuit Court of Waushara County, 162 N. W. 436, 437, 165 Wis. 387; but see Board of Com'rs of Lea County v. Board of Com'rs of Chaves County, 169 P. 306, 308, 23 N. M. 469. The word accrued, as used in reference to contracts in which process may be sent out of the country to be served, has reference to the place where the contract was made and executed. Phelps v. McGee, 18 Ill. 155, 158.

ACCRUER (or ACCRUAL), CLAUSE OF. An express clause, frequently occurring in the case of gifts by deed or will to persons as tenants in common, providing that upon the death of one or more of the beneficiaries his or their shares shall go to the survivor or survivors. Brown. The share of the decedent is then said to *accrue* to the others.

ACCRUING. Inchoate; in process of maturing. That which will or may, at a future time, ripen into a vested right, an available demand, or an existing cause of action. Cochran v. Taylor, 13 Ohio St. 382.

ACCRUING COSTS. Costs and expenses incurred after judgment.

ACCRUING INTEREST. Running or accumulating interest, as distinguished from accrued or matured interest; interest daily accumulating on the principal debt but not yet due and payable. Gross v. Partenheimer, 159 Pa. 556, 28 A. 370.

ACCRUING RIGHT. One that is increasing, enlarging, or augmenting. Richards v. Land Co., 54 F. 209, 4 C. C. A. 290.

ACCT. An abbreviation for "account," of such universal and immemorial use that the courts will take judicial notice of its meaning. Heaton v. Ainley, 108 Iowa, 112, 78 N. W. 798.

ACCUMULATED SURPLUS. In statutes relative to the taxation of corporations, this term refers to the fund which the company has in excess of its capital and liabilities. Trenton Iron Co. v. Yard, 42 N. J. Law, 357; People's F. Ins. Co. v. Parker, 34 N. J. Law, 479, 35 N. J. Law, 575; Mutual Ben. L. Ins. Co. v. Utter, 34 N. J. Law, 489; Mills v. Britton, 64 Conn. 4, 29 A. 231, 24 L. R. A. 536; Equitable Guarantee & Trust Co. v. Rogers, 44 A. 789, 7 Del. Ch. 398. See Earnings.

ACCUMULATIONS. When an executor or other trustee masses the rents, dividends, and other income which he receives, treats it as a capital, invests it, makes a new capital of the income derived therefrom, invests that, and so on, he is said to accumulate the fund, and the capital and accrued income thus procured constitute *accumulations*. Hussey v. Sargent, 116 Ky. 53, 75 S. W. 211; In re Rogers' Estate, 179 Pa. 609, 36 A. 340; Thorn v. De Breteuil, 86 App. Div. 405, 83 N. Y. S. 849. Testamentary trusts held not to provide for accumulation beyond statutory periods: Henderson v. Henderson, 97 So. 353, 361, 210 Ala. 73; Swain v. Bowers, 91 Ind. App. 307, 158 N. E. 598, 604; In re Hartman's Estate, 215 N. Y. S. 802, 806, 126 Misc. 862. See Perpetuity.

ACCUMULATIVE. That which accumulates, or is heaped up; additional. Said of several things heaped together, or of one thing added to another.

ACCUMULATIVE JUDGMENT. Where a person has already been convicted and sentenced, and a second or additional judgment is passed against him, the execution of which is postponed until the completion of the first sentence, such second judgment is said to be *accumulative*.

As to accumulative "Legacy," see that title.

Accusare nemo se debet, nisi coram Deo. No one is bound to accuse himself, except before God. See Hardres, 139.

ACCUSATION. A formal charge against a person, to the effect that he is guilty of a punishable offense, laid before a court or magistrate having jurisdiction to inquire into the alleged crime. Coplon v. State, 73 So. 225, 228, 15 Ala. App. 331. See Accuse.

A neglect to accuse may in some cases be considered a misdemeanor, or misprision (which see); 1 Brown, Civ. Law 247; 2 *id.* 389; Inst. *lib.* 4, *tit.* 18.

For "accusation" as equivalent to common-law information, or to indictment or presentment, see Gilbert v. State, 17 Ga. App. 143, 86 S. E. 415, 416; Cleveland v. Brown, 141 Ga. 829, 82 S. E. 243; Flint v. State, 12 Ga. App. 169, 76 S. E. 1032, 1033; as including warrant, Cox v. Dorsey, 152 Ga. 532, 110 S. E. 236.

Accusator post rationabile tempus non est audiendus, nisi se bene de omissione excusaverit. Moore, 817. An accuser ought not to be heard after the expiration of a reasonable time, unless he can account satisfactorily for the delay.

ACCUSATORY PART. The "accusatory part" of an indictment is that part where the offense is named. Deaton v. Commonwealth, 295 S. W. 167, 168, 220 Ky. 343.

ACCUSE. To bring a formal charge against a person, to the effect that he is guilty of a crime or punishable offense, before a court or magistrate having jurisdiction to inquire into the alleged crime. People v. Frey, 112 Mich. 251, 70 N. W. 548; People v. Braman, 30 Mich. 460; Castle v. Houston, 19 Kan. 426, 27 Am. Rep. 127; Gordon v. State, 102 Ga. 673, 29 S. E. 444; Pen. Code Texas, 1895, art. 240.

In its popular sense "accusation" applies to all derogatory charges or imputations, whether or not they relate to a punishable legal offense, and however made, whether orally, by newspaper, or otherwise. State v. Pat-

terson, 196 S. W. 3, 5, 271 Mo. 99; State v. South, 5 Rich. Law (S. C.) 489; Com. v. Andrews, 132 Mass. 263; People v. Braman, 30 Mich. 460. But in legal phraseology, it is limited to such accusations as have taken shape in a prosecution. United States v. Patterson, 150 U. S. 65, 14 Sup. Ct. 20, 37 L. Ed. 999.

ACCUSED. The person against whom an accusation is made; one who is charged with a crime or misdemeanor. See People v. Braman, 30 Mich. 468. The term cannot be said to apply to a defendant in a civil action; Castle v. Houston, 19 Kan. 417, 37 Am. Rep. 127; and see Mosby v. Ins. Co., 31 Gratt. (Va.) 629.

"Accused" is the generic name for the defendant in a criminal case, and is more appropriate than either "prisoner" or "defendant." 1 Car. & K. 131.

ACCUSER. The person by whom an accusation is made.

ACCUSTOMED. Habitual; often used; synonymous with usual; Farwell v. Smith, 16 N. J. Law, 133.

ACEPHALI. The levelers in the reign of Hen. I., who acknowledged no head or superior. Leges H. 1; Cowell. Also certain ancient heretics, who appeared about the beginning of the sixth century, and asserted that there was but one substance in Christ, and one nature. Wharton; Gibbon, Rom. Emp. ch. 47.

ACEQUIA. In Mexican law. A ditch, channel, or canal, through which water, diverted from its natural course, is conducted, for use in irrigation or other purposes.

Where irrigation is necessary, as in New Mexico, there is much legislation respecting public ditches and streams, and those used for the purpose of irrigation are declared to be "public ditches or acequias". Comp. L. N. Mex. tit. 1, c. 1, § 6 (Comp. St. 1929, §§ 151–401).

ACHAT, also ACHATE, ACHATA, ACHET. In French law. A purchase or bargain. Cowell.

It is used in some of our law-books, as well as *achetor*, a purchaser, which in some ancient statutes means purveyor. Stat. 36 Edw. III; Merlin, Répert.

ACHERSET. In old English law. A measure of grain, conjectured to have been the same with our quarter, or eight bushels. Cowell.

ACKNOWLEDGE. To own, avow, or admit; to confess; to recognize one's acts, and assume the responsibility therefor.

ACKNOWLEDGMENT. In conveyancing. The act by which a party who has executed an instrument of conveyance as grantor goes before a competent officer or court, and declares or acknowledges the same as his genuine and voluntary act and deed. The certificate of the officer on such instrument that it has been so acknowledged. Bristol v. Buck, 201 App. Div. 100, 194 N. Y. S. 53, 55; Herron v. Harbour, 75 Okl. 127, 182 P. 243, 244, 29 A. L. R. 905; Rasmussen v. Stone, 30 N. D. 451, 152 N. W. 809, 810; Billington v. Dunn, 217 Ky. 164, 289 S. W. 213, 214; Rogers v. Pell, 154 N. Y. 518, 49 N. E. 75; Strong v. United States (D. C.) 34 F. 17; In re Virgin (D. C. Ga.) 224 F. 128, 130; Williford v. Davis, 106 Okl. 208, 232 P. 828, 831; Burbank v. Ellis, 7 Neb. 156.

The term is also used of the act of a person who avows or admits the truth of certain facts which, if established, will entail a civil liability upon him. Thus, the debtor's *acknowledgment* of the creditor's demand or right of action will toll the statute of limitations. Ft. Scott v. Hickman, 112 U. S. 150, 163, 5 Sup. Ct. 56, 28 L. Ed. 636; Wade v. Sheehan (Tex. Civ. App.) 226 S. W. 444; York v. Hughes (Tex. Civ. App.) 275 S. W. 229, 231; Hayes Pump & Planter Co. v. Taylor, 114 Kan. 380, 219 P. 258, 259; Nixon v. Ramsey, 40 Cal. App. 240, 180 P. 649, 650; Olatmanns v. Glenn, 78 Okl. 70, 188 P. 886, 888; Taylor v. Desoto Lumber Co., 137 Miss. 829, 102 So. 260, 261; Wenz v. Wenz, 222 Mass. 314, 110 N. E. 969. *Admission* is also used in this sense. Roanes v. Archer, 4 Leigh (Va.) 550. To denote an avowal of criminal acts, or the concession of the truth of a criminal charge, the word "confession" seems more appropriate.

Of a Child

An avowal or admission that the child is one's own; recognition of a parental relation, either by a written agreement, verbal declarations or statements, by the life, acts, and conduct of the parties, or any other satisfactory evidence that the relation was recognized and admitted. In re Spencer (Sur.) 4 N. Y. S. 395; In re Hunt's Estate, 86 Hun, 232, 33 N. Y. S. 256; Blythe v. Ayres, 96 Cal. 532, 31 P. 915, 19 L. R. A. 40; Bailey v. Boyd, 59 Ind. 292.

The "public acknowledgment" of paternity, under Civ. Code Cal. § 230, is the opposite of private acknowledgment, and means the same kind of acknowledgment a father would make of his legitimate child. In re Baird's Estate, 193 Cal. 225, 223 P. 974, 994.

In General

—Acknowledgment money. A sum paid in some parts of England by copyhold tenants on the death of their lords, as a recognition of their new lords, in like manner as money is usually paid on the attornment of tenants. Cowell; Blount. Called a fine by Blackstone; 2 Bla. Com. 98.

—Separate acknowledgment. An acknowledgment of a deed or other instrument, made by a married woman, on her examination by the officer separate and apart from her husband. Hutchinson v. Stone, 79 Fla. 157, 84 So. 151, 154.

ACOLYTE. An inferior church servant, who, next under the sub-deacon, follows and waits upon the priests and deacons, and performs the offices of lighting the candles, carrying the bread and wine, and paying other servile attendance. Spelman; Cowell.

ACQUAINTED. Having personal knowledge of. Kelly v. Calhoun, 95 U. S. 710, 24 L. Ed. 544. Acquaintance expresses less than familiarity; In re Carpenter's Estate, 94 Cal. 406, 29 P. 1101. It is "familiar knowledge"; Wyllis v. Haun, 47 Iowa, 614; Chauvin v. Wagner, 18 Mo. 531. To be "personally acquainted with," and to "know personally," are equivalent terms; Kelly v. Calhoun, 95 U. S. 710, 24 L. Ed. 544. When used with reference to a paper to which a certificate or affidavit is attached, it indicates a substantial knowledge of the subject-matter thereof. Bohan v. Casey, 5 Mo. App. 101; U. S. v. Jones, 14 Blatchf. 90, Fed. Cas. No. 15,491.

ACQUEREUR. In French and Canadian law. One who acquires title, particularly to immovable property, by purchase.

ACQUEST. An estate acquired newly, or by purchase. 1 Reeve, Eng. Law, 56.

ACQUÊTS. In the civil law. Property which has been acquired by purchase, gift, or otherwise than by succession. Immovable property which has been acquired otherwise than by succession. Merl. Répert.

Profits or gains of property, as between husband and wife. Civil Code La. art. 2402. 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 joint industry 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 though the purchase be only in the name of one of the two, and not of both. See Community; Conquêts.

ACQUIESCE. To give an implied consent to a transaction, to the accrual of a right, or to any act, by one's mere silence, or without express assent or acknowledgment. Matthews v. Murchison (C. C.) 17 F. 760; Cass County v. Plotner, 149 Ind. 116, 48 N. E. 635; Scott v. Jackson, 89 Cal. 258, 26 P. 898.

ACQUIESCENCE. A silent appearance of consent. Worcester, Dict. Dartnell v. Bidwell, 115 Me. 227, 98 A. 743, 745, 5 A. L. R. 1320; Dwight v. City of Des Moines, 174 Iowa, 178, 156 N. W. 336, 338.

Failure to make any objections. 2 Phil. 117; 8 Ch. Div. 286; Scott v. Jackson, 89 Cal. 258, 26 P. 898; State ex rel. Bankers' Life Co. of Des Moines, Iowa, v. Reynolds, 277 Mo. 14, 208 S. W. 618, 621. Submission to an act of which one had knowledge. See Pence v. Langdon, 99 U. S. 578, 25 L. Ed. 420. It imports full knowledge; Rabe v. Dunlap, 51 N. J. Eq. 40, 25 A. 959; Kent v. Mining Co., 78 N. Y. 159; Union Cemetery Co. v. Jackson, 188 Ala. 599, 65 So. 986, 988.

It is to be distinguished from avowed consent, on the one hand, and from open discontent or opposition, on the other.

It arises where a person who knows that he is entitled to impeach a transaction or enforce a right neglects to do so for such a length of time that, under the circumstances of the case, the other party may fairly infer that he has waived or abandoned his right. City of Rome v. Reese, 91 S. E. 880, 882, 19 Ga. App. 559; Scott v. Jackson, 89 Cal. 258, 26 P. 898; Lowndes v. Wicks, 69 Conn. 15, 36 A. 1072; Norfolk & W. R. Co. v. Perdue, 40 W. Va. 442, 21 S. E. 755.

Acquiescence and *laches* are cognate but not equivalent terms. The former is a submission to, or resting satisfied with, an existing state of things, while laches implies a neglect to do that which the party ought to do for his own benefit or protection. Hence laches may be evidence of acquiescence. Laches, imports a merely passive assent, while acquiescence implies active assent. Ocmulgee River Lumber Co. v. Ocmulgee Valley R. Co. (D. C. Ga.) 251 F. 161, 162; Rodick v. Pineo, 120 Me. 160, 113 A. 45, 47; Lux v. Haggin, 69 Cal. 255, 10 P. 674, 678; Kenyon v. National Life Ass'n, 39 App. Div. 276, 57 N. Y. S. 60; Johnson-Brinkman Commission Co. v. Missouri Pac. R. Co., 126 Mo. 345, 28 S. W. 870, 26 L. R. A. 840, 47 Am. St. Rep. 675.

"Acquiescence" is synonymous with "abandonment"; Sclawr v. City of St. Paul, 132 Minn. 238, 156 N. W. 283, 284; and is distinguished from "admission"; Saunders v. Busch-Everett Co., 138 La. 1049, 71 So. 153, 154; People v. Nitti, 312 Ill. 73, 143 N. E. 448, 455; and from "ratification" and "estoppel in pais"; Marion Sav. Bank v. Leahy, 200 Iowa, 220, 204 N. W. 456, 458; but see Murray v. Smith, 152 N. Y. S. 102, 108, 166 App. Div. 528.

See Admission; Confession; Estoppel; Ratification.

ACQUIETANDIS PLEGIIS. A writ of justices, formerly lying for the surety against a creditor who refuses to acquit him after the debt has been satisfied. Reg. of Writs 158; Cowell; Blount.

ACQUIRE. In the law of contracts and of descents. To become the owner of property; to make property one's own. Ex parte Okahara, 191 Cal. 353, 216 P. 614, 618; Sandlin v. Maury Nat. Bank, 210 Ala. 349, 98 So. 190, 191; Spofford v. Rose, 145 Tenn. 583, 237 S. W. 68, 71; Martin v. Raleigh State Bank, 146 Miss. 1, 111 So. 448, 450, 51 A. L. R. 442; Wulzen v. San Francisco, 101 Cal. 15, 35 P. 353, 40 Am. St. Rep. 17. To gain permanently. Parker v. Schrimsher (Tex. Civ. App.) 172 S. W. 165, 169; Rogers v. Rogers (D. C. Okl.) 263 F. 160, 161; Lee v. Lee, 112 Tex. 392, 247 S. W. 828, 832.

It is regularly applied to a permanent acquisition. A man is said to obtain or procure a mere temporary acquisition. But "acquire" is sometimes used in the sense of "procure," Jolly v. McCoy, 36 Cal. App. 479, 172 P. 618,

619; it does not necessarily mean that title has passed, Godwin v. Tuttle, 70 Or. 424, 141 P. 1120, 1122; State v. District Court of Third Judicial Dist. in and for Granite County, 79 Mont. 1, 254 P. 863, 865. It has been held to include a taking by devise, Santa Clara Female Academy v. Sullivan, 116 Ill. 375, 6 N. E. 183, 56 Am. Rep. 776; and by bequest, U. S. v. Merriam, 44 S. Ct. 69, 70, 263 U. S. 179, 68 L. Ed. 240, 29 A. L. R. 1547.

ACQUIRED. Coming to an intestate in any other way than by gift, devise, or descent from a parent or the ancestor of a parent. In re Miller's Will, 2 Lea (Tenn.) 54.

ACQUIRED RIGHTS. Those which a man does not naturally enjoy, but which are owing to his own procurement, as sovereignty, or the right of commanding, or the right of property. Borden v. State, 11 Ark. 519, 527, 44 Am. Dec. 217.

ACQUISITION. The act of becoming the owner of certain property; the act by which one acquires or procures the property in anything. Used also of the thing acquired. Johnson v. Turnholt, 199 Iowa, 1331, 203 N. W. 715; Federal Trade Commission v. Thatcher Mfg. Co. (C. C. A. Wash.) 5 F.(2d) 615, 620; Hartigan v. City of Los Angeles, 170 Cal. 313, 149 P. 590, 592.

Original acquisition is that by which a man secures a property in a thing which is not at the time he acquires it, and in its then existing condition, the property of any other individual. It may result from occupancy; 2 Kent, 289; accession; 2 Kent, 293; intellectual labor—namely, for inventions, which are secured by patent rights; and for the authorship of books, maps, and charts, which is protected by copyrights; 1 Bouv. Inst. 508, n.

Derivative acquisitions are those which are procured from others. Goods and chattels may change owners by act of law in the cases of forfeiture, succession, marriage, judgment, insolvency, and intestacy; or by act of the parties, as by gift or sale.

An acquisition may result from the act of the party himself, or those who are in his power acting for him, as his children while minors; Gale v. Parrot, 1 N. H. 28. See Dig. 41. 1. 53; Inst. 2. 9. 3.

See Accession.

ACQUIT. To release, absolve, or discharge one from an obligation or a liability; or to legally certify the innocence of one charged with crime. Dolloway v. Turrill, 26 Wend. (N. Y.) 383, 400.

ACQUIT À CAUTION. In French law. Certain goods pay higher export duties when exported to a foreign country than when they are destined for another French port. In order to prevent fraud, the administration compels the shipper of goods sent from one French port to another to give security that such goods shall not be sent to a foreign country. The certificate which proves the receipt of the security is called "*acquit à caution.*" Argles, Fr. Merc. Law, 543.

ACQUITMENT. See Absolution.

ACQUITTAL.

In Contracts

A release, absolution, or discharge from an obligation, liability, or engagement.

According to Lord Coke, there are three kinds of acquittal, namely: by deed, when the party releases the obligation; by prescription; by tenure; Co. Litt. 100 *a.*

In Criminal Practice

The legal and formal certification of the innocence of a person who has been charged with crime; a deliverance or setting free a person from a charge of guilt.

In a narrow sense, it is the absolution of a party accused on a trial before a traverse jury. Thomas v. De Graffenreid, 2 Nott & McC. (S. C.) 143; Teague v. Wilks, 3 McCord (S. C.) 461. Properly speaking, however, one is not acquitted by the jury but by the judgment of the court. Burgess v. Boetefeur, 7 Man. & G. 481, 504; People v. Lyman, 53 App. Div. 470, 65 N. Y. S. 1062; People v. Rogers, 170 N. Y. S. 86, 87, 102 Misc. Rep. 437. And he may be legally acquitted by a judgment rendered otherwise than in pursuance of a verdict, as where he is discharged by a magistrate because of the insufficiency of the evidence, or the indictment is dismissed by the court or a nol. pros. entered. State v. Hart, 101 A. 278, 280, 90 N. J. Law, 261, L. R. A. 1917F, 985; Junction City v. Keeffe, 40 Kan. 275, 19 P. 735; People v. Lyman, 65 N. Y. S. 1062, 53 App. Div. 470; Lee v. State, 26 Ark. 260, 7 Am. Rep. 611; Morgan County v. Johnson, 31 Ind. 463. But compare State v. Smith, 170 N. C. 742, 87 S. E. 98, 99; Wilson v. Com., 3 Bush (Ky.) 105; State v. Champeau, 52 Vt. 313, 315, 36 Am. Rep. 754. The unnecessary discharge of the jury without the consent of the accused after it has been sworn may constitute an acquittal. Riley v. Commonwealth, 190 Ky. 204, 227 S. W. 146, 147. Acquittal discharges from guilt, pardon only from punishment. Younger v. State, 2 W. Va. 579, 98 Am. Dec. 791.

Acquittals in fact are those which take place when the jury, upon trial, finds a verdict of not guilty.

Acquittals in law are those which take place by mere operation of law; as where a man has been charged merely as an accessory, and the principal has been acquitted. 2 Co. Inst. 364. Compare State v. Walton, 186 N. C. 485, 119 S. E. 886, 888.

See Jeopardy; Autrefois Acquit; Convict.

In Feudal Law

The obligation on the part of a mesne lord to protect his tenant from any claims, entries,

or molestations by lords paramount arising out of the services due to them by the mesne lord. See Co. Litt. 100*a*.

ACQUITTANCE. In contracts. A written discharge, whereby one is freed from an obligation to pay money or perform a duty. It differs from a *release* in not requiring to be under seal. Pothier, Oblig. n. 781. See 3 Salk. 298; Co. Litt. 212 *a*, 273 *a*; Milliken v. Brown, 1 Rawle (Pa.) 391.

This word, though perhaps not strictly speaking synonymous with "receipt," includes it. A receipt is one form of an acquittance; a discharge is another. A receipt in full is an acquittance, and a receipt for a part of a demand or obligation is an acquittance *pro tanto*. State v. Shelters, 51 Vt. 104, 31 Am. Rep. 679.

ACQUITTED. Released; absolved; purged of an accusation; judicially discharged from accusation; released from debt, etc. Includes both civil and criminal prosecutions. Dolloway v. Turrill, 26 Wend. (N. Y.) 383, 399. See Acquittal.

ACRE. A quantity of land containing 160 square rods of land, in whatever shape. Serg. Land Laws Pa. 185; Cro. Eliz. 476, 665; 6 Coke, 67; Poph. 55; Co. Litt. 5*b*.

Originally the word "acre" *(acer, aker,* or Sax. *æcer)* was not used as a measure of land, or to signify any determinate quantity of land, but to denote any open ground, *(latum quantumvis agrum,)* wide champaign, or field; which is still the meaning of the German *acker*, derived probably from the same source, and is preserved in the names of some places in England, as Castle Acre, South Acre, etc. Burrill. Originally a strip in the fields that was ploughed in the forenoon. Maitland, Domesday and Beyond, 387.

ACRE FOOT. 325,850 gallons, or the amount of water which will cover one acre one foot in depth. Rowles v. Hadden (Tex. Civ. App.) 210 S. W. 251, 258.

ACRE RIGHT. "The share of a citizen of a New England town in the common lands. The value of the acre right was a fixed quantity in each town, but varied in different towns. A 10-acre lot or right in a certain town was equivalent to 113 acres of upland and 12 acres of meadow, and a certain exact proportion was maintained between the acre right and salable lands." Messages, etc., of the Presidents, Richardson, X, 230.

ACREFIGHT, or ACRE. A camp or field fight; a sort of duel, or judicial combat, anciently fought by single combatants, English and Scotch, between the frontiers of the two kingdoms with sword and lance. Called "campfight," and the combatants "champions," from the open "acre" or *field* that was the stage of trial. Cowell.

ACROMIAL PROCESS. A point in the region of the shoulder about where the arm joins or fits into the shoulder blade. Muskogee Electric Traction Co. v. Mueller, 134 P. 51, 52, 39 Okl. 63.

ACROSS. From side to side. Transverse to the length of. Hannibal & St. J. R. Co. v. Packet Co., 125 U. S. 260, 8 S. Ct. 874, 31 L. Ed. 731; but see Appeal of Bennett's Branch Imp. Co., 65 Pa. 242. It may mean over, Brown v. Meady, 10 Me. 391, 25 Am. Dec. 248; or "upon and along," Mt. Vernon Telephone Co. v. Franklin Farmers' Co-op. Telephone Co., 92 A. 934, 935, 113 Me. 46, Ann. Cas. 1917B, 649; or "upon," Jefferson County v. Louisville & I. R. Co., 160 S. W. 502, 504, 155 Ky. 810; or "within," Quanah, A. & P. Ry. Co. v. Cooper (Tex. Civ. App.) 236 S. W. 811, 812. See Comstock v. Van Deusen, 5 Pick. (Mass.) 163, where a grant of a right of way *across* a lot of land was held not to mean a right to enter at one side, go partly across and come out at a place on the same side. And compare Brooklyn Heights R. Co. v. Steers, 106 N. E. 919, 920, 213 N. Y. 76, Ann. Cas. 1916C, 791; but see Holley v. State, 63 So. 738, 9 Ala. App. 33.

ACT, *v.* In Scotch practice. To do or perform judicially; to enter of record. Surety "acted in the Books of Adjournal." 1 Broun, 4.

ACT, *n.* In its most general sense, this noun signifies something done voluntarily by a person; the exercise of an individual's power; an effect produced in the external world by an exercise of the power of a person objectively, prompted by intention, and proximately caused by a motion of the will. In a more technical sense, it means something done voluntarily by a person, and of such a nature that certain legal consequences attach to it. Duncan v. Landis, 106 F. 839, 45 C. C. A. 666; Y. & O. Coal Co. v. Paszka, 152 N. E. 31, 32, 20 Ohio App. 248; Jefferson Standard Life Ins. Co. v. Myers (Tex. Com. App.) 284 S. W. 216, 218. Thus a grantor acknowledges the conveyance to be his "*act* and deed," the terms being synonymous.

In its general legal sense, the word may denote something done by an individual, as a private citizen, or as an officer; or by a body of men, as a legislature, a council, or a court of justice; including not merely physical acts, but also decrees, edicts, laws, judgments, resolves, awards, and determinations. Some general laws made by the Congress of the United States are styled joint resolutions, and these have the same force and effect as those styled acts. But see Hawes & Co. v. Trigg Co., 65 S. E. 538, 552, 110 Va. 165. Compare Herbring v. Brown, 180 P. 328, 330, 92 Or. 176; Decher v. Vaughan, 177 N. W. 388, 392, 209 Mich. 565.

An instrument in writing to verify facts. Webster, Dict.

It is used in this sense of the published acts of assembly, congress, etc. In a sense approaching this, it has been held in trials for treason that letters and other written documents were *acts;* 1 Fost. Cr. Cas. 198; 2 Stark. 116.

In the Civil Law

An *act* is a writing which states in a legal form that a thing has been said, done, or agreed. Merl. Répert.

Private acts are those made by private persons as registers in relation to their receipts and expenditures, schedules, acquittances, and the like.

Acts under private signature are those which have been made by private individuals under their hands.

Public acts are those which have a public authority, and which have been made before public officers, are authorized by a public seal, have been made public by the authority of a magistrate, or which have been extracted and been properly authenticated from public records.

In Practice

Anything done by a court and reduced to writing; a decree, judgment, resolve, rule, order, or other judicial proceeding. In Scotch law, the orders and decrees of a court, and in French and German law, all the records and documents in an action, are called "acts."

In Legislation

A written law, formally ordained or passed by the legislative power of a state, called in England an "act of parliament," and in the United States an "act of congress," or of the "legislature;" a statute. People v. Tiphaine, 3 Parker, Cr. R. (N. Y.) 241; United States v. Smith, 27 Fed. Cas. 1167.

Acts are either public or private. Public acts (also called general acts, or general statutes, or statutes at large) are those which relate to the community generally, or establish a universal rule for the governance of the whole body politic. Private acts (formerly called special, Co. Litt. 126*a*) are those which relate either to particular persons (personal acts) or to particular places (local acts), or which operate only upon specified individuals or their private concerns. Public acts are those which concern the whole community and of which courts of law are bound to take judicial notice. Burke v. New Orleans Ry. & Light Co., 63 So. 51, 54, 133 La. 369; Chambers v. Atchison, T. & S. F. Ry. Co., 32 Ariz. 102, 255 P. 1092, 1093.

A "special" or "private" act is one operating only on particular persons and private concerns; a "local act" is one applicable only to a particular part of the legislative jurisdiction. Trumper v. School Dist. No. 55 of Musselshell County, 173 P. 946, 947, 55 Mont. 90.

The words *bill* and *law* are frequently used synonymously with *act*, People v. City of Buffalo, 161 N. Y. S. 706, 712, 175 App. Div. 218, but incorrectly; Sedgwick County Com'rs v. Bailey, 13 Kan. 600; a bill being only the draft or form of the act presented to the legislature but not enacted; Southwark Bank v. Com., 26 Pa. 446. "Act" does not include ordinances or regulations made by local authorities, or even statutes having only a local application; People v. City of Buffalo, 157 N. Y. S. 938, 940, 93 Misc. 275; although sometimes used interchangeably with "measure" and "law"; Whittemore v. Terral, 215 S. W. 686, 687, 140 Ark. 493.

In Scotch Practice

An abbreviation of *actor*, (proctor or advocate, especially for a plaintiff or pursuer,) used in records. "*Act.* A. *Alt.* B." an abbreviation of *Actor*, A. *Alter*, B.; that is, for the pursuer or plaintiff, A., for the defender, B. 1 Broun, 336, note.

In General

—Act book. In Scotch practice. The minute book of a court. 1 Swin. 81.

—Act in pais. An act done out of court, and not a matter of record. A deed or an assurance transacted between two or more private persons in the country, that is, according to the old common law, upon the very spot to be transferred, is matter *in pais*. 2 Bl. Comm. 294.

—Act of attainder. A legislative act, attainting a person. See Attainder.

—Act of bankruptcy. Any act which renders a person liable to be proceeded against as a bankrupt, or for which he may be adjudged bankrupt. These acts are usually defined and classified in statutes on the subject. Duncan v. Landis, 106 Fed. 839, 45 C. C. A. 666; In re Chapman (D. C.) 99 Fed. 395.

—Act of curatory. In Scotch law. The act extracted by the clerk, upon any one's acceptance of being curator. Forb. Inst. pt. 1, b. 1, c. 2, tit. 2. 2 Kames, Eq. 291. Corresponding with the order for the appointment of a guardian, in English and American practice.

—Act of God. In the civil law, *vis major*. Any misadventure or casualty is said to be caused by the "act of God" when it happens by the direct, immediate, and exclusive operation of the forces of nature, uncontrolled or uninfluenced by the power of man and without human intervention, and is of such a character that it could not have been prevented or escaped from by any amount of foresight or prudence, or by any reasonable degree of care or diligence, or by the aid of any appliances which the situation of the party might reasonably require him to use. Inevitable accident, or casualty; any accident produced by any physical cause which is irresistible, such as lightning, tempests, perils of the seas, an inundation, or earthquake; and also the sudden illness or death of persons. People v. Tubbs, 37 N. Y. 586; Central of Georgia Ry. Co. v. Hall, 124 Ga. 322, 52 S. E. 679, 4 L. R. A. (N. S.) 898, 110 Am. St. Rep. 170, 4 Ann. Cas. 128; Feeney v. New York Waist House, 136 A. 554, 555, 105 Conn. 647, 50 A. L. R. 1539; Northern Irr. Co. v. Dodd (Tex. Civ. App.) 162 S. W. 946, 948; Parish v. Parish, 94 S. E. 315, 316, 21 Ga. App. 275; Gans S. S. Line v. Wilhelmsen (C. C. A. N. Y.) 275 F. 254, 261; London Guarantee & Accident Co. v. Industrial Accident Commission of California, 202 Cal. 239, 259 P. 1096, 54

A. L. R. 1392; United States v. Pennsylvania Co. (D. C. Pa.) 239 F. 761, 764; Hecht v. Boston Wharf Co., 107 N. E. 990, 991, 220 Mass. 397, L. R. A. 1915B, 725, Ann. Cas. 1917A, 445; New Brunswick, etc., Transp. Co. v. Tiers, 24 N. J. Law, 714, 64 Am. Dec. 394; Williams v. Grant, 1 Conn. 487, 7 Am. Dec. 235; Hays v. Kennedy, 41 Pa. 378, 80 Am. Dec. 627; Merritt v. Earle, 29 N. Y. 115, 86 Am. Dec. 292; Story, Bailm. §§ 25, 511; 2 Bl. Comm. 122; Broom, Max. 108. Explosion of war munitions in transit, John Lysaght, Limited, v. Lehigh Valley R. Co. (D. C. N. Y.) 254 F. 351, 353, a landside in the Panama Canal, Gans S. S. Line v. Wilhelmsen (C. C. A. N. Y.) 275 F. 254, 261, and changes in the styles of wearing apparel, Rosenblatt v. Winstanley (Mo. App.) 186 S. W. 542, 543, are not "acts of God"; otherwise, however, as to a strike, accompanied with violence and intimidation, see Southern Cotton Oil Co. v. Louisville & N. R. Co., 84 S. E. 198, 199, 15 Ga. App. 751.

The term is sometimes defined as equivalent to inevitable accident; Neal v. Saunderson, 2 Sm. & M. (Miss.) 572, 41 Am. Dec. 609; Fish v. Chapman, 2 Ga. 349, 46 Am. Dec. 393; Early v. Hampton, 82 S. E. 669, 671, 15 Ga. App. 95; Central of Georgia Ry. Co. v. Council Bros., 137 S. E. 569, 570, 36 Ga. App. 573 (see, however, Cannon v. Hunt, 113 Ga. 509, 38 S. E. 983; Harmony Grove Telephone Co. v. Potts, 100 S. E. 236, 24 Ga. App. 178); but incorrectly, as there is a distinction between the two; Alaska Coast Co. v. Alaska Barge Co., 140 P. 334, 335, 79 Wash. 216; Rosenwald v. Oregon City Transp. Co., 163 P. 831, 833, 84 Or. 15; McArthur v. Sears, 21 Wend. (N. Y.) 190; Neal v. Saunderson, 2 Sm. & M. (Miss.) 572, 41 Am. Dec. 609; Bolton v. Burnett, 5 Blackf. (Ind.) 222.

See Inevitable Accident; Perils of the Sea.

—Act of Government. The usual name of Cromwell's Constitution vesting the supreme power in a Protector and two houses of Parliament, passed March 25, 1657.

—Act of grace. In Scotch law. A term applied to the act of 1696, c. 32, by which it was provided that where a person imprisoned for a civil debt is so poor that he cannot aliment [maintain] himself, and will make oath to that effect, it shall be in the power of the magistrates to cause the creditor by whom he is incarcerated to provide an aliment for him, or consent to his liberation; which, if the creditor delay to do for 10 days, the magistrate is authorized to set the debtor at liberty. Bell. The term is often used to designate a general act of parliament, originating with the crown, such as has often been passed at the commencement of a new reign, or the coming of age or marriage of a sovereign, or at the close of a period of civil troubles, declaring pardon or amnesty to numerous offenders. Abbott.

—Act of honor. When a bill has been protested, and a third person wishes to take it up, or accept it, for honor of one or more of the parties, the notary draws up an instrument, evidencing the transaction, called by this name.

—Act of indemnity. A statute by which those who have committed illegal acts which subject them to penalties are protected from the consequences of such acts.

—Act of insolvency. Within the meaning of the national currency act, an act which shows a bank to be insolvent, such as nonpayment of its circulating notes, bills of exchange, or certificates of deposit; failure to make good the impairment of capital, or to keep good its surplus or reserve; in fact, any act which shows that the bank is unable to meet its liabilities as they mature, or to perform those duties which the law imposes for the purpose of sustaining its credit. In re Manufacturers' Nat. Bank, 5 Biss. 504, Fed. Cas. No. 9,051: Hayden v. Chemical Nat. Bank, 84 Fed. 874, 28 C. C. A. 548.

—Act of law. The operation of fixed legal rules upon given facts or occurrences, producing consequences independent of the design or will of the parties concerned; as distinguished from "act of parties." Also an act performed by judicial authority which prevents or precludes a party from fulfilling a contract or other engagement. Taylor v. Taintor, 16 Wall. 366, 21 L. Ed. 287; Metcalf v. State, 57 Okl. 64, 156 P. 305, 306, L. R. A. 1916E, 595.

—Act of parliament. A statute, law, or edict, made by the British sovereign, with the advice and consent of the lords spiritual and temporal, and the commons, in parliament assembled. Acts of parliament form the *leges scriptæ*, *i. e.*, the written laws of the kingdom.

—Act of providence. An accident against which ordinary skill and foresight could not guard. McCoy v. Danley, 20 Pa. 91, 57 Am. Dec. 680. Equivalent to "act of God," see *supra*.

—Act of sale. In Louisiana law. An official record of a sale of property, made by a notary who writes down the agreement of the parties as stated by them, and which is then signed by the parties and attested by witnesses. Hodge v. Palms, 117 Fed. 396, 54 C. C. A. 570.

—Act of settlement. The statute (12 & 13 Wm. III. c. 2) limiting the crown to the Princess Sophia of Hanover, and to the heirs of her body being Protestants. 1 Bla. Com. 128; 2 Steph. Com. 290. One clause of it made the tenure of judges' office for life or good behavior independent of the crown.

—Act of state. An act done by the sovereign power of a country, or by its delegate, within the limits of the power vested in him. An

act of state cannot be questioned or made the subject of legal proceedings in a court of law.

—Act of supremacy. An act of 26 Hen. VIII. c. 1, and also 1 Eliz. c. 1, which recognized the king as the only supreme head on earth of the Church of England having full power to correct all errors, heresies, abuses, offenses, contempts and enormities. The oath, taken under the act, denies to the Pope any other authority than that of the Bishop of Rome.

—Act of uniformity. In English law. The statute of 13 & 14 Car. II. c. 4, enacting that the book of common prayer, as then recently revised, should be used in every parish church and other place of public worship, and otherwise ordaining a uniformity in religious services, etc. 3 Steph. Comm. 104.

—Act of union. The statutes uniting England and Wales, 27 Hen. VIII, c. 26, confirmed by 34 & 35 Hen. VIII, c. 26; England and Scotland, 5 Anne, c. 8; Great Britain and Ireland, 39 & 40 Geo. III, c. 67. 1 Bl. Comm. 97.

The act uniting the three lower counties (now Delaware) to the province of Pennsylvania, passed at Upland, Dec. 7, 1682, is so called.

—Private act. A statute operating only upon particular persons and private concerns, and of which the courts are not bound to take notice. Unity v. Burrage, 103 U. S. 454, 26 L. Ed. 405; Fall Brook Coal Co. v. Lynch, 47 How. Prac. (N. Y.) 520; Sasser v. Martin, 101 Ga. 447, 29 S. E. 278.

—Public act. A universal rule or law that regards the whole community, and of which the courts of law are bound to take notice judicially and *ex officio* without its being particularly pleaded. 1 Bl. Comm. 86. See People v. Chautauqua County, 43 N. Y. 10; Sasser v. Martin, 101 Ga. 447, 29 S. E. 278; Bank of Newberry v. Greenville & C. R. Co., 9 Rich. Law (S. C.) 496; People v. Bellet, 99 Mich. 151, 57 N. W. 1094, 22 L. R. A. 696, 41 Am. St. Rep. 589; Holt v. Birmingham, 111 Ala. 369, 19 South. 735.

ACT ON PETITION. A form of summary proceeding formerly in use in the high court of admiralty, in England, in which the parties stated their respective cases briefly, and supported their statements by affidavit. 2 Dod. Adm. 174, 184; 1 Hagg. Adm. 1, note.

ACTA DIURNA. Lat. In the Roman law. Daily acts or chronicles; the public registers or journals of the daily proceedings of the senate, assemblies of the people, courts of justice, etc. Supposed to have resembled a modern newspaper. Brande. Thus: I do not find the thing published in the *acta diurna* (daily records of affairs); Tacitus, Ann. 3, 3; Ainsworth, Lex.; Smith, Lex.

Acta exteriora indicant interiora secreta. 8 Coke, 146*b*. External acts indicate undisclosed thoughts.

Acta in uno judicio non probant in alio nisi inter easdem personas. Things done in one action cannot be taken as evidence in another, unless it be between the same parties. Tray. Lat. Max. 11.

ACTA PUBLICA. Lat. Things of general knowledge and concern; matters transacted before certain public officers. Calvinus, Lex.

ACTE. In French law, denotes a document, or formal, solemn writing, embodying a legal attestation that something has been done, corresponding to one sense or use of the English word "act." Thus, *actes de naissance* are the certificates of birth, and must contain the day, hour, and place of birth, together with the sex and intended christian name of the child, and the names of the parents and of the witnesses. *Actes de mariage* are the marriage certificates, and contain names, professions, ages, and places of birth and domicile of the two persons marrying, and of their parents; also the consent of these latter, and the mutual agreements of the intended husband and wife to take each other for better and worse, together with the usual attestations. *Actes de décès* are the certificates of death, which are required to be drawn up before any one may be buried. *Les actes de l'état civil* are public documents. Brown.

ACTE AUTHENTIQUE. A deed executed with certain prescribed formalities, in the presence of a notary, mayor, *greffier*, *huissier*, or other functionary qualified to act in the place in which it is drawn up. Argles, Fr. Merc. Law, 50.

ACTE DE FRANCISATION. The certificate of registration of a ship, by virtue of which its French nationality is established.

ACTE D'HÉRITIER. Act of inheritance. Any action or fact on the part of an heir which manifests his intention to accept the succession; the acceptance may be express or tacit. Duverger.

ACTE EXTRAJUDICIAIRE. A document served by a *huissier*, at the demand of one party upon another party, without legal proceedings.

ACTING. Performing; operating. See Meyer v. Johnston, 64 Ala. 603, 665. Also employed to designate a *locum tenens* who is performing the duties of an office to which he does not himself claim title; State Bank of Williams v. Gish, 167 Iowa, 526, 149 N. W. 600, 601; *e. g.*, "*Acting* Supervising Architect." Fraser v. United States, 16 Ct. Cl. 514. An acting executor is one who assumes to act as executor for a decedent, not being the executor legally appointed or the executor in fact. Morse v. Allen, 99 Mich. 303, 58 N. W. 327.

An acting trustee is one who takes upon himself to perform some or all of the trusts mentioned in a will. Sharp v. Sharp, 2 Barn. & Ald. 415.

ACTIO. Lat. In the civil law. An action or suit; a right or cause of action. It should be noted that this term means both the proceeding to enforce a right in a court and the right itself which is sought to be enforced.

The first sense here given is the older one. Justinian, following Celsus, gives the well-known definition: *Actio nihil aliud est quam jus persequendi in judicio quod sibi debetur*, which may be thus rendered: An action is simply the *right* to enforce one's demands in a court of law. See Inst. Jus. 4, 6, *de Actionibus;* Pollock, Expansion of C. L. 92.

ACTIO AD EXHIBENDUM. An action for the purpose of compelling a defendant to exhibit a thing or title in his power. It was preparatory to another action, which was always a real action in the sense of the Roman law; that is, for the recovery of a thing, whether it was movable or immovable. Merl. Quest. tome i, 84.

ACTIO ÆSTIMATORIA; ACTIO QUANTI MINORIS. Two names of an action which lay in behalf of a buyer to reduce the contract price proportionately to the defects of the object, not to cancel the sale; the *judex* had power, however, to cancel the sale. Hunter, Rom. Law, 332, 505.

ACTIO ARBITRARIA. Action depending on the discretion of the judge. In this, unless defendant would make amends to plaintiff as dictated by the judge in his discretion, he was liable to be condemned. Id. 825, 987.

ACTIO BONÆ FIDEI. (Lat.: An action of good faith.) A class of actions in which the judge might at the trial *ex officio*, take into account any equitable circumstances that were presented to him affecting either of the parties to the action. 1 Spence, Eq. Jur. 210, 218.

ACTIO CALUMNIÆ. An action to restrain defendant from prosecuting a groundless proceeding or trumped-up charge against plaintiff. Hunter, Rom. Law, 859, 1020. An action for malicious prosecution. So. Afr. Leg. Dict.

ACTIO CIVILIS. In the common law. A civil action, as distinguished from a criminal action. Bracton divides personal actions into *criminalia et civilia*, according as they grow out of crimes or contracts. Bract. fol. 101*b*. *Actiones civiles* are those forms of remedies which were established under the rigid system of the civil law, the *jus civilis*. See Actio Honoraria.

ACTIO COMMODATI. Included several actions appropriate to enforce the obligations of a borrower or a lender. Id. 305.

ACTIO COMMODATI CONTRARIA. An action by the borrower against the lender, to compel the execution of the contract. Poth. *Prêt à Usage*, n. 75.

ACTIO COMMODATI DIRECTA. An action by a lender against a borrower, the principal object of which is to obtain a restitution of the thing lent. Poth. *Prêt à Usage*, nn. 65, 68.

ACTIO COMMUNI DIVIDUNDO. An action to procure a judicial division of joint property. Hunter, Rom. Law, 194. It was analogous in its object to proceedings for partition in modern law.

ACTIO CONDICTIO INDEBITATI. An action by which the plaintiff recovers the amount of a sum of money or other thing he paid by mistake. Poth. Promutuum, n. 140; Merl. Répert.

ACTIO CONFESSORIA. An affirmative petitory action for the recognition and enforcement of a servitude. So called because based on plaintiff's affirmative allegation of a right in defendant's land. Distinguished from an *actio negatoria*, which was brought to repel a claim of defendant to a servitude in plaintiff's land. Mackeld. Rom. Law, § 324.

ACTIO DAMNI INJURIA. The name of a general class of actions for damages, including many species of suits for losses caused by wrongful or negligent acts. The term is about equivalent to our "action for damages."

ACTIO DE DOLO MALO. An action of fraud; an action which lay for a defrauded person against the defrauder and his heirs, who had been enriched by the fraud, to obtain the restitution of the thing of which he had been fraudulently deprived, with all its accessions (*cum omni causa;*) or, where this was not practicable, for compensation in damages. Mackeld. Rom. Law, § 227.

ACTIO DE PECULIO. An action concerning or against the *peculium*, or separate property of a party.

ACTIO DE PECUNIA CONSTITUTA. An action for money engaged to be paid; an action which lay against any person who had engaged to pay money for himself, or for another without any formal stipulation. Inst. 4, 6, 9; Dig. 13, 5; Cod. 4, 18.

ACTIO DE TIGNO JUNCTO. An action by the owner of material built by another into his building. If so used in good faith double their value could be recovered; if in bad faith, the owner could recover suitable damage for the wrong, and recover the property when the building came down. So. Afr. Leg. Dict.

ACTIO DEPOSITI CONTRARIA. An action which the depositary has against the depositor, to compel him to fulfil his engagement towards him. Poth *Du Dépôt*, n. 69.

ACTIO DEPOSITI DIRECTA. An action which is brought by the depositor against the depositary, in order to get back the thing deposited. Poth. *Du Dépôt*, n. 60.

ACTIO DIRECTA. A direct action; an action founded on strict law, and conducted according to fixed forms; an action founded on certain legal obligations which from their origin were accurately defined and recognized as actionable. See Actio Utilis.

ACTIO EMPTI. An action employed in behalf of a buyer to compel a seller to perform his obligations or pay compensation; also to enforce any special agreements by him, embodied in a contract of sale. Hunter, Rom. Law, 332, 505.

ACTIO EX CONDUCTO. An action which the bailor of a thing for hire may bring against the bailee, in order to compel him to redeliver the thing hired.

ACTIO EX CONTRACTU. In the civil and common law. An action of contract; an action arising out of, or founded on, contract. Inst. 4, 6, 1; Bract. fol. 102; 3 Bl. Comm. 117.

ACTIO EX DELICTO. In the civil and common law. An action of tort; an action arising out of fault, misconduct, or malfeasance. Inst. 4, 6, 15; 3 Bl. Comm. 117. *Ex maleficio* is the more common expression of the civil law; which is adopted by Bracton. Inst. 4, 6, 1; Bract. fols. 102, 103.

ACTIO EX LOCATO. An action upon letting; an action which the person who let a thing for hire to another might have against the hirer. Dig. 19, 2; Cod. 4, 65.

ACTIO EX STIPULATU. An action brought to enforce a stipulation.

ACTIO EXERCITORIA. An action against the *exercitor* or employer of a vessel.

ACTIO FAMILIÆ ERCISCUNDÆ. An action for the partition of an inheritance. Inst. 4, 6, 20; Id. 4, 17, 4. Called, by Bracton and Fleta, a mixed action, and classed among actions arising *ex quasi contractu*. Bract. fol. 100*b*; Id. fols. 443*b*, 444; Fleta, lib. 2, c. 60, § 1.

ACTIO FURTI. An action of theft; an action founded upon theft. Inst. 4, 1, 13–17; Bract. fol. 444. This could be brought only for the penalty attached to the offense, and not to recover the thing stolen, for which other actions were provided. Inst. 4, 1, 19. An appeal of larceny. The old process by which a thief can be pursued and the goods vindicated. 2 Holdsw. Hist. Eng. L. 202.

ACTIO HONORARIA. An honorary, or prætorian action. Dig. 44, 7, 25, 35. *Actiones honorariæ* are those forms of remedies which were gradually introduced by the prætors and ædiles, by virtue of their equitable powers, in order to prevent the failure of justice which too often resulted from the employment of the *actiones civiles*. These were found so beneficial in practice that they eventually supplanted the old remedies, of which in the time of Justinian hardly a trace remained. Mackeldey, Civ. L. § 194; 5 Savigny, System.

ACTIO IN FACTUM. An action adapted to the particular case, having an analogy to some *actio in jus*, the latter being founded on some subsisting acknowledged law. 1 Spence, Eq. Jur. 212. The origin of these actions is similar to that of actions on the case at common law.

ACTIO IN PERSONAM. In the civil law. An action against the person, founded on a personal liability; an action seeking redress for the violation of a *jus in personam* or right available against a particular individual.

In admiralty law. An action directed against the particular person who is to be charged with the liability. It is distinguished from an *actio in rem*, which is a suit directed against a specific *thing* (as a vessel) irrespective of the ownership of it, to enforce a claim or lien upon it, or to obtain, out of the thing or out of the proceeds of its sale, satisfaction for an injury alleged by the claimant.

ACTIO IN REM. In the civil and common law. An action *for a thing;* an action for the recovery of a thing possessed by another. Inst. 4, 6, 1. An action for the enforcement of a right (or for redress for its invasion) which was originally available against all the world, and not in any special sense against the individual sued, until he violated it. See In Rem.

ACTIO JUDICATI. An action instituted, after four months had elapsed after the rendition of judgment, in which the judge issued his warrant to seize, first, the movables, which were sold within eight days afterwards; and then the immovables, which were delivered in pledge to the creditors, or put under the care of a curator, and if, at the end of two months, the debt was not paid, the land was sold. Dig. 42, 1; Cod. 8, 34. According to some authorities, if the defendant then utterly denied the rendition of the former judgment, the plaintiff was driven to a new action, conducted like any other action, which was called *actio judicati*, and which had for its object the determination of the question whether such a judgment had been rendered. The exact meaning of the term is by no means clear. See Savigny, Syst. 305, 411; 3 Ortolan, Just. § 2033.

ACTIO LEGIS AQUILIÆ. An action under the Aquilian law; an action to recover damages for maliciously or injuriously killing or wounding the slave or beast of another, or injuring in any way a thing belonging to another. Otherwise called *damni injuriæ actio*.

ACTIO MANDATI. Included actions to enforce contracts of mandate or obligations arising out of them. Hunter, Rom. Law, 316.

ACTIO MIXTA. A mixed action; an action brought for the recovery of a thing, or compensation for damages, and also for the payment of a penalty; partaking of the nature both of an *actio in rem* and *in personam*. Inst. 4, 6, 16, 18, 19, 20; Mackeld. Rom. Law, § 209.

ACTIO NEGATORIA (or NEGATIVA). An action brought to repel a claim of the defendant to a servitude in the plaintiff's land. Mackeld. Rom. Law, § 324. See Actio Confessoria.

ACTIO NEGOTIORUM GESTORUM. Included actions between principal and agent and other parties to an engagement, whereby one person undertook the transaction of business for another.

ACTIO NON. In pleading. The Latin name of that part of a special plea which follows next after the statement of appearance and defense, and declares that the plaintiff "ought not to have or maintain his aforesaid action thereof against" the defendant (in Latin, *actionem non habere debet*). 1 Chit. Plead. 531; 2 *id.* 421; Stephens, Plead. 394.

ACTIO NON ACCREVIT INFRA SEX ANNOS. The name of the plea of the statute of limitations, when the defendant alleges that the plaintiff's action has not accrued within six years.

ACTIO NON ULTERIUS. In English pleading. A name given to the distinctive clause in the plea to the *further maintenance* of the action, introduced in place of the plea *puis darrein continuance;* the averment being that the plaintiff ought not *further* (*ulterius*) to have or maintain his action. Steph. Pl. 64, 65, 401.

ACTIO NOXALIS. A noxal action; an action which lay against a master for a crime committed or injury done by his slave; and in which the master had the alternative either to pay for the damage done or to deliver up the slave to the complaining party. Inst. 4, 8, pr.; Heinecc. Elem. lib. 4, tit. 8. So called from *noxa*, the offense or injury committed. Inst. 4, 8, 1.

ACTIO PERSONALIS. In the civil and common law. A personal action. The ordinary term for this kind of action in the civil law is *actio in personam*, (*q. v.*,) the word *personalis* being of only occasional occurrence. Inst. 4, 6, 8, *in tit.;* Id. 4, 11, pr. 1. Bracton, however, uses it freely, and hence the *personal action* of the common law. Bract. fols. 102*a*, 159*b*. See Action.

ACTIO PIGNORATITIA. An action of pledge; an action founded on the contract of pledge (*pignus*). Dig. 13, 7; Cod. 4, 24.

ACTIO PŒNALIS. Called also *actio ex delicto*. An action in which a penalty was recovered of the delinquent. *Actiones pœnales* and *actiones mixtæ* comprehended cases of injuries, for which the civil law permitted redress by private action, but which modern civilization universally regards as crimes; that is, offences against society at large, and punished by proceedings in the name of the state alone. Thus, theft, receiving stolen goods, robbery, malicious mischief, and the murder or negligent homicide of a slave (in which case an injury to property was involved), gave rise to private actions for damages against the delinquent. Inst. 4, 1. *De obligationibus quæ ex delicto nascuntur; id.* 2. *De bonis vi raptis; id.* 3. *De lege Aquilia.* And see Mackeldey, Civ. L. § 196; 5 Savigny, System, § 210.

ACTIO PRÆJUDICIALIS. A preliminary or preparatory action. An action instituted for the determination of some preliminary matter on which other litigated matters depend, or for the determination of some point or question arising in another or principal action; and so called from its being *determined before*, (*prius*, or *præ judicari.*)

ACTIO PRÆSCRIPTIS VERBIS. A form of action which derived its force from continued usage or the *responsa prudentium*, and was founded on the unwritten law. 1 Spence, Eq. Jur. 212. The distinction between this action and an *actio in factum* is said to be, that the latter was founded not on usage or the unwritten law, but by analogy to or on the equity of some subsisting law; 1 Spence, Eq. Jur. 212.

ACTIO PRÆTORIA. A prætorian action; one introduced by the prætor, as distinguished from the more ancient *actio civilis*, (*q. v.*) Inst. 4, 6, 3; Mackeld. Rom. Law, § 207.

ACTIO PRO SOCIO. An action of partnership. An action brought by one partner against his associates to compel them to carry out the terms of the partnership agreement. Story, Partn., Bennett ed. § 352; Pothier, Contr. de Société, n. 34.

ACTIO PUBLICIANA. An action which lay for one who had lost a thing of which he had *bona fide* obtained possession, before he had gained a property in it, in order to have it restored, under color that he had obtained a property in it by prescription. Inst. 4, 6, 4; Heinecc. Elem. lib. 4, tit. 6, § 1131; Halifax, Anal. b. 3, c. 1, n. 9. It was an honorary action, and derived its name from the prætor Publicius, by whose edict it was first given. Inst. 4, 6, 4.

ACTIO QUOD JUSSU. An action given against a master, founded on some business done by his slave, acting under his *order*, (*jussu.*) Inst. 4, 7, 1; Dig. 15, 4; Cod. 4, 26.

ACTIO QUOD METUS CAUSA. An action granted to one who had been compelled by un-

lawful force, or fear (*metus causa*) that was not groundless, (*metus probabilis* or *justus*,) to deliver, sell, or promise a thing to another. Bract. fol. 103*b*; Mackeld. Rom. Law, § 226.

ACTIO REALIS. A real action. The proper term in the civil law was *rei vindicatio*. Inst. 4, 6, 3.

ACTIO REDHIBITORIA. An action to cancel a sale in consequence of defects in the thing sold. It was prosecuted to compel complete restitution to the seller of the thing sold, with its produce and accessories, and to give the buyer back the price, with interest, as an equivalent for the restitution of the produce. Hunter, Rom. Law, 332. See Redhibitory Action.

ACTIO RERUM AMOTARUM. An action for things removed; an action which, in cases of divorce, lay for a husband against a wife, to recover things carried away by the latter, in contemplation of such divorce. Dig. 25, 2; Id. 25, 2, 25, 30. It also lay for the wife against the husband in such cases. Id. 25, 2, 7, 11; Cod. 5, 21.

ACTIO RESCISSORIA. An action for restoring plaintiff to a right or title which he has lost by prescription, in a case where the equities are such that he should be relieved from the operation of the prescription. Mackeld. Rom. Law, § 226.

ACTIO SERVIANA. An action which lay for the lessor of a farm, or rural estate, to recover the goods of the lessee or farmer, which were pledged or bound for the rent. Inst. 4, 6, 7.

ACTIO STRICTI JURIS. An action of strict right. The class of civil law personal actions, which were adjudged only by the strict law, and in which the judge was limited to the precise language of the formula, and had no discretionary power to regard the *bona fides* of the transaction. See Inst. 4, 6, 28; Gaius, iii. 137; Mackeld. Rom. Law, § 210; 1 Spence, Eq. Jur. 218.

ACTIO TUTELÆ. Action founded on the duties or obligations arising on the relation analogous to that of guardian and ward.

ACTIO UTILIS. A beneficial action or equitable action. An action founded on equity instead of strict law, and available for those who had equitable rights or the beneficial ownership of property. Actions are divided into *actiones directæ* or *utiles*. The former are founded on certain legal obligations which from their origin were accurately defined and recognized as actionable. The latter were formed analogically in imitation of the former. They were permitted in legal obligations for which the *actiones directæ* were not originally intended, but which resembled the legal obligations which formed the basis of the direct action. Mackeld. Rom. Law, § 207.

ACTIO VENDITI. An action employed in behalf of a seller, to compel a buyer to pay the price, or perform any special obligations embodied in a contract of sale. Hunter, Rom. Law, 332.

ACTIO VI BONORUM RAPTORUM. An action for goods taken by force; a species of mixed action, which lay for a party whose goods or movables (*bona*) had been taken from him by force, (*vi*,) to recover the things so taken, together with a penalty of triple the value. Inst. 4, 2; Id. 4, 6, 19. Bracton describes it as lying *de rebus mobilibus vi ablatis sive robbatis*, (for movable things taken away by force, or robbed.) Bract. fol. 103*b*.

ACTIO VULGARIS. A legal action; a common action. Sometimes used for *actio directa*. Mackeld. Rom. Law, § 207.

Actio non datur non damnificato. An action is not given to one who is not injured. Jenk. Cent. 69.

Actio non facit reum, nisi mens sit rea. An act does not make one guilty, unless the intention be bad. Lofft. 37.

Actio pœnalis in hæredem non datur, nisi forte ex damno locupletior hæres factus sit. A penal action is not given against an heir, unless, indeed, such heir is benefited by the wrong.

Actio personalis moritur cum persona. A personal right of action dies with the person. Noy, Max. 14.

Actio quælibet it sua via. Every action proceeds in its own way. Jenk. Cent. 77.

ACTION. Conduct; behavior; something done; the condition of acting; an act or series of acts.

In Practice

The legal and formal demand of one's right from another person or party made and insisted on in a court of justice. Smith-Webster Co. v. John (C. C. A. Pa.) 259 F. 549, 551; Dinsmore v. Barker, 61 Utah, 332, 212 P. 1109, 1110; Burkholder Lumber Co., 164 Minn. 81, 204 N. W. 923, 924; Gilbert v. Hayward, 37 R. I. 303, 92 A. 625, 631; State v. Superior Court for King County, 111 Wash. 63, 189 P. 556, 559; Valentine v. Boston, 20 Pick. (Mass.) 201; Hibernia Nat. Bank v. Lacombe, 84 N. Y. 376; Appeal of McBride, 72 Pa. 480; Wilt v. Stickney, 30 Fed. Cas. 256; White v. Rio Grande Western R. Co., 25 Utah, 346, 71 Pac. 593; Bridgton v. Bennett, 23 Me. 420; Harger v. Thomas, 44 Pa. 128, 84 Am. Dec. 422; Peeler v. Norris, 4 Yerg. (Tenn.) 339.

An action is an ordinary proceeding in a court of justice by which one party prosecutes another for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense. Code Civ. Proc. Cal. § 22; Code N. Y. § 2 (Civil Pr. Act, § 4); Code N. C. 1883, § 126 (Code 1931, § 392); Rev. Code N. D. 1899, § 5156 (Comp.

Laws 1913, § 7330); Code Civ. Proc. S. D. 1903, § 12 (Comp. Laws 1929, § 2091); Missionary Soc. v. Ely, 56 Ohio St. 405, 47 N. E. 537; In re Welch, 108 Wis. 387, 84 N. W. 550; Smith v. Westerfield, 88 Cal. 374, 26 Pac. 207; Losey v. Stanley, 83 Hun, 420, 31 N. Y. Supp. 950; Lawrence v. Thomas, 84 Iowa, 362, 51 N. W. 11; Greenleaf v. Minneapolis, St. P. & S. S. M. Ry. Co., 30 N. D. 112, 151 N. W. 879, 881, Ann. Cas. 1917D, 908.

An action is merely the judicial means of enforcing a right. Code Ga. 1882, § 3151 (Civ. Code 1926, § 5507).

Action is the form of a suit given by law for the recovery of that which is one's due; the lawful demand of one's right. Co. Litt. 284*b*, 285*a*.

An action is a legal proceeding by a party complainant against a party defendant to obtain the judgment of the court in relation to some right claimed to be secured, or some remedy claimed to be given by law, to the party complaining. Haley v. Eureka County Bank, 21 Nev. 127, 26 Pac. 64, 12 L. R. A. 815.

In a quite common sense, action includes all the formal proceedings in a court of justice attendant upon the demand of a right made by one person of another in such court, including an adjudication upon the right and its enforcement or denial by the court.

Cases holding that various proceedings in question therein were not actions: State v. Superior Court of Spokane County, 110 Wash. 49, 187 P. 708 (attachment proceeding); Temple v. Riverland Co. (Tex. Civ. App.) 228 S. W. 605, 609 (arbitration); U. S. v. Cleveland (D. C. Ala.) 281 F. 249, 253 (criminal prosecution); Wynn v. Commonwealth, 198 Ky. 644, 249 S. W. 783, 784 (criminal prosecution); McClelland v. State, 101 Ohio St. 42, 127 N. E. 409, 410 (writ of citation); Campbell v. Common Council of City of Watertown, 46 S. D. 574, 195 N. W. 442 (certiorari); De Leyer v. Britt, 212 N. Y. 565, 106 N. E. 57 (mandamus); Head v. Fuller, 122 Me. 15, 118 A. 714, 715 (petition to compel father to support child); Richardson County v. Drainage Dist. No. 2 of Richardson County, 96 Neb. 169, 147 N. W. 205, 206 (drainage proceedings); State v. Superior Court for Ferry County, 145 Wash. 576, 261 P. 110, 111 (condemnation proceeding). Cases holding that various proceedings were actions: In re Wilcox, 90 Kan. 646, 135 P. 995 (disbarment proceeding); Simpson v. Simpson, 273 Ill. 90, 112 N. E. 276, 277 (proceeding to probate a will); Byrne v. Byrne (Mo. Sup.) 181 S. W. 391, 392 (will contest); Pigeon v. Employers' Liability Assur. Corporation, 216 Mass. 51, 102 N. E. 932, 935, Ann. Cas. 1915A, 737 (workman's compensation proceeding); Mason v. U. S. (C. C. A. Ill.) 1 F.(2d) 279, 280 (criminal prosecution); People v. Lueders, 287 Ill. 107, 122 N. E. 374, 375 (mandamus); In re Fordiani, 98 Conn. 435, 120 A. 338, 341 (naturalization proceeding).

Classification of Actions

Civil actions are such as lie in behalf of persons to enforce their rights or obtain redress of wrongs in their relation to individuals.

Criminal actions are such as are instituted by the sovereign power, for the purpose of punishing or preventing offenses against the public.

Penal actions are such as are brought, either by the state or by an individual under permission of a statute, to enforce a penalty imposed by law for the commission of a prohibited act.

Common law actions are such as will lie, on the particular facts, at common law, without the aid of a statute.

Statutory actions are such as can only be based upon the particular statutes creating them.

Popular actions, in English usage, are those actions which are given upon the breach of a penal statute, and which any man that will may sue on account of the king and himself, as the statute allows and the case requires. Because the action is not given to one especially, but generally to any that will prosecute, it is called "action popular;" and, from the words used in the process, (*qui tam pro domino rege sequitur quam pro se ipso*, who sues as well for the king as for himself,) it is called a *qui tam* action. Tomlins.

Real, personal, mixed. Actions are divided into real, personal, and mixed. See Infra.

Local action. An action is so termed when all the principal facts on which it is founded are of a local nature; as where possession of land is to be recovered, or damages for an actual trespass, or for waste affecting land, because in such case the cause of action relates to some particular locality, which usually also constitutes the venue of the action. Miller v. Rickey (C. C.) 127 F. 577; Crook v. Pitcher, 61 Md. 513; Beirne v. Rosser, 26 Grat. (Va.) 541; McLeod v. Railroad Co., 58 Vt. 727, 6 Atl. 648; Ackerson v. Erie R. Co., 31 N. J. Law, 311; Texas & P. R. Co. v. Gay, 86 Tex. 571, 26 S. W. 599, 25 L. R. A. 52. An action is styled a "local action" if the subject-matter thereof is situated in a county other than one in which the parties reside and the primary and principal relief sought relates to such subject-matter; such action must be brought and tried in the county where such subject-matter is situated. State v. District Court of Blue Earth County, 150 Minn. 512, 185 N. W. 953. Actions are deemed transitory where the transactions on which they are founded might have taken place anywhere, but are local where the cause in its nature could only have arisen in one place. Taylor v. Sommers Bros. Match Co., 35 Idaho, 30, 204 P. 472, 474.

Transitory actions are those founded upon a cause of action not necessarily referring to or arising in any particular locality. Their characteristic feature is that the right of action follows the person of the defendant. Brown v. Brown, 155 Tenn. 530, 296 S. W. 356, 358. Actions are "transitory" when the transactions relied on might have taken place anywhere, and are "local" when they could not occur except in some particular place; the distinction being in the nature of the subject of the injury, and not in the means used or the place at which the cause of action arises. Brady v. Brady, 161 N. C. 324, 77 S. E. 235, 236, 44 L. R. A. (N. S.) 279; Taylor v.

Sommers Bros. Match Co., 35 Idaho, 30, 204 P. 472, 474, 42 A. L. R. 189. The test of whether an action is local or transitory is whether the injury is done to a subject-matter which, in its nature, could not arise beyond the locality of its situation, in contradistinction to the subject causing the injury. Mattix v. Swepston, 127 Tenn. 693, 155 S. W. 928, 929. Actions triable where defendant resides are termed "transitory" and those triable where the subject-matter is situated are termed "local." State v. District Court of Swift County, 164 Minn. 433, 205 N. W. 284, 285.

Actions are called, in common-law practice, *ex contractu* when they are founded on a contract; *ex delicto* when they arise out of a tort. Umlauf v. Umlauf, 103 Ill. 651; Nelson v. Great Northern R. Co., 28 Mont. 297, 72 Pac. 642; Van Oss v. Synon, 85 Wis. 661, 56 N. W. 190.

As to the distinction between a *revocatory action* and an *action in simulation*, see Chapman v. Irwin, 157 La. 920, 103 So. 263, 265.

See Cause of Action.

"Action" and "Suit"

The terms "action" and "suit" are now nearly, if not entirely, synonymous. (3 Bl. Comm. 3, 116, et passim.) Elmo v. James (Tex. Civ. App.) 282 S. W. 835, 839; Coleman v. Los Angeles County, 180 Cal. 714, 182 P. 440. Or, if there be a distinction, it is that the term "action" is generally confined to proceedings in a court of law, while "suit" is equally applied to prosecutions at law or in equity. McBride v. University Club, 112 Ohio St. 69, 146 N. E. 804, 805; Guarantee Trust & Banking Co. v. Dickson, 148 Ga. 311, 96 S. E. 561, 562; Giammares v. Allemania Fire Ins. Co. of Pittsburgh, Pa., 105 A. 611, 612, 89 N. J. Eq. 460; White v. Washington School Dist., 45 Conn. 59; Dullard v. Phelan, 83 Iowa, 471, 50 N. W. 204; Lamson v. Hutchings, 118 Fed. 321, 55 C. C. A. 245; Page v. Brewster, 58 N. H. 126; Kennebec Water Dist. v. Waterville, 96 Me. 234, 52 A. 774; Miller v. Rapp, 7 Ind. App. 89, 34 N. E. 126; Hall v. Bartlett, 9 Barb. (N. Y.) 297; Branyan v. Kay, 33 S. C. 283, 11 S. E. 970; Niantic Mills Co. v. Riverside & O. Mills, 19 R. I. 34, 31 A. 432; Ulshafer v. Stewart, 71 Pa. 170. Formerly, however, there was a more substantial distinction between them. An *action* was considered as terminating with the giving of judgment, and the execution formed no part of it. (Litt. § 504; Co. Litt. 289*a*.) A *suit*, on the other hand, included the execution. (Id. 291*a*.) So, an action is termed by Lord Coke, "the *right* of a *suit*." (2 Inst. 40.) Burrill.

In French Commercial Law

Stock in a company, or shares in a corporation.

In Scotch Law

A suit or judicial proceeding.

In General

—Action for poinding. An action by a creditor to obtain a sequestration of the rents of land and the goods of his debtor for the satisfaction of the debt, or to enforce a distress.

—Action of abstracted multures. An action for multures or tolls against those who are thirled to a mill, *i. e.*, bound to grind their corn at a certain mill, and fail to do so. Bell.

—Action of adherence. See Adherence.

—Mixed action. An action partaking of the twofold nature of real and personal actions, having for its object the demand and restitution of real property and also personal damages for a wrong sustained. 3 Bl. Comm. 118; Hall v. Decker, 48 Me. 257. Mixed actions are those which are brought for the specific recovery of lands, like real actions, but comprise, joined with this claim, one for damages in respect of such property; such as the action of waste, where, in addition to the recovery of the place wasted, the demandant claims damages; the writ of entry, in which, by statute, a demand of mesne profits may be joined; and dower, in which a claim for detention may be included. 48 Me. 255. In the civil law. An action in which some specific thing was demanded, and also some personal obligation claimed to be performed; or, in other words, an action which proceeded both *in rem* and *in personam*. Inst. 4, 6, 20.

—Personal action. In the civil law. An action *in personam*. A personal action seeks to enforce an obligation imposed on the defendant by his contract or delict; that is, it is the contention that he is bound to transfer some dominion or to perform some service or to repair some loss. Gaius, bk. 4, § 2. In common law. An action brought for the recovery of some debt or for damages for some personal injury, in contradistinction to the old real actions, which related to real property only. See 3 Bl. Comm. 117. Boyd v. Cronan, 71 Me. 286; Doe v. Waterloo Min. Co. (C. C.) 43 Fed. 219; Osborn v. Fall River, 140 Mass. 508, 5 N. E. 483. An action which can be brought only by the person himself who is injured, and not by his representatives.

—Real action. At the common law. One brought for the specific recovery of lands, tenements, or hereditaments. Steph. Pl. 3; Crocker v. Black, 16 Mass. 448; Hall v. Decker, 48 Me. 256; Doe v. Waterloo Min. Co., 43 Fed. 220; Mathews v. Sniggs, 75 Okl. 108, 182 P. 703, 708. They are *droitural* when they are based upon the right of property, and *possessory* when based upon the right of possession. They are either writs of right; writs of entry upon disseisin (which lie in the per, the per et cui, or the post), intrusion, or alienation; writs ancestral possessory, as mort d'ancestor, aiel, besaiel, cossinage, or nuper obiit. Com. Dig. *Actions* (D 2). The former class was divided into *droitural*,

founded upon demandant's own seisin, and *ancestral droitural* upon the demandant's claim in respect of a mere right descended to him from an ancestor. Possessory actions were divided in the same way—as to the demandant's own seisin and as to that of his ancestor. Among the civilians, real actions, otherwise called "vindications," were those in which a man demanded something that was his own. They were founded on dominion, or *jus in re*. The real actions of the Roman law were not, like the real actions of the common law, confined to real estate, but they included personal, as well as real, property. Wharton.

ACTION IN PERSONAM, IN REM. See In Personam, In Rem.

ACTION OF A WRIT. A phrase used when a defendant pleads some matter by which he shows that the plaintiff had no cause to have the writ sued upon, although it may be that he is entitled to another writ or action for the same matter. Cowell.

ACTION OF ASSUMPSIT. See Assumpsit.

ACTION OF BOOK DEBT. A form of action for the recovery of claims, such as are usually evidenced by a book-account; this action is principally used in Vermont and Connecticut. Terrill v. Beecher, 9 Conn. 344; Stoking v. Sage, 1 Conn. 75; Green v. Pratt, 11 Conn. 205; May v. Brownell, 3 Vt. 463; Easly v. Eakin, Cooke (Tenn.) 388; Bradley v. Goodyear, 1 Day (Conn.) 105; Smith v. Gilbert, 4 Day (Conn.) 105; Newton v. Higgins, 2 Vt. 366.

ACTION ON CONTRACT. An action brought to enforce rights whereof the contract is the evidence, and usually the sufficient evidence. Kokusai Kisen Kabushiki Kaisha v. Argos Mercantile Corporation (C. C. A. N. Y.) 280 F. 700, 701.

ACTION ON THE CASE. A species of personal action of very extensive application, otherwise called "trespass on the case," or simply "case," from the circumstance of the plaintiff's whole *case or cause of complaint* being set forth at length in the original writ by which formerly it was always commenced. 3 Bl. Comm. 122. Mobile L. Ins. Co. v. Randall, 74 Ala. 170; Cramer v. Fry (C. C.) 68 Fed. 201; Sharp v. Curtiss, 15 Conn. 526; Wallace v. Wilmington & N. R. Co., 8 Houst. (Del.) 529, 18 A. 818. In its most comprehensive signification it includes *assumpsit* as well as an action in form *ex delicto*; at present when it is mentioned it is usually understood to mean an action in form *ex delicto*.

It is founded on the common law or upon acts of Parliament, and lies generally to recover damages for torts not committed with force, actual or implied; or having been occasioned by force where the matter affected was not tangible, or the injury was not immediate but consequential; or where the interest in the property was only in reversion, in all of which cases trespass is not sustainable; 1 Chit. Pl. 132. See Assumpsit.

ACTION REDHIBITORY. See Redhibitory Action.

ACTION TO QUIET TITLE. One in which plaintiff asserts his own estate and declares generally that defendant claims some estate in the land, without defining it, and avers that the claim is without foundation, and calls on defendant to set forth the nature of his claim, so that it may be determined by decree. It differs from a "suit to remove a cloud," in that plaintiff therein declares on his own title, and also avers the source and nature of defendant's claim, points out its defect, and prays that it may be declared void as a cloud on plaintiff's estate. Manning v. Gregoire, 97 Or. 394, 192 P. 406, 407. The apparent difference between an action to restore a lost instrument and one to quiet title is that, in the former, ordinarily both the titles of plaintiff and defendant are deraigned in the complaint, which must disclose that, notwithstanding an apparent interest of defendant the property belongs to plaintiff; and in the latter action the complaint need only allege the ultimate fact of plaintiff's interest and defendant's outstanding claim. Nicholson v. Nicholson, 67 Mont. 517, 216 P. 328, 329, 31 A. L. R. 548. See, also, Slette v. Review Pub. Co., 71 Mont. 518, 230 P. 580, 581.

ACTIONABLE. That for which an action will lie; furnishing legal ground for an action.

ACTIONABLE FRAUD. Deception practiced in order to induce another to part with property or surrender some legal right; a false representation made with an intention to deceive; may be committed by stating what is known to be false or by professing knowledge of the truth of a statement which is false, but in either case, the essential ingredient is a falsehood uttered with intent to deceive. Marsh v. Falker, 40 N. Y. 575; Farrington v. Bullard, 40 Barb. (N. Y.) 512; Hecht v. Metzler, 14 Utah, 408, 48 Pac. 37, 60 Am. St. Rep. 906; Sawyer v. Prickett, 19 Wall. 146, 22 L. Ed. 105.

ACTIONABLE MISREPRESENTATION. A false statement respecting a fact material to the contract and which is influential in procuring it. Wise v. Fuller, 29 N. J. Eq. 257.

ACTIONABLE NEGLIGENCE. The breach or nonperformance of a legal duty, through neglect or carelessness, resulting in damage or injury to another. Roddy v. Missouri Pac. R. Co., 104 Mo. 234, 15 S. W. 1112, 12 L. R. A. 746, 24 Am. St. Rep. 333; Boardman v. Creighton, 95 Me. 154, 49 A. 663; Hale v. Grand Trunk R. Co., 60 Vt. 605, 15 A. 300, 1

L. R. A. 187; Fidelity & Casualty Co. v. Cutts, 95 Me. 162, 49 Atl. 673.

ACTIONABLE NUISANCE. Anything injurious to health, or indecent, or offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property. Civil Code Cal. § 3479; Grandona v. Lovdal, 78 Cal. 611, 21 Pac. 366, 12 Am. St. Rep. 121; Cooper v. Overton, 102 Tenn. 211, 52 S. W. 183, 45 L. R. A. 591, 73 Am. St. Rep. 864.

ACTIONABLE WORDS. In the law of libel and slander. Such words as naturally imply damage. Dahm v. O'Connell, 161 N. Y. S. 909, 911, 96 Misc. 582. Words which import a charge of some punishable crime or some offensive disease, or impute moral turpitude, or tend to injure a party in his trade or business, are said to be "actionable per se." Barnes v. Trundy, 31 Me. 321; Lemons v. Wells, 78 Ky. 117; Mayrant v. Richardson, 1 Nott & McC. 347, 9 Am. Dec. 707; Cady v. Brooklyn Union Pub. Co., 23 Misc. Rep. 409, 51 N. Y. Supp. 198; Barnett v. Phelps, 97 Or. 242, 191 P. 502, 503; Shaw v. Killingsworth, 213 Ala. 655, 106 So. 138, 139; Du Pont Engineering Co. v. Nashville Banner Pub. Co. (D. C.) 13 F.(2d) 186, 195; Ecuyer v. New York Life Ins. Co., 101 Wash. 247, 172 P. 359, 362. Words actionable at law without allegation of special damages are ordinarily designated as "actionable per se." Kluender v. Semann, 203 Iowa, 68, 212 N. W. 326, 327. Words "actionable per se" are those which law presumes must actually, proximately, and necessarily damage defendant and for which general damages are recoverable; words "actionable per quod" are those not actionable per se upon their face, but are only actionable in consequence of extrinsic facts showing circumstances under which they were said or the damages resulting to slandered party therefrom. Smith v. Mustain, 210 Ky. 445, 276 S. W. 154, 155, 44 A. L. R. 386. See, also, Libelous per se.

ACTIONARE. L. Lat. (From *actio*, an action.) In old records. To bring an action; to prosecute, or sue. Thorn's Chron.; Whishaw.

ACTIONARY. A foreign commercial term for the proprietor of an *action* or share of a public company's stock; a stockholder.

ACTIONES LEGIS. In the Roman law. Legal or lawful action; actions of or at law, (*legitimæ actiones.*) Dig. 1, 2, 2, 6.

ACTIONES NOMINATÆ. (Lat. named actions). In the English chancery. Writs for which there were precedents. The statute of Westminster, 2, c. 24, gave chancery authority to form new writs *in consimili casu*; hence the action on the case.

ACTIONS. (Fr.) Shares of corporate stock. Compare Actionary.

ACTIONS ORDINARY. In Scotch law. All actions which are not rescissory. Ersk. Inst. 4, 1, 18.

ACTIONS RESCISSORY. In Scotch law. These are either (1) actions of proper improbation for declaring a writing false or forged; (2) actions of reduction-improbation for the production of a writing in order to have it set aside or its effect ascertained under the certification that the writing if not produced shall be declared false or forged; and (3) actions of simple reduction, for declaring a writing called for null until produced. Ersk. Prin. 4, 1, 5.

Actionum genera maxime sunt servanda. The kinds of actions are especially to be preserved. Lofft 460.

ACTIVE. That is in action; that demands action; actually subsisting; the opposite of passive. An active debt is one which draws interest. An active trust is a confidence connected with a duty. An active use is a present legal estate.

ACTIVE TRUST. See Trust.

ACTIVITY. A recreational "activity" is a physical or gymnastic exercise, an agile performance, such as dancing. McClure v. Board of Education of City of Visalia, 38 Cal. App. 500, 176 P. 711, 712.

ACTON BURNEL, STATUTE OF. In English law. A statute, otherwise called *Statutum Mercatorum* or *de Mercatoribus*, the statute of the merchants, made at a parliament held at the castle or village of Acton Burnel in Shropshire, in the 11th year of the reign of Edward I. 2 Reeves, Eng. Law, 158–162. It was a statute for the collection of debts, the earliest of its class, being enacted in 1283. A further statute for the same object, and known as De Mercatoribus, was enacted 13 Edw. I. (c. 3.). See Statute Merchant.

ACTOR.

In Roman Law

One who acted for another; one who attended to another's business; a manager or agent. A slave who attended to, transacted, or superintended his master's business or affairs, received and paid out moneys, and kept accounts. Burrill.

The word has a variety of closely-related meanings, very nearly corresponding with manager. Thus, *actor dominæ*, manager of his master's farm; *actor ecclesiæ*, manager of church property; *actores provinciarum*, tax-gatherers, treasurers, and managers of the public debt.

Actor ecclesiæ.—An advocate for a church; one who protects the temporal interests of a church. *Actor villæ* was the steward or head-bailiff of a town or village. Cowell.

A plaintiff or complainant. In a civil or private action the plaintiff was often called

by the Romans "*petitor*;" in a public action (*causa publica*) he was called "*accusator*." The defendant was called "*reus*," both in private and public causes; this term, however, according to Cicero, (*De Orat.* ii. 43,) might signify either party, as indeed we might conclude from the word itself. In a private action, the defendant was often called "*adversarius*," but either party might be called so.

Also, the term is used of a party who, for the time being, sustains the burden of proof, or has the initiative in the suit.

In Old European Law

A patron, proctor, advocate, or pleader; one who acted for another in legal matters; one who represented a party and managed his cause. An attorney, bailiff, or steward; one who managed or acted for another. The scotch "doer" is the literal translation.

Actor qui contra regulam quid adduxit, non est audiendus. A plaintiff (or pleader) is not to be heard who has advanced anything against authority, (or against the rule.)

Actor sequitur forum rei. According as *rei* is intended as the genitive of *res*, a thing, or *reus*, a defendant, this phrase means: The plaintiff follows the forum of the property in suit, or the forum of the defendant's residence. Branch, Max. 4. Home, Law Tr. 232; Story, Confl. L. § 325 *k*; 2 Kent 462.

Actore non probante reus absolvitur. When the plaintiff does not prove his case the defendant is acquitted (or absolved). Hob. 103.

Actori incumbit onus probandi. The burden of proof rests on the plaintiff, (or on the party who advances a proposition affirmatively.) Hob. 103.

ACTORNAY. In old Scotch law. An attorney. Skene.

ACTRIX. Lat. A female actor; a female plaintiff. Calvinus, Lex.

Acts indicate the intention. 8 Co. 146*b*; Broom, Max. 301.

ACTS OF COURT. Legal memoranda made in the admiralty courts in England, in the nature of pleas.

ACTS OF POSSESSION. To constitute adverse possession, acts of possession must be such as, if seen by the party whose claim is sought to be divested, would apprise him that the party doing the acts claimed the ownership of the property. Crosby v. City of Greenville, 183 Mich. 452, 150 N. W. 246, 248.

ACTS OF SEDERUNT. In Scotch law. Ordinances for regulating the forms of proceeding, before the court of session, in the administration of justice, made by the judges, who have the power by virtue of a Scotch act of parliament passed in 1540. Ersk. Prin. § 14.

ACTUAL. Real; substantial; existing presently in act, having a valid objective existence as opposed to that which is merely theoretical or possible.

Something real, in opposition to constructive or speculative; something existing in act. Astor v. Merritt, 111 U. S. 202, 4 Sup. Ct. 413, 28 L. Ed. 401; Kelly v. Ben. Ass'n, 46 App. Div. 79, 61 N. Y. Supp. 394; State v. Wells, 31 Conn. 213; Pascagoula Nat. Bank v. Federal Reserve Bank of Atlanta (D. C. Ga.) 3 F. (2d) 465, 467. It is used as a legal term in contradistinction to virtual or constructive as of possession or occupation; Cleveland v. Crawford, 7 Hun (N. Y.) 616; or an actual settler, which implies actual residence; McIntyre v. Sherwood, 82 Cal. 139, 22 Pac. 937. An actual seizure means nothing more than seizure, since there was no fiction of constructive seizure before the act; L. R. 6 Exch. 203.

Actually is opposed to seemingly, pretendedly, or feignedly, as *actually engaged in farming* means really, truly, in fact; In re Strawbridge & Mays, 39 Ala. 367; Ayer & Lord Tie Co. v. Commonwealth, 208 Ky. 606, 271 S. W. 693, 694; Morris & Co. v. Commonwealth, 116 Va. 912, 83 S. E. 408, 411; Baron v. Wisnowski, 102 N. J. Law, 46, 130 A. 450, 451.

As to actual "Bias," "Damages," "Delivery," "Eviction," "Fraud," "Malice," "Notice," "Occupation," "Ouster," "Possession," "Residence," "Seisin," "Total Loss," see those titles.

ACTUAL AUTHORITY. In the law of agency, such authority as a principal intentionally confers on the agent, or intentionally or by want of ordinary care allows the agent to believe himself to possess. Civ. Code Cal. § 2316; Comp. Laws N. D. 1913, § 6337.

ACTUAL CASH VALUE. The fair or reasonable cash price for which the property could be sold in the market, in the ordinary course of business, and not at forced sale; the price it will bring in a fair market after reasonable efforts to find a purchaser who will give the highest price. Montesano Lumber & Mfg. Co. v. Portland Iron Works, 94 Or. 677, 186 P. 428, 432; Riverdale State Bank v. Schmidt, 123 Kan. 39, 254 P. 383, 385; State v. Woodward, 208 Ala. 31, 93 So. 826, 827; Birmingham F. Ins. Co. v. Pulver, 126 Ill. 329, 18 N. E. 804, 9 Am. St. Rep. 598; Mack v. Lancashire Ins. Co. (C. C.) 4 Fed. 59; Morgan's L. & T. R. S. S. Co. v. Board of Reviewers, 41 La. Ann. 1156, 3 So. 507; Peavy-Wilson Lumber Co. v. Jackson, 161 La. 669, 109 So. 351, 352.

ACTUAL CHANGE OF POSSESSION. In statutes of frauds. An open, visible, and unequivocal change of possession, manifested by the usual outward signs, as distinguished from a merely formal or constructive change. Randall v. Parker, 3 Sandf. (N. Y.) 69; Murch

v. Swensen, 40 Minn. 421, 42 N. W. 290; Dodge v. Jones, 7 Mont. 121, 14 Pac. 707; Stevens v. Irwin, 15 Cal. 503, 76 Am. Dec. 500.

ACTUAL COST. The actual price paid for goods by a party, in the case of a real *bona fide* purchase, and not the market value of the goods. Alfonso v. United States, 2 Story, 421, Fed. Cas. No. 188; United States v. Sixteen Packages, 2 Mason, 48, Fed. Cas. No. 16,303; Lexington, etc., R. Co. v. Fitchburg R. Co., 9 Gray (Mass.) 226; Caldwell v. Hand, 149 Ga. 589, 101 S. E. 582; Standard Auto Ins. Ass'n v. West, 203 Ky. 335, 262 S. W. 296, 297; Mayor and Aldermen of Worcester v. Boston & A. R. Co., 213 Mass. 567, 100 N. E. 1014, 1015. Compare First Nat. Bank v. Nash, 232 Mich. 380, 205 N. W. 127, 128; Fillmore v. Johnson, 221 Mass. 406, 109 N. E. 153, 155; Rock Milling & Elevator Co. v. Atchison, T. & S. F. Ry. Co., 98 Kan. 478, 158 P. 859, 861; State v. Tonopah Extension Mining Co., 49 Nev. 428, 248 P. 835, 836; Ogunquit Village Corporation v. Inhabitants of Wells, 123 Me. 207, 122 A. 522, 524.

ACTUAL MARKET VALUE. In custom laws. The price at which merchandise is freely offered for sale to all purchasers; the price which the manufacturer or owner would have received for merchandise, sold in the ordinary course of trade in the usual wholesale quantities. United States v. Sischo (D. C. Wash.) 262 F. 1001, 1011.

ACTUAL SALE. Lands are "actually sold" at a tax sale, so as to entitle the treasurer to the statutory fees, when the sale is completed; when he has collected from the purchaser the amount of the bid. Miles v. Miller, 5 Neb. 272.

ACTUAL VIOLENCE. An assault with actual violence is an assault with physical force put in action, exerted upon the person assailed. The term violence is synonymous with physical force, and the two are used interchangeably in relation to assaults. State v. Wells, 31 Conn. 210. Tanner v. State, 24 Ga. App. 132, 100 S. E. 44.

ACTUARIUS. In Roman law. A notary or clerk. One who drew the acts or statutes, or who wrote in brief the public acts.

An officer who had charge of the public baths; an officer who received the money for the soldiers, and distributed it among them; a notary.

An *actor*, which see. Du Cange.

ACTUARY. In English ecclesiastical law. A clerk that registers the acts and constitutions of the lower house of convocation; or a registrar in a court christian.

Also an officer appointed to keep savings banks accounts; the computing officer of an insurance company; a person skilled in calculating the value of life interests, annuities, and insurances.

ACTUM. Lat. A deed; something done.

ACTUS. In the civil law. An act or action. *Non tantum verbis, sed etiam actu;* not only by words, but also by act. Dig. 46. 8. 5.

A species of right of way, consisting in the right of driving cattle, or a carriage, over the land subject to the servitude. Inst. 2, 3, pr. It is sometimes translated a "road," and included the kind of way termed "*iter*," or path. Lord Coke, who adopts the term "*actus*" from Bracton, defines it a foot and horse way, vulgarly called "pack and prime way;" but distinguishes it from a cart-way. Co. Litt. 56*a;* Boyden v. Achenbach, 79 N. C. 539.

In Old English Law

An act of parliament; a statute. 8 Coke 40. A distinction, however, was sometimes made between *actus* and *statutum*. *Actus parliamenti* was an act made by the lords and commons; and it became *statutum*, when it received the king's consent. Barring. Obs. St. 46, note *b*.

Actus curiæ neminem gravabit. An act of the court shall prejudice no man. Jenk. Cent. 118. Where a delay in an action is the act of the court, neither party shall suffer for it.

Actus Dei nemini est damnosus. The act of God is hurtful to no one. 2 Inst. 287. That is, a person cannot be prejudiced or held responsible for an accident occurring without his fault and attributable to the "act of God." See Act of God.

Actus Dei nemini facit injuriam. The act of God does injury to no one. 2 Bl. Comm. 122. A thing which is inevitable by the act of God, which no industry can avoid, nor policy prevent, will not be construed to the prejudice of any person in whom there was no laches. Broom, Max. 230.

Actus inceptus, cujus perfectio pendet ex voluntate partium, revocari potest; si autem pendet ex voluntate tertiæ personæ, vel ex contingenti, revocari non potest. An act already begun, the completion of which depends on the will of the parties, may be revoked; but if it depend on the will of a third person, or on a contingency, it cannot be revoked. Bac. Max. reg. 20.

Actus judiciarius coram non judice irritus habetur, de ministeriali autem a quocunque provenit ratum esto. A judicial act by a judge without jurisdiction is void; but a ministerial act, from whomsoever proceeding, may be ratified. Lofft, 458.

Actus legis nemini est damnosus. The act of the law is hurtful to no one. An act in law shall prejudice no man. 2 Inst. 287.

Actus legis nemini facit injuriam. The act of the law does injury to no one. 5 Coke, 116.

Actus legitimi non recipiunt modum. Acts required to be done by law do not admit of qualification. Hob. 153; Branch, Princ.

Actus me invito factus non est meus actus. An act done by me, against my will, is not my act. Branch, Princ.

Actus non facit reum, nisi mens sit rea. An act does not make [the doer of it] guilty, unless the mind be guilty; that is, unless the intention be criminal. 3 Inst. 107. The intent and the act must both concur to constitute the crime. Lord Kenyon, C. J., 7 Term 514; Broom, Max. 306.

Actus repugnus non potest in esse produci. A repugnant act cannot be brought into being, *i. e.*, cannot be made effectual. Plowd. 355.

Actus servi in iis quibus opera ejus communiter adhibita est, actus domini habetur. The act of a servant in those things in which he is usually employed, is considered the act of his master. Lofft, 227.

AD. Lat. At; by; for; near; on account of; to; until; upon; with relation to or concerning.

AD ABUNDANTIOREM CAUTELAM. L. Lat. For more abundant caution. 2 How. State Tr. 1182. Otherwise expressed, *ad cautelam ex superabundanti.* Id. 1163.

AD ADMITTENDUM CLERICUM. For the admitting of the clerk. A writ in the nature of an execution, commanding the bishop to admit his clerk, upon the success of the latter in a *quare impedit.*

AD ALIUD EXAMEN. To another tribunal; belonging to another court, cognizance, or jurisdiction.

AD ALIUM DIEM. At another day. A common phrase in the old reports. Yearb. P. 7 Hen. VI. 13.

AD ASSISAS CAPIENDAS. To take assises; to take or hold the assises. Bract. fol. 110*a;* 3 Bl. Comm. 185, 352. *Ad assisam capiendam;* to take an assise. Bract. fol. 110*b.*

AD AUDIENDAM CONSIDERATIONEM CURIÆ. To hear the judgment of the court. Bract. 383 *b.*

AD AUDIENDUM ET TERMINANDUM. To hear and determine. St. Westm. 2, cc. 29, 30. 4 Bla. Com. 278.

AD BARRAM. To the bar; at the bar. 3 How. State Tr. 112.

AD BARRAM EVOCATUS. Called to the bar. 1 Ld. Raym. 59.

AD CAMPI PARTEM. For a share of the field or land, for champert. Fleta, lib. 2, c. 36, § 4.

AD CAPTUM VULGI. Adapted to the common understanding.

AD COLLIGENDUM. For collecting; as an administrator or trustee *ad colligendum.* 2 Kent 414.

AD COLLIGENDUM BONA DEFUNCTI. For collecting the goods of the deceased. See Administration of Estates.

AD COMMUNE NOCUMENTUM. To the common nuisance. Broom & H. Com. 196.

AD COMMUNEM LEGEM. At common law. The name of a writ of entry (now obsolete) brought by the reversioners after the death of the life tenant, for the recovery of lands wrongfully alienated by him.

AD COMPARENDUM. To appear. *Ad comparendum, et ad standum juri,* to appear and to stand to the law, or abide the judgment of the court. Cro. Jac. 67.

AD COMPOTUM REDDENDUM. To render an account. St. Westm. 2, c. 11.

AD CULPAM. Until misbehavior.

AD CURIAM. At a court. 1 Salk. 195. To court. *Ad curiam vocare,* to summon to court.

AD CUSTAGIA. At the costs. Toullier; Cowell; Whishaw.

AD CUSTUM. At the cost. 1 Bl. Comm. 314.

AD DAMNUM. In pleading. "To the damage." The technical name of that clause of the writ or declaration which contains a statement of the plaintiff's money loss, or the damages which he claims. Cole v. Hayes, 78 Me. 539, 7 Atl. 391; Vincent v. Life Ass'n, 75 Conn. 650, 55 Atl. 177.

AD DEFENDENDUM. To defend. 1 Bl. Comm. 227.

AD DIEM. At a day; at the day. Townsh. Pl. 23. *Ad alium diem.* At another day. Y. B. 7 Hen. VI, 13. *Ad certum diem,* at a certain day. 2 Strange, 747. *Solvit ad diem;* he paid at or on the day. 1 Chit. Pl. 485.

Ad ea quæ frequentius accidunt jura adaptantur. Laws are adapted to those cases which most frequently occur. 2 Inst. 137; Broom, Max. 43.

Laws are adapted to cases which frequently occur. A statute, which, construed according to its plain words, is, in all cases of ordinary occurrence, in no degree inconsistent or unreasonable, should not be varied by construction in every case, merely because there is one possible but highly improbable case in which the law would operate with great severity and against our notions of justice. The utmost that can be contended is that the construction of the statute should be varied in that particular case, so as to obviate the injustice. 7 Exch. 549; 8 Exch. 778.

AD EFFECTUM. To the effect, or end. Co. Litt. 204*a;* 2 Crabb, Real Prop. p. 802, § 2143. *Ad effectum sequentem,* to the effect following. 2 Salk. 417.

AD EVERSIONEM JURIS NOSTRI. To the overthrow of our right. 2 Kent 91.

AD EXCAMBIUM. For exchange; for compensation. Bract. fol. 12*b*, 37*b*.

AD EXHÆREDATIONEM. To the disherison, or disinheriting; to the injury of the inheritance. Bract. fol. 15*a;* 3 Bl. Comm. 288. Formal words in the old writ of waste, which calls upon the tenant to appear and show cause why he hath committed waste and destruction in the place named, *ad exhæredationem,* etc.; 3 Bla. Com. 228; Fitzherbert, Nat. Brev. 55.

AD EXITUM. At issue; at the end (of the pleadings.) Steph. Pl. 24.

AD FACIENDUM. To do. Co. Litt. 204*a. Ad faciendum, subjiciendum et recipiendum;* to do, submit to, and receive. *Ad faciendam juratamillam;* to make up that jury. Fleta, lib. 2, c. 65, § 12.

AD FACTUM PRÆSTANDUM. In Scotch law. A name descriptive of a class of obligations marked by unusual severity. A debtor *ad fac. præs.* is denied the benefit of the act of grace, the privilege of sanctuary, and the *cessio bonorum;* Erskine, Inst. lib. 3, tit. 3, § 62; Kames, Eq. 216.

AD FEODI FIRMAM. To fee farm. Fleta, lib. 2, c. 50, § 30.

AD FIDEM. In allegiance. 2 Kent, Comm. 56. Subjects born *ad fidem* are those born in allegiance.

AD FILUM AQUÆ. To the thread of the water; to the central line, or middle of the stream. *Usque ad filum aquæ,* as far as the thread of the stream. Bract. fol. 208*b;* 235*a.* A phrase of frequent occurrence in modern law; of which *ad medium filum aquæ* (*q. v.*) is another form, and etymologically more exact.

AD FILUM VIÆ. To the middle of the way; to the central line of the road. Parker v. Inhabitants of Framingham, 8 Metc. (Mass.) 260.

AD FINEM. Abbreviated *ad fin.* To the end. It is used in citations to books, as a direction to read from the place designated to the end of the chapter, section, etc. *Ad finem litis,* at the end of the suit.

AD FIRMAM. To farm. Derived from an old Saxon word denoting rent. *Ad firmam noctis* was a fine or penalty equal in amount to the estimated cost of entertaining the king for one night. Cowell. *Ad feodi firmam,* to fee farm. Spelman.

AD FUNDANDAM JURISDICTIONEM. To make the basis of jurisdiction. [1905] 2 K. B. 555.

AD GAOLAS DELIBERANDAS. To deliver the gaols; to empty the gaols. Bract. fol. 109*b. Ad gaolam deliberandam;* to deliver the gaol; to make gaol delivery. Bract. fol. 110*b.*

AD GRAVAMEN. To the grievance, injury, or oppression. Fleta, lib. 2, c. 47, § 10.

AD HOC. For this; for this special purpose. An attorney ad hoc, or a guardian or curator ad hoc, is one appointed for a special purpose, generally to represent the client or infant in the particular action in which the appointment is made. Sallier v. Rosteet, 108 La. 378, 32 South. 383; Bienvenu v. Insurance Co., 33 La. Ann. 212.

AD HOMINEM. To the person. A term used in logic with reference to a personal argument.

AD HUNC DIEM. At this day. 1 Leon. 90.

AD IDEM. To the same point, or effect. *Ad idem facit,* it makes to or goes to establish the same point. Bract. fol. 27*b.*

AD INDE. Thereunto. *Ad inde requisitus,* thereunto required. Townsh. Pl. 22.

AD INFINITUM. Without limit; to an infinite extent; indefinitely.

AD INQUIRENDUM. To inquire; a writ of inquiry; a judicial writ, commanding inquiry to be made of anything relating to a cause pending in court. Cowell.

AD INSTANTIAM. At the instance. 2 Mod. 44. *Ad instantiam partis,* at the instance of a party. Hale, Com. Law, 28.

AD INTERIM. In the meantime. An officer *ad interim* is one appointed to fill a temporary vacancy, or to discharge the duties of the office during the absence or temporary incapacity of its regular incumbent.

AD JUDICIUM. To judgment; to court. *Ad judicium provocare;* to summon to court; to commence an action; a term of the Roman law. Dig. 5, 1, 13, 14.

AD JUNGENDUM AUXILIUM. To joining in aid; to join in aid. See Aid Prayer.

AD JURA REGIS. To the rights of the king; a writ which was brought by the king's clerk, presented to a living against those who endeavored to eject him, to the prejudice of the king's title. Reg. Writs 61.

AD LARGUM. At large: as, title at large; assize at large. See Dane, Abr. c. 144, art. 16, § 7. Also at liberty; free, or unconfined. *Ire ad largum,* to go at large. Plowd. 37.

At large; giving details, or particulars; *in*

extenso. A special verdict was formerly called a verdict at large. Plowd. 92.

AD LIBITUM. At pleasure. 3 Bla. Com. 292.

AD LITEM. For the suit; for the purposes of the suit; pending the suit. A guardian *ad litem* is a guardian appointed to prosecute or defend a suit on behalf of a party incapacitated by infancy or otherwise.

AD LUCRANDUM VEL PERDENDUM. For gain or loss. Emphatic words in the old warrants of attorney. Reg. Orig. 21, et seq. Sometimes expressed in English, "to lose and gain." Plowd. 201.

AD MAJOREM CAUTELAM. For greater security. 2 How. State Tr. 1182.

AD MANUM. At hand; ready for use. *Et querens sectam habeat ad manum;* and the plaintiff immediately have his suit ready. Fleta, lib. 2, c. 44, § 2.

AD MEDIUM FILUM AQUÆ. To the middle thread of the stream. See Ad Filum Aquæ.

AD MEDIUM FILUM VIÆ. To the middle thread of the way.

AD MELIUS INQUIRENDUM. A writ directed to a coroner commanding him to hold a second inquest. See 45 Law J. Q. B. 711.

AD MORDENDUM ASSUETUS. Accustomed to bite. Cro. Car. 254. A material averment in declarations for damage done by a dog to persons or animals. 1 Chit. Pl. 388; 2 Chit. Pl. 597.

AD NOCUMENTUM. To the nuisance, or annoyance; to the hurt or injury. Fleta, lib. 2, c. 52, § 19. *Ad nocumentum liberi tenementi sui,* to the nuisance of his freehold. Formal words in the old assise of nuisance. 3 Bl. Comm. 221.

Ad officium justiciariorum spectat, unicuique coram eis placitanti justitiam exhibere. It is the duty of justices to administer justice to every one pleading before them. 2 Inst. 451.

AD OMISSA VEL MALE APPRETIATA. With relation to omissions or wrong interpretations. 3 Ersk. Inst. 9, § 36.

AD OPUS. To the work. See 21 Harv. L. Rev. 264, citing 2 Poll. & Maitl. 232 *et seq.;* Use.

AD OSTENDENDUM. To show. Formal words in old writs. Fleta, lib. 4, c. 65, § 12.

AD OSTIUM ECCLESIÆ. At the door of the church. One of the five species of dower formerly recognized by the English law. 1 Washb. Real Prop. 149; 2 Bl. Comm. 132.

AD PIOS USUS. Lat. For pious (religious or charitable) uses or purposes. Used with reference to gifts and bequests.

AD PROSEQUENDAM. To prosecute. 11 Mod. 362.

Ad proximum antecedens fiat relatio nisi impediatur sententiâ. Relative words refer to the nearest antecedent, unless it be prevented by the context. Jenk. Cent. 180.

AD PUNCTUM TEMPORIS. At the point of time. Sto. Bailm. § 263.

AD QUÆRIMONIAM. On complaint of.

AD QUEM. To which. A term used in the computation of time or distance, as correlative to *a quo;* denotes the end or terminal point. See A Quo.

The *terminus a quo* is the point of beginning or departure; the *terminus ad quem,* the end of the period or point of arrival.

Ad questiones facti non respondent judices; ad questiones legis non respondent juratores. Judges do not answer questions of fact; juries do not answer questions of law. 8 Coke, 308; Co. Litt. 295.

Ad quæstiones legis judices, et non juratores, respondent. Judges, and not jurors, decide questions of law. 7 Mass. 279.

AD QUOD CURIA CONCORDAVIT. To which the court agreed. Yearb. P. 20 Hen. VI. 27.

AD QUOD DAMNUM. The name of a writ formerly issuing from the English chancery, commanding the sheriff to make inquiry "to what damage" a specified act, if done, will tend. *Ad quod damnum* is a writ which ought to be sued before the king grants certain liberties, as a fair, market, or such like, which may be prejudicial to others, and thereby it should be inquired whether it will be a prejudice to grant them, and to whom it will be prejudicial, and what prejudice will come thereby. There is also another writ of *ad quod damnum,* if any one will turn a common highway and lay out another way as beneficial. Termes de la Ley. The writ of *ad quod damnum* is a common-law writ, in the nature of an original writ, issued by the prothonotary, and in condemnation proceedings is returnable to and subject to confirmation of the Superior Court. Elbert v. Scott, 5 Boyce (Del.) 1, 90 A. 587.

AD QUOD NON FUIT RESPONSUM. To which there was no answer. A phrase used in the reports, where a point advanced in argument by one party was not denied by the other; or where a point or argument of counsel was not met or noticed by the court; or where an objection was met by the court, and not replied to by the counsel who raised it. 3 Coke, 9; 4 Coke, 40.

AD RATIONEM PONERE. To cite a person to appear. A technical expression in the old records of the Exchequer, signifying, to put

to the bar and interrogate as to a charge made; to arraign on a trial.

AD RECOGNOSCENDUM. To recognize. Fleta, lib. 2, c. 65, § 12. Formal words in old writs.

Ad recte docendum oportet, primum inquirere nomina, quia rerum cognitio a nominibus rerum dependet. In order rightly to comprehend a thing, inquire first into the names, for a right knowledge of things depends upon their names. Co. Litt. 68.

AD RECTUM. (L. Lat.) To right. To do right. To meet an accusation. To answer the demands of the law. *Habeant eos ad rectum.* They shall render themselves to answer the law, or to make satisfaction. Bract. fol. 124 *b*.

AD REPARATIONEM ET SUSTENTATIONEM. For repairing and keeping in suitable condition.

AD RESPONDENDUM. For answering; to make answer; words used in certain writs employed for bringing a person before the court to make answer in defense in a proceeding, as in *habeas corpus ad respondendum* and *capias ad respondendum, q. v.*

AD SATISFACIENDUM. To satisfy. The emphatic words of the writ of *capias ad satisfaciendum*, which requires the sheriff to *take* the person of the defendant *to satisfy* the plaintiff's claim.

AD SECTAM. At the suit of. Commonly abbreviated to *ads.* Used in entering and indexing the names of cases, where it is desired that the name of the defendant should come first. Thus, "B. *ads.* A." indicates that B. is defendant in an action brought by A., and the title so written would be an inversion of the more usual form "A. *v.* B."

AD STUDENDUM ET ORANDUM. For studying and praying; for the promotion of learning and religion. A phrase applied to colleges and universities. 1 Bl. Comm. 467; T. Raym. 101.

AD TERMINUM ANNORUM. For a term of years.

AD TERMINUM QUI PRETERIT. For a term which has passed. Words in the Latin form of the writ of entry employed at common law to recover, on behalf of a landlord, possession of premises, from a tenant holding over after the expiration of the term for which they were demised. See Fitzh. Nat. Brev. 201.

Ad tristem partem strenua est suspicio. Suspicion lies heavy on the unfortunate side.

AD TUNC ET IBIDEM. In pleading. The Latin name of that clause of an indictment containing the statement of the subject-matter "then and there being found."

AD ULTIMAM VIM TERMINORUM. To the most extended import of the terms; in a sense as universal as the terms will reach. 2 Eden, 54.

AD USUM ET COMMODUM. To the use and benefit.

AD VALENTIAM. To the value. See Ad Valorem.

AD VALOREM. According to value. Duties are either *ad valorem* or *specific;* the former when the duty is laid in the form of a percentage on the value of the property; the latter where it is imposed as a fixed sum on each article of a class without regard to its value. The term *ad valorem* tax is as well defined and fixed as any other used in political economy or legislation, and simply means a tax or duty upon the value of the article or thing subject to taxation. Bailey v. Fuqua, 24 Miss. 501; Pingree v. Auditor General, 120 Mich. 95, 78 N. W. 1025, 44 L. R. A. 679; Blue Coach Lines v. Lewis, 294 S. W. 1080, 1083, 220 Ky. 116.

AD VENTREM INSPICIENDUM. To inspect the womb. A writ for the summoning of a jury of matrons to determine the question of pregnancy.

Ad vim majorem vel ad casus fortuitus non tenetur quis, nisi sua culpa intervenerit. No one is held to answer for the effects of a superior force, or of accidents, unless his own fault has contributed. Fleta, lib. 2, c. 72, § 16.

AD VITAM. For life. Bract. fol. 13*b*. *In feodo, vel ad vitam;* in fee, or for life. Id.

AD VITAM AUT CULPAM. For life or until fault. Words descriptive of a tenure of office "for life or good behavior," equivalent to *quamdiu bene se gesserit.*

AD VOLUNTATEM. At will. Bract. fol. 27*a*. *Ad voluntatem domini*, at the will of the lord.

AD WARACTUM. To fallow. Bract. fol. 228*b*. See Waractum.

ADAPTED. Capable of use. People v. Dorrington, 221 Mich. 571, 191 N. W. 831, 832.

ADAWLUT. Corrupted from *Adalat*, justice, equity; a court of justice. The terms "Dewanny Adawlut" and "Foujdarry Adawlut" denote the civil and criminal courts of justice in India. Wharton.

ADCORDABILIS DENARII. Money paid by a vassal to his lord upon the selling or exchanging of a feud. Enc. Lond.

ADD. To unite; attach; annex; join. Board of Com'rs of Hancock County v. State, 119 Ind. 473, 22 N. E. 10.

ADDICERE. Lat. In the civil law. To adjudge or condemn; to assign, allot, or deliver; to sell. In the Roman law, *addico* was one of the three words used to express the extent of the civil jurisdiction of the prætors.

ADDICT. As defined in Acts 1894, No. 157, one who has acquired the habit of using spirituous liquors or narcotics to such an extent as to deprive him of reasonable self-control. Interdiction of Gasquet, 85 So. 884, 888, 147 La. 722.

ADDICTIO. In the Roman law. The giving up to a creditor of his debtor's person by a magistrate; also the transfer of the (deceased) debtor's goods to one who assumes his liabilities.

Additio probat minoritatem. An addition [to a name] proves or shows minority or inferiority. 4 Inst. 80; Wing. Max. 211, max. 60. That is, if it be said that a man has a fee tail, it is less than if he has the fee.

This maxim is applied by Lord Coke to courts, and terms of law; *minoritas* being understood in the sense of difference, inferiority, or qualification. Thus, the style of the king's bench is *coram rege*, and the style of the court of chancery is *coram domino rege in cancellaria;* the addition showing the difference. 4 Inst. 80. By the word "fee" is intended *fee-simple*, fee-tail not being intended by it, unless there be added to it the *addition* of the word "tail." 2 Bl. Comm. 106; Litt. § 1.

ADDITION. Whatever is added to a man's name by way of title or description. Cowell.

In English law, there are four kinds of *additions*, —additions of *estate*, such as yeoman, gentleman, esquire; additions of *degree*, or names of dignity, as knight, earl, marquis, duke; additions of *trade*, mystery, or occupation, as scrivener, painter, mason, carpenter; and additions of *place* of residence, as London, Chester, etc. The only additions recognized in American law are those of mystery and residence.

At common law there was no need of addition in any case; 2 Ld. Raym. 988; it was required only by stat. 1 Hen. V. c. 5, in cases where process of outlawry lies. In all other cases it is only a description of the person, and common reputation is sufficient; 2 Ld. Raym. 849.

In addition to means not exclusive of, but by way of increase or accession to. In re Daggett's Estate, 2 Con. Sur. 230, 9 N. Y. S. 652; Washington Loan & Trust Co. v. Hammond, 51 App. D. C. 260, 278 F. 569, 571.

In the Law of Insurance

The word "addition," as applied to buildings, usually means a part added or joined to a main building. Globe & Rutgers Fire Ins. Co. v. Hamilton, 65 Ind. App. 541, 116 N. E. 597, 599; Agnew v. Sun Ins. Office, 167 Wis. 456, 167 N. W. 829; Myerstein v. Great American Ins. Co., 82 Cal. App. 131, 255 P. 220, 222; Henry Clay Fire Ins. Co. v. Crider, 191 Ky. 121, 229 S. W. 128. It may also apply to buildings appurtenant to some other building though not actually in physical contact therewith. Seeds v. Royal Ins. Co., 75 Pa. Super. Ct. 302, 304; Taylor v. Northwestern Nat. Ins. Co., 34 Cal. App. 471, 167 P. 899.

In the Law of Liens

Within the meaning of the mechanic's lien law, an "addition" to a building must be a lateral addition. It must occupy ground without the limits of the building to which it constitutes an addition, so that the lien shall be upon the building formed by the addition and the land upon which it stands. An alteration in a former building, by adding to its height, or to its depth, or to the extent of its interior accommodations, is merely an "alteration," and not an "addition." Putting a new story on an old building is not an addition. Updike v. Skillman, 27 N. J. Law, 132. See, also, Lamson v. Maryland Casualty Co., 196 Iowa, 1185, 194 N. W. 70, 71.

An "addition" is that which has become united with or become a part of. See Georgia Southern & F. Ry. Co. v. Tifton Produce Co., 160 Ga. 213, 127 S. E. 771, 772; Judge v. Bergman, 258 Ill. 246, 101 N. E. 574, 576; In re Thorn's Estate, 183 Cal. 512, 192 P. 19, 22.

In French Law

A supplementary process to obtain additional information. Guyot, Répert.

ADDITIONAL. This term embraces the idea of joining or uniting one thing to another, so as thereby to form one aggregate. Hurst Home Ins. Co. v. Deatley, 175 Ky. 728, 194 S. W. 910, 911, L. R. A. 1917E, 750; Rose v. Sullivan, 56 Mont. 480, 185 P. 562, 563; Payne v. Albright (Tex. Civ. App.) 235 S. W. 288, 289; Griebel v. School Dist. No. 6 of Rooks County, 110 Kan. 317, 203 P. 718, 719. Thus, "additional security" imports a security, which, united with or joined to the former one, is deemed to make it, as an aggregate, sufficient as a security from the beginning. State v. Hull, 53 Miss. 626; Searcy v. Cullman County, 196 Ala. 287, 71 So. 664, 665.

ADDITIONAL BURDEN. See Eminent Domain.

ADDITIONALES. In the law of contracts. Additional terms or propositions to be added to a former agreement.

ADDLED. Stupid, muddled, foolish. Windham v. State, 93 Tex. Cr. R. 477, 248 S. W. 51, 54.

ADDLED PARLIAMENT. The parliament which met in 1614. It sat for but two months and none of its bills received the royal assent. Taylor, Jurispr. 359.

ADDONE, Addonne. L. Fr. Given to. Kelham.

ADDRESS. That part of a bill in equity wherein is given the appropriate and technical description of the court in which the bill is filed.

In Legislation. A formal request addressed to the executive by one or both branches of the legislative body, requesting him to per-

form some act. It is provided as a means for the removal of judges deemed unworthy, though the causes of removal would not warrant impeachment. It is not provided for in the Constitution of the United States; and even in those states where the right exists it is exercised but seldom.

A place of business or residence.

ADDRESS TO THE CROWN. When the royal speech has been read in Parliament, an address in answer thereto is moved in both houses. Two members are selected in each house by the administration for moving and seconding the address. Since the commencement of the session 1890–1891, it has been a single resolution expressing their thanks to the sovereign for his gracious speech.

ADDUCE. To present, bring forward, offer, introduce. Used particularly with reference to evidence. Tuttle v. Story County, 56 Iowa, 316, 9 N. W. 292.

"The word 'adduced' is broader in its signification than the word 'offered,' and, looking to the whole statement in relation to the evidence below, we think it sufficiently appears that all of the evidence is in the record." Beatty v. O'Connor, 106 Ind. 81, 5 N. E. 880; Brown v. Griffin, 40 Ill. App. 558.

ADEEM. To take away, recall, or revoke. To satisfy a legacy by some gift or substituted disposition, made by the testator, in advance. Tolman v. Tolman, 85 Me. 317, 27 Atl. 184. See Ademption.

In case the identical thing bequeathed is not in existence, or has been disposed of and does not form part of the testator's estate at the time of his death, the legacy is "extinguished" or "adeemed," and the legatee's rights are gone. Welch v. Welch, 113 So. 197, 198, 147 Miss. 728.

ADELANTADO. In Spanish law. The military and political governor of a frontier province. This office has long since been abolished. Also a president or president judge; a judge having jurisdiction over a kingdom, or over certain provinces only. So called from having authority over the judges of those places. Las Partidas, pt. 3, tit. 4, l. 1.

ADELING, or ATHELING. Noble; excellent. A title of honor among the Anglo-Saxons, properly belonging to the king's children. Spelman.

ADEMPTIO. Lat. In the civil law. A revocation of a legacy; an ademption. Inst. 2, 21, pr. Where it was expressly transferred from one person to another, it was called *translatio.* Id. 2, 21, 1; Dig. 34, 4.

ADEMPTION. The revocation, recalling, cancellation, or extinction of a legacy, according to the apparent intention of the testator, implied by the law from acts done by him in his life, though such acts do not amount to an express revocation of it. Kenaday v. Sinnott, 179 U. S. 606, 21 Sup. Ct. 233, 45 L. Ed. 339; Burnham v. Comfort, 108 N. Y. 535, 15 N. E. 710, 2 Am. St. Rep. 462; Tanton v. Keller, 167 Ill. 129, 47 N. E. 376; Cowles v. Cowles, 56 Conn. 240, 13 Atl. 414; Johns Hopkins University v. Uhrig, 145 Md. 114, 125 A. 606, 610; Elwyn v. De Garmendia, 148 Md. 109, 128 A. 913, 914, 40 A. L. R. 553; Lamkin v. Kaiser (Mo. App.) 256 S. W. 558, 559; King v. Sellers, 194 N. C. 533, 140 S. E. 91, 92; In re Goodfellow's Estate, 166 Cal. 409, 137 P. 12, 15.

"The word 'ademption' is the most significant, because, being a term of art, and never used for any other purpose, it does not suggest any idea foreign to that intended to be conveyed. It is used to describe the act by which the testator pays to his legatee, in his life-time, a general legacy which by his will he had proposed to give him at his death. (1 Rop. Leg. p. 365.) It is also used to denote the act by which a specific legacy has become inoperative on account of the testator having parted with the subject." Langdon v. Astor, 16 N. Y. 40.

Ademption, in strictness, is predicable only of specific, and satisfaction of general legacies. Beck v. McGillis, 9 Barb. (N. Y.) 35, 56; Langdon v. Astor, 3 Duer (N. Y.) 477, 541; Kramer v. Kramer (C. C. A. Ga.) 201 F. 248, 253. See Advancement.

ADEO. Lat. So, as. *Adeo plene et integre,* as fully and entirely. 10 Coke, 65.

ADEQUATE. Sufficient; proportionate; equally efficient; equal to what is required; suitable to the case or occasion; satisfactory. Elbert County v. Brown, 16 Ga. App. 834, 86 S. E. 651, 652; Nagle v. City of Billings, 77 Mont. 205, 250 P. 445, 446.

ADEQUATE CARE. Such care as a man of ordinary prudence would himself take under similar circumstances to avoid accident; care proportionate to the risk to be incurred. Wallace v. Wilmington & N. R. Co., 8 Houst. (Del.) 529, 18 Atl. 818.

ADEQUATE CAUSE. Sufficient cause for a particular purpose. Pennsylvania & N. Y. Canal & R. Co. v. Mason, 109 Pa. 296, 58 Am. Rep. 722. In criminal law, adequate cause for the passion which reduces a homicide committed under its influence from the grade of murder to manslaughter, means such cause as would commonly produce a degree of anger, rage, resentment, or terror, in a person of ordinary temper, sufficient to render the mind incapable of cool reflection. Insulting words or gestures, or an assault and battery so slight as to show no intention to inflict pain or injury, or an injury to property unaccompanied by violence are not adequate causes. McKaskle v. State, 96 Tex. Cr. R. 638, 260 S. W. 588, 589; Pickens v. State, 86 Tex. Cr. R. 657, 218 S. W. 755, 758; Vollintine v. State, 77 Tex. Cr. R. 522, 179 S. W. 108; Solis v. State, 76 Tex. Cr. R. 230, 174 S. W. 343, 344; Lamb v. State, 75 Tex. Cr. R. 75, 169 S. W. 1158, 1163; Wisnoski v. State, 68

Tex. Cr. R. 382, 153 S. W. 316, 318; Gardner v. State, 40 Tex. Cr. R. 19, 48 S. W. 170; Williams v. State, 7 Tex. App. 396; Boyett v. State, 2 Tex. App. 100.

ADEQUATE COMPENSATION (to be awarded to one whose property is taken for public use under the power of eminent domain means the full and just value of the property, payable in money. Buffalo, etc., R. Co. v. Ferris, 26 Tex. 588. It includes interest. Texarkana & Ft. S. Ry. Co. v. Brinkman (Tex. Civ. App.) 288 S. W. 852, 853. It may include the cost or value of the property to the owner for the purposes for which he designed it. Elbert County v. Brown, 16 Ga. App. 834, 86 S. E. 651, 656.

ADEQUATE CONSIDERATION. One which is equal, or reasonably proportioned, to the value of that for which it is given. 1 Story, Eq. Jur. §§ 244–247. An adequate consideration is one which is not so disproportionate as to shock our sense of that morality and fair dealing which should always characterize transactions between man and man. Eaton v. Patterson, 2 Stew. & P. (Ala.) 9, 19; U. S. Smelting, Refining & Milling Co. v. Utah Power & Light Co., 58 Utah, 168, 197 P. 902, 905; Schader v. White, 173 Cal. 441, 160 P. 557, 559; Greenwood v. Greenwood, 96 Kan. 591, 152 P. 657, 659; In re Felton's Estate, 176 Cal. 663, 169 P. 392, 394.

ADEQUATE PROVOCATION. An adequate provocation to cause a sudden transport of passion that may suspend the exercise of judgment and exclude premeditation and a previously formed design is one that is calculated to excite such anger as might obscure the reason or dominate the volition of an ordinary reasonable man. Rivers v. State, 75 Fla. 401, 78 So. 343. 344; Commonwealth v. Webb, 252 Pa. 187, 97 A. 189, 191.

ADEQUATE REMEDY. One vested in the complainant, to which he may at all times resort at his own option, fully and freely, without let or hindrance. Wheeler v. Bedford, 54 Conn. 244, 7 Atl. 22; George S. Chatfield Co. v. Reeves, 87 Conn. 63, 86 A. 750, 751, L. R. A. 1916D, 321; Chicago & N. W. R. Co. v. Railroad and Warehouse Commission of Minnesota (D. C. Minn.) 280 F. 387, 392. A remedy which is plain and complete and as practical and efficient to the ends of justice and its prompt administration as the remedy in equity. Keplinger v. Woolsey, 4 Neb. (Unof.) 282, 93 N. W. 1008; St. Louis-San Francisco Ry. Co. v. McElvain (D. C. Mo.) 253 F. 123, 135; Blackstone Hall Co. v. Rhode Island Hospital Trust Co., 39 R. I. 69, 97 A. 484, 488; Jones v. Stearns, 97 Vt. 37, 122 A. 116, 119, 31 A. L. R. 653; Dells Paper & Pulp Co. v. Willow River Lumber Co., 170 Wis. 19, 173 N. W. 317, 322; Cook v. Panhandle Refining Co. (Tex. Civ. App.) 267 S. W. 1070, 1073. A remedy that affords complete relief with reference to the particular matter in controversy, and is appropriate to the circumstances of the case. City of Mt. Vernon v. Berman & Reed, 100 Ohio St. 1, 125 N. E. 116, 120; State v. Huwe, 103 Ohio St. 546, 134 N. E. 456, 459. A remedy to be adequate, precluding resort to mandamus, must not only be one placing relator in statu quo, but must itself enforce in some way performance of the particular duty. State v. Erickson, 104 Conn. 542, 133 A. 683, 686.

ADESSE. In the civil law. To be present; the opposite of *abesse*. Calvin.

ADEU. Without day, as when a matter is finally dismissed by the court. *Alez adeu*, go without day. Y. B. 5 Edw. II. 173. See Adieu.

ADFERRUMINATIO. In the civil law. The welding together of iron; a species of *adjunctio*, (*q. v.*). Called also *ferruminatio*. Mackeld. Rom. Law, § 276; Dig. 6, 1, 23, 5.

ADHERENCE. In Scotch law. The name of a form of action by which the mutual obligation of marriage may be enforced by either party. Bell. It corresponds to the English action for the restitution of conjugal rights. Wharton.

ADHERING. Joining, leagued with, cleaving to; as, "adhering to the enemies of the United States."

Rebels, being citizens, are not "enemies," within the meaning of the constitution; hence a conviction for treason, in promoting a rebellion, cannot be sustained under that branch of the constitutional definition which speaks of "adhering to their enemies, giving them aid and comfort." United States v. Greathouse, 2 Abb. (U. S.) 364, Fed. Cas. No. 15,254.

ADHESION. The entrance of another state into an existing treaty with respect only to a part of the principles laid down or the stipulations agreed to. Opp. Int. L. § 533.

Properly speaking, by adhesion the third state becomes a party only to such parts as are specifically agreed to, and by accession it accepts and is bound by the whole treaty. See Accession.

ADHIBERE. In the civil law. To apply; to employ; to exercise; to use. *Adhibere diligentiam*, to use care. *Adhibere vim*, to employ force.

ADIATION. A term used in the laws of Holland for the application of property by an executor. Wharton.

ADIEU. L. Fr. Without day. A common term in the Year Books, implying final dismissal from court.

ADIPOCERE. A waxy substance (chemically margarate of ammonium or ammoniacal soap) formed by the decomposition of animal matter protected from the air but subjected to

moisture; in medical jurisprudence, the substance into which a human cadaver is converted which has been buried for a long time in a saturated soil or has lain long in water.

ADIRATUS. Lost; strayed; a price or value set upon things stolen or lost, as a recompense to the owner. Cowell.

ADIT. In mining law, an entrance or approach; a horizontal excavation used as an entrance to a mine, or a vent by which ores and water are carried away; an excavation "in and along a lode," which in statutes of Colorado and other mining states is made the equivalent of a discovery shaft. Gray v. Truby, 6 Colo. 278; Electro-Magnetic M. & D. Co. v. Van Auken, 9 Colo. 204, 11 P. 80.

ADITUS. An approach; a way; a public way. Co. Litt. 56*a*.

ADJACENT. Lying near or close to; sometimes, contiguous. *Adjacent* implies that the two objects are not widely separated, though they may not actually touch, while *adjoining* imports that they are so joined or united to each other that no third object intervenes. City of Hutchinson v. Danley, 88 Kan. 437, 129 P. 163, 164; Martin v. Lown, 111 Kan. 752, 208 P. 565; Hewey v. Cudahy Packing Co. (C. C. A. Kan.) 269 F. 21, 23; Charles Wolff Packing Co. v. Travelers' Ins. Co., 94 Kan. 630, 146 P. 1175, 1177; People v. Keechler, 194 Ill. 235, 62 N. E. 525; Hanifen v. Armitage (C. C.) 117 Fed. 845; McDonald v. Wilson, 59 Ind. 54; Wormley v. Wright County, 108 Iowa, 232, 78 N. W. 824; Hennessy v. Douglas County, 99 Wis. 129, 74 N. W. 983; Yard v. Ocean Beach Ass'n, 49 N. J. Eq. 306, 24 Atl. 729; Henderson v. Long, 11 Fed. Cas. 1084; Yuba County v. Kate Hayes Min. Co., 141 Cal. 360, 74 Pac. 1049; United States v. St. Anthony R. Co., 192 U. S. 524, 24 Sup. Ct. 333, 48 L. Ed. 548. But see Wilson v. Greenville County, 110 S. C. 321, 96 S. E. 301, 302; National Optical Co. v. U. S. Fidelity & Guaranty Co., 77 Colo. 130, 235 P. 343, 344; Miller v. Cabell, 81 Ky. 184; In re Sadler, 142 Pa. 511, 21 Atl. 978.

"Adjacent" is a word of flexible meaning, depending upon context and subject matter. U. S. v. R. Co., 31 F. 886; Johnston v. Davenport Brick & Tile Co. (D. C. Iowa) 237 F. 668, 669; Scotton v. Wright, 13 Del. Ch. 214, 117 A. 131, 135; Hoopes v. City of Omaha, 99 Neb. 460, 156 N. W. 1047, 1048; City of Baltimore v. Williams, 129 Md. 290, 99 A. 362, 364; Nomath Hotel Co. v. Kansas City Gas Co., 204 Mo. App. 214, 223 S. W. 975, 982.

Under a statute authorizing a city to operate a waterworks for such city and adjacent territory, "adjacent territory" means the suburbs of the city not within the limits of another municipality. Johnson City v. Weeks, 133 Tenn. 277, 180 S. W. 327, 328, 3 A.L.R. 1431.

ADJECTIVE LAW. The aggregate of rules of procedure or practice. As opposed to that body of law which the courts are established to administer, (called "substantive law,") it means the rules according to which the substantive law is administered. That part of the law which provides a method for enforcing or maintaining rights, or obtaining redress for their invasion. Anderson v. Wirkman, 67 Mont. 176, 215 P. 224, 227.

ADJOINING. The word in its etymological sense, means touching or contiguous, as distinguished from lying near to or adjacent. Broun v. Texas & N. O. R. Co. (Tex. Civ. App.) 295 S. W. 670, 674; Plainfield-Union Water Co. v. Inhabitants of City of Plainfield, 84 N. J. Law, 634, 87 A. 448, 450. And the same meaning has been given to it when used in statutes. City of New York v. Alheidt, 151 N. Y. S. 463, 464, 88 Misc. 524. See Adjacent.

ADJOURN. To put off; defer; postpone. To postpone action of a convened court or body until another time specified, or indefinitely, the latter being usually called to adjourn *sine die*. Bispham v. Tucker, 2 N. J. Law, 253; Reynolds v. Cropsey, 241 N. Y. 389, 150 N. E. 303; Village of Coon Valley v. Spellum, 190 Wis. 140, 208 N. W. 916, 917.

The primary signification of the term "adjourn" is to put off or defer to another day specified. But it has acquired also the meaning of suspending business for a time,—deferring, delaying. Probably, without some limitation, it would, when used with reference to a sale on foreclosure, or any judicial proceeding, properly include the fixing of the time to which the postponement was made. La Farge v. Van Wagenen, 14 How. Prac. (N. Y.) 54; People v. Martin, 5 N. Y. 22; Waldrop v. Kansas City Southern Ry. Co., 131 Ark. 453, 199 S. W. 369, 371, L. R. A. 1918B, 1081; Town of Athens v. Miller, 190 Ala. 82, 66 So. 702, 704.

ADJOURNAL. A term applied in Scotch law and practice to the records of the criminal courts. The original records of criminal trials were called "bukis of adiornale," or "books of adjournal," few of which are now extant. An "act of adjournal" is an order of the court of justiciary entered on its minutes.

Adjournamentum est ad diem dicere seu diem dare. An adjournment is to appoint a day or give a day. 4 Inst. 27. Hence the formula *"eat sine die."*

ADJOURNATUR. L. Lat. It is adjourned. A word with which the old reports very frequently conclude a case. 1 Ld. Raym. 602; 1 Show. 7; 1 Leon. 88.

ADJOURNED SUMMONS. A summons taken out in the chambers of a judge, and afterwards taken into court to be argued by counsel.

ADJOURNED TERM. In practice. A continuance, by adjournment, of a regular term. Harris v. Gest, 4 Ohio St. 473; Kingsley v. Bagby, 2 Kan. App. 23, 41 P. 991. Distinguished from an "additional term," which is a

distinct term. Id. An *adjourned term* is a continuation of a previous or regular term; it is the same term prolonged, and the power of the court over the business which has been done, and the entries made at the regular term, continues. Van Dyke v. State, 22 Ala. 57; Carter v. State, 14 Ga. App. 242, 80 S. E. 533, 534.

ADJOURNMENT. A putting off or postponing of business or of a session until another time or place; the act of a court, legislative body, public meeting, or officer, by which the session or assembly is dissolved, either temporarily or finally, and the business in hand dismissed from consideration, either definitely or for an interval. If the adjournment is final, it is said to be *sine die*. See Johnson City v. Tennessee Eastern Electric Co., 133 Tenn. 632, 182 S. W. 587, 589.

In the Civil Law

A calling into court; a summoning at an appointed time. Du Cange.

In General

—Adjournment day. A further day appointed by the judges at the regular sittings at *nisi prius* to try issue of fact not then ready for trial.

—Adjournment day in error. In English practice. A day appointed some days before the end of the term at which matters left undone on the affirmance day are finished. 2 Tidd, Pr. 1176.

—Adjournment in eyre. The appointment of a day when the justices in eyre mean to sit again. Cowell; Spelman.

ADJUDGE. To pass on judicially; to decide, settle, or decree; to sentence or condemn. Webb v. Bidwell, 15 Minn. 479 (Gil. 394); Western Assur. Co. v. Klein, 48 Neb. 904, 67 N. W. 873; Blaufus v. People, 69 N. Y. 107, 25 Am. Rep. 148. Compare Edwards v. Hellings, 99 Cal. 214, 33 Pac. 799. To adjudicate. Haney v. Neace-Stark Co., 109 Or. 93, 216 P. 757, 762; Dobbins v. Economic Gas Co., 182 Cal. 616, 189 P. 1073, 1082.

Adjudged does not mean the same as *deemed* (contra, under statute, State v. District Court, 208 P. 952, 955, 64 Mont. 181), nor is one disqualified as a witness who "shall, upon conviction, be adjudged guilty of perjury" merely by verdict of guilty or until sentence; Blaufus v. People, 69 N. Y. 107, 25 Am. Rep. 148. It was said by Gibson, C. J., that the word "can be predicated only of an act of the court"; Searight v. Com., 13 S. & R. (Pa.) 301. Compare Drinkhouse v. Van Ness, 202 Cal. 359, 260 P. 869, 874; People ex rel. Strohsahl v. Strohsahl, 222 N. Y. S. 319, 324, 221 App. Div. 86.

ADJUDICATAIRE. In Canadian law. A purchaser at a sheriff's sale. See 1 Low. Can. 241; 10 Low. Can. 325.

ADJUDICATE. To settle in the exercise of judicial authority. To determine finally. Synonymous with *adjudge* in its strictest sense. United States v. Irwin, 127 U. S. 125, 8 S. Ct. 1033, 32 L. Ed. 99; Street v. Benner, 20 Fla. 700; Sans v. New York, 64 N. Y. S. 681, 31 Misc. 559; Haney v. Neace-Stark Co., 109 Or. 93, 216 P. 757, 762.

ADJUDICATEE. In French and civil law. The purchaser at a judicial sale. Brent v. New Orleans, 41 La. Ann. 1098, 6 South. 793.

ADJUDICATIO. In the civil law. An adjudication. The judgment of the court that the subject-matter is the property of one of the litigants; confirmation of title by judgment. Mackeld. Rom. Law, § 204.

ADJUDICATION. The giving or pronouncing a judgment or decree in a cause; also the judgment given. People ex rel. Argus Co. v. Hugo, 168 N. Y. S. 25, 27, 101 Misc. 481; Spaulding v. Mutual Life Ins. Co. of New York, 96 Vt. 67, 117 A. 376, 378. The term is principally used in bankruptcy proceedings, the adjudication being the order which declares the debtor to be a bankrupt.

In French Law

A sale made at public auction and upon competition. Adjudications are voluntary, judicial, or administrative. Duverger.

In Scotch Law

A species of diligence, or process for transferring the estate of a debtor to a creditor, carried on as an ordinary action before the court of session. A species of judicial sale, redeemable by the debtor. A decreet of the lords of session, adjudging and appropriating a person's lands, hereditaments, or any heritable right to belong to his creditor, who is called the "adjudger," for payment or performance. Bell; Ersk. Inst. c. 2, tit. 12, §§ 39–55; Forb. Inst. pt. 3, b. 1, c. 2, tit. 6.

In General

—Adjudication contra hæreditatem jacentem. When a debtor's heir apparent renounces the succession, any creditor may obtain a decree *cognitionis causâ*, the purpose of which is that the amount of the debt may be ascertained so that the real estate may be adjudged.

—Adjudication in bankruptcy. See Bankruptcy.

—Adjudication in implement. An action by a grantee against his grantor to compel him to complete the title.

ADJUNCT. Something added to another. New York Trust Co. v. Carpenter (C. C. A. Ohio) 250 F. 668, 672; Judge v. Bergman, 258 Ill. 246, 101 N. E. 574, 576.

An additional judge sometimes appointed in the Court of Delegates, *q. v.*

ADJUNCTIO. In the civil law. Adjunction; a species of *accessio*, whereby two things belonging to different proprietors are brought into firm connection with each other; such as interweaving, (*intertextura*); welding togeth-

er, (*adferruminatio*); soldering together, (*applumbatura*); painting, (*pictura*); writing, (*scriptura*); building, (*inædificatio*); sowing, (*satio*); and planting, (*plantatio*). Inst. 2, 1, 26-34; Dig. 6, 1, 23; Mackeld. Rom. Law, § 276. See Accessio.

ADJUNCTION.

In Civil Law

The attachment or union permanently of a thing belonging to one person to that belonging to another. This union may be caused by *inclusion*, as if one man's diamond be set in another's ring, or by *soldering*, *sewing*, *construction*, *writing*, or *painting*.

In these cases, as a general rule, the accessory follows the principal. The common law implicitly adopts the civil law doctrines. See 2 Bla. Com. 404. See Accession.

ADJUNCTUM ACCESSORIUM. An accessory or appurtenance.

ADJURATION. A swearing or binding upon oath.

ADJUST. To bring to proper relations; to settle; Joy v. Rousseau, 72 Cal. App. 179, 236 P. 972, 975; Jeff Davis County v. Davis (Tex. Civ. App.) 192 S. W. 291, 295: Craig v. Lee, 36 Cal. App. 335, 171 P. 1089, 1090; to determine and apportion an amount due; Utah Const. Co. v. St. Louis Construction & Equipment Co. (D. C. N. M.) 254 F. 321, 330; Flaherty v. Insurance Co., 20 App. Div. 275, 46 N. Y. S. 934; Miller v. Insurance Co., 113 Iowa, 211, 84 N. W. 1049; Washington County v. St. Louis, etc., R. Co., 58 Mo. 376. Accounts are adjusted when they are settled and a balance struck. Townes v. Birchett, 12 Leigh (Va.) 173, 201. It is sometimes used in the sense of pay. See Lynch v. Nugent, 80 Iowa, 422, 46 N. W. 61.

ADJUSTER. One who makes any adjustment or settlement. Popa v. Northern Ins. Co., 192 Mich. 237, 158 N. W. 945, 946, or who determines the amount of a claim, as a claim against an insurance company. Samchuck v. Insurance Co. of North America, 99 Or. 565, 194 P. 1095. He is a special agent for the person or company for whom he acts. Bond v. National Fire Ins. Co., 77 W. Va. 736, 88 S. E. 389, 394; Occidental Fire Ins. Co. v. Fort Worth Grain & Elevator Co. (Tex. Civ. App.) 294 S. W. 953, 957. Compare Manheim v. Standard Fire Ins. Co. of Hartford, Conn., 84 Wash. 16, 145 P. 992.

ADJUSTMENT. An arrangement; a settlement. Henry D. Davis Lumber Co. v. Pacific Lumber Agency, 127 Wash. 198, 220 P. 804, 805; Dworkin v. Caledonian Ins. Co., 285 Mo. 342, 226 S. W. 846, 850. In the law of insurance, the adjustment of a loss is the ascertainment of its amount and the ratable distribution of it among those liable to pay it; the settling and ascertaining the amount of the indemnity which the assured, after all allowances and deductions made, is entitled to receive under the policy, and fixing the proportion which each underwriter is liable to pay. Marsh. Ins. (4th Ed.) 499; 2 Phil. Ins. §§ 1814, 1815; New York v. Insurance Co., 39 N. Y. 45, 100 Am. Dec. 400; Whipple v. Insurance Co., 11 R. I. 139; Samchuck v. Insurance Co. of North America, 99 Or. 565, 194 P. 1095; Commonwealth Ins. Co. of New York v. Soloman, 2 W. W. Harr. (Del.) 98, 119 A. 850, 851. The terms "examination" and "adjustment" are not convertible. Pennsylvania Fire Ins. Co. v. Draper, 187 Ala. 103, 65 So. 923, 927.

ADJUTANT GENERAL. The term "civil adjutant general" is used as one of convenience merely to designate state adjutant general who has not been officially recognized by War Department. People v. Newlon, 77 Colo. 516, 238 P. 44, 47.

Adjuvari quippe nos, non decipi, beneficio oportet. We ought to be favored, not injured, by that which is intended for our benefit. (The species of bailment called "loan" must be to the adyantage of the borrower, not to his detriment.) Story, Bailm. § 275. See 8 El. & Bl. 1051.

ADLAMWR. In Welsh law. A proprietor who, for some cause, entered the service of another proprietor, and left him after the expiration of a year and a day. He was liable to the payment of 30 pence to his patron. Wharton.

ADLEGIARE. To purge one's self of a crime by oath.

ADMANUENSIS. A person who swore by laying his hands on the book.

ADMEASUREMENT. Ascertainment by measure; measuring out; assignment or apportionment by measure, that is, by fixed quantity or value, by certain limits, or in definite and fixed proportions.

ADMEASUREMENT OF DOWER. In practice. A remedy which lay for the heir on reaching his majority to rectify an assignment of dower made during his minority, by which the doweress had received more than she was legally entitled to. 2 Bl. Comm. 136; Gilb. Uses, 379. The remedy is of rare occurrence. See 1 Washb. R. P. 225, 226; Jones v. Brewer, 1 Pick. (Mass.) 314; McCormick v. Taylor, 2 Ind. 336. In some of the states the statutory proceeding enabling a widow to compel the assignment of dower is called "admeasurement of dower."

ADMEASUREMENT OF PASTURE. In English law. A writ which lay between those that have common of pasture appendant, or by vicinage, in cases where any one or more of them surcharges the common with more cattle than they ought. Bract. fol. 229*a*; 1 Crabb, Real Prop. p. 318, § 358. The remedy is now abolished in England; 3 Sharsw. Bla. Com. 239, *n.*; and in the United States; 3 Kent 419.

ADMEASUREMENT, WRIT OF. It lay against persons who usurped more than their share, in the two following cases: Admeasurement of dower, and admeasurement of pasture. Termes de la Ley.

ADMENSURATIO. In old English law. Admeasurement. Reg. Orig. 156, 157.

ADMEZATORES. In old Italian law. Persons chosen by the consent of contending parties, to decide questions between them. Literally, mediators. Spelman.

ADMINICLE.

In Scotch Law

An aid or support to something else. A collateral deed or writing, referring to another which has been lost, and which it is in general necessary to produce before the tenor of the lost deed can be proved by parol evidence. Ersk. Inst. b. 4, tit. 1, § 55.

Used as an English word in the statute of 1 Edw. IV. c. 1, in the sense of aid, or support.

In the Civil Law

Imperfect proof. Merl. Répert. See Adminiculum.

ADMINICULAR. Auxiliary or subordinate to. "The murder would be *adminicular* to the robbery," (*i. e.*, committed to accomplish it.) The Marianna Flora, 3 Mason, 121, Fed. Cas. No. 9080.

ADMINICULAR EVIDENCE. In ecclesiastical law. Auxiliary or supplementary evidence; such as is presented for the purpose of explaining and completing other evidence.

ADMINICULATE. To give adminicular evidence.

ADMINICULATOR. An officer in the Romish church, who administered to the wants of widows, orphans, and afflicted persons. Spelman.

ADMINICULUM. Lat. An adminicle; a prop or support; an accessory thing. An aid or support to something else, whether a right or the evidence of one. It is principally used to designate evidence adduced in aid or support of other evidence, which without it is imperfect. Brown.

ADMINISTER. To discharge the duties of an office; to take charge of business; to manage affairs; to serve in the conduct of affairs, in the application of things to their uses; to settle and distribute the estate of a decedent. Hunter v. City of Louisville, 208 Ky. 562, 271 S. W. 690, 691.

Also, to give, as an oath; to direct or cause to be taken. Gilchrist v. Comfort, 34 N. Y. 239; Brinson v. State, 89 Ala. 105, 8 South. 527; State v. Van Wormer, 103 Kan. 309, 173 P. 1076, 1081.

In physiology, and in criminal law, to administer means to cause or procure a person to take some drug or other substance into his or her system; to direct and cause a medicine, poison, or drug to be taken into the system. State v. Jones, 4 Pennewill (Del.) 109, 53 Atl. 861; McCaughey v. State, 156 Ind. 41, 59 N. E. 169; La Beau v. People, 34 N. Y. 223; Sumpter v. State, 11 Fla. 247; Robbins v. State, 8 Ohio St. 131; Aven v. State, 102 Tex. Cr. R. 478, 277 S. W. 1080, 1081; Leary v. State, 14 Ga. App. 797, 82 S. E. 471, 472; People v. Tinnen, 49 Cal. App. 18, 192 P. 557, 561.

Neither fraud nor deception is a necessary ingredient in the act of administering poison. To force poison into the stomach of another; to compel another by threats of violence to swallow poison; to furnish poison to another for the purpose and with the intention that the person to whom it is delivered shall commit suicide therewith, and which poison is accordingly taken by the suicide for that purpose; or to be present at the taking of poison by a suicide, participating in the taking thereof, by assistance, persuasion, or otherwise,—each and all of these are forms and modes of "administering" poison. Blackburn v. State, 23 Ohio St. 146.

ADMINISTRATION. In public law. The administration of government means the practical management and direction of the executive department, or of the public machinery or functions, or of the operations of the various organs of the sovereign. The term "administration" is also conventionally applied to the whole class of public functionaries, or those in charge of the management of the executive department. People v. Salsbury, 134 Mich. 537, 96 N. W. 936; House v. Creveling, 147 Tenn. 589, 250 S. W. 357, 358.

ADMINISTRATION OF ESTATES. The management and settlement of the estate of an intestate, or of a testator who has no executor, performed under the supervision of a court, by a person duly qualified and legally appointed, and usually involving (1) the collection of the decedent's assets; (2) payment of debts and claims against him and expenses; (3) distributing the remainder of the estate among those entitled thereto.

The term is applied broadly to denote the management of an estate by an executor, and also the management of estates of minors, lunatics, etc., in those cases where trustees have been appointed by authority of law to take charge of such estates in place of the legal owners. Bouvier; Crow v. Hubard, 62 Md. 565.

Administration is principally of the following kinds, viz.:

Ad colligendum bona defuncti. To collect the goods of the deceased. Special letters of administration granted to one or more persons, authorizing them to *collect* and preserve the goods of the deceased, are so called. 2 Bl. Comm. 505; 2 Steph. Comm. 241. These are otherwise termed "letters *ad colligendum*,"

and the party to whom they are granted, a "collector."

An administrator *ad colligendum* is the mere agent or officer of the court to collect and preserve the goods of the deceased until some one is clothed with authority to administer them, and can not complain that another is appointed administrator in chief. Flora v. Mennice, 12 Ala. 836.

Ancillary administration is auxiliary and subordinate to the administration at the place of the decedent's domicile; it may be taken out in any foreign state or country where assets are locally situated, and is merely for the purpose of collecting such assets and paying debts there.

Cum testamento annexo. Administration with the will annexed. Administration granted in cases where a testator makes a will, without naming any executors; or where the executors who are named in the will are incompetent to act, or refuse to act; or in case of the death of the executors, or the survivor of them. 2 Bl. Comm. 503, 504.

De bonis non. Administration of the goods not administered. Administration granted for the purpose of administering such *of the goods* of a deceased person as were *not administered* by the former executor or administrator. 2 Bl. Comm. 506; Sims v. Waters, 65 Ala. 442; Clemens v. Walker, 40 Ala. 198; Tucker v. Horner, 10 Phila. (Pa.) 122.

De bonis non cum testamento annexo. That which is granted when an executor dies leaving a part of the estate unadministered. Conklin v. Egerton, 21 Wend. (N. Y.) 430; Clemens v. Walker, 40 Ala. 189.

Durante absentia. That which is granted during the absence of the executor and until he has proved the will.

Durante minori ætate. Where an infant is made executor; in which case administration with will annexed is granted to another, during the minority of such executor, and until he shall attain his lawful age to act. See Godo. 102.

Foreign administration. That which is exercised by virtue of authority properly conferred by a foreign power.

Pendente lite. Administration during the suit. Administration granted during the pendency of a suit touching the validity of a will. 2 Bl. Comm. 503; Cole v. Wooden, 18 N. J. Law, 15, 20.

Public administration is such as is conducted (in some jurisdictions) by an officer called the public administrator, who is appointed to administer in cases where the intestate has left no person entitled to apply for letters.

General administration. The grant of authority to administer upon the entire estate of a decedent, without restriction or limitation, whether under the intestate laws or with the will annexed. Clemens v. Walker, 40 Ala. 198.

Special administration. Authority to administer upon some few particular effects of a decedent, as opposed to authority to administer his whole estate. In re Senate Bill, 12 Colo. 193, 21 P. 482; Clemens v. Walker, 40 Ala. 198.

Letters of Administration

The instrument by which an administrator or administratrix is authorized by the probate court, surrogate, or other proper officer, to have the charge and administration of the goods and chattels of an intestate. See Mutual Ben. L. Ins. Co. v. Tisdale, 91 U. S. 243, 23 L. Ed. 314.

ADMINISTRATION SUIT. In English practice. A suit brought in chancery, by any one interested, for administration of a decedent's estate, when there is doubt as to its solvency. Stimson.

ADMINISTRATIVE. Pertaining to administration. Particularly, having the character of executive or ministerial action. In this sense, administrative functions or acts are distinguished from such as are judicial. People v. Austin, 46 N. Y. Supp. 526, 20 App. Div. 1; Commonwealth v. Benn, 284 Pa. 421, 131 A. 253, 257; Ex parte Taylor, 68 Fla. 61, 66 So. 292, 295, Ann. Cas. 1916A, 701; Western Union Telegraph Co. v. Tax Commission of Ohio (D. C. Ohio) 21 F.(2d) 355, 358; Blue Bus Co. v. Marshall, 116 Ohio St. 116, 155 N. E. 644. Synonymous with "executive." Sheely v. People, 54 Colo. 136, 129 P. 201, 202. An administrative act concerns daily affairs as distinguished from permanent matters. People v. Graham, 70 Colo. 509, 203 P. 277, 278.

ADMINISTRATIVE LAW. That branch of public law which deals with the various organs of the sovereign power considered as in motion, and prescribes in detail the manner of their activity, being concerned with such topics as the collection of the revenue, the regulation of the military and naval forces, citizenship and naturalization, sanitary measures, poor laws, coinage, police, the public safety and morals, etc. See Holl. Jur. 305–307.

ADMINISTRATIVE OFFICER. Politically and as used in constitutional law, an officer of the executive department of government, and generally one of inferior rank; legally, a ministerial or executive officer, as distinguished from a judicial officer. People v. Salsbury, 134 Mich. 537, 96 N. W. 936.

ADMINISTRATIVE REMEDY. One not judicial, but provided by commission or board created by legislative power. Kansas City Southern R. Co. v. Ogden Levee Dist. (C. C. A. Ark.) 15 F.(2d) 637, 642.

ADMINISTRATOR, in the most usual sense of the word, is a person to whom letters of administration, that is, an authority to ad-

minister the estate of a deceased person, have been granted by the proper court. He resembles an executor, but, being appointed by the court, and not by the deceased, he has to give security for the due administration of the estate, by entering into a bond with sureties, called the administration bond. Smith v. Gentry, 16 Ga. 31; Collamore v. Wilder, 19 Kan. 78.

By the law of Scotland the father is what is called the "administrator-in-law" for his children. As such, he is *ipso jure* their tutor while they are pupils, and their curator during their minority. The father's power extends over whatever estate may descend to his children, unless where that estate has been placed by the donor or grantor under the charge of special trustees or managers. This power in the father ceases by the child's discontinuing to reside with him, unless he continues to live at the father's expense; and with regard to daughters, it ceases on their marriage, the husband being the legal curator of his wife. Bell.

In the Civil Law

A manager or conductor of affairs, especially the affairs of another, in his name or behalf. A manager of public affairs in behalf of others. Calvin. A public officer, ruler, or governor. Nov. 95, gl.; Cod. 12, 8.

Domestic Administrator

One appointed at the place of the domicile of the decedent; distinguished from a foreign or an ancillary administrator.

Foreign Administrator

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

Public Administrator

An official provided for by statute in some states to administer upon the property of intestates in certain cases. See Rocca v. Thompson, 223 U. S. 317, 32 S. Ct. 207, 56 L. Ed. 453.

ADMINISTRATRIX. A woman who administers, or to whom letters of administration have been granted.

ADMINISTRAVIT. Lat. He has administered. Used in the phrase *plene administravit*, which is the name of a plea by an executor or administrator to the effect that he has "fully administered" (lawfully disposed of) all the assets of the estate that have come to his hands.

ADMIRAL.

In European Law

An officer who presided over the *admiralitas*, or *collegium ammiralitatis*. Locc. de Jur. Mar. lib. 2, c. 2, § 1.

In Old English Law

A high officer or magistrate that had the government of the king's navy, and the hearing of all causes belonging to the sea. Cowell.

In the Navy

Admiral is also the title of high naval officers; they are of various grades,—rear admiral, vice-admiral, admiral, admiral of the fleet, the last named being the highest. But by Act of Jan. 24, 1873 (17 Stat. 418), certain grades ceased to exist when the offices became vacant.

ADMIRALITAS. L. Lat. Admiralty; the admiralty, or court of admiralty.

In European Law

An association of private armed vessels for mutual protection and defense against pirates and enemies.

ADMIRALTY. A court which has a very extensive jurisdiction of maritime causes, civil and criminal, controversies arising out of acts done upon or relating to the sea, and questions of prize. It is properly the successor of the consular courts, which were emphatically the courts of merchants and sea-going persons, established in the principal maritime cities on the revival of commerce after the fall of the Western Empire, to supply the want of tribunals that might decide causes arising out of maritime commerce.

Also, the system of jurisprudence relating to and growing out of the jurisdiction and practice of the admiralty courts.

In English Law

The court of the admiral, perhaps erected by Edward III, 3 Bla. Comm. 69, or as early as the time of Henry I.

The building where the lords of the admiralty transact business.

See Admiralty, First Lord of the.

In American Law

A tribunal exercising jurisdiction over all maritime contracts, torts, injuries, or offenses. De Lovio v. Boit, 2 Gall. 398, Fed. Cas. No. 3,776; The Huntress, 2 Ware (Dav. 93) 102, Fed. Cas. No. 6,914; Peele v. Ins. Co., 3 Mason, 28, Fed. Cas. No. 10,905; Hale v. Ins. Co., 2 Sto. 176, Fed. Cas. No. 5,916; Ramsey v. Allegre, 12 Wheat. (U. S.) 611, 6 L. Ed. 746; U. S. v. The Sally, 2 Cr. (U. S.) 406, 2 L. Ed. 320; U. S. v. The Betsey, 4 Cr. (U. S.) 444, 2 L. Ed. 673; U. S. v. La Vengeance, 3 Dall. (U. S.) 297, 1 L. Ed. 610; New Jersey Steam Nav. Co. v. Bank, 6 How. (U. S.) 344, 12 L. Ed. 465; Bogart v. The John Jay, 17 How. (U. S.) 399, 15 L. Ed. 95; Thomas v. Osborn, 19 How. (U. S.) 22, 15 L. Ed. 534; Jackson v. The Magnolia, 20 How. (U. S.) 296, 15 L. Ed. 909; Ex parte Easton, 95 U. S. 68, 72, 24 L. Ed. 373; Panama R. Co. v. Johnson, 264 U. S. 375, 44 S. Ct. 391, 68 L. Ed. 748.

ADMIRALTY, FIRST LORD OF THE. The normal head of the executive department of state which presides over the naval forces of the kingdom is the lord high admiral, but in practice the functions of the great office are discharged by several Lords Commissioners, of whom one, being the chief, is called the "First Lord," and is a member of the Cabinet. He is assisted by other lords, called Sea Lords, and by various secretaries.

ADMISSIBLE. Pertinent and proper to be considered in reaching a decision. Used with reference to the issues to be decided in any judicial proceeding.

As applied to evidence, the term means that it is of such a character that the court or judge is bound to receive it; that is, allow it to be introduced.

ADMISSION.

To Practice as Attorney at Law

The act by which attorneys and counsellors become recognized as officers of the court and are allowed to practice.

Of Testimony or Evidence

Admission or concession by a party in pleading or as evidence. See Admissions.

To Membership In Corporation

The act of a corporation or company by which an individual acquires the rights of a member of such corporation or company.

To Bail

The order of a competent court or magistrate that a person accused of crime be discharged from actual custody upon the taking of bail. Comp. Laws Nev. 1900, § 4460 (Comp. Laws 1929, § 11106); Ann. Codes & St. Or. 1901, § 1492 (Code 1930, § 13-1301); People v. Solomon, 5 Utah, 277, 15 Pac. 4; Shelby County v. Simmonds, 33 Iowa, 345. Admitting to bail is a judicial act; and by "allowing bail" or "admitting to bail" is not meant the formal justification, subscription, or acknowledgment by the sureties, the term first mentioned relating to the order determining that the offense is bailable and fixing the amount of undertaking, and "taking the bail" meaning the final acceptance or approval of it by the court. Clatsop County v. Wuopio, 95 Or. 30, 186 P. 547.

In English Ecclesiastical Law

The act of the bishop, who, on approval of the clerk presented by the patron, after examination, declares him fit to serve the cure of the church to which he is presented, by the words "*admitto te habilem*," I admit thee able. Co. Litt. 344*a*; 4 Coke, 79; 1 Crabb, Real Prop. p. 138, § 123.

ADMISSIONALIS. In European law. An usher. Spelman.

ADMISSIONS.

As Evidence

Confessions, concessions or voluntary acknowledgments made by a party of the existence of certain facts. Roosevelt v. Smith, 40 N. Y. S. 381, 17 Misc. 323. More accurately regarded, they are statements by a party, or some one identified with him in legal interest, of the existence of a fact which is relevant to the cause of his adversary. Atlantic Coast Line R. Co. v. Stovall-Pace Co., 30 Ga. App. 326, 118 S. E. 62, 65. They are against the interest of the party making them. Burkhart v. Millikan, 76 Ind. App. 480, 130 N. E. 837, 839; Little Fay Oil Co. v. Stanley, 90 Okl. 265, 217 P. 377, 378.

The term "admission" is usually applied to civil transactions and to these matters of fact in criminal cases which do not involve criminal intent, while the term "confession" is generally restricted to acknowledgments of guilt. People v. Velarde, 59 Cal. 457; Colburn v. Groton, 66 N. H. 151, 28 Atl. 95, 22 L. R. A. 763; State v. Porter, 32 Or. 135, 49 P. 964; People v. Fowler, 178 Cal. 657, 174 P. 892, 894; State v. Stevens, 60 Mont. 390, 199 P. 256, 258; State v. Weston, 102 Or. 102, 201 P. 1083, 1087; State v. Cook, 188 Iowa, 655, 176 N. W. 674, 676; Pringle v. State, 108 Miss. 802, 67 So. 455, 457; People v. Rupert, 316 Ill. 38, 146 N. E. 456, 458; Commonwealth v. Haywood, 247 Mass. 16, 141 N. E. 571, 572; Bates v. Commonwealth, 164 Ky. 1, 174 S. W. 765, 767; Parrish v. State, 90 Fla. 25, 105 So. 130, 133; Beasley v. State, 28 Ga. App. 564, 112 S. E. 168; State v. Lindsey, 26 N. M. 526, 194 P. 877, 878.

Direct, called also *express*, admissions are those which are made in direct terms.

Implied admissions are those which result from some act or failure to act of the party.

Incidental admissions are those made in some other connection, or involved in the admission of some other fact.

Judicial admissions are those made in court by a person's attorney for the purpose of being used as a substitute for the regular legal evidence of the facts at the trial. Probst v. St. Louis Basket & Box Co., 200 Mo. App. 568, 207 S. W. 891, judgment affirmed State ex rel. St. Louis Basket & Box Co. v. Reynolds, 284 Mo. 372, 224 S. W. 401; Clark-Montana Realty Co. v. Butte & Superior Copper Co. (D. C.) 233 F. 547, aff Butte & Superior Copper Co. v. Clark-Montana Realty Co., 248 F. 609, 160 C. C. A. 509, cert den Butte & Superior Copper Co. v. Clark-Montana Realty Co., 38 S. Ct. 581, 247 U. S. 516, 62 L. Ed. 1245, aff 39 S. Ct. 231, 249 U. S. 12, 63 L. Ed. 447; People v. Pretswell, 167 N. W. 1000, 202 Mich. 1; Martin v. State (Okl. Cr. App.) 287 P. 424. Such as are made voluntarily by a party, which appear of record in the proceedings of the court. Formal acts done by a party or his attorney in court on the trial of a cause for the purpose of dispensing with proof by the opposing party of some fact claimed by the latter to be true. Wiley v. Rutland R. Co., 86 Vt. 504, 86 A. 808, 810.

See Acquiescence; Quasi-Admissions.

In Pleading

The acknowledgment or recognition by one party of the truth of some matter alleged by the opposite party, made in a pleading, the effect of which is to narrow the area of facts or allegations required to be proved by evidence. Connecticut Hospital v. Brookfield, 69 Conn. 1, 36 Atl. 1017.

In Equity. Partial admissions are those which are delivered in terms of uncertainty, mixed up with explanatory or qualifying circumstances.

Plenary admissions are those which admit the truth of the matter without qualification, whether it be asserted as from information and belief or as from actual knowledge. See Burrell v. Hackley, 35 F. 833; Schnauffer v. Aste, 148 F. 867; Gouwens v. Gouwens, 222 Ill. 223, 78 N. E. 597, 113 Am. St. Rep. 395; Perry v. United States School Furniture Co., 232 Ill. 101, 83 N. E. 444; Town of Punta Gorda v. Charlotte Realty & Investment Co., 93 Fla. 253, 111 So. 631.

At Law. In pleadings in confession and avoidance, admission of the truth of the opposite party's pleading is made.

Express admissions may be made of matters of fact only. See Confession and Avoidance.

ADMIT. To allow, receive, or take; to suffer one to enter; to give possession; to license. Gregory v. United States, 17 Blatchf. 325, 10 Fed. Cas. 1195.

"Admits," as used in Immigration Act, § 19 (8 USCA § 155), providing for deportation of alien who admits the commission of a felony, means an unequivocal acknowledgment of guilt. Ex parte Tozier (D. C. Me.) 2 F.(2d) 268, 269. See Admission; Admissions.

ADMITTANCE. In English law. The act of giving possession of a copyhold estate. It is of three kinds: (1) Upon a voluntary grant by the lord, where the land has escheated or reverted to him. (2) Upon surrender by the former tenant. (3) Upon descent, where the heir is tenant on his ancestor's death. 2 Bla. Comm. 366.

ADMITTENDO CLERICO. An old English writ issuing to the bishop to establish the right of the Crown to make a presentation to a benefice. A writ of execution upon a right of presentation to a benefice being recovered in *quare impedit*, addressed to the bishop or his metropolitan, requiring him to admit and institute the clerk or presentee of the plaintiff. Reg. Orig. 33*a*.

ADMITTENDO IN SOCIUM. A writ for associating certain persons, as knights and other gentlemen of the county, to justices of assize on the circuit. Reg. Orig. 206.

ADMONISH. To caution or advise. People v. Pennington, 267 Ill. 45, 107 N. E. 871, 872. To counsel against wrong practices, or to warn against danger of an offense. Ft. Smith Light & Traction Co. v. Hendrickson, 126 Ark. 377, 189 S. W. 1064, 1067.

ADMONITION. A reprimand from a judge to a person accused, on being discharged, warning him of the consequences of his conduct, and intimating to him that, should he be guilty of the same fault for which he has been admonished, he will be punished with greater severity. Merlin, *Répert.* The admonition was authorized as a species of punishment for slight misdemeanors. In ecclesiastical law, this is the lightest form of punishment.

Any authoritative oral communication or statement by way of advice or caution by the court to the jury respecting their duty or conduct as jurors, the admissibility or nonadmissibility of evidence, or the purpose for which any evidence admitted may be considered by them. Miller v. Noell, 193 Ky. 659, 237 S. W. 373, 374.

ADMONITO TRINA. The threefold warning given to a prisoner who stood mute, before he was subjected to *peine forte et dure* (*q. v.*). 4 Bl. Comm. 325; 4 Steph. Comm. 391.

ADMORTIZATION. The reduction of property of lands or tenements to mortmain, in the feudal customs.

ADM'R. This abbreviation will be judicially presumed to mean "administrator." Moseley v. Mastin, 37 Ala. 216, 221.

ADNEPOS. The son of a great-great-grandson. Calvinus, Lex.

ADNEPTIS. The daughter of a great-great-granddaughter. Calvinus, Lex.

ADNICHILED. Annulled, canceled, made void. 28 Hen. VIII.

ADNIHILARE. In old English law. To annul; to make void; to reduce to nothing; to treat as nothing; to hold as or for nought.

ADNOTATIO. In the civil law. The subscription of a name or signature to an instrument. Cod. 4, 19, 5, 7.

A rescript (*q. v.*) of the prince or emperor, signed with his own hand, or sign-manual. Cod. 1, 19, 1. "In the imperial law, casual homicide was excused by the indulgence of the emperor, signed with his own sign-manual, *annotatione principis.*" 4 Bl. Comm. 187.

ADOBE. Earth. In arid or desert regions, an alluvial or playa clay from which bricks are made for construction of houses, called "adobe" houses. See Sweeney v. Jackson County, 93 Or. 96, 178 P. 365, 376.

ADOLESCENCE. That age which follows puberty and precedes the age of majority. It commences for males at fourteen, and for females at twelve years, and continues until twenty-one years complete.

ADOPT. To accept, appropriate, choose, or select; to make that one's own (property or act) which was not so originally.

To adopt a route for the transportation of the mail means to take the steps necessary to cause the mail to be transported over that route. Rhodes v. U. S., Dev. Ct. Cl. 47. To adopt a contract is to accept it as binding, notwithstanding some defect which entitles the party to repudiate it. Thus, when a person affirms a voidable contract, or ratifies a contract made by his agent beyond his authority, he is sometimes said to adopt it. Sweet. Strictly, however, the word "adopt" should be used to apply to void transactions, while the word "ratify" should be limited to the final approval of a voidable transaction by one who theretofore had the optional right to relieve himself from its obligations. Cosden Oil & Gas Co. v. Hendrickson, 96 Okl. 206, 221 P. 86, 89; United German Silver Co. v. Bronson, 92 Conn. 266, 102 A. 647, 648. "Adoption" of a contract by one not a party thereto is of the nature of a novation. Edwards v. Heralds of Liberty, 263 Pa. 548, 107 A. 324, 326. See Affirm.

To accept, consent to, and put into effective operation; as in the case of a constitution, constitutional amendment, ordinance, or by-law. Real v. People, 42 N. Y. 282; People v. Norton, 59 Barb. (N. Y.) 191.

Adopting a Code. Legislature's employment of such words imports an intention to incorporate into a statute, or to enact and make of force as a statute, every provision in the entire work under consideration. City of Albany v. Nix, 21 Ala. App. 164, 106 So. 199, 200; Baugh v. City of La Grange, 161 Ga. 80, 130 S. E. 69, 71.

To take into one's family the child of another and give him or her the rights, privileges, and duties of a child and heir. State v. Thompson, 13 La. Ann. 515; Abney v. De Loach, 84 Ala. 393, 4 South. 757; In re Sessions' Estate, 70 Mich. 297, 38 N. W. 249, 14 Am. St. Rep. 500; Smith v. Allen, 32 App. Div. 374, 53 N. Y. Supp. 114.

Adoption of children was a thing unknown to the common law, but was a familiar practice under the Roman law and in those countries where the civil law prevails, as France and Spain. Modern statutes authorizing adoption are taken from the civil law, and to that extent modify the rules of the common law as to the succession of property. Butterfield v. Sawyer, 187 Ill. 598, 58 N. E. 602, 52 L. R. A. 75, 79 Am. St. Rep. 246; Vidal v. Commagere, 13 La. Ann. 516; Eckford v. Knox, 67 Tex. 200, 2 S. W. 372.

Adoption and legitimation. Adoption, properly speaking, refers only to persons who are strangers in blood (In re Landers' Estate, 166 N. Y. S. 1036, 1038, 100 Misc. 635; Marshall v. Marshall, 196 Cal. 761, 239 P. 36, 37), and is not synonymous with "legitimation," which refers to persons of the same blood. Where one acknowledges his illegitimate child and takes it into his family and treats it as if it were legitimate, it is not properly an "adoption" but a "legitimation." Blythe v. Ayres, 96 Cal. 532, 31 P. 915, 19 L. R. A. 40. But this distinction is not always observed. In re Presly's Estate, 113 Okl. 160, 240 P. 89, 90.

To accept an alien as a citizen or member of a community or state and invest him with corresponding rights and privileges, either (in general and untechnical parlance) by naturalization, or by an act equivalent to naturalization, as where a white man is "adopted" by an Indian tribe. Hampton v. Mays, 4 Ind. T. 503, 69 S. W. 1115.

ADOPTION. The act of one who takes another's child into his own family, treating him as his own, and giving him all the rights and duties of his own child. See In re Chambers' Estate, 183 N. Y. S. 526, 528, 112 Misc. 551. A juridical act creating between two persons certain relations, purely civil, of paternity and filiation. 6 Demol. § 1. The relation thereby created is a statutory status, not a contractual relation. Ellis v. Nevius Coal Co., 100 Kan. 187, 163 P. 654; Wells v. Zenz, 83 Cal. App. 137, 256 P. 484, 487. Though legal adoption may confer on person adopted rights of actual relationship of child, simple "adoption" extends only to his treatment as member of the household. Zimmerman v. Thomas, 152 Md. 263, 136 A. 637, 639; Ellis v. Nevius Coal Co., 100 Kan. 187, 163 P. 654. See, also, Adopt.

ADOPTIVE ACT. An act of legislation which comes into operation within a limited area upon being adopted, in manner prescribed therein, by the inhabitants of that area.

ADOPTIVUS. Lat. Adoptive. Applied both to the parent adopting, and the child adopted. Inst. 2, 13, 4; Id. 3, 1, 10–14.

ADPROMISSOR. In the civil and Scotch law. A guarantor, surety, or cautioner; a peculiar species of *fidejussor;* one who adds his own promise to the promise given by the principal debtor, whence the name.

ADQUIETO. Payment. Blount.

ADRECTARE. To set right, satisfy, or make amends.

ADRHAMIRE. In old European law. To undertake, declare, or promise solemnly; to pledge; to pledge one's self to make oath. Spelman.

ADRIFT. Sea-weed, between high and low water-mark, which has not been deposited on the shore, and which during flood-tide is moved by each rising and receding wave, is *adrift,* although the bottom of the mass may touch the beach. Anthony v. Gifford, 2 Allen (Mass.) 549.

ADROGATION. In the civil law. The adoption of one who was *impubes;* that is, if a male, under fourteen years of age; if a female, under twelve. Dig. 1, 7, 17, 1.

ADS. An abbreviation for *ad sectam* (q. v.), meaning "at the suit of." Bowen v. Sewing Mach. Co., 86 Ill. 11.

ADSCENDENTES. Lat. In the civil law. Ascendants. Dig. 23, 2, 68; Cod. 5, 5, 6.

ADSCRIPTI. See Adscriptus.

ADSCRIPTI GLEBÆ. Slaves who served the master of the soil, who were annexed to the land, and passed with it when it was conveyed. Calvinus, Lex.

In Scotland, as late as the reign of George III., laborers in collieries and salt works were bound to the coal-pit or salt work in which they were engaged, in a manner similar to that of the *adscripti* of the Romans. Bell. These *servi adscripti* (or *adscriptitii*) *glebæ* held the same position as the *villeins regardant* of the Normans; 2 Bla. Com. 93. See 1 Poll. & Mait. 372.

ADSCRIPTITII. Lat. A species of serfs or slaves. See 1 Poll. & Mait. 372.

Those persons who were enrolled and liable to be drafted as legionary soldiers. Calvinus, Lex.

ADSCRIPTUS. In the civil law. Added, annexed, or bound by or in writing; enrolled, registered; united, joined, annexed, bound to, generally. *Servus colonæ adscriptus*, a slave annexed to an estate as a cultivator. Dig. 19, 2, 54, 2. *Fundus adscriptus*, an estate bound to, or burdened with a duty. Cod. 11, 2, 3.

ADSESSORES. Side judges. Assistants or advisers of the regular magistrates, or appointed as their substitutes in certain cases. Calvinus, Lex. See Assessor.

ADSTIPULATOR. In Roman law. An accessory party to a promise, who received the same promise as his principal did, and could equally receive and exact payment; or he only stipulated for a part of that for which the principal stipulated, and then his rights were coextensive with the amount of his own stipulation. One who supplied the place of a procurator at a time when the law refused to allow stipulations to be made by procuration. Sandars, Just. Inst. (5th Ed.) 348.

ADULT.

In the Civil Law

A male infant who has attained the age of fourteen; a female infant who has attained the age of twelve. Dom. Liv. Prel. tit. 2, § 2, n. 8.

In the Common Law

One who has attained the legal age of majority, generally 21 years, though in some states women are legally "adults" at 18. Schenault v. State, 10 Tex. App. 410; George v. State, 11 Tex. App. 95; Wilson v. Lawrence, 70 Ark. 545, 69 S. W. 570.

ADULTER. Lat. One who corrupts; one who seduces another man's wife. *Adulter solidorum.* A corruptor of metals; a counterfeiter. Calvinus, Lex.

ADULTERA. In the civil law. An adulteress; a woman guilty of adultery. Dig. 48, 5, 4, pr.; Id. 48, 5, 15, 8.

ADULTERATION. The act of corrupting or debasing; the act of mixing something impure or spurious with something pure or genuine, or an inferior article with a superior one of the same kind. State v. Norton, 24 N. C. 40. The term is generally applied to the act of mixing up with food or drink intended to be sold other matters of an inferior quality, and usually of a more or less deleterious quality. Grosvenor v. Duffy, 121 Mich. 220, 80 N. W. 19; Com. v. Hufnal, 185 Pa. 376, 39 A. 1052; People v. West, 44 Hun (N. Y.) 162.

ADULTERATOR. Lat. A corrupter. In the civil law. A forger; a counterfeiter. *Adulteratores monetæ*, counterfeiters of money. Dig. 48, 19, 16, 9.

ADULTERINE. Begotten in an adulterous intercourse. Those are not deemed adulterine who are begotten of a woman openly married through ignorance of a former wife being alive. In the Roman and canon law, adulterine bastards were distinguished from such as were the issue of two unmarried persons, and the former were treated with more severity, not being allowed the *status* of natural children, and being ineligible to holy orders.

ADULTERINE BASTARDS. The offspring of adulterous relations. Kotzke v. Kotzke's Estate, 205 Mich. 184, 171 N. W. 442, 443. See, also, Adulterous Bastards.

ADULTERINE GUILDS. Traders acting as a corporation without a charter, and paying a fine annually for permission to exercise their usurped privileges. Smith, Wealth Nat. b. 1, c. 10.

ADULTERIUM. A fine anciently imposed for the commission of adultery.

ADULTEROUS BASTARDS. Those produced by an unlawful connection between two persons, who at the time when the child was conceived, were, either of them or both, connected by marriage with some other person. Civil Code La. art. 182.

ADULTERY. Voluntary sexual intercourse of a married person with a person other than the offender's husband or wife. People v. Martin, 180 Ill. App. 578, 580; Signs v. State, 35 Okl. Cr. 340, 250 P. 938, 940; State v. Ellis, 1 W. W. Harr. (Del.) 156, 112 A. 172, 173; State v. Ling, 91 Kan. 647, 138 P. 582, Ann. Cas. 1915D, 374; Civil Code Cal. § 93; 1 Bish. Mar. & Div. § 703; Cook v. State, 11 Ga. 53, 56 Am. Dec. 410; State v. Mahan, 81 Iowa, 121, 46 N. W. 855; Banks v. State, 96 Ala. 78, 11 South. 404.

A wife did not commit "adultery" where, due to insanity, the element of intent was lacking. Laudo v. Laudo, 177 N. Y. S. 396, 188 App. Div. 699.

It is sometimes said that the term "adultery" has no technical meaning in law distinct from its ordinary sense. State v. Hart, 30 N. D. 368, 152 N. W. 672, 673.

In some states, however, as was also true under the Roman and Jewish law, this crime is committed only when the *woman* is married to a third person; the unlawful commerce of a married man with an unmarried woman not being of the grade of adul-

tery. Com. v. Call, 21 Pick. (Mass.) 509, 32 Am. Dec. 284, and note; Com. v. Elwell, 2 Metc. 190, 39 Am. Dec. 398. In other jurisdictions, both parties are guilty of adultery, even though only one of them is married. Goodwin v. State, 158 S. W. 274, 275, 70 Tex. Cr. R. 600; State v. Alamanio, 104 A. 66, 67, 7 Boyce (Del.) 133. In some jurisdictions, also, a distinction is made between double and single adultery, the former being committed where both parties are married to other persons, the latter where one only is so married. State v. Fellows, 50 Wis. 65, 6 N. W. 239; State v. Searle, 56 Vt. 516; State v. Lash, 16 N. J. Law, 380, 32 Am. Dec. 397; Hood v. State, 56 Ind. 263, 26 Am. Rep. 21; State v. Connoway, Tapp. (Ohio) 90; State v. Weatherby, 43 Me. 258, 69 Am. Dec. 59; Hunter v. U. S., 1 Pin. (Wis.) 91, 39 Am. Dec. 277.

The term "criminal conversation" (q. v.), in its general and comprehensive sense, is synonymous with "adultery" (Rash v. Pratt, 1 W. W. Harr. (Del.) 18, 111 A. 225, 228); but in its more limited and technical signification it is adultery in the aspect of a tort. Turner v. Heavrin, 182 Ky. 65, 206 S. W. 23, 4 A. L. R. 562.

Open and Notorious Adultery

To constitute living in open and notorious adultery, the parties must reside together publicly in the face of society, as if conjugal relations existed between them, and their so living and the fact that they are not husband and wife must be known in the community. Gill v. State, 32 Okl. Cr. 278, 240 P. 1073, 1075; Burns v. State, 17 Okl. Cr. 26, 182 P. 738, 739; Copeland v. State, 133 P. 258, 10 Okl. Cr. 1. See, also, People v. Stern, 207 Ill. App. 154; McCullough v. State, 107 Tex. Cr. R. 258, 296 S. W. 530.

ADVANCE, *v.* To pay money or render other value before it is due; to furnish something before an equivalent is received; to loan; to furnish capital in aid of a projected enterprise, in expectation of return from it. Powell v. Allan, 70 Cal. App. 663, 234 P. 339, 344; Houghton v. Jacobs (Mo. Sup.) 246 S. W. 285, 287; William F. Mosser Co. v. Cherry River Boom & Lumber Co., 290 Pa. 67, 138 A. 85, 87.

An agreement to "advance" money for personal property implies a loan with property as pledge, rather than a payment of purchase money in sale. Shelley v. Byers, 73 Cal. App. 44, 238 P. 177, 182.

ADVANCEMENT. Money or property given by a parent to his child or, sometimes, presumptive heir, or expended by the former for the latter's benefit, by way of anticipation of the share which the child will inherit in the parent's estate and intended to be deducted therefrom. It is the latter circumstance which differentiates an advancement from a gift or a loan. Holland v. Bonner, 142 Ark. 214, 218 S. W. 665, 667, 26 A. L. R. 1101; Nobles v. Davenport, 183 N. C. 207, 111 S. E. 180, 181, 26 A. L. R. 1086; Brewer's Adm'r v. Brewer, 181 Ky. 400, 205 S. W. 393, 396; Stenson v. H. S. Halvorson Co., 28 N. D. 151, 147 N. W. 800, 801, L. R. A. 1915A, 1179, Ann. Cas. 1916D, 1289; Grattan v. Grattan, 18 Ill. 167, 65 Am. Dec. 726; Beringer v. Lutz, 188 Pa. 364, 41 A. 643; Daugherty v. Rogers, 119 Ind. 254, 20 N. E. 779, 3 L. R. A. 847; Hattersley v. Bissett, 51 N. J. Eq. 597, 20 A. 187, 40 Am. St. Rep. 532; Chase v. Ewing, 51 Barb. (N. Y.) 597; Osgood v. Breed, 17 Mass. 356; Nicholas v. Nicholas, 100 Va. 660, 42 S. E. 669; Moore v. Freeman, 50 Ohio St. 592, 35 N. E. 502; Appeal of Porter, 94 Pa. 332; Bissell v. Bissell, 120 Iowa, 127, 94 N. W. 465; In re Allen's Estate, 207 Pa. 325, 56 A. 928.

"Advancement," unlike "ademption" (q. v.), applies only to cases of intestacy. Ellard v. Ferris, 91 Ohio St. 339, 110 N. E. 476, 479, L. R. A. 1916C, 613; Harper v. Harris (C. C. A. N. M.) 294 F. 44, 46, 32 A. L. R. 727. To constitute an "advancement," the donor must irrevocably part with his title in the subject-matter, and such title must become vested in the donee during the lifetime of the donor. Greene v. Greene, 145 Miss. 87, 110 So. 218, 222, 49 A. L. R. 565. Whether there was an advancement or not depends on the intention of the donor. Leach v. Leach, 162 Minn. 159, 202 N. W. 448, 449; Payne v. Payne, 128 Va. 33, 104 S. E. 712, 714.

Advancement, in its legal acceptation, does not involve the idea of obligation or future liability to answer. It is a pure and irrevocable gift made by a parent to a child in anticipation of such child's future share of the parent's estate. In re Long's Estate, 254 Pa. 370, 98 A. 1066, 1068; Fell v. Bradshaw, 205 Iowa, 100, 215 N. W. 595; Appeal of Yundt, 13 Pa. 580, 53 Am. Dec. 496. An advancement is any provision by a parent made to and accepted by a child out of his estate, either in money or property, during his life-time, over and above the obligation of the parent for maintenance and education. Code Ga. 1882, § 2579 (Civ. Code 1926, § 4052). An "advancement by portion," within the meaning of the statute, is a sum given by a parent to establish a child in life, (as by starting him in business,) or to make a provision for the child, (as on the marriage of a daughter). L. R. 20 Eq. 155. See Ademption; Gift.

ADVANCES. Moneys paid before or in advance of the proper time of payment; money or commodities furnished on credit; a loan or gift, or money advanced to be repaid conditionally. Vail v. Vail, 10 Barb. (N. Y.) 69; Laflin, etc., Powder Co. v. Burkhardt, 97 U. S. 110, 24 L. Ed. 973.

This word, when taken in its strict legal sense, does not mean gifts, (advancements,) and does mean a sort of loan; and, when taken in its ordinary and usual sense, it includes both loans and gifts,—loans more readily, perhaps, than gifts. Nolan v. Bolton, 25 Ga. 355; Linderman v. Carmin, 255 Mo. 62, 164 S. W. 614, 617; Landrum & Co. v. Wright, 11 Ala. App. 406, 66 So. 892.

Payments advanced to the owner of property by a factor or broker on the price of goods which the latter has in his hands, or is to receive, for sale.

"Loans" are repayable at maturity, while "advances" are not repaid by party receiving them, but are covered by proceeds of consigned goods. People ex rel. James Talcott, Inc., v. Goldfogle, 211 N. Y. S. 122, 123, 213 App. Div. 719.

ADVANTAGE. Preference or priority. United States v. Preston, 4 Wash. 446, Fed. Cas. No. 16,087.

ADVANTAGIUM. In old pleading. An advantage. Co. Ent. 484; Townsh. Pl. 50.

ADVENA. In Roman law. One of foreign birth, who has left his own country and settled elsewhere, and who has not acquired citizenship in his new locality; often called *albanus*. Du Cange.

ADVENT. A period of time recognized by the English common and ecclesiastical law, beginning on the Sunday that falls either upon St. Andrew's day, being the 30th of November, or the next to it, and continuing to Christmas day. Wharton.

ADVENTITIOUS. That which comes incidentally, fortuitously, or out of the regular course. "Adventitious value" of lands, see Central R. Co. v. State Board of Assessors, 49 N. J. Law, 1, 7 A. 306.

ADVENTITIUS. Lat. Fortuitous; incidental; coming from an unusual source. *Adventitia bona* are goods which fall to a man otherwise than by inheritance. *Adventitia dos* is a dowry or portion given by some friend other than the parent.

ADVENTURA. An adventure. 2 Mon. Angl. 615; Townsh. Pl. 50. Flotson, jetson, and lagon are styled *adventuræ maris*, (adventures of the sea.) Hale, De Jure Mar. pt. 1, c. 7.

ADVENTURE.

In Mercantile Law

Sending goods abroad under charge of a supercargo or other agent, at the risk of the sender, to be disposed of to the best advantage for the benefit of the owners.

The goods themselves so sent.

In Marine Insurance

A very usual word in policies of marine insurance, and everywhere used as synonymous, or nearly so, with "perils." It is often used by the writers to describe the enterprise or voyage as a "marine adventure" insured against. Moores v. Louisville Underwriters (C. C.) 14 Fed. 233.

In General

—Adventure, bill of. In mercantile law. A writing signed by a merchant, stating that the property in goods shipped in his name belongs to another, to the adventure or chance of which the person so named is to stand, with a covenant from the merchant to account to him for the produce.

—Gross adventure. In maritime law. A loan on bottomry. So named because the lender, in case of a loss, or expense incurred for the common safety, must contribute to the *gross* or general average.

—Joint adventure. A commercial or maritime enterprise undertaken by several persons jointly; a limited partnership,—not limited in the statutory sense as to the liability of the partners, but as to its scope and duration. Ross v. Willett, 76 Hun, 211, 27 N. Y. S. 785; Lobsitz v. E. Lissberger Co., 168 App. Div. 840, 154 N. Y. S. 556, 557. A special partnership. McDaniel v. State Fair of Texas (Tex. Civ. App.) 286 S. W. 513, 517. An association of two or more persons to carry out a single business enterprise for profit, for which purpose they combine their property, money, effects, skill, and knowledge. Forman v. Lumm, 214 App. Div. 579, 212 N. Y. S. 487, 491; Fletcher v. Fletcher, 206 Mich. 153, 172 N. W. 436, 440; Hey v. Duncan (C. C. A. Ill.) 13 F.(2d) 794, 795; Sanders v. Newman, 174 Wis. 321, 181 N. W. 822, 824; Wilson v. Maryland, 152 Minn. 506, 189 N. W. 437, 438. A special combination of two or more persons, where, in some specific adventure, a profit is jointly sought, without any actual partnership or corporate designation. Griffin v. Reilly (Tex. Civ. App.) 275 S. W. 242, 246; Perry v. Morrison, 118 Okl. 212, 247 P. 1004, 1006; Dexter & Carpenter v. Houston (C. C. A. Va.) 20 F.(2d) 647, 651. It is ordinarily, but not necessarily, limited to a single transaction, Forbes v. Butler, 66 Utah, 373, 242 P. 950, 956, which serves to distinguish it from a partnership, Barry v. Kern, 184 Wis. 266, 199 N. W. 77, 78. But the business of conducting it to a successful termination may continue for a number of years. Elliott v. Murphy Timber Co., 117 Or. 387, 244 P. 91, 93, 48 A. L. R. 1043. There is no real distinction between a "joint adventure" and what is termed a "partnership for a single transaction." Atlas Realty Co. v. Galt, 153 Md. 586, 139 A. 285, 286. A "joint adventure," while not identical with a partnership, is so similar in its nature and in the relations created thereby that the rights of the parties as between themselves are governed practically by the same rules that govern partnerships. Goss v. Lanin, 170 Iowa, 57, 152 N. W. 43, 45; Boles v. Akers, 116 Okl. 266, 244 P. 182, 184; Fried v. Guiberson, 30 Wyo. 150, 217 P. 1087, 1089; Welling v. Crosland, 129 S. C. 127, 123 S. E. 776, 781.

ADVENTURER. One who undertakes uncertain or hazardous actions or enterprises. It is also used to denote one who seeks to advance his own interests by unscrupulous designs on the credulity of others. It has been held that to impute that a person is an adventurer is a libel; 18 L. J. C. P. 241.

ADVERSARIA. (From Lat. *adversa*, things remarked or ready at hand.) Rough memoranda, common-place books.

ADVERSARY. A litigant-opponent, the opposite party in a writ or action.

ADVERSARY PROCEEDING. One having opposing parties; contested, as distinguished from an *ex parte* application; one of which the party seeking relief has given legal warning to the other party, and afforded the latter an opportunity to contest it. Excludes an

adoption proceeding. Platt v. Magagnini, 110 Wash. 39, 187 P. 716, 718.

ADVERSE. Opposed; contrary; in resistance or opposition to a claim, application, or proceeding.

ADVERSE INTEREST. The "adverse interest" of a witness, so as to permit cross-examination by the party calling him, must be so involved in the event of the suit that a legal right or liability will be acquired, lost, or materially affected by the judgment, and must be such as would be promoted by the success of the adversary of the party calling him. Dinger v. Friedman, 279 Pa. 8, 123 A. 641, 643.

As to adverse "Claim," "Enjoyment," "Possession," "User," "Verdict," "Witness," see those titles.

ADVERSE PARTY. An "adverse party" entitled to notice of appeal is every party whose interest in relation to the judgment or decree appealed from is in conflict with the modification or reversal sought by the appeal; every party interested in sustaining the judgment or decree. Harrigan v. Gilchrist, 121 Wis. 127, 99 N. W. 909; Mohr v. Byrne, 132 Cal. 250, 64 Pac. 257; Fitzgerald v. Cross, 30 Ohio St. 444; In re Clarke, 74 Minn. 8, 76 N. W. 790; Herriman v. Menzies, 115 Cal. 16, 44 Pac. 660, 35 L. R. A. 318, 56 Am. St. Rep. 81; Pacific Live Stock Co. v. Ellison Ranching Co., 45 Nev. 1, 192 P. 262; Wyoming Hereford Ranch v. Hammond Pacing Co., 31 Wyo. 31, 222 P. 1027, 1028; Fairchild v. Plank, 189 Iowa, 639, 179 N. W. 64, 67; In re Chewaucan River, 89 Or. 659, 171 P. 402, 175 P. 421, 427; In re McGovern's Estate, 77 Mont. 182, 250 P. 812, 815; Texas Employers' Ins. Ass'n v. Shilling (Tex. Com. App.) 289 S. W. 996, 997. Any party who would be prejudicially affected by a modification or reversal of the judgment appealed from. Wright v. Spencer, 38 Idaho, 447, 221 P. 846; Great Falls Nat. Bank v. Young, 67 Mont. 328, 215 P. 651, 652.

A party who, by the pleadings, is arrayed on the opposite side. Merrill v. St. Paul City Ry. Co., 170 Minn. 332, 212 N. W. 533. The other party to the action. Highland v. Hines, 80 N. H. 179, 116 A. 347, 349. A party to the record for, or against, whom judgment is sought. Merchants' Supply Co. v. Hughes Ex'rs, 139 Va. 212, 123 S. E. 355, 356.

In a statute requiring that case-made shall be served on "opposite" party, opposite is synonymous with "adverse." In re Wah-shah-she-me-tsa-he's Estate, 111 Okl. 177, 239 P. 177, 178. And the term "adverse party" is not necessarily confined to plaintiffs as against defendants, or vice versa. Lidfors v. Pflaum, 115 Or. 142, 205 P. 277; Arwood v. Hill's Adm'r, 135 Va. 235, 117 S. E. 603, 605.

A defaulting defendant is not an "adverse party"; Syracuse Mortgage Corporation v. Kepler, 202 N. Y. S. 193, 122 Misc. 95; Holt v. Empey, 32 Idaho, 106, 178 P. 703; nor is one who is named as a party but is not served; Kissler v. Moss, 26 Idaho, 516, 144 P. 647. Compare Fergen v. Lonie, 50 S. D. 328, 210 N. W. 102, 103 (garnishment debtor not served in garnishment proceeding).

ADVERSUS. In the civil law. Against, (*contra.*) *Adversus bonos mores*, against good morals. Dig. 47, 10, 15.

Adversus extraneos vitiosa possessio prodesse solet. Prior possession is a good title of ownership against all who cannot show a better. D. 41. 2. 53; Salmond, Jurispr. 638.

ADVERTISE. To give public notice; Green v. Blanchard, 138 Ark. 137, 211 S. W. 375, 379, 5 A. L. R. 84; either by publication in a newspaper, or by means of hand bills, placards, or other written public notices; Nichols v. Nichols, 192 Ala. 206, 68 So. 186, 187. To inform, publish; Arthur v. City of Petaluma, 27 Cal. App. 782, 151 P. 183, 185; or call to the public attention by any means whatsoever; Commonwealth v. Allison, 227 Mass. 57, 116 N. E. 265, 266; Van Doorn v. U. S., 12 Ct. Cust. App. 167, 168; In re Donovan, 43 S. D. 98, 178 N. W. 143, 144 (advertising as a divorce lawyer by publishing a booklet containing newspaper clippings).

"Advertising" is merely identification and description, apprising of quality and place, Rast v. Van Deman & Lewis Co., 36 S. Ct. 370, 377, 240 U. S. 342, 60 L. Ed. 679, L. R. A. 1917A, 421, Ann. Cas. 1917B, 455; and "advertising purposes" are not limited to matters of vocation, or even avocation, but include advertisements essentially for unselfish purposes, Almind v. Sea Beach Ry. Co., 141 N. Y. S. 842, 843, 157 App. Div. 230.

ADVERTISEMENT. Notice given in a manner designed to attract public attention; information communicated to the public, or to an individual concerned, as by handbills or the newspaper. Montford v. Allen, 111 Ga. 18, 36 S. E. 305; Haffner v. Barnard, 123 Ind. 429, 24 N. E. 152; Com. v. Johnson, 3 Pa. Dist. R. 222; People v. McKean, 76 Cal. App. 114, 243 P. 898, 900; Fauntleroy v. Mardis, 123 Miss. 353, 85 So. 96, 97.

A sign-board, erected at a person's place of business, giving notice that lottery tickets are for sale there, is an "advertisement," within the meaning of a statute prohibiting the advertising of lotteries. Com. v. Hooper, 5 Pick. (Mass.) 42.

ADVERTISEMENTS OF QUEEN ELIZABETH. Certain articles or ordinances drawn up by Archbishop Parker and some of the bishops in 1564, at the request of Queen Elizabeth, the object of which was to enforce decency and uniformity in the ritual of the church. The queen subsequently refused to give her official sanction to these advertisements, and left them to be enforced by the bishops under their general powers. Phillim. Ecc. Law, 910; 2 Prob. Div. 276; Id. 354.

ADVICE. View; opinion; the counsel given by lawyers to their clients; an opinion expressed as to wisdom of future conduct.

The instruction usually given by one merchant or banker to another by letter, inform-

ing him of shipments made to him, or of bills or drafts drawn on him, with particulars of date, or sight, the sum, and the payee. Bills presented for acceptance or payment are frequently dishonored for *want of advice.*

Letter of Advice

A communication from one person to another, advising or warning the latter of something which he ought to know, and commonly apprising him beforehand of some act done by the writer which will ultimately affect the recipient. It is usual and perfectly proper for the drawer of a bill of exchange to write a letter of advice to the drawee, as well to prevent fraud or alteration of the bill, as to let the drawee know what provision has been made for the payment of the bill. Chit. Bills, 162.

ADVISARE, ADVISARI. Lat. To consult, deliberate, consider, advise; to be advised. Occurring in the phrase *curia advisari vult,* which see (usually abbreviated *cur. adv. vult,* or *C. A. V.,*) the court wishes to be advised, or to consider of the matter.

ADVISE. To give an opinion or counsel, or recommend a plan or course of action; also to give notice. Long v. State, 23 Neb. 33, 36 N. W. 310. To encourage. Voris v. People, 75 Colo. 574, 227 P. 551, 553.

This term is not synonymous with "persuade" (Wilson v. State, 38 Ala. 411), or with "direct" or "instruct." Where a statute authorizes the trial court to *advise* the jury to acquit, the court has no power to *instruct* the jury to acquit. The court can only counsel, and the jury are not bound by the advice. People v. Horn, 70 Cal. 17, 11 P. 470. "Advise" imports that it is discretionary or optional with the person addressed whether he will act on such advice or not. State v. Downing, 23 Idaho, 540, 130 P. 461, 462; Brown v. Brown, 180 N. C. 433, 104 S. E. 889, 890.

ADVISED. Prepared to give judgment, after examination and deliberation. "The court took time to be advised." 1 Leon. 187.

ADVISEDLY. With deliberation; intentionally. 15 Moore P. C. 147.

ADVISEMENT. Deliberation, consideration, consultation; the consultation of a court, after the argument of a cause by counsel, and before delivering their opinion. Clark v. Read, 5 N. J. Law, 486; In re Hohorst, 150 U. S. 662, 14 Sup. Ct. 221, 37 L. Ed. 1211.

ADVISORY. Counselling, suggesting, or advising, but not imperative or conclusive. A verdict on an issue out of chancery is advisory. Watt v. Starke, 101 U. S. 252, 25 L. Ed. 826.

ADVOCACY. The act of pleading for, supporting, or recommending active espousal. Gitlow v. People of State of New York, 45 S. Ct. 625, 626, 268 U. S. 652, 69 L. Ed. 1138.

ADVOCARE. Lat. To defend; to call to one's aid; to vouch; to warrant.

ADVOCASSIE. L. Fr. The office of an advocate; advocacy. Kelham.

ADVOCATA. In old English law. A patroness; a woman who had the right of presenting to a church. Spelman.

ADVOCATE, *v.* To speak in favor of; defend by argument. Ex parte Bernat (D. C.) 255 F. 429, 432.

ADVOCATE, *n.* One who assists, defends, or pleads for another; one who renders legal advice and aid and pleads the cause of another before a court.

A person learned in the law, and duly admitted to practice, who assists his client with advice, and pleads for him in open court. Holthouse.

An assistant; adviser; a pleader of causes.

Derived from *advocare,* to summon to one's assistance; *advocatus* originally signified an assistant or helper of any kind, even an accomplice in the commission of a crime; Cicero, *Pro Cœcina,* c. 8; Livy, lib. ii. 55; iii. 47; Tertullian, *De Idolatr.* cap. xxiii.; Petron. *Satyric.* cap. xv. Secondarily, it was applied to one called in to assist a party in the conduct of a suit; Inst. 1, 11, D, 50, 13. *de extr. cogn.* Hence, a pleader, which is its present signification.

In the Civil and Ecclesiastical Law

An officer of the court, learned in the law, who is engaged by a suitor to maintain or defend his cause.

In General

—Advocate general. The adviser of the crown in England on questions of naval and military law.

—Lord Advocate. The principal crown lawyer in Scotland, and one of the great officers of state of Scotland. It is his duty to act as public prosecutor; but private individuals injured may prosecute upon obtaining his concurrence. He is assisted by a solicitor general and four junior counsel, termed "advocates-depute." He has the power of appearing as public prosecutor in any court in Scotland, where any person can be tried for an offense, or in any action where the crown is interested. Wharton.

—Queen's advocate. A member of the College of Advocates, appointed by letters patent, whose office is to advise and act as counsel for the crown in questions of civil, canon, and international law. His rank is next after the solicitor general.

ADVOCATI. Lat. In Roman law. Patrons; pleaders; speakers.

ADVOCATI ECCLESIÆ. Advocates of the church. A term used in the ecclesiastical law to denote the patrons of churches who presented to the living on an avoidance. This term was also applied to those who were retained to argue the cases of the church. These were of two sorts: those retained as pleaders

to argue the cases of the church and attend to its law-matters; and advocates, or patrons of the advowson. Cowell; Spelman, Gloss.

ADVOCATI FISCI. In civil law. Those chosen by the emperor to argue his cause whenever a question arose affecting his revenues. 3 Bla. Comm. 27. Advocates of the fisc, or revenue; fiscal advocates, (*qui causam fisci egissent.*) Cod. 2, 9, 1; Id. 2, 7, 13. Answering, in some measure, to the king's counsel in English law.

ADVOCATIA. In the civil law. The quality, function, privilege, or territorial jurisdiction of an advocate.

The functions, duty, or privilege of an advocate. Du Cange, *Advocatia.*

ADVOCATION. In Scotch law. A process by which an action may be carried from an inferior to a superior court before final judgment in the former.

ADVOCATIONE DECIMARUM. A writ which lay for tithes, demanding the fourth part or upwards, that belonged to any church.

ADVOCATOR.

In Old Practice

One who called on or vouched another to warrant a title; a voucher. *Advocatus;* the person called on, or vouched; a vouchee. Spelman; Townsh. Pl. 45.

In Scotch Practice

An appellant. 1 Broun, R. 67.

ADVOCATUS. A pleader; a narrator. Bracton, 412 *a*, 372 *b*.

In the civil law. An advocate; one who managed or assisted in managing another's cause before a judicial tribunal. Called also "*patronus.*" Cod. 2, 7, 14. But distinguished from *causidicus.* Id. 2, 6, 6.

ADVOCATUS DIABOLI. In ecclesiastical law. The devil's advocate; the advocate who argues against the canonization of a saint.

Advocatus est, ad quem pertinet jus advocationis alicujus ecclesiæ, ut ad ecclesiam, nomine proprio, non alieno, possit præsentare. A patron is he to whom appertains the right of presentation to a church, in such a manner that he may present to such a church in his own name, and not in the name of another. Co. Litt. 119.

ADVOUTRER. In old English law. An adulterer. Beaty v. Richardson, 56 S. C. 173, 34 S. E. 73, 46 L. R. A. 517.

ADVOUTRY. In old English law. Adultery between parties both of whom were married. Hunter v. U. S., 1 Pin. (Wis.) 91, 39 Am. Dec. 277. Or the offense by an adulteress of continuing to live with the man with whom she committed the adultery. Cowell; Termes de la Ley. Sometimes spelled "advowtry." See Advoutrer.

ADVOWEE, or AVOWEE. The person or patron who has a right to present to a benefice. Fleta, lib. 5, c. 14.

ADVOWEE PARAMOUNT. The sovereign, or highest patron.

ADVOWSON. In English ecclesiastical law. The right of presentation to a church or ecclesiastical benefice; the right of presenting a fit person to the bishop, to be by him admitted and instituted to a certain benefice within the diocese, which has become vacant. 2 Bl. Comm. 21; Co. Litt. 119*b*, 120*a*. The person enjoying this right is called the "patron" (*patronus*) of the church, and was formerly termed "*advocatus,*" the advocate or defender, or in English, "*advowee.*" Id.; 1 Crabb, Real Prop. p. 129, § 117.

He who possesses this right is called the patron or advocate. When there is no patron, or he neglects to exercise his right within six months, it is called a *lapse,* and a title is given to the ordinary to collate to a church: when a presentation is made by one who has no right, it is called a *usurpation.*

Advowsons are of different kinds, viz.:

—Advowson appendant. An advowson annexed to a manor, and passing with it, as incident or appendant to it, by a grant of the manor only, without adding any other words. 2 Bl. Comm. 22; Co. Litt. 120, 121; 1 Crabb, Real Prop. p. 130, § 118.

—Advowson collative. Where the bishop happens himself to be the patron, in which case (presentation being impossible, or unnecessary) he does by one act, which is termed "*collation,*" or conferring the benefice, all that is usually done by the separate acts of presentation and institution. 2 Bl. Comm. 22, 23; 1 Crabb, Real Prop. p. 131, § 119.

—Advowson donative. Where the patron has the right to put his clerk in possession by his mere gift, or deed of donation, without any presentation to the bishop, or institution by him. 2 Bl. Comm. 23; 1 Crabb, Real Prop. p. 131, § 119.

—Advowson in gross. An advowson separated from the manor, and annexed to the person. 2 Bl. Comm. 22; Co. Litt. 120; 1 Crabb, Real Prop. p. 130, § 118; 3 Steph. Comm. 116.

—Advowson presentative. The usual kind of advowson, where the patron has the right of *presentation* to the bishop, or ordinary, and moreover to demand of him to institute his clerk, if he finds him canonically qualified. 2 Bl. Comm. 22; 1 Crabb, Real Prop. p. 131, § 119.

ADVOWTRY. See Advoutry.

ÆDES. Lat. In the civil law. A house, dwelling, temple, place of habitation, whether in the city or country. Dig. 30, 41, 5. In the country everything upon the surface of the soil passed under the term "*ædes.*" Du Cange; Calvin.

ÆDIFICARE. Lat. In civil and old English law. To make or build a house; to erect a building. Dig. 45, 1, 75, 7.

Ædificare in tuo proprio solo non licet quod alteri noceat. 3 Inst. 201. To build upon your own land what may injure another is not lawful.

A proprietor of land has no right to erect an edifice on his own ground, interfering with the due enjoyment of adjoining premises, as by overhanging them, or by throwing water from the roof and eaves upon them, or by obstructing ancient lights and windows. Broom, Max. 369.

Ædificatum solo solo cedit. What is built upon land belongs to or goes with land. Broom, Max. 172; Co. Litt. 4*a*.

Ædificia solo cedunt. Buildings belong to [go with] the soil. Fleta, lib. 3, c. 2, § 12.

ÆDILE. In Roman law. An officer who attended to the repairs of the temples and other public buildings; the repairs and cleanliness of the streets; the care of the weights and measures; the providing for funerals and games; and to regulating the prices of provisions. Ainsworth, Lex.; Smith, Lex.; Du Cange.

ÆDILITUM EDICTUM. In the Roman law. The Ædilitian Edict; an edict providing remedies for frauds in sales, the execution of which belonged to the curule ædiles. Dig. 21, 1. See Cod. 4, 58.

That provision by which the buyer of a diseased or imperfect slave, horse, or other animal was relieved at the expense of the vendor who had sold him as sound knowing him to be imperfect. Calvinus, Lex.

ÆFESN. In old English law. The remuneration to the proprietor of a domain for the privilege of feeding swine under the oaks and beeches of his woods.

ÆGROTO. Lat. Being sick or indisposed. A term used in some of the older reports. "Holt *ægroto.*" 11 Mod. 179.

ÆGYLDE. Uncompensated, unpaid for, unavenged. From the participle of exclusion, *a*, *æ*, or *ex*, (Goth.,) and *gild*, payment, requital. Anc. Inst. Eng.

ÆL. A Norman French term signifying "grandfather." It is also spelled "*aieul*" and "*ayle.*" Kelham.

Æquior est dispositio legis quam hominis. The disposition of the law is more equitable than that of man. 8 Coke, 152.

ÆQUITAS. In the civil law. Equity, as opposed to *strictum* or *summum jus*, (*q. v.*) Otherwise called *æquum*, *æquum bonum*, *æquum et bonum*, *æquum et justum*. Calvin.

Referring to the use of this term, Prof. Gray says (Nature and Sources of the Law 290): "Austin and Maine take *æquitas* as having an analogous meaning to equity; they apply the term to those rules which the prætors introduced through the Edict in modification of the *jus civile*, but it seems to be an error to suppose that *æquitas* had this sense in the Roman Law." He quotes Prof. Clark (Jurisprudence 367) as doubting "whether *æquitas* is ever clearly used by the Roman jurists to indicate simply a *department* of Law" and expresses the opinion that an examination of the authorities more than justifies his doubt. *Æquitas* is opposed to *strictum jus* and varies in meaning between reasonable modification of the letter and substantial justice. It is to be taken as a frame of mind in dealing with legal questions and not as a source of law.

See Æquum et Bonum.

Æquitas agit in personam. Equity acts upon the person. 4 Bouv. Inst. n. 3733.

Æquitas est correctio legis generaliter latæ, qua parte deficit. Equity is the correction of that wherein the law, by reason of its generality, is deficient. Plowd. 375.

Æquitas est correctio quædam legi adhibita, quia ab eâ abest aliquid propter generalem sine exceptione comprehensionem. Equity is a certain correction applied to law, because on account of its general comprehensiveness, without an exception, something is absent from it. Plowd. 467.

Æquitas est perfecta quædam ratio quæ jus scriptum interpretatur et emendat; nulla scriptura comprehensa, sed solum in verâ ratione consistens. Equity is a certain perfect reason, which interprets and amends the written law, comprehended in no writing, but consisting in right reason alone. Co. Litt. 24*b*.

Æquitas est quasi æqualitas. Equity is as it were equality; equity is a species of equality or equalization. Co. Litt. 24.

Æquitas ignorantiæ opitulatur, oscitantiæ non item. Equity assists ignorance, but not carelessness.

Æquitas non facit jus, sed juri auxiliatur. Equity does not make law, but assists law. Lofft, 379.

Æquitas nunquam contravenit leges. Equity never counteracts the laws.

Æquitas sequitur legem. Equity follows the law. 1 Story, Eq. Jur. § 64; 3 Woodd. Lect. 479, 482; Branch, Max. 8; 2 Bla. Com. 330; Gilb. 186; 2 Eden 316; 10 Mod. 3; 15 How. (U. S.) 299, 14 L. Ed. 696; 7 Allen (Mass.) 503; 5 Barb. (N. Y.) 277, 282.

Æquitas supervacua odit. Equity abhors superfluous things. Lofft, 282.

Æquitas uxoribus, liberis, creditoribus maxime favet. Equity favors wives and children, creditors most of all.

ÆQUUM ET BONUM. "The Roman conception involved in *'æquum et bonum'* or

'*æquitas*' is identical with what we mean by 'reasonable' or nearly so. On the whole, the natural justice or 'reason of the thing' which the common law recognizes and applies does not appear to differ from the 'law of nature' which the Romans identified with *jus gentium*, and the medieval doctors of the civil and common law boldly adopted as being divine law revealed through man's natural reason." Sir F. Pollock, Expans. of C. L. 111, citing [1902] 2 Ch. 661, where *jus naturale* and *æquum et bonum* were taken to have the same meaning.

Æquum et bonum est lex legum. What is equitable and good is the law of laws. Hob. 224.

ÆQUUS. Lat. Equal; even. A provision in a will for the division of the residuary estate *ex æquus* among the legatees means equally or evenly. Archer v. Morris, 61 N. J. Eq. 152, 47 Atl. 275.

ÆRA, or ERA. A fixed point of chronological time, whence any number of years is counted; thus, the Christian era began at the birth of Christ, and the Mohammedan era at the flight of Mohammed from Mecca to Medina. The derivation of the word has been much contested. Wharton.

ÆRARIUM. Lat. In the Roman law. The treasury, (*fiscus.*) Calvin.

AËRIAL NAVIGATION. See Aeronautics.

AERODROME. A term originally applied by Professor Langley to his flying machine but now used in the same sense as "airport" (*q. v.*).

AERONAUT. This term under some statutes includes every person who, being in or upon an airship or anything attached thereto, undertakes to direct its ascent, course, or descent in the air, or the ascent, course, or descent in the air of anything attached to such airship.

Under the Uniform Aeronautics Act it includes aviator, pilot, balloonist, and every other person having any part in the operation of aircraft while in flight. See Aeronautics.

AERONAUTIC ACTIVITY. Assured, killed when struck by propeller blade, as he was leaving airplane after completing flight, met his death while participating in an "aeronautic activity." Pittman v. Lamar Life Ins. Co. (C. C. A. Tex.) 17 F.(2d) 370, 371. To a contrary effect: Tierney v. Occidental Life Ins. Co., 89 Cal. App. 779, 265 P. 400.

AERONAUTICS. The science, art, or practice of sailing in or navigating the air. It is divided into two branches: aerostation, dealing with machines which, like ballons, are lighter than air; and aviation, dealing with artificial flight by machines which are heavier than air. Bew v. Travelers' Ins. Co., 95 N. J. Law, 533, 112 A. 859, 860, 14 A. L. R. 983.

A passenger in an airplane, whether he takes part in its operation or not, "participates in aeronautics" within the meaning of an insurance policy. Meredith v. Business Men's Acc. Ass'n of America, 213 Mo. App. 688, 252 S. W. 976, 977; Travelers' Ins. Co. v. Peake, 82 Fla. 128, 89 So. 418. *Contra*: Benefit Ass'n Ry. Employees v. Hayden, 175 Ark. 565, 299 S. W. 995, 57 A. L. R. 622.

See, also, Aircraft; Airship; Airport; Airway; Aviation.

AEROPLANE. See Aircraft; Hydro-Aeroplane; Seaplane.

AEROSTATION. See Aeronautics.

ÆS. Lat. In the Roman law. Money, (literally, brass;) metallic money in general, including gold. Dig. 9, 2, 2, pr.; Id. 9, 2, 27, 5; Id. 50, 16, 159.

ÆS ALIENUM. A civil law term signifying a debt. Literally translated, the money of another; the civil law considered borrowed money as the property of another, as distinguished from *æs suum*, one's own money.

ÆS SUUM. One's own money. In the Roman law. Debt; a debt; that which others owe to us, (*quod alii nobis debent.*) Dig. 50, 16, 213.

ÆSNECIA. In old English law. Esnecy; the right or privilege of the eldest born. Spelman; Glanv. lib. 7, c. 3; Fleta, lib. 2, c. 66, §§ 5, 6.

ÆSNECIUS. See Anecius; Aesnecia.

ÆSTHETIC. Relating to that which is beautiful or in good taste. People v. Wolf, 216 N. Y. S. 741, 744, 127 Misc. 382.

ÆSTIMATIO CAPITIS. Lat. The value of a head. In Saxon law. The estimation or valuation of the head; the price or value of a man. The price to be paid for taking the life of a human being. By the laws of Athelstan, the life of every man not excepting that of the king himself, was estimated at a certain price, which was called the *were*, or *æstimatio capitis*. Crabb, Eng. Law, c. 4.

Æstimatio præteriti delicti ex postremo facto nunquam crescit. The weight of a past offense is never increased by a subsequent fact. Bacon.

ÆTAS. Lat. In the civil law. Age.

ÆTAS INFANTIÆ (also written infantili) **PROXIMA.** The age next to infancy; the first half of the period of childhood (*pueritia,*) extending from seven years to ten and a half. Inst. 3, 20, 9; 4 Bl. Comm. 22. See Age.

ÆTAS LEGITIMA. Lawful age; the age of twenty-five. Dig. 3, 5, 27, pr.; Id. 26, 2, 32, 2; Id. 27, 7, 1, pr.

ÆTAS PERFECTA. Complete age; full age; the age of twenty-five. Dig. 4, 4, 32; Id. 22, 3, 25, 1.

ÆTAS PRIMA. The first age; infancy, (*infantia*). Cod. 6, 61, 8, 3.

ÆTAS PUBERTATI PROXIMA. The age next to puberty; the last half of the period of childhood (*pueritia*), extending from ten and a half years to fourteen, in which there might or might not be criminal responsibility according to natural capacity or incapacity. Under twelve, an offender could not be guilty in will, neither after fourteen could he be supposed innocent, of any capital crime which he in fact committed. Inst. 3, 20, 9; 4 Bl. Comm. 22. See Age.

ÆTATE PROBANDA. A writ which inquired whether the king's tenant holding in chief by chivalry was of full age to receive his lands. It was directed to the escheater of the county. Now disused.

ÆTHELING. In Saxon law. A noble; generally a prince of the blood.

AFFAIR. (Fr.). A law suit.

AFFAIRS. A person's concerns in trade or property; business. Montgomery v. Com., 91 Pa. 133; Bragaw v. Bolles, 51 N. J. Eq. 84, 25 A. 947; People ex rel. Western Union Telegraph Co. v. Public Service Commission of New York, Second Dist., 192 App. Div. 748, 183 N. Y. S. 659, 661. That which is done or to be done. Wicks v. City and County of Denver, 61 Colo. 266, 156 P. 1100, 1103. The affairs of a corporation include the borrowing of money in conducting its business, and methods of obtaining loans. Cameron v. First Nat. Bank (Tex. Civ. App.) 194 S. W. 469, 470. In a statute pertaining to incompetents, "affairs" relates solely to person and estate of alleged incompetent. State ex rel. Bevan v. Williams, 316 Mo. 665, 291 S. W. 481, 482.

AFFECT. To act upon; influence; change; enlarge or abridge; often used in the sense of acting injuriously upon persons and things. Ryan v. Carter, 93 U. S. 84, 23 L. Ed. 807; Tyler v. Wells, 2 Mo. App. 538; Holland v. Dickerson, 41 Iowa, 373; United States v. Ortega, 11 Wheat. 467, 6 L. Ed. 521; Gaunt v. Alabama Bound Oil & Gas Co. (C. C. A. Okl.) 281 F. 653, 655, 23 A. L. R. 1279; Swigart v. Commissioners of Highways of Town of Mahomet, 277 Ill. 281, 115 N. E. 378, 379; State v. Home Brewing Co. of Indianapolis, 182 Ind. 75, 105 N. E. 909; Barrows v. Farnum's Stage Lines, 254 Mass. 240, 150 N. E. 206, 208; In re Fowler St. in City of New York (Sup.) 153 N. Y. S. 585, 587; Eastern Oil Co. v. Harjo, 57 Okl. 676, 157 P. 921, 922; Meurer v. Hooper (Tex. Civ. App.) 271 S. W. 172, 177. A right is affected, if it is either enlarged or abridged, since "affect" does not mean to impair. Harris v. Friend, 175 P. 722, 725, 24 N. M. 627.

AFFECTED WITH A PUBLIC INTEREST. This phrase, used as a basis for legislative regulation of prices, means something more than "quasi public," or "not strictly private," and similar phrases employed as a basis for upholding police regulation in respect to the conduct of particular businesses. A business is not affected with a public interest merely because the public derives benefit, accommodation, ease or enjoyment from its existence or operation. The price or charge for admissions to theaters or places of amusement or entertainment is not a matter "affected with a public interest." Tyson & Bro.-United Theatre Ticket Offices v. Banton, 273 U. S. 418, 47 S. Ct. 426, 429, 71 L. Ed. 718, 58 A. L. R. 1236.

Affectio tua nomen imponit operi tuo. Your disposition (or motive, intention) gives name (or character) to your work or act. Bract. fol. 2*b*, 101*b*.

AFFECTION. The making over, pawning, or mortgaging of a thing to assure the payment of a sum of money, or the discharge of some other duty or service. Crabb, Technol. Dict.

In a medical sense, an abnormal bodily condition. A local "affection" is not a local disease within the meaning of an insurance policy, unless the affection has sufficiently developed to have some bearing on the general health. Cady v. Fidelity & Casualty Co. of New York, 113 N. W. 967, 971, 134 Wis. 322, 17 L. R. A. (N. S.) 260.

AFFECTUS. Disposition; intention, impulse or affection of the mind. One of the causes for a challenge of a juror is *propter affectum*, on account of a suspicion of *bias* or favor. 3 Bl. Comm. 363; Co. Litt. 156.

Affectus punitur licet non sequatur effectus. The intention is punished although the intended result does not follow. 9 Coke, 55.

AFFEER. To assess, liquidate, appraise, fix in amount.

To affeer an amercement. To establish the amount which one amerced in a court-leet should pay. See Amercement.

To affeer an account. To confirm it on oath in the exchequer. Cowell; Blount; Spelman.

AFFEERORS. Persons who, in court-leets, upon oath, settle and moderate the fines and amercements imposed on those who have committed offenses arbitrarily punishable, or that have no express penalty appointed by statute. They are also appointed to moderate fines, etc., in courts-baron. Cowell.

AFFERMER. L. Fr. To let to farm. Also to make sure, to establish or confirm. Kelham.

AFFIANCE. To assure by pledge. A plighting of troth between man and woman. Littleton, § 39.

An agreement by which a man and woman

promise each other that they will marry together. Pothier, *Traité du Mar.* n. 24. Co. Litt. 34 *a*. See Dig. 23, 1, 1; Code, 5. 1. 4.

AFFIANT. The person who makes and subscribes an affidavit. The word is used, in this sense, interchangeably with "deponent." But the latter term should be reserved as the designation of one who makes a deposition.

AFFIDARE. To swear faith to; to pledge one's faith or do fealty by making oath. Cowell. Used of the mutual relation arising between landlord and tenant; 1 Washb. R. P. 19; 1 Bla. Com. 367; Termes de la Ley, *Fealty.* Affidavit is of kindred meaning.

AFFIDARI. To be mustered and enrolled for soldiers upon an oath of fidelity.

AFFIDATIO. A swearing of the oath of fidelity or of fealty to one's lord, under whose protection the quasi-vassal has voluntarily come. Brown.

AFFIDATIO DOMINORUM. An oath taken by the lords in parliament.

AFFIDATUS. One who is not a vassal, but who for the sake of protection has connected himself with one more powerful. Spelman; 2 Bl. Comm. 46.

AFFIDAVIT. A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before an officer having authority to administer such oath. Cox v. Stern, 170 Ill. 442, 48 N. E. 906, 62 Am. St. Rep. 385; Hays v. Loomis, 84 Ill. 18. A statement or declaration reduced to writing, and sworn to or affirmed before some officer who has authority to administer an oath or affirmation. Quoted and approved in Shelton v. Berry, 19 Tex. 154, 70 Am. Dec. 326, and In re Breidt, 84 N. J. Eq. 222, 94 A. 214, 216.

An affidavit is a written declaration under oath, made without notice to the adverse party. Code Civ. Proc. Cal. § 2003.

An affidavit is an oath in writing, sworn before and attested by him who hath authority to administer the same. Knapp v. Duclo, 1 Mich. N. P. 189; Smith v. Smith (Ind. App.) 110 N. E. 1013, 1014.

An affidavit is always taken *ex parte*, and in this respect it is distinguished from a deposition, the matter of which is elicited by questions, and which affords an opportunity for cross-examination. In re Liter's Estate, 19 Mont. 474, 48 P. 753; State v. Quartier, 114 Or. 657, 236 P. 746, 748; Osborne v. Commonwealth, 214 Ky. 84, 282 S. W. 762, 763. But the word "affidavits" is sometimes used to include "depositions." U. S. v. Kaplan (D. C. Ga.) 286 F. 963, 970; State v. English, 71 Mont. 343, 229 P. 727, 728.

"Affidavits" are of two kinds; those which serve as evidence to advise the court in the decision of some preliminary issue or determination of some substantial right, and those which merely serve to invoke the judicial power. Worthen v. State, 189 Ala. 395, 66 So. 686, 688.

AFFIDAVIT OF DEFENSE. An affidavit stating that the defendant has a good defense to the plaintiff's action on the merits. The statements required in such an affidavit vary considerably in the different states where they are required. Called also an affidavit of merits (*q. v.*), as in Massachusetts.

AFFIDAVIT OF MERITS. One setting forth that the defendant has a meritorious defense (substantial and not technical) and stating the facts constituting the same. Palmer v. Rogers, 70 Iowa, 381, 30 N. W. 645.

AFFIDAVIT OF SERVICE. An affidavit intended to certify the service of a writ, notice, or other document.

AFFIDAVIT TO HOLD TO BAIL. An affidavit required in many cases before the defendant in a civil action may be arrested. Such an affidavit must contain a statement, clearly and certainly expressed, by some one acquainted with the fact, of an indebtedness from the defendant to the plaintiff, and must show a distinct cause of action; 1 Chit. Pl. 165.

AFFILARE. L. Lat. To put on record; to file or affile. *Affiletur*, let it be filed. 8 Coke, 160. *De recordo affilatum*, affiled of record. 2 Ld. Raym. 1476.

AFFILE. A term employed in old practice, signifying to put on file. 2 Maule & S. 202. In modern usage it is contracted to *file*.

AFFILIATE. The word "affiliate" under Acts Ky. 1912, c. 7, § 19, providing that in precincts where there was no registration electors might vote only the ballot of the party with which they declared their affiliation, requires the elector to in some way make plain the party he espouses and allies himself with; Heitzman v. Voiers, 159 S. W. 625, 626, 155 Ky. 39; Commonwealth v. Carson, 171 Ky. 288, 188 S. W. 372.

AFFILIATION. The act of imputing or determining the paternity of a bastard child, and the obligation to maintain it.

In French Law

A species of adoption which exists by custom in some parts of France. The person affiliated succeeded equally with other heirs to the property acquired by the deceased to whom he had been affiliated, but not to that which he inherited.

In Ecclesiastical Law

A condition which prevented the superior from removing the person affiliated to another convent. Guyot, Répert.

AFFINAGE. A refining of metals. Blount.

AFFINES. In the civil law. Connections by marriage, whether of the persons or their relatives. Calvinus, Lex.

Neighbors, who own or occupy adjoining lands. Dig. 10, 1, 12.

From this word we have affinity, denoting relationship by marriage; 1 Bla. Com. 434.

The singular, *affinis,* is used in a variety of related significations—a boundary; Du Cange; a partaker or sharer, *affinis culpæ* (an aider or one who has knowledge of a crime); Calvinus, Lex.

Affinis mei affinis non est mihi affinis. One who is related by marriage to a person related to me by marriage has no affinity to me. Shelf. Mar. & Div. 174.

AFFINITAS. Lat. In the civil law. Affinity; relationship by marriage. Inst. 1, 10, 6.

AFFINITAS AFFINITATIS. Remote relationship by marriage. That connection between parties arising from marriage which is neither consanguinity nor affinity. Chinn v. State, 47 Ohio St. 575, 26 N. E. 986, 11 L. R. A. 630; Davidson v. Whitehill, 87 Vt. 499, 89 A. 1081, 1085. This term signifies the connection between the kinsmen of the two persons married, as, for example, the husband's brother and the wife's sister. Erskine, Inst. 1. 6. 8.

AFFINITY. The connection existing, in consequence of marriage, between each of the married persons and the kindred of the other. Clawson v. Ellis, 286 Ill. 81, 121 N. E. 242, 243; Sizemore v. Commonwealth, 210 Ky. 637, 276 S. W. 524, 525.

It is distinguished from consanguinity, which denotes relationship by blood. Affinity is the tie which exists between one of the spouses with the kindred of the other: thus, the relations of my wife, her brothers, her sisters, her uncles, are allied to me by affinity, and my brothers, sisters, etc., are allied in the same way to my wife. But my brother and the sister of my wife are not allied by the ties of affinity. Williams v. Foster (Tex. Civ. App.) 233 S. W. 120, 122; Clawson v. Ellis, 121 N. E. 242, 243, 286 Ill. 81; Everett v. Ingram, 82 S. E. 562, 563, 142 Ga. 145. See Affinitas Affinitatis.

At Common Law

Relationship by marriage between the husband and the blood relations of the wife, and between the wife and the blood relations of the husband. 1 Bl. Comm. 434; Solinger v. Earle, 45 N. Y. Super. Ct. 80; Tegarden v. Phillips (Ind. App.) 39 N. E. 212.

Affinity is distinguished into three kinds: (1) *Direct,* or that subsisting between the husband and his wife's relations by blood, or between the wife and the husband's relations by blood; (2) *secondary,* or that which subsists between the husband and his wife's relations by marriage; (3) *collateral,* or that which subsists between the husband and the relations of his wife's relations. Wharton.

In the Civil Law

The connection which arises by marriage between each of the married persons and the kindred of the other. Mackeld. Rom. Law, § 147; Poydras v. Livingston, 5 Mart. O. S. (La.) 295. A husband is related by affinity to all the *consanguinei* of his wife, and *vice versa,* the wife to the husband's *consanguinei;* for the husband and wife being considered one flesh, those who are related to the one by blood are related to the other by affinity. Gib. Cod. 412; 1 Bl. Comm. 435.

In a larger sense, consanguinity or kindred. Co. Litt. 157*a*.

Quasi Affinity

In the civil law. The affinity which exists between two persons, one of whom has been betrothed to a kinsman of the other, but who have never been married.

AFFIRM. To ratify, make firm, confirm, establish, reassert.

To ratify or confirm a former law or judgment. Cowell.

In the practice of appellate courts, to *affirm* a judgment, decree, or order, is to declare that it is valid and right, and must stand as rendered below; to ratify and reassert it; to concur in its correctness and confirm its efficacy. Boner v. Fall River County Bank, 25 Wyo. 260, 168 P. 726, 727.

To ratify or confirm a voidable act.

In Pleading

To allege or aver a matter of fact; to state it affirmatively; the opposite of *deny* or *traverse.*

In Practice

To make affirmation; to make a solemn and formal declaration or asseveration that an affidavit is true, that the witness will tell the truth, etc., this being substituted for an oath in certain cases. Also, to give testimony on affirmation.

In the Law of Contracts

A party is said to affirm a contract, the same being voidable at his election, when he ratifies and accepts it, waives his right to annul it, and proceeds under it as if it had been valid originally. Cf. Adopt.

AFFIRMANCE. In practice. The confirming, or ratifying of a former law, or judgment. Cowell; Blount.

The confirmation and ratification by an appellate court of a judgment, order, or decree of a lower court brought before it for review. See Affirm.

A dismissal of an appeal for want of prosecution is not an "affirmance" of the judgment. Drummond v. Husson, 14 N. Y. 60. Contra: Tackett v. United States Fidelity & Guaranty Co., 112 Kan. 500, 212 P. 357, 360. See, also, Peck v. Curlee Clothing Co., 63 Okl. 61, 162 P. 735, 736.

The ratification or confirmation of a voidable contract or act by the party who is to be bound thereby.

The term is in accuracy to be distinguished from *ratification,* which is a recognition of

the validity or binding force as against the party ratifying, of some act performed by another person; and from *confirmation*, which would seem to apply more properly to cases where a doubtful authority has been exercised by another in behalf of the person ratifying; but these distinctions are not generally observed with much care.

AFFIRMANCE DAY GENERAL. In the English court of exchequer, a day appointed by the judges of the common pleas, and barons of the exchequer, to be held a few days after the beginning of every term for the general affirmance or reversal of judgments. 2 Tidd, Pr. 1091.

AFFIRMANT. A person who testifies on affirmation, or who affirms instead of taking an oath. See Affirmation. Used in affidavits and depositions which are *affirmed*, instead of sworn to in place of the word "deponent."

He is liable to all the pains and penalty of perjury, if he shall be guilty of willfully and maliciously violating his affirmation.

Affirmanti, non neganti incumbit probatio. The [burden of] proof lies upon him who affirms, not upon one who denies. Steph. Pl. 84.

Affirmantis est probare. He who affirms must prove. Porter v. Stevens, 9 Cush. (Mass.) 535.

AFFIRMATION. In practice. A solemn and formal declaration or asseveration that an affidavit is true, that the witness will tell the truth, etc., this being substituted for an oath in certain cases.

A solemn religious asseveration in the nature of an oath. 1 Greenl. Ev. § 371.

Quakers, as a class, and other persons who have conscientious scruples against taking an oath, are allowed to make affirmation in any mode which they may declare to be binding upon their consciences, in confirmation of the truth of testimony which they are about to give. 1 Atk. 21, 46; Cowp. 340, 389; 1 Leach Cr. Cas. 64; 1 Ry. & M. 77; Vail v. Nickerson, 6 Mass. 262; Com. v. Buzzell, 16 Pick. (Mass.) 153; Buller, N. P. 292.

AFFIRMATION OF FACT. A statement concerning a subject-matter of a transaction which might otherwise be only an expression of opinion but which is affirmed as an existing fact material to the transaction, and reasonably induces the other party to consider and rely upon it, as a fact. Stone v. McCarty, 64 Cal. App. 158, 220 P. 690, 694; Ireland v. Louis K. Liggett Co., 243 Mass. 243, 137 N. E. 371, 372.

AFFIRMATIVE. That which declares positively; that which avers a fact to be true; that which establishes; the opposite of negative.

The party who, upon the allegations of pleadings joining issue, is under the obligation of making proof, in the first instance, of matters alleged, is said to hold the affirmative, or, in other words, to sustain the burden of proof. Abbott.

As to affirmative "Damages," "Plea," "Proof," "Warranty," see those titles.

AFFIRMATIVE AUTHORIZATION. Something more than authority by mere implication. White, Gratwick & Mitchell v. Empire Engineering Co., 210 N. Y. S. 563, 572, 125 Misc. 47.

AFFIRMATIVE CHARGE. The general "affirmative charge" is an instruction to the jury that, whatever the evidence may be, defendant cannot be convicted under the count in the indictment to which the charge is directed. Coker v. State, 18 Ala. App. 550, 93 So. 384, 386.

AFFIRMATIVE DEFENSE. In code pleading. New matter constituting a defense; new matter which, assuming the complaint to be true, constitutes a defense to it. Carter v. Eighth Ward Bank, 67 N. Y. S. 300, 33 Misc. 128.

AFFIRMATIVE PREGNANT. In pleading. An affirmative allegation implying some negative in favor of the adverse party. Fields v. State, 134 Ind. 46, 32 N. E. 780.

AFFIRMATIVE RELIEF. Relief, benefit, or compensation which may be granted to the defendant in a judgment or decree in accordance with the facts established in his favor; such as may properly be given within the issues made by the pleadings or according to the legal or equitable rights of the parties as established by the evidence. Garner v. Hannah, 6 Duer (N. Y.) 262. As used in a statute giving plaintiff right to dismiss at any time before trial if no affirmative relief is demanded in answer, "affirmative relief" has reference only to that relief for which defendant might maintain an action independently of plaintiff's claim and on which he might proceed to recovery, although plaintiff abandoned his cause of action or failed to establish it. Southwestern Surety Ins. Co. v. Walser, 77 Okl. 240, 188 P. 335, 336.

AFFIRMATIVE STATUTE. In legislation. A statute couched in affirmative or mandatory terms; one which directs the doing of an act, or declares what shall be done; as a *negative* statute is one which prohibits a thing from being done, or declares what shall not be done. Blackstone describes affirmative acts of parliament as those "wherein justice is directed to be done according to the law of the land." 1 Bl. Comm. 142.

AFFIX. To fix or fasten upon, to attach to, inscribe, or impress upon, as a signature, a seal, a trade-mark. Pen. Code N. Y. § 367. To attach, add to, or fasten upon, permanently, as in the case of fixtures annexed to real estate.

A thing is deemed to be affixed to land when it is attached to it by the roots, as in the case of trees, vines, or shrubs; or imbedded in it, as in the case of walls; or permanently resting upon it, as in the case of buildings; or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts, or screws. Civ. Code Cal. § 660; Civ. Code Mont. 1895, § 1076 (Rev. Codes 1921, § 6669); McNally v. Connolly, 70 Cal. 3, 11 Pac. 320; Miller v. Waddingham (Cal.) 25 Pac. 688, 11 L. R. A. 510; Tollé v. Vandenberg, 44 Okl. 780, 146 P. 212, 213.

AFFIXUS. In the civil law. Affixed, fixed, or fastened to.

AFFORARE. To set a price or value on a thing. Blount.

AFFORATUS. Appraised or valued, as things vendible in a market. Blount.

AFFORCE. To add to; to increase; to strengthen; to add force to.

AFFORCE THE ASSISE. In old English practice. A method of securing a verdict, where the jury disagreed, either by confining them without meat and drink, or, more anciently, by adding other jurors to the panel, to a limited extent, until twelve could be found who were unanimous. Bract. fol. 185*b*, 292*a*; Fleta, lib. 4, c. 9, § 2; 2 Reeve, Hist. Eng. Law, 267.

AFFORCIAMENTUM. In old English law. A fortress or stronghold, or other fortification. Cowell.

The calling of a court upon a solemn or extraordinary occasion. Id.

AFFOREST. To convert land into a forest in the legal sense of the word.

AFFORESTATION. The turning of a part of a country into forest or woodland or subjecting it to forest law, *q. v.*

AFFOUAGE. In French law. The right of the inhabitants of a commune or section of a commune to take from the forest the fire-wood which is necessary for their use. Duverger.

AFFRANCHIR. L. Fr. To set free. Kelham.

AFFRANCHISE. To liberate; to make free.

AFFRAY. In criminal law. The fighting of two or more persons in some public place to the terror of the people. Wallace v. Commonwealth, 207 Ky. 122, 268 S. W. 809, 813; Carnley v. State, 88 Fla. 281, 102 So. 333, 334; Burton v. Com., 22 Ky. Law Rep. 1315, 60 S. W. 526; Thompson v. State, 70 Ala. 26; State v. Allen, 11 N. C. 356.

It differs from a riot in not being premeditated; for if any persons meet together upon any lawful or innocent occasion, and happen on a sudden to engage in fighting, they are not guilty of a riot, but an affray only; and in that case none are guilty except those actually engaged in it. Hawk. P. C. bk. 1, c. 65, § 3; 4 Bl. Comm. 146; 1 Russ. Crimes, 271; Supreme Council v. Garrigus, 104 Ind. 133, 3 N. E. 818, 54 Am. Rep. 298.

If two or more persons voluntarily or by agreement engage in any fight, or use any blows or violence towards each other in an angry or quarrelsome manner, in any public place to the disturbance of others, they are guilty of an affray, and shall be punished by imprisonment in the county jail not exceeding thirty days, or by fine not exceeding one hundred dollars. Rev. Code Iowa 1880, § 4065 (Code 1927, § 13221).

Mere words cannot amount to an affray. But if one person, by such abusive language toward another as is calculated and intended to bring on a fight, induces the other to strike him, both are guilty of "affray." State v. Maney, 138 S. E. 441, 442, 194 N. C. 34.

AFFRECTAMENTUM. Affreightment; a contract for the hire of a vessel. From the Fr. *fret*, which, according to Cowell, meant tons or tonnage. *Affreightamentum* was sometimes used. Du Cange.

AFFREIGHTMENT. A contract of affreightment is a contract with a ship-owner to hire his ship, or part of it, for the carriage of goods. Such a contract generally takes the form either of a charter-party or of a bill of lading. Maude & P. Mer. Shipp. 227; Smith, Merc. Law, 295; Bramble v. Culmer, 78 Fed. 501, 24 C. C. A. 182; Auten v. Bennett, 88 App. Div. 15, 84 N. Y. Supp. 689. A contract to transport goods constitutes a contract of "affreightment," although there is towage service connected therewith. Sacramento Nav. Co. v. Salz, 47 S. Ct. 368, 369, 273 U. S. 326, 71 L. Ed. 663, reversing (C. C. A. Cal.) 3 F.(2d) 759.

In French law, freighting and affreighting are distinguished. The owner of a ship freights it, (*le frete*;) he is called the freighter, (*freteur*;) he is the letter or lessor, (*locateur, locator.*) The merchant affreights (*affrete*) the ship, and is called the affreighter, (*affreteur*;) he is the hirer, (*locataire, conductor.*) Emerig. Tr. des Ass. c. 11, § 3.

AFFRETEMENT. Fr. In French law. The hiring of a vessel; affreightment (*q. v.*). Called also *nolissement.* Ord. Mar. liv. 1, tit. 2, art. 2; Id. liv. 3, tit. 1, art. 1.

AFFRI. In old English law. Plow cattle, bullocks or plow horses. *Affri*, or *afri carucæ;* beasts of the plow. Spelman.

AFORESAID. Before, or already said, mentioned, or recited; premised. Plowd. 67. Alabama Great Southern R. Co. v. Smith, 191 Ala. 643, 68 So. 56, 57. *Foresaid* is used in Scotch law.

Although the words "preceding" and "aforesaid" generally mean next before, and "following" means next after, yet a different signification will be given to them if required by the context and the facts of the case. Simpson v. Robert, 35 Ga. 180.

AFORETHOUGHT. In criminal law. Deliberate; planned; premeditated; prepense. State v. Peo, 9 Houst. (Del.) 488, 33 Atl. 257; Edwards v. State, 25 Ark. 444; People v. Ah Choy, 1 Idaho, 317; State v. Fiske, 63 Conn. 388, 28 Atl. 572. See Malice Aforethought; Premeditation; 4 Bla. Com. 199; Respublica v. Mulatto Bob, 4 Dall. (Pa.) 146, 1 L. Ed. 776; U. S. v. Cornell, 2 Mas. 91, Fed. Cas. No. 14,868.

"Aforethought" as used in the law of murder means thought of beforehand and for any length of time, however short, before the doing of the act, and is synonymous with premeditation. State v. Smith, 26 N. M. 482, 194 P. 869, 872.

AFRICAN DESCENT. Persons of African nativity or of "African descent" within the meaning of the Naturalization Act, as amended by Act July 14, 1870 (8 USCA § 359), are members of the negro races of Africa or their descendants by intermixture with races constituting free white persons, the negro races referred to being those from which the emancipated slaves in the United States descend. Ex parte Shahid (D. C. S. C.) 205 F. 812, 815.

AFTER. Later, succeeding, subsequent to, inferior in point of time or of priority or preference.

Its true meaning must be collected from the context and subject-matter; Sands v. Lyon, 18 Conn. 27; In re Waxman's Estate, 223 N. Y. S. 772, 773, 129 Misc. 829; Hyman Bros. Box & Label Co. v. Industrial Accident Commission, 181 P. 784, 786, 180 Cal. 423 (equivalent to "at"); New York Trust Co. v. Portland Ry. Co., 197 App. Div. 422, 189 N. Y. S. 346, 348 (equivalent to "on and after"). The words "after thirty days from notice" mean 30 days after the day on which the notice was received, excluding that day or fractions of it; Mathews Farmers' Mut. Live Stock Ins. Co. v. Moore, 58 Ind. App. 240, 108 N. E. 155, 157. But the words "after the filing" as used in sections 63 and 68 of the Bankruptcy Act (11 USCA §§ 103, 108) do not mean the day after that of filing, but refer to the very instant of filing if ascertainable. In re Ledbetter (D. C. Ga.) 267 F. 893, 896. A note payable generally "after date," is payable on demand. Love v. Perry, 90 S. E. 978, 979, 19 Ga. App. 86. When time is to be computed "after" a certain date, it is meant that such date should be excluded in the computation. Bigelow v. Wilson, 1 Pick. (Mass.) 485; Taylor v. Jacoby, 2 Pa. St. 495; Cromelian v. Brink, 29 Pa. St. 522.

AFTER-ACQUIRED. Acquired after a particular date or event. Thus, a judgment is a lien on after-acquired realty, *i. e.*, land acquired by the debtor after entry of the judgment. Hughes v. Hughes, 152 Pa. 590, 26 A. 101.

AFTER-BORN CHILD. A statute making a will void as to after-born children means physical birth, and is not applicable to a child legitimated by the marriage of its parents. Appeal of McCulloch, 113 Pa. 247, 6 A. 253. See En Ventre Sa Mere; Posthumous Child.

AFTER-DISCOVERED. Discovered or made known after a particular date or event.

AFTER-DISCOVERED EVIDENCE. See Evidence.

AFTER SIGHT. This term as used in a bill payable so many days after sight, means after legal sight; that is, after legal presentment for acceptance. The mere fact of having seen the bill or known of its existence does not constitute legal "sight." Mitchell v. Degrand, 17 Fed. Cas. 494.

AFTERMATH. A second crop of grass mown in the same season; also the right to take such second crop. See 1 Chit. Gen. Pr. 181.

"Aftermath" as used in the manufacture of window glass means the colder glass remaining on and in molten bath after drawing of glass cylinder. Okmulgee Window Glass Co. v. Window Glass Mach. Co., 265 F. 626, 630.

AFTERNOON. This word has two senses. It may mean the whole time from noon to midnight; or it may mean the earlier part of that time, as distinguished from the evening. When used in a statute its meaning must be determined by the context and the circumstances of the subject-matter. Reg. v. Knapp, 2 El. & Bl. 451, where an act forbidding innkeepers to have their houses open on Sunday during the usual hours of afternoon Divine Service was taken in the latter sense.

AFTERWARD, AFTERWARDS. Subsequent in point of time; synonymous with "thereafter," Lamoutte v. Title Guaranty & Surety Co., 165 App. Div. 573, 151 N. Y. S. 148, 154, or with "then," Boyce v. Mosely, 102 S. C. 361, 86 S. E. 771, 772.

AGAINST. Adverse to; contrary; opposed to; without the consent of; in contact with. State v. Metzger, 26 Kan. 395; James v. Bank, 12 R. I. 460; Seabright v. Seabright, 28 W. Va. 465; Palmer v. Superior Mfg. Co. (D. C. N. Y.) 203 F. 1003, 1005. The meaning of the word varies according to the context. State v. Prather, 54 Ind. 63; First Avenue Coal & Lumber Co. v. Hite, 9 Ala. App. 251, 62 So. 1018, 1019. A guaranty "against loss" is a guaranty of collection. Wyman, Partridge & Co. v. Bible, 150 Minn. 26, 184 N. W. 45. "Against" signifies discord or conflict and not harmony. Olschewske v. Priester (Tex. Com. App.) 276 S. W. 647, 650; Patterson v. Carr, 189 Iowa, 69, 176 N. W. 265, 266. To constitute rape, the act must be committed without the consent or against the will of the woman; the phrases "against her will" and "without her consent" denoting the manifestation of the utmost reluctance and the greatest re-

sistance. State v. Egner, 317 Mo. 457, 296 S. W. 145, 146.

AGAINST THE FORM OF THE STATUTE. Technical words which must be used in framing an indictment for a breach of the statute prohibiting the act complained of. The Latin phrase is *contra forman statuti, q. v.* State v. Murphy, 15 R. I. 543, 10 A. 585.

AGAINST THE PEACE. A technical phrase used in alleging a breach of the peace. See Contra Pacem. State v. Tibbetts, 86 Me. 189, 29 A. 979.

AGAINST THE WILL. Technical words which must be used in framing an indictment for robbery from the person, rape and some other offenses. Whittaker v. State, 50 Wis. 521, 7 N. W. 431, 36 Am. St. Rep. 856; Com. v. Burke, 105 Mass. 376, 7 Am. Rep. 531; Beyer v. People, 86 N. Y. 369. They are implied in, and hence may be omitted from, an information charging robbery and using the words "unlawfully, willfully, feloniously, forcibly, and violently." State v. Wilson, 136 La. 345, 67 So. 26.

AGALMA. An impression or image of anything on a seal. Cowell.

AGARD. L. Fr. An award. *Nul fait agard;* no award made.

AGARDER. L. Fr. To award, adjudge, or determine; to sentence, or condemn.

AGE. Signifies those periods in the lives of persons of both sexes which enable them to do certain acts which, before they had arrived at those periods, they were prohibited from doing.

The length of time during which a person has lived or a thing has existed.

In the old books, "age" is commonly used to signify "full age;" that is, the age of twenty-one years. Litt. § 259.

—Age of consent. This phrase is well understood as referring to the age as defined in the statute in the life of females when they are deemed capable of consenting to sexual intercourse, and also affords a basis for classification of the different kinds of rape denounced by the statute. Ex parte Hutchens, 246 S. W. 186, 189, 296 Mo. 331.

—Age of maturity. "Age of maturity" in a will means maturity in mind, character, and judgment. Commercial Bank & Trust Co. v. Noble, 146 Miss. 552, 112 So. 691.

—Legal age. The age at which the person acquires full capacity to make his own contracts and deeds and transact business generally (age of majority) or to enter into some particular contract or relation, as, the "legal age of consent" to marriage. See Capwell v. Capwell, 21 R. I. 101, 41 A. 1005; Montoya de Antonio v. Miller, 7 N. M. 289, 34 Pac. 40, 21 L. R. A. 699; Johnson v. Alexander, 39 Cal. App. 177, 178 P. 297, 298; Berry v. Winistorfer, 55 N. D. 310, 213 N. W. 26, 27; Perkins v. Safe Deposit & Trust Co. of Baltimore, 138 Md. 299, 113 A. 877, 880.

AGE, Awe, Aive. L. Fr. Water. Kelham.

AGE PRAYER. A suggestion of nonage, made by an infant party to a real action, with a prayer that the proceedings may be deferred until his full age. It is now abolished. St. 11 Geo. IV.; 1 Wm. IV. c. 37, § 10; 1 Lil. Reg. 54; 3 Bl. Comm. 300.

AGENCY. A relation, created either by express or implied contract or by law, whereby one party (called the principal or constituent) delegates the transaction of some lawful business or the authority to do certain acts for him or in relation to his rights or property, with more or less discretionary power, to another person (called the agent, attorney, proxy, or delegate) who undertakes to manage the affair and render him an account thereof. State v. Hubbard, 58 Kan. 797, 51 Pac. 290, 39 L. R. A. 860; Sternaman v. Insurance Co., 170 N. Y. 13, 62 N. E. 763, 57 L. R. A. 318, 88 Am. St. Rep. 625; Wynegar v. State, 157 Ind. 577, 62 N. E. 38; Harkins v. Murphy, 51 Tex. Civ. App. 568, 112 S. W. 136, 137; Steele v. Lawyer, 47 Wash. 266, 91 P. 958; In re Cullinan, 99 N. Y. S. 1119, 1121, 114 App. Div. 509.

A contract by which one of the contracting parties confides the management of some affair, to be transacted on his account, to the other party, who undertakes to do the business and render an account of it. 1 Liverm. Prin. & Ag. 2.

A contract by which one person, with greater or less discretionary power, undertakes to represent another in certain business relations. Whart. Ag. 1.

A relation between two or more persons, by which one party, usually called the agent or attorney, is authorized to do certain acts for, or in relation to the rights or property of the other, who is denominated the principal, constituent, or employer.

"Agency," in its broadest sense, includes every relation in which one person acts for or represents another, C. M. Keys Commission Co. v. Miller, 59 Okl. 42, 157 P. 1029, 1030, and, in a more restricted sense, is the relation resulting where one party authorizes another to act for him in business dealings with third persons, Murphy v. Albany Pecan Development Co., 169 Iowa, 542, 151 N. W. 500, 502.

—Agency by estoppel. One created by operation of law and established by proof of such acts of the principal as reasonably lead to the conclusion of its existence. Sigel-Campion Live Stock Commission Co. v. Ardohain, 71 Colo. 410, 207 P. 82, 83. One which arises where the principal by his negligence permits his agent to exercise powers not granted to him, though the principal have no notice of the conduct of the agent. Dispatch Printing Co. v. National Bank of Commerce, 109 Minn. 440, 124 N. W. 236, 50 L. R. A. (N. S.) 74. The holding out of the agent as having authority must be known to the party with whom he dealt. Austin-Western Road Machinery Co.

v. Commercial State Bank (Mo. App.) 255 S. W. 585, 586.

—Agency of necessity. A term sometimes applied to the kind of implied agency which enables a wife to procure what is reasonably necessary for her maintenance and support on her husband's credit and at his expense, when he fails to make proper provision for her necessities. Bostwick v. Brower, 49 N. Y. S. 1046, 22 Misc. 709.

—Actual agency. That which exists where the agent is really employed by the principal. Weidenaar v. N. Y. Life Ins. Co., 94 P. 1, 6, 36 Mont. 592.

—Deed of agency. A revocable and voluntary trust for payment of debts. Wharton.

—Exclusive agency. Though a contract giving a broker an "exclusive agency" as to property may be defined as an agreement by the owner that during the life of the contract he will not sell the property to a purchaser procured by another agent, which agreement does not preclude the owner himself from selling to a purchaser of his own procuring, yet a contract giving a broker "exclusive sale" is more than such exclusive agency, and is an agreement by the owner that he will not sell the property during the life of the contract to any purchaser not procured by the broker in question. Harris v. McPherson, 97 Conn. 164, 115 A. 723, 724, 24 A. L. R. 1530; Harris & White v. Stone, 137 Ark. 23, 207 S. W. 443, 444.

—General agency. That which exists when there is a delegation to do all acts connected with a particular trade, business, or employment. Hinkson v. Kansas City Life Ins. Co., 93 Or. 473, 183 P. 24, 29; Foster v. Jones, 78 Ga. 150, 1 S. E. 275; Bacon v. Dannenberg Co., 24 Ga. App. 540, 101 S. E. 699; Brutinel v. Nygren, 17 Ariz. 491, 154 P. 1042, 1045, L. R. A. 1918F, 713; Kissell v. Pittsburgh, Ft. W. & C. Ry. Co., 194 Mo. App. 346, 188 S. W. 1118, 1121. It implies authority on the part of the agent to act without restriction or qualification in all matters relating to the business of his principal. Schwartz v. Maryland Casualty Co., 82 N. H. 177, 131 A. 352, 353.

—Implied agency. One created by the act of the parties and deduced from proof of other facts. Sigel-Campion Live Stock Commission Co. v. Ardohain, 71 Colo. 410, 207 P. 82, 83. It is an actual agency, established by proof of circumstances bearing upon the question, and does not require proof that the party with whom the agent dealt had knowledge of the facts establishing such proof. Austin-Western Road Machinery Co. v. Commercial State Bank (Mo. App.) 255 S. W. 585, 588.

—Ostensible agency. One which exists where the principal intentionally or by want of ordinary care causes a third person to believe another to be his agent who is not really employed by him. Weidenaar v. N. Y. Life Ins. Co., 36 Mont. 592, 94 P. 1, 6. See, also, Agency by Estoppel.

AGENESIA. In medical jurisprudence. Impotentia generandi; sexual impotence; incapacity for reproduction, existing in either sex, and whether arising from structural or other causes.

AGENFRIDA. Sax. The true master or owner of a thing. Spelman.

AGENHINA. In Saxon law. A guest at an inn, who, having stayed there for three nights, was then accounted one of the family. Cowell.

AGENS. Lat. An agent, a conductor, or manager of affairs. Distinguished from *factor*, a workman. A plaintiff. Fleta, lib. 4, c. 15, § 8.

AGENT. One who represents and acts for another under the contract or relation of agency, *q. v.* Fowler v. Cobb (Mo. App.) 232 S. W. 1084.

One who undertakes to transact some business, or to manage some affair, for another, by the authority and on account of the latter, and to render an account of it. 1 Livermore, Ag. 67. See Co. Litt. 207; 1 B. & P. 316; Thomas B. Jeffrey Co. v. Lockridge, 173 Ky. 282, 190 S. W. 1103, 1105; Blackwell v. Kercheval, 27 Idaho, 537, 149 P. 1060, 1062; Hall v. State, 21 Ariz. 261, 187 P. 577, 578.

Classification

Agents are either *general* or *special*. A general agent is one employed in his capacity as a professional man or master of an art or trade, or one to whom the principal confides his whole business or all transactions or functions of a designated class; or he is a person who is authorized by his principal to execute all deeds, sign all contracts, or purchase all goods, required in a particular trade, business, or employment. See Story, Ag. § 17; Thompson v. Michigan Mut. Life Ins. Co., 56 Ind. App. 502, 105 N. E. 780, 782; Little v. Minneapolis Threshing Mach. Co., 166 Iowa, 651, 147 N. W. 872, 873; Powell & Powell v. King Lumber Co., 168 N. C. 632, 84 S. E. 1032, 1033; Continental Ins. Co. v. Schulman, 140 Tenn. 481, 205 S. W. 315, 317; Butler v. Maples, 9 Wall. 766, 19 L. Ed. 822; Jaques v. Todd, 3 Wend. (N. Y.) 90; Springfield Engine Co. v. Kennedy, 7 Ind. App. 502, 34 N. E. 856; Cruzan v. Smith, 41 Ind. 297; Godshaw v. Struck, 109 Ky. 285, 58 S. W. 781, 51 L. R. A. 668. An agent to manage buildings and lease and collect the rents is a "general agent" respecting the property. Daniel v. Pappas (C. C. A. Okl.) 16 F.(2d) 880, 883. An agent empowered to enter into contracts without consulting insurer is "general agent" notwithstanding restriction of his territory. London & Lancashire Ins. Co. v. McWilliams, 110 So. 909, 910, 215 Ala. 481. The term may be equivalent to "general manager." Abuc Trading & Sales Corporation v. Jennings, 151 Md. 392, 135 A. 166, 173; Pro-

ducers' Coal Co. v. Mifflin Coal Mining Co., 82 W. Va. 311, 95 S. E. 948, 949. Life insurance agents are rarely, if ever, "general" in the sense that they execute and deliver policies, as is often done in the business of fire insurance. McDonald v. Equitable Life Assur. Soc. of the United States, 185 Iowa, 1008, 169 N. W. 352, 359. A special agent is one employed to conduct a particular transaction or piece of business for his principal or authorized to perform a specified act. Hinkson v. Kansas City Life Ins. Co., 93 Or. 473, 183 P. 24, 29; Pettijohn v. St. Paul Fire & Marine Ins. Co., 100 Kan. 482, 164 P. 1096, 1097; Hoffman v. Marano, 71 Pa. Super. Ct. 26, 28; Buchanan v. Caine, 57 Ind. App. 274, 106 N. E. 885, 889; Southern States Fire Ins. Co. of Birmingham v. Kronenberg, 199 Ala. 164, 74 So. 63, 66; Bryant v. Moore, 26 Me. 87, 45 Am. Dec. 96; Gibson v. Snow Hardware Co., 94 Ala. 346, 10 South. 304; Cooley v. Perrine, 41 N. J. Law, 325, 32 Am. Rep. 210. The terms general agent and special agent are relative. Hinkson v. Kansas City Life Ins. Co., 93 Or. 473, 183 P. 24, 29.

Agents employed for the sale of goods or merchandise are called "mercantile agents," and are of two principal classes,—brokers and factors (*q. v.*); a factor is sometimes called a "commission agent," or "commission merchant." Russ. Merc. Ag. 1.

Synonyms

The term "agent" is to be distinguished from its synonyms "servant," "representative," and "trustee." A servant acts in behalf of his master and under the latter's direction and authority, but is regarded as a mere instrument, and not as the substitute or proxy of the master. Turner v. Cross, 83 Tex. 218, 18 S. W. 578, 15 L. R. A. 262; People v. Treadwell, 69 Cal. 226, 10 P. 502. A representative (such as an executor or an assignee in bankruptcy) owes his power and authority to the law, which puts him in the place of the person represented, although the latter may have designated or chosen the representative. A trustee acts in the interest and for the benefit of one person, but by an authority derived from another person.

A "servant" is a worker for another who deals ordinarily with things and who has no power to bring about contractual relations with third persons; while an "agent" is one who deals not only with things, but persons, using his own discretion as to means, and frequently establishing contractual relations between his principal and third persons. Rendleman v. Niagara Sprayer Co. (D. C. Ill.) 16 F. (2d) 122, 124. See, also, State v. Bond, 118 S. E. 276, 279, 94 W. Va. 255.

In International Law

A diplomatic *agent* is a person employed by a sovereign to manage his private affairs, or those of his subjects in his name, at the court of a foreign government. Wolff, Inst. Nat. § 1237.

In the Practice of the House of Lords and Privy Council

In appeals, solicitors and other persons admitted to practice in those courts in a similar capacity to that of solicitors in ordinary courts, are technically called "agents." Macph. Priv. Coun. 65.

In General

—Agent and patient. A phrase indicating the state of a person who is required to do a thing, and is at the same time the person to whom it is done; as, when a man is indebted to another, and he appoints him his executor, the latter is required to pay the debt in his capacity of executor, and entitled to receive it in his own right; he is then *agent and patient.* Termes de la Ley.

—General agent. One empowered to transact all business of principal at any particular time or any particular place; it may be equivalent to "general manager." Abuc Trading & Sales Corporation v. Jennings, 151 Md. 392, 135 A. 166, 173.

—Local agent. One appointed to act as the representative of a corporation and transact its business generally (or business of a particular character) at a given place or within a defined district. See Frick Co. v. Wright, 23 Tex. Civ. App. 340, 55 S. W. 608; Moore v. Freeman's Nat. Bank, 92 N. C. 594; Western, etc., Organ Co. v. Anderson, 97 Tex. 432, 79 S. W. 517.

—Managing agent. A person who is invested with general power, involving the exercise of judgment and discretion, as distinguished from an ordinary agent or employee, who acts in an inferior capacity, and under the direction and control of superior authority, both in regard to the extent of the work and the manner of executing the same. Reddington v. Mariposa Land & Min. Co., 19 Hun (N. Y.) 405; Taylor v. Granite State Prov. Ass'n, 136 N. Y. 343, 32 N. E. 992, 32 Am. St. Rep. 749; U. S. v. American Bell Tel. Co. (C. C.) 29 Fed. 33; Upper Mississippi Transp. Co. v. Whittaker, 16 Wis. 220; Foster v. Charles Betcher Lumber Co., 5 S. D. 57, 58 N. W. 9, 23 L. R. A. 490, 49 Am. St. Rep. 859. One who has exclusive supervision and control of some department of a corporation's business, the management of which requires of such person the exercise of independent judgment and discretion, and the exercise of such authority that it may be fairly said that service of summons upon him will result in notice to the corporation. Federal Betterment Co. v. Reeves, 73 Kan. 107, 84 Pac. 560, 4 L. R. A. (N. S.) 460; Hatinen v. Payne, 150 Minn. 344, 185 N. W. 386, 387. As used in section 4274, Wilson's Statutes of Oklahoma 1903, Ann., an agent whose agency extends to all the transactions of the corporation within the state; one who has or is engaged in the management of the business of the corporation, in distinction from the management of a local or particular branch or department of said business. Waters Pierce Oil Co. v. Foster, 52 Okl. 412, 153 P. 169, 171.

—Private agent. An agent acting for an individual in his private affairs; as distinguished

from a *public* agent, who represents the government in some administrative capacity.

—Public agent. An agent of the public, the state, or the government; a person appointed to act for the public in some matter pertaining to the administration of government or the public business. See Story, Ag. § 302; Whiteside v. United States, 93 U. S. 254, 23 L. Ed. 882.

—Real-estate agent. Any person whose business it is to sell, or offer for sale, real estate for others, or to rent houses, stores, or other buildings, or real estate, or to collect rent for others. Act July 13, 1866, c. 184, § 9, par. 25; 14 St. at Large, 118. Carstens v. McReavy, 1 Wash. St. 359, 25 Pac. 471.

Agentes et consentientes pari pœna plectentur. Acting and consenting parties are liable to the same punishment. 5 Coke, 80.

In the Civil Law

AGER. Lat. A field; land generally. A portion of land inclosed by definite boundaries. Municipality No. 2 v. Orleans Cotton Press, 18 La. 167, 36 Am. Dec. 624.

In Old English Law

An acre (*q. v.*). Spelman.

AGGER. Lat. In the civil law. A dam, bank or mound. Cod. 9, 38; Townsh. Pl. 48.

AGGRAVATED ASSAULT. An assault with circumstances of aggravation, or of a heinous character, or with intent to commit another crime. In re Burns (C. C.) 113 Fed. 992; Norton v. State, 14 Tex. 393; Barker v. Green, 34 Ga. App. 574, 130 S. E. 599. See Assault.

Defined in Pennsylvania as follows: "If any person shall unlawfully and maliciously inflict upon another person, either with or without any weapon or instrument, any grievous bodily harm, or unlawfully cut, stab, or wound any other person, he shall be guilty of a misdemeanor," etc. Brightly, Purd. Dig. p. 434, § 167 (18 PS § 2112). Under Pen. Code Tex. 1911, art. 1022 (Vernon's Ann. P. C. art. 1147), an assault becomes an aggravated assault when committed with a deadly weapon under circumstances not amounting to an intent to murder; Myers v. State, 163 S. W. 432, 72 Tex. Cr. R. 630; or when the instrument or means used is such as inflicts disgrace upon the person assaulted; Cirul v. State, 83 Tex. Cr. R. 8, 200 S. W. 1088; Scott v. State, 73 Tex. Cr. R. 622, 166 S. W. 729, 730 (indecent and improper fondling of the person). In Arizona, under Pen. Code 1913, § 215, subd. 5 (Rev. Code 1928, § 4613), aggravated assault is different from simple assault only by infliction of serious bodily injury. Brimhall v. State, 31 Ariz. 522, 255 P. 165, 166, 53 A. L. R. 231.

AGGRAVATION. Any circumstance attending the commission of a crime or tort which increases its guilt or enormity or adds to its injurious consequences, but which is above and beyond the essential constituents of the crime or tort itself.

Matter of aggravation, correctly understood, does not consist in acts of the same kind and description as those constituting the gist of the action, but in something done by the defendant, on the occasion of committing the trespass, which is, to some extent, of a different legal character from the principal act complained of. Hathaway v. Rice, 19 Vt. 107. So on an indictment for murder the prisoner may be convicted of manslaughter, for the averment of malice aforethought is merely matter of aggravation. Co. Litt. 282 *a*.

In Pleading

The introduction of matter into the declaration which tends to increase the amount of damages, but does not affect the right of action itself. Steph. Pl. 257; 12 Mod. 597.

AGGREGATE. Composed of several; consisting of many persons united together; a combined whole. 1 Bl. Comm. 469. The entire number, sum, mass, or quantity of something, Bauer v. Rusetos & Co., 306 Ill. 602, 138 N. E. 206, 208; In re Establishment of Restricted Residence Dist., 151 Minn. 115, 186 N. W. 292, 293.

AGGREGATE CORPORATION. See Corporation.

AGGREGATIO MENTIUM. The meeting of minds. The moment when a contract is complete. A supposed derivation of the word "agreement," *q. v.*

AGGREGATION. "Aggregation," in the law of patents, means that the claims in and of themselves, independently of the prior art, show that the elements are incapable of coacting to produce a unitary result. Krell Auto Grand Piano Co. of America v. Story & Clark Co. (C. C. A. Ind.) 207 F. 946, 951; Line Material Co. v. Brady Electric Mfg. Co. (C. C. A. Conn.) 7 F.(2d) 48, 50. The assembly of old elements, in a device in which each performs the same function in the same way as it did when used alone, without mutuality of action, interaction, or co-operation, is mere "aggregation" not involving invention. Lundie Engineering Co. v. Railroad Supply Co. (C. C. A. Ill.) 8 F.(2d) 995; In re Smith, 19 F.(2d) 678, 679, 57 App. D. C. 204.

AGGRESSOR. The party who first offers violence or offense. He who begins a quarrel or dispute, either by threatening or striking another. See Wilkie v. State, 33 Okl. Cr. 225, 242 P. 1057, 1059.

AGGRIEVED. Having suffered loss or injury; damnified; injured.

A person is "prejudiced" or "aggrieved," in the legal sense, when a legal right is invaded by an act complained of or his pecuniary interest is directly affected by a decree or judgment. Glos v. People, 259 Ill. 332, 102 N. E. 763, 766, Ann. Cas. 1914C, 119; Wadsworth v. Cozad, 175 N. C. 15, 94 S. E. 670, 671. See next topic.

AGGRIEVED PARTY. Under statutes granting the right of appeal to the party aggrieved

by an order or judgment, the party aggrieved is one whose pecuniary interest is directly affected by the adjudication; one whose right of property may be established or divested thereby. Ruff v. Montgomery, 83 Miss. 185, 36 South. 67; McFarland v. Pierce, 151 Ind. 546, 45 N. E. 706; Lamar v. Lamar, 118 Ga. 684, 45 S. E. 498; Smith v. Bradstreet, 16 Pick. (Mass.) 264; Bryant v. Allen, 6 N. H. 116; Wiggin v. Swett, 6 Metc. (Mass.) 194, 39 Am. Dec. 716; Tillinghast v. Brown University, 24 R. I. 179, 52 Atl. 891; Lowery v. Lowery, 64 N. C. 110; Raleigh v. Rogers, 25 N. J. Eq. 506; McMahan v. Ruble, 135 Ark. 83, 204 S. W. 746; Standard Oil Co. of New York v. Board of Purification of Waters, 43 R. I. 336, 111 A. 887, 888; Williams v. Rice (Sup. Ct.) 201 N. Y. S. 43; Succession of Dickson, 148 La. 501, 87 So. 251, 252; Appeal of Cummings, 126 Me. 111, 136 A. 662, 663 (adoption proceedings); State v. Hunter, 152 Tenn. 233, 276 S. W. 639, 640 (disbarment proceedings; petitioner, individual member of bar, aggrieved); State v. Huddleston, 173 Ark. 686, 293 S. W. 353, 358 (disbarment proceedings; bar association aggrieved; *contra*, In re Dolphin, 240 N. Y. 89, 147 N. E. 538, 539 (disciplinary proceedings); Commonwealth v. Davidson, 269 Pa. 218, 112 A. 115 (lunacy inquisition); Madden v. Zoning Board of Review of City of Providence, 48 R. I. 175, 136 A. 493 (zoning board's proceedings). Or one against whom error has been committed. Kinealy v. Macklin, 67 Mo. 95. Or one against whom an appealable order or judgment has been entered. Ely v. Frisbie, 17 Cal. 260. Or any party having an interest recognized by law in the subject-matter, which interest is injuriously affected by judgment. Hornbeck v. Richards, 80 Mont. 27, 257 P. 1025, 1026.

A complainant who has received less than the relief demanded, or a defendant who has not been accorded the full amount of his set-off or counterclaim, is aggrieved by the judgment. Blanchard v. Neill, 83 N. J. Eq. 446, 91 A. 811. See, also, Kondas v. Washoe County Bank, 50 Nev. 181, 254 P. 1080, 1081. Conversely, a petitioner for probate of a will cannot be "aggrieved" by its admission. Appeal of Thompson, 114 Me. 338, 96 A. 238, 239.

One who is under the necessity of answering or replying to irrelevant and redundant matter in a pleading is a "person aggrieved" thereby, who may move that it be stricken out under Code Civ. Proc. N. Y. § 545. Shea v. Kiely (Sup.) 167 N. Y. S. 570, 572.

"Party aggrieved" by officer's failure to execute and make return of process, so as to be entitled to recover penalty imposed by statute, is party at whose instance process was issued, or one having beneficial interest therein by transfer or assignment and not party to whom process was directed. Whitsitt v. Wright, 155 Tenn. 207, 291 S. W. 447, 448.

AGILD. In Saxon law. Free from penalty, not subject to the payment of *gild*, or *were-gild;* that is, the customary fine or pecuniary compensation for an offense. Spelman; Cowell.

AGILER. In Saxon law. An observer or informer.

AGILLARIUS. L. Lat. In old English law. A hayward, herdward, or keeper of the herd of cattle in a common field. Cowell.

AGIO. In commercial law. A term used to express the difference in point of value between metalic and paper money, or between one sort of metallic money and another. McCul. Dict.

An Italian word for accommodation.

AGIOTAGE. A speculation on the rise and fall of the public debt of states, or the public funds. The speculator is called "*agioteur.*"

AGIST.

In Ancient Law

To take in and give feed to the cattle of strangers in the king's forest, and to collect the money due for the same to the king's use. Spelman; Cowell.

In Modern Law

To take in cattle to feed, or pasture, at a certain rate of compensation. See Agistment.

AGISTATIO ANIMALIUM IN FORESTA. The drift or numbering of cattle in the forest.

AGISTER. See Agistor.

AGISTERS, or GIST TAKERS. Officers appointed to look after cattle, etc. See Williams, Common, 232.

AGISTMENT. The taking in of another person's cattle to be fed, or to pasture, upon one's own land, in consideration of an agreed price to be paid by the owner. Also the profit or recompense for such pasturing of cattle. Bass v. Pierce, 16 Barb. (N. Y.) 595; Williams v. Miller, 68 Cal. 290, 9 Pac. 166; Auld v. Travis, 5 Colo. App. 535, 39 Pac. 357. It is a species of bailment. Patchen-Wilkes Stock Farm Co. v. Walton, 166 Ky. 705, 179 S. W. 823.

Tithe of Agistment was a small tithe paid to the rector or vicar on cattle or other produce of grass lands. It was paid by the occupier of the land and not by the person who put in his cattle to graze. Rawle, Exmoor 31.

In Canon Law

A composition or mean rate at which some right or due might be reckoned.

There is also agistment of sea-banks, where lands are charged with a tribute to keep out the sea; and *terræ agistatæ* are lands whose owners must keep up the sea-banks. Holthouse.

AGISTOR. One who takes in horses or other animals to pasture at certain rates. Story, Bailm. § 443; Cox v. Chase, 99 Kan. 740, 163 P. 184, 186; Vaughan v. Bixby, 24 Cal. App. 641, 142 P. 100; Skinner v. Caughey, 64 Minn. 375, 67 N. W. 203.

An officer who had the charge of cattle pastured for a certain stipulated sum in the king's forest and who collected the money paid for them.

AGNATES. In the law of descents. Relations by the father, or on the father's side. This word is used in the Scotch law, and by some writers as an English word, corresponding with the Latin *agnati*, (*q. v.*). Ersk. Inst. b. 1, tit. 7, § 4.

AGNATI. In Roman law. The term included "all the cognates who trace their connection exclusively through males. A table of *cognates* is formed by taking each lineal ancestor in turn and including all his descendants of both sexes in the tabular view. If, then, in tracing the various branches of such a genealogical table or tree, we stop whenever we come to the name of a female, and pursue that particular branch or ramification no further, all who remain after the descendants of women have been excluded are *agnates*, and their connection together is agnatic relationship." Maine, Anc. Law, 142.

All persons are agnatically connected together who are under the same *patria potestas*, or who have been under it, or who might have been under it if their lineal ancestor had lived long enough to exercise his empire. Maine, Anc. Law, 144.

The agnate family consisted of all persons living at the same time, who would have been subject to the *patria potestas* of a common ancestor, if his life had been continued to their time. Hadl. Rom. Law, 131.

Cognates were all persons who could trace their blood to a single ancestor or ancestress, and agnates were those cognates who traced their connection exclusively through males. Maine, Anc. Law. Between *agnati* and *cognati* there is this difference: that, under the name of agnati, *cognati* are included, but not *è converso;* for instance, a father's brother, that is, a paternal uncle, is both *agnatus* and *cognatus*, but a mother's brother, that is, a maternal uncle, is a *cognatus* but not *agnatus*. (Dig. 38, 7, 5, pr.) Burrill.

AGNATIC. [From *agnati*, *q. v.*] Derived from or through males. 2 Bl. Comm. 236.

AGNATIO. In the civil law. Relationship on the father's side; the relationship of *agnati;* agnation. *Agnatio a patre est.* Inst. 3, 5, 4; Id. 3, 6, 6.

AGNATION. Kinship by the father's side. See Agnates; Agnati.

AGNOMEN. Lat. An additional name or title; a nickname. A name or title which a man gets by some action or peculiarity; the last of the four names sometimes given a Roman. Thus, Scipio *Africanus*, (the African,) from his African victories. Ainsworth; Calvinus, Lex. See Nomen.

AGNOMINATION. A surname; an additional name or title; agnomen.

AGNUS DEI. Lat. Lamb of God. A piece of white wax, in a flat, oval form, like a small cake, stamped with the figure of a lamb, and consecrated by the pope. Cowell.

AGONY. Violent physical pain or mental distress. City of Chicago v. McLean, 133 Ill. 148, 24 N. E. 527, 8 L. R. A. 765.

AGRAPHIA. See Aphasia.

AGRARIAN. Relating to land, or to a division or distribution of land; as an agrarian law.

AGRARIAN LAWS. In Roman law. Laws for the distribution among the people, by public authority, of the lands constituting the public domain, usually territory conquered from an enemy.

In common parlance the term is frequently applied to laws which have for their object the more equal division or distribution of landed property; laws for subdividing large properties and increasing the number of landholders.

AGRARIUM. A tax upon or tribute payable out of land.

AGREAMENTUM. In old English law. Agreement; an agreement. Spelman.

AGREE. To concur; to come into harmony; to give mutual assent; to unite in mental action; to exchange promises: to make an agreement; to arrange; to settle. Mickleson v. Gypsy Oil Co., 110 Okl. 117, 238 P. 194, 198; In re Segregation of School Dist. No. 58 from Rural High School Dist. No. 1, 34 Idaho, 222, 200 P. 138, 139; Harvey v. Bodman, 212 Ala. 503, 103 So. 569, 572.

To concur or acquiesce in; to approve or adopt. *Agreed, agreed to,* are frequently used in the books, (like *accord,*) to show the concurrence or harmony of cases. *Agreed per curiam* is a common expression.

To harmonize or reconcile. "You will *agree* your books." 8 Coke, 67.

To say that a jury agrees upon a verdict is equivalent to *find*. Benedict v. State, 14 Wis. 423.

It sometimes means to grant or covenant, as when a grantor agrees that no building shall be erected on an adjoining lot; Hogan v. Barry, 143 Mass. 538, 10 N. E. 253; or a mortgagor agrees to cause all taxes to be paid; Mackay v. Truchon, 171 Mo. App. 42, 153 S. W. 502, 503.

AGRÉÉ. In French law. A person authorized to represent a litigant before the Tribunals of Commerce. If such person be a lawyer, he is called an *avocat-agréé*. Coxe, Manual of French Law.

AGREEANCE. In Scotch law. Agreement; an agreement or contract.

AGREED. Settled or established by agreement. This word in a deed creates a covenant.

This word is a technical term, and it is synonymous with "contracted," McKisick v. McKisick, Meigs (Tenn.) 433. It means, *ex vi termini*, that it is the agreement of both parties, whether both sign it or not, each and both consenting to it. Aikin v. Albany, V. & C. R. Co., 26 Barb. (N. Y.) 298.

The word "understood" in a contract is synonymous with "agreed." Phœnix Iron & Steel Co. v. Wilkoff Co. (C. C. A. Ohio) 253 F. 165, 167, 1 A. L. R. 1497; Mertz v. Fleming, 185 Wis. 58, 200 N. W. 655, 656.

AGREED CASE. An agreed statement of facts on which a case is submitted in lieu of evidence is not an "agreed case" under the statute (Rev. St. 1909, § 2117), or at common law. Byers v. Essex Inv. Co., 281 Mo. 375, 219 S. W. 570, 571. Nor is such a statement an "agreed case" within the Indiana statute (Burns' Ann. St. 1926, § 604), providing that parties may submit any matter of controversy upon an agreed statement of the facts, made out and signed by the parties, and accompanied by an affidavit that the controversy is real, and the proceedings in good faith. Reddick v. Board of Com'rs of Pulaski County, 14 Ind. App. 598, 41 N. E. 834; Struble-Werneke Motor Co. v. Metropolitan Securities Corporation, 93 Ind. App. 416, 178 N. E. 460.

AGREED ORDER. The only difference between an agreed order and one which is made in the due course of the proceedings in an action is that in the one case it is agreed to, and in the other it is made as authorized by law. Clafiin v. Gibson (Ky.) 51 S. W. 439, 21 Ky. Law Rep. 337.

AGREED STATEMENT OF FACTS. A statement of facts, agreed on by the parties as true and correct, to be submitted to a court for a ruling on the law of the case. United States Trust Co. v. New Mexico, 183 U. S. 535, 22 Sup. Ct. 172, 46 L. Ed. 315; Reddick v. Pulaski County, 14 Ind. App. 598, 41 N. E. 834. See Case Stated.

AGREEMENT. A concord of understanding and intention, between two or more parties, with respect to the effect upon their relative rights and duties, of certain past or future facts or performances. The act of two or more persons, who unite in expressing a mutual and common purpose, with the view of altering their rights and obligations.

A coming together of parties in opinion or determination; the union of two or more minds in a thing done or to be done; a mutual assent to do a thing. Com. Dig. "Agreement," A 1. See Aggregatio Mentium. Carter v. Prairie Oil & Gas Co., 58 Okl. 365, 160 P. 319, 322; Tucker v. Pete Sheeran Bro. & Co., 155 Ky. 670, 160 S. W. 176, 178; Stuckert v. Cann, 111 A. 596, 597, 1 W. W. Harr. (Del.) 129; Northwestern Pac. R. Co. v. Industrial Accident Commission of California, 173 Cal. 652, 161 P. 123, 125; Simpson Const. Co. v. Industrial Board of Illinois, 275 Ill. 366, 114 N. E. 138, 140.

The consent of two or more persons concurring, the one in parting with, the other in receiving, some property, right, or benefit. Bac. Abr.

A promise, or undertaking. This is a loose and incorrect sense of the word. Wain v. Warlters, 5 East, 11.

The writing or instrument which is evidence of an agreement.

Classification

Agreements are of the following several descriptions, viz.:

Conditional agreements, the operation and effect of which depend upon the existence of a supposed state of facts, or the performance of a condition, or the happening of a contingency.

Executed agreements, which have reference to past events, or which are at once closed and where nothing further remains to be done by the parties.

Executory agreements are such as are to be performed in the future. They are commonly preliminary to other more formal or important contracts or deeds, and are usually evidenced by memoranda, parol promises, etc.

Express agreements are those in which the terms and stipulations are specifically declared and avowed by the parties at the time of making the agreement.

Implied agreement. (1) Implied in fact. One inferred from the acts or conduct of the parties, instead of being expressed by them in written or spoken words. (2) Implied in law; more aptly termed a constructive or quasi contract. One where, by fiction of law, a promise is imputed to perform a legal duty; one inferred by the law where the conduct of the parties with reference to the subject-matter is such as to induce the belief that they intended to do that which their acts indicate they have done. Baltimore & O. R. Co. v. U. S., 261 U. S. 592, 43 S. Ct. 425, 67 L. Ed. 816; Bixby v. Moor, 51 N. H. 403; Cuneo v. De Cuneo, 24 Tex. Civ. App. 436, 59 S. W. 284.

Parol agreements. Such as are either by word of mouth or are committed to writing, but are not under seal. The common law draws only one great line, between things under seal and not under seal. Wharton.

Synonyms Distinguished

The term "agreement" is often used as synonymous with "contract." Douglass v. W. L. Williams Art Co., 143 Ga. 846, 85 S. E. 993. Properly speaking, however, it is a wider term than "contract" (Anson, Cont. 4.) An agreement might not be a contract, because not fulfilling some requirement of the law of the place in which it is made. So, where a contract embodies a series of mutual

stipulations or constituent clauses, each of these clauses might be denominated an "agreement." The meaning of the contracting parties is their agreement. Whitney v. Wyman, 101 U. S. 396, 25 L. Ed. 1050.

"*Agreement*" is seldom applied to specialties; "*contract*" is generally confined to simple contracts; and "*promise*" refers to the engagement of a party without reference to the reasons or considerations for it, or the duties of other parties. Pars. Cont. 6.

"Agreement" is more comprehensive than "promise;" signifies a mutual contract, on consideration, between two or more parties. A statute (of frauds) which requires the agreement to be in writing includes the consideration. Wain v. Warlters, 5 East, 10.

"Agreement" is not synonymous with "promise" or "undertaking," but, in its more proper and correct sense, signifies a mutual contract, on consideration, between two or more parties, and implies a consideration. Andrews v. Pontue, 24 Wend. (N. Y.) 285.

An interlocutory judgment of divorce may be a contract or agreement within the meaning of a statute freeing the husband from liability for support. London Guarantee & Accident Co. v. Industrial Accident Commission, 181 Cal. 460, 184 P. 864, 866.

In General

—Agreement for insurance. An agreement often made in short terms preliminary to the filling out and delivery of a policy with specific stipulations.

—Agreement of sale; agreement to sell. An agreement of sale may imply not merely an obligation to sell, but an obligation on the part of the other party to purchase (cf. Maloney v. Aschaffenburg, 143 La. 509, 78 So. 761, 764; Loud v. St. Louis Union Trust Co., 313 Mo. 552, 281 S. W. 744, 755); while an agreement to sell is simply an obligation on the part of the vendor or promisor to complete his promise of sale; Treat v. White, 181 U. S. 264, 21 Sup. Ct. 611, 45 L. Ed. 853; Davis v. Roseberry, 95 Kan. 411, 148 P. 629, 630, 3 A. L. R. 564. Generally, anything short of passing the title is an "agreement to sell," not a sale. Neponsit Holding Corporation v. Ansorge, 215 App. Div. 371, 214 N. Y. S. 91, 96.

—In agreement. In conformity, or harmony with. Brown Real Estate Co. v. Lancaster County, 110 Neb. 665, 194 N. W. 897, 898.

AGREER. Fr. In French marine law. To rig or equip a vessel. Ord. Mar. liv. 1, tit. 2, art. 1.

AGREZ. Fr. In French marine law. The rigging or tackle of a vessel. Ord. Mar. liv. 1, tit. 2, art. 1; Id. tit. 11, art. 2; Id. liv. 3, tit. 1, art. 11.

AGRI. Arable lands in common fields.

AGRI LIMITATI.

In Roman Law

Lands belonging to the state by right of conquest, and granted or sold in plots. Sandars, Just. Inst. (5th Ed.) 98.

In Modern Civil Law

Lands whose boundaries are strictly limited by the lines of government surveys. Hardin v. Jordan, 140 U. S. 371, 11 Sup. Ct. 808, 35 L. Ed. 428.

AGRICULTURAL CHEMISTRY. A study of products of the soil, especially foods, their nutritive value, their intensive production, study of composition of soil, chemical methods of fertilization, prevention or amelioration of plant diseases, extinction of insects and other detriments to agriculture, and in general study of animal and plant life with relation to the science of chemistry. In re Frasch's Estate, 211 N. Y. S. 635, 638, 125 Misc. Rep. 381.

AGRICULTURAL HOLDING. Land cultivated for profit in some way. Within the meaning of the English Agricultural Holdings act of 1883, the term will not include natural grass lands. Such lands are pastoral holdings. 32 S. J. 630.

AGRICULTURAL LAND. Land may be assessable as "agricultural land" though it be covered by native timber and underbrush, grass, and weeds. Milne v. McKinnon, 32 S. D. 627, 144 N. W. 117, 118. The term is synonymous with land "agricultural in character." State v. Stewart, 58 Mont. 1, 190 P. 129, 131.

AGRICULTURAL LIEN. A statutory lien in some states to secure money or supplies advanced to an agriculturist to be expended or employed in the making of a crop and attaching to that crop only. Clark v. Farrar, 74 N. C. 686, 690; Jones-Phillips Co. v. McCormick, 174 N. C. 82, 93 S. E. 449, 452.

AGRICULTURAL PRODUCT. That which is the direct result of husbandry and the cultivation of the soil. The product in its natural unmanufactured condition. Getty v. Milling Co., 40 Kan. 281, 19 Pac. 617. It has been held not to include beef cattle; Davis & Co. v. City of Macon, 64 Ga. 128, 37 Am. Rep. 60; but to include forestry products; Northern Cedar Co. v. French, 131 Wash. 394, 230 P. 837, 846.

AGRICULTURAL SOCIETY. One for the promotion of agricultural interests, such as the improvement of land, breeds of cattle, etc.; Downing v. State Board of Agriculture, 129 Ind. 443, 28 N. E. 123, 614, 12 L. R. A. 664; or for giving agricultural fairs; Town of West Hartford v. Connecticut Fair Ass'n, 92 A. 432, 88 Conn. 627. See, also, Fairview Inv. Co. v. Lamberson, 25 Idaho, 72, 136 P. 606, 607.

AGRICULTURE. The cultivation of soil for food products or any other useful or valuable growths of the field or garden; tillage, husbandry; also, by extension, farming, including any industry practiced by a cultivator of the soil in connection with such cultivation, as breeding and rearing of stock, dairying, etc. The science that treats of the cultivation of the soil. Stand. Dict.; State v. Stewart, 58 Mont. 1, 190 P. 129, 131; Fleckles v. Hille, 83 Ind. App. 715, 149 N. E. 915; Davis v. Industrial Commission of Utah, 59 Utah, 607, 206 P. 267, 268; Gordon v. Buster, 113 Tex. 382, 257 S. W. 220, 221; Tower & Sons v. U. S., 9 Ct. Cust. App. 307, 308; Slycord v. Horn, 179 Iowa, 936, 162 N. W. 249, 252, 7 A. L. R. 1285; People v. City of Joliet, 321 Ill. 385, 152 N. E. 159, 160. And see Binzel v. Grogan, 67 Wis. 147, 29 N. W. 895.

"Agriculture" refers to the field or farm with all its wants, appointments, and products, as distinguished from "horticulture," which refers to the garden, with its less important though varied products. Dillard v. Webb, 55 Ala. 468.

A person is actually engaged in agriculture (within the meaning of a statute giving him special exemptions) when he derives the support of himself and family in whole or in part from the cultivation of land; it must be something more than a garden, though it may be less than a field, and the uniting of any other business with this is not inconsistent with the pursuit of agriculture. Springer v. Lewis, 22 Pa. 193. See Bachelder v. Bickford, 62 Me. 526; Simons v. Lovell, 7 Heisk. (Tenn.) 515.

AGUSADURA. In ancient customs, a fee, due from the vassals to their lord for sharpening their plowing tackle.

AHTEID. In old European law. A kind of oath among the Bavarians. Spelman. In Saxon law. One bound by oath, *q. d.* "oath-tied." From *ath*, oath, and *tied*. Id.

AID. To support, help, assist, or strengthen. Hines v. State, 16 Ga. App. 411, 85 S. E. 452, 454; State v. Harris, 74 Or. 573, 144 P. 109, 111, Ann. Cas. 1916A, 1156. To act in cooperation with. Cornett v. Commonwealth, 198 Ky. 236, 248 S. W. 540, 542. This word must be distinguished from its synonym "encourage," the difference being that the former connotes active support and assistance, while the latter does not; and also from "abet," which last word imports necessary criminality in the act furthered (see State v. Ankrom, 86 W. Va. 570, 103 S. E. 925, 927; Osborne v. Baughman, 85 Cal. App. 224, 259 P. 70, 71), while "aid," standing alone, does not. But see Acker v. State, 26 Ariz. 372, 226 P. 199, 201, holding that aid given by an accomplice implies guilty knowledge, and a definite aiding in the crime itself. See Abet.

AID AND ABET. In criminal law. That kind of connection with the commission of a crime which, at common law, rendered the person guilty as a principal in the second degree. It consisted in being present at the time and place, and doing some act to render aid to the actual perpetrator of the crime, though without taking a direct share in its commission. See 4 Bl. Comm. 34; People v. Dole, 122 Cal. 486, 55 Pac. 581, 68 Am. St. Rep. 50; State v. Tally, 102 Ala. 25, 15 South. 722; State v. Jones, 115 Iowa, 113, 88 N. W. 196; State v. Cox, 65 Mo. 29, 33; State v. Odbur, 317 Mo. 372, 295 S. W. 734, 736; Lassen v. Board of Dental Examiners, 24 Cal. App. 767, 142 P. 505, 507. See Accessory; Abettor; Aider and Abettor.

"Aid and abet" comprehend all assistance rendered by words, acts, encouragement, support, or presence, actual or constructive, to render assistance if necessary. Johnson v. State, 21 Ala. App. 565, 110 So. 55; State v. Davis, 191 Iowa, 720, 183 N. W. 314, 316. It is not sufficient that there is a mere negative acquiescence not in any way made known to the principal malefactor. People v. Barnes, 311 Ill. 559, 143 N. E. 445, 447.

AID AND ASSIST. The words "aided and assisted," as used in the statute prohibiting the sale of intoxicating liquors, as regards the condemnation or confiscation of vehicles, implies either knowledge on the part of the owner that the vehicle was being used for unlawful transportation, or such negligence or want of care as to charge him with such knowledge or notice. In re Gattina, 203 Ala. 517, 84 So. 760; State v. Hughes, 203 Ala. 90, 82 So. 104.

AID AND COMFORT. Help; support; assistance; counsel; encouragement.

As an element in the crime of treason (see Constitution of the United States, art. 3, § 3), the giving of "aid and comfort" to the enemy may consist in a mere attempt. It is not essential to constitute the giving of aid and comfort that the enterprise commenced should be successful and actually render assistance. Young v. United States, 97 U. S. 39, 62, 24 L. Ed. 992; U. S. v. Greathouse, 4 Sawy. 472, Fed. Cas. No. 15,254.

The voluntary execution of an official bond of a commissioned officer of the Confederacy from motives of personal friendship, is giving aid and comfort; U. S. v. Padelford, 9 Wall. (U. S.) 539, 19 L. Ed. 788; as is the giving of mechanical skill to build boats for the Confederacy; Gearing v. U. S., 3 Ct. of Cl. 172; otherwise, however, as to a devise to an alien enemy; In re Kielsmark's Will, 188 Iowa, 1378, 177 N. W. 690, 693, 11 A. L. R. 156.

AID BOND. See Bond.

AID OF THE KING. The king's tenant prays this, when rent is demanded of him by others.

AID PRAYER. In English practice. A proceeding formerly made use of, by way of petition in court, praying in aid of the tenant for life, etc., from the reversioner or remainderman, when the title to the inheritance was in question. It was a plea in suspension of the action. 3 Bl. Comm. 300.

AID SOCIETIES. See Benefit Societies.

AIDER AND ABETTOR. One who advises, counsels, procures, or encourages another to commit the criminal act, State v. Hart, 186 N. C. 582, 120 S. E. 345, 346; Ratcliffe v. Walker, 117 Va. 569, 85 S. E. 575, 579, Ann. Cas. 1917E, 1022. He must share the criminal intent of the principal; State v. Reedy, 97 W. Va. 549, 127 S. E. 24, 28; Whitt v. Commonwealth, 221 Ky. 490, 298 S. W. 1101, 1103; Crawford v. State, 133 Miss. 147, 97 So. 534; and must be actually or constructively present when the crime is committed; Smiddy v. Commonwealth, 210 Ky. 359, 275 S. W. 872, 873. But one who incites or instigates the commission of a felony when he is neither actually nor constructively present is an "aider, abettor, or procurer" within the meaning of a statute. Lamb v. State, 69 Neb. 212, 95 N. W. 1050; Neal v. State, 175 N. W. 669, 670, 104 Neb. 56.

AIDER BY VERDICT. The healing or remission, by a verdict rendered, of a defect or error in pleading which might have been objected to before verdict.

The presumption of the proof of all facts necessary to the verdict as it stands, coming to the aid of a record in which such facts are not distinctly alleged.

AIDS. In feudal law, originally mere benevolences granted by a tenant to his lord, in times of distress; but at length the lords claimed them as of right. They were principally three: (1) To ransom the lord's person, if taken prisoner; (2) to make the lord's eldest son and heir apparent a knight; (3) to give a suitable portion to the lord's eldest daughter on her marriage. Abolished by 12 Car. II. c. 24.

Also, extraordinary grants to the crown by the house of commons, which were the origin of the modern system of taxation. 2 Bl. Comm. 63, 64.

Reasonable Aid

A duty claimed by the lord of the fee of his tenants, holding by knight service, to marry his daughter, etc. Cowell.

AIEL (spelled also *Ayel*, *Aile*, *Ayle*, and *Aieul*). L. Fr. A grandfather.

A writ which lieth where the grandfather was seized in his demesne as of fee of any lands or tenements in fee simple the day that he died, and a stranger abateth or entereth the same day and dispossesseth the heir. Fitzh. Nat. Brev. 222; Termes de la Ley; 3 Bla. Com. 186; 2 Poll. & Maitl. 57. See Abatement of Freehold.

AIELESSE. A Norman French term signifying "grandmother." Kelham.

AILE. A corruption of the French word *aieul*, grandfather. See Aiel.

AILMENT. Within the meaning of an application for a benefit certificate, something which substantially impairs the health of the applicant, materially weakens the vigor of his constitution, or seriously deranges his vital functions, thereby excluding chronic rheumatism. National Americans v. Ritch, 121 Ark. 185, 180 S. W. 488, 489. The term "ailment," however, covers disorders which could not properly be called diseases. Cromeens v. Sovereign Camp W. O. W. (Mo. App.) 247 S. W. 1033, 1034.

AIM A WEAPON. To aim a weapon at another is to point it intentionally. Livingston v. State, 6 Ga. App. 805 (2), 65 S. E. 812; Edwards v. State, 28 Ga. App. 466, 111 S. E. 748. The word "point," however, is not entirely synonymous. "Aim" denotes direction toward some minute point in an object, while "point" implies direction toward the whole object; but the word "point," as used in Comp. St. Okl. 1921, § 1999 (St. 1931, § 2591), implies intention, and in that respect is similar to the word "aim." Buchanan v. State, 25 Okl. Cr. 198, 219 P. 420, 423.

AINESSE. In French feudal law. The right or privilege of the eldest born; primogeniture; esnecy. Guyot, Inst. Feud. c. 17.

AIR. That fluid transparent substance which surrounds our globe. Bank v. Kennett, 101 Mo. App. 370, 74 S. W. 474.

AIR COURSES. As applied to the operation of coal mines, passages for conducting air. Ricardo v. Central Coal & Coke Co., 100 Kan. 95, 163 P. 641, 643. See Airway.

AIRCRAFT. As used in the Act of Congress of 1926 (49 USCA §§ 171–184), to encourage the use of aircraft in commerce, the term "aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air, except a parachute or other contrivance designed for such navigation but used primarily as safety equipment.

As defined in the Uniform Aeronautics Act, § 1, adopted by 1932 in 21 states, the term includes balloon, airplane, hydroplane and every other vehicle used for navigation through the air. See Aeronautics; Airship; Hydro-Aeroplane.

AIRE. In old Scotch law. The court of the justices itinerant, corresponding with the English *eyre*, (*q. v.*) Skene de Verb. Sign. voc. *Iter*.

AIRPLANE. See Aeronautics; Hydro-Aeroplane; Aircraft; Airship.

AIRPORT. A place specially constructed and designed for the purpose of enabling airplanes or craft navigating the air to take off and to land safely and for the housing or anchoring of such craft when not in service.

As used in the air commerce act of 1926 (49 USCA §§ 171–184), the term "airport" means any locality either of water or land which is adapted for the landing and taking off of

aircraft and which provides facilities for shelter, supply, and repair of aircraft, or a place used regularly for receiving or discharging passengers or cargo by air. See City of Wichita v. Clapp, 125 Kan. 100, 263 P. 12, 63 A. L. R. 478; McClintock v. City of Roseburg, 127 Or. 698, 273 P. 331; State v. Johnson, 117 Neb. 301, 220 N. W. 273; State v. City of Cleveland, 26 Ohio App. 265, 160 N. E. 241; Douty v. Mayor and City Council, 155 Md. 125, 141 A. 499; Hesse v. Rath, 249 N. Y. 436, 164 N. E. 342; Id., 224 App. Div. 344, 230 N. Y. S. 676; Ennis v. Kansas City, 321 Mo. 536, 11 S.W.(2d) 1054; Dysart v. City of St. Louis, 321 Mo. 514, 11 S.W.(2d) 1045, 62 A. L. R. 762.

AIRSHIP. Under some statutes the term airship" includes every kind of vehicle or structure intended for use as a means of transporting passengers or goods, or both, in the air. As defined by the International Flying Convention of 1919, an airship means an aircraft using gas lighter than air as a means of support and having means of propulsion.

As regards airships as common carriers, see North American & Acc. Ins. Co. v. Pitts, 213 Ala. 102, 104 So. 21, 40 A. L. R. 1171; Brown v. Pacific Mut. Life Ins. Co. (C. C. A.) 8 F.(2d) 996.

See Aeronautics; Aircraft; Hydro-Aeroplane.

AIRT AND PAIRT. In old Scotch criminal law. Accessary; contriver and partner. 1 Pitc. Crim. Tr. pt. 1, p. 133; 3 How. State Tr. 601. Now written *art and part*, (*q. v.*)

AIRWAY. In English law. A passage for the admission of air into a mine. To maliciously fill up, obstruct, or damage, with intent to destroy, obstruct, or render useless the airway to any mine, is a felony punishable by penal servitude or imprisonment at the discretion of the court. 24 & 25 Vict. c. 97, § 28. See Air Courses.

A term used to describe air routes for airplanes, including seaplanes. City of Wichita v. Clapp, 125 Kan. 100, 263 P. 12, 63 A. L. R. 478.

AISIAMENTUM (spelled also *Esamentum, Aismentum).* In old English law. An easement. Spelman.

AISNE or EIGNE. In old English law, the eldest or first born.

AJOURNMENT. In French law. The document pursuant to which an action or suit is commenced, equivalent to the writ of summons in England. Actions, however, are in some cases commenced by *requête* or petition. Arg. Fr. Merc. Law, 545.

AJUAR. In Spanish law. Paraphernalia. The jewels and furniture which a wife brings in marriage.

AJUTAGE (spelled also *Adjutage).* A conical tube used in drawing water through an aperture, by the use of which the quantity of water drawn is much increased.

When a privilege to draw water from a canal, through the forebay or tunnel, by means of an aperture, has been granted, it is not lawful to add an *ajutage*, unless such was the intention of the parties; Schuylkill Nav. Co. v. Moore, 2 Whart. (Pa.) 477.

AKIN. In old English law. Of kin. "Next-a-kin." 7 Mod. 140.

AL. Law Fr. At the; to the. *Al barre*; at the bar. *Al huis d'esglise;* at the church door.

ALÆ ECCLESIÆ. The wings or side aisles of a church. Blount.

ALANERARIUS. A manager and keeper of dogs for the sport of hawking; from *alanus*, a dog known to the ancients. A falconer. Blount.

ALARM LIST. The list of persons liable to military watches, who were at the same time exempt from trainings and musters. See Prov. Laws 1775–76, c. 10, § 18; Const. Mass. c. 11, § 1, art. 10; Pub. St. Mass. 1882, p. 1287.

ALBA FIRMA. In old English law. White rent; rent payable in silver or white money, as distinguished from that which was anciently paid in corn or provisions, called black mail, or black rent; *reditus nigri.* Spelman; Reg. Orig. 319*b*.

ALBACEA. In Spanish law. An executor or administrator; one who is charged with fulfilling and executing that which is directed by the testator in his testament or other last disposition. Emeric v. Alvarado, 64 Cal. 529, 2 Pac. 418, 433.

ALBANAGIUM. In old French law. The state of alienage; of being a foreigner or alien.

ALBANUS. In old French law. A stranger, alien, or foreigner.

ALBINATUS. In old French law. The state or condition of an alien or foreigner.

ALBINATUS JUS. In old French law. The *droit d'aubaine* in France, whereby the king, at an alien's death, was entitled to all his property, unless he had peculiar exemption. Repealed in June, 1791.

ALBUM BREVE. A blank writ; a writ with a blank or omission in it.

ALBUS LIBER. The white book; an ancient book containing a compilation of the law and customs of the city of London.

ALCABALA. In Spanish law. A duty of a certain per cent. paid to the treasury on the sale or exchange of property.

ALCALDE. The name of a judicial officer in Spain, and in those countries which have received their laws and institutions from Spain.

His functions somewhat resembled those of mayor in small municipalities on the continent, or justice of the peace in England and most of the United States. Castillero v. U. S., 2 Black, 17, 194, 17 L. Ed. 360.

ALCOHOLIC LIQUORS. "Alcoholic, spirituous and malt liquors" mean intoxicating liquors which can be used as a beverage, and which, when drunk to excess, will produce intoxication. Howard v. Acme Brewing Co., 143 Ga. 1, 83 S. E. 1096, 1097, Ann. Cas. 1917A, 91. Near beer, containing less than 2 per cent. of alcohol, is not a malt or alcoholic liquor. Village of Marthaville v. Chambers, 135 La. 767, 66 So. 193. But raw alcohol is included in prohibitions against selling "alcoholic, spirituous, or intoxicating liquors." C. J. Lincoln Co. v. State, 122 Ark. 204, 183 S. W. 173, 174. The terms "alcoholic liquors," "intoxicating or spirituous liquors," and "intoxicating liquors, including beer, ale, or wine" are used as synonymous terms in Selective Service Act, § 12 (50 USCA § 226 note), prohibiting sale of such liquors to members of the military forces while in uniform. U. S. v. Kinsel (D. C.) 263 F. 141, 142. See Intoxicating Liquor.

ALCOHOLISM. In medical jurisprudence. The pathological effect (as distinguished from physiological effect) of excessive indulgence in intoxicating liquors. It is *acute* when induced by excessive potations at one time or in the course of a single debauch. An attack of delirium tremens and alcoholic homicidal mania are examples of this form. It is *chronic* when resulting from the long-continued use of spirits in less quantities, as in the case of dipsomania.

ALCOVE ROOM. An "alcove room," within Tenement House Law N. Y. § 65, is a room with an alcove. People on Complaint of Hickey v. Whitelow (Mag. Ct. N. Y.) 166 N. Y. S. 141, 148.

ALDERMAN. A judicial or administrative magistrate. Originally the word was synonymous with "elder" or "senator," but was also used to designate an earl, and even a king. See Aldermannus.

In English Law

An associate to the chief civil magistrate of a corporate town or city.

The word would seem to have been rather an appellation of honor, originally, than a distinguishing mark of office. Spelman, Gloss.

In American Cities

One of a board of municipal officers next in order to the mayor. State v. Waterman, 95 Conn. 414, 111 A. 623, 624. It has been held that the mayor is not a councilman or alderman. Board of Lights and Waterworks v. Dobbs, 151 Ga. 53, 105 S. E. 611, 612.

The aldermen are generally a legislative body, having limited judicial powers as a body, as in matters of internal police regulation, laying out and repairing streets, constructing sewers, and the like; though in many cities they hold separate courts, and have magisterial powers to a considerable extent.

ALDERMANNUS. L. Lat. An alderman.

ALDERMANNUS CIVITATIS VEL BURGI. Alderman of a city or borough, from which the modern office of alderman has been derived. T. Raym. 435, 437.

ALDERMANNUS COMITATUS. The alderman of the county. According to Spelman, he held an office intermediate between that of an earl and a sheriff. According to other authorities, he was the same as the earl. 1 Bl. Comm. 116.

ALDERMANNUS HUNDREDI SEU WAPENTACHII. Alderman of a hundred or wapentake. Spelman.

ALDERMANNUS REGIS. Alderman of the king. So called, either because he received his appointment from the king or because he gave the judgment of the king in the premises allotted to him.

ALDERMANNUS TOTIUS ANGLIÆ. Alderman of all England. An officer among the Anglo-Saxons, supposed by Spelman to be the same with the chief justiciary of England in later times. Spelman.

ALE-CONNER. In old English law. An officer appointed by the court-leet, sworn to look to the assise and goodness of ale and beer within the precincts of the leet. Kitch. Courts, 46; Whishaw.

An officer appointed in every court-leet, and sworn to look to the assise of bread, ale, or beer within the precincts of that lordship. Cowell.

This officer is still continued in name, though the duties are changed or given up; 1 Crabb, Real Prop. 501.

ALE-HOUSE. A place where ale is sold to be drunk on the premises where sold.

ALE SILVER. A rent or tribute paid annually to the lord mayor of London, by those who sell ale within the liberty of the city.

ALE-STAKE. A maypole or long stake driven into the ground, with a sign on it for the sale of ale. Cowell.

ALEA. Lat. In the civil law. A game of chance or hazard. Dig. 11, 5, 1. See Cod. 3, 43. The chance of gain or loss in a contract.

ALEATOR. Lat. (From *alea, q. v.*, meaning dice). In the civil law. A gamester; one who plays at games of hazard. Dig. 11, 5; Cod. 3, 43.

ALEATORY CONTRACT. A mutual agreement, of which the effects, with respect both

to the advantages and losses, whether to all the parties or to some of them, depend on an uncertain event. Civil Code La. art. 2982; Moore v. Johnston, 8 La. Ann. 488; Losecco v. Gregory, 108 La. 648, 32 So. 985.

A contract, the obligation and performance of which depend upon an uncertain event, such as insurance, engagements to pay annuities, and the like.

A contract is aleatory or hazardous when the performance of that which is one of its objects depends on an uncertain event. It is certain when 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. Civil Code La. art. 1776.

ALER A DIEU. L. Fr. In old practice. To be dismissed from court; to go quit. Literally, "to go to God."

ALER SANS JOUR. In old practice, a phrase used to indicate the final dismissal of a case from court without continuance. "To go without day."

ALEU. Fr. In French feudal law. An allodial estate, as distinguished from a feudal estate or benefice.

ALFET. A cauldron into which boiling water was poured, in which a criminal plunged his arm up to the elbow, and there held it for some time, as an ordeal. Du Cange.

ALGARUM MARIS. Probably a corruption of *Laganum maris, lagan* being a right, in the middle ages, like *jetsam* and *flotsam*, by which goods thrown from a vessel in distress became the property of the king, or the lord on whose shores they were stranded. Spelman; Jacob; Du Cange.

ALGO. Span. In Spanish law. Property. White, Nov. Recop. b. 1, tit. 5, c. 3, § 4.

ALIA. Lat. Other things.

ALIA ENORMIA. Other wrongs. The name given to a general allegation of injuries caused by the defendant with which the plaintiff in an action of trespass under the common-law practice concluded his declaration. Archb. Crim. Pl. 694.

ALIAMENTA. A liberty of passage, open way, water-course, etc., for the tenant's accommodation. Kitchen.

ALIAS. Lat. Otherwise; at another time; in another manner; formerly.

ALIAS DICTUS. "Otherwise called." This phrase (or its shorter and more usual form, *alias*; see Kennedy v. People, 39 N. Y. 245), when placed between two names in a pleading or other paper indicates that the same person is known by both those names. A fictitious name assumed by a person is colloquially termed an "*alias*." State v. Melson, 161 La. 423, 108 So. 794, 795; Ferguson v. State, 134 Ala. 63, 32 South. 760, 92 Am. St. Rep. 17; Turns v. Com., 6 Metc. (Mass.) 235; Kennedy v. People, 1 Cow. Cr. Rep. (N. Y.) 119. One indicted under various names connected by the word "alias" may be identified by any of them. Harris v. State, 19 Ala. App. 484, 98 So. 316, 317.

ALIAS WRIT. A second writ issued in the same cause, where a former writ of the same kind had been issued without effect. In such case, the language of the second writ is, "We command you, as we have *before* [*sicut alias*] commanded you," etc. Roberts v. Church, 17 Conn. 142; Farris v. Walter, 2 Colo. App. 450, 31 Pac. 231; Ward v. Miller, 143 Ga. 164, 84 S. E. 480, 482; Carter Coal Co. v. Bates, 127 Va. 586, 105 S. E. 76, 78. It is used of all species of writs.

ALIBI. Lat. In criminal law. Elsewhere; in another place. A term used to express that mode of defense to a criminal prosecution, where the party accused, in order to prove that he could not have committed the crime with which he is charged, offers evidence to show that he was in another place at the time; which is termed setting up an *alibi*. State v. Child, 40 Kan. 482, 20 Pac. 275; State v. Powers, 72 Vt. 168, 47 Atl. 830; Peyton v. State, 54 Neb. 188, 74 N. W. 597; State v. Bosworth, 170 Iowa, 329, 152 N. W. 581, 585; Blackwell v. State, 79 Fla. 709, 86 So. 224, 227, 15 A. L. R. 465; State v. Summers, 96 A. 195, 196, 6 Boyce (Del.) 13; People v. Schladweiler, 315 Ill. 553, 146 N. E. 525, 527; McCool v. U. S. (C. C. A.) 263 F. 55, 57; Colbeck v. U. S. (C. C. A.) 10 F.(2d) 401, 403. An "alibi" is a general traverse of the material averment of the indictment that the defendant committed the crime charged against him. Ragsdale v. State, 12 Ala. App. 1, 67 So. 783, 787. An "alibi" strictly is not a defense though usually called such in criminal procedure. State v. Norman, 103 Ohio St. 541, 134 N. E. 474. Where the state claims the offense was committed at one time and place, and the defense is merely that it was committed at another time and place, the issue of alibi is not presented. State v. Ivy (Mo. Sup.) 192 S. W. 733, 735.

ALIEN. *n.* A foreigner; one born abroad; a person resident in one country, but owing allegiance to another. In England, one born out of the allegiance of the king. In the United States, one born out of the jurisdiction of the United States, and who has not been naturalized under their constitution and laws. 2 Kent, Comm. 50; Ex parte Dawson, 3 Bradf. Sur. (N. Y.) 136; Lynch v. Clarke, 1 Sandf. Ch. (N. Y.) 668; Lyons v. State, 67 Cal. 380, 7 Pac. 763; Breuer v. Beery, 194 Iowa, 243, 189 N. W. 717, 718; Ex parte (Ng.) Fung Sing (D. C.) 6 F.(2d) 670, 671.

As to the effect of marriage on the status of women, whether they were originally aliens or citi-

zens of the United States, see 8 USCA §§ 9, 368; Gorman v. Forty-Second St., M. & St. N. Ave. Ry. Co., 203 N. Y. S. 632, 633, 208 App. Div. 214; Dorto v. Clark (D. C.) 300 F. 568, 571; Hopkins v. Fachant, 130 F. 839, 65 C. C. A. 1; United States v. Cohen (C. C. A.) 179 F. 834.

—Alien amy. In international law. Alien friend. An alien who is the subject or citizen of a foreign government at peace with our own.

—Alien and Sedition Laws. Acts of congress of July 6 and July 14, 1798. See Whart. State Tr. 22.

—Alien enemy. In international law. An alien who is the subject or citizen of some hostile state or power. See Dyer, 2*b*; Co. Litt. 129*b*. A person who, by reason of owing a permanent or temporary allegiance to a hostile power, becomes, in time of war, impressed with the character of an enemy. See 1 Kent, Comm. 74; 2 Id. 63; Bell v. Chapman, 10 Johns. (N. Y.) 183; Dorsey v. Brigham, 177 Ill. 250, 52 N. E. 303, 42 L. R. A. 809, 69 Am. St. Rep. 228; Russel v. Skipwith, 6 Binney (Pa.) 241; Ozbolt v. Lumbermen's Indemnity Exchange (Tex. Civ. App.) 204 S. W. 252; Taylor v. Albion Lumber Co., 176 Cal. 347, 168 P. 348, 350, L. R. A. 1918B, 185; Techt v. Hughes, 186 N. Y. 222, 128 N. E. 185, 229, 11 A. L. R. 166; Breuer v. Beery, 194 Iowa, 243, 189 N. W. 717, 718; Ex parte Graber (D. C.) 247 F. 882, 884; Krachanake v. Acme Mfg. Co., 175 N. C. 435, 95 S. E. 851, 852, L. R. A. 1918E, 801, Ann. Cas. 1918E, 340; Miller v. Humphrey (C. C. A.) 7 F.(2d) 330, 334; Fritz Schultz, Jr., Co. v. Raimes & Co., 164 N. Y. S. 454, 99 Misc. Rep. 626. Whether or not a person is an alien enemy depends, not on his nationality, but on the place in which he voluntarily resides or carries on business. Porter v. Freudenberg, [1915] 1 K. B. 857. See, also, Noble v. Great American Ins. Co., 194 N. Y. S. 60, 66, 200 App. Div. 773; Wirtele v. Grand Lodge, A. O. U. W., 111 Neb. 302, 196 N. W. 510, 511.

—Alien friend. A subject or citizen of a foreign state with which we are at peace; an *alien amy*. Techt v. Hughes, 229 N. Y. 222, 128 N. E. 185, 186, 11 A. L. R. 166.

—Alien née. An alien born, *i. e.*, a person who has been born an alien.

ALIEN or ALIENE. *v.* To transfer or make over to another; to convey or transfer the property of a thing from one person to another; to alienate. Usually applied to the transfer of lands and tenements. Co. Litt. 118; Cowell.

Aliena negotia exacto officio geruntur. The business of another is to be conducted with particular attention. Jones, Bailm. 83; First Nat. Bank of Carlisle v. Graham, 79 Pa. 118, 21 Am. Rep. 49.

ALIENABLE. Proper to be the subject of alienation or transfer.

ALIENAGE. The condition or state of an alien.

ALIENATE. To convey; to transfer the title to property. Co. Litt. 118*b*. *Alien* is very commonly used in the same sense. 1 Washb. Real Prop. 53.

"Sell, *alienate*, and dispone" are the formal words of transfer in Scotch conveyances of heritable property. Bell.

"The term *alienate* has a technical legal meaning, and any transfer of real estate, short of a conveyance of the title, is not an alienation of the estate. No matter in what form the sale may be made, unless the title is conveyed to the purchaser, the estate is not alienated." Masters v. Insurance Co., 11 Barb. (N. Y.) 630. See, also, Nichols & Shepard Co. v. Dunnington, 118 Okl. 231, 247 P. 353, 355; Hiles v. Benton, 111 Neb. 557, 196 N. W. 903, 904; Blank v. Browne, 216 N. Y. S. 664, 668, 217 App. Div. 624. To "alienate" homestead real estate, as contemplated by Constitution, means to convey or transfer the legal title or the beneficial interest owned and held therein. Norton v. Baya, 88 Fla. 1, 102 So. 361, 363.

Alienatio licet prohibeatur, consensu tamen omnium, in quorum favorem prohibita est, potest fieri, et quilibet potest renunciare juri pro se introducto. Although alienation be prohibited, yet, by the consent of all in whose favor it is prohibited, it may take place; for it is in the power of any man to renounce a law made in his own favor. Co. Litt. 98.

Alienatio rei præfertur juri accrescendi. Alienation is favored by the law rather than accumulation. Co. Litt. 185.

ALIENATION. In real property law. The transfer of the property and possession of lands, tenements, or other things, from one person to another. Termes de la Ley. It is particularly applied to absolute conveyances of real property. Conover v. Mutual Ins. Co., 1 N. Y. 290, 294. The term is inapplicable to mortgages. Worthington v. Tipton, 24 N. M. 89, 172 P. 1048, 1049; Lohman State Bank v. Grim, 69 Mont. 444, 222 P. 1052, 1053; Moore v. Tillman, 170 Ark. 895, 282 S. W. 9, 11.

The act by which the title to real estate is voluntarily resigned by one person to another and accepted by the latter, in the forms prescribed by law. Cf. In re Ehrhardt (U. S. D. C.) 19 F.(2d) 406, 407 (bankruptcy proceedings).

The voluntary and complete transfer from one person to another, involving the complete and absolute exclusion, out of him who alienates, of any remaining interest or particle of interest, in the thing transmitted; the complete transfer of the property and possession of lands, tenements, or other things to another. Herring v. Keneipp (Ind. Sup.)

102 N. E. 834, 835; Rich v. Doneghey, 71 Okl. 204, 177 P. 86, 89, 3 A. L. R. 352; Orrell v. Bay Mfg. Co., 83 Miss. 800, 36 South. 561, 70 L. R. A. 881; Burbank v. Insurance Co., 24 N. H. 558, 57 Am. Dec. 300; United States v. Schurz, 102 U. S. 378, 26 L. Ed. 167; Vining v. Willis, 40 Kan. 609, 20 Pac. 232; Chouteau v. Chouteau, 49 Okl. 105, 152 P. 373, 376 (disposition by will is "alienation"); *contra*, Postlethwaite v. Edson, 102 Kan. 619, 171 P. 769, 773, L. R. A. 1918D, 983. But leases, especially of Indians' allotted lands, have been held to be alienations. Bailey v. King, 57 Okl. 523, 157 P. 763, 764; Ashton v. Noble, 65 Okl. 45, 162 P. 784, 785; Williams v. Hylan, 215 N. Y. S. 101, 106, 126 Misc. Rep. 807.

In Medical Jurisprudence

A generic term denoting the different kinds or forms of mental aberration or derangement.

ALIENATION OF AFFECTIONS. The wrong done in a case of alienation of affections consists in the deprivation of one spouse of the right to the aid, comfort, assistance, and society of the other spouse in family relationships. Hargraves v. Ballou, 47 R. I. 186, 131 A. 643, 645; Nieberg v. Cohen, 88 Vt. 281, 92 A. 214, 217, L. R. A. 1915C, 483, Ann. Cas. 1916C, 476. The gist of an action for alienation of the affections of plaintiff's husband is the loss of conjugal fellowship and aid of the husband, the loss of consortium being the principal fact, and the alienation of affections, matter of aggravation. Lupton v. Underwood, 3 Boyce (Del.) 519, 85 A. 965, 973.

ALIENATION OFFICE. In English practice. An office for the recovery of fines levied upon writs of covenant and entries.

Alienation pending a suit is void. 2 P. Wms. 482; 2 Atk. 174; 3 Atk. 392; 11 Ves. 194; Murray v. Ballow, 1 Johns. Ch. (N. Y.) 566, 580.

ALIENEE. One to whom an alienation, conveyance, or transfer of property is made. See Alienor.

ALIENI GENERIS. Lat. Of another kind. 3 P. Wms. 247.

ALIENI JURIS. Lat. Under the control, or subject to the authority, of another person; *e. g.*, an infant who is under the authority of his father or guardian; a wife under the power of her husband. The term is contrasted with Sui Juris, (*q. v.*).

ALIENIGENA. One of foreign birth; an alien. 7 Coke, 31.

ALIENISM. The state, condition, or character of an alien. 2 Kent, Comm. 56, 64, 69.

ALIENIST. One who has specialized in the study of mental diseases. State v. Reidell, 9 Houst. (Del.) 470, 14 A. 550, 552.

ALIENOR. He who makes a grant, transfer of title, conveyance, or alienation. Correlative of *alienee*.

ALIENUS. Lat. Another's; belonging to another; the property of another. *Alienus homo*, another's man, or slave. Inst. 4, 3, pr. *Aliena res*, another's property. Bract. fol. 13*b*.

ALIGNMENT. The act of laying out or adjusting a line. The state of being so laid out or adjusted. The ground plan of a railway or other road or work as distinguished from its profile or gradients. Village of Chester v. Leonard, 68 Conn. 495, 37 Atl. 397. An adjustment to a line. Harner v. Monongalia County Court, 80 W. Va. 626, 92 S. E. 781, 785.

ALIKE. Similar to another. The term is not synonymous with "identical," which means "exactly the same." Carn v. Moore, 74 Fla. 77, 76 So. 337, 340.

ALIMENT. In Scotch law. To maintain, support, provide for; to provide with necessaries. As a noun, maintenance, support; an allowance from the husband's estate for the support of the wife. Paters. Comp. §§ 845, 850, 893.

In Civil Law

Food and other things necessary to the support of life; money allowed for the purpose of procuring these. Dig. 50. 16. 43.

In Common Law

To supply with necessaries. Purcell v. Purcell, 3 Edw. Ch. (N. Y.) 194.

ALIMENTA. Lat. In the civil law. Aliments; things necessary to sustain life: means of support, including food, (*cibaria*,) clothing, (*vestitus*,) and habitation, (*habitatio*.) Dig. 34, 1, 6.

ALIMONY. The allowance made to a wife out of her husband's estate for her support, either during a matrimonial suit, or at its termination, when she proves herself entitled to a separate maintenance, and the fact of a marriage is established.

Alimony is an allowance out of the husband's estate, made for the support of the wife when living separate from him. It is either temporary or permanent. Code Ga. 1882, § 1736 (Civ. Code 1926, § 2975). Davis v. Davis, 61 Okl. 275, 161 P. 190, 191; Phy v. Phy, 116 Or. 31, 236 P. 751, 240 P. 237, 240, 42 A. L. R. 588; Kutchai v. Kutchai, 233 Mich. 569, 207 N. W. 818, 820.

The allowance which is made by order of court to a woman for her support out of her husband's estate, upon being separated from him by divorce, or pending a suit for divorce. Pub. St. Mass. 1882, p. 1287. And see Bowman v. Worthington, 24 Ark. 522; Lynde v. Lynde, 64 N. J. Eq. 736, 52 Atl. 694, 58 L. R. A. 471, 97 Am. St. Rep. 692; Collins v. Collins, 80 N. Y. 1; Stearns v. Stearns, 66 Vt. 187, 28 Atl. 875, 44 Am. St. Rep. 836; In re Spen-

cer, 83 Cal. 460, 23 Pac. 395, 17 Am. St. Rep. 266; Adams v. Storey, 135 Ill. 448, 26 N. E. 582, 11 L. R. A. 790, 25 Am. St. Rep. 392.

A maintenance afforded the wife, where the husband refuses to give it, or where his improper conduct compels her to separate from him; a provision for her to continue for their joint lives, or so long as they live separate, which, on the death of either, or upon their mutual consent to live together, ceases. Polley v. Polley, 97 A. 526, 527, 128 Md. 60.

"Alimony," in its broad sense, means also an award for the support of a child or children. Schafer v. Schafer, 193 N. Y. S. 43, 44, 118 Misc. Rep. 254; Brown v. Brown, 222 Mass. 415, 111 N. E. 42, 43.

By *alimony* we understand what is necessary for the nourishment, lodging, and support of the person who claims it. It includes education, when the person to whom the alimony is due is a minor. Civil Code La. art. 230. Floyd v. Floyd, 91 Fla. 910, 108 So. 896, 898.

The term is commonly used as equally applicable to all allowances, whether annual or in gross, made to a wife upon a decree in divorce. Burrows v. Purple, 107 Mass. 432.

The matter of alimony is largely regulated by statute.

Alimony pendente lite is that ordered during the pendency of a suit. Duss v. Duss, 92 Fla. 1081, 111 So. 382, 385. Alimony pending an appeal is "alimony pendente lite." But an application to enforce a final decree for permanent alimony pending an appeal is not an application for alimony pendente lite. Robinson v. Robinson (N. J. Err. & App.) 92 A. 94, 96, L. R. A. 1915B, 1071.

Permanent Alimony

A provision for the support and maintenance of a wife out of her husband's estate, during her lifetime, ordered by a court on decreeing a divorce. Odom v. Odom, 36 Ga. 320; In re Spencer, 83 Cal. 460, 23 Pac. 395, 17 Am. St. Rep. 266; Lape v. Lape, 99 Ohio St. 143, 124 N. E. 51, 52, 6 A. L. R. 187.

The award of alimony is essentially a different thing from a division of the property of the parties. Mesler v. Jackson, Circuit Judge, 188 Mich. 195, 154 N. W. 63, 65; Braecklein v. Braecklein, 136 Md. 32, 109 A. 546, 548; Johnson v. Johnson, 57 Kan. 343, 46 Pac. 700. It is not in itself an "estate" in the technical sense, and therefore not the separate property or estate of the wife. Cizek v. Cizek, 69 Neb. 797, 99 N. W. 28; Guenther v. Jacobs, 44 Wis. 354; Romaine v. Chauncey, 60 Hun, 477, 15 N. Y. Supp. 198; Lynde v. Lynde, 64 N. J. Eq. 736, 52 Atl. 694, 58 L. R. A. 471, 97 Am. St. Rep. 692; Holbrook v. Comstock, 16 Gray (Mass.) 109. But see West v. West, 126 Va. 696, 101 S. E. 876, 877.

"Maintenance" and "permanent alimony" are synonymous, and constitute an allowance in money to be recovered from the one in fault for support of innocent party. Phy v. Phy, 116 Or. 31, 236 P. 751, 752, 42 A. L. R. 588. And see Gilbert v. Hayward, 37 R. I. 303, 92 A. 625, 627.

Alimony in its strictly legal sense relates to the provisions made pendente lite, and hence the allowance provided the wife by Civ. Code S. Dak. § 92, is a permanent allowance for maintenance and not "permanent alimony." Warne v. Warne, 36 S. D. 573, 156 N. W. 60, 62. See, also, Honey v. Honey, 214 P. 250, 251, 60 Cal. App. 759. Compare Emerson v. Emerson, 120 Md. 584, 87 A. 1033, 1035 (holding that in the absence of statute, in case of an absolute divorce the duty to support ceases and with it the right to alimony).

ALIO INTUITU. Lat. In a different view; under a different aspect. 4 Rob. Adm. & Pr. 151.

With another view or object; with respect to another case or condition. 7 East, 558; 6 M. & S. 231. See Diverso Intuitu.

Aliquid conceditur ne injuria remaneat impunita, quod alias non concederetur. Something is (will be) conceded, to prevent a wrong remaining unredressed, which otherwise would not be conceded. Co. Litt. 197*b*.

ALIQUID POSSESSIONIS ET NIHIL JURIS. Somewhat of possession, and nothing of right, (but no right). A phrase used by Bracton to describe that kind of possession which a person might have of a thing as a guardian, creditor, or the like; and also that kind of possession which was granted for a term of years, where nothing could be demanded but the usufruct. Bract. fols. 39*a*, 160*a*.

Aliquis non debet esse judex in propriâ causâ, quia non potest esse judex et pars. A person ought not to be judge in his own cause, because he cannot act as judge and party. Co. Litt. 141; 3 Bl. Comm. 59.

ALIQUOT. Strictly, contained in something else an exact number of times. But as applied to resulting trusts, "aliquot" is treated as meaning fractional. Fox v. Shanley, 94 Conn. 350, 109 A. 249, 251. An "aliquot" part of an estate, as used in the rule that in order to create a resulting trust where several contribute to a purchase it shall appear that the sums severally contributed were for an aliquot part of an estate, means any definite interest. Hinshaw v. Russell, 280 Ill. 235, 117 N. E. 406, 408.

ALITER. Otherwise; as otherwise held or decided.

Aliud est celare, aliud tacere. To conceal is one thing; to be silent is another. Lord Mansfield, 3 Burr. 1910.

Aliud est distinctio, aliud separatio. Distinction is one thing; separation is another. It is one thing to make things distinct, another thing to make them separable.

Aliud est possidere, aliud esse in possessione. It is one thing to possess; it is another to be in possession. Hob. 163.

Aliud est vendere, aliud vendenti consentire. To sell is one thing; to consent to a sale (seller) is another thing. Dig. 50, 17, 160.

ALIUD EXAMEN. A different or foreign mode of trial. 1 Hale, Com. Law, 38.

ALIUNDE. Lat. From another source; from elsewhere; from outside. Evidence *aliunde* (i. e., from without the will) may be received to explain an ambiguity in a will. 1 Greenl. Ev. § 291.

ALIVE. A child to be born alive and capable of inheriting as a requisite to an estate by curtesy need be alive for only a moment of time; the word "alive" meaning that the child shall be alive and have an independent life of its own for some period after birth, and, while respiration at birth is evidence of such life and existence, proof of respiration from actual observation is not necessary to establish it, but other indications of life, such as the beating of the heart and the pulsation of the arteries, may be satisfactory evidence. Fleming v. Sexton, 172 N. C. 250, 90 S. E. 247, 249. Cf. Hydrostatic Test.

ALL. Collectively, this term designates the whole number of particulars, individuals, or separate items; distributively, it may be equivalent to "each" or "every." State v. Maine Cent. R. Co., 66 Me. 510; Sherburne v. Sischo, 143 Mass. 442, 9 N. E. 797; Davis Trust Co. v. Price, 77 W. Va. 678, 88 S. E. 111; State v. Dilworth, 80 Mont. 102, 258 P. 246, 248; Middleton v. Stone, 163 Ky. 571, 174 S. W. 6, 8, Ann. Cas. 1917E, 84; Thurlow Co. v. U. S., 12 Ct. Cust. App. 275, 276. Or to "any." In re Licenses for Sale of Used Motor Vehicles (Iowa) 179 N. W. 609, 611. It is a general rather than a universal term, to be understood in one sense or the other according to the demands of sound reason. Kieffer v. Ehler, 18 Pa. 391; 9 Ves. Jr. 137. See Both.

ALL AND SINGULAR. All without exception. A comprehensive term often employed in conveyances, wills, and the like, which includes the aggregate or whole and also each of the separate items or components. McClaskey v. Barr (C. C.) 54 Fed. 798.

ALL DISABILITY. Under Workmen's Compensation Act, § 306, par. (c), being 77 PS § 513, the term "all disability" includes both total and partial disability caused by a permanent injury to the leg or arm, or resulting from or relating to the permanent injury, and embraces not only all incapacity to labor, directly or indirectly arising from such permanent injury, but likewise cases of no incapacity at all. Bausch v. Fidler, 277 Pa. 573, 121 A. 507.

ALL FAULTS. A sale of goods with "all faults" covers, in the absence of fraud on the part of the vendor, all such faults and defects as are not inconsistent with the identity of the goods as the goods described. Whitney v. Boardman, 118 Mass. 242.

ALL FOURS. Two cases or decisions which are alike in all material respects, and precisely similar in all the circumstances affecting their determination, are said to be or to run on "all fours."

ALL THE ESTATE. The name given in England to the short clause in a conveyance or other assurance which purports to convey "all the estate, right, title, interest, claim, and demand" of the grantor, lessor, etc., in the property dealt with. Dav. Conv. 93.

ALL THE MEMBERS. The provision of a church constitution that "all the members" can discharge their parish priest means that all shall have opportunity to participate, but not that all members must attend the meeting or vote in the affirmative for the discharge of the priest. Stryjewski v. Panfil, 269 Pa. 568, 112 A. 764, 765.

Allegans contraria non est audiendus. One alleging contrary or contradictory things (whose statements contradict each other) is not to be heard. 4 Inst. 279. Applied to the statements of a witness.

Allegans suam turpitudinem non est audiendus. One who alleges his own infamy is not to be heard. 4 Inst. 279.

Allegari non debuit quod probatum non relevat. That ought not to be alleged which, if proved, is not relevant. 1 Ch. Cas. 45.

ALLEGATA. In Roman law. A word which the emperors formerly signed at the bottom of their rescripts and constitutions; under other instruments they usually wrote *signata* or *testata*. Encyc. Lond.

ALLEGATA ET PROBATA. Lat. Things alleged and proved. The allegations made by a party to a suit, and the proof adduced in their support.

Allegatio contra factum non est admittenda. An allegation contrary to the deed (or fact) is not admissible.

ALLEGATION. The assertion, declaration, or statement of a party to an action, made in a pleading, setting out what he expects to prove.

A material allegation in a pleading is one essential to the claim or defense, and which could not be stricken from the pleading without leaving it insufficient. Code Civil Proc. Cal. § 463.

"Allegations" are not synonymous with "denials." Pullen v. Seaboard Trading Co., 150 N. Y. S. 719, 721, 165 App. Div. 117; De Witt v. New York Herald Co., 188 N. Y. S. 112, 116, 196 App. Div. 417.

In Ecclesiastical Law

The statement of the facts intended to be relied on in support of the contested suit.

In English ecclesiastical practice the word seems to designate the pleading as a whole;

the three pleadings are known as the allegations; and the defendant's plea is distinguished as the defensive, or sometimes the responsive, allegation, and the complainant's reply as the rejoining allegation.

In General

—Allegation of faculties. A statement made by the wife of the property of her husband, in order to obtain alimony. Lovett v. Lovett, 11 Ala. 763; Wright v. Wright, 3 Tex. 168. See Faculties.

ALLEGE. To state, recite, assert, or charge; to make an allegation. To affirm, assert, or declare. State v. Hostetter (Mo. Sup.) 222 S. W. 750, 754.

ALLEGED. Stated; recited; claimed; asserted; charged. Williams v. Hyman-Michaels Co. (Mo. App.) 277 S. W. 593, 595; Lynn v. Nichols, 202 N. Y. S. 401, 406, 122 Misc. Rep. 170.

ALLEGIANCE. The obligation of fidelity and obedience which the individual owes to the government under which he lives, or to his sovereign in return for the protection he receives. It may be an absolute and permanent obligation, or it may be a qualified and temporary one. The citizen or subject owes an absolute and permanent allegiance to his government or sovereign, or at least until, by some open and distinct act, he renounces it and becomes a citizen or subject of another government or another sovereign. The alien, while domiciled in the country, owes a local and temporary allegiance, which continues during the period of his residence. Carlisle v. U. S., 16 Wall. 154, 21 L. Ed. 426; Jackson v. Goodell, 20 Johns. (N. Y.) 191; U. S. v. Wong Kim Ark., 169 U. S. 649, 18 Sup. Ct. 456, 42 L. Ed. 890; Wallace v. Harmstad, 44 Pa. 501.

"The tie or *ligamen* which binds the subject [or citizen] to the king [or government] in return for that protection which the king [or government] affords the subject, [or citizen."] 1 Bl. Comm. 366. It consists in "a true and faithful obedience of the subject due to his sovereign," 7 Coke, 4*b*, and is a comparatively modern corruption of ligeance (*ligeantia*), which is derived from liege (*ligius*), meaning absolute or unqualified. It signified originally liege fealty, i. e. absolute and unqualified fealty. 18 L. Q. Rev. 47.

Allegiance is the obligation of fidelity and obedience which every citizen owes to the state. Pol. Code Cal. § 55.

In Norman French. Alleviation; relief; redress. Kelham.

Acquired Allegiance

That binding a citizen who was born an alien, but has been naturalized.

Local or Actual Allegiance

That measure of obedience which is due from a subject of one government to another government, within whose territory he is temporarily resident. From this are excepted foreign sovereigns and their representatives, naval and armed forces when permitted to remain in or pass through the country or its waters.

Natural Allegiance

In English law. That kind of allegiance which is due from all men born within the king's dominions, immediately upon their birth, which is intrinsic and perpetual, and cannot be divested by any act of their own. 1 Bl. Comm. 369; 2 Kent, Comm. 42. In American law. The allegiance due from citizens of the United States to their native country, and also from naturalized citizens, and which cannot be renounced without the permission of government, to be declared by law. 2 Kent, Comm. 43–49. It differs from *local* allegiance, which is temporary only, being due from an alien or stranger born for so long a time as he continues within the sovereign's dominions and protection. Fost. Cr. Law, 184. Natural allegiance is said to be due to the king in his political, not his personal, capacity; L. R. 17 Q. B. D. 54, quoted in U. S. v. Wong Kim Ark, 169 U. S. 663, 18 Sup. Ct. 456, 42 L. Ed. 890; and so in the United States "it is a political obligation" depending not on ownership of land, but on the enjoyment of the protection of government; Wallace v. Harmstad, 44 Pa. 492; and it "binds the citizen to the observance of all laws" of his own sovereign; Adams v. People, 1 N. Y. 173.

ALLEGIARE. To defend and clear one's self; to wage one's own law.

ALLEGING DIMINUTION. The allegation in an appellate court, of some error in a subordinate part of the *nisi prius* record. See Diminution.

ALLEVIARE. L. Lat. In old records. To levy or pay an accustomed fine or composition; to redeem by such payment. Cowell.

ALLEY. A narrow way designed for the special accommodation of the property it reaches. Atchison, T. & S. F. Ry. Co. v. City of Chanute, 95 Kan. 161, 147 P. 836, 837. In a plat or statute concerning cities or towns, it means a public way, unless the word "private" is prefixed or the context requires a different meaning. Payne v. Godwin, 147 Va. 1019, 133 S. E. 481, 483; Bellevue Gas & Oil Co. v. Carr, 61 Okl. 290, 161 P. 203, 204.

ALLIANCE. The relation or union between persons or families contracted by intermarriage; affinity.

In International Law

A union or association of two or more states or nations, formed by league or treaty, for the joint prosecution of a war, or for their mutual assistance and protection in repelling hostile attacks. The league or treaty by

which the association is formed. The act of confederating, by league or treaty, for the purposes mentioned.

If the alliance is formed for the purpose of mutual aid in the prosecution of a war against a common enemy, it is called an "offensive" alliance. If it contemplates only the rendition of aid and protection in resisting the assault of a hostile power, it is called a "defensive" alliance. If it combines both these features, it is denominated an alliance "offensive and defensive."

The term is also used in a wider sense, embracing unions for objects of common interest to the contracting parties, as the "Holy Alliance" entered into in 1815 by Prussia, Austria and Russia for the purpose of counteracting the revolutionary movement in the interest of political liberalism.

ALLISION. The running of one vessel into or against another, as distinguished from a collision, *i. e.*, the running of two vessels against each other. But this distinction is not very carefully observed.

ALLOCATION. An allowance made upon an account in the English exchequer. Cowell. Placing or adding to a thing. Encyc. Lond.

ALLOCATIONE FACIENDA. In old English practice. A writ for allowing to an accountant such sums of money as he hath lawfully expended in his office; directed to the lord treasurer and barons of the exchequer upon application made. Jacob.

ALLOCATO COMITATU. In old English practice. In proceedings in outlawry, when there were but two county courts holden between the delivery of the writ of *exigi facias* to the sheriff and its return, a special *exigi facias*, with an *allocato comitatu* issued to the sheriff in order to complete the proceedings. See Exigent.

ALLOCATUR. Lat. It is allowed. A word formerly used to denote that a writ or order was allowed.

A word denoting the allowance by a master or prothonotary of a bill referred for his consideration, whether touching costs, damages, or matter of account. Lee, Dict.

Special Allocatur

The special allowance of a writ (particularly a writ of error) which is required in some particular cases.

ALLOCATUR EXIGENT. A species of writ anciently issued in outlawry proceedings, on the return of the original writ of exigent. 1 Tidd, Pr. 128. See Exigent.

ALLOCUTION. See Allocutus.

ALLOCUTUS. In criminal procedure, when a prisoner is convicted on a trial for treason or felony, the court is bound to demand of him what he has to say as to why the court should not proceed to judgment against him; this demand is called the "*allocutus*," or "allocution," and is entered on the record. Archb. Crim. Pl. 173; State v. Ball, 27 Mo. 324.

ALLODARII. Owners of allodial lands. Owners of estates as large as a subject may have. Co. Litt. 1; Bac. Abr. "*Tenure*," A.

ALLODIAL. Free; not holden of any lord or superior; owned without obligation of vassalage or fealty; the opposite of feudal. Barker v. Dayton, 28 Wis. 384; Wallace v. Harmstad, 44 Pa. 499.

ALLODIUM. Land held absolutely in one's own right, and not of any lord or superior; land not subject to feudal duties or burdens.

An estate held by absolute ownership, without recognizing any superior to whom any duty is due on account thereof. 1 Washb. Real Prop. 16. McCartee v. Orphan Asylum, 9 Cow. (N. Y.) 511, 18 Am. Dec. 516.

ALLOGRAPH. A document not written by any of the parties thereto; opposed to autograph.

ALLONGE. A piece of paper annexed to a bill of exchange or promissory note, on which to write endorsements for which there is no room on the instrument itself. Pardessus, n. 343; Story, Prom. Notes, §§ 121, 151; Fountain v. Bookstaver, 141 Ill. 461, 31 N. E. 17; Haug v. Riley, 101 Ga. 372, 29 S. E. 44, 40 L. R. A. 244; Bishop v. Chase, 156 Mo. 158, 56 S. W. 1080, 79 Am. St. Rep. 515; Clark v. Thompson, 194 Ala. 504, 69 So. 925.

ALLOT. To apportion, distribute; to divide property previously held in common among those entitled, assigning to each his ratable portion, to be held in severalty; to set apart specific property, a share of a fund, etc., to a distinct party. Glenn v. Glenn, 41 Ala. 582; Fort v. Allen, 110 N. C. 183, 14 S. E. 685; Millet v. Bilby, 110 Okl. 241, 237 P. 859, 861.

In the law of corporations, to allot shares, debentures, etc., is to appropriate them to the applicants or persons who have applied for them; this is generally done by sending to each applicant a letter of allotment, informing him that a certain number of shares have been allotted to him. Sweet.

ALLOTMENT. A share or portion; that which is allotted. Partition, apportionment, division; the distribution of land under an inclosure act, or shares in a public undertaking or corporation. The term ordinarily and commonly used to describe land held by Indians after allotment, and before the issuance of the patent in fee that deprives the land of its character as Indian country. Estes v. U. S. (C. C. A.) 225 F. 980, 981; Harris v. Grayson, 90 Okl. 147, 216 P. 446, 449. See Allottee.

ALLOTMENT CERTIFICATE. A document issued to an applicant for shares in a com-

pany or public loan announcing the number of shares allotted or assigned and the amounts and due dates of the calls or different payments to be made on the same. An "allotment certificate," when issued to an enrolled member of the Five Civilized Tribes of the Indian Territory, is an adjudication of the special tribunal empowered to decide the question that the party to whom it issues is entitled to the land, and it is a conveyance of the right to this title to the allottee. Bowen v. Carter, 42 Okl. 565, 144 P. 170, 173.

ALLOTMENT NOTE. In English law. A writing by a seaman, whereby he makes an assignment of part of his wages in favor of his wife, father or mother, grandfather or grandmother, brother or sister. Every allotment note must be in a form sanctioned by the board of trade. The allottee, that is, the person in whose favor it is made, may recover the amount in the county court. Mozley & Whitley.

ALLOTMENT SYSTEM. Designates the practice in England of dividing land in small portions for cultivation by agricultural laborers and other cottagers at their leisure, and after they have performed their ordinary day's work. Wharton.

ALLOTMENT WARDEN. By the English general inclosure act, 1845, § 108, when an allotment for the laboring poor of a district has been made on an inclosure under the act, the land so allotted is to be under the management of the incumbent and church warden of the parish, and two other persons elected by the parish, and they are to be styled "the allotment wardens" of the parish. Sweet.

ALLOTTEE. One to whom an allotment is made, who receives a ratable share under an allotment; a person to whom land under an inclosure act or shares in a public undertaking are allotted.

An "allottee," as the word is used in the act of April 21, 1904 (chapter 1402, 33 Stat. 189–204), is one, generally an Indian, freedman, or adopted citizen of a tribe of Indians, to whom a tract of land out of a common holding has been given by, or under the supervision of, the United States. Lynch v. Franklin, 37 Okl. 60, 130 P. 599, 600. The word does not include such allottee's heirs. Bradley v. Goddard, 45 Okl. 77, 145 P. 409, 410.

ALLOW. To grant, approve, or permit; as to allow an appeal or a marriage; to allow an account or claim. Also to give a fit portion out of a larger property or fund. Thurman v. Adams, 82 Miss. 204, 33 So. 944; Chamberlain v. Putnam, 10 S. D. 360, 73 N. W. 201; People v. Gilroy, 82 Hun, 500, 31 N. Y. Supp. 776; Hinds v. Marmolejo, 60 Cal. 231; Straus v. Wanamaker, 175 Pa. 213, 34 A. 652; Doak-Riddle-Hamilton Co. v. Raabe, 63 Ind. App. 250, 114 N. E. 415, 417; In re McLure's Estate, 68 Mont. 556, 220 P. 527, 530. To sanction, either directly or indirectly, as opposed to merely suffering a thing to be done. People v. Duncan, 22 Cal. App. 430, 134 P. 797, 798. To acquiesce in. Luckie v. Diamond Coal Co., 41 Cal. App. 468, 183 P. 178, 181; Curtis & Gartside Co. v. Pigg, 39 Okl. 31, 134 P. 1125, 1129. To compel. Longren v. Missouri Pac. Ry. Co., 99 Kan. 757, 163 P. 183, 184. To permit; Kearns v. Kearns, 107 Pa. 575; Doty v. Lawson, 14 Fed. 892; 3 H. & C. 75; to yield; Doty v. Lawson, 14 Fed. 892; to suffer, to tolerate; Gregory v. U. S., 17 Blatchf. 325, Fed. Cas. No. 5,803; to fix; Hinds v. Marmolejo, 60 Cal. 229; Smith v. Board of Com'rs of Washita County, 38 Okl. 436, 133 P. 177. To substitute by way of compensation something for another; Glenn v. Glenn, 41 Ala. 571. It is used as a synonym of intent by unlearned persons in wills; it is also used as an equivalent of I will; Ramsey v. Hanlon, 33 Fed. 425.

ALLOWANCE. A deduction, an average payment, a portion assigned or allowed; the act of allowing. See Stone v. State, 197 Ala. 293, 72 So. 536, 537; Sawyer v. U. S. (C. C. A.) 10 F.(2d) 416, 421.

As distinguished from a "salary," which is a fixed compensation, decreed by authority and for permanence, and is paid at stated intervals, and depends upon time, and not the amount of the services rendered, "allowance" is a variable quantity. Blaine County v. Pyrah, 32 Idaho, 111, 178 P. 702, 703; Veterans' Welfare Board v. Riley, 188 Cal. 607, 206 P. 631, 637; Jones v. U. S., 60 Ct. Cl. 552, 564.

As used in S. Dak. Civ. Code, § 92, authorizing an allowance to the wife on divorce, it is not synonymous with "alimony" and authorizes setting aside specific property. Warne v. Warne, 36 S. D. 573, 156 N. W. 60, 62.

—Allowance pendente lite. In the English chancery division, where property which forms the subject of proceedings is more than sufficient to answer all claims in the proceedings, the court may allow to the parties interested the whole or part of the income, or (in the case of personalty) part of the property itself. St. 15 & 16 Vict. c. 86, § 57; Daniell, Ch. Pr. 1070.

—Special allowances. In English practice. In taxing the costs of an action as between party and party, the taxing officer is, in certain cases, empowered to make special allowances; *i. e.*, to allow the party costs which the ordinary scale does not warrant. Sweet.

ALLOY. An inferior or cheaper metal mixed with gold or silver in manufacturing or coining. As respects coining, the amount of alloy is fixed by law, and is used to increase the hardness and durability of the coin.

A compound of two or more metals. Treibacher-Chemische Werke Gesellschaft mit Beschränkter Haftung v. Roessler & Hasslacher Chemical Co. (C. C. A.) 219 F. 210, 211. A mixture or combination of metals while in state of fusion. Pittsburgh Iron & Steel

Foundries Co. v. Seaman-Sleeth Co. (D. C.) 236 F. 756, 757; Treibacher Chemische Werke Gesellschaft mit Beschränkter Haftung v. Roessler & Hasslacher Chemical Co. (D. C.) 214 F. 410, 412.

ALLOYNOUR. L. Fr. One who conceals, steals, or carries off a thing privately. Britt. c. 17.

ALLUVIO MARIS. Lat. In the civil and old English law. The washing up of the sea; the soil thus formed; formation of soil or land from the sea; maritime increase. Hale, Anal. § 8. "*Alluvio maris* is an increase of the land adjoining, by the projection of the sea, casting up and adding sand and slubb to the adjoining land, whereby it is increased, and for the most part by insensible degrees." Hale, de Jure Mar. pt. 1, c. 6.

ALLUVION. That increase of the earth on a shore or bank of a river, or to the shore of the sea, by the force of the water, as by a current or by waves, which is so gradual that no one can judge how much is added at each moment of time. Inst. 1, 2, t. 1, § 20. Ang. Water Courses, 53. Jefferis v. East Omaha Land Co., 134 U. S. 178, 10 Sup. Ct. 518, 33 L. Ed. 872; Freeland v. Pennsylvania R. Co., 197 Pa. 529, 47 A. 745, 58 L. R. A. 206, 80 Am. St. Rep. 850; State v. Richardson, 72 So. 984, 986, 140 La. 329.

The term is chiefly used to signify a gradual increase of the shore of a running stream, produced by deposits from the waters.

By the common law, alluvion is the addition made to land by the washing of the sea, or a navigable river or other stream, whenever the increase is so gradual that it cannot be perceived in any one moment of time. Lovingston v. St. Clair County, 64 Ill. 58, 16 Am. Rep. 516.

Alluvion differs from avulsion in this: that the latter is sudden and perceptible. St. Clair County v. Lovingston, 23 Wall. 46, 23 L. Ed. 59. See Accretion; Avulsion.

ALLY. A nation which has entered into an alliance with another nation. 1 Kent, Comm. 69.

A citizen or subject of one of two or more allied nations. Miller v. The Resolution, 2 Dall. (U. S.) 15, 1 L. Ed. 263; Siemund v. Schmidt (Mun. Ct. N. Y.) 168 N. Y. S. 935.

ALMANAC. A publication, in which is recounted the days of the week, month, and year, both common and particular, often distinguishing the fasts, feasts, terms, etc., from the common days by proper marks, pointing out also the several changes of the moon, tides, eclipses, etc.

ALMARIA. The archives, or, as they are sometimes styled, muniments of a church or library.

ALMESFEOH. In Saxon law. Alms-fee; alms-money. Otherwise called "Peter-pence." Cowell.

ALMOIN. Alms; a tenure of lands by divine service. See Frankalmoigne.

ALMONER. One charged with the distribution of alms. The office was first instituted in religious houses and although formerly one of importance is now in England almost a sinecure.

ALMOXARIFAZGO. In Spanish law. A general term, signifying both export and import duties, as well as excise.

ALMS. Charitable donations. Any species of relief bestowed upon the poor. That which is given by public authority for the relief of the poor.

ALMS FEE. Peter-pence (or Peter's pence), which see.

ALMSHOUSE. A house for the publicly supported paupers of a city or county. People v. City of New York, 36 Hun (N. Y.) 311. In England an almshouse is not synonymous with a workhouse or poorhouse, being supported by private endowment.

An "almshouse" may be a public institution kept up by public revenues, or it may be an institution maintained by private endowment and contributions, where the indigent, sick, and poor are cared for without cost to themselves. State Board of Control v. Buckstegge, 18 Ariz. 277, 158 P. 837, 839.

ALNAGER, or ULNAGER. A sworn officer of the king whose duty it was to look to the assise of woolen cloth made throughout the land, and to the putting on the seals for that purpose ordained, for which he collected a duty called "alnage." Cowell; Termes de la Ley.

ALNETUM. In old records, a place where alders grow, or a grove of alder trees. Doomsday Book; Co. Litt. 4*b*.

ALOD, Alode, Alodes, Alodis. L. Lat. In feudal law. Old forms of *alodium* or *allodium* (*q. v.*). A term used in opposition to *feodum* or *fief*, which means property, the use of which was bestowed upon another by the proprietor, on condition that the grantee should perform certain services for the grantor, and upon the failure of which the property should revert to the original possessor. See 1 Poll. & Maitl. 45.

ALODIAN. Sometimes used for allodial, but not well authorized. Cowell.

ALODIARII. See Allodarii.

ALONE. Apart from others; singly; sole. Salem Capital Flour Mills Co. v. Water-Ditch & Canal Co., 33 Fed. 154.

ALONG. By, on, up to, or over, according to the subject-matter and context. Church v. Meeker, 34 Conn. 425; Walton v. R. Co., 67 Mo. 58; Benton v. Horsley, 71 Ga. 619; State v. Downes, 79 N. H. 505, 112 A. 246; Sioux

City Bridge Co. v. Miller (C. C. A.) 12 F.(2d) 41, 48. The term does not necessarily mean touching at all points; Com. v. Franklin, 133 Mass. 569; nor does it necessarily imply contact, Watts v. City of Winfield, 101 Kan. 470, 168 P. 319, 321.

ALSO. Beside; as well as; too. Lindsley v. City and County of Denver, 64 Colo. 444, 172 P. 707, 708. In addition to, State v. Erickson, 75 Mont. 429, 244 P. 287, 295; Fessenden v. Coombs, 99 A. 817, 116 Me. 49; Irvine v. Irvine, 69 Or. 187, 136 P. 18, 19. Likewise, or in like manner. City of Birmingham v. Collins, 201 Ala. 479, 78 So. 385; Wilson v. Matson, 110 Neb. 630, 194 N. W. 735, 736; Cain v. Courter (Mo. Sup.) 215 S. W. 17, 19; Sargent v. Shumaker, 193 Cal. 122, 223 P. 464, 465. The word imports no more than "item" and may mean the same as "moreover"; but not the same as "in like manner"; Evans v. Knorr, 4 Rawle (Pa.) 68; nor is it synonymous with "other," City of Ft. Smith v. Gunter, 154 S. W. 181, 183, 106 Ark. 371. It may be (1) the beginning of an entirely different sentence, or (2) a copulative carrying on the sense of the immediately preceding words into those immediately succeeding. Stroud, Jud. Dict., citing 1 Jarm. 497 n.; 1 Salk. 239; Security State Bank v. Jones, 247 P. 862, 863, 121 Kan. 396.

ALT. In Scotch practice. An abbreviation of *Alter*, the other; the opposite party; the defender. 1 Broun, 336, note.

ALTA PRODITIO. L. Lat. In old English law. High treason. 4 Bl. Comm. 75. See High Treason.

ALTA VIA. L. Lat. In old English law. A highway; the highway. 1 Salk. 222. *Alta via regia;* the king's highway; "the king's high street." Finch, Law, b. 2, c. 9.

ALTARAGE. In ecclesiastical law. Offerings made on the altar; all profits which accrue to the priest by means of the altar. Ayliffe, Parerg. 61.

ALTENHEIM. A German word meaning "home for old people." German Pioneer Verein v. Meyer, 63 A. 835, 70 N. J. Eq. 192.

ALTER. To make a change in; to modify; to vary in some degree; to change some of the elements or ingredients or details without substituting an entirely new thing or destroying the identity of the thing affected. Hannibal v. Winchell, 54 Mo. 177; Haynes v. State, 15 Ohio St. 455; Davis v. Campbell, 93 Iowa, 524, 61 N. W. 1053; Sessions v. State, 115 Ga. 18, 41 S. E. 259. See Alteration; Change.

The other; the opposite party. See Alt.

Synonyms

This term is to be distinguished from its synonyms "change" and "amend." To change may import the substitution of an entirely different thing, while to alter is to operate upon a subject-matter which continues objectively the same while modified in some particular. If a check is raised, in respect to its amount, it is altered; if a new check is put in its place, it is changed. To "amend" implies that the modification made in the subject improves it, which is not necessarily the case with an alteration. An amendment always involves an alteration, but an alteration does not always amend. See Ex parte Woo Jan (D. C.) 228 F. 927, 940.

But "alter" is sometimes used synonymously with "change," Board of Sup'rs of Yavapai County v. Stephens, 20 Ariz. 115, 177 P. 261, 264, and with "enlarge," City of Jamestown v. Pennsylvania Gas Co. (C. C. A.) 1 F.(2d) 871, 883.

ALTERATION. Variation; changing; making different. See Alter.

"Alteration," as applied to a building, means a substantial change. Mayer v. Texas Tire & Rubber Co. (Tex. Civ. App.) 223 S. W. 874, 875; Cawker v. Trimmel, 155 Wis. 108, 143 N. W. 1046, 1047, Ann. Cas. 1915C, 1005; Kresge v. Maryland Casualty Co., 154 Wis. 627, 143 N. W. 668, 669. Advertising signs on the outer walls of a building are not an "alteration" of or addition to the building, which the lessee covenants not to make without consent. Emmons v. D. A. Schulte, Inc., 13 Del. Ch. 336, 120 A. 221, 222.

Improvements which add to the height or depth of a building, or which change, increase, and repair the interior accommodations thereof, are repairs or alterations within the meaning of the Mechanic's Lien Act. Fehr Const. Co. v. Postl System of Health Building, 288 Ill. 634, 124 N. E. 315, 317; Hardwood Interior Co. v. Bull, 24 Cal. App. 129, 140 P. 702, 703.

As applied to highways, especially in connection with grade crossings, "alteration" is the substitution of one way for another. New York Cent. & H. R. R. Co. v. Board of Com'rs of Middlesex County, 220 Mass. 569, 108 N. E. 506, 507; Boston & M. R. R. v. County Com'rs of Middlesex County, 239 Mass. 127, 131 N. E. 283, 286; Police Jury of Jackson Parish, La., v. Tremont & G. Ry. Co., 136 La. 784, 67 So. 829, 830.

An alteration is an act done upon the instrument by which its meaning or language is changed. If what is written upon or erased from the instrument has no tendency to produce this result, or to mislead any person, it is not an alteration. Oliver v. Hawley, 5 Neb. 444.

An alteration is said to be *material* when it affects, or may possibly affect, the rights of the persons interested in the document.

A "material alteration" of an instrument is one which makes it speak a language different in legal effect from that which it originally spoke, or which carries with it some change in the rights, interests, or obligations of the parties to the writing. McIntosh v. State, 98 S. E. 555, 556, 23 Ga. App. 513; Bank of Moberly v. Meals, 316 Mo. 1158, 295 S. W. 73, 77; Gray v. Williams, 91 Vt. 111, 99 A. 735, 738; Commercial Credit Co. v. Giles (Tex. Civ. App.) 207 S. W. 596, 598; Francen v. Oklahoma Star Oil Co., 80 Okl. 103, 194 P. 193, 194; Dr. Ward's Medical Co. v. Wolleat, 160 Minn. 21, 199 N. W. 738, 740.

Synonyms

An act done upon a written instrument, which, without destroying the identity of the document, introduces some change into its terms, meaning, language, or details is an alteration. See U. S. v. Sacks, 42 S. Ct. 38, 39, 257 U. S. 37, 66 L. Ed. 118; Spencer v. Tripplett (Tex. Civ. App.) 184 S. W. 712; Moore v. First Nat. Bank, 211 Ala. 367, 100 So. 349, 351; Crouch v. U. S. (C. C. A.) 298 F. 437, 439. This may be done either by the mutual agreement of the parties concerned (but this use of the word is rather colloquial than technical; such an alteration becomes a new agreement, superseding the original one; Leake, Cont. 430), or by a person interested under the writing without the consent, or without the knowledge, of the others. Smith v. Barnes, 51 Mont. 202, 149 P. 963, 967, Ann. Cas. 1917D, 330; Rice v. Jones, 102 Okl. 30, 225 P. 958, 960; Edwards v. Thompson, 99 Wash. 188, 169 P. 327, 328. In either case it is properly denominated an alteration; but if performed by a mere stranger, it is more technically described as a *spoliation* or *mutilation*. Knox v. Horne (Tex. Civ. App.) 200 S. W. 259, 260; Cochran v. Nebeker, 48 Ind. 462. The term is not properly applied to any change which involves the substitution of a practically new document. Kempner v. Simon, 195 N. Y. S. 333, 334, 119 Misc. Rep. 60. And it should in strictness be reserved for the designation of changes in form or language, and not used with reference to modifications in matters of substance. The term is also to be distinguished from "defacement," which conveys the idea of an obliteration or destruction of marks, signs, or characters already existing. An addition which does not change or interfere with the existing marks or signs, but gives a different tenor or significance to the whole, may be an alteration, but is not a defacement. Linney v. State, 6 Tex. 1, 55 Am. Dec. 756. Again, in the law of wills, there is a difference between revocation and alteration. If what is done simply takes away what was given before, or a part of it, it is a revocation; but if it gives something in addition or in substitution, then it is an alteration. Appeal of Miles, 68 Conn. 237, 36 Atl. 39, 36 L. R. A. 176; In re Thorn's Estate, 183 Cal. 512, 192 P. 19, 22.

Alterius circumventio alii non præbet actionem. The deceiving of one person does not afford an action to another. Dig. 50, 17, 49.

ALTERNAT. A usage among diplomatists by which the rank and places of different powers, who have the same right and pretensions to precedence, are changed from time to time, either in a certain regular order or one determined by lot. In drawing up treaties and conventions, for example, it is the usage of certain powers to alternate, both in the preamble and the signatures, so that each power occupies, in the copy intended to be delivered to it, the first place. Wheat. Int. Law, § 157.

ALTERNATIM. L. Lat. Interchangeably. Litt. § 371; Townsh. Pl. 37.

Alternativa petitio non est audienda. An alternative petition or demand is not to be heard. 5 Coke, 40.

ALTERNATIVE. One or the other of two things; giving an option or choice; allowing a choice between two or more things or acts to be done. See Malone v. Meres, 91 Fla. 709, 109 So. 677, 693.

ALTERNATIVE CONTRACT. A contract whose terms allow of performance by the doing of either one of several acts at the election of the party from whom performance is due. Crane v. Peer, 43 N. J. Eq. 553, 4 Atl. 72.

ALTERNATIVE OBLIGATION. An obligation allowing the obligor to choose which of two things he will do, the performance of either of which will satisfy the instrument. Where the things which form the object of the contract are separated by a disjunctive, then the obligation is *alternative*. A promise to deliver a certain thing or to pay a specified sum of money is an example of this kind of obligation. Civil Code La. art. 2066.

ALTERNATIVE RELIEF. The term "alternative," as used in Equity Rule 25 (28 USCA § 723), allowing relief to be stated and sought in alternative forms, means mutually exclusive. Boyd v. New York & H. R. Co. (D. C.) 220 F. 174, 179.

ALTERNATIVE REMEDY. Where a new remedy is created in addition to an existing one, they are called "alternative" if only one can be enforced; but if both, "cumulative."

ALTERNATIVE WRIT. A writ commanding the person against whom it is issued to do a specified thing, or show cause to the court why he should not be compelled to do it. Allee v. McCoy, 2 Marv. (Del.) 465, 36 Atl. 359. Under the common-law practice, the first *mandamus* is an alternative writ; 3 Bla. Com. 111; but in modern practice this writ is often dispensed with and its place is taken by a rule to show cause. See Mandamus.

ALTERNIS VICIBUS. L. Lat. By alternate turns; at alternate times; alternately. Co. Litt. 4*a*; Shep. Touch. 206.

ALTERUM NON LÆDERE. Not to injure another. This maxim, and two others, *honeste vivere*, and *suum cuique tribuere*, (*q. v.*,) are considered by Justinian as fundamental principles upon which all the rules of law are based. Inst. 1, 1, 3.

ALTIUS NON TOLLENDI. In the civil law. A servitude due by the owner of a house, by which he is restrained from building beyond a certain height. Dig. 8, 2, 4; Sandars, Just. Inst. 119.

ALTIUS TOLLENDI. In the civil law. A servitude which consists in the right, to him

who is entitled to it, to build his house as high as he may think proper. In general, however, every one enjoys this privilege, unless he is restrained by some contrary title. Sandars, Just. Inst. 119.

ALTO ET BASSO. High and low. This phrase is applied to an agreement made between two contending parties to submit all matters in dispute, *alto et basso*, to arbitration. Cowell.

ALTUM MARE. L. Lat. In old English law. The high sea, or seas. Co. Litt. 260*b*. The deep sea. *Super altum mare*, on the high seas. Hob. 212*b*.

ALUMNUS. A child which one has nursed; a foster-child. Dig. 40, 2, 14.

Also a graduate from a school, college, or other institution of learning.

ALVEUS. The bed or channel through which the stream flows when it runs within its ordinary channel. Calvinus, Lex.

Alveus derelictus, a deserted channel. Mackeld. Rom. Law, § 274.

AMALGAMATION. Union of different races, or diverse elements, societies, or corporations, so as to form a homogeneous whole or new body; interfusion; intermarriage; consolidation; coalescence; as, the amalgamation of stock. Stand. Dict.

In England it is applied to the merger or consolidation of two incorporated companies or societies.

The word has no definite meaning; it involves the blending of two concerns into one; [1904] 2 Ch. 268.

In the case of the Empire Assurance Corporation, (1887,) L. R. 4 Eq. 347, the vice-chancellor said: "It is difficult to say what the word 'amalgamate' means. I confess at this moment I have not the least conception of what the full legal effect of the word is. We do not find it in any law dictionary, or expounded by any competent authority. But I am quite sure of this: that the word 'amalgamate' cannot mean that the execution of a deed shall make a man a partner in a firm in which he was not a partner before, under conditions of which he is in no way cognizant, and which are not the same as those contained in the former deed." But in Adams v. Yazoo & M. V. R. Co., 77 Miss. 194, 24 South. 200, 211, 60 L. R. A. 33, it is said that the term "amalgamation" of corporations is used in the English cases in the sense of what is usually known in the United States as "merger," meaning the absorption of one corporation by another, so that the absorbing corporation continues in existence, and differs from "consolidation," the meaning of which is limited to such a union of two or more corporations as necessarily results in the creation of a third new corporation.

AMALPHITAN CODE OR TABLE. A collection of sea-laws, compiled about the end of the eleventh century, by the people of Amalphi. It consists of the laws on maritime subjects, which were or had been in force in countries bordering on the Mediterranean; and was for a long time received as authority in those countries. Azuni; Wharton. It became a part of the law of the sea; The Scotia, 14 Wall. (U. S.) 170, 20 L. Ed. 822. See Code.

AMANUENSIS. One who writes on behalf of another that which he dictates.

AMBACTUS. A messenger; a servant sent about; one whose services his master hired out. Spelman.

AMBASCIATOR. A person sent about in the service of another; a person sent on a service. A word of frequent occurrence in the writers of the middle ages. Spelman.

AMBASSADOR. In international law. A public officer, clothed with high diplomatic powers, commissioned by a sovereign prince or state to transact the international business of his government at the court of the country to which he is sent.

Ambassador is the commissioner who represents one country in the seat of government of another. He is a public minister, which, usually, a consul is not. Brown.

Ambassador is a person sent by one sovereign to another, with authority, by letters of credence, to treat on affairs of state. Jacob.

A distinction was formerly made between Ambassadors *Extraordinary*, who were sent to conduct special business or to remain for an indeterminate period, and Ambassadors *Ordinary*, who were sent on permanent missions; but this distinction is no longer observed.

Ambassadors are regarded as the personal representatives of the head of the state which sends them, and in consequence they are entitled to special honors, and have special privileges. The duties of an ambassador are varied; he is the mouthpiece of communications from his state to the foreign country; he must keep his government informed upon all questions of interest to it; he must see to the protection of citizens of his country resident in the foreign state. A foreign ambassador may authorize suit in our courts in the name of his government. Russian Government v. Lehigh Valley R. Co. (D. C.) 293 F. 133. See Letter of Credence; Minister.

AMBER, or AMBRA. In old English law. A measure of four bushels.

AMBIDEXTER. Skillful with both hands; one who plays on both sides. Applied anciently to an attorney who took pay from both sides, and subsequently to a juror guilty of the same offense. Cowell.

Ambigua responsio contra proferentem est accipienda. An ambiguous answer is to be taken against (is not to be construed in favor of) him who offers it. 10 Coke, 59.

Ambiguis casibus semper præsumitur pro rege. In doubtful cases, the presumption always is in behalf of the crown. Lofft, Append. 248.

AMBIGUITAS. Lat. From *ambiguus*, doubtful, uncertain, obscure. Ambiguity; uncertainty of meaning.

Ambiguitas latens, a latent ambiguity; *ambiguitas patens*, a patent ambiguity. See Ambiguity.

Ambiguitas contra stipulatorem est. Doubtful words will be construed most strongly against the party using them.

Ambiguitas verborum latens verificatione suppletur; nam quod ex facto oritur ambiguum verificatione facti tollitur. A latent ambiguity in the language may be removed by evidence; for whatever ambiguity arises from an extrinsic fact may be explained by extrinsic evidence. Bac. Max. Reg. 23. Said to be "an unprofitable subtlety; inadequate and uninstructive." Prof. J. B. Thayer in 6 Harv. L. 417.

Ambiguitas verborum patens nullâ verificatione excluditur. A patent ambiguity cannot be cleared up by extrinsic evidence (or is never holpen by averment). Lofft, 249; Bacon, Max. 25.

AMBIGUITY. Doubtfulness; doubleness of meaning; indistinctness or certainty of meaning of an expression used in a written instrument. First Nat. Bank v. Hancock Warehouse Co., 142 Ga. 99, 82 S. E. 481, 483; McCreary v. Acton, 29 Ga. App. 162, 114 S. E. 230, 231; San Antonio Life Ins. Co. v. Griffith (Tex. Civ. App.) 185 S. W. 335, 337; Nindle v. State Bank, 13 Neb. 245, 13 N. W. 275; Ellmaker v. Ellmaker, 4 Watts (Pa.) 89; Kraner v. Halsey, 82 Cal. 209, 22 Pac. 1137; Ward v. Epsy, 6 Humph. (Tenn.) 447.

An ambiguity may be either *latent* or *patent*. It is the former, where the language employed is clear and intelligible and suggests but a single meaning, but some extrinsic fact or extraneous evidence creates a necessity for interpretation or a choice among two or more possible meanings. But a patent ambiguity is that which appears on the face of the instrument, and arises from the defective, obscure, or insensible language used. Carter v. Holman, 60 Mo. 504; Brown v. Guice, 46 Miss. 302; Stokeley v. Gordon, 8 Md. 505; Chambers v. Ringstaff, 69 Ala. 140; Hawkins v. Garland, 76 Va. 152, 44 Am. Rep. 158; Hand v. Hoffman, 8 N. J. Law, 71; Ives v. Kimball, 1 Mich. 313; Palmer v. Albee, 50 Iowa, 431; Petrie v. Hamilton College, 158 N. Y. 458, 53 N. E. 216; Zilwaukee Tp. v. Saginaw Bay City Ry. Co., 213 Mich. 61, 181 N. W. 37, 39; In re Milliette's Estate, 206 N. Y. S. 342, 348, 123 Misc. Rep. 745; Higinbotham v. Blair, 308 Ill. 568, 139 N. E. 909, 910; McDougal v. Conn (Tex. Civ. App.) 195 S. W. 627, 635; Harney v. Wirtz, 30 N. D. 292, 152 N. E. 803, 807; Perkins v. O'Donald, 77 Fla. 710, 727, 82 So. 401, 404; In re Mizener's Estate, 262 Pa. 62, 105 A. 46, 48; Mirando v. Mirando, 104 Conn. 318, 132 A. 910, 912; Carroll v. Cave Hill Cemetery Co., 172 Ky. 204, 189 S. W. 186, 190.

Synonyms

Ambiguity of language is to be distinguished from unintelligibility and inaccuracy, for words cannot be said to be ambiguous unless their signification seems doubtful and uncertain to persons of competent skill and knowledge to understand them. Story, Contr. 272.

The term "ambiguity" does not include mere *inaccuracy*, or such uncertainty as arises from the use of peculiar words, or of common words in a peculiar sense. Wig. Wills, 174; In re Milliette's Estate, 206 N. Y. S. 342, 349, 123 Misc. Rep. 745.

A will is ambiguous only when, after full consideration, it is determined judicially that no interpretation can be given to it. In re Altman's Estate, 188 N. Y. S. 493, 115 Misc. Rep. 476; In re Gorsch's Estate, 169 N. Y. S. 1064, 103 Misc. Rep. 156.

AMBIGUITY UPON THE FACTUM. An ambiguity in relation to the very foundation of the instrument itself, as distinguished from an ambiguity in regard to the construction of its terms. The term is applied, for instance, to a doubt as to whether a testator meant a particular clause to be a part of the will, or whether it was introduced with his knowledge, or whether a codicil was meant to republish a former will, or whether the residuary clause was accidentally omitted. Eatherly v. Eatherly, 1 Cold. (Tenn.) 461, 465, 78 Am. Dec. 499.

Ambiguum pactum contra venditorem interpretandum est. An ambiguous contract is to be interpreted against the seller.

Ambiguum placitum interpretari debet contra proferentem. An ambiguous plea ought to be interpreted against the party pleading it. Co. Litt. 303*b*.

AMBIT. A boundary line, as going around a place; an exterior or inclosing line or limit. Ellicott v. Pearl, 10 Pet. (U. S.) 412, 442, 9 L. Ed. 475.

The limits or circumference of a power or jurisdiction; the line circumscribing any subject-matter. As to the ambit of a port, see Leonis Steamship Co., Ltd., v. Rank, Ltd., [1907] 1 K. B. 344, 352; Pyman Bros. v. Dreyfus Bros. & Co. [1890] 24 Q. B. D. 152, 155.

AMBITUS. In the Roman law. A going around; a path worn by going around. A space of at least two and a half feet in width, between neighboring houses, left for the convenience of going around them. Calvin.

The procuring of a public office by money or gifts; the unlawful buying and selling of a public office. Inst. 4, 18, 11; Dig. 48, 14.

AMBULANCE. A vehicle for the conveyance of the sick or wounded. In time of war they are considered neutral and must be respected by the belligerents. Oppenheim, Int. L. 126.

AMBULANCE CHASER. A lawyer or his agent who follows up accidents in the streets

and tries to induce the injured person to sue for damages, but not including employees and representatives of one charged with tort sent to the injured person to make an amicable adjustment if possible. Kelley v. Boyne, 239 Mich. 204, 214 N. W. 316, 318, 53 A. L. R. 273. A popular name for one who solicits negligence cases for an attorney. In re Newell, 160 N. Y. S. 275, 278, 174 App. Div. 94. See, also, Ambulance Chasing.

AMBULANCE CHASING. A term descriptive of the practice of some attorneys, on hearing of a personal injury which may have been caused by the negligence or wrongful act of another, of at once seeking out the injured person with a view to securing authority to bring action on account of the injury. The practice has been described as in violation of the ethics of the legal profession, branding those who indulge in it with professional infamy. Chunes v. Duluth, W. & P. Ry. Co. (D. C.) 298 F. 964. See Weinard v. Chicago, M. & St. P. Ry. Co. (D. C.) 298 F. 977.

Ambulatoria est voluntas defuncti usque ad vitæ supremum exitum. The will of a deceased person is ambulatory until the latest moment of life. Dig. 34, 4, 4.

AMBULATORY. (Lat. *ambulare*, to walk about). Movable; revocable; subject to change.

Ambulatoria voluntas (a changeable will) denotes the power which a testator possesses of altering his will during his life-time. Hattersley v. Bissett, 50 N. J. Eq. 577, 25 Atl. 332.

The court of king's bench in England was formerly called an "ambulatory court," because it followed the king's person, and was held sometimes in one place and sometimes in another. So, in France, the supreme court or parliament was originally *ambulatory*. 3 Bl. Comm. 38, 39, 41.

The return of a sheriff has been said to be *ambulatory* until it is filed. Wilmot, J., 3 Burr. 1644.

AMBUSH. The noun "ambush" means (1) the act of attacking an enemy unexpectedly from a concealed station; (2) a concealed station, where troops or enemies lie in wait to attack by surprise, an ambuscade; (3) troops posted in a concealed place for attacking by surprise. The verb "ambush" means to lie in wait, to surprise, to place in ambush. Dale County v. Gunter, 46 Ala. 118, 142, referred to in Darneal v. State, 14 Okl. Cr. 540, 174 P. 290, 292, 1 A. L. R. 638.

AMELIORATIONS. Betterments; improvements. 6 Low. Can. 294; 9 Id. 503.

AMENABLE. Subject to answer to the law; accountable; responsible; liable to punishment. Miller v. Com., 1 Duv. (Ky.) 17; Pickelsimer v. Glazener, 173 N. C. 630, 92 S. E. 700, 704.

Also means tractable, that may be easily led or governed; formerly applied to a wife who is governable by her husband. Cowell.

AMEND. To improve; to make better by change or modification. See Alter.

To correct or rectify or to free from error. U. S. v. Dembowski (D. C.) 252 F. 894, 898.

AMENDE HONORABLE.

In Old English Law

A penalty imposed upon a person by way of disgrace or infamy, as a punishment for any offense, or for the purpose of making reparation for any injury done to another, as the walking into church in a white sheet, with a rope about the neck and a torch in the hand, and begging the pardon of God, or the king, or any private individual, for some delinquency.

In French Law

A punishment somewhat similar to this, which bore the same name, was common in France for offenses against public decency or morality. It was abolished by the law of the 25th of September, 1791; Merlin, Répert. In 1826 it was re-introduced in cases of sacrilege and was finally abolished in 1830.

In modern usage, an apology.

AMENDMENT.

In Practice

The correction of an error committed in any process, pleading, or proceeding at law, or in equity, and which is done either of course, or by the consent of parties, or upon motion to the court in which the proceeding is pending. 3 Bl. Comm. 407, 448; 1 Tidd, Pr. 696. Hardin v. Boyd, 113 U. S. 756, 5 Sup. Ct. 771, 28 L. Ed. 1141. An amendment to a pleading, as distinguished from a "supplemental pleading" (*q. v.*), has reference to facts existing at the time of the commencement of the action. Fisher v. Bullock, 198 N. Y. S. 538, 540, 204 App. Div. 523.

The office of a "trial amendment" is to supply allegations in a pleading after exception thereto has been sustained. Cotton v. Thompson (Tex. Civ. App.) 159 S. W. 455, 459.

Any writing made or proposed as an improvement of some principal writing. Ex parte Woo Jan (D. C.) 228 F. 927, 941; Couch v. Southern Methodist University (Tex. Civ. App.) 290 S. W. 256, 260; U. S. v. Munday (D. C.) 211 F. 536, 538.

A broad definition of the word "amendment" would include any alteration or change. State v. Le Blond, 108 Ohio St. 41, 140 N. E. 491, 494. It may be used interchangeably with "revise." Pierce v. Solano County, 62 Cal. App. 465, 217 P. 545, 546.

In Legislation

A modification or alteration proposed to be made in a bill on its passage, or an enacted law; also such modification or change when made. Brake v. Callison (C. C.) 122 Fed. 722;

State v. MacQueen, 82 W. Va. 44, 95 S. E. 666, 668; State v. Cooney, 70 Mont. 355, 225 P. 1007, 1009; Aldridge v. Commonwealth, 192 Ky. 215, 232 S. W. 619. An "amendment" merely continues the law or ordinance in its changed form; City of Chicago v. American Tile & Gravel Roofing Co., 282 Ill. 537, 118 N. E. 730, 731. An amendment, as of a bill, is to be distinguished from a "substitute." In re Ross, 86 N. J. Law, 387, 94 A. 304, 306.

"Amendment" includes additions to, as well as corrections of, matters already treated, and there is nothing in the context of Const. art. 5, providing that Congress shall propose amendments, which suggests that it was used in a restricted sense. Christian Feigenspan, Inc., v. Bodine (D. C.) 264 F. 186, 190. See, also, State v. Fulton, 99 Ohio St. 168, 124 N. E. 172, 175.

AMENDS. A satisfaction given by a wrongdoer to the party injured, for a wrong committed. 1 Lil. Reg. 81.

AMENITY. In real property law. Such circumstances, in regard to situation, outlook, access to a water course, or the like, as enhance the pleasantness or desirability of an estate for purposes of residence, or contribute to the pleasure and enjoyment of the occupants, rather than to their indispensable needs. In England, upon the building of a railway or the construction of other public works, "amenity damages" may be given for the defacement of pleasure grounds, the impairment of riparian rights, or other destruction of or injury to the amenities of the estate.

In the law of easements, an "amenity" consists in restraining the owner from doing that with and on his property which, but for the grant or covenant, he might lawfully have done; sometimes called a "negative easement" as distinguished from that class of easements which compel the owner to suffer something to be done on his property by another. Equitable Life Assur. Soc. v. Brennan (Sup.) 24 N. Y. Supp. 784, 788.

AMENTIA. In medical jurisprudence. Insanity; idiocy. See Insanity.

AMERALIUS. L. Lat. A naval commander, under the eastern Roman empire, but not of the highest rank; the origin, according to Spelman, of the modern title and office of admiral. Spelman.

AMERCE. To impose an amercement or fine; to punish by a fine or penalty.

AMERCEMENT. A pecuniary penalty, in the nature of a fine, imposed upon a person for some fault or misconduct, he being "in mercy" for his offense. It was assessed by the peers of the delinquent, or the affeerors, or imposed arbitrarily at the discretion of the court or the lord. Goodyear v. Sawyer (C. C.) 17 Fed. 9.

The difference between *amercements* and *fines* is as follows: The latter are certain, and are created by some statute; they can only be imposed and assessed by courts of record; the former are arbitrarily imposed by courts not of record, as courts-leet. Termes de la Ley, 40.

The word "amercement" has long been especially used of a mulct or penalty, imposed by a court upon its own officers for neglect of duty, or failure to pay over moneys collected. In particular, the remedy against a sheriff for failing to levy an execution or make return of proceeds of sale is, in several of the states, known as "amercement." In others, the same result is reached by process of attachment. Abbott. Stansbury v. Mfg. Co., 5 N. J. Law, 441.

AMERCEMENT ROYAL. In Great Britain a penalty imposed on an officer for a misdemeanor in his office.

AMERICAN. Pertaining to the western hemisphere or in a more restricted sense to the United States. See Beardsley v. Selectmen of Bridgeport, 53 Conn. 493, 3 A. 557, 55 Am. Rep. 152. It was assumed in Life Photo Film Corp. v. Bell, 154 N. Y. S. 763, 764, 90 Misc. Rep. 469, that the term "American" included all classes of citizens, native and naturalized, irrespective of where they originally came from.

AMERICAN CLAUSE. In marine insurance. A proviso in a policy to the effect that, in case of any subsequent insurance, the insurer shall nevertheless be answerable for the full extent of the sum subscribed by him, without right to claim contribution from subsequent underwriters. American Ins. Co. v. Griswold, 14 Wend. (N. Y.) 399.

AMEUBLISSEMENT. In French law. A species of agreement which by a fiction gives to immovable goods the quality of movable. Merl. Répert.; 1 Low. Can. 25, 58.

AMI; AMY. A friend; as *alien ami*, an alien belonging to a nation at peace with us; *prochein ami*, a next friend suing or defending for an infant, married woman, etc.

AMICABLE. Friendly; mutually forbearing; agreed or assented to by parties having conflicting interests or a dispute; as opposed to hostile or adversary.

AMICABLE ACTION. In practice. An action between friendly parties. An action brought and carried on by the mutual consent and arrangement of the parties, in order to obtain the judgment of the court on a doubtful question of law, the facts being usually settled by agreement. Lord v. Veazie, 8 How. 251, 12 L. Ed. 1067. It differs entirely from a "Moot" Case (*q. v.*). The words "arbitration" and "amicable lawsuit," used in an obligation or agreement between parties, are not convertible terms. The former carries with it

the idea of settlement by disinterested third parties, and the latter by a friendly submission of the points in dispute to a judicial tribunal to be determined in accordance with the forms of law. Thompson v. Moulton, 20 La. Ann. 535. See Case Stated.

AMICABLE COMPOUNDERS. In Louisiana law and practice. "There are two sorts of arbitrators,—the arbitrators properly so called, and the amicable compounders. The arbitrators ought to determine as judges, agreeably to the strictness of law. Amicable compounders are authorized to abate something of the strictness of the law in favor of natural equity. Amicable compounders are in other respects subject to the same rules which are provided for the arbitrators by the present title." Civ. Code La. arts. 3109, 3110.

AMICUS CURIÆ. Lat. A friend of the court. A by-stander (usually a counsellor) who interposes and volunteers information upon some matter of law in regard to which the judge is doubtful or mistaken, or upon a matter of which the court may take judicial cognizance. Counsel in court frequently act in this capacity when they happen to be in possession of a case which the judge has not seen, or does not at the moment remember. The Claveresk (C. C. A.) 264 F. 276, 279; In re Perry, 83 Ind. App. 456, 148 N. E. 163, 165; State v. City of Albuquerque, 31 N. M. 576, 249 P. 242, 248; Taft v. Northern Transp. Co., 56 N. H. 416; Birmingham Loan, etc., Co. v. Bank, 100 Ala. 249, 13 South. 945, 46 Am. St. Rep. 45; In re Columbia Real Estate Co. (D. C.) 101 Fed. 970.

It is also applied to persons who have no right to appear in a suit, but are allowed to introduce evidence to protect their own interests. Bass v. Fontleroy, 11 Tex. 699, 701, 702.

Leave to file briefs as *amicus curiæ* will be denied when it does not appear that the applicant is interested in any other case that will be affected by the decision and the parties are represented by competent counsel, whose consent has not been secured; Northern Securities Co. v. U. S., 191 U. S. 555, 24 Sup. Ct. 119, 48 L. Ed. 299; where many cases are cited in the argument.

AMIRAL. Fr. In French maritime law. Admiral. Ord. de la Mar. liv. 1, tit. 1, § 1.

AMITA. Lat. A paternal aunt. An aunt on the father's side. *Amita magna.* A great-aunt on the father's side. *Amita major.* A great-great aunt on the father's side. *Amita maxima.* A great-great-great aunt, or a great-great-grandfather's sister. Calvinus, Lex.

AMITINUS. The child of a brother or sister; a cousin; one who has the same grandfather, but different father and mother. Calvinus, Lex.

AMITTERE. Lat. In the civil and old English law. To lose. Hence the old Scotch "amitt."

AMITTERE CURIAM. To lose the court; to be deprived of the privilege of attending the court.

AMITTERE LEGEM TERRÆ. To lose the protection afforded by the law of the land.

AMITTERE LIBERAM LEGEM. To lose one's frank-law. A term having the same meaning as *amittere legem terræ*, (*q. v.*) He who lost his law lost the protection extended by the law to a freeman, and became subject to the same law as thralls or serfs attached to the land.

To lose the privilege of giving evidence under oath in any court; to become infamous, and incapable of giving evidence. Glanville 2. If either party in a wager of battle cried "craven" he was condemned *amittere liberam legem;* 3 Bla. Com. 340.

AMNESTY. A sovereign act of oblivion for past acts, granted by a government to all persons (or to certain persons) who have been guilty of crime or delict, generally political offenses,—treason, sedition, rebellion,—and often conditioned upon their return to obedience and duty within a prescribed time.

A declaration of the person or persons who have newly acquired or recovered the sovereign power in a state, by which they pardon all persons who composed, supported, or obeyed the government which has been overthrown.

Express amnesty is one granted in direct terms.

Implied amnesty is one which results when a treaty of peace is made between contending parties. Vattel, 1, 4, c. 2, § 20.

The word "amnesty" properly belongs to international law, and is applied to treaties of peace following a state of war, and signifies there the burial in oblivion of the particular cause of strife, so that that shall not be again a cause for war between the parties; and this signification of "amnesty" is fully and poetically expressed in the Indian custom of burying the hatchet. And so amnesty is applied to rebellions which by their magnitude are brought within the rules of international law, and in which multitudes of men are the subjects of the clemency of the government. But in these cases, and in all cases, it means only "oblivion," and never expresses or implies a grant. Knote v. United States, 10 Ct. Cl. 407.

The distinction between amnesty and pardon is one rather of philological interest than of legal importance. But there are incidental differences of importance. Amnesty is the abolition and forgetfulness of the offense; pardon is forgiveness. Knote v. U. S., 95 U. S. 149, 152, 24 L. Ed. 442; State v. Blalock, 61 N. C. 242, 247. The one overlooks offense; the other remits punishment. The first is usually addressed to crimes against the sover-

eignty of the state, to political offenses; the second condones infractions of the peace of the state. Amnesty is usually general, addressed to classes or even communities,—a legislative act, or under legislation, constitutional or statutory,—the act of the supreme magistrate. Burdick v. United States, 35 S. Ct. 267, 271, 236 U. S. 79, 59 L. Ed. 476.

AMONG. Mingled with or in the same group or class. Dwight Mfg. Co. v. Word, 200 Ala. 221, 75 So. 979, 983; Genung v. Best, 100 N. J. Eq. 250, 135 A. 514, 516. Intermingled with. "A thing which is *among* others is intermingled with them. Commerce *among* the states cannot stop at the external boundary line of each state, but may be introduced into the interior." Gibbons v. Ogden, 9 Wheat. 194, 6 L. Ed. 23; Ft. Smith & W. R. Co. v. Blevins, 130 P. 525, 529, 35 Okl. 378.

Where property is directed by will to be distributed *among* several persons, it cannot be all given to one, nor can any of the persons be wholly excluded from the distribution. Hudson v. Hudson, 6 Munf. (Va.) 352.

"Among" is sometimes held to be equivalent to "between"; Hick's Estate, 134 Pa. 507, 19 Atl. 705; Records v. Fields, 155 Mo. 314, 55 S. W. 1021; Senger v. Senger's Ex'r, 81 Va. 687; In re Mays' Estate, 197 Mo. App. 555, 196 S. W. 1039, 1041.

AMORTISE. See Amortize.

AMORTISSEMENT. (Fr.) The redemption of a debt by a sinking fund.

AMORTIZATION. An alienation of lands or tenements in mortmain. The reduction of the property of lands or tenements to mortmain.

In its modern sense, amortization is the operation of paying off bonds, stock, a mortgage, or other indebtedness, commonly of a state or corporation, by installments, or by a sinking fund. An "amortization plan" for the payment of an indebtedness is one where there are partial payments of the principal, and accrued interest, at stated periods for a definite time, at the expiration of which the entire indebtedness will be extinguished. Bystra v. Federal Land Bank of Columbia, 82 Fla. 472, 90 So. 478, 480.

AMORTIZE. To alien lands in mortmain.

To destroy, kill, or deaden. Elliott v. U. S. (D. C.) 16 F.(2d) 164, 165. See Amortization.

AMOTIO. In the civil law. A moving or taking away. "The slightest *amotio* is sufficient to constitute theft, if the *animus furandi* be clearly established." 1 Swint. 205. See Amotion.

AMOTION. A putting or turning out; dispossession of lands. Ouster is an *amotion* of possession. 3 Bl. Comm. 199, 208.

A moving or carrying away; the wrongful taking of personal chattels. Archb. Civil Pl. Introd. c. 2, § 3.

In Corporation Law

The act of removing an officer, or official representative, of a corporation from his office or official station, before the end of the term for which he was elected or appointed, but without depriving him of membership in the body corporate. In this last respect the term differs from "disfranchisement," (or expulsion) which imports the removal of a member from the corporation itself, and his deprivation of all rights of membership. White v. Brownell, 2 Daly (N. Y.) 356; Richards v. Clarksburg, 30 W. Va. 491, 4 S. E. 774. *Expulsion* (*q. v.*) is the usual phrase in reference to loss of membership of private corporations.

AMOUNT. The effect, substance, or result; the total or aggregate sum. Hilburn v. Railroad Co., 23 Mont. 229, 58 P. 551; Connelly v. Telegraph Co., 100 Va. 51, 40 S. E. 618, 56 L. R. A. 663, 93 Am. St. Rep. 919; Naylor v. Board of Education of Fulton County, 216 Ky. 766, 288 S. W. 690, 692; Simmons Hardware Co. v. City of St. Louis (Mo. Sup.) 192 S. W. 394, 398; State v. Hill, 40 Nev. 110, 160 P. 772, 774. The sum of principal and interest, McCabe v. Cary's Ex'rs, 135 Va. 428, 116 S. E. 485, 491. But see In re Stoneman (Sur.) 146 N. Y. S. 172, 175 (interest excluded). See, also, Candelaria v. Gutierrez, 28 N. M. 434, 213 P. 1037, holding that the "amount of judgment" within a statute requiring a bond for supersedeas does not include interest or costs.

AMOUNT COVERED. In insurance. The amount that is insured, and for which underwriters are liable for loss under a policy of insurance.

AMOUNT IN CONTROVERSY. The damages claimed or relief demanded; the amount claimed or sued for. Glenwood Light & Water Co. v. Mutual Light, Heat & Power Co., 36 S. Ct. 30, 239 U. S. 121, 60 L. Ed. 174; Lion Bonding & Surety Co. v. Karatz, 43 S. Ct. 480, 262 U. S. 77, 67 L. Ed. 871, rev (C. C. A.) 281 F. 1021, and Hertz v. Lion Bonding & Surety Co. (C. C. A.) 280 F. 540, cert gr Department of Trade and Commerce of State of Nebraska v. Hertz, 43 S. Ct. 89, 260 U. S. 713, 67 L. Ed. 477, app dism 43 S. Ct. 90, 260 U. S. 696, 67 L. Ed. 468, motion den 43 S. Ct. 641, 262 U. S. 640, 67 L. Ed. 1151, and 43 S. Ct. 701, 262 U. S. 733, 67 L. Ed. 1206; Smith v. Giles, 65 Tex. 341; Barber v. Kennedy, 18 Minn. 216 (Gil. 196); Railroad Co. v. Cunnigan, 95 Tex. 439, 67 S. W. 888.

AMOUNT IN DISPUTE. This phrase, as used in Const. La. 1921, art. 7, § 10, concerning jurisdiction of Supreme Court, includes the value of the thing in contest, where a thing instead of an amount is in dispute. A. Baldwin & Co. v. McCain, 159 La. 966, 106 So. 459, 460.

AMOUNT OF LOSS. In insurance. The diminution, destruction, or defeat of the value of, or of the charge upon, the insured subject to the assured, by the direct consequence of the

operation of the risk insured against, according to its value in the policy, or in contribution for loss, so far as its value is covered by the insurance.

AMOUNT TO. To reach in the aggregate, to rise to or reach by accumulation of particular sums or quantities. Peabody v. Forest Preserve District of Cook County, 320 Ill. 454, 151 N. E. 271, 274.

AMOVEAS MANUS. Lat. That you remove your hands. After office found, the king was entitled to the things forfeited, either lands or personal property; the remedy for a person aggrieved was by "petition," or "*monstrans de droit*," or "*traverses*," to establish his superior right. Thereupon a writ issued, *quod manus domini regis amoveantur*. 3 Bl. Comm. 260.

AMPARO. In Spanish-American law. A document issued to a claimant of land as a protection to him, until a survey can be ordered, and the title of possession issued by an authorized commissioner. Trimble v. Smither's Adm'r, 1 Tex. 790.

AMPLIATION.

In the Civil Law

A deferring of judgment until a cause be further examined. Calvin.; Cowell. An order for the rehearing of a cause on a day appointed, for the sake of more ample information. Halifax, Anal. b. 3, c. 13, n. 32.

In this case, the judges pronounced the word *amplius*, or by writing the letters N. L. for *non liquet* (*q. v.*), signifying that the cause was not clear. It is very similar to the common-law practice of entering *cur. adv. vult* in similar cases.

In French Law

A duplicate of an acquittance or other instrument. A notary's copy of acts passed before him, delivered to the parties.

AMPLIUS. In the Roman law. More; further; more time. A word which the prætor pronounced in cases where there was any obscurity in a cause, and the *judices* were uncertain whether to condemn or acquit; by which the case was deferred to a day named. Adam, Rom. Ant. 287.

AMPUTATION OF RIGHT HAND. An ancient punishment for a blow given in a superior court; or for assaulting a judge sitting in the court.

AMUSEMENT. Pastime; diversion; enjoyment.

AMY. See Ami; Prochein Ami.

AN. The English indefinite article. In statutes and other legal documents, it is equivalent to "one" or "any"; it is seldom used to denote plurality. Kaufman v. Superior Court, 115 Cal. 152, 46 Pac. 904; People v. Ogden, 8 App. Div. 464, 40 N. Y. Supp. 827.

AN ET JOUR. Fr. Year and day; a year and a day.

AN, JOUR, ET WASTE. In feudal law. Year, day, and waste. A forfeiture of the lands to the crown incurred by the felony of the tenant, after which time the land escheats to the lord. Termes de la Ley, 40. See Year, Day, and Waste.

ANACRISIS. In the civil law. An investigation of truth, interrogation of witnesses, and inquiry made into any fact, especially by torture.

ANÆSTHESIA. In medical jurisprudence. (1) Loss of sensation, or insensibility to pain, general or local, induced by the administration or application of certain drugs such as ether, nitrous oxide gas, or cocaine. (2) Defect of sensation, or more or less complete insensibility to pain, existing in various parts of the body as a result of certain diseases of the nervous system.

ANAGRAPH. A register, inventory, or commentary.

ANALOGOUS. As used in patent law, if the elements and purposes in one art are related and similar to those in another art to such extent as to make an appeal to the mind of a person having mechanical skill or knowledge in the second art, the two arts are said to be "analogous." A. J. Deer Co. v. U. S. Slicing Mach. Co. (C. C. A.) 21 F.(2d) 812, 813.

ANALOGY. In logic. Identity or similarity of proportion. Where there is no precedent in point, in cases on the same subject, lawyers have recourse to cases on a different subject-matter, but governed by the same general principle. This is reasoning by analogy. Wharton.

The similitude of relations which exist between things compared. See Smith v. State, 63 Ala. 58.

"Analogy" does not mean identity, but implies a difference. Sturm v. Ulrich (C. C. A.) 10 F.(2d) 9, 11.

ANALYTICAL JURISPRUDENCE. A theory and system of jurisprudence wrought out neither by inquiring for ethical principles or the dictates of the sentiments of justice nor by the rules which may be actually in force, but by analyzing, classifying and comparing various legal conceptions. See Jurisprudence.

ANAPHRODISIA. In medical jurisprudence. Impotentia cœundi; frigidity; incapacity for sexual intercourse existing in either man or woman, and in the latter case sometimes called "dyspareunia."

ANARCHIST. One who professes and advocates the doctrines of anarchy, *q. v.* And see Cerveny v. Chicago Daily News Co., 139 Ill. 345, 28 N. E. 692, 13 L. R. A. 864; United States v. Williams, 194 U. S. 279, 24 Sup. Ct. 719, 48 L. Ed. 979. The word "anarchist,"

as used in the immigration statutes, includes, not only persons who advocate the overthrow of organized government by force, but also those who believe in the absence of government as a political ideal, and seek the same end through propaganda. U. S. v. Stuppiello (D. C.) 260 F. 483; Ex parte Caminita (D. C.) 291 F. 913, 915.

ANARCHY. The destruction of government; lawlessness; the absence of all political government; by extension, confusion in government. See Spies v. People, 122 Ill. 1, 253, 12 N. E. 865, 3 Am. St. Rep. 320; Lewis v. Daily News Co., 81 Md. 466, 32 A. 246, 29 L. R. A. 59; People v. Most, 36 Misc. Rep. 139, 73 N. Y. Supp. 220; Von Gerichten v. Seitz, 94 App. Div. 130, 87 N. Y. Supp. 968. "Anarchy," at its best, pertains to a society made orderly by good manners rather than law, in which each person produces according to his powers and receives according to his needs, and at its worst, the word pertains to a terroristic resistance of all present government and social order. State v. Schleifer, 102 Conn. 708, 130 A. 184, 188.

Criminal Anarchy

The doctrine that organized government should be overthrown by force, or by assassination of executive officers, or by any unlawful means. Penal Law N. Y. § 160 et seq. See People v. Gitlow, 183 N. Y. S. 846, 847, 111 Misc. Rep. 641, and 15 Rep. Am. Bar Assn. 210.

ANATHEMA. An ecclesiastical punishment by which a person is separated from the body of the church, and forbidden all intercourse with the members of the same.

It differs from excommunication, which simply forbids the person excommunicated from going into the church and taking the communion with the faithful.

ANATHEMATIZE. To pronounce anathema upon; to pronounce accursed by ecclesiastical authority; to excommunicate. See Anathema.

ANATOCISM. In the civil law. Repeated or doubled interest; compound interest; usury. Cod. 4, 32, 1, 30.

ANCESTOR. One who has preceded another in a direct line of descent; a lineal ascendant.

A former possessor; the person last seised. Termes de la Ley; 2 Bl. Comm. 201.

A deceased person from whom another has inherited land. A former possessor. Bailey v. Bailey, 25 Mich. 185; McCarthy v. Marsh, 5 N. Y. 275; Springer v. Fortune, 2 Handy, (Ohio) 52; Wheatcraft v. Hall, 106 Ohio St. 21, 138 N. E. 368, 371. In this sense a child may be the "ancestor" of his deceased parent, or one brother the "ancestor" of another. Wills v. Le Munyon, 90 N. J. Eq. 353, 107 A. 159, 161; Lavery v. Egan, 143 Mass. 389, 9 N. E. 747; Murphy v. Henry, 35 Ind. 450.

The term differs from "predecessor," in that it is applied to a natural person and his progenitors, while the latter is applied also to a corporation and those who have held *offices* before those who now fill them. Co. Litt. 78*b*. "Ancestor" may embrace both lineals and collaterals, Cornell v. Child, 170 App. Div. 240, 156 N. Y. S. 449, 452, or both testator and testatrix, Pfaffenberger v. Pfaffenberger, 189 Ind. 507, 127 N. E. 766, 767; it may also be limited to mean immediate ancestor, In re Simpson's Estate (Sur.) 144 N. Y. S. 1099, 1101.

ANCESTRAL. Relating to ancestors, or to what has been done by them; as *homage ancestral* (*q. v.*).

Derived from ancestors. Ancestral estates are such as are transmitted by descent, and not by purchase. 4 Kent, Comm. 404. Brown v. Whaley, 58 Ohio St. 654, 49 N. E. 479, 65 Am. St. Rep. 793. Or such as are acquired either by descent or by operation of law. Gray v. Chapman, 122 Okl. 130, 243 P. 522, 525. Allotments to members of Indian tribes or their heirs have been treated as an ancestral estate. Whitener v. Moss, 71 Okl. 57, 175 P. 223; Sims v. Brown, 46 Okl. 767, 149 P. 876, 877; McDougal v. McKay, 237 U. S. 372, 35 S. Ct. 605, 607, 59 L. Ed. 1001.

Ancestral property is realty which comes to one by descent or devise from a now dead ancestor, or by a deed of actual gift from a living one; there being no other consideration than that of blood;—distinguished from "nonancestral property," which is realty which comes to one in any other way. Gray v. Chapman, 122 Okl. 130, 243 P. 522, 526.

Under Gen. St. Conn. 1902, § 398 (Gen. St. 1930, § 4982), an "ancestral estate" is real estate of the intestate, which comes to the distributee by descent, gift, or devise from any kinsman. Ward v. Ives, 91 Conn. 12, 98 A. 337, 339. And see Carter v. Carter, 129 Ark. 7, 195 S. W. 10, 11.

ANCHOR. A measure containing ten gallons.

The instrument used by which a vessel or other body is held. See The Lady Franklin, 2 Low. 220, Fed. Cas. No. 7,984; Walsh v. Dock Co., 77 N. Y. 448; Reid v. Ins. Co., 19 Hun (N. Y.) 284.

ANCHOR WATCH. A watch, consisting of a small number of men, (from one to four,) kept constantly on deck while the vessel is riding at single anchor, to see that the stoppers, painters, cables, and buoy-ropes are ready for immediate use. The Lady Franklin, 2 Lowell, 220, Fed. Cas. No. 7,984. The lookout intrusted to one or two men when a vessel is at anchor. O' Hara v. Luckenbach S. S. Co., 269 U. S. 364, 46 S. Ct. 157, 160, 70 L. Ed. 313.

ANCHORAGE. In English law. A prestation or toll for every anchor cast from a ship in a port; and sometimes, though there be no anchor. Hale, de Jure Mar. pt. 2, c. 6. See 1 W. Bl. 413 et seq.; 4 Term. 262.

ANCIENT. Old; that which has existed from an indefinitely early period, or which by

age alone has acquired certain rights or privileges accorded in view of long continuance.

ANCIENT DEED. A deed 30 years old and shown to come from a proper custody and having nothing suspicious about it is an "ancient deed" and may be admitted in evidence without proof of its execution. Havens v. Seashore Land Co., 47 N. J. Eq. 365, 20 A. 497; Davis v. Wood, 161 Mo. 17, 61 S. W. 695. See, also, Fronsoe v. Bushnell (C. C. A.) 251 F. 850, 853 (deed of bargain and sale 48 years old); Chew v. First Presbyterian Church of Wilmington, Del. (D. C.) 237 F. 219 (deed more than 73 years old).

ANCIENT DEMESNE. Manors which in the time of William the Conqueror were in the hands of the crown, and are so recorded in the Domesday Book. Fitzh. Nat. Brev. 14, 56; Baker v. Wich, 1 Salk. 56. Tenure in *ancient demesne* may be pleaded in abatement to an action of ejectment. Rust v. Roe, 2 Burr. 1046. Also a species of copyhold, which differs, however, from common copyholds in certain privileges, but yet must be conveyed by surrender, according to the custom of the manor. There are three sorts: (1) Where the lands are held freely by the king's grant; (2) customary freeholds, which are held of a manor in ancient demesne, but not at the lord's will, although they are conveyed by surrender, or deed and admittance; (3) lands held by copy of court-roll at the lord's will, denominated copyholds of base tenure.

ANCIENT DOCUMENTS. See Ancient Writings.

ANCIENT HOUSE. One which has stood long enough to acquire an easement of support against the adjoining land or building. 3 Kent, Comm. 437; 2 Washb. Real Prop. 74, 76. In England this term is applied to houses or buildings erected before the time of legal memory, (Cooke, Incl. Acts, 35, 109,) that is, before the reign of Richard I., although practically any house is an ancient messuage if it was erected before the time of living memory, and its origin cannot be proved to be modern.

ANCIENT LIGHTS. Lights or windows in a house, which have been used in their present state, without molestation or interruption, for twenty years, and upwards. To these the owner of the house has a right by prescription or occupancy, so that they cannot be obstructed or closed by the owner of the adjoining land which they may overlook. Wright v. Freeman, 5 Har. & J. (Md.) 477; Story v. Odin, 12 Mass. 160, 7 Am. Dec. 81.

ANCIENT READINGS. Readings or lectures upon the ancient English statutes, formerly regarded as of great authority in law. Litt. § 481; Co. Litt. 280.

ANCIENT RECORDS. See Ancient Writings.

ANCIENT RENT. The rent reserved at the time the lease was made, if the building was not then under lease. Orby v. Lord Mohun, 2 Vern. 542.

ANCIENT SERJEANT. In English law. The eldest of the queen's serjeants.

ANCIENT WALL. A wall built to be used, and in fact used, as a party-wall, for more than twenty years, by the express permission and continuous acquiescence of the owners of the land on which it stands. Eno v. Del Vecchio, 4 Duer (N. Y.) 53, 63.

ANCIENT WATER COURSE. A water course is "ancient" if the channel through which it naturally runs has existed from time immemorial independent of the quantity of water which it discharges. Earl v. De Hart, 12 N. J. Eq. 280, 72 Am. Dec. 395.

ANCIENT WRITINGS. Wills, deeds, or other documents upwards of thirty years old. These are presumed to be genuine without express proof, when coming from the proper custody. Jones v. Scranton Coal Co., 274 Pa. 312, 118 A. 219; Cooper v. Williamson, 191 Ky. 213, 229 S. W. 707, 709; Magee v. Paul (Tex. Civ. App.) 159 S. W. 325, 327. Bonds more than 50 years old are admissible as ancient documents, where they are on their face free from suspicion as to their authenticity, come from the proper source, and are accompanied by some corroborating evidence. Smythe v. Inhabitants of New Providence Tp., Union County, N. J. (C. C. A.) 263 F. 481. Only the original copy of a deed, not the record copy, can be considered as an ancient document. Laclede Land & Improvement Co. v. Goodno (Mo. Sup.) 181 S. W. 410, 413.

ANCIENTS. In English law. Gentlemen of the inns of court and chancery. In Gray's Inn the society consists of benchers, ancients, barristers, and students under the bar; and here the ancients are of the oldest barristers. In the Middle Temple, those who had passed their readings used to be termed "ancients." The Inns of Chancery consist of ancients and students or clerks; from the ancients a principal or treasurer is chosen yearly. Wharton.

The *Council of Ancients* was the upper Chamber of the French legislature under the constitution of 1795, consisting of 250, each required to be at least forty years old.

ANCIENTY. Eldership; seniority. Used in the statute of Ireland, 14 Hen. VIII. Cowell.

ANCILLARY. Aiding; auxiliary; attendant upon; subordinate; describing a proceeding attendant upon or which aids another proceeding considered as principal. Steele v. Insurance Co., 31 App. Div. 389, 52 N. Y. Supp. 373; In re Stoddard, 238 N. Y. 147, 144 N. E. 484, 486.

ANCILLARY ADMINISTRATION. When a decedent leaves property in a foreign state, (a

state other than that of his domicile,) administration may be granted in such foreign state for the purpose of collecting the assets and paying the debts there, and bringing the residue into the general administration. This is called "ancillary" (auxiliary, subordinate) administration. Pisano v. Shanley Co., 66 N. J. Law, 1, 48 Atl. 618; In re Gable's Estate, 79 Iowa, 178, 44 N. W. 352, 9 L. R. A. 218; Steele v. Insurance Co., 31 App. Div. 389, 52 N. Y. S. 373.

ANCILLARY ATTACHMENT. One sued out in aid of an action already brought, its only office being to hold the property attached under it for the satisfaction of the plaintiff's demand. Templeton v. Mason, 107 Tenn. 625, 65 S. W. 25; Southern California Fruit Exch. v. Stamm, 9 N. M. 361, 54 Pac. 345.

ANCILLARY BILL OR SUIT. One growing out of and auxiliary to another action or suit, either at law or in equity, such as a bill for discovery, or a proceeding for the enforcement of a judgment, or to set aside fraudulent transfers of property. Coltrane v. Templeton, 106 Fed. 370. 45 C. C. A. 328; In re Williams, (D. C.) 123 Fed. 321; Claflin v. McDermott (C. C.) 12 Fed. 375; Beers v. Equitable Trust Co. of New York (C. C. A.) 286 F. 883. One growing out of a prior suit in the same court, dependent upon and instituted for the purpose either of impeaching or enforcing the judgment or decree in a prior suit. Hume v. New York (C. C. A.) 255 F. 488, 491.

ANCILLARY RECEIVER. One appointed in aid of, and in subordination to, a foreign receiver for purposes of collecting and taking charge of assets, as of insolvent corporation, in the jurisdiction where he is appointed. In re Stoddard, 242 N. Y. 148, 151 N. E. 159, 164, 45 A. L. R. 622.

ANCIPITIS USUS. Lat. In international law. Of doubtful use; the use of which is doubtful; that may be used for a civil or peaceful, as well as military or warlike, purpose. Gro. de Jure B. lib. 3, c. 1, § 5, subd. 3; 1 Kent, Comm. 140.

AND. A conjunction connecting words or phrases expressing the idea that the latter is to be added to or taken along with the first. Grand Trunk Western Ry. Co. v. Thrift Co., 68 Ind. App. 198, 116 N. E. 756, 759; Caldwell & Co. v. Lea, 152 Tenn. 48, 272 S. W. 715; McCaull-Webster Elevator Co. v. Adams, 39 N. D. 259, 167 N. W. 330, 332, L. R. A. 1918D, 1036; Burke v. Southern Pac. R. Co. of California (D. C.) 222 F. 97, 101.

It is said to be equivalent to "as well as," Porter v. Moores, 4 Heisk. (Tenn.) 16; "including," Finch v. Hunter, 148 Ark. 482, 230 S. W. 553, 554; "and also," Carter v. Keesling, 130 Va. 655, 108 S. E. 708, 713.

It is sometimes construed as meaning "or," Bay State Iron Co. v. Goodall, 39 N. H. 223, 75 Am. Dec. 219; Land & Lake Ass'n v. Conklin, 170 N. Y. S. 427, 428, 182 App. Div. 546; State v. Harwi, 117 Kan. 74, 230 P. 331, 332; People v. Emmerson, 302 Ill. 300, 134 N. E. 707, 710, 21 A. L. R. 636; Baker v. State, 36 Okl. Cr. 328, 254 P. 512, 513; Gates v. Kenney, 223 Mich. 187, 193 N. W. 808; State v. Circuit Court of Dodge County, 186 N. W. 732, 734, 176 Wis. 198.

That the power to change the words is not arbitrary, but only to effectuate the intention, see Armstrong v. Moran, 1 Bradf. Sur. (N. Y.) 314; Rice v. Bennington County Sav. Bank, 93 Vt. 493, 108 A. 708, 712; Oklahoma Nat. Life Ins. Co. v. Norton, 44 Okl. 783, 145 P. 1138, 1139; Voight v. Industrial Commission, 297 Ill. 109, 130 N. E. 470, 472; In re Evans' Will, 234 N. Y. 42, 136 N. E. 233, 234.

The character "&c." has been recognized as "sanctioned by age and good use for perhaps centuries, and is used even at this day in written instruments, in daily transactions, and with such frequency that it may be said to be a part of our language"; Brown v. State, 16 Tex. App. 245. So the abbreviation "&c." is said to have "been naturalized in English for ages," and was constantly used by Lord Coke without a suggestion from any quarter that it is not English; Berry v. Osborn, 28 N. H. 279.

The use of the expression "and/or" in a contract is permissible and is equivalent to a direction that it be construed so as to best accord with the equity of the situation, using either conjunction, but such usage cannot apply to statutes, since the Legislature, in making its laws, must express its own will. State v. Dudley, 159 La. 872, 106 So. 364, 365.

ANDROCHIA. In old English law. A dairywoman. Fleta, lib. 2, c. 87.

ANDROGYNUS. A hermaphrodite.

ANDROLEPSY. The taking by one nation of the citizens or subjects of another, in order to compel the latter to do justice to the former. Wolffius, § 1164; Moll. de Jure Mar. 26.

ANECIUS. L. Lat. Spelled also *æsnecius, enitius, aneas, eneyus*, Fr. *aisne*. The eldest-born; the first-born; senior, as contrasted with the *puis-ne*, (younger.) Spelman.

ANEW. To try a case or issue "anew" or "de novo" implies that the case or issue has been heard before. Gaiser v. Steele, 25 Idaho, 412, 137 P. 889, 890.

ANGARIA. A term used in the Roman law to denote a forced or compulsory service exacted by the government for public purposes; as a forced rendition of labor or goods for the public service; in particular, the right of a public officer to require the service of vehicles or ships. See Dig. 50, 4, 18, 4.

In Maritime Law

A forced service (*onus*) imposed on a vessel for public purposes; an impressment of a

vessel. Locc. de Jure Mar. lib. 1, c. 5, §§ 1–6. See Angary, Right Of.

In Feudal Law

Any troublesome or vexatious personal service paid by the tenant or villein to his lord. Spelman.

ANGARY, RIGHT OF. In international law. Formerly the right (*jus angariæ*) claimed by a belligerent to seize merchant vessels in the harbors of the belligerent and to compel them, on payment of freight, to transport troops and supplies to a designated port. It was frequently exercised by Louis XIV. of France, but as a result of specific treaties entered into by states not to exercise the right, it has now come to be abandoned. 2 Opp. 446.

At the present day, the right of a belligerent to appropriate, either for use, or for destruction in case of necessity, neutral property temporarily located in his own territory or in that of the other belligerent. The property may be of any description whatever, provided the appropriation of it be for military or naval purposes.

Requisition of neutral property is justified by military necessity, and accordingly the right of angary is a belligerent right, although the claim of the neutral owner to indemnity properly comes under the law of neutrality.

ANGEL. An ancient English coin, of the value of ten shillings sterling. Jacob.

ANGER. A strong passion of the mind excited by real or supposed injuries; not synonymous with "heat of passion," "malice," or "rage or resentment," because these are all terms of wider import and may include anger as an element or as an incipient stage. Chandler v. State, 141 Ind. 106, 39 N. E. 444; Hoffman v. State, 97 Wis. 571, 73 N. W. 51; Eanes v. State, 10 Tex. App. 421, 446.

"Passion," within rule that killing to constitute first degree murder must not have been committed under passion, means the same thing as anger. Winton v. State, 151 Tenn. 177, 268 S. W. 633, 637. The terms are also interchangeable within the meaning of a statute prohibiting display of deadly weapon in rude, angry, and threatening manner. People v. Sica, 76 Cal. App. 648, 245 P. 461, 463.

ANGILD. In Saxon law. The single value of a man or other thing; a single weregild (*q. v.*); the compensation of a thing according to its single value or estimation. Spelman. The double gild or compensation was called "*twigild*," the triple, "*trigild*," etc. Id. See Angylde.

When a crime was committed, before the Conquest, the angild was the money compensation that the person who had been wronged was entitled to receive. Maitl. Domesday Book & Beyond 274.

ANGLESCHERIA. In old English law. Englishery; the fact of being an Englishman.

Angliæ jura in omni casu libertatis dant favorem. The laws of England in every case of liberty are favorable, (favor liberty in all cases.) Fortes. c. 42.

ANGLICE. In English. A term formerly used in pleading when a thing is described both in Latin and English, inserted immediately after the Latin and as an introduction of the English translation.

ANGLING. Under a statute, the act of taking or seeking to take fish with a hook and line in hand, or rod in hand, or, as applied to fishing from a boat, the use of two lines with or without a rod. State v. Harvey, 88 Vt. 358, 92 A. 452, 453.

ANGLO-INDIAN. An Englishman domiciled in the Indian territory of the British crown.

ANGORA GOAT. A more or less degenerate goat, known as the "Cape Angora," produced by breeding the original Angora with the Cape Colony goat, whose hair is shown to be dealt in, used, and known as mohair, is an "Angora goat" within the meaning of that expression in Schedule K, par. 305, Tariff Act of 1913 (Comp. St. § 5291). U. S. v. Beadenkopf Co., 8 Ct. Cust. App. 283, 284.

ANGUISH. Great or extreme pain, agony, or distress, either of body or mind; but, as used in law, particularly mental suffering or distress of great intensity. Cook v. Railway Co., 19 Mo. App. 334. It is not synonymous with inconvenience, annoyance, or harassment. Western Union Telegraph Co. v. Stewart, 16 Ala. App. 502, 79 So. 200, 201.

ANGYLDE. In Saxon law. The rate fixed by law at which certain injuries to person or property were to be paid for; in injuries to the person, it seems to be equivalent to the "were," *i. e.*, the price at which every man was valued. It seems also to have been the fixed price at which cattle and other goods were received as currency, and to have been much higher than the market price, or *ceapgild*. Wharton. See Angild.

ANHLOTE. In old English law. A single tribute or tax, paid according to the custom of the country as scot and lot.

ANIENS, or ANIENT. Null, void, of no force or effect. Fitzh. Nat. Brev. 214. See Anniented.

ANIMAL. Any animate being which is endowed with the power of voluntary motion. In the language of the law the term includes all living creatures not human. State v. Wiglesworth, 93 Kan. 610, 144 P. 831; State v. Hedrick, 272 Mo. 502, 199 S. W. 192, L. R. A. 1918C, 574; Holcomb v. Van Zylen, 174 Mich. 274, 140 N. W. 521, 44 L. R. A. (N. S.)

607, Ann. Cas. 1915A, 1241 (turkeys and other fowls).

Domitæ are those which have been tamed by man; domestic.

Ferœ naturæ are those which still retain their wild nature.

Mansuetæ naturæ are those gentle or tame by nature, such as sheep and cows.

—Animals of a base nature. Animals in which a right of property may be acquired by reclaiming them from wildness, but which, at common law, by reason of their base nature, are not regarded as possible subjects of a larceny. 3 Inst. 109; 1 Hale, P. C. 511, 512.

Some animals which are now usually tamed come within this class, as dogs and cats; and others which, though wild by nature and often reclaimed by art and industry, clearly fall within the same rule, as bears, foxes, apes, monkeys, ferrets, and the like; 1 Hawk. Pl. Cr. 33, § 36; 4 Bla. Com. 236; 2 East, Pl. Cr. 614. See 1 Wms. Saund. 84, note 2.

—Domestic animals. "Domestic" as applied to animals means tame as distinguished from wild; living in or near the habitations of man or by habit or special training in association with man. Thurston v. Carter, 112 Me. 361, 92 A. 295, L. R. A. 1915C, 359, Ann. Cas. 1917A, 389.

Animalia fera, si facta sint mansueta et ex consuetudine eunt et redeunt, volant et revolant, ut cervi, cygni, etc., eo usque nostra sunt, et ita intelliguntur quamdiu habuerunt animum revertendi. Wild animals, if they be made tame, and are accustomed to go out and return, fly away and fly back, as stags, swans, etc., are considered to belong to us so long as they have the intention of returning to us. 7 Coke, 16.

ANIMO. Lat. With intention, disposition, design, will. *Quo animo*, with what intention. *Animo cancellandi*, with intention to cancel. 1 Pow. Dev. 603. *Furandi*, with intention to steal. 4 Bl. Comm. 230; 1 Kent, Comm. 183. *Lucrandi*, with intention to gain or profit. 3 Kent, Comm. 357. *Manendi*, with intention to remain. 1 Kent, Comm. 76. *Morandi*, with intention to stay, or delay. *Republicandi*, with intention to republish. 1 Pow. Dev. 609. *Revertendi*, with intention to return. 2 Bl. Comm. 392. *Revocandi*, with intention to revoke. 1 Pow. Dev. 595. *Testandi*, with intention to make a will. See Animus and the titles which follow it.

ANIMO ET CORPORE. By the mind, and by the body; by the intention and by the physical act. Dig. 50, 17, 153; Id. 41, 2, 3, 1; Fleta, lib. 5, c. 5, §§ 9, 10.

ANIMO FELONICO. With felonious intent. Hob. 134.

ANIMUS. Lat. Mind; intention; disposition; design; will. *Animo* (*q. v.*), with the intention or design. These terms are derived from the civil law.

Animus ad se omne jus ducit. It is to the intention that all law applies. Law always regards the intention.

ANIMUS CANCELLANDI. The intention of destroying or canceling, (applied to wills).

ANIMUS CAPIENDI. The intention to take or capture. 4 C. Rob. Adm. 126, 155.

ANIMUS DEDICANDI. The intention of donating or dedicating.

ANIMUS DEFAMANDI. The intention of defaming. The phrase expresses the malicious intent which is essential in every case of verbal injury to render it the subject of an action for libel or slander.

ANIMUS DERELINQUENDI. The intention of abandoning. 4 C. Rob. Adm. 216. Rhodes v. Whitehead, 27 Tex. 304, 84 Am. Dec. 631.

ANIMUS DIFFERENDI. The intention of obtaining delay.

ANIMUS DONANDI. The intention of giving. Expressive of the intent to give which is necessary to constitute a gift.

ANIMUS ET FACTUM. To constitute a change of domicile, there must be an "animus et factum"; the "factum" being a transfer of the bodily presence, and the "animus" the intention of residing permanently or for indefinite period. Hayward v. Hayward, 65 Ind. App. 440, 115 N. E. 966, 970. See Animus Manendi.

ANIMUS ET FACTUS. Intention and act: will and deed. Used to denote those acts which become effective only when accompanied by a particular intention.

ANIMUS FURANDI. The intention to steal. Brennon v. Commonwealth, 169 Ky. 815, 185 S. W. 489, 492; Butts v. Commonwealth, 145 Va. 800, 133 S. E. 764, 768; Gardner v. State, 55 N. J. Law, 17, 26 A. 30; State v. Slingerland, 19 Nev. 135, 7 P. 280.

Animus hominis est anima scripti. The intention of the party is the soul of the instrument. 9 Bulst. 67; Pitm. Prin. & Sur. 26. In order to give life or effect to an instrument, it is essential to look to the intention of the individual who executed it.

ANIMUS LUCRANDI. The intention to make a gain or profit.

ANIMUS MANENDI. The intention of remaining; intention to establish a permanent residence. 1 Kent, Comm. 76. This is the point to be settled in determining the domicile or residence of a party. Id. 77. See Animus et Factum.

ANIMUS MORANDI. The intention to remain, or to delay.

ANIMUS POSSIDENDI. The intention of possessing.

ANIMUS QUO. The intent with which.

ANIMUS RECIPIENDI. The intention of receiving.

ANIMUS RECUPERANDI. The intention of recovering. Locc. de Jure Mar. lib. 2, c. 4, § 10.

ANIMUS REPUBLICANDI. The intention to republish.

ANIMUS RESTITUENDI. The intention of restoring. Fleta, lib. 3, c. 2, § 3.

ANIMUS REVERTENDI. The intention of returning. A man retains his domicile if he leaves it *animo revertendi.* In re Miller's Estate, 3 Rawle (Pa.) 312, 24 Am. Dec. 345; 4 Bl. Comm. 225; 2 Russ. Crimes, 18; Poph. 42, 52; 4 Coke, 40. Also, a term employed in the civil law, in expressing the rule of ownership in tamed animals.

ANIMUS REVOCANDI. The intention to revoke.

ANIMUS TESTANDI. An intention to make a testament or will. Farr v. Thompson, 1 Speers (S. C.) 105; In re Harrison's Will, 183 N. C. 457, 111 S. E. 867, 868.

ANKER. A measure containing ten gallons.

ANN. In Scotch law. Half a year's stipend, over and above what is owing for the incumbency, due to a minister's relict, or child, or next of kin, after his decease. Whishaw.

ANNA. In East Indian coinage, a piece of money, the sixteenth part of a rupee.

ANNALES. Lat. Annuals; a title formerly given to the Year Books.

In old records. Yearlings; cattle of the first year. Cowell.

ANNALS. Masses said in the Romish church for the space of a year or for any other time, either for the soul of a person deceased, or for the benefit of a person living, or for both. Aylif. Parerg.

ANNALY. In Scotch law. To alienate; to convey.

ANNATES. In ecclesiastical law. First-fruits paid out of spiritual benefices to the Pope, so called because the value of one year's profit was taken as their rate.

ANNEX. To add to; to unite; to attach one thing permanently to another. The word expresses the idea of joining a smaller or subordinate thing with another, larger, or of higher importance. Waterbury Lumber & Coal Co. v. Asterchinsky, 87 Conn. 316, 87 A. 739, 740, Ann. Cas. 1916B, 613. To consolidate, as school districts. Evans v. Hurlburt, 117 Or. 274, 243 P. 553, 554.

In the law relating to fixtures, the expression "annexed to the freehold" means fastened to or connected with it; mere juxtaposition, or the laying of an object, however heavy, on the freehold, does not amount to annexation. Merritt v. Judd, 14 Cal. 64.

ANNEXATION. The act of attaching, adding, joining, or uniting one thing to another; generally spoken of the connection of a smaller or subordinate thing with a larger or principal thing. The attaching an illustrative or auxiliary document to a deposition, pleading, deed, etc., is called "annexing" it. So the incorporation of newly-acquired territory into the national domain, as an integral part thereof, is called "annexation," as in the case of the addition of Texas to the United States.

In the law relating to fixtures: *Actual annexation* includes every movement by which a chattel can be joined or united to the freehold. *Constructive annexation* is the union of such things as have been holden parcel of the realty, but which are not actually annexed, fixed, or fastened to the freehold. Shep. Touch. 469; Amos & F. Fixt. 2.

In Scotch Law

The union of lands to the crown, and declaring them inalienable. Also the appropriation of the church-lands by the crown, and the union of lands lying at a distance from the parish church to which they belong, to the church of another parish to which they are contiguous.

ANNI ET TEMPORA. Lat. Years and terms. An old title of the Year Books.

ANNI NUBILES. A woman's marriageable years. The age at which a girl becomes by law fit for marriage; the age of twelve.

ANNICULUS. A child a year old. Calvinus, Lex.

Anniculus trecentesimo sexagesimoquinto die dicitur, incipiente plane non exacto die, quia annum civiliter non ad momenta temporum sed ad dies numeramur. We call a child a year old on the three hundred and sixty-fifth day, when the day is fairly begun but not ended, because we calculate the civil year not by moments, but by days. Dig. 50, 16, 134; Id. 132; Calvin.

ANNIENTED. Made null, abrogated, frustrated, or brought to nothing. Litt. c. 3, § 741. Cf. Aniens.

ANNIVERSARY. An annual day, in old ecclesiastical law, set apart in memory of a deceased person. Also called "year day" or "mind day." Spelman.

As applied to an insurance policy, "anniversary" means yearly recurring date of the policy, Mid-Continent Life Ins. Co. v. Skye, 113 Okl. 184, 240 P. 630, 632, or perhaps the date of the delivery thereof, Jefferson Standard Life Ins. Co. v. Baker (Tex. Civ. App.) 260 S. W. 223, 225. And see Coleman v. New England Mut. Life Ins. Co., 236 Mass. 552, 129 N. E. 288, 289.

ANNO DOMINI. In the year of the Lord. Commonly abbreviated A. D. The computation of time, according to the Christian era, dates from the birth of Christ.

This phrase has become Anglicized by adoption, so that an indictment or declaration containing the words "Anno Domini" is not demurrable as not being in the English language. State v. Gilbert, 13 Vt. 647; Hale v. Vesper, Smith (N. H.) 283.

ANNONA. Barley; corn; grain; food; a yearly contribution of food, of various kinds, for support.

Annona porcum, acorns; *annona frumentum hordeo admixtum*, corn and barley mixed; *annona panis*, bread without reference to the amount. Du Cange; Spelman, Gloss.; Cowell.

The term is used in the old English law, and also in the civil law quite generally, to denote anything contributed by one person towards the support of another.

ANNONÆ CIVILES. A species of yearly rents issuing out of certain lands, and payable to certain monasteries.

ANNOTATIO. In the civil law. The sign-manual of the emperor; a rescript of the emperor, signed with his own hand. It is distinguished both from a rescript and pragmatic sanction, in Cod. 4, 59, 1.

ANNOTATION. A remark, note, or commentary on some passage of a book, intended to illustrate its meaning. Webster.

In the Civil Law

An imperial rescript (see Rescript) signed by the emperor. The answers of the prince to questions put to him by private persons respecting some doubtful point of law.

Summoning an absentee. Dig. 1, 5.

The designation of a place of deportation. Dig. 32, 1, 3.

ANNOUNCED. Though mere intimation of what decision may or ought to be does not amount to announcement of decision, decision is "announced," preventing nonsuit, when court's conclusion on issue tried is made known from bench or by any publication, oral or written, even if judgment has not been rendered. Ex parte Alabama Marble Co., 216 Ala. 272, 113 So. 240, 242.

ANNOYANCE. Discomfort; vexation. It is not synonymous with anguish, inconvenience, or harassment. Western Union Telegraph Co. v. Stewart, 16 Ala. App. 502, 79 So. 200, 201. "Annoyance and inconvenience" of crossing railroad, which jury might consider in condemnation proceedings, relate as much to physical as to mental conditions. Chicago, I. & L. Ry. Co. v. Ader, 184 Ind. 235, 110 N. E. 67, 69. An annoyance is an injury to the owner or possessor as respects his dealings with or his mode of enjoying his premises. Nashville, C. & St. L. Ry. v. Yarbrough, 194 Ala. 162, 69 So. 582, 585.

Annua nec debitum judex non separat ipsum. A judge (or court) does not divide annuities nor debt. 8 Coke, 52; 1 Salk. 36, 65. Debt and annuity cannot be divided or apportioned by a court.

ANNUA PENSIONE. An ancient writ to provide the king's chaplain, if he had no preferment, with a pension. Reg. Orig. 165, 307.

ANNUAL. Occurring or recurring once in each year; continuing for the period of a year; accruing within the space of a year; relating to or covering the events or affairs of a year. State v. McCullough, 3 Nev. 224. "Annual" means once a year, but does not signify what time in the year. Rolerson v. Standard Life Ins. Co. (Tex. Civ. App.) 244 S. W. 845, 846.

ANNUAL AMOUNT. Under Workmen's Compensation Act, providing for a death benefit amounting to three times the "annual amount" devoted to support of partial dependents, the term "annual amount" means the annual amount of contribution at the rate at which deceased was contributing at the time of his injury, regardless of whether that rate had existed for a year or more or for less than a year. Spreckles Sugar Co. v. Industrial Acc. Commission, 186 Cal. 256, 199 P. 8.

ANNUAL ASSAY. An annual trial of the gold and silver coins of the United States, to ascertain whether the standard fineness and weight of the coinage is maintained. See Rev. St. U. S. § 3547 (31 USCA § 363).

ANNUAL PENSION. In Scotch law. A yearly profit or rent.

ANNUAL RENT. In Scotch law. Yearly interest on a loan of money.

ANNUAL SALARY. Yearly salary. Glucksman v. Board of Education of City of New York (Mun. Ct. N. Y.) 164 N. Y. S. 351, 358.

ANNUAL VALUE. The net yearly income derivable from a given piece of property; its fair rental value for one year, deducting costs and expenses; the value of its use for a year.

ANNUALLY. Yearly; returning every year.

The meaning of this term, as applied to interest, is not an undertaking to pay interest at the end of one year only, but to pay interest at the end of each and every year during a period of time, either fixed or contingent. Sparhawk v. Wills, 6 Gray (Mass.) 164; Patterson v. McNeeley, 16 Ohio St. 348; Westfield v. Westfield, 19 S. C. 89; First Nat. Bank v. Kirby (Mo. Sup.) 175 S. W. 926, 929.

The words "per annum" or "a year" as applied to interest, or to a charge on an estate as compensation for care of the widow, are not synonymous with "annually," but are used

as a means of fixing rate. Hinson v. Hinson, 176 N. C. 613, 97 S. E. 465.

ANNUITANT. The recipient of an annuity; one who is entitled to an annuity.

ANNUITIES OF TIENDS. In Scotch law. Annuities of tithes; 10*s.* out of the boll of tiend wheat, 8*s.* out of the boll of beer, less out of the boll of rye, oats, and peas, allowed to the crown yearly of the tiends not paid to the bishops, or set apart for other pious uses.

ANNUITY. A yearly sum stipulated to be paid to another in fee, or for life, or years, and chargeable only on the person of the grantor. Co. Litt. 144*b*. But the term is often used in a broader sense as designating a fixed sum, granted or bequeathed, payable periodically but not necessarily annually. Wilkin v. Board of Com'rs of Oklahoma County, 77 Okl. 88, 186 P. 474, 475; In re Kohler's Will, 183 N. Y. S. 550, 559, 193 App. Div. 8. A legacy payable in stated amounts by installments. In re Beach's Estate, 203 N. Y. S. 492, 494, 122 Misc. Rep. 261. To constitute an "annuity," the bequest must be of a sum certain, which does not even include the gift of the interest of a fixed and certain sum of money. Moore v. Downey, 83 N. J. Eq. 428, 91 A. 116, 117.

An annuity, which is a yearly payment of a certain sum of money, is distinguished from an "income," in that the latter is interest or profits to be earned. Grand Rapids Trust Co. v. Herbst, 220 Mich. 321, 190 N. W. 250, 252; In re Gurnee, 147 N. Y. S. 396, 397, 84 Misc. Rep. 324. It is distinguishable also by the fact that an annuity, unlike a gift of income, may be paid out of the principal, where necessary. Guthrie v. Guthrie's Ex'r, 168 Ky. 805, 183 S. W. 221, 226.

An annuity is different from a rent-charge, with which it is sometimes confounded, the annuity being chargeable on the person merely, and so far personalty; while a rent-charge is something reserved out of realty, or fixed as a burden upon an estate in land. 2 Bl. Comm. 40; Rolle, Abr. 226; Horton v. Cook, 10 Watts (Pa.) 127, 36 Am. Dec. 151; Bartos v. Skleba, 107 Neb. 293, 185 N. W. 1002, 1003; In re Kohler, 160 N. Y. S. 669, 674, 96 Misc. Rep. 433.

The contract of *annuity* is that by which one party delivers to another a sum of money, and agrees not to reclaim it so long as the receiver pays the rent agreed upon. This annuity may be either perpetual or for life. Civ. Code La. arts. 2793, 2794. See Succession of Vidalat, 155 La. 1005, 99 So. 801, 802.

The name of an action, now disused, (L. Lat. *breve de annuo redditu,*) which lay for the recovery of an annuity. Reg. Orig. 158*b*; Bract. fol. 203*b*; 1 Tidd, Pr. 3.

ANNUITY-TAX. An impost levied annually in Scotland for the maintenance of the ministers of religion.

ANNUL. To cancel; make void; destroy. To abrogate, nullify, or abolish. To annul a judgment or judicial proceeding is to deprive it of all force and operation, either *ab initio* or prospectively as to future transactions. Wait v. Wait, 4 Barb. (N. Y.) 205; In re Morrow's Estate, 54 Atl. 342, 204 Pa. 484.

It is not a technical word and there is nothing which prevents the idea from being expressed in equivalent words; Woodson v. Skinner, 22 Mo. 24.

A suit to "rescind" a contract cannot be differentiated from a suit to "annul" the contract; the two words being used interchangeably. Vaughn v. Fey, 47 Cal. App. 485, 190 P. 1041, 1042.

ANNULMENT OF MARRIAGE. An action or proceeding for the annulment of a marriage is maintained on the theory that for some cause existing at the time of marriage no valid or legal marriage ever existed, even though the marriage be only voidable at the instance of the injured party. Millar v. Millar, 175 Cal. 797, 167 P. 394, 398, L. R. A. 1918B, 415, Ann. Cas. 1918E, 184; Sorenson v. Sorenson, 202 N. Y. S. 620, 625, 122 Misc. Rep. 196. It is therefore distinguishable from an action for divorce, which is based on the theory of a valid marriage, for some cause arising after the marriage. Sorenson v. Sorenson, supra. And see Kellogg v. Kellogg, 203 N. Y. S. 757, 765, 122 Misc. Rep. 734.

ANNULUS. Lat. In old English law. A ring; the ring of a door. *Per haspam vel annulum hostii exterioris;* by the hasp or ring of the outer door. Fleta, lib. 3. c. 15, § 5.

ANNULUS ET BACULUS. (Lat. ring and staff.) The investiture of a bishop was *per annulum et baculum*, by the prince's delivering to the prelate a ring and pastoral staff, or crozier. 1 Bl. Comm. 378; Spelman.

ANNUM, DIEM, ET VASTUM. See Year, Day, and Waste.

ANNUS. Lat. In civil and old English law. A year; the period of three hundred and sixty-five days. Dig. 40, 7, 4, 5; Calvin.; Bract. fol. 359*b*.

ANNUS DELIBERANDI. In Scotch law. A year of deliberating; a year to deliberate. The year allowed by law to the heir to deliberate whether he will enter and represent his ancestor. It commences on the death of the ancestor, unless in the case of a posthumous heir, when the year runs from his birth. Bell.

ANNUS, DIES, ET VASTUM. In old English law. Year, day, and waste. See Year, Day, and Waste.

Annus est mora motus quo suum planeta pervolvat circulum. A year is the duration of the motion by which a planet revolves through its orbit. Dig. 40, 7, 4, 5; Calvin.; Bract. 359*b*.

ANNUS ET DIES. A year and a day.

Annus inceptus pro completo habetur. A year begun is held as completed. Tray. Lat. Max. 45.

ANNUS LUCTUS. The year of mourning. It was a rule among the Romans, and also the Danes and Saxons, that widows should not marry *infra annum luctûs*, (within the year of mourning.) Code 5, 9, 2; 1 Bl. Comm. 457.

ANNUS UTILIS. A year made up of available or serviceable days. Brissonius; Calvin. In the plural, *anni utiles* signifies the years during which a right can be exercised or a prescription grow. In prescription, the period of incapacity of a minor, etc., was not counted; it was no part of the *anni utiles*.

ANNUUS REDITUS. A yearly rent; annuity. 2 Bl. Comm. 41; Reg. Orig. 158*b*.

ANOMALOUS. Irregular; exceptional; unusual; not conforming to rule, method, or type.

ANOMALOUS INDORSER. A stranger to a note, who indorses it after its execution and delivery but before maturity, and before it has been indorsed by the payee. Buck v. Hutchins, 45 Minn. 270, 47 N. W. 808.

ANOMALOUS PLEA. One which is partly affirmative and partly negative. Baldwin v. Elizabeth, 42 N. J. Eq. 11, 6 Atl. 275; Potts v. Potts (N. J. Ch.) 42 Atl. 1055.

ANON., AN., A. Abbreviations for anonymous.

ANONYMOUS. Nameless; wanting a name or names. A publication, withholding the name of the author, is said to be anonymous. An anonymous letter is one that has no name signed. Belk v. State, 102 Tex. Cr. R. 561, 278 S. W. 842.

Cases are sometimes reported anonymously, *i. e.*, without giving the names of the parties. Abbreviated to "*Anon.*"

An anonymous society in the Mexican code is one which has no firm name and is designated by the particular designation of the object of the undertaking.

ANOTHER. Additional. Harelson v. South San Joaquin Irr. Dist., 20 Cal. App. 324, 128 P. 1010, 1011. Distinct or different. Hammell v. State, 198 Ind. 45, 152 N. E. 161, 163; Ex parte Lyman (D. C.) 202 F. 303, 304.

ANOTHER ACTION PENDING. See Auter Action Pendant.

ANOYSANCE. Annoyance; nuisance. Cowell; Kelham.

ANSEL, ANSUL, or AUNCEL. In old English law. An ancient mode of weighing by hanging scales or hooks at either end of a beam or staff, which, being lifted with one's finger or hand by the middle, showed the equality or difference between the weight at one end and the thing weighed at the other. Termes de la Ley, 66.

ANSWER.

In Pleading

Any pleading setting up matters of fact by way of defense. In chancery pleading, the term denotes a defense in writing, made by a defendant to the allegations contained in a bill or information filed by the plaintiff against him.

In pleading, under the Codes of Civil Procedure, the answer is the formal written statement made by a defendant setting forth the grounds of his defense; corresponding to what, in actions under the common-law practice is called the "plea." But as used in a statute providing that defendant must appear and answer the petition, "answer" refers to any sort of pleading filed by defendant. State ex rel. Oliver Hast Auction Co. v. Grimm, 197 Mo. App. 566, 196 S. W. 1019, 1021; Central Deep Creek Orchard Co. v. C. C. Taft Co., 34 Idaho, 458, 202 P. 1062, 1063; Arnold v. Pike (Tex. Civ. App.) 191 S. W. 207, 208. But extending the time to "answer" does not give the right to demur or otherwise plead. Ruland v. Tuthill, 187 App. Div. 314, 175 N. Y. S. 467.

A demurrer may sometimes be regarded as an answer; Stockham v. Knollenberg, 133 Md. 337, 105 A. 305, 307; and sometimes not; Mariner v. Milisich, 45 Nev. 193, 200 P. 478.

In Massachusetts, the term denotes the statement of the matter intended to be relied upon by the defendant in avoidance of the plaintiff's action, taking the place of special pleas in bar, and the general issue, except in real and mixed actions. Pub. St. Mass. 1882, p. 1287.

In matrimonial suits in the (English) probate, divorce, and admiralty division, an answer is the pleading by which the respondent puts forward his defense to the petition. Browne, Div. 223.

Under the old admiralty practice in England, the defendant's first pleading was called his "answer." Williams & B. Adm. Jur. 246.

In Practice

A reply to interrogatories; an affidavit in answer to interrogatories. The declaration of a fact by a witness after a question has been put, asking for it.

As a verb, the word denotes an assumption of liability, as to "answer" for the debt or default of another.

Frivolous Answer

See Sham Answer, *infra*.

Irrelevant Answer

One that has no substantial relation to the controversy;—distinguishable from a sham answer. Rosatti v. Common School Dist. No. 96 of Cass County, 53 N. D. 268, 205 N. W. 678, 679.

Sham Answer

One sufficient on its face but so clearly false that it presents no real issue to be tried. Bank of Richards, Mo., v. Sheasgreen, 153 Minn. 363, 190 N. W. 484. One good in form, but false in fact and not pleaded in good faith. Burkhalter v. Townsend, 139 S. C. 324, 138 S. E. 34, 36. A frivolous answer, on the other hand, is one which on its face sets up no defense, although it may be true in fact. A frivolous answer is always assumed to be true, while a sham answer must be admittedly false or conclusively proved to be so; the character of the former is determined by mere inspection, while the character of the latter is usually determined by proof aliunde. Milberg v. Keuthe, 98 N. J. Law, 779, 121 A. 713, 714. An answer averring facts not legally responsive to the inquiry involved is in contemplation of law either sham or frivolous, and on motion may be struck out upon either ground. Boynton Lumber Co. v. Evans, 101 N. J. Law, 120, 128 A. 180.

Voluntary Answer

In the practice of the court of chancery, this was an answer put in by a defendant, when the plaintiff had filed no interrogatories which required to be answered. Hunt, Eq.

ANTAPOCHA. In the Roman law. A transcript or counterpart of the instrument called "*apocha*" (*q. v.*), signed by the debtor and delivered to the creditor. Calvin.

ANTE. Lat. Before. Usually employed in old pleadings as expressive of time, as *præ* (before) was of place, and *coram* (before) of person. Townsh. Pl. 22.

Occurring in a report or a text-book, it is used to refer the reader to a previous part of the book.

ANTE EXHIBITIONEM BILLÆ. Before the exhibition of the bill. Before suit begun.

ANTE-FACTUM, or ANTE-GESTUM. Done before. A Roman law term for a previous act, or thing done before.

ANTE JURAMENTUM. See Antejuramentum.

ANTE LITEM MOTAM. Before suit brought, before controversy instituted. Also, before the controversy arose. Corbett v. Hawes, 187 N. C. 653, 122 S. E. 478, 479.

ANTE NATUS. Born before. A person born before another person or before a particular event. The term is particularly applied to one born in a country before a revolution, change of government or dynasty, or other political event, such that the question of his rights, *status*, or allegiance will depend upon the date of his birth with reference to such event. In England, the term commonly denotes one born before the act of union with Scotland; in America, one born before the declaration of independence. Its opposite is *post natus*, one born after the event.

ANTEA. Lat. Formerly; heretofore.

ANTECEDENT. Prior in point of time. Turner v. State, 84 Tex. Cr. R. 267, 206 S. W. 689.

ANTECEDENT CREDITORS. Those whose debts are created before the debtor makes a transfer not lodged for record. Stone v. Keith, 218 Ky. 11, 290 S. W. 1042, 1043.

ANTECESSOR. An ancestor (*q. v.*).

ANTEDATE. To affix an earlier date; to date an instrument as of a time before the time it was written.

To antedate an insurance policy means to make it, for the purpose of fixing maturity dates for premiums, relate back to and take effect as of a time prior to its delivery. New York Life Ins. Co. v. Franklin, 118 Va. 418, 87 S. E. 584, 586.

ANTEJURAMENTUM. In Saxon law. A preliminary or preparatory oath (called also "*præjuramentum*," and "*juramentum calumniæ*," *q. v.*), which both the accuser and accused were required to make before any trial or purgation; the accuser swearing that he would prosecute the criminal, and the accused making oath on the very day that he was to undergo the ordeal that he was innocent of the crime with which he was charged. Whishaw.

ANTENATI. See Ante Natus.

ANTENNA. In wireless telegraphy, the wire in the air on the tall mast is called the "antenna." National Electric Signaling Co. v. Telefunken Wireless Telegraph Co. of United States (C. C. A.) 221 F. 629, 631. A wire, or a combination of wires, supported in the air for directly transmitting electric waves into space, or receiving them therefrom. Webster, Dict.

ANTENUPTIAL. Made or done before a marriage.

ANTENUPTIAL CONTRACT. A contract made before marriage. The term is most generally applied to a contract entered into between a man and woman in contemplation of their future marriage, and in that case it is called a marriage contract.

ANTENUPTIAL SETTLEMENTS. Settlements of property upon the wife, or upon her and her children, made before and in contemplation of the marriage.

ANTHRACITE COAL. "Anthracite coal" differs from bituminous coal in the amount of fixed carbon, the amount of volatile matter, color, luster, and structural character. The percentage of fixed carbon in anthracite coal is much higher and the percentage of

volatile matter is much lower than in bituminous coal. Anthracite coal is hard, compact and is comparatively clean and free from dust and is commonly termed "hard coal," and burns with practically no smoke. Commonwealth v. Hudson Coal Co., 287 Pa. 64, 134 A. 413, 414.

ANTHROPOMETRY. In criminal law and medical jurisprudence. The measurement of the human body; a system of measuring the dimensions of the human body, both absolutely and in their proportion to each other, the facial, cranial, and other angles, the shape and size of the skull, etc., for purposes of comparison with corresponding measurements of other individuals, and serving for the identification of the subject in cases of doubtful or disputed identity. It was largely adopted after its introduction in France in 1883, but fell into disfavor as being costly and as liable to error. It has given place to the "finger print" system devised by Francis Galton. See Bertillon System.

ANTI MANIFESTO. A term used in international law to denote a proclamation or manifesto published by one of two belligerent powers, alleging reasons why the war is defensive on its part.

ANTI-TRUST ACTS. Federal and state statutes to protect trade and commerce from unlawful restraints and monopolies. See U. S. v. Knight Co., 156 U. S. 1, 15 Sup. Ct. 249, 39 L. Ed. 325; Restraint of Trade.

ANTICHRESIS. In the civil law. A species of mortgage, or pledge of immovables. An agreement by which the debtor gives to the creditor the income from the property which he has pledged, in lieu of the interest on his debt. Guyot, Répert.; Marquise De Portes v. Hurlbut, 44 N. J. Eq. 517, 14 Atl. 891. It is analogous to the Welsh mortgage of the common law. In the French law, if the income was more than the interest, the debtor was entitled to demand an account of the income, and might claim any excess.

A debtor may give as security for his debt any immovable which belongs to him, the creditor having the right to enjoy the use of it on account of the interest due, or of the capital if there is no interest due; this is called "antichresis." Civ. Code Mex. art. 1927.

By the law of Louisiana, there are two kinds of pledges,—the pawn and the antichresis. A pawn relates to movables, and the antichresis to immovables. The antichresis must be reduced to writing; and the creditor thereby acquires the right to the fruits, etc., of the immovables, deducting yearly their proceeds from the interest, in the first place, and afterwards from the principal of his debt. He is bound to pay taxes on the property, and keep it in repair, unless the contrary is agreed. The creditor does not become the proprietor of the property by failure to pay at the agreed time, and any clause to that effect is void. He can only sue the debtor, and obtain sentence for sale of the property. The possession of the property is, however, by the contract, transferred to the creditor. Livingston v. Story, 11 Pet. 351, 9 L. Ed. 746. The "antichresis" is an antiquated contract, requiring the creditor to take possession of and administer the property, to pay the taxes, and to keep up the improvements, and has been resorted to in this state in but a few instances. Harang v. Ragan, 134 La. 201, 63 So. 875, 877.

ANTICIPATION. The act of doing or taking a thing before its proper time.

In conveyancing, anticipation is the act of assigning, charging, or otherwise dealing with income before it becomes due.

In patent law, a person is said to have been anticipated when he patents a contrivance already known within the limits of the country granting the patent. Topliff v. Topliff, 145 U. S. 156, 12 Sup. Ct. 825, 36 L. Ed. 658; Detroit, etc., Co. v. Renchard (C. C.) 9 Fed. 298; National Hollow Brake Beam Co. v. Interchangeable Brake Beam Co. (C. C.) 99 Fed. 772; Thacher v. City of Baltimore (D. C.) 219 F. 909, 910; General Electric Co. v. De Forest Radio Co. (D. C.) 17 F.(2d) 90, 100.

In the law of negligence infrequency of danger, or even lack of its previous occurrence in experience of party charged, is not a decisive test of his duty to anticipate it; "anticipation" not being confined to expectation. Kenney v. Wong Len, 81 N. H. 427, 128 A. 343, 344. But compare Hardy v. Missouri Pac. R. Co. (C. C. A.) 266 F. 860, 863, 36 A. L. R. 1.

ANTICIPATORY BREACH OF CONTRACT. See Breach.

ANTIGRAPHUS. In Roman law. An officer whose duty it was to take care of tax money. A comptroller.

ANTIGRAPHY. A copy or counterpart of a deed.

ANTINOMIA. In Roman law. A real or apparent contradiction or inconsistency in the laws. Merl. Répert. Conflicting laws or provisions of law; inconsistent or conflicting decisions or cases.

ANTINOMY. A term used in logic and law to denote a real or apparent inconsistency or conflict between two authorities or propositions; same as *antinomia* (*q. v.*).

ANTIQUA CUSTUMA. In English law. Ancient custom. An export duty on wool, woolfells, and leather, imposed during the reign of Edw. I. It was so called by way of distinction from an increased duty on the same articles, payable by foreign merchants, which was imposed at a later period of the same reign and was called "*custuma nova.*" 1 Bl. Comm. 314.

ANTIQUA STATUTA. Also called *"Vetera Statuta."* English statutes from the time of Richard I. to Edward III. 1 Reeve, Eng. Law, 227. See Nova Statuta.

ANTIQUARE. In Roman law. To restore a former law or practice; to reject or vote against a new law; to prefer the old law. Those who voted against a proposed law wrote on their ballots the letter "A," the initial of *antiquo*, I am for the old law. Calvin.

ANTIQUUM DOMINICUM. In old English law. Ancient demesne.

ANTITHETARIUS. In old English law. A man who endeavors to discharge himself of the crime of which he is accused, by retorting the charge on the accuser. He differs from an approver in this: that the latter does not charge the accuser, but others. Jacob.

ANTRUSTIO. In early feudal law. A confidential vassal. A term applied to the followers or dependents of the ancient German chiefs, and of the kings and counts of the Franks. Burrill.

ANUELS LIVRES. L. Fr. The Year Books. Kelham.

ANY. Some; one out of many; an indefinite number. Ebeling v. Bankers' Casualty Co., 61 Mont. 58, 201 P. 284, 22 A. L. R. 777; Winslow v. Fleischner, 110 Or. 554, 223 P. 922, 928; State v. Pierson, 204 Iowa, 837, 216 N. W. 43, 44.

It is often synonymous with "either;" State v. Antonio, 3 Brev. (S. C.) 562; Carr-Lowry Lumber Co. v. Martin, 144 Miss. 106, 109 So. 849, 850; Powell v. Allan, 70 Cal. App. 663, 234 P. 339, 344; and is given the full force of "every" or "all"; Logan v. Small, 43 Mo. 254; McMurray v. Brown, 91 U. S. 265, 23 L. Ed. 321; Glen Alden Coal Co. v. City of Scranton, 282 Pa. 45, 127 A. 307, 308; Klotz v. First Nat. Bank, 78 Ind. App. 679, 134 N. E. 220, 222; Harrington v. Interstate Business Men's Acc. Ass'n of Des Moines, Iowa, 210 Mich. 327, 178 N. W. 19, 20; Cole v. Sloss-Sheffield Steel & Iron Co., 186 Ala. 192, 65 So. 177, 178, Ann. Cas. 1916E, 99; but its generality may be restricted by the context; Drainage Dist. No. 1 of Bates County v. Bates County (Mo. Sup.) 216 S. W. 949, 953; Gordon v. Business Men's Racing Ass'n, 141 La. 819, 75 So. 735, 736, L. R. A. 1917F, 700. Thus, the giving of a right to do some act "at any time" is commonly construed as meaning within a reasonable time. Michaels v. Pontius, 83 Ind. App. 66, 137 N. E. 579, 581; Paulson v. Weeks, 80 Or. 468, 157 P. 590, 592, Ann. Cas. 1918D, 741; Geo. Finberg Co. v. Jamison (Tex. Civ. App.) 260 S. W. 884, 886. And the words "any other" following the enumeration of particular classes are to be read as "other such like," and include only others of like kind or character. Van Pelt v. Hilliard, 75 Fla. 792, 78 So. 693, 697, L. R. A. 1918E, 639; Southern Ry. Co. v. Columbia Compress Co. (C. C. A.) 280 F. 344, 348; Weatherly v. City of Athens, 18 Ga. App. 734, 90 S. E. 494.

ANYTHING. Sometimes used colloquially in the sense of whatever. Pittsburgh Plate Glass Co. v. H. Neuer Glass Co. (C. C. A.) 253 F. 161, 164.

APANAGE. In old French law. A provision of lands or feudal superiorities assigned by the kings of France for the maintenance of their younger sons. An allowance assigned to a prince of the reigning house for his proper maintenance out of the public treasury. 1 Hallam, Mid. Ages, pp. ii, 88; Wharton.

APARTMENT. A part of a house occupied by a person, while the rest is occupied by another, or others. As to the meaning of this term, see 7 Man. & G. 95; 6 Mod. 214; McMillan v. Solomon, 42 Ala. 356, 94 Am. Dec. 654; Commonwealth v. Estabrook, 10 Pick. (Mass.) 293; McLellan v. Dalton, 10 Mass. 190; People v. St. Clair, 38 Cal. 137.

APARTMENT HOTEL. "Apartment hotel" is generally understood to apply to those houses which contain nonhousekeeping apartments without a kitchen or cooking facilities, wherein the proprietor furnishes a restaurant for feeding the occupants of the different apartments. Waitt Const. Co. v. Chase, 188 N. Y. S. 589, 591, 197 App. Div. 327. A covenant prohibiting erection of an "apartment house" does not prohibit an apartment hotel containing one, two, and three room suites without kitchens or kitchenettes. Griswold Realty & Holding Corporation v. West End Avenue & Seventy-Fifth St. Corporation, 209 N. Y. S. 764, 766, 125 Misc. Rep. 30. See Apartment House.

APARTMENT HOUSE. A building arranged in several suites of connecting rooms, each suite designed for independent housekeeping, but with certain mechanical conveniences, such as heat, light, or elevator services, in common to all families occupying the building. Konick v. Champneys, 108 Wash. 35, 183 P. 75, 77, 6 A. L. R. 459. Sometimes called a flat or flat house. Lignot v. Jaekle, 65 Atl. 221, 72 N. J. Eq. 233. It comes within the prohibition of a restrictive building covenant forbidding buildings designed for any purpose other than a private dwelling house. Taylor v. Lambert, 279 Pa. 514, 124 A. 169, 170. But it is not a "hotel." Satterthwait v. Gibbs, 288 Pa. 428, 135 A. 862, 864. A house for two families has been held to be an "apartment house" within a restriction covenant. Elterich v. Leicht Real Estate Co., 130 Va. 224, 107 S. E. 735, 739, 18 A. L. R. 441; *contra*, Austin v. Richardson (Tex. Com. App.) 288 S. W. 180, 181.

APATISATIO. An agreement or compact. Du Cange.

APERTA BREVIA. Open, unsealed writs.

APERTUM FACTUM. An overt act.

APERTURA TESTAMENTI. In the civil law. A form of proving a will, by the witnesses acknowledging before a magistrate their having sealed it.

APEX. The summit or highest point of anything; the top; *e. g.*, in mining law, "apex of a vein." See Larkin v. Upton, 144 U. S. 19, 12 Sup. Ct. 614, 36 L. Ed. 330; Stevens v. Williams, 23 Fed. Cas. 40; Duggan v. Davey, 4 Dak. 110, 26 N. W. 887. An "apex" is all that portion of a terminal edge of a mineral vein from which the vein has extension downward in the direction of the dip. Stewart Mining Co. v. Ontario Mining Co., 35 S. Ct. 610, 614, 237 U. S. 350, 59 L. Ed. 989; Alameda Mining Co. v. Success Mining Co., 29 Idaho, 618, 161 P. 862, 865. Or it is the juncture of two dipping limbs of a fissure vein. Jim Butler Tonopah Mining Co. v. West End Consol. Mining Co., 38 S. Ct. 574, 576, 247 U. S. 450, 62 L. Ed. 1207.

APEX JURIS. The summit of the law; a legal subtlety; a nice or cunning point of law; close technicality; a rule of law carried to an extreme point, either of severity or refinement. A term used to denote a stricter application of the rules of law than is indicated by the phrase *summum jus* (*q. v.*).

APEX RULE. In mining law. The mineral laws of the United States give to the locator of a mining claim on the public domain the whole of every vein the apex of which lies within his surface exterior boundaries, or within perpendicular planes drawn downward indefinitely on the planes of those boundaries; and he may follow a vein which thus apexes within his boundaries, on its dip, although it may so far depart from the perpendicular in its course downward as to extend outside the vertical side-lines of his location; but he may not go beyond his end-lines or vertical planes drawn downward therefrom. This is called the apex rule. Rev. St. U. S. § 2322 (30 USCA § 26); King v. Mining Co., 9 Mont. 543, 24 Pac. 200; Stewart Mining Co. v. Ontario Mining Co., 23 Idaho, 724, 132 P. 787, 792.

APHASIA. In medical jurisprudence. Loss of the faculty or power of articulate speech; a condition in which the patient, while retaining intelligence and understanding and with the organs of speech unimpaired, is unable (in "motor aphasia") to utter articulate words, or unable to vocalize the particular word which is in his mind and which he wishes to use, or utters words different from those he believes himself to be speaking, or (in "sensory aphasia" or apraxia) is unable to understand spoken or written language. *Sensory aphasia* includes *word blindness* and *word deafness*, visual and auditory aphasia. *Motor aphasia* often includes *agraphia*, or the inability to write words of the desired meaning. The seat of the disease is in the brain, but it is not a form of insanity.

APHONIA. In medical jurisprudence. Loss of the power of articulate speech in consequence of morbid conditions of some of the vocal organs. It may be incomplete, in which case the patient can whisper. It is to be distinguished from congenital dumbness, and from temporary loss of voice through extreme hoarseness or minor affections of the vocal cords, as also from aphasia, the latter being a disease of the brain without impairment of the organs of speech.

Apices juris non sunt jura [jus]. Extremities, or mere subtleties of law are not rules of law [are not law]. Co. Litt. 304*b*; 10 Coke, 126; Wing. Max. 19, max. 14; Broom, Max. 188. Legal principles must not be carried to their extreme consequences, regardless of equity and good sense. Salmond, Jurispr. 639. See Apex Juris.

APICES LITIGANDI. Extremely fine points, or subtleties of litigation. Nearly equivalent to the modern phrase "sharp practice." "It is unconscionable in a defendant to take advantage of the *apices litigandi*, to turn a plaintiff around and make him pay costs when his demand is just." Per Lord Mansfield, in 3 Burr. 1243.

APNŒA. In medical jurisprudence. Want of breath; difficulty in breathing; partial or temporary suspension of respiration; specifically, such difficulty of respiration resulting from over-oxygenation of the blood, and in this distinguished from "asphyxia" (*q. v.*), which is a condition resulting from a deficiency of oxygen in the blood due to suffocation or any serious interference with normal respiration. The two terms were formerly (but improperly) used synonymously.

APOCHA (also *Apoca*). Lat. In the civil law. A writing acknowledging payments; acquittance. It differs from acceptilation in this: that acceptilation imports a complete discharge of the former obligation whether payment be made or not; *apocha*, discharge only upon payment being made. Calvin. See Antapocha.

APOCHÆ ONERATORIÆ. In old commercial law. Bills of lading.

APOCRISARIUS. In civil law. A messenger; an ambassador.

In ecclesiastical law. One who answers for another. An officer whose duty was to carry to the emperor messages relating to ecclesiastical matters, and to take back his answer to the petitioners. An officer who gave advice on questions of eccleciastical law. An ambassador or legate of a pope or bishop. Spelman.

A messenger sent to transact ecclesiastical business and report to his superior; an officer who had charge of the treasury of a monastic edifice; an officer who took charge of opening and closing the doors. Du Cange; Spelman; Calvinus, Lex.

APOCRISARIUS CANCELLARIUS. In the civil law. An officer who took charge of the royal seal and signed royal dispatches.

Called, also, *secretarius, consiliarius* (from his giving advice); *referendarius; a consiliis* (from his acting as counsellor); *a responsis,* or *responsalis.*

APOGRAPHIA. In civil law. An examination and enumeration of things possessed; an inventory. Calvinus. Lex.

APOPLEXY. In medical jurisprudence. The failure of consciousness and suspension of voluntary motion from suspension of the functions of the cerebrum.

The group of symptoms arising from rupture of a minute artery and consequent hemorrhage into the substance of the brain or from the lodgment of a minute clot in one of the cerebral arteries. The symptoms consist usually of sudden loss of consciousness, muscular relaxation, lividity of the face and slow stertorous respiration, lasting from a few hours to several days. Death frequently ensues. If consciousness returns, there is found paralysis of some of the voluntary muscles, very frequently of the muscles of the face, arm, and leg upon one side, giving the symptom of hemiplegia. There is usually more or less mental impairment, which presents no uniform characters, but varies indefinitely.

By apoplexy is meant a break or rupture of a blood vessel in the brain, not produced by any external cause. Robinson v. Ætna Life Ins. Co. (Tex. Com. App.) 276 S. W. 900, 902.

APOSTACY (also spelled *Apostasy*). In English law. The total renunciation of Christianity, by embracing either a false religion or no religion at all. This offense can take place only in such as have once professed the Christian religion. 4 Bl. Comm. 43; 4 Steph. Comm. 231.

APOSTATA. In civil and old English law. An apostate; a deserter from the faith; one who has renounced the Christian faith. Cod. 1, 7; Reg. Orig. 71*b*.

APOSTATA CAPIENDO. An obsolete English writ which issued against an apostate, or one who had violated the rules of his religious order. It was addressed to the sheriff, and commanded him to deliver the defendant into the custody of the abbot or prior. Reg. Orig. 71, 267; Jacob; Wharton.

APOSTILLE, Appostille. L. Fr. An addition; a marginal note or observation. Kelham.

APOSTLES. In English admiralty practice. A term borrowed from the civil law, denoting brief dismissory letters granted to a party who appeals from an inferior to a superior court, embodying a statement of the case and a declaration that the record will be transmitted.

This term is still sometimes applied in the admiralty courts of the United States to the papers sent up or transmitted on appeals.

APOSTOLI. In civil law. Certificates of the inferior judge from whom a cause is removed, directed to the superior. Dig. 49, 6. See Apostles.

Those sent as messengers. Spelman, Gloss.

APOSTOLUS. A messenger; an ambassador, legate, or nuncio. Spelman.

APOTHECA. In the civil law. A repository; a place of deposit, as of wine, oil, books, etc. Calvin.

APOTHECARY. Any person who keeps a shop or building where medicines are compounded or prepared according to prescriptions of physicians, or where medicines are sold. Act Cong. July 13, 1866, c. 184, § 9, 14 Stat. 119; Woodward v. Ball, 6 Car. & P. 577; Westmoreland v. Bragg, 2 Hill (S. C.) 414; Com. v. Fuller, 2 Walk. (Pa.) 550.

The term "druggist" properly means one whose occupation is to buy and sell drugs without compounding or preparing them. The term therefore has a much more limited and restricted meaning than the word "apothecary," and there is little difficulty in concluding that the term "druggist" may be applied in a technical sense to persons who buy and sell drugs. State v. Holmes, 28 La. Ann. 767, 26 Am. Rep. 110; Apothecaries' Co. v. Greenough, 1 Q. B. 803; State v. Donaldson, 41 Minn. 74, 42 N. W. 781.

In England and Ireland an apothecary is a member of an inferior branch of the medical profession and is licensed by the Apothecaries Company to practice medicine as well as to sell drugs.

APPARATOR. A furnisher or provider. Formerly the sheriff, in England, had charge of certain county affairs and disbursements, in which capacity he was called "*apparator comitatus*" (apparator for the county), and received therefor a considerable emolument. Cowell.

APPARATUS. An outfit of tools, utensils, or instruments adapted to accomplishment of any branch of work or for performance of experiment or operation. McClintock & Irvine Co. v. Ætna Explosives Co., 260 Pa. 191, 103 A. 622, 623, Ann. Cas. 1918E, 1078. A group or set of organs concerned in performance of single function. First State Bank of Perkins v. Pulliam, 112 Okl. 22, 239 P. 595, 596.

As used in statutes granting exemption from execution, etc., "apparatus" means a complex device or machine designed for the accomplishment of a special purpose; a complex instrument or appliance, mechanical or chemical, for a specific action or operation; machinery; mechanism; as a newspaper printing press, Harris v. Townley (Tex. Civ. App.) 161 S. W. 5; or four pool tables, Harris v. Todd (Tex. Civ. App.) 158 S. W. 1189;

but not a threshing outfit, Comer v. Powell (Tex. Civ. App.) 189 S. W. 88, 91; nor a well-drilling rig, consisting of boiler, engine, and other parts of complicated machinery, Thresher v. McEvoy (Tex. Civ. App.) 193 S. W. 159, 160. And see In re Willis (D. C.) 292 F. 872, 873, wherein it was said that the term "apparatus" is practically synonymous with "tools."

APPARENT. That which is obvious, evident, or manifest; what appears, or has been made manifest; appearing to the eye or mind. Milliken v. McKenzie (Tex. Civ. App.) 285 S. W. 1110, 1111; Van Arsdale v. State, 94 Tex. Cr. R. 169, 249 S. W. 863, 866; Walker v. John Smith, T., 199 Ala. 514, 74 So. 451, 453. In respect to facts involved in an appeal or writ of error, that which is stated in the record. An error discovered by close scrutiny of the entire evidence is not "apparent." Stewart v. McAllister (Tex. Civ. App.) 209 S. W. 704, 706.

APPARENT AUTHORITY. In the law of agency, such authority as the principal knowingly permits the agent to assume, or which he holds the agent out as possessing; such authority as he appears to have by reason of the actual authority which he has; such authority as a reasonably prudent man, using diligence and discretion, in view of the principal's conduct, would naturally suppose the agent to possess. Ozark Mut. Life Ass'n v. Dillard, 169 Ark. 136, 273 S. W. 378, 381; Iowa Loan & Trust Co. v. Seaman, 203 Iowa 310, 210 N. W. 937, 940; Kissell v. Pittsburgh, Ft. W. & C. Ry. Co., 194 Mo. App. 346, 188 S. W. 1118, 1121; Caughren v. Kahan, 86 Wash. 356, 150 P. 445, 448; Hudson v. Carlson, 31 Idaho, 196, 170 P. 100, 102; Brager v. Levy, 122 Md. 554, 90 A. 102, 104; Atto v. Saunders, 77 N. H. 527, 93 A. 1037, 1039; Johnson v. Evans, 134 Minn. 43, 158 N. W. 823. It includes the power to do whatever is usually done and necessary to be done in order to carry into effect the principal power conferred. Oliver v. United States Fidelity & Guaranty Co., 176 N. C. 598, 97 S. E. 490, 491.

APPARENT DANGER. As used with reference to the doctrine of self-defense in homicide, means such overt actual demonstration, by conduct and acts, of a design to take life or do some great personal injury, as would make the killing apparently necessary to self-preservation. Evans v. State, 44 Miss. 773; Stoneman v. Com., 25 Grat. (Va.) 896; Leigh v. People, 113 Ill. 379; Modesett v. Emmons (Tex. Com. App.) 292 S. W. 855, 856. Under a statute providing that it shall not be a defense to an action for injuries to an employee that the dangers inherent or apparent in the employment contributed to the injury, an "apparent danger" is one the existence of which the employee has knowledge, actual or constructive. Standard Steel Car Co. v. Martinecz, 66 Ind. App. 672, 113 N. E. 244, 248.

APPARENT DEFECTS. In a thing sold, are those which can be discovered by simple inspection. Code La. art. 2497 (Civil Code, § 2521). See, also, Woolley v. Ablah, 119 Kan. 380, 240 P. 266, 269.

APPARENT EASEMENT. See Easement.

APPARENT HEIR. In English law. One whose right of inheritance is indefeasible, provided he outlive the ancestor. 2 Bl. Comm. 208. See, also, Heir Apparent. In Scotch law. He is the person to whom the succession has actually opened. He is so called until his regular entry on the lands by service or infeftment on a precept of *clare constat.*

APPARENT NECESSITY. In actions under the Alabama Homicide Act, "apparent necessity" which will justify killing in self-defense must be such as to impress a reasonable man of its presence and imminence, and must so impress defendant at the time of the fatal shot. Drummond v. Drummond, 212 Ala. 242, 102 So. 112, 114.

APPARITIO. In old practice. Appearance; an appearance. *Apparitio in judicio,* an appearance in court. Bract. fol. 344. *Post apparitionem,* after appearance. Fleta, lib. 6, c. 10, § 25.

APPARITOR. An officer or messenger employed to serve the process of the spiritual courts in England and summon offenders. Cowell.

In the civil law. An officer who waited upon a magistrate or superior officer, and executed his commands. Calvin.; Cod. 12, 53–57.

APPARLEMENT. In old English law. Resemblance; likelihood; as apparlement of war. St. 2 Rich. II. st. 1, c. 6; Cowell.

APPARURA. In old English law the apparura were furniture, implements, tackle, or apparel. *Carucarum apparura,* plow-tackle. Cowell.

APPEAL. In civil practice. The complaint to a superior court of an injustice done or error committed by an inferior one, whose judgment or decision the court above is called upon to correct or reverse.

The removal of a cause from a court of inferior to one of superior jurisdiction, for the purpose of obtaining a review and retrial. Wiscart v. Dauchy, 3 Dall. 321, 1 L. Ed. 619; City of Birmingham v. Louisville & N. R. Co., 213 Ala. 92, 104 So. 258, 259; Norman v. Toliver, 94 Kan. 356, 146 P. 1037, 1038; Hall v. Kincaid, 64 Ind. App. 103, 115 N. E. 361, 365.

The distinction between an appeal and a writ of error is that an appeal is a process of civil law origin, and removes a cause entirely, subjecting the facts, as well as the law, to a review and revisal; but a writ of error is of common law origin, and it removes nothing for re-examination but the law. Wiscart v. Dauchy, 3 Dall. 321, 1 L. Ed. 619; U. S. v.

Goodwin, 7 Cranch, 108, 3 L. Ed. 284; Cunningham v. Neagle, 135 U. S. 1, 10 Sup. Ct. 658, 34 L. Ed. 55; Buessel v. U. S. (C. C. A.) 258 F. 811, 814. The present tendency is to ignore the distinction between "writ of error" and "appeal," and, when found in modern statutes, the meaning given "appeal" must be gathered from the language of the statute itself. Widgins v. Norfolk & W. Ry. Co., 142 Va. 419, 128 S. E. 516, 518.

But appeal is sometimes used to denote the nature of appellate jurisdiction, as distinguished from original jurisdiction, without any particular regard to the mode by which a cause is transmitted to a superior jurisdiction. U. S. v. Wonson, 1 Gall. 5, 12, Fed. Cas. No. 16,750; Dorris Motor Car Co. v. Colburn, 307 Mo. 137, 270 S. W. 339, 346. "Appeal" has no conclusive meaning, and it is necessary in each instance to look to the particular act giving an appeal, to determine powers to be exercised by the appellate court. McCauley v. Imperial Woolen Co., 261 Pa. 312, 104 A. 617, 620.

An "appeal" in equity is a trial de novo. Simmons v. Stern (C. C. A.) 9 F.(2d) 256, 259.

"Appeal" may also be used to denote the act of invoking another judicial forum for the trial. Newell v. Kalamazoo Circuit Judge, 215 Mich. 153, 183 N. W. 907, 908. See Appealed. As used in statutes authorizing taxpayers or parties to condemnation proceedings to appeal, the term often has its nontechnical sense meaning to "apply for" or "ask." Commonwealth v. Deford Co., 137 Va. 542, 120 S. E. 281, 282; Purcell Bank & Trust Co. of Purcell v. Byars, 66 Okl. 70, 167 P. 216, 218.

In Criminal Practice

A formal accusation made by one private person against another of having committed some heinous crime. 4 Bl. Comm. 312.

Appeal was also the name given to the proceeding in English law where a person, indicted of treason or felony, and arraigned for the same, confessed the fact before plea pleaded, and *appealed*, or accused others, his accomplices in the same crime, in order to obtain his pardon. In this case he was called an "approver" or "prover," and the party appealed or accused, the "appellee." 4 Bl. Comm. 330. Appeals have been abolished by statute.

In Legislation

The act by which a member of a legislative body who questions the correctness of a decision of the presiding officer, or "chair," procures a vote of the body upon the decision.

In Old French Law

A mode of proceeding in the lords' courts, where a party was dissatisfied with the judgment of the peers, which was by accusing them of having given a false or malicious judgment, and offering to make good the charge by the duel or combat. This was called the "appeal of false judgment." Montesq. Esprit des Lois, liv. 28, c. 27.

In General

—Appeal bond. The bond given on taking an appeal, by which the appellant and his sureties are bound to pay damages and costs if he fails to prosecute the appeal with effect. Omaha Hotel Co. v. Kountze, 107 U. S. 378, 2 Sup. Ct. 911, 27 L. Ed. 609. A general purpose of appeal bonds is to discourage vexatious and frivolous appeals. State v. Coletti, 102 Kan. 523, 170 P. 995, 997.

—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.

APPEALED. In a sense not strictly technical, this word may be used to signify the exercise by a party of the right to remove a litigation from one forum to another; as where he removes a suit involving the title to real estate from a justice's court to the common pleas. Lawrence v. Souther, 8 Metc. (Mass.) 166.

APPEAR. In practice. To be properly before a court; as a fact or matter of which it can take notice. To be in evidence; to be proved. "Making it *appear* and proving are the same thing." Freem. 53.

To be regularly in court; as a defendant in an action. Cf. Bennett v. Rodgers, 205 Mo. App. 458, 225 S. W. 101. See Appearance.

APPEAR OF RECORD. A substitution of trustee under deed of trust "appears of record" in the office of the chancery clerk, by being actually spread at large on the record. King v. Jones, 121 Miss. 319, 83 So. 531.

APPEARANCE. In practice. A coming into court as party to a suit, whether as plaintiff or defendant. In re Puget Sound Engineering Co. (D. C.) 270 F. 353, 354; Stephens v. Ringling, 102 S. C. 333, 86 S. E. 683, 685.

The formal proceeding by which a defendant submits himself to the jurisdiction of the court. Flint v. Comly, 95 Me. 251, 49 Atl. 1044; Crawford v. Vinton, 102 Mich. 83, 62 N. W. 988; Childers v. Lahann, 18 N. M. 487, 138 P. 202, 203.

Appearance anciently meant an actual coming into court, either in person or by attorney. Appearance may be made by the party in person or by his agent. Everett Ry., Light & Power Co. v. U. S. (D. C.) 236 F. 806, 808. But *in criminal cases* the personal appearance of the accused in court is often necessary.

Classification

An appearance may be either *general* or *special*; the former is a simple and unqualified or unrestricted submission to the jurisdiction of the court, the latter a submission to the jurisdiction for some specific purpose only, not for all the purposes of the suit. National Furnace Co. v. Moline Malleable Iron Works (C. C.) 18 F. 864; Citizens' Trust Co. of Utica v. R. Prescott & Son, 223 N. Y. S. 191, 197, 221

App. Div. 426; Kyser v. American Surety Co. of New York, 213 Ala. 614, 105 So. 689, 690; Louisville & N. R. Co. v. Industrial Board of Illinois, 282 Ill. 136, 118 N. E. 483, 485. A special appearance is for the purpose of testing the sufficiency of service or the jurisdiction of the court; a general appearance is made where the defendant waives defects of service and submits to the jurisdiction. Bacon v. Federal Reserve Bank of San Francisco (D. C.) 289 F. 513, 515; Whitesides v. Drage, 56 Ind. App. 679, 106 N. E. 382; Brumleve v. Cronan, 176 Ky. 818, 197 S. W. 498, 504; Louisville & N. R. Co. v. Industrial Board of Illinois, 282 Ill. 136, 118 N. E. 483, 485; State v. Huller, 23 N. M. 306, 168 P. 528, 534, 1 A. L. R. 170.

An appearance may also be either *compulsory* or *voluntary*, the former where it is compelled by process served on the party, the latter where it is entered by his own will or consent, without the service of process, though process may be outstanding. 1 Barb. Ch. Pr. 77. It is said to be *optional* when entered by a person who intervenes in the action to protect his own interests, though not joined as a party; it occurs in chancery practice, especially in England; *conditional*, when coupled with conditions as to its becoming or being taken as a general appearance; *gratis*, when made by a party to the action, but before the service of any process or legal notice to appear; *de bene esse*, when made provisionally or to remain good only upon a future contingency; *subsequent*, when made by a defendant after an appearance has already been entered for him by the plaintiff; *corporal*, when the person is physically present in court.

—Appearance by attorney. This term and "appearance by counsel" are distinctly different, the former being the substitution of a legal agent for the personal attendance of the suitor, the latter the attendance of an advocate without whose aid neither the party attending nor his attorney in his stead could safely proceed; and an appearance by attorney does not supersede the appearance by counsel. Mercer v. Watson, 1 Watts (Pa.) 351. See In re Ford's Estate, 163 N. Y. S. 960, 98 Misc. Rep. 100.

—Appearance day. The day for appearing; that on which the parties are bound to come into court. Cruger v. McCracken (Tex. Civ. App.) 26 S. W. 282. Compare City of Decatur v. Barteau, 260 Ill. 612, 103 N. E. 601, 602.

—Appearance docket. A docket kept by the clerk of the court, in which appearances are entered, containing also a brief abstract of all the proceedings in the cause. See McAdams v. Windham, 191 Ala. 287, 68 So. 51, 52.

—Notice of appearance. A notice given by defendant to a plaintiff that he appears in the action in person or by attorney.

APPEARAND HEIR. In Scotch law. An apparent heir. See Heir Apparent.

APPELLANT. The party who takes an appeal from one court or jurisdiction to another. Used broadly or nontechnically, the term includes one who sues out a writ of error. Chickamauga Quarry & Construction Co. v. Pundt, 136 Tenn. 328, 189 S. W. 686; Widgins v. Norfolk & W. Ry. Co., 142 Va. 419, 128 S. E. 516, 518.

APPELLATE. Pertaining to or having cognizance of appeals and other proceedings for the judicial review of adjudications.

APPELLATE COURT. A court having jurisdiction of appeal and review; a court to which causes are removable by appeal, *certiorari*, or error.

APPELLATE JURISDICTION. Jurisdiction on appeal; jurisdiction to revise or correct the proceedings in a cause already instituted and acted upon by an inferior court, or by a tribunal having the attributes of a court. Auditor of State v. Railroad Co., 6 Kan. 505, 7 Am. Rep. 575; State v. Anthony, 65 Mo. App. 543; State v. Baker, 19 Fla. 19; Ex parte Bollman, 4 Cranch, 101, 2 L. Ed. 554; Illinois Cent. R. Co. v. Dodd, 105 Miss. 23, 61 So. 743, 49 L. R. A. (N. S.) 565; Fine v. Lawless, 140 Tenn. 453, 205 S. W. 124. The term includes proceedings in error. Miami County v. City of Dayton, 92 Ohio St. 179, 110 N. E. 726, 727.

APPELLATIO. Lat. An appeal.

APPELLATOR. An old law term having the same meaning as "appellant" (*q. v.*).

In the civil law, the term was applied to the judge ad quem, or to whom an appeal was taken. Calvin.

APPELLEE. The party in a cause against whom an appeal is taken; that is, the party who has an interest adverse to setting aside or reversing the judgment. Slayton v. Horsey, 97 Tex. 341, 78 S. W. 919. Sometimes also called the "respondent."

In a nontechnical sense, "appellee" may include a defendant in writ of error. Widgins v. Norfolk & W. Ry. Co., 142 Va. 419, 128 S. E. 516, 518.

In old English law. Where a person charged with treason or felony pleaded guilty and turned approver or "king's evidence," and accused another as his accomplice in the same crime, in order to obtain his own pardon, the one so accused was called the "appellee." 4 Bl. Comm. 330.

APPELLO. Lat. In the civil law. I appeal. The form of making an appeal *apud acta*. Dig. 49, 1, 2.

APPELLOR. In old English law. A criminal who accuses his accomplices, or who challenges a jury. See Approver.

APPEND. To add or attach. American Cannel Coal Co. v. Indiana Cotton Mills, 78 Ind. App. 115, 134 N. E. 891, 893.

APPENDAGE. Something added as an accessory to or the subordinate part of another thing. State v. Fertig, 70 Iowa, 272, 30 N. W. 633; Hemme v. School Dist., 30 Kan. 377, 1

Pac. 104; State Treasurer v. Railroad Co., 28 N. J. Law, 26; American Cannel Coal Co. v. Indiana Cotton Mills, 78 Ind. App. 115, 134 N. E. 891, 893. An "appendage" for a schoolhouse includes a well on the school premises. Schofield v. School Dist. No. 113, Labette County, 105 Kan. 343, 184 P. 480, 481, 7 A. L. R. 788. But "appendages" of a railroad do not include Liberty bonds pledged to indemnify a surety on its appeal bond, or cash which was not indispensable to enjoyment of the property nor to its operation. Jackman v. St. Louis & H. R. Co., 304 Mo. 319, 263 S. W. 230, 231.

APPENDANT. A thing annexed to or belonging to another thing and passing with it; a thing of inheritance belonging to another inheritance which is more worthy; as an advowson, common, etc., which may be appendant to a manor, common of fishing to a freehold, a seat in a church to a house, etc. It differs from appurtenance, in that appendant must ever be by prescription, *i. e.*, a personal usage for a considerable time, while an appurtenance may be created at this day; for if a grant be made to a man and his heirs, of common in such a moor for his beasts levant or couchant upon his manor, the commons are appurtenant to the manor, and the grant will pass them. Co. Litt. 121*b*; Lucas v. Bishop, 15 Lea (Tenn.) 165, 54 Am. Rep. 440; Leonard v. White, 7 Mass. 6, 5 Am. Dec. 19; Meek v. Breckenridge, 29 Ohio St. 648. See Appurtenance.

APPENDITIA. The appendages or appurtenances of an estate or house, dwelling, etc.; thus, *pent-houses* are the *appenditia domus.* Cowell.

APPENDIX. A printed volume, used on an appeal to the English house of lords or privy council, containing the documents and other evidence presented in the inferior court and referred to in the cases made by the parties for the appeal. Answering in some respects to the "paper-book" or "case" in American practice.

APPENSURA. Payment of money by weight instead of by count. Cowell.

APPERTAIN. To belong to; to have relation to; to be appurtenant to. See Appurtenant; Ferguson v. Steen (Tex. Civ. App.) 293 S. W. 318, 320; State v. Bodden, 166 Wis. 219, 164 N. W. 1009, 1011. To be used in connection with. McVeety v. Hayes, 111 Wash. 457, 191 P. 401, 402.

APPERTAINING. Connected with in use or occupancy. Miller v. Mann, 55 Vt. 475, 479. It does not necessarily import contiguity, as does "adjoining," and is therefore not synonymous with it; *id.*

Peculiar to. Herndon v. Moore, 18 S. C. 339.

APPLE CIDER VINEGAR. Vinegar made from evaporated apples by treating them with a certain percentage of water squeezed out again as apple juice is "apple cider vinegar" within the meaning of Agricultural Law N. Y. §§ 70–72, as amended by Laws 1916, c. 125 (Agriculture and Markets Law, §§ 207–209). People v. Douglas Packing Co., 236 N. Y. 1, 139 N. E. 759, 760.

APPLIANCE. The term "appliance" refers to machinery and all the instruments used in operating it, and is to be distinguished from the word "materials," which includes everything of which anything is made. Royal Indemnity Co. v. Day & Maddock Co., 114 Ohio St. 58, 150 N. E. 426, 427, 44 A. L. R. 374; Riter-Conley Mfg. Co. v. O'Donnell, 64 Okl. 229, 168 P. 49, 52. An "appliance" is a mechanical thing, a device or apparatus. One Black Mule v. State, 204 Ala. 440, 85 So. 749, 750. The term has been applied to a railroad track, Hines v. Kelley (Tex. Civ. App.) 226 S. W. 493, 496; motor tracks in a coal mine, Jaggie v. Davis Colliery Co., 75 W. Va. 370, 84 S. E. 941; an automobile, Ross v. Tabor, 53 Cal. App. 605, 200 P. 971, 973; a telephone lineman's safety belt, Boone v. Lohr, 172 Iowa, 440, 154 N. W. 591, 592; and a plank on which a painting foreman was working, Peterson v. Beck, 27 Cal. App. 571, 150 P. 788, 789; but not, however, to a station water tank, rope, or scaffold used thereon, by a painter, McFarland v. Chesapeake & O. Ry. Co., 177 Ky. 551, 197 S. W. 944, 947; nor to a moving picture machine, Balcom v. Ellintuch & Yarfitz, 179 App. Div. 548, 166 N. Y. S. 841, 842; nor the steps of a caboose, Cincinnati, N. O. & T. P. Ry. Co. v. Goldston, 163 Ky. 42, 173 S. W. 161, 162.

APPLICABLE. Fit, suitable, pertinent, or appropriate. Thomas v. City of Huntington, 80 Ind. App. 476, 141 N. E. 358, 359. Brought into actual contact with. People v. Buffalo Cold Storage Co., 185 N. Y. S. 790, 794, 113 Misc. Rep. 479.

When a constitution or court declares that the common law is in force in a particular state so far as it is *applicable*, it is meant that it must be applicable to the habits and conditions of the community, as well as in harmony with the genius, the spirit, and the objects of their institutions. Wagner v. Bissell, 3 Iowa, 402.

When a constitution prohibits the enactment of local or special laws in all cases where a general law would be *applicable*, a general law should always be construed to be applicable, in this sense, where the entire people of the state have an interest in the subject, such as regulating interest, statutes of frauds or limitations, etc. But where only a portion of the people are affected, as in locating a county-seat, it will depend upon the facts and circumstances of each particular case whether such a law would be applicable. Evans v. Job, 8 Nev. 322.

APPLICANT. An applicant, as for letters of administration, is one who is entitled thereto, and who files a petition asking that letters be granted. Jerauld v. Chambers, 44 Cal. App. 771, 187 P. 33.

APPLICARE. Lat. In old English law. To fasten to; to moor (a vessel.) Anciently rendered, "to apply." Hale, de Jure Mar.

Applicatio est vita regulæ. Application is the life of a rule. 2 Bulst. 79.

APPLICATION. A putting to, placing before, preferring a request or petition to or before a person. The act of making a request for something. See Zilch v. Bomgardner, 91 Ohio St. 205, 110 N. E. 459, 460; Newhall Land & Farming Co. v. Industrial Accident Commission, 57 Cal. App. 115, 206 P. 769, 771; In re Naturalization of Subjects of Germany (D. C.) 242 F. 971, 973; In re Meyer, 166 N. Y. S. 505, 100 Misc. Rep. 587.

A written request to have a certain quantity of land at or near a certain specified place. Biddle v. Dougal, 5 Bin. (Pa.) 151.

A petition. Scott v. Strobach, 49 Ala. 477, 489. And see Gardner v. Goodner Wholesale Grocery Co., 113 Tex. 423, 256 S. W. 911, 913.

The use or disposition made of a thing.

A bringing together, in order to ascertain some relation or establish some connection; as the *application* of a rule or principle to a case or fact.

In Insurance

The preliminary request, declaration, or statement made by a party applying for an insurance policy, such as one on his life, or against fire. Whipple v. Prudential Ins. Co. of America, 222 N. Y. 30, 118 N. E. 211, 212.

Of Purchase Money

The disposition made of the funds received by a trustee on a sale of real estate held under the trust.

Of Payments

Appropriation of a payment to some particular debt; or the determination to which of several demands a general payment made by a debtor to his creditor shall be applied.

APPLY. To make a formal request or petition, usually in writing, to a court, officer, board, or company, for the granting of some favor, or of some rule or order, which is within his or their power or discretion. For example, to apply for an injunction, for a pardon, for a policy of insurance, or for a receiver. In re Bucyrus Road Machinery Co. (C. C. A.) 10 F.(2d) 333, 334.

To use or employ for a particular purpose; to appropriate and devote to a particular use, object, demand, or subject-matter. Thus, to apply payments to the reduction of interest. Foley v. Hastings, 107 Conn. 9, 139 A. 305, 306. See Appropriate.

To put, use, or refer, as suitable or relative; to co-ordinate language with a particular subject-matter; as to apply the words of a statute to a particular state of facts.

The word "apply" is used in connection with statutes in two senses. When construing a statute, in describing the class of persons, things, or functions which are within its scope; as that the statute does not "apply" to transactions in interstate commerce. When discussing the use made of a statute, in referring to the process by which the statute is made operative; as where the jury is told to "apply" the statute of limitation if they find that the cause of action arose before a given date. Brandeis, J., dissenting in Dahnke-Walker Milling Co. v. Bondurant, 257 U. S. 282, 42 S. Ct. 106, 110, *n.* 66 L. Ed. 239.

APPOINT. To designate, ordain, prescribe, nominate. People v. Fitzsimmons, 68 N. Y. 519; Cunio v. Franklin County, 315 Mo. 405, 285 S. W. 1007, 1008; Santa Barbara County v. Janssens, 117 Cal. 114, 169 P. 1025, 1027, L. R. A. 1918C, 558; Rhodes v. City of Tacoma, 97 Wash. 341, 166 P. 647. To allot, set apart. Heisler v. Robbins, 17 Ariz. 429, 153 P. 771, 772.

"Appoint" is used where exclusive power and authority is given to one person, officer, or body to name persons to hold certain offices. State v. Doss, 102 W. Va. 162, 134 S. E. 749. It is usually distinguished from "elect," meaning to choose by a vote of the qualified voters of the city. State ex rel. Smith v. Bowman, 170 S. W. 700, 701, 184 Mo. App. 549. But the distinction is not invariably observed. Schaffner v. Shaw, 191 Iowa, 1047, 180 N. W. 853, 854.

APPOINTEE. A person who is appointed or selected for a particular purpose; as the appointee under a power is the person who is to receive the benefit of the power.

APPOINTMENT.

In Chancery Practice

The exercise of a right to designate the person or persons who are to take the use of real estate. 2 Washb. Real Prop. 302; Merchants' Loan & Trust Co. v. Patterson, 308 Ill. 519, 139 N. E. 912, 919.

The act of a person in directing the disposition of property, by limiting a use, or by substituting a new use for a former one, in pursuance of a power granted to him for that purpose by a preceding deed, called a "power of appointment;" also the deed or other instrument by which he so conveys.

Where the power embraces several permitted objects, and the appointment is made to one or more of them, excluding others, it is called "exclusive."

Appointment may signify an appropriation of money to a specific purpose. Harris v. Clark, 3 N. Y. 93, 119, 51 Am. Dec. 352. See Illusory Appointment.

In Public Law

The selection or designation of a person, by the person or persons having authority therefor, to fill an office or public function

and discharge the duties of the same. State v. New Orleans, 41 La. Ann. 156, 6 So. 592; Wickersham v. Brittan, 93 Cal. 34, 28 P. 792, 15 L. R. A. 106; Speed v. Crawford, 3 Metc. (Ky.) 210; State v. Braman, 173 Wis. 596, 181 N. W. 729, 730.

The term "appointment" is to be distinguished from "election." The former is an executive act, whereby a person is named as the incumbent of an office and invested therewith, by one or more individuals who have the sole power and right to select and constitute the officer. Election means that the person is chosen by a principle of selection in the nature of a vote, participated in by the public generally or by the entire class of persons qualified to express their choice in this manner. See McPherson v. Blacker, 146 U. S. 1, 13 Sup. Ct. 3, 36 L. Ed. 869; State v. Compson, 34 Or. 25, 54 Pac. 349; Reid v. Gorsuch, 67 N. J. Law, 396, 51 A. 457; State v. Squire, 39 Ohio St. 197; State v. Williams, 60 Kan. 837, 58 P. 476; Town of Nortonville v. Woodward, 191 Ky. 730, 231 S. W. 224; Mono County v. Industrial Acc. Commission, 175 Cal. 752, 167 P. 377, 378.

"Appointment" may also mean the arranging of a meeting. Spears v. State, 89 Tex. Cr. R. 459, 232 S. W. 326, 328.

APPOINTOR. The person who appoints, or executes a power of appointment; as *appointee* is the person to whom or in whose favor an appointment is made. 1 Steph. Comm. 506, 507; 4 Kent, Comm. 316.

One authorized by the donor, under the statute of uses, to execute a power. 2 Bouv. Inst. n. 1923.

The appointor is the instrument of the donor of the power, and the appointee takes under the original will or instrument which creates the trust, and not from the donee of the power. Barret v. Berea College, 48 R. I. 258, 137 A. 145, 147.

APPORT. L. Fr. In old English law. Tax; tallage; tribute; imposition; payment; charge; expenses. Kelham.

APPORTION. To divide and distribute proportionally. School Dist. No. 3, Platte County, v. School Dist. No. 2, Platte County, 29 Wyo. 80, 210 P. 562.

APPORTIONMENT. The division, partition, or distribution of a subject-matter in proportionate parts. Co. Litt. 147; 1 Swanst. 37, n.; 1 Story, Eq. Jur. 475*a*; Hunt v. Callaghan, 32 Ariz. 235, 257 P. 648, 649.

Of Contracts

The allowance, in case of a severable contract, partially performed, of a part of the entire consideration proportioned to the degree in which the contract was carried out.

Of Rent

The allotment of their shares in a rent to each of several parties owning it. The determination of the amount of rent to be paid when the tenancy is terminated at some period other than one of the regular intervals for the payment of rent. Swint v. McCalmont Oil Co., 184 Pa. 202, 38 A. 1021, 63 Am. St. Rep. 791; Gluck v. Baltimore, 81 Md. 315, 32 A. 515, 48 Am. St. Rep. 515.

Of Incumbrances

Where several persons are interested in an estate, apportionment, as between them, is the determination of the respective amounts which they shall contribute towards the removal of the incumbrance.

Of Corporate Shares

The *pro tanto* division among the subscribers of the shares allowed to be issued by the charter, where more than the limited number have been subscribed for. Clarke v. Brooklyn Bank, 1 Edw. Ch. (N. Y.) 368; Haight v. Day, 1 Johns. Ch. (N. Y.) 18.

Of Common

A division of the right of common between several persons, among whom the land to which, as an entirety, it first belonged has been divided.

Of Representatives

The determination upon each decennial census of the number of representatives in congress which each state shall elect, the calculation being based upon the population. See Const. U. S. art. 1, § 2; Amend. 14, § 2.

Of Taxes

The apportionment of a tax consists in a selection of the subjects to be taxed, and in laying down the rule by which to measure the contribution which each of these subjects shall make to the tax. Barfield v. Gleason, 111 Ky. 491, 63 S. W. 964.

APPORTS EN NATURE. In French law. That which a partner brings into the partnership other than cash; for instance, securities, realty or personalty, cattle, stock, or even his personal ability and knowledge. Argl. Fr. Merc. Law, 545.

APPORTUM. In old English law. The revenue, profit, or emolument which a thing brings to the owner. Commonly applied to a corody or pension. Blount.

APPOSAL OF SHERIFFS. The charging them with money received upon their account in the exchequer. St. 22 & 23 Car. II.; Cowell.

APPOSER. An officer in the exchequer, clothed with the duty of examining the sheriffs in respect of their accounts. Usually called the "foreign apposer." Termes de la Ley. The office is now abolished.

APPOSTILLE, or APOSTILLE. In French law, an addition or annotation made in the margin of a writing. Merl. Répert.

APPRAISAL. A valuation or an estimation of value of property by two disinterested persons of suitable qualifications. Jacobs v. Schmidt, 231 Mich. 200, 203 N. W. 845, 846.

APPRAISE. In practice. To fix or set a price or value upon; to fix and state the true value of a thing, and, usually, in writing. Vincent v. German Ins. Co., 120 Iowa, 272, 94 N. W. 458. To value property at what it is worth. Tax Commission of Ohio v. Clark, 20 Ohio App. 166, 151 N. E. 780, 781. In a statute directing officers to "appraise all taxable property *at its full and true value in money*," the words italicized add nothing to the meaning of the statute; Cocheco Mfg. Co. v. Strafford, 51 N. H. 455, 482.

To "appraise" money means to count. In re Hollinger's Estate, 259 Pa. 72, 102 A. 409.

APPRAISEMENT. A just and true valuation of property. A valuation set upon property under judicial or legislative authority. Cocheco Mfg. Co. v. Strafford, 51 N. H. 482. A valuation or estimation of the value of property. Littlehead v. Sheppard, 123 Okl. 29, 251 P. 60, 62.

An "arbitration" presupposes a controversy or difference to be decided, and the arbitrators proceed in a judicial way. On the other hand, an appraisal or valuation is generally a mere auxiliary feature of a contract of sale, the purpose of which is not to adjudicate a controversy but to avoid one. Thompson v. Newman, 36 Cal. App. 248, 171 P. 982, 983.

APPRAISER. A person appointed by competent authority to make an appraisement, to ascertain and state the true value of goods or real estate.

The title of "appraiser" carries with it a significance that he is to be the judge of the evidence he desires submitted to him on the question of valuation, in cases fairly treated by him. In re Gibert's Estate, 160 N. Y. S. 213, 214, 96 Misc. Rep. 401.

General Appraisers

Appraisers appointed under an act of congress to afford aid and assistance to the collectors of customs in the appraisement of imported merchandise. Gibb v. Washington, 10 Fed. Cas. 288.

Merchant Appraisers

Where the appraisement of an invoice of imported goods made by the revenue officers at the custom house is not satisfactory to the importer, persons may be selected (under this name) to make a definitive valuation; they must be merchants engaged in trade. Auffmordt v. Hedden (C. C.) 30 Fed. 360; Oelberman v. Merritt (C. C.) 19 Fed. 408; s. c., 123 U. S. 356, 8 Sup. Ct. 151, 31 L. Ed. 164.

APPRECIABLE. Capable of being estimated; perceptible. Fisher v. Los Angeles Pacific Co., 21 Cal. App. 677, 132 P. 767, 769. See Stodder v. Rosen Talking Mach. Co., 247 Mass. 60, 141 N. E. 569, 571. As used in a decree enjoining operation of a cotton oil mill in such manner as to throw out lint in "appreciable" quantities, "appreciable" may be practically synonymous with unreasonable. Buckeye Cotton Oil Co. v. Ragland (C. C. A.) 11 F.(2d) 231, 234.

APPRECIATE. To estimate justly; to set a price or value on. Holmes v. Connell's Estate, 207 Mich. 663, 175 N. W. 148, 149; Brace v. Black, 125 Ill. 33, 17 N. E. 66. When used with reference to the nature and effect of an act, "appreciate" may be synonymous with "know" or "understand." Western Indemnity Co. v. MacKechnie (Tex. Civ. App.) 214 S. W. 456, 460.

APPRECIATION IN VALUE. Appreciation in the value of property has reference to the so-called unearned increment, and does not include that added value of the property made by extensions and permanent improvements. People ex rel. Adirondack Power & Light Corporation v. Public Service Commission, 193 N. Y. S. 186, 189, 200 App. Div. 268.

APPREHEND. To take hold of, whether with the mind, and so to conceive, believe, fear, dread, Trogdon v. State, 133 Ind. 1, 32 N. E. 725; or actually and bodily, and so to take a person on a criminal process; to seize; to arrest, Hogan v. Stophlet, 179 Ill. 150, 53 N. E. 604, 44 L. R. A. 809.

To understand. Golden v. State, 25 Ga. 527, 531. To be conscious or sensible of. Collins v. Liddle, 67 Utah, 242, 247 P. 476, 479.

APPREHENSIO. Lat. In the civil and old English law. A taking hold of a person or thing; apprehension; the seizure or capture of a person. Calvin.

One of the varieties or subordinate forms of *occupatio*, or the mode of acquiring title to things not belonging to any one.

APPREHENSION.

In Practice

The seizure, taking, or arrest of a person on a criminal charge. The term "apprehension" is applied exclusively to criminal cases, and "arrest" to both criminal and civil cases. Cummings v. Clinton County, 181 Mo. 162, 79 S. W. 1127; Ralls County v. Stephens, 104 Mo. App. 115, 78 S. W. 291; Hogan v. Stophlet, 179 Ill. 150, 53 N. E. 604, 44 L. R. A. 809; People v. Martin, 188 Cal. 281, 205 P. 121, 123, 21 A. L. R. 1399.

In the Civil Law

A physical or corporal act, (*corpus*,) on the part of one who intends to acquire possession of a thing, by which he brings himself into such a relation to the thing that he may subject it to his exclusive control; or by which he obtains the physical ability to exercise his power over the thing whenever he pleases. One of the requisites to the acquisition of ju-

dicial possession, and by which, when accompanied by intention, (*animus,*) possession is acquired. Mackeld. Rom. Law, §§ 248, 249, 250.

APPRENDRE. A fee or profit taken or received. Cowell.

APPRENTICE. A person, usually a minor, bound in due form of law to a master, to learn from him his art, trade, or business, and to serve him during the time of his apprenticeship. 1 Bl. Comm. 426; 2 Kent, Comm. 211; 4 Term, 735. Altemus v. Ely, 3 Rawle (Pa.) 307; In re Goodenough, 19 Wis. 274; Phelps v. Railroad Co., 99 Pa. 113; Lyon v. Whitemore, 3 N. J. Law, 845; Delaware, L. & W. R. Co. v. Petrowsky (C. C. A.) 250 F. 554, 560; City of St. Louis v. Bender, 248 Mo. 113, 154 S. W. 88, 89, 44 L. R. A. (N. S.) 1072.

APPRENTICE EN LA LEY. An ancient name for students at law, and afterwards applied to counsellors, *apprentici ad barras*, from which comes the more modern word "barrister." In some of the ancient law-writers the terms apprentice and barrister are synonymous. Co. 2d Inst. 214; Eunomus, Dial. 2, § 53, p. 155.

APPRENTICESHIP. A contract by which one person, usually a minor, called the "apprentice," is bound to another person, called the "master," to serve him during a prescribed term of years in his art, trade, or business, in consideration of being instructed by the master in such art or trade, and (commonly) of receiving his support and maintenance from the master during such term.

The term during which an apprentice is to serve.

The *status* of an apprentice; the relation subsisting between an apprentice and his master.

APPRENTICIUS AD LEGEM. An apprentice to the law; a law student; a counsellor below the degree of serjeant; a barrister. See Apprentice en la Ley.

APPRIZING. In Scotch law. A form of process by which a creditor formerly took possession of the estates of the debtor in payment of the debt due. It is now superseded by adjudications.

APPROACH. To come nearer in space. Pezzoni v. Pezzoni, 38 Cal. App. 209, 175 P. 801, 802; Lawrence v. Goodwill, 44 Cal. App. 440, 186 P. 781, 785; Weber v. Greenebaum, 270 Pa. 382, 113 A. 413, 414. Thus, an "approaching" street car is one coming near to, in point of time and place. Ruffin Coal & Transfer Co. v. Rich, 214 Ala. 622, 108 So. 600, 602.

APPROACH, RIGHT OF. In international law. The right of a ship of war, upon the high sea, to draw near to another vessel for the purpose of ascertaining the nationality of the latter. The Marianna Flora, 11 Wheat. (U. S.) 43, 44, 6 L. Ed. 405. Kent understood it to be equivalent to the right of visit. 1 Kent, Comm. 153. And at present the right of approach has no existence apart from the right of visit.

APPROACHES. The "approaches" to a bridge or viaduct may include embankments, grades, or structures of any sort serving as a passage or way. Henderson County v. Chicago, B. & Q. R. Co., 320 Ill. 608, 151 N. E. 542, 545; Starrett v. Inhabitants of Town of Thomaston, 126 Me. 205, 137 A. 67, 70. That part of the roadway which is essential to make the bridge accessible and convenient for public use. Person v. Polk County, 193 Iowa, 733, 185 N. W. 491, 492. Compare State v. Great Northern Ry. Co., 136 Minn. 164, 161 N. W. 506, 508; In re Rosedale Ave. in City of New York, 162 N. Y. S. 877, 885, 175 App. Div. 864. The "approaches" to a rapid transit railway tunnel 60 feet below the surface may include elevators. City of Boston v. Boston Elevated Ry. Co., 213 Mass. 407, 100 N. E. 601, 603.

APPROBATE AND REPROBATE. In Scotch law. To approve and reject; to attempt to take advantage of one part, and reject the rest. Bell. Equity suffers no person to *approbate and reprobate* the same deed. 1 Kames, Eq. 317; 1 Bell, Comm. 146. The doctrine of *approbate and reprobate* is the English doctrine of election.

APPROPRIATE. To make a thing one's own; to make a thing the subject of property; to exercise dominion over an object to the extent, and for the purpose, of making it subserve one's own proper use or pleasure. Newhouse v. First Nat. Bank (D. C.) 13 F.(2d) 887, 889; People v. Ashworth, 222 N. Y. S. 24, 27, 220 App. Div. 498. The term is properly used in this sense to denote the acquisition of property and a right of exclusive enjoyment in those things which before were without an owner or were *publici juris.* United States v. Nicholson (D. C.) 12 Fed. 522; Wulzen v. San Francisco, 101 Cal. 15, 35 Pac. 353, 40 Am. St. Rep. 17; People v. Lammerts, 164 N. Y. 137, 58 N. E. 22.

Under a statute punishing any officer of a corporation who fraudulently appropriates the money of the corporation, "appropriates" embraces every mode by which an officer fraudulently or unlawfully obtains the property of the corporation. Commonwealth v. Dow, 217 Mass. 473, 105 N. E. 995, 996, And under similar statutes, it may be synonymous with "convert." State v. Hoff, 29 N. D. 412, 150 N. W. 929, 930.

To destroy property is to "appropriate" it within the meaning of a constitutional prohibition against taking private property for public use without just compensation. Little Falls Fibre Co. v. Henry Ford & Son, 217 N. Y. S. 534, 540, 127 Misc. Rep. 834. See, also, American Woolen Co. v. State, 211 N. Y. S. 149, 166, 125 Misc. Rep. 186.

To prescribe a particular use for particular moneys; to designate or destine a fund or property for a distinct use, or for the payment of a particular demand. Whitehead v. Gibbons, 10 N. J. Eq. 235; State v. Bordelon, 6 La. Ann. 68; Western Union Telegraph Co. v. Buchanan (Tex. Civ. App.) 248 S. W. 68, 70.

In its use with reference to payments or moneys, there is room for a distinction between this term and "apply." The former properly denotes the setting apart of a fund or payment for a particular use or purpose, or the mental act of resolving that it shall be so employed, while "apply" signifies the actual expenditure of the fund, or using the payment, for the purpose to which it has been appropriated. Practically, however, the words are used interchangeably.

To allot, assign, or set apart, or apply to a particular use or purpose. Jennings v. Kinsey, 308 Mo. 265, 271 S. W. 786, 787.

Where a sale is of goods not specified at the time the contract is made, the goods are said to be "appropriated" to the contract when they are identified and applied irrevocably to the contract. E. L. Welch Co. v. Lahart Elevator Co., 122 Minn. 432, 142 N. W. 828, 830.

Also used in the sense of distribute; in this sense it may denote the act of an executor or administrator who distributes the estate of his decedent among the legatees, heirs, or others entitled, in pursuance of his duties and according to their respective rights.

APPROPRIATION. The act of appropriating or setting apart; prescribing the destination of a thing; designating the use or application of a fund.

In Public Law

The act by which the legislative department of government designates a particular fund, or sets apart a specified portion of the public revenue or of the money in the public treasury, to be applied to some general object of governmental expenditure, (as the civil service list, etc.,) or to some individual purchase or expense. State v. Moore, 50 Neb. 88, 69 N. W. 373, 61 Am. St. Rep. 538; Clayton v. Berry, 27 Ark. 129; State v. Carter, 31 Wyo. 401, 226 P. 690, 693; Blaine County Inv. Co. v. Gallet, 35 Idaho, 102, 204 P. 1066, 1067. An element of the definition of "appropriation" is that the money appropriated be out of the general revenues of the state. Black and White Taxicab Co. v. Standard Oil Co., 25 Ariz. 381, 218 P. 139, 144. An "expenditure" is the expending, a laying out of money, disbursement, and is not the same as an "appropriation," the setting apart or assignment to a particular person or use. Grout v. Gates, 97 Vt. 434, 124 A. 76, 80.

When money is appropriated (*i. e.*, set apart) for the purpose of securing the payment of a specific debt or class of debts, or for an individual purchase or object of expense, it is said to be specifically appropriated for that purpose.

A specific appropriation is an act of the legislature by which a named sum of money has been set apart in the treasury, and devoted to the payment of a particular demand. Stratton v. Green, 45 Cal. 149.

In General

—Appropriation of land. The act of selecting, devoting, or setting apart land for a particular use or purpose, as where land is appropriated for public buildings, military reservations, or other public uses. McSorley v. Hill, 2 Wash. St. 638, 27 Pac. 552; Murdock v. Memphis, 7 Cold. (Tenn.) 500; Jackson v. Wilcox, 2 Ill. 360. Sometimes also applied to the taking of private property for public use in the exercise of the power of eminent domain. Railroad Co. v. Foltz (C. C.) 52 Fed. 629; Sweet v. Rechel, 159 U. S. 380, 16 Sup. Ct. 43, 40 L. Ed. 188; N. Ward Co. v. Board of Street Com'rs of City of Boston, 217 Mass. 381, 104 N. E. 965, 966. In this sense it may refer merely to physical occupation and contemplate payment prior thereto, in contradistinction to "taking," referring to a legal taking and presupposing payment after damages are due. Keller v. City of Bridgeport, 101 Conn. 669, 127 A. 508, 511.

"Appropriation" under the Civil Code has been said to be but another form of prescription. City of San Bernardino v. City of Riverside, 186 Cal. 7, 198 P. 784, 787.

—Appropriation of payments. This means the application of a payment to the discharge of a particular debt. Thus, if a creditor has two distinct debts due to him from his debtor, and the latter makes a general payment on account, without specifying at the time to which debt he intends the payment to apply, it is optional for the creditor to *appropriate* (apply) the payment to either of the two debts he pleases. Gwin v. McLean, 62 Miss. 121; Martin v. Draher, 5 Watts (Pa.) 544.

—Appropriation of water. An appropriation of water flowing on the public domain consists in the capture, impounding, or diversion of it from its natural course or channel and its actual application to some beneficial use private or personal to the appropriator, to the entire exclusion (or exclusion to the extent of the water appropriated) of all other persons. To constitute a valid appropriation, there must be an intent to apply the water to some beneficial use existing at the time or contemplated in the future, a diversion from the natural channel by means of a ditch or canal, or some other open physical act of taking possession of the water, and an actual application of it within a reasonable time to some useful or beneficial purpose. Murphy v. Kerr (D. C.) 296 F. 536, 542; Snow v. Abalos, 18 N. M. 681, 140 P. 1044, 1048; In re Water Rights in Silvies River, 115 Or. 27, 237 P. 322, 336; Low v. Rizor, 25 Or. 551, 37 Pac.

82; Clough v. Wing, 2 Ariz. 371, 17 Pac. 453; Offield v. Ish, 21 Wash. 277, 57 Pac. 809; Reservoir Co. v. People, 8 Colo. 614, 9 Pac. 794; McCall v. Porter, 42 Or. 49, 70 Pac. 820; McDonald v. Mining Co., 13 Cal. 220.

In English Ecclesiastical Law

The perpetual annexing of a benefice to some spiritual corporation either sole or aggregate, being the patron of the living. 1 Bl. Comm. 384; 3 Steph. Comm. 70–75; 1 Crabb, Real Prop. p. 144, § 129. Where the annexation is to the use of a lay person, it is usually called an "impropriation" (*q. v.*). 1 Crabb, Real Prop. p. 145, § 130. There have been no appropriations since the dissolution of monasteries.

APPROPRIATOR. One who makes an appropriation; as, an appropriator of water. Lux v. Haggin, 69 Cal. 255, 10 Pac. 736.

In English Ecclesiastical Law

A spiritual corporation entitled to the profits of a benefice.

APPROVAL. The act of confirming, ratifying, sanctioning, or consenting to some act or thing done by another. Melton v. Cherokee Oil & Gas Co., 67 Okl. 247, 170 P. 691, 697; Ellison v. Oliver, 147 Ark. 252, 227 S. W. 586, 588; Rooney v. South Sioux City, 111 Neb. 1, 195 N. W. 474, 475. "Approval" implies knowledge and exercise of discretion after knowledge. State v. Duckett, 133 S. C. 85, 130 S. E. 340, 342.

The act of a judge or magistrate in sanctioning and accepting as satisfactory a bond, security, or other instrument which is required by law to pass his inspection and receive his approbation before it becomes operative.

APPROVE. To confirm, ratify, sanction, or consent to some act or thing done by another. Board of Education of City of Hutchinson v. Reno Community High School, 124 Kan. 175, 257 P. 957, 959; Tibbens v. Clayton (D. C.) 288 F. 393, 394. "Approve" is therefore distinguishable from "authorize," meaning to permit a thing to be done in future. Gray v. Gill, 210 N. Y. S. 658, 660, 125 Misc. 70.

The act of approval "imports the act of passing judgment, the use of discretion, and the determination as a deduction therefrom"; to confirm, ratify, sanction, or consent to some act or thing done by another.

To regard or pronounce as good; think or judge well of; to be pleased with; commend. Melton v. Cherokee Oil & Gas Co., 67 Okl. 247, 170 P. 691, 697.

"Approve" often implies the exercise of sound judgment or discretion; Cunningham v. Commissioner of Banks, 249 Mass. 401, 144 N. E. 447, 455; Key v. Board of Education of Granville County, 170 N. C. 123, 86 S. E. 1002, 1003; but not necessarily so; Better Built Homes & Mortgage Co. v. Nolte, 211 Mo. App. 601, 249 S. W. 743, 745.

To take to one's proper and separate use. To improve; to enhance the value or profits of anything. To inclose and cultivate common or waste land.

To *approve common* or waste land is to inclose and convert it to the purposes of husbandry, which the owner might always do, provided he left common sufficient for such as were entitled to it. St. Mert. c. 4; St. Westm. 2, c. 46; 2 Bl. Comm. 34; 3 Bl. Comm. 240; 2 Steph. Comm. 7; 3 Kent, Comm. 406.

In Old Criminal Law

To accuse or prove; to accuse an accomplice by giving evidence against him.

APPROVED INDORSED NOTES. Notes indorsed by another person than the maker, for additional security, the indorser being satisfactory to the payee. Mills v. Hunt, 20 Wend. (N. Y.) 431.

APPROVEMENT. By the common law, approvement is said to be a species of confession, and incident to the arraignment of a prisoner indicted for treason or felony, who confesses the fact before plea pleaded, and appeals or accuses others, his accomplices in the same crime, in order to obtain his own pardon. In this case he is called an "approver," or "prover," "probator," and the party appealed or accused is called the "appellee." Such approvement can only be in capital offenses, and it is, as it were, equivalent to an indictment, since the appellee is equally called upon to answer it. Gray v. People, 26 Ill. 344; Whiskey Cases, 99 U. S. 599, 25 L. Ed. 399; State v. Graham, 41 N. J. Law, 15, 32 Am. Rep. 174.

APPROVER. L. Fr. To approve or prove; to vouch. Kelham.

APPROVER, *n.*

In Real Property Law

Approvement; improvement. "There can be no *approver* in derogation of a right of common of turbary." 1 Taunt. 435.

In Criminal Law

An accomplice in crime who accuses others of the same offense, and is admitted as a witness at the discretion of the court to give evidence against his companions in guilt. He is vulgarly called "King's Evidence."

He is one who confesses himself guilty of felony and accuses others of the same crime to save himself from punishment. Myers v. People, 26 Ill. 175. See Antithetarius. By the old law, if he failed to convict those he accused he was at once hung. It is said that they usually failed. 1 Pike, Hist. of Cr. 286.

In Old English Law

Certain men sent into the several counties to increase the farms (rents) of hundreds and wapentakes, which formerly were let at a certain value to the sheriff. Cowell.

Bailiffs of lords in their franchises. Sheriffs were called the king's "approvers" in 1 Edw. III. st. 1, c. 1. Termes de la Ley, 49.

Approvers in the Marches were those who had license to sell and purchase beasts there.

APPROXIMATE. Used in the sense of an estimate merely, meaning more or less, but about and near the amount, quantity, or distance specified. Ross v. Keaton Tire & Rubber Co., 57 Cal. App. 50, 206 P. 645, 646; Stockburger v. Brooker, 33 Ga. App. 676, 127 S. E. 663. Near to; about; a little more or less; close. Kleiman v. Orion Knitting Mills, 139 Md. 550, 115 A. 857, 858; Texas Employers' Ins. Ass'n v. Fitzgerald (Tex. Civ. App.) 292 S. W. 925, 927. But where blueprints furnished prospective bidders on municipal bridge construction show depth of bed rock at a certain number of feet "approximate," such word covers only negligible deviations from entire accuracy, and not substantial variations. City of Richmond v. I. J. Smith & Co., 119 Va. 198, 89 S. E. 123, 126. "Approximately" is very nearly synonymous with "proximately," and an instruction on the causal relation between the injury and the alleged negligence, though using the former instead of the latter, is not prejudicially erroneous. P. B. Arnold Co. v. Buchanan, 60 Ind. App. 626, 111 N. E. 204, 207.

APPRUARE. To take to one's use or profit. Cowell.

APPULSUS. In the civil law. A driving to, as of cattle to water. Dig. 8, 3, 1, 1.

APPURTENANCE. That which belongs to something else; an adjunct; an appendage; something annexed to another thing more worthy as principal, and which passes as incident to it, as a right of way or other easement to land; an out-house, barn, garden, or orchard, to a house or messuage. Cohen v. Whitcomb, 142 Minn. 20, 170 N. W. 851, 852; Foil v. Board of Drainage Com'rs of Big Cold Water Drainage Dist. No. 1 of Cabarrus County, 192 N. C. 652, 135 S. E. 781, 782; First Nat. Bank v. Labit, 161 La. 719, 109 So. 400; Dixson v. Ladd, 32 S. D. 163, 142 N. W. 259, 260, 46 L. R. A. (N. S.) 206, Ann. Cas. 1916A, 253; Clark v. Koesheyan, 26 Cal. App. 305, 146 P. 904, 905; Meek v. Breckenridge, 29 Ohio St. 642; Harris v. Elliott, 10 Pet. 54, 9 L. Ed. 333; Humphreys v. McKissock, 140 U. S. 304, 11 Sup. Ct. 779, 35 L. Ed. 473; Farmer v. Water Co., 56 Cal. 11.

Appurtenances of a ship include whatever is on board a ship for the objects of the voyage and adventure in which she is engaged, belonging to her owner, such as boats and cable; Briggs v. Strange, 17 Mass. 405; a rudder and cordage; 5 B. & Ald. 942; fishing-stores; chronometers.

Appurtenant is substantially the same in meaning as *accessory*, but it is more technically used in relation to property, and is the more appropriate word for a conveyance, being employed in leases for the purpose of including any easements or servitudes used or enjoyed with the demised premises. Riddle v. Littlefield, 53 N. H. 508, 16 Am. Rep. 388. It includes the opportunity to look through a window, and obtain light and air from it. Agalias v. Hirschfield, 99 N. J. Eq. 622, 133 A. 526, 528.

Real property cannot be appurtenant to real property. Hurley v. Liberty Lake Co., 112 Wash. 207, 192 P. 4, 5.

APPURTENANT. Belonging to; accessory or incident to; adjunct, appended, or annexed to; answering to *accessorium* in the civil law. 2 Steph. Comm. 30 note.

A thing is deemed to be incidental or *appurtenant* to land when it is by right used with the land for its benefit, as in the case of a way, or water-course, or of a passage for light, air, or heat from or across the land of another. Civil Code Cal. § 662. Mattix v. Swepston, 127 Tenn. 693, 155 S. W. 928, 930.

In common speech, appurtenant denotes annexed or belonging to; but in law it denotes an annexation which is of convenience merely and not of necessity, and which may have had its origin at any time, in both which respects it is distinguished from appendant (*q. v.*). Balcar v. Lee County Cotton Oil Co. (Tex. Civ. App.) 193 S. W. 1094, 1095.

APRAXIA. See Aphasia.

APROVECHAMIENTO. In Spanish law. Approvement, or improvement and enjoyment of public lands. As applied to pueblo lands, it has particular reference to the commons, and includes not only the actual enjoyment of them but a right to such enjoyment. Hart v. Burnett, 15 Cal. 530, 566.

APT. Fit; suitable; appropriate.

APT TIME. Apt time sometimes depends upon *lapse* of time; as, where a thing is required to be done at the first term, or within a given time, it cannot be done afterwards. But the phrase more usually refers to the *order* of proceedings, as fit or suitable. Pugh v. York, 74 N. C. 383.

APT WORDS. Words proper to produce the legal effect for which they are intended; sound technical phrases.

APTA VIRO. Fit for a husband; marriageable; a woman who has reached marriageable years.

APUD ACTA. Among the acts; among the recorded proceedings. In the civil law, this phrase is applied to appeals taken orally, in the presence of the judge, at the time of judgment or sentence. Credit Co., Ltd., v. Arkansas Cent. Ry. Co., 9 S. Ct. 107, 108, 128 U. S. 258, 32 L. Ed. 448.

AQUA. In the civil and old English law. Water; sometimes a stream or water-course.

AQUA ÆSTIVA. In Roman law. Summer water; water that was used in summer only. Dig. 43, 20, 1, 3, 4.

Aqua cedit solo. Water follows the land. A sale of land will pass the water which covers it. 2 Bl. Comm. 18; Co. Litt. 4.

AQUA CURRENS. Running water.

Aqua currit et debet currere, ut currere solebat. Water runs, and ought to run, as it has used to run. 3 Bulst. 339; 3 Kent, Comm. 439. A running stream should be left to flow in its natural channel, without alteration or diversion. A fundamental maxim in the law of water-courses.

AQUA DULCIS, or FRISCA. Fresh water. Reg. Orig. 97; Bract. fols. 117, 135.

AQUA FONTANEA. Spring water. Fleta, lib. 4, c. 27, § 8.

AQUA PROFLUENS. Flowing or running water. Dig. 1, 8, 2.

AQUA QUOTIDIANA. In Roman law. Daily water; water that might be drawn at all times of the year, (*qua quis quotidie possit uti, si vellet.*) Dig. 43, 20, 1–4.

AQUA SALSA. Salt water.

AQUÆ DUCTUS. In the civil law. A servitude which consists in the right to carry water by means of pipes or conduits over or through the estate of another. Dig. 8, 3, 1; Inst. 2, 3.

AQUÆ HAUSTUS. In the civil law. A servitude which consists in the right to draw water from the fountain, pool, or spring of another. Inst. 2, 3, 2; Dig. 8, 3, 1, 1.

AQUÆ IMMITTENDÆ. A civil law easement or servitude, consisting in the right of one whose house is surrounded with other buildings to cast waste water upon the adjacent roofs or yards. Similar to the common law easement of drip. Bellows v. Sackett, 15 Barb. (N. Y.) 96.

AQUAGIUM. A canal, ditch, or water course running through marshy grounds. A mark or gauge placed in or on the banks of a running stream, to indicate the height of the water, was called "*aquagaugium.*" Spelman.

AQUATIC RIGHTS. Rights which individuals have to the use of the sea and rivers, for the purpose of fishing and navigation, and also to the soil in the sea and rivers.

ARABANT. They plowed. A term of feudal law, applied to those who held by the tenure of plowing and tilling the lord's lands within the manor. Cowell.

ARAHO. In feudal law. To make oath in the church or some other holy place. All oaths were made in the church upon the relics of saints, according to the Ripuarian laws. Cowell; Spelman.

ARALIA. Plowlands. Land fit for the plow. Denoting the character of land, rather than its condition. Spelman.

ARATOR. A plowman; a farmer of arable land.

ARATRUM TERRÆ. In old English law. A plow of land; a plowland; as much land as could be tilled with one plow (or by a single "arator" or plowman). Whishaw.

ARATURA TERRÆ. The plowing of land by the tenant, or vassal, in the service of his lord. Whishaw.

ARATURIA. Land suitable for the plow; arable land. Spelman.

ARBITER. A person chosen to decide a controversy; an arbitrator, referee.

A person bound to decide according to the rules of law and equity, as distinguished from an arbitrator, who may proceed wholly at his own discretion, so that it be according to the judgment of a sound man. Cowell.

According to Mr. Abbott, the distinction is as follows: "Arbitrator" is a technical name of a person selected with reference to an established system for friendly determination of controversies, which, though not judicial, is yet regulated by law; so that the powers and duties of the arbitrator, when once he is chosen, are prescribed by law, and his doings may be judicially revised if he has exceeded his authority. "Arbiter" is an untechnical designation of a person to whom a controversy is referred, irrespective of any law to govern the decision; and is the proper word to signify a referee of a question outside of or above municipal law.

But it is elsewhere said that the distinction between arbiters and arbitrators is not observed in modern law. Russ. Arb. 112.

In the Roman Law

A judge invested with a discretionary power. A person appointed by the prætor to examine and decide that class of causes or actions termed "*bonæ fidei,*" and who had the power of judging according to the principles of equity, (*ex æquo et bono;*) distinguished from the *judex*, (*q. v.*,) who was bound to decide according to strict law. Inst. 4, 6, 30, 31.

ARBITRAGE. Transactions of bankers and mercantile houses by which stocks or bills are bought in one market and sold in another for the sake of the profit arising from a difference in price in the two markets.

ARBITRAMENT. The award or decision of arbitrators upon a matter of dispute, which has been submitted to them. Termes de da Ley.

ARBITRAMENT AND AWARD. A plea to an action brought for the same cause which had been submitted to arbitration and on which an award had been made. Wats. Arb. 256.

Arbitramentum æquum tribuit cuique suum. A just arbitration renders to every one his own. Noy, Max. 248.

ARBITRARILY. See Arbitrary. A finding that certain orders were "arbitrarily" given by an engineer in charge of a public improvement did not amount to a finding that they were given in bad faith, fraudulently, or through ignorance or incompetency. First Savings & Trust Co. v. Milwaukee County, 158 Wis. 207, 148 N. W. 22, 33.

ARBITRARINESS. Conduct or acts based alone upon one's will, and not upon any course of reasoning and exercise of judgment. Boyle v. Rock Island Coal Mining Co., 125 Okl. 137, 256 P. 883, 887.

ARBITRARY. Not supported by fair, solid, and substantial cause, and without reason given. Treloar v. Bigge, L. R. 9 Exch. 155; Thomas v. Mills, 117 Ohio St. 114, 157 N. E. 488, 490, 54 A. L. R. 1220. Not governed by any fixed rules or standard. People ex rel. Hultman v. Gilchrist, 188 N. Y. S. 61, 65, 114 Misc. 651. A discrimination is not arbitrary in a legislative sense unless it is outside of the wide discretion that the Legislature may exercise. State v. Cannon, 125 Wash. 515, 217 P. 18, 19. And see Birmingham Ry., Light & Power Co. v. Kyser, 203 Ala. 121, 82 So. 151, 155.

ARBITRARY GOVERNMENT. The difference between a free and an arbitrary government is that in the former limits are assigned to those to whom the administration is committed, but the latter depends on the will of the departments or some of them. Kamper v. Hawkins, 1 Va. Cas. 20, 23.

ARBITRARY POWER. Power to act according to one's own will; especially applicable to power conferred on an administrative officer, who is not furnished any adequate determining principle. Fox Film Corporation v. Trumbull (D. C.) 7 F.(2d) 715, 727.

ARBITRARY PUNISHMENT. That punishment which is left to the decision of the judge, in distinction from those defined by statute.

ARBITRATION. The investigation and determination of a matter or matters of difference between contending parties, by one or more unofficial persons, chosen by the parties, and called arbitrators, or referees. This definition was adopted in Temple v. Riverland Co. (Tex. Civ. App.) 228 S. W. 605, 608.

The submission of a disputed matter to selected parties and the substitution of their award or decision for the judgment of a court. Morgan v. Teel, 109 Okl. 17, 234 P. 200, 201. See, also, Fargo v. Reighard, 13 Ind. App. 39, 39 N. E. 888, 41 N. E. 74; Duren v. Getchell, 55 Me. 241; Henderson v. Beaton, 52 Tex. 43; Boyden v. Lamb, 152 Mass. 416, 25 N. E. 609; In re Curtis-Castle Arbitration, 64 Conn. 501, 30 A. 769, 42 Am. St. Rep. 200; Atlantic Fruit Co. v. Red Cross Line (D. C.) 276 F. 319; Red Cross Line v. Atlantic Fruit Co., 264 U. S. 109, 44 S. Ct. 274, 68 L. Ed. 582.

For cases decided under the United States Arbitration Act, 9 USCA, "Arbitration," enacted Feb. 12, 1925, see The Silverbrook (D. C.) 18 F.(2d) 144; The Fredensbro (D. C.) 18 F.(2d) 983; Danielsen v. Entre Rios Rys. Co. (D. C.) 22 F.(2d) 326.

Compulsory arbitration is that which occurs when the consent of one of the parties is enforced by statutory provisions. Wood v. City of Seattle, 23 Wash. 1, 62 Pac. 135, 52 L. R. A. 369.

Voluntary arbitration is by mutual and free consent of the parties.

The *submission* is an agreement by which parties agree to submit their differences to the decision of a referee or arbitrators. It is sometimes termed a reference. 3 M. & W. 816; McManus v. McCulloch, 6 Watts (Pa.) 357; Stewart v. Cass, 16 Vt. 663, 42 Am. Dec. 534; Howard v. Sexton, 4 N. Y. 157. As to "final submission," see In re Gitt, 125 N. Y. S. 369, 140 App. Div. 382.

In a wide sense, "arbitration" may embrace the whole method of thus settling controversies, and include all the various steps. But in a more strict use, the term denotes only the submission and hearing, the decision being separately spoken of, and called an "award." An award is the judgment or decision of arbitrators or referees on a matter submitted to them. It is also the writing containing such judgment. Cowell; *Termes de la Ley;* Jenk. 137. See Award.

As distinguished from appraisal, an arbitration presupposes a controversy or a difference to be tried and decided. On the other hand, an appraisal or valuation is generally a mere auxiliary feature, as of a contract of sale, the purpose of which is not to adjudicate a controversy but to avoid one. Thompson v. Newman, 171 P. 982, 983, 36 Cal. App. 248; Luedinghaus Lumber Co. v. Luedinghaus (C. C. A.) 299 F. 111, 113; Webster v. Van Allen, 216 N. Y. S. 552, 555, 217 App. Div. 219; Dworkin v. Caledonian Ins. Co., 235 Mo. 342, 226 S. W. 846, 848; Toledo S. S. Co. v. Zenith Transp. Co., 184 F. 391, 106 C. C. A. 501.

Arbitration strictly applies to cases where the parties agree beforehand to abide by the award, while "conciliation" is the term used where there is no agreement, but the efforts are made by some indifferent party as a mediator to promote an agreement between the parties.

With reference to labor matters, the investigation and determination of disputed matters between employers and employees (often called "labor arbitration"). As to federal legislation, which is necessarily limited to disputes affecting interstate commerce, see 45 USCA § 10 et seq.

ARBITRATION CLAUSE. A clause inserted in a contract providing for compulsory arbitration in case of dispute as to rights or liabilities under it; ineffectual if it purports to oust the courts of jurisdiction entirely. See Perry v. Cobb, 88 Me. 435, 34 A. 278, 49 L. R. A. 389.

ARBITRATION OF EXCHANGE. This takes place where a merchant pays his debts in one country by a bill of exchange upon another.

ARBITRATOR. A private, disinterested person, chosen by the parties to a disputed question, for the purpose of hearing their contention, and giving judgment between them; to whose decision (award) the litigants submit themselves either voluntarily, or, in some cases, compulsorily, by order of a court. Gordon v. U. S., 7 Wall. 195, 19 L. Ed. 35; Mobile v. Wood (C. C.) 95 Fed. 538; Burchell v. Marsh, 17 How. 349, 15 L. Ed. 96; Miller v. Canal Co., 53 Barb. (N. Y.) 595; Fudickar v. Insurance Co., 62 N. Y. 399.

"Referee" is of frequent modern use as a synonym of arbitrator, but is in its origin of broader signification and less accurate than arbitrator.

ARBITRIOS. In Spanish and Mexican law. Taxes imposed by municipalities on certain articles of merchandise, to defray the general expenses of government, in default of revenues from "proprios" (*q. v.*), i. e., lands owned by the municipality, or the income of which was legally set apart for its support. Sometimes used in a wider sense, as meaning the resources of a town, including its privileges in the royal lands as well as the taxes. Escriche Dict.; Sheldon v. Milmo, 90 Tex. 1, 36 S. W. 413.

ARBITRIUM. The decision of an arbiter, or arbitrator; an award; a judgment.

Arbitrium est judicium. An award is a judgment. Jenk. Cent. 137.

Arbitrium est judicium boni viri, secundum æquum et bonum. An award is the judgment of a good man, according to justice. 3 Bulst. 64.

ARBOR. Lat. A tree; a plant; something larger than an herb; a general term including vines, osiers, and even reeds. The mast of a ship. Brissonius. Timber. Ainsworth; Calvinus, Lex.

In a technological sense, "arbor" denotes the core consisting of an iron pipe over which is spread a thin coating of damp sand and which is inserted in the mold used in casting iron pipe. Casey-Hedges Co. v. Gates, 139 Tenn. 63, 201 S. W. 760, 761, L. R. A. 1918B, 184.

ARBOR CIVILIS. A genealogical tree. Coke, Inst.

ARBOR CONSANGUINITATIS. A table, formed in the shape of a tree, showing the genealogy of a family. See the *arbor civilis* of the civilians and canonists. Hale, Com. Law, 335.

Arbor dum crescit, lignum dum crescere nescit. [That which is] a tree while it grows, [is] wood when it ceases to grow. Cro. Jac. 166; Hob. 77*b*, in marg.

ARBOR FINALIS. In old English law. A boundary tree; a tree used for making a boundary line. Bract. fols. 167, 207*b*.

ARCA. Lat. In the civil law. A chest or coffer; a place for keeping money. Dig. 30, 30, 6; Id. 32, 64. Brissonius.

ARCANA IMPERII. State secrets. 1 Bl. Comm. 337.

ARCARIUS. In civil and old English law. A treasurer; a keeper of public money. Cod. 10, 70, 15; Spelman.

ARCHAIONOMIA. A collection of Saxon laws, published during the reign of Queen Elizabeth, in the Saxon language, with a Latin version by Lambard.

ARCHBISHOP. In English ecclesiastical law. The chief of the clergy in his province, having supreme power under the king or queen in all ecclesiastical causes. He has also his own diocese, in which he exercises episcopal jurisdiction, as in his province he exercises archiepiscopal authority. In England he is addressed as *Most Reverend.*

ARCHDEACON. A dignitary of the Anglican church who has ecclesiastical jurisdiction immediately subordinate to that of the bishop, either throughout the whole of his diocese or in some particular part of it. He is a ministerial officer; 1 Bla. Com. 383. He is addressed as *Venerable.*

ARCHDEACON'S COURT. In English ecclesiastical law. A court held before a judge appointed by the archdeacon, and called his official. Its jurisdiction comprises the granting of probates and administrations, and ecclesiastical causes in general, arising within the archdeaconry. It is the most inferior court in the whole ecclesiastical polity of England. 3 Bl. Comm. 64; 3 Steph. Comm. 430.

ARCHDEACONRY. A division of a diocese, and the circuit of an archdeacon's jurisdiction.

ARCHERY. In feudal law. A service of keeping a bow for the lord's use in the defense of his castle. Co. Litt. 157.

ARCHES COURT. In English ecclesiastical law. A court of appeal belonging to the Archbishop of Canterbury, the judge of which is called the "Dean of the Arches," because his court was anciently held in the church of Saint Mary-le-Bow, (*Sancta Maria de Arcubus,*) so named from the steeple, which is raised upon pillars built archwise. The court was formerly held in the hall belonging to the College of Civilians, commonly called "Doctors' Commons." It is now held in Westminster Hall. Its proper jurisdiction is only over the thirteen peculiar parishes belonging to the archbishop in London, but, the office of Dean of the Arches having been for a long time united with that of the archbishop's principal official, the Judge of the Arches, in right of such added office, it receives and determines appeals from the sentences of all infe-

rior ecclesiastical courts within the province. 3 Bl. Comm. 64.

ARCHETYPE. The original from which a copy is made.

ARCHICAPELLANUS. L. Lat. In old European law. A chief or high chancellor, (*summus cancellarius.*) Spelman.

ARCHITECT. One who makes plans and specifications for a building and superintends its construction. Payne v. De Vaughn, 77 Cal. App. 399, 246 P. 1069, 1071.

ARCHIVES. The Rolls; any place where ancient records, charters, and evidences are kept. In libraries, the private depository. Cowell; Spelman.

The derivative meaning of the word (now the more common) denotes the writings themselves thus preserved; thus we say the archives of a college, of a monastery, a public office, etc. Texas M. Ry. Co. v. Jarvis, 69 Tex. 537, 7 S. W. 210; Guillbeau v. Mays, 15 Tex. 410.

ARCHIVIST. The custodian of archives.

ARCTA ET SALVA CUSTODIA. Lat. In strict (or close) and safe custody or keeping. When a defendant is arrested on a *capias ad satisfaciendum*, (*ca. sa.*,) he is to be kept *arcta et salva custodi.* 3 Bl. Comm. 415.

ARDENT SPIRITS. Spirituous or distilled liquors. Sarlls v. U. S., 152 U. S. 570, 14 Sup. Ct. 720, 38 L. Ed. 556; U. S. v. Ellis (D. C.) 51 Fed. 808; State v. Townley, 18 N. J. Law, 311. State v. Centennial Brewing Co., 55 Mont. 500, 179 P. 296, 297. It has been held that this phrase, in a statute, does not include alcohol, which is not a liquor of any kind. State v. Martin, 34 Ark. 340. But under Laws Va. 1918, c. 388, §§ 1, 49, 58, liquids, mixtures, and preparations which will produce intoxication, as defined in the prohibition act, are "ardent spirits" condemned by the act whether or not they contain alcohol. Christian v. Commonwealth, 132 Va. 616, 111 S. E. 130; Bragg v. Commonwealth, 133 Va. 645, 112 S. E. 609, 610.

ARDOUR. In old English law. An incendiary; a house burner.

ARE, *n.* A surface measure in the French law, in the form of a square, equal to 1076.441 square feet.

ARE, *v.* The word "are," where the court charged, "But the law says you are to take his testimony in the light of the fact that he is a defendant and interested in the result," does not have the same force as the word "must." Williams v. State, 18 Ala. App. 473, 93 So. 57, 59.

AREA. An inclosed yard or opening in a house; an open place adjoining a house. 1 Chit. Pr. 176.

In the civil law. A vacant space in a city; a place not built upon. Dig. 50, 16, 211.

The site of a house; a site for building; the space where a house has stood. The ground on which a house is built, and which remains after the house is removed. Brissonius; Calvin.

"Area" in geometry means the superficial contents of any figure. State v. City of Polytechnic (Tex. Civ. App.) 194 S. W. 1136, 1140.

The word "area" has a somewhat elastic meaning. Originally it meant a broad piece of level ground, but in modern use it can mean any plane surface, the inclosed space on which a building stands, the sunken space or court giving ingress and affording light to the basement of a building, a particular extent of surface. State v. Armstrong, 97 Neb. 343, 149 N. W. 786, 788, Ann. Cas. 1917A, 554.

AREAL GEOLOGY. That branch of geology which pertains to the distribution, position, and form of the areas of the earth's surface, occupied by different sorts of rock or different geologic formations, and to the making of geologic maps. Lewis v. Carr, 49 Nev. 366, 246 P. 695, 696.

AREAWAY. As used in an ordinance regulating the construction of areaways under any sidewalk, "areaway" was equivalent to cellar or room under the sidewalk. State v. Armstrong, 97 Neb. 343, 149 N. W. 786, 788, Ann. Cas. 1917A, 554.

ARENALES. In Spanish law. Sandy beaches; or grounds on the banks of rivers. White, Recop. b. 2, tit. 1, c. 6.

ARENDATOR. A farmer or renter; in some provinces of Russia, formerly one who farmed the public rents or revenues; a "crown arendator" is one who rents an estate belonging to the crown.

ARENIFODINA. In the civil law. A sandpit. Dig. 7, 1, 13, 5.

ARENTARE. Lat. To rent; to let out at a certain rent. Cowell. *Arentatio.* A renting.

AREOPAGITE. In ancient Greek law. A lawyer or chief judge of the Areopagus in capital matters in Athens; a tribunal so called after a hill or slight eminence, in a street of that city dedicated to Mars, where the court was held in which those judges were wont to sit. Wharton.

ARETRO. In arrear; behind. Also written *a retro.*

ARG. An abbreviation of *arguendo.*

ARGENT. In heraldry. Silver.

ARGENTARIUS (*pl.*, **Argentarii**). In the Roman law, a money lender or broker; a dealer in money; a banker. *Argentarium*, the instrument of the loan, similar to the modern word "bond" or "note."

ARGENTARIUS MILES. A money porter in the English exchequer, who carries the money from the lower to the upper exchequer to be examined and tested. Spelman.

ARGENTEUS. An old French coin, answering nearly to the English shilling. Spelman.

ARGENTUM. Silver; money.

ARGENTUM ALBUM. Bullion; uncoined silver; common silver coin; silver coin worn smooth. Cowell; Spelman.

ARGENTUM DEI. God's money; God's penny; money given as earnest in making a bargain. Cowell.

ARGUENDO. In arguing; in the course of the argument. A statement or observation made by a judge as a matter of argument or illustration, but not directly bearing upon the case at bar, or only incidentally involved in it, is said (in the reports) to be made *arguendo*, or in the abbreviated form, *arg.*

ARGUMENT. An effort to establish belief by a course of reasoning.

In rhetoric and logic, an inference drawn from premises, the truth of which is indisputable, or at least highly probable.

The argument of a demurrer, special case, appeal, or other proceeding involving a question of law, consists of the speeches of the opposed counsel; namely, the "opening" of the counsel having the right to begin, (*q. v.*,) the speech of his opponent, and the "reply" of the first counsel. It answers to the trial of a question of fact. Sweet. But the submission of printed briefs may technically constitute an argument. Malcomb v. Hamill, 65 How. Prac. (N. Y.) 506; State v. California Min. Co., 13 Nev. 209. Also, the opening statement to a jury is part of the argument. State v. McCaskill, 173 Iowa, 563, 155 N. W. 976, 977.

ARGUMENT AB INCONVENIENTI. An argument arising from the inconvenience which the proposed construction of the law would create.

ARGUMENTATIVE. By way of reasoning.

In pleading. Indirect; inferential. Steph. Pl. 179.

A pleading is so called in which the statement on which the pleader relies is implied instead of being expressed, or where it contains, in addition to proper statements of facts, reasoning or arguments upon those facts and their relation to the matter in dispute, such as should be reserved for presentation at the trial.

Argumentum a communiter accidentibus in jure frequens est. An argument drawn from things commonly happening is frequent in law. Broom, Max. 44.

Argumentum a divisione est fortissimum in jure. An argument from division [of the subject] is of the greatest force in law. Co. Litt. 213*b*; 6 Coke, 60.

Argumentum a majori ad minus negative non valet; valet e converso. An argument from the greater to the less is of no force negatively; affirmatively (or conversely) it is. Jenk. Cent. 281.

Argumentum a simili valet in lege. An argument from a like case (from analogy) is good in law. Co. Litt. 191.

Argumentum ab auctoritate est fortissimum in lege. An argument from authority is the strongest in the law. "The book cases are the best proof of what the law is." Co. Litt. 254*a*.

Argumentum ab impossibili valet in lege. An argument drawn from an impossibility is forcible in law. Co. Litt. 92*a*.

Argumentum ab inconvenienti est validum in lege; quia lex non permittit aliquod inconveniens. An argument drawn from what is inconvenient is good in law, because the law will not permit any inconvenience. Co. Litt. 66*a*, 258.

Argumentum ab inconvenienti plurimum valet [est validum] in lege. An argument drawn from inconvenience is of the greatest weight [is forcible] in law. Co. Litt. 66*a*, 97*a*, 152*b*, 258*b*; Broom, Max. 184. If there be in any deed or instrument equivocal expressions, and great inconvenience must necessarily follow from one construction, it is strong to show that such construction is not according to the true intention of the grantor; but where there is no equivocal expression in the instrument, and the words used admit only of one meaning, arguments of inconvenience prove only want of foresight in the grantor. 3 Madd. 540; 7 Taunt. 496.

ARIBANNUM. In feudal law. A fine for not setting out to join the army in obedience to the summons of the king.

ARIERBAN, or ARRIERE-BAN. An edict of the ancient kings of France and Germany, commanding all their vassals, the noblesse, and the vassals' vassals, to enter the army, or forfeit their estates on refusal. Spelman. See, also, Arrier Ban.

ARIMANNI. A mediæval term for a class of agricultural owners of small allodial farms, which they cultivated in connection with larger farms belonging to their lords, paying rent and service for the latter, and being under the protection of their superiors. Military tenants holding lands from the emperor. Spelman.

ARISE. To come into existence or action. A case arising in the land or naval forces is a case proceeding, issuing or springing from acts, in violation of the laws and regulations, committed while in the forces or service. In re Bogart, 2 Sawy. 396, Fed. Cas. No. 1,596.

A case "arises" under the Constitution or a law of the United States, so as to be within the jurisdiction of a federal court, whenever its correct decision depends on the construction of either. Cleveland, C., C. & St. L. Ry. Co. v. Hirsch (C. C. A.) 204 F. 849, 851; Accardo v. Fontenot (D. C.) 269 F. 447, 449; Orr v. Baltimore & O. R. Co., 145 N. Y. S. 378, 381, 83 Misc. 221; City Commission of Bismarck v. Bismarck Water Supply Co., 47 N. D. 179, 181 N. W. 596, 598.

To accrue. St. Louis & S. F. R. Co. v. Spiller, 274 U. S. 304, 47 S. Ct. 635, 637, 71 L. Ed. 1060.

The Codes generally provide that matters constituting the basis of counterclaims must "arise out of the transaction" set forth in the complaint. For cases construing this phrase, see J. M. & L. A. Osborn Co. v. Kennedy, 185 N. Y. S. 75, 76, 113 Misc. 615; Benesch v. Benesch, 173 N. Y. S. 629, 635, 106 Misc. 395; Alford v. Thomas (Tex. Civ. App.) 238 S. W. 270, 272; Waldman-Ross Grain Co. v. Davison & Co. (Tex. Civ. App.) 251 S. W. 521; Bank of Charleston, National Banking Ass'n, v. Bank of Neeses, 127 S. C. 210, 119 S. E. 841, 842; Wedderien v. Wood, 62 Cal. App. 628, 217 P. 577.

ARISING. "Arising," though having a progressive and prospective meaning in some circumstances, ordinarily signifies the present and most frequently denotes the immediate present, and only occasionally implies future events or occurrences. Moore v. Hope Natural Gas Co., 76 W. Va. 649, 86 S. E. 564, 566; North American Co. v. St. Louis & S. F. R. Co. (D. C.) 288 F. 612, 625.

Workmen's Compensation Acts provide for compensating an employee whose injury is one "arising out of and in the course of the employment." These words describe an injury directly and naturally resulting in a risk reasonably incident to the employment. Thomas v. Proctor & Gamble Mfg. Co., 179 P. 372, 374, 104 Kan. 432, 6 A. L. R. 445; Pierce v. Boyer-Van Kuran Lumber & Coal Co., 156 N. W. 509, 510, 99 Neb. 321, L. R. A. 1916D, 970; Emerick v. Slavonian Roman Greek Catholic Union, 108 A. 223, 93 N. J. Law, 282; Sparks Milling Co. v. Industrial Commission, 127 N. E. 737, 738, 293 Ill. 350; Coronado Beach Co. v. Pillsbury, 158 P. 212, 213, 172 Cal. 682, L. R. A. 1916F, 1164; Madore v. New Departure Mfg. Co., 104 Conn. 709, 134 A. 259, 260. They mean that there must be some causal connection between the conditions under which the employee worked and the injury which he received. Fogg's Case, 132 A. 129, 130, 125 Me. 168; Dougherty's Case, 131 N. E. 167, 238 Mass. 456, 16 A. L. R. 1036; Elk Grove Union High School Dist. v. Industrial Accident Commission of State of California, 168 P. 392, 394, 34 Cal. App. 589; In re McCrary, 192 N. W. 237, 239, 109 Neb. 796; Chicago, I. & L. Ry. Co. v. Clendennin, 143 N. E. 303, 304, 81 Ind. App. 323; Lucky-Kidd Mining Co. v. State Industrial Commission, 236 P. 600, 602, 110 Okl. 27. The words "arising out of employment" refer to the origin of the cause of the injury, while "course of employment" refer to the time, place, and circumstances under which the injury occurred. Hendrix v. Franklin State Bank, 154 Tenn. 287, 290 S. W. 30; Walker v. Hyde, 43 Idaho, 625, 253 P. 1104, 1105. See, further, Course.

ARISTOCRACY. A government in which a class of men rules supreme.

A form of government which is lodged in a council composed of select members or nobles, without a monarch, and exclusive of the people.

A privileged class of the people; nobles and dignitaries; people of wealth and station.

ARISTO-DEMOCRACY. A form of government where the power is divided between the nobles (or the more powerful) and the people.

ARLES. Earnest. Used in Yorkshire in the phrase "Arles-penny." Cowell. In Scotland it has the same signification. Bell.

ARM OF THE SEA. A portion of the sea projecting inland, in which the tide ebbs and flows. 5 Coke, 107.

An arm of the sea is considered as extending as far into the interior of a country as the water of fresh rivers is propelled backwards by the ingress of the tide. Ang. Tide-Waters, 73; Hubbard v. Hubbard, 8 N. Y. 196; Adams v. Pease, 2 Conn. 484; U. S. v. Grush, 5 Mason, 290, Fed. Cas. No. 15,268; Ex parte Byers (D. C.) 32 Fed. 404. See Fauces Terræ.

ARMA. Lat. Arms; weapons, offensive and defensive; armor; arms or cognizances of families.

ARMA DARE. To dub or make a knight.

ARMA MOLUTA. Sharp weapons that cut, in contradistinction to such as are blunt, which only break or bruise. Fleta, lib. 1, c. 33, par. 6.

ARMA REVERSATA. Reversed arms, a punishment for a traitor or felon. Cowell.

Arma in armatos sumere jura sinunt. The laws permit the taking up of arms against armed persons. 2 Inst. 574.

ARMATA VIS. In the civil law. Armed force. Dig. 43, 16, 3; Fleta, lib. 4, c. 4.

ARMED. A vessel is "armed" when she is fitted with a full armament for fighting purposes. She may be equipped for warlike purposes, without being "armed." By "armed" it is ordinarily meant that she has cannon, but if she had a fighting crew, muskets, pistols, powder, shot, cutlasses, and boarding appliances, she might well be said to be equipped for warlike purposes, though not armed. 2 Hurl. & C. 537; Murray v. The Charming Betsy, 2 Cranch, 121, 2 L. Ed. 208.

ARMED NEUTRALITY. An attitude of neutrality between belligerents which the neutral state is prepared to maintain by armed force if necessary.

ARMED PEACE. A situation in which two or more nations, while actually at peace with each other, are armed for possible or probable hostilities.

ARMIGER. An armor-bearer; an esquire. A title of dignity belonging to gentlemen authorized to bear arms. Cowell.

In its earlier meaning, a servant who carried the arms of a knight. Spelman.

A tenant by scutage; a servant or valet; applied, also, to the higher servants in convents. Spelman.

ARMING ONE'S SELF. Equipping one's self with a weapon or weapons. Simmons v. State, 87 Tex. Cr. R. 270, 220 S. W. 554.

ARMISCARA. An ancient mode of punishment, which was to carry a saddle at the back as a token of subjection. Spelman.

ARMISTICE. A suspending or cessation of hostilities between belligerent nations or forces for a considerable time. Commercial Cable Co. v. Burleson (D. C.) 255 F. 99, 104. The term cannot properly be applied to agreements between a government on one side and rioters, brigands, and banditti on the other. O'Neill v. Central Leather Co., 87 N. J. Law, 552, 94 A. 789, 790, L. R. A. 1917A, 276.

An armistice differs from a mere "suspension of arms" (*q. v.*) in that the latter is concluded for very brief periods and for local military purposes only, whereas an armistice not only covers a longer period, but is agreed upon for political purposes. It is said to be *general* if it relates to the whole area of the war, and *partial* if it relates to only a portion of that area. Partial armistices are sometimes called truces (*q. v.*) but there is no hard and fast distinction.

ARMORIAL BEARINGS. In English law. A device depicted on the (now imaginary) shield of one of the nobility, of which gentry is the lowest degree. The criterion of nobility is the bearing of arms, or armorial bearings, received from ancestry.

Armorum appellatione, non solum scuta et gladii et galeæ, sed et fustes et lapides continentur. Under the name of arms are included, not only shields and swords and helmets, but also clubs and stones. Co. Litt. 162.

ARMS. Anything that a man wears for his defense, or takes in his hands, or uses in his anger, to cast at or strike at another. Co. Litt. 161*b*, 162*a*; State v. Buzzard, 4 Ark. 18.

This term, as it is used in the constitution, relative to the right of citizens to bear arms, refers to the arms of a militiaman or soldier, and the word is used in its military sense. The arms of the infantry soldier are the musket and bayonet; of cavalry and dragoons, the sabre, holster pistols, and carbine; of the artillery, the field-piece, siege-gun, and mortar, with side arms. The term, in this connection, cannot be made to cover such weapons as dirks, daggers, slung-shots, sword-canes, brass knuckles, and bowie-knives. These are not military arms. English v. State, 35 Tex. 476, 14 Am. Rep. 374; Hill v. State, 53 Ga. 472; Fife v. State, 31 Ark. 455, 25 Am. Rep. 556; Andrews v. State, 3 Heisk. (Tenn.) 179, 8 Am. Rep. 8; Aymette v. State, 2 Humph. (Tenn.) 154. But a pistol is properly included within the word "arms." State v. Kerner, 181 N. C. 574, 107 S. E. 222, 224.

Arms, or coat of arms, signifies *insignia, i. e.*, ensigns of honor, such as were formerly assumed by soldiers of fortune, and painted on their shields to distinguish them; or nearly the same as armorial bearings (*q. v.*).

ARMY. The armed forces of a nation intended for military service on land.

"The term 'army' or 'armies' has never been used by congress, so far as I am advised, so as to include the navy or marines, and there is nothing in the act of 1862, or the circumstances which led to its passage, to warrant the conclusion that it was used therein in any other than its long established and ordinary sense,—the land force, as distinguished from the navy and marines." In re Bailey, 2 Sawy. 205, Fed. Cas. No. 728. But see In re Stewart, 7 Rob. (N. Y.) 636.

An "army" is a body of men whose business is war, while the "militia" is a body of men composed of citizens occupied temporarily in the pursuit of civil life, but organized by discipline and drill, and called into the field for temporary military service when the exigencies of the country require it. Story v. Perkins (D. C.) 243 F. 997, 999, 1 A. L. R. 547. And see Brown v. Soldiers' Bonus Board, 44 R. I. 483, 116 A. 280, 281.

Regular Army

"The permanent military establishment, which is maintained both in peace and war according to law." 10 USCA § 3; State v. Moorhead, 102 Neb. 276, 167 N. W. 70, 71. But the term as used in an insurance certificate may mean simply the regular army of any country, not being construable with reference to the congressional classification of the military organizations of the United States. Huntington v. Fraternal Reserve Ass'n of Oshkosh, 173 Wis. 582, 181 N. W. 819, 820.

AROMATARIUS. A word formerly used for a grocer. 1 Vent. 142.

AROUND. "Around" may mean "in the vicinity of." Thus, sheep branded "O" on the hip or side may be within a mortgage covering sheep described as branded "O" around the hip bone. Hawkins v. First Nat. Bank (Tex. Civ. App.) 175 S. W. 163, 164.

ARPEN, Arpent, Arpennus. A measure of land of uncertain quantity mentioned in Domesday and other old books; by some called an "acre," by others "half an acre," and by others a "furlong." Spelman; Cowell;

Blount. Quoted in McMillan v. Aiken, 205 Ala. 35, 88 So. 135, 143.

A French measure of land, containing one hundred square perches, of eighteen feet each, or about an acre. But the quantity varied in different provinces. Spelman. An "arpent" is a land measure varying in dimension from .84 of an acre to 1.04 acres and to 1.28 acres, accordingly as the arpent meant is an arpent de Paris, an arpent commun, or an arpent d'ordonnance. Troll v. City of St. Louis, 257 Mo. 626, 168 S. W. 167, 171.

In Louisiana, the terms "arpent" and "acre" are sometimes used interchangeably; but there is a considerable difference, the arpent being the square of 192 feet and the acre of 209 and a fraction. Randolph v. Sentilles, 110 La. 419, 34 South. 587.

ARPENTATOR. A measurer or surveyor of land. Cowell; Spelman.

ARRA. In the civil law. Earnest; earnest-money; evidence of a completed bargain. Used of a contract of marriage, as well as any other. Spelled, also, *Arrha*, *Arrhæ*, *Arræ*, Calvin. Cf. Arles.

ARRAIGN.

In Criminal Practice

To bring a prisoner to the bar of the court to answer the matter charged upon him in the indictment. Tiller v. State, 10 Ala. App. 45, 64 So. 653, 654. The arraignment (*q. v.*) of a prisoner consists of calling upon him by name, and reading to him the indictment, (in the English tongue,) and demanding of him whether he be guilty or not guilty, and entering his plea. Crain v. United States, 162 U. S. 625, 16 Sup. Ct. 952, 40 L. Ed. 1097; Early v. State, 1 Tex. App. 248, 268, 28 Am. Rep. 409; State v. Braunschweig, 36 Mo. 397; Whitehead v. Com., 19 Grat. (Va.) 640; United States v. McKnight (D. C.) 112 Fed. 982; State v. Hunter, 181 Mo. 316, 80 S. W. 955; State v. De Wolfe, 29 Mont. 415, 74 Pac. 1084.

In Old English Law

To order, or set in order; to conduct in an orderly manner; to prepare for trial. *To arraign an assise* was to cause the tenant to be called to make the plaint, and to set the cause in such order as the tenant might be enforced to answer thereunto. Litt. § 442; Co. Litt. 262*b*.

ARRAIGNMENT. In criminal practice. Calling the defendant to the bar of the court, to answer the accusation contained in the indictment. Harmon v. State, 8 Ala. App. 311, 62 So. 438, 440; Andrews v. State, 196 Ind. 12, 146 N. E. 817. See Arraign.

ARRAIGNS, CLERK OF. In English law. An assistant to the clerk of assise.

ARRAMEUR. In old French law. An officer employed to superintend the loading of vessels, and the safe stowage of the cargo. 1 Pet. Adm. Append. XXV.

ARRANGEMENT. A setting in order. 1 El. & Bl. 540.

ARRANGEMENT, DEED OF. A term used in England to express an assignment for the benefit of creditors.

ARRAS. In Spanish law. The donation which the husband makes to his wife, by reason or on account of marriage, and in consideration of the *dote*, or portion, which he receives from her. Miller v. Dunn, 62 Mo. 219; Cutter v. Waddingham, 22 Mo. 254.

The property contributed by the husband *ad sustinenda onera matrimonii* (for bearing the expenses).

ARRAY. The whole body of jurors summoned to attend a court, as they are *arrayed* or arranged on the panel. Dane, Abr. Index; 1 Chit. Crim. Law, 536; Com. Dig. "Challenge," B. Durrah v. State, 44 Miss. 789.

A ranking, or setting forth in order; the order in which jurors' names are ranked in the panel containing them. Co. Litt. 156*a*; 3 Bl. Comm. 359.

ARRAYER. An English military officer in the early part of the fifteenth century. His duties were similar to those of the modern Lord Lieutenant of a county.

ARREARAGES. Arrears.

ARREARS, or ARREARAGES. Money unpaid at the due time, as rent behind; the remainder due after payment of a part of an account; money in the hands of an accounting party. Cowell; Wiggin v. Knights of Pythias (C. C.) 31 Fed. 122; Condit v. Neighbor, 13 N. J. Law, 92; Board of Education of Glen Ellyn Tp. High School Dist. No. 87 v. Boger, 291 Ill. 191, 125 N. E. 768, 770; Independent Council No. 2, Junior Order of United American Mechanics of the District of Columbia v. Lucas, 273 F. 320, 322, 50 App. D. C. 356.

"In arrear (arrears)" means overdue and unpaid. Hollingsworth v. Willis, 64 Miss. 157, 8 South. 170. Behind in the payment of that which is due. Grand Court of Texas Independent Order of Calanthe v. Johns (Tex. Civ. App.) 181 S. W. 869, 870.

ARRECT. To accuse or charge with an offense. *Arrectati*, accused or suspected persons.

ARRENDAMIENTO. In Spanish law. The contract of letting and hiring an estate or land, (*heredad.*) White, Recop. b. 2, tit. 14, c. 1.

ARRENT. In old English law. To let or demise at a fixed rent. Particularly used with reference to the public domain or crown lands; as where a license was granted to inclose land in a forest with a low hedge and a ditch, under a yearly rent, or where an encroachment, originally a purpresture, was allowed to remain on the fixing and payment of a suitable

compensation to the public for its maintenance.

ARREST. To deprive a person of his liberty by legal authority. Taking, under real or assumed authority, custody of another for the purpose of holding or detaining him to answer a criminal charge or civil demand. Davis & Allcott Co. v. Boozer, 215 Ala. 116, 110 So. 28, 29, 49 A. L. R. 1307; French v. Bancroft, 1 Metc. (Mass.) 502; Emery v. Chesley, 18 N. H. 201; U. S. v. Benner, 24 Fed. Cas. 1084; Rhodes v. Walsh, 55 Minn. 542, 57 N. W. 212, 23 L. R. A. 632; Ex parte Sherwood, 29 Tex. App. 334, 15 S. W. 812.

Arrest is well described in the old books as "the beginning of imprisonment, when a man is first taken and restrained of his liberty, by power of a lawful warrant." 2 Shep. Abr. 299; Wood, Inst. Com. Law, 575.

It is the taking, seizing or detaining the person of another, touching or putting hands upon him in the execution of process, or any act indicating an intention to arrest. U. S. v. Benner, Bald. 234, 239, Fed. Cas. No. 14,568; State v. District Court of Eighth Judicial Dist. in and for Cascade County, 70 Mont. 378, 225 P. 1000, 1001; Hart v. Flynn's Ex'r, 8 Dana (Ky.) 190. "An arrest is an imprisonment." Blight v. Meeker, 7 N. J. L. 97; People v. Esposito, 194 N. Y. S. 326, 118 Misc. 867. As used in Bankruptcy Act, § 9 (11 USCA § 27), arrest includes "imprisonment." Ex parte Harrison (D. C.) 272 F. 543, 544.

By *arrest* is to be understood to take the party into custody. To *commit* is the separate and distinct act of carrying the party to prison, after having taken him into custody by force of the execution. French v. Bancroft, 1 Metc. (Mass.) 502.

As ordinarily used, the terms arrest and attachment coincide in meaning to some extent; though in strictness, as a distinction, an arrest may be said to be the act resulting from the service of an attachment. And in the more extended sense which is sometimes given to attachment, including the act of taking, it would seem to differ from arrest in that it is more peculiarly applicable to a taking of property, while *arrest* is more commonly used in speaking of persons.

Arrest is also applied in some instances to a seizure and detention of personal chattels, especially of ships and vessels; thus, in admiralty actions a ship or cargo is *arrested* when the marshal has served the writ in an action *in rem*. Williams & B. Adm. Jur. 193; Pelham v. Rose, 9 Wall. 103, 19 L. Ed. 602.

In Civil Practice

The apprehension of a person by virtue of a lawful authority to answer the demand against him in a civil action. Gentry v. Griffith, 27 Tex. 462.

One of the means which the law gives the creditor to secure the person of his debtor while the suit is pending, or to compel him to give security for his appearance after judgment. La. Code Prac. art. 210.

In Criminal Cases

The apprehending or detaining of the person in order to be forthcoming to answer an alleged or suspected crime. Quoted and adopted, as is also the distinction which follows, in County of Montgomery v. Robinson, 85 Ill. 174; Hogan v. Stophlet, 179 Ill. 150, 53 N. E. 604, 44 L. R. A. 809; Ex parte Sherwood, 29 Tex. App. 334, 15 S. W. 812.

The word *arrest* is said to be more properly used in civil cases, and *apprehension* in criminal. Thus, a man is arrested under a *capias ad respondendum*, and apprehended under a warrant charging him with larceny.

Malicious Arrest

An arrest made willfully and without probable cause, but in the course of a regular proceeding.

Parol Arrest

One ordered by a judge or magistrate from the bench, without written complaint or other proceedings, of a person who is present before him, and which is executed on the spot; as in case of breach of the peace in open court.

Rearrest

Right of an officer to take without warrant one forcibly freeing himself after arrest, Gross v. State, 186 Ind. 581, 117 N. E. 562, 1 A. L. R. 1151, or escaping in any manner, Hefler v. Hunt, 120 Me. 10, 112 A. 675, or violating parole, Massey v. Cunningham, 169 Ark. 410, 275 S. W. 737, or failing to respond to bond for appearance, Porter v. Garmony, 148 Ga. 261, 96 S. E. 426.

Second Arrest

The "second arrest" forbidden after discharge on habeas corpus means an imprisonment based on the same information and not under a new information followed by a lawful warrant. Sutton v. Butler, 26 N. Y. Cr. R. 413, 133 N. Y. S. 936, 74 Misc. 251; State v. Riley, 109 Minn. 437, 124 N. W. 13. See, also, Stair v. Heska Amone Congregation, 128 Tenn. 190, 159 S. W. 840, 841.

Warrant of Arrest

A written order issued and signed by a magistrate, directed to a peace officer or some other person specially named, and commanding him to arrest the body of a person named in it, who is accused of an offense. Brown v. State, 109 Ala. 70, 20 South. 103.

ARREST OF INQUEST. Pleading in arrest of taking the inquest upon a former issue, and showing cause why an inquest should not be taken.

ARREST OF JUDGMENT. The act of staying a judgment, or refusing to render judgment in an action at law, after verdict, for some matter intrinsic appearing on the face of the record, which would render the judgment, if given, erroneous or reversible. 3 Bl. Comm. 393; 3 Steph. Comm. 628; 2 Tidd, Pr. 918; Browning v. Powers, 142 Mo. 322, 44 S. W. 224; People v. Kelly, 94 N. Y. 526; Byrne v. Lynn, 18 Tex. Civ. App. 252, 44 S. W. 311; Pillsbury Flour Mills Co. v. Walsh, 60 Ind.

App. 76, 110 N. E. 96, 99; State v. Kirby, 34 S. D. 281, 148 N. W. 533; State v. Christian, 101 W. Va. 579, 133 S. E. 329, 330.

It is the fact that a motion in arrest of judgment is based on some defect on the face of the record or pleadings which aids in distinguishing it from a motion for a new trial. Maddox Coffee Co. v. McHan, 22 Ga. App. 198, 95 S. E. 736. It differs also from a motion to set aside a judgment, in that a motion in arrest of judgment must be made during the term when the judgment was rendered. Love v. National Liberty Ins. Co., 157 Ga. 259, 121 S. E. 648, 650.

A motion in arrest of judgment is practically a demurrer, People v. Cordosco, 77 Cal. App. 780, 246 P. 461, 462, and has been abolished in some jurisdictions, Mo. Laws 1925, p. 198; State v. Sharp (Mo. Sup.) 300 S. W. 501.

ARRESTANDIS BONIS NE DISSIPENTUR. In old English law. A writ which lay for a person whose cattle or goods were taken by another, who during a contest was likely to make away with them, and who had not the ability to render satisfaction. Reg. Orig. 126.

ARRESTANDO IPSUM QUI PECUNIAM RECEPIT. In old English law. A writ which issued for apprehending a person who had taken the king's prest money to serve in the wars, and then hid himself in order to avoid going.

ARRESTATIO. In old English law. An arrest (*q. v.*).

ARRESTEE. In Scotch law. The person in whose hands, the movables of another, or a debt due to another, are arrested by the creditor of the latter by the process of *arrestment.* 2 Kames, Eq. 173, 175.

If, in contempt of the arrestment, he make payment of the sum or deliver the goods arrested to the common debtor, he is not only liable criminally for breach of the arrestment, but he must pay the debt again to the arrester; Erskine, Inst. 3. 6. 6.

ARRESTER. In Scotch law. One who sues out and obtains an arrestment of his debtor's goods or movable obligations. Erskine, Inst. 3. 6. 1.

ARRESTMENT. In Scotch law. Securing a criminal's person till trial, or that of a debtor till he give security *judicio sisti.*

The order of a judge, by which he who is debtor in a movable obligation to the arrester's debtor is prohibited to make payment or delivery till the debt due to the arrester be paid or secured. Erskine, Inst. 3. 6. 1; 1. 2. 12.

This word is used interchangeably with attachment in the act for the protection of seaman's wages. U. S. R. S. § 4536; Wilder v. Navigation Co., 211 U. S. 239, 29 S. Ct. 58, 53 L. Ed. 164, 15 Ann. Cas. 127. The court, after quoting the above definition, held that, though not literally so, the prohibition against "attachment or arrestment" must apply to execution after judgment as well as attachment before it.

ARRESTMENT JURISDICTIONIS FUNDANDÆ CAUSÂ. In Scotch law. A process to bring a foreigner within the jurisdiction of the courts of Scotland. The warrant attaches a foreigner's goods within the jurisdiction, and these will not be released unless caution or security be given.

ARRESTO FACTO SUPER BONIS MERCATORUM ALIENIGENORUM. In old English law. A writ against the goods of aliens found within this kingdom, in recompense of goods taken from a denizen in a foreign country, after denial of restitution. Reg. Orig. 129. The ancient civilians called it *"clarigatio,"* but by the moderns it is termed *"reprisalia."*

ARRET. Fr. A judgment, sentence, or decree of a court of competent jurisdiction.

The term is derived from the French law, and is used in Canada and Louisiana.

Saisie arrêt is an attachment of property in the hands of a third person. Code Pr. La. art. 209; 2 Low. Can. 77; 5 *id.* 198, 218. See "Saisie."

ARRETTED. Convened before a judge and charged with a crime.

Ad rectum malefactorem is, according to Bracton, to have a malefactor forthcoming to be put on his trial.

Imputed or laid to one's charge; as, no folly may be *arretted* to one under age. Bracton, l. 3, tr. 2, c. 10; Cunningham, Dict.; Cowell.

ARRHABO. In the civil law. Earnest; money given to bind a bargain. Calvin.

ARRHÆ. In the civil law. Money or other valuable things given by the buyer to the seller, for the purpose of evidencing the contract; earnest. See Arra: Pot-de-vin.

Arrhæ sponsalitiæ were the earnest or present given by one betrothed to the other at the betrothal.

ARRIAGE AND CARRIAGE. In English and Scotch law. Indefinite services formerly demandable from tenants, but prohibited by statute, (20 Geo. II. c. 50, §§ 21, 22.) Holthouse; Ersk. Inst. 2, 6, 42.

ARRIER BAN. In feudal law. A second summons to join the lord, addressed to those who had neglected the first. A summons of the inferiors or vassals of the lord. Spelman, Gloss. See, also, Arierban.

ARRIERE FIEF, or FEE. In feudal law. A fief or fee dependent on a superior one; an inferior fief granted by a vassal of the king, out of the fief held by him. Montesq. Esprit des Lois, liv. 31, cc. 26, 32.

ARRIERE VASSAL. In feudal law. The vassal of a vassal.

ARRIVAL. In marine insurance, arrival of a vessel means an arrival for purposes of business, requiring an entry and clearance and stay at the port so long as to require some

of the acts connected with business, and not merely touching at a port for advices, or to ascertain the state of the market, or being driven in by an adverse wind and sailing again as soon as it changes. Gronstadt v. Witthoff (D. C.) 15 Fed. 265; Dalgleish v. Brooke, 15 East, 295; Kenyon v. Tucker, 17 R. I. 529, 23 A. 61; Meigs v. Insurance Co., 2 Cush. (Mass.) 439; Toler v. White, 1 Ware, 280, 24 Fed. Cas. 3; Harrison v. Vose, 9 How. 384, 13 L. Ed. 179. See, also, F. S. Royster Guano Co. v. U. S. (C. C. A.) 18 F.(2d) 469, 470.

"A vessel arrives at a port of discharge when she comes, or is brought, to a place where it is intended to discharge her, and where is the usual and customary place of discharge. When a vessel is insured to one or two ports, and sails for one, the risk terminates on her arrival there. If a vessel is insured to a particular port of discharge, and is destined to discharge cargo successively at two different wharves, docks, or places, within that port, each being a distinct place for the delivery of cargo, the risk ends when she has been moored twenty-four hours in safety at the first place. But if she is destined to one or more places for the delivery of cargo, and delivery or discharge of a portion of her cargo is necessary, not by reason of her having reached any destined place of delivery, but as a necessary and usual nautical measure, to enable her to reach such usual and destined place of delivery, she cannot properly be considered as having arrived at the usual and customary place of discharge, when she is at anchor for the purpose only of using such means as will better enable her to reach it. If she cannot get to the destined and usual place of discharge in the port because she is too deep, and must be lightered to get there, and, to aid in prosecuting the voyage, cargo is thrown overboard or put into lighters, such discharge does not make that the place of arrival; it is only a stopping-place in the voyage. When the vessel is insured to a particular port of discharge, arrival within the limits of the harbor does not terminate the risk, if the place is not one where vessels are discharged and voyages completed. The policy covers the vessel through the port navigation, as well as on the open sea, until she reaches the destined place." Simpson v. Insurance Co., Holmes, 137, Fed. Cas. No. 12,886.

"Arrival of ship," within meaning of bills of lading requiring claims to be filed, must be construed, where misdelivery is charged, as meaning date when cargo is discharged or offered for delivery. The Cardiganshire (D. C.) 9 F.(2d) 416, 420.

As to arrival of goods, see Jewett & Sherman Co. v. Rosenberg Bros. & Co., 182 Wis. 34, 195 N. W. 720; Boyd v. City of Louisville, 178 Ky. 354, 198 S. W. 927, 928; Rhodes v. State of Iowa, 170 U. S. 412, 18 S. Ct. 664, 42 L. Ed. 1088.

"Arrival" within the immigration laws means compliance with the requirements entitling an alien to entry. See 8 USCA §§ 106, 380. In re Kempson (D. C.) 14 F.(2d) 668, 669.

ARRIVE. To come to a particular place; to reach a particular or certain place. Thompson v. U. S., 1 Brock. 411, Fed. Cas. No. 13,985; 8 B. & C. 119.

In Insurance Law

To reach that particular place or point in a harbor which is the ultimate destination of a vessel. Meigs v. Insurance Co., 2 Cush. (Mass.) 439, 453.

The words "arrive" and "enter" are not always synonymous; there certainly may be an arrival without an actual entry or attempt to enter. United States v. Open Boat, 5 Mason, 120, 132, Fed. Cas. No. 15,967. And where a vessel from a foreign port, laden with liquors, anchored within four leagues of the coast, and the master without a permit therefor, allowed part of the cargo to be taken away, with the intention of so disposing of the entire cargo, the vessel had "arrived" within the meaning of Tariff Act 1922, § 586 (19 USCA § 488). The Cherie (C. C. A.) 13 F. (2d) 992, 993, aff The U. S. v. The Cherie (D. C.) 9 F.(2d) 640, 641.

ARROGATION. In the civil law. The adoption of a person who was of full age or *sui juris*. 1 Browne, Civil & Adm. Law, 119; Dig. 1, 7, 5; Inst. 1, 11, 3. Reinders v. Koppelmann, 68 Mo. 497, 30 Am. Rep. 802.

ARRONDISSEMENT. In France, one of the subdivisions of a department.

ARSÆ ET PENSATÆ. Burnt and weighed. A term formerly applied to money tested or assayed by fire and by weighing.

ARSENALS. Store-houses for arms; dockyards, magazines, and other military stores.

ARSER IN LE MAIN. Fr. Burning in the hand. The punishment by burning or branding the left thumb of lay offenders who claimed and were allowed the benefit of clergy, so as to distinguish them in case they made a second claim of clergy. 5 Coke, 51; 4 Bl. Comm. 367; *Termes de la Ley.*

ARSON. At common law, the malicious burning of the house of another. Co. 3d Inst. 66; Bish. Cr. L. § 415; 4 Bla. Com. 220; Curran's Case, 7 Gratt. (Va.) 619; Ritchey v. State, 7 Blackf. (Ind.) 168; Mary v. State, 24 Ark. 44, 81 Am. Dec. 60; 1 Leach, Cr. Cas. 218; People v. Fisher, 51 Cal. 319; 4 Steph. Comm. 99; 2 Russ. Crimes, 896; Steph. Crim. Dig. 298; State v. Brett, 144 La. 980, 81 So. 461; Thacker v. Commonwealth, 219 Ky. 789, 294 S. W. 491, 492.

"Arson" at common law and by statute consists in willfully and maliciously burning or causing to be burned the dwelling house of another, or any kitchen, shop, or other outhouse that is parcel thereof, or adjoining or belonging thereto. State v. Heller, 2 N. J. Misc. R. 1023, 126 A. 298, 299; Graham v. State, 40 Ala. 664; Allen v. State, 10 Ohio St. 300; State v. Porter, 90 N. C. 719; Hill v. Com., 98 Pa. 195; State v. McCoy, 162 Mo. 383, 62 S. W. 991. Whether "house" or "dwelling house" be used in defining the crime may be of importance in determining whether occupancy

is or is not an element. 1 Hale, P. C. 566, 567; Commonwealth v. Barney, 64 Mass. (10 Cush.) 478. Some states have expressly eliminated occupancy as an element, State v. Snover, 101 N. J. Law, 543, 126 A. 850; P. L. 1919, p. 257; while others have made it a distinction between degrees of the crime, People v. Principe, 23 Cal. App. 729, 139 P. 658; People v. Abrams, 174 Cal. 172, 162 P. 395, 396.

At common law it must be the house of another. 1 Bish. Cr. Law, § 389; Norville v. State, 144 Tenn. 278, 230 S. W. 966. But it is now an offense to burn one's own house under the statutes of New Hampshire, Arkansas, California, and other states. State v. Hurd, 51 N. H. 176; State v. Dinagan, 79 N. H. 7, 104 A. 33; Pub. St. 1901, c. 277, §§ 1–3 (Pub. Laws 1926, ch. 391, §§ 1–3). State v. Blumenthal, 136 Ark. 532, 203 S. W. 36, 37, L. R. A. 1918E, 482; State v. Hanna, 131 Ark. 129, 198 S. W. 881, 882; Kirby's Dig. §§ 1575–1578, People v. Simpson, 50 Cal. 304; People v. Abrams, 174 Cal. 172, 162 P. 395, 397; Pen. Code § 452. State v. Moore, 61 Mo. 276; State v. Dworkin, 307 Mo. 487, 271 S. W. 477; Rev. St. Mo. 1919, §§ 3282, 3283 (Mo. St. Ann. §§ 4036, 4037). N. J. Crimes Act, § 123, as amended by P. L. 1919, p. 257. Com. v. Levine, 82 Pa. Super. Ct. 105, 18 PS § 3026. Clemens v. State, 17 Okl. Cr. 274, 187 P. 1100, 1101; Rev. Laws 1910, §§ 2598, 2610 (St. 1931, §§ 1849, 1861).

In several states, this crime is divided into arson in the first, second, and third degrees, the first degree including the burning of an inhabited dwelling-house in the night-time; the second degree, the burning (at night) of a building other than a dwelling-house, but so situated with reference to a dwelling-house as to endanger it; the third degree, the burning of any building or structure not the subject of arson in the first or second degree, or the burning of property, his own or another's with intent to defraud or prejudice an insurer thereof. People v. Durkin, 5 Parker, Cr. R. (N. Y.) 248; People v. Fanshawe, 65 Hun, 77, 19 N. Y. Supp. 865; State v. McCoy, 162 Mo. 383, 62 S. W. 991; State v. Jessup, 42 Kan. 422, 22 P. 627.

ARSURA. The trial of money by heating it after it was coined.

The loss of weight occasioned by this process. A pound was said to *burn* so many pence (*tot ardere denarios*) as it lost by the fire. Spelman. The term is now obsolete.

ART. A principle put in practice and applied to some art, machine, manufacture, or composition of matter. Earle v. Sawyer, 4 Mason, 1, Fed. Cas. No. 4,247. See Act Cong. July 8, 1870.

In the law of patents, this term means a useful art or manufacture which is beneficial and which is described with exactness in its mode of operation. Such an art can be protected only in the mode and to the extent thus described. Smith v. Downing, 22 Fed. Cas. 511; Carnegie Steel Co. v. Cambria Iron Co. (C. C.) 89 Fed. 754; Jacobs v. Baker, 7 Wall. 297, 19 L. Ed. 200; Corning v. Burden, 15 How. 267, 14 L. Ed. 683; David E. Kennedy, Inc., v. Beaver Tile & Specialty Co. (D. C.) 232 F. 477, 478.

In seduction cases, "art" means the skillful and systematic arrangement of means for the attainment of a desired end. Smith v. State, 13 Ala. App. 399, 69 So. 402, 404; Hayes v. State, 19 Ala. App. 241, 96 So. 647.

Prior Art

In patent law, something that a man skilled in the art may by diligence discover. Davis-Bournonville Co. v. Alexander Milburn Co. (C. C. A.) 1 F.(2d) 227, 231.

Every business or employment requiring peculiar knowledge or experience, and having a particular class of persons devoted to its pursuit, is an "art" or "trade." Detroit Taxicab & Transfer Co. v. Callahan (C. C. A.) 1 F.(2d) 911, 912; Miller v. State, 9 Okl. Cr. 255, 131 P. 717, 718, L. R. A. 1915A, 1088.

ART, WORDS OF. Words used in a technical sense; words scientifically fit to carry the sense assigned them.

ART AND PART. In Scotch law. The offense committed by one who aids and assists the commission of a crime, but who is not the principal or chief actor in its actual commission. An accessory. A principal in the second degree. Paters. Comp.

ARTHEL, ARDHEL, or ARDDELIO. To avouch; as if a man were taken with stolen goods in his possession he was allowed a lawful *arthel, i. e.*, vouchee, to clear him of the felony; but provision was made against it by 28 Hen. VIII. c. 6. Blount.

ARTICLE. A separate and distinct part of an instrument or writing comprising two or more particulars; one of several things presented as connected or forming a whole. Carter v. Railroad Co., 126 N. C. 437, 36 S. E. 14; Wetzell v. Dinsmore, 4 Daly (N. Y.) 195. A particular object or substance, a material thing or a class of things. People v. Epstean, 170 N. Y. S. 68, 73, 102 Misc. 476; U. S. v. Doragon Co., 12 Ct. Cust. App. 524, 525; U. S. v. Closson Co., 12 Ct. Cust. App. 470, 471; Mulloy v. Humble Oil & Refining Co. (Tex. Civ. App.) 250 S. W. 792 (inapplicable to oil well); A. O. Andersen & Co. v. U. S. (C. C. A.) 284 F. 542, 543 ("article of food" held applicable to entire shipment of a food product in containers, as canned salmon).

In English Ecclesiastical Law

A complaint exhibited in the ecclesiastical court by way of libel. The different parts of a libel, responsive allegation, or counter allegation in the ecclesiastical courts. 3 Bl. Comm. 109.

In Scotch Practice

A subject or matter; competent matter. "Article of dittay." 1 Broun, 62. A "point of dittay." 1 Swint. 128, 129.

ARTICLED CLERK. In English law. A clerk bound to serve in the office of a solicitor in consideration of being instructed in the profession. This is the general acceptation of the term; but it is said to be equally applicable to other trades and professions. Reg. v. Reeve, 4 Q. B. 212.

ARTICLES. 1. A connected series of propositions; a system of rules. The subdivisions of a document, code, book, etc. A specification of distinct matters agreed upon or established by authority or requiring judicial action.

2. A statute; as having its provisions articulately expressed under distinct heads. Several of the ancient English statutes were called "articles," (*articuli.*)

3. A system of rules established by legal authority; as *articles* of war, *articles* of the navy, *articles* of faith. (See *infra.*)

4. A contractual document executed between parties, containing stipulations or terms of agreement; as *articles* of agreement, *articles* of partnership.

5. In chancery practice. A formal written statement of objections filed by a party, after depositions have been taken, showing ground for discrediting the witnesses.

6. In ecclesiastical law. A complaint in the form of a libel exhibited to an ecclesiastical court. See Article.

ARTICLES APPROBATORY. In Scotch law. That part of the proceedings which corresponds to the answer to the charge in an English bill in chancery. Paters. Comp.

ARTICLES IMPROBATORY. In Scotch law. Articulate averments setting forth the facts relied upon. Bell. That part of the proceedings which corresponds to the charge in an English bill in chancery to set aside a deed. Paters. Comp. The answer is called "articles approbatory."

ARTICLES, LORDS OF. A committee of the Scottish parliament, which, in the mode of its election, and by the nature of its powers, was calculated to increase the influence of the crown, and to confer upon it a power equivalent to that of a negative before debate. This system appeared inconsistent with the freedom of parliament, and at the revolution the convention of estates declared it a grievance, and accordingly it was suppressed by Act 1690, c. 3. Wharton.

ARTICLES OF AGREEMENT. A written memorandum of the terms of an agreement. It is a common practice for persons to enter into articles of agreement, preparatory to the execution of a formal deed, whereby it is stipulated that one of the parties shall convey to the other certain lands, or release his right to them, or execute some other disposition of them.

When persons form voluntary associations for religious, literary, social, or other purposes, and adopt rules by which to regulate their conduct and measure their rights, by the provisions of which members may be admitted and expelled, such rules are articles of agreement, to which all who have become members are parties, and by which they must be governed in their relations to the associations. Brown v. Harris County Medical Soc. (Tex. Civ. App.) 194 S. W. 1179, 1180.

ARTICLES OF ASSOCIATION, OR OF INCORPORATION. Articles subscribed by the members of a joint-stock company or corporation organized under a general law, and which create the corporate union between them. Such articles are in the nature of a partnership agreement, and commonly specify the form of organization, amount of capital, kind of business to be pursued, location of the company, etc. Articles of association are to be distinguished from a charter, in that the latter is a grant of power from the sovereign or the legislature.

ARTICLES OF CONFEDERATION. The name of the instrument embodying the compact made between the thirteen original states of the Union, before the adoption of the present constitution.

ARTICLES OF FAITH. In English law. The system of faith of the Church of England, more commonly known as the "Thirty-Nine Articles."

ARTICLES OF IMPEACHMENT. A formal written allegation of the causes for impeachment; answering the same office as an indictment in an ordinary criminal proceeding.

ARTICLES OF INCORPORATION. The instrument by which a private corporation is formed and organized under general corporation laws. People v. Golden Gate Lodge, 128 Cal. 257, 60 P. 865. See Articles of Association.

ARTICLES OF PARTNERSHIP. A written agreement by which the parties enter into a copartnership upon the terms and conditions therein stipulated.

ARTICLES OF PERSONAL PROPERTY. As used in a will, "articles of personal property" meant goods and chattels, not money or securities, and hence excluded notes, mortgages, contracts of sale of real estate, and checks. Merrill v. Winchester, 120 Me. 203, 113 A. 261, 267.

ARTICLES OF RELIGION. In English ecclesiastical law. Commonly called the "Thirty-Nine Articles;" a body of divinity drawn up by the convocation in 1562, and confirmed by James I.

ARTICLES OF ROUP. In Scotch law. The terms and conditions under which property is sold at auction.

ARTICLES OF SEPARATION. See Separation.

ARTICLES OF SET. In Scotch law. An agreement for a lease. Paters. Comp.

ARTICLES OF THE CLERGY. The title of a statute passed in the ninth year of Edward II. for the purpose of adjusting and settling the great questions of cognizance then existing between the ecclesiastical and temporal courts. 2 Reeve, Hist. Eng. Law, 291–296.

ARTICLES OF THE NAVY. A system of rules prescribed by act of parliament for the government of the English navy; also, in the United States, there are articles for the government of the navy.

ARTICLES OF THE PEACE. A complaint made or exhibited to a court by a person who makes oath that he is in fear of death or bodily harm from some one who has threatened or attempted to do him injury. The court may thereupon order the person complained of to find sureties for the peace, and, in default, may commit him to prison. 4 Bl. Comm. 255.

ARTICLES OF UNION. In English law. Articles agreed to, A. D. 1707, by the parliaments of England and Scotland, for the union of the two kingdoms. They were twenty-five in number. 1 Bl. Comm. 96.

ARTICLES OF WAR. Codes framed for the government of a nation's army or navy.

ARTICULATE ADJUDICATION. In Scotch law. Where the creditor holds several distinct debts, a separate adjudication for each claim is thus called.

ARTICULATELY. Article by article; by distinct clauses or articles; by separate propositions.

ARTICULI. Lat. Articles; items or heads. A term applied to some old English statutes, and occasionally to treatises.

ARTICULI CLERI. "Articles of the clergy" (*q. v.*). See Circumspecte Agatis.

ARTICULI DE MONETA. Articles concerning money, or the currency. The title of a statute passed in the twentieth year of Edward I. 2 Reeve, Hist. Eng. Law, 228; Crabb, Eng. Law (Amer. Ed.) 167.

ARTICULI MAGNÆ CHARTÆ. The preliminary articles, forty-nine in number, upon which the *Magna Charta* was founded.

ARTICULI SUPER CHARTAS. Articles upon the charters. The title of a statute passed in the twenty-eighth year of Edward I. st. 3, confirming or enlarging many particulars in *Magna Charta*, and the *Charta de Foresta*, and appointing a method for enforcing the observance of them, and for the punishment of offenders. 2 Reeve, Hist. Eng. Law, 103, 233.

ARTICULO MORTIS. (Or more commonly *in articulo mortis.*) At the point of death; in the article of death, which means at the moment of death; in the last struggle or agony. Succession of Villa, 132 La. 714, 61 So. 765, 770.

ARTIFICE. "Artifice" implies craftiness and deceit, and imports some element of moral obliquity. Davis v. Boston Elevated Ry. Co., 235 Mass. 482, 126 N. E. 841, 845. But a representation contrary to a well-known fact, such as a representation that pregnancy will not result from natural sexual intercourse, will not constitute artifice, deception, or promises. Finch v. Gibson, 140 Tenn. 134, 203 S. W. 759, 761.

ARTIFICER. One who buys goods in order to reduce them, by his own art or industry, into other forms, and then to sell them. Lansdale v. Brashear, 3 T. B. Mon. (Ky.) 335.

One who is actually and personally engaged or employed to do work of a mechanical or physical character, not including one who takes contracts for labor to be performed by others. Ingram v. Barnes, 7 El. & Bl. 135; Chawner v. Cummings, 8 Q. B. 321.

One who is master of his art, and whose employment consists chiefly in manual labor. Wharton; Cunningham.

ARTIFICIAL. Created by art, or by law; existing only by force of or in contemplation of law.

ARTIFICIAL FORCE. In patent law. A natural force so transformed in character or energies by human power as to possess new capabilities of action; this transformation of a natural force into a force practically new involves a true inventive act. Wall v. Leck, 60 Fed. 555, 13 C. C. A. 630.

ARTIFICIAL PERSONS. Persons created and devised by human laws for the purposes of society and government, as distinguished from natural persons. Corporations are examples of artificial persons. 1 Bl. Comm. 123. Chapman v. Brewer, 43 Neb. 890, 62 N. W. 320, 47 Am. St. Rep. 779; Smith v. Trust Co., 4 Ala. 568.

ARTIFICIAL PRESUMPTIONS. Also called "legal presumptions;" those which derive their force and effect from the law, rather than their natural tendency to produce belief. 3 Starkie, Ev. 1235. Gulick v. Loder, 13 N. J. Law, 72, 23 Am. Dec. 711.

ARTIFICIAL SUCCESSION. The succession between predecessors and successors in a corporation aggregate or sole. Thomas v. Dakin, 22 Wend. (N. Y.) 100.

ARTIFICIAL WATER COURSE. See Water course.

ARTIFICIALLY. Technically; scientifically; using terms of art. A will or contract

is described as "artificially" drawn if it is couched in apt and technical phrases and exhibits a scientific arrangement.

ARTISAN. One skilled in some kind of mechanical craft or art; a skilled mechanic. O'Clair v. Hale, 25 Misc. Rep. 31, 54 N. Y. Supp. 386; Amazon Irr. Co. v. Briesen, 1 Kan. App. 758, 41 Pac. 1116. As used in lien statutes, the term includes the architect, Kansas City Southern Ry. Co. v. Wallace, 38 Okl. 233, 132 P. 908, 911, 46 L. R. A. (N. S.) 112, but not a subcontractor, Huffman v. McDonald (Tex. Civ. App.) 261 S. W. 146, 147. An optometrist is not an "artisan." Swanz v. Clark, 71 Mont. 385, 229 P. 1108.

ARTIST. Under the Immigration Law May 19, 1921, § 2, subd. "d" (42 Stat. 5), "artist" refers to one skilled in trade or art. U. S. v. Commissioner of Immigration at Port of New York (C. C. A.) 298 F. 449, 450.

ARURA. An old English law term, signifying a day's work in plowing.

ARVIL-SUPPER. A feast or entertainment made at a funeral in the north of England; *arvil bread* is bread delivered to the poor at funeral solemnities, and *arvil, arval,* or *arfal,* the burial or funeral rites. Cowell.

AS. Lat. In the Roman and civil law. A pound weight; and a coin originally weighing a pound, (called also "*libra*;") divided into twelve parts, called "*unciæ.*"

The parts were reckoned (as may be seen in the law, *Servum de hæredibus,* Inst. lib. xiii. *Pandect*) as follows: *uncia,* 1 ounce; *sextans,* 2 ounces; *triens,* 3 ounces; *quadrans,* 4 ounces; *quincunx,* 5 ounces; *semis,* 6 ounces; *septunx,* 7 ounces; *bes,* 8 ounces; *dodrans,* 9 ounces; *dextans,* 10 ounces; *deunx,* 11 ounces.

Any integral sum, subject to division in certain proportions. Frequently applied in the civil law to inheritances; the whole inheritance being termed "as," and its several proportionate parts "*sextans*," "*quadrans*," etc. Burrill.

The term "as," and the multiples of its *unciæ*, were also used to denote the rates of interest. 2 Bl. Comm. 462, note *m.*

AS. Used as an adverb, etc., "as" means like, similar to, of the same kind, in the same manner, in the manner in which. Van Pelt v. Hilliard, 75 Fla. 792, 78 So. 693, 697, L. R. A. 1918E, 639; Price v. Skylstead, 69 Mont. 453, 222 P. 1059, 1060. "As" may also have the meaning of because, since, or it being the case that; State v. Rudman, 126 Me. 177, 136 A. 817, 819; in the character or under the name of; State v. Blue, 134 La. 561, 64 So. 411, 414; when; Shane Bros. & Wilson Co. v. Barrett, 71 Ind. App. 313, 124 N. E. 780, 781.

AS AGAINST; AS BETWEEN. These words contrast the relative position of two persons, with a tacit reference to a different relationship between one of them and a third person. For instance, the temporary bailee of a chattel is entitled to it *as between* himself and a stranger, or *as against* a stranger; reference being made by this form of words to the rights of the bailor. Wharton.

AS IS. A sale of goods by sample "as is" requires that the goods be of the kind and quality represented, even though they be in a damaged condition. Schwartz v. Kohn (Sup.) 155 N. Y. S. 547, 548.

AS LONG AS. The phrase "as long as life doth last," in a will, is tantamount to "forever." In re Brown, 119 Kan. 402, 239 P. 747.

AS OF COURSE. Under a statute providing that an attachment will be dissolved, "as of course," upon defendant's entering his appearance and filing his answer, the quoted words mean when asked by defendant. Pitman v. West, 198 Mo. App. 92, 199 S. W. 756, 757.

AS PER. "As per" is a sort of law and business term which is hardly susceptible of literal translation, but which is commonly understood to mean, "in accordance with," or "in accordance with the terms of," or "as by the contract authorized." Continental Bank & Trust Co. v. Times Pub. Co., 142 La. 209, 76 So. 612, 617, L. R. A. 1918B, 632. "A crude phrase in commercial correspondence, avoided in good business style." Krapp, Comprehensive Guide to Good English, page 56.

AS SOON AS. This term has a relative meaning according to the thing which is to be done. Eichelbaum & Smith v. Bishop, 75 Pa. Super. Ct. 528, 529. It often denotes merely a reasonable time; Childers v. Brown, 81 Or. 1, 158 P. 166, 168, Ann. Cas. 1918D, 170; In re Varet's Estate, 181 App. Div. 446, 168 N. Y. S. 896, 898; and it may be the equivalent of "whenever"; School Dist. No. 37 of Rice County v. Board of Education of City of Lyons, 110 Kan. 613, 204 P. 758, 761. Sometimes it means immediately. Columbia Digger Co. v. Rector (D. C.) 215 F. 618, 630.

AS SOON AS POSSIBLE. When used with reference to the time of performing some act, such as the shipment of goods, these words mean merely within a reasonable time. Russell Co. v. Spurgeon (Mo. App.) 258 S. W. 10, 12; Birmingham Paper Co. v. Holder, 24 Ga. App. 630, 101 S. E. 692; Ingram Day Lumber Co. v. Germain Co., 135 Miss. 490, 100 So. 281, 285; Dillinger v. Ogden, 244 Pa. 20, 90 A. 446, 449; Sturges & Burn Mfg. Co. v. American Separator Co., 142 N. Y. S. 697, 700, 158 App. Div. 63. *Contra:* National Cash Register Co. v. McCann, 140 N. Y. S. 916, 920, 80 Misc. 165 ("as soon as possible" requires a much more speedy fulfillment than within a reasonable time).

AS SOON AS PRACTICABLE. These words are not synonymous with "as soon as pos-

sible"; they mean ordinarily as soon as reasonably can be expected; Texas Employers' Ins. Ass'n v. Mummey (Tex. Civ. App.) 200 S. W. 251, 253; or "in due time"; Texas Employers' Ins. Ass'n v. Mummey (Tex. Civ. App.) 200 S. W. 251, 252. But the words have also been construed as practically synonymous with speedily. Roberson v. Weaver, 145 Ga. 620, 89 S. E. 769, 772.

ASCEND. To go up; to pass up or upwards; to go or pass in the ascending line. 4 Kent, Comm. 393, 397.

ASCENDANTS. Persons with whom one is related in the ascending line; one's parents, grandparents, great-grandparents, etc.

ASCENDIENTES. In Spanish law. Ascendants; ascending heirs; heirs in the ascending line. Schm. Civil Law, 259.

ASCENT. Passage upwards; the transmission of an estate from the ancestor to the heir in the ascending line. See 4 Kent, Comm. 393, 397.

ASCERTAIN. To fix; to render certain or definite; to estimate and determine; to clear of doubt or obscurity. Brown v. Lyddy, 11 Hun, 456; Bunting v. Speek, 41 Kan. 424, 21 Pac. 288, 3 L. R. A. 690; Pughe v. Coleman (Tex. Civ. App.) 44 S. W. 578; Carter County v. Huett, 303 Mo. 194, 259 S. W. 1057, 1058. To find out by investigation, U. S. v. Carver, 43 S. Ct. 181, 182, 260 U. S. 482, 67 L. Ed. 361. Sometimes it means to "assess", Commonwealth v. Deford Co., 137 Va. 542, 120 S. E. 281, 285; or to "hear, try, and determine," In re Higgins' Estate, 143 N. Y. S. 552, 556, 81 Misc. 579.

ASCRIPTITIUS (or ASCRIPTICIUS). In Roman law. A foreigner who had been registered and naturalized in the colony in which he resided. Cod. 11, 47.

A man bound to the soil but not a slave. 2 Holdsw. Hist. E. L. 217. See Adscriptitii.

ASEXUALIZATION. See Vasectomy.

ASIDE. On one side; apart. *To set aside.* To annul; to make void. State v. Primm, 61 Mo. 171.

ASK. In an affidavit wherein affiant asks that a cause be reinstated and set down for trial, "asks" is practically synonymous with "moves." Harris v. Chicago House-Wrecking Co., 314 Ill. 500, 145 N. E. 666, 669.

ASKING A BRIBE. To constitute the crime of "asking a bribe," it is not necessary that the party solicited shall consent to give the bribe, or that there shall be a meeting of the minds, or mutual understanding or agreement between him and the party asking the bribe; it being sufficient if the latter is ready and willing to enter into the corrupt agreement. People v. Powell, 50 Cal. App. 436, 195 P. 456, 458.

ASPECT. View; object; possibility. Implies the existence of alternatives. Used in the phrases "bill with a double aspect" and "contingency with a double aspect."

ASPERSIONS. "Aspersions" may mean the making of calumnious report or may mean nothing more than criticism or censure. Fitts v. Davis, 269 F. 1018, 1019, 50 App. D. C. 234.

ASPHYXIA. In medical jurisprudence. A morbid condition of swooning, suffocation, or suspended animation, resulting in death if not relieved, produced by any serious interference with normal respiration (as, the inhalation of poisonous gases or too rarified air, choking, drowning, obstruction of the air passages, or paralysis of the respiratory muscles) with a consequent deficiency of oxygen in the blood. See State v. Baldwin, 36 Kan. 1, 12 Pac. 328. See Apnœa.

ASPIRIN. A coal tar product commonly kept in drug stores and sold for medicinal purposes. It is not a proprietary or patent medicine, but is a drug or medicine, within a statute prohibiting retailing by one not a registered pharmacist. State v. Zotalis, 172 Minn. 132, 214 N. W. 766, 767.

ASPORTATION. The removal of things from one place to another. The carrying away of goods; one of the circumstances requisite to constitute the offense of larceny. 4 Bl. Comm. 231. Wilson v. State, 21 Md. 1; State v. Higgins, 88 Mo. 354; Rex v. Walsh, 1 Moody, Cr. Cas. 14, 15. Any appreciable changing of the location of the property involved with felonious intent. People v. Ashworth, 222 N. Y. S. 24, 27, 220 App. Div. 498; Banks v. State, 133 Ark. 169, 202 S. W. 43. 44. To constitute "asportation," the thing taken must have been in entire or absolute possession of taker. People v. Edwards, 72 Cal. App. 102, 236 P. 944, 949; Adams v. Commonwealth, 153 Ky. 88, 154 S. W. 381, 382, 44 L. R. A. (N. S.) 637.

ASPORTAVIT. He carried away. Sometimes used as a noun to denote a carrying away. An "*asportavit* of personal chattels." 2 H. Bl. 4.

ASSACH. In old Welsh law. An oath made by compurgators. Brown.

ASSART. In English law. The offense committed in the forest, by pulling up the trees by the roots that are thickets and coverts for deer, and making the ground plain as arable land. It differs from waste, in that waste is the cutting down of coverts which may grow again, whereas assart is the plucking them up by the roots and utterly destroying them, so that they can never afterward grow. This is not an offense if done with license to convert forest into tillage ground. Consult *Manwood's Forest Laws*, pt. I, p. 171. Wharton. See Essarter.

ASSART RENTS. Rents paid to the Crown for assarted lands.

ASSASSINATION. Murder committed for hire, without provocation or cause of resentment given to the murderer by the person upon whom the crime is committed. Ersk. Inst. 4, 4, 45.

A murder committed treacherously, or by stealth or surprise, or by lying in wait.

ASSATH. An ancient custom in Wells, by which a person accused of crime could clear himself by the oaths of three hundred men. It was abolished by St. 1 Hen. V. c. 6. Cowell; Spelman.

ASSAULT. An unlawful offer or attempt with force or violence to do a corporeal hurt to another. Force unlawfully directed or applied to the person of another under such circumstances as to cause a well-founded apprehension of immediate peril. Bish. Cr. Law, 548. Quoted and relied on in Haun v. State, 22 Okl. Cr. 440, 211 P. 1060. See, also, Pen. Code Cal. § 240; Code Ga. 1882, § 4357 (Pen. Code 1926, § 95); State v. Staw, 97 N. J. Law, 349. 116 A. 425.

An attempt or offer to beat another, without touching him; as if one lifts up his cane or his fist in a threatening manner at another; or strikes at him, but misses him. 3 Bl. Comm. 120; 3 Steph. Comm. 469; United States v. Hand, 2 Wash. C. C. 435, Fed. Cas. No. 15,297; Hays v. People, 1 Hill (N. Y.) 351; Yarberry v. Commonwealth, 209 Ky. 15, 272 S. W. 24, 25; Yates v. State, 22 Ala. App. 105, 113 So. 87. Any unjustifiable act causing a well-founded apprehension of immediate peril from a force already partially or fully put in motion. 4 C. & P. 349; 9 *id.* 483, 626; Com. v. White, 110 Mass. 407; State v. Crow, 23 N. C. 375; Com. v. Eyre, 1 Serg. & R. (Pa.) 347; State v. Sims, 3 Strobh. (S. C.) 137; State v. Blackwell, 9 Ala. 79. See Battery.

The attempt must be coupled with the ability or apparent present ability to execute it. State v. Straub, 190 Iowa, 800, 180 N. W. 869, 871; Flournoy v. State, 25 Tex. App. 244, 7 S. W. 865; Lane v. State, 85 Ala. 11, 4 South. 730; 13 C. B. 880; People v. Lilley, 43 Mich. 527, 5 N. W. 982; Tarver v. State, 43 Ala. 354; State v. Holman, 90 Kan. 105, 132 P. 1175; Mendenhall v. State, 18 Okl. Cr. 441, 196 P. 736, 739; State v. Cancelmo, 86 Or. 379, 168 P. 721, 723; State v. Greco, 104 A. 637, 639, 7 Boyce (Del.) 140; State v. Paxon, 99 A. 46, 47, 6 Boyce (Del.) 249; Blankenship v. State, 130 Miss. 725, 95 So. 81, 82; Burton v. State, 8 Ala. App. 295, 62 So. 394, 395; People v. Cieslak, 319 Ill. 221, 149 N. E. 815, 816.

An intention to do harm is of the essence of an assault. State v. Kunkel (Mo. App.) 244 S. W. 968, 969; State v. Davis, 23 N. C. 127, 35 Am. Dec. 735; Raefeldt v. Koenig, 152 Wis. 459, 140 N. W. 56, 57, L. R. A. 1918E, 1052; Wells v. State, 108 Ark. 312, 157 S. W. 389, 45 L. R. A. (N. S.) 1171.

In some jurisdictions degrees of the offense are established, as first degree, State v. Papp, 51 Mont. 405, 153 P. 279, 280; second degree, State v. Reynolds, 94 Wash. 270, 162 P. 358, 359; and third degree, State v. Steele, 83 Wash. 470, 145 P. 581; People v. Wein, 187 N. Y. S. 753, 754, 196 App. Div. 368.

Aggravated Assault

One committed with the intention of committing some additional crime; or one attended with circumstances of peculiar outrage or atrocity. This class includes assault with a dangerous or deadly weapon; State v. Kakarikos, 45 Utah, 470, 146 P. 750, 751; People v. Bennett, 37 Cal. App. 324, 173 P. 1004, 1005; Brinkley v. State, 82 Tex. Cr. R. 150, 198 S. W. 940; assault upon infants or females, if it create a sense of shame; Hopson v. State, 84 Tex. Cr. R. 619, 209 S. W. 410; Price v. State, 90 Tex. Cr. R. 534, 236 S. W. 722; Wren v. State, 27 Ariz. 491, 232 P. 398; and assault of lust, meaning an assault, less than felonious, with intent to have improper sexual connection; State v. Eslick (Mo. App.) 216 S. W. 974, 975.

Secret Assault

Under a North Carolina statute, to warrant conviction for malicious, "secret assault," state must prove all essential elements of crime, namely, malice, use of deadly weapon in secret manner, with intent to kill. State v. Kline, 190 N. C. 177, 129 S. E. 417, 418. It is not essential, however, that the person assaulted be unconscious of the presence of his adversary, though the purpose of such adversary must not be known. State v. Oxendine, 187 N. C. 658, 122 S. E. 568, 571.

Simple Assault

One committed with no intention to do any other injury. An offer or attempt to do bodily harm which falls short of an actual battery; an offer or attempt to beat another, but without touching him; for example, a blow delivered within striking distance, but which does not reach its mark. See State v. Lightsey, 43 S. C. 114, 20 S. E. 975; Norton v. State, 14 Tex. 393. Also, sometimes, the use of physical violence upon another, without circumstances of aggravation. Ratcliff v. State, 106 Tex. Cr. R. 37, 289 S. W. 1072, 1074. "Simple assault and battery" is an unlawful act of violent injury to another, unaccompanied by any circumstances of aggravation. State v. Jones, 133 S. C. 167, 130 S. E. 747, 751. And see State v. Staw, 97 N. J. Law, 349, 116 A. 425.

ASSAY. The proof or trial, by chemical experiments, of the purity or fineness of metals,—particularly of the precious metals, gold and silver.

A trial of weights and measures by a standard; as by the constituted authorities, clerks of markets, etc. Reg. Orig. 280.

A trial or examination of certain commodities, as bread, cloths, etc. Cowell; Blount. See Annual Assay.

ASSAY OFFICE. The staff of persons by whom (or the building or department in which) the process of assaying gold and sil-

ver, required by government, incidental to maintaining the coinage, is conducted.

ASSAYER. One whose business it is to make assays of the precious metals.

ASSAYER OF THE KING. An officer of the royal mint, appointed by St. 2 Hen. VI. c. 12, who received and tested the bullion taken in for coining; also called *"assayator regis."* Cowell; Termes de la Ley.

ASSECURARE. To assure, or make secure by pledges, or any solemn interposition of faith. Cowell; Spelman.

ASSECURATION. In European law. Assurance; insurance of a vessel, freight, or cargo. Ferrière.

ASSECURATOR. In maritime law. An insurer, (*aversor periculi.*) Locc. de Jure Mar. lib. 2, c. 5, § 10.

ASSEDATION. In Scotch law. An old term, used indiscriminately to signify a lease or feu-right. Bell; Ersk. Inst. 2, 6, 20.

ASSEMBLAGE. A collection of persons. Also the act of coming together. State v. Breen, 110 Kan. 817, 205 P. 632, 633.

ASSEMBLE. When applied to a machine, "assemble" means to collect or gather together the parts and place them in their proper relation to each other to constitute the machine. Citizens' Nat. Bank v. Bucheit, 14 Ala. App. 511, 71 So. 82, 88.

ASSEMBLY. The concourse or meeting together of a considerable number of persons at the same place. Also the persons so gathered.

Popular assemblies are those where the people meet to deliberate upon their rights; these are guaranteed by the constitution. Const. U. S. Amend. art. 1.

Political assemblies are those required by the constitution and laws: for example, the general assembly.

The lower or more numerous branch of the legislature in many of the states is also called the "Assembly" or "House of Assembly," but the term seems to be an appropriate one to designate any political meeting required to be held by law.

ASSEMBLY GENERAL. The highest ecclesiastical court in Scotland, composed of a representation of the ministers and elders of the church, regulated by Act 5th Assem. 1694.

ASSEMBLY, UNLAWFUL. In criminal law. The assembling of three or more persons together to do an unlawful act, who separate without actually doing it, or making any motion towards it. 3 Inst. 176; 4 Bl. Comm. 146. It differs from a riot or rout, because in each of the latter cases there is some act done besides the simple meeting. See State v. Stalcup, 23 N. C. 30, 35 Am. Dec. 732; 9 Car. & P. 91, 431; 5 Car. & P. 154; 1 Bish. Crim. Law, § 535; 2 Bish. Crim. Law, §§ 1256, 1259.

ASSENT. Compliance; approval of something done; a declaration of willingness to do something in compliance with a request. Norton v. Davis, 83 Tex. 32, 18 S. W. 430; Appeal of Pittsburgh, 115 Pa. 4, 7 A. 778; Canal Co. v. Railroad Co., 4 Gill & J. (Md.) 1, 30; Baker v. Johnson County, 37 Iowa, 189; Fuller v. Kemp (Com. Pl.) 16 N. Y. Supp. 160; State v. Peasley, 80 Wash. 99, 141 P. 316, 317; Illinois State Bank v. Queen City Quarry Co., 203 Ill. App. 176, 177. It implies a conscious approval of facts actually known, as distinguished from mere neglect to ascertain facts. White-Wilson-Drew Co. v. Lyon-Ratcliff Co. (C. C. A. Ill.) 268 F. 525, 526. Sometimes it is equivalent to "authorize." Hagerla v. Mississippi River Power Co. (D. C.) 202 F. 776, 783.

In every agreement the parties must, as regards the principal or essential part of the transaction, intend the same thing: *i. e.*, each must know what the other is to do. This is called "mutuality of assent." Chit. Cont. 13.

In strictness, *assent* is to be distinguished from *consent*, which denotes a willingness that something about to be done, be done: *acceptance*, compliance with, or receipt of, something offered; *ratification*, rendering valid something done without authority; and *approval*, an expression of satisfaction with some act done for the benefit of another beside the party approving. But in practice the term is often used in the sense of acceptance and approval.

Under a statute penalizing a broker who consents or assents to unlawful pledge of customer's securities, "consent" means an active circumstance of concurrence, while "assent" is passive act of concurrence before another does act charged, People v. Sugarman, 215 N. Y. S. 56, 66, 216 App. Div. 209; or "consent" means an active acquiescence, and "assent" a silent acquiescence with knowledge of the proposed act, but neither includes approval after commission of act, People v. Lowe, 205 N. Y. S. 77, 78, 209 App. Div. 498.

Express Assent

That which is openly declared.

Implied Assent

That which is presumed by law.

Mutual Assent

The meeting of the minds of both or all the parties to a contract; the fact that each agrees to all the terms and conditions, in the same sense and with the same meaning as the others. Insurance Co. v. Young, 23 Wall. 107, 23 L. Ed. 152.

ASSERT. To state as true; declare; maintain. To assert against another has probably a *prima facie* meaning of a contradiction of him, but the context or circumstances may show that it connotes a criminatory charge; 7 L. J. Ex. 268.

ASSERTORY COVENANT. One which affirms that a particular state of facts exists; an affirming promise under seal.

ASSERTORY OATH. See Oath.

ASSESS. To ascertain; fix the value of. State ex rel. Ambrose v. Trimble, 304 Mo. 533, 263 S. W. 840, 842. To ascertain, adjust, and settle the respective shares to be contributed by several persons toward an object beneficial to them all, in proportion to the benefit received.

To adjust or fix the proportion of a tax which each person, of several liable to it, has to pay; to apportion a tax among several; to distribute taxation in a proportion founded on the proportion of burden and benefit. Allen v. McKay, 120 Cal. 332, 52 Pac. 828; Seymour v. Peters, 67 Mich. 415, 35 N. W. 62. To calculate the rate and amount of taxes. Flanigan v. Police Jury of Jackson Parish, 145 La. 613, 82 So. 722, 726.

To place a valuation upon property for the purpose of apportioning a tax. Bridewell v. Morton, 46 Ark. 73; Moss v. Hindes, 28 Vt. 281.

"Assess" is sometimes used as synonymous with "levy"; Lehigh Valley R. Co. v. State Board of Taxes and Assessment, 101 N. J. Law, 298, 128 A. 432, 433; Barnett v. Pension Commission of Police and Fire Departments of Atlantic City, 100 N. J. Eq. 473, 136 A. 317, 319; and is sometimes distinguished therefrom; City of Portland v. Portland Ry. Light & Power Co., 80 Or. 271, 156 P. 1058, 1064.

To impose a pecuniary payment upon persons or property; to tax. People v. Priest, 169 N. Y. 435, 62 N. E. 568; People v. Illinois Cent. R. Co., 273 Ill. 220, 112 N. E. 700; State ex rel. Asotsky v. Regan, 317 Mo. 1216, 298 S. W. 747, 749, 55 A. L. R. 773.

ASSESSED. Where the charter of a corporation provides for the payment by it of a state tax, and contains a proviso that "no other tax or impost shall be levied or assessed upon the said company," the word "assessed" in the proviso cannot have the force and meaning of describing special levies for public improvements, but is used merely to describe the act of levying the tax or impost. New Jersey Midland R. Co. v. Jersey City, 42 N. J. Law, 97.

ASSESSMENT. In a general sense, "assessment" denotes the process of ascertaining and adjusting the shares respectively to be contributed by several persons towards a common beneficial object according to the benefit received.

In Taxation

The listing and valuation of property for the purpose of apportioning a tax upon it, either according to value alone or in proportion to benefit received. Also determining the share of a tax to be paid by each of many persons; or apportioning the entire tax to be levied among the different taxable persons, establishing the proportion due from each. Commerce Trust Co. v. Syndicate Lot Co., 208 Mo. App. 261, 232 S. W. 1055, 1056; Town of Albertville v. Hooper, 196 Ala. 642, 72 So. 258; Sussex County v. Jarratt, 129 Va. 672, 106 S. E. 384, 387; Town of Auburndale v. Cline, 82 Fla. 121, 89 So. 427, 429; Adams, etc., Co. v. Shelbyville, 154 Ind. 467, 57 N. E. 114, 49 L. R. A. 797, 77 Am. St. Rep. 484; Webb v. Bidwell, 15 Minn. 483 (Gil. 394); State v. Farmer, 94 Tex. 232, 59 S. W. 541; Kinney v. Zimpleman, 36 Tex. 582; Southern R. Co. v. Kay, 62 S. C. 28, 39 S. E. 785; U. S. v. Erie R. Co., 107 U. S. 1, 2 S. Ct. 83, 27 L. Ed. 385.

Assessment, as used in juxtaposition with taxation in a state constitution, includes all the steps necessary to be taken in the legitimate exercise of the power to tax. Hurford v. Omaha, 4 Neb. 336.

Assessment is also popularly used as a synonym for taxation in general,—the authoritative imposition of a rate or duty to be paid. But in its technical signification it denotes only taxation for a special purpose or local improvement; local taxation, as distinguished from general taxation; taxation on the principle of apportionment according to the relation between burden and benefit.

As distinguished from other kinds of taxation, assessments are those special and local impositions upon property in the immediate vicinity of municipal improvements which are necessary to pay for the improvement, and are laid with reference to the special benefit which the property is supposed to have derived therefrom. Hale v. Kenosha, 29 Wis. 599. And see Ridenour v. Saffin, 1 Handy (Ohio) 464; Roosevelt Hospital v. New York, 84 N. Y. 108, 112; King v. Portland, 2 Or. 146; Reeves v. Wood County, 8 Ohio St. 333; Wood v. Brady, 68 Cal. 78, 5 P. 623, 8 P. 599.

Taxes are impositions for purposes of general revenue, while assessments are special and local impositions upon property in the immediate vicinity of an improvement, for the public welfare, which are necessary to pay for the improvement and made with reference to the special benefit which such property derives from the expenditure. Palmer v. Stumph, 29 Ind. 329; Kimball v. Board of Sup'rs of Polk County, 190 Iowa, 783, 180 N. W. 988, 991; Atlantic Coast Line R. Co. v. Town of Ahoskie, 192 N. C. 258, 134 S. E. 653, 654.

A special assessment is a charge in the nature of a tax, imposed for the purpose of paying the cost of a local improvement in a municipal corporation, and levied only on those parcels of real property which, by reason of the location of such improvement, are specially benefited by it. Village of Morgan Park v. Wiswall, 155 Ill. 262, 40 N. E. 611; Wilson v. Auburn, 27 Neb. 435, 43 N. W. 257; Raleigh v. Peace, 110 N. C. 32, 14 S. E. 521, 17 L. R. A. 330; Sargent v. Tuttle, 67 Conn. 162, 34 A. 1023, 32 L. R. A. 822.

Assessment and tax are not synonymous, although occasionally so used. Orr v. Allen (D. C.) 245 F. 486, 498.

An assessment is doubtless a tax, but the term implies something more; it implies a tax of a particular kind, predicated upon the principle of equivalents, or benefits, which are peculiar to the persons or property charged therewith, and which are said to be assessed or appraised, according to the measure or proportion of such equivalents; whereas a simple tax is imposed for the purpose of supporting the government generally, without reference to any special advantage which may be supposed to accrue to the persons taxed. Taxes must be levied, without discrimination, equally upon all the subjects of property; whilst assessments are

only levied upon lands, or some other specific property, the subjects of the supposed benefits; to repay which the assessment is levied. Ridenour v. Saffin, 1 Handy (Ohio) 464; In re Walker River Irr. Dist., 44 Nev. 321, 195 P. 327, 330.

There is a wide difference in law between a tax and an assessment. In the one case the taxes are assessed against the individual and become a charge upon his property generally. In the other, the assessment, being for the benefits accruing to the specific property, becomes a charge only upon and against it, and liability for the charge is confined to the particular property benefited. Therefore an assessment or "special assessment" is not embraced within the meaning of the word taxation, because the owner of the property assessed gets back the amount of his assessment in the benefits received by his property, and therefore does not bear the burden of a tax. In re Walker River Irr. Dist., 44 Nev. 321, 195 P. 327, 330.

A charge or exaction levied on all the property within the limits of some pre-existing political unit, such as a municipality, and made in proportion to the valuation of the property, is a tax, not an assessment, though levied for purposes for which a local assessment might have been levied. Smith v. Hurlburt, 108 Or. 690, 217 P. 1093, 1099.

In Corporations

Installments of the money subscribed for shares of stock, called for from the subscribers by the directors, from time to time as the company requires money, are called "assessments," or, in England, "calls." Water Co. v. Superior Court, 92 Cal. 47, 28 Pac. 54, 27 Am. St. Rep. 91; Spangler v. Railroad Co., 21 Ill. 278; Stewart v. Publishing Co., 1 Wash. St. 521, 20 Pac. 605. While the terms "call" and "assessment" are generally used synonymously, the latter term applies with peculiar aptness to contributions above the par value of stock or the subscription liability of the stockholders; Porter v. Northern Fire & Marine Ins. Co., 36 N. D. 199, 161 N. W. 1012, 1014; whereas "call" or "installments" means action of the board of directors demanding payment of all or portion of unpaid subscriptions; Seyberth v. American Commander Min. & Mill. Co., 42 Idaho, 254, 245 P. 392, 395. It has been said, however, that the superadded liability of stockholders to creditors, is not in a true sense an "assessment," but is a "statutory liability." Leach v. Arthur Sav. Bank, 203 Iowa, 1052, 213 N. W. 772, 773.

Of Damages

Fixing the amount of damages to which the successful party in a suit is entitled after an interlocutory judgment has been taken.

Assessment of damages is also the name given to the determination of the sum which a corporation proposing to take lands for a public use must pay in satisfaction of the demand proved or the value taken.

In Insurance

An apportionment made in general average upon the various articles and interests at risk, according to their value at the time and place of being in safety, for contribution for damage and sacrifices purposely made, and expenses incurred for escape from impending common peril. 2 Phil. Ins. c. xv.

A sum specially levied in mutual benefit insurance upon a fixed and definite plan within the limit of the company's or society's fundamental law of organization to pay losses, or losses and expenses incurred, being to a certain degree substantially the equivalent of premiums. Beaver State Merchants' Mut. Fire Ins. Ass'n v. Smith, 97 Or. 579, 192 P. 798, 800.

The periodical demands made by a mutual insurance company, under its charter and by-laws, upon the makers of premium notes, are also denominated "assessments." Hill v. Insurance Co., 129 Mich. 141, 88 N. W. 392.

In Mining

"Assessment" as applied to labor on mining claims is universally understood to mean the annual labor required by Rev. St. U. S. § 2324 (30 USCA § 28), in order to hold the right to the possession of the claim after a discovery and complete location has been made. Smith v. Union Oil Co., 166 Cal. 217, 135 P. 966, 969. See Assessment Work.

ASSESSMENT ASSOCIATION. This term, as defined by the Nebraska insurance laws, does not include an insurance company which requires the payment of a fixed premium in advance and provides benefits not in any degree dependent upon the collection of assessments from other members, and which does not provide for the levying of extra assessments, if necessary. Western Life & Accident Co. of Colorado v. State Ins. Board of Nebraska, 101 Neb. 152, 162 N. W. 530.

ASSESSMENT COMPANY. In life insurance. A company in which a death loss is met by levying an assessment on the surviving members of the association. Mutual Ben. L. Ins. Co. v. Marye, 85 Va. 643, 8 S. E. 481; National Ben. Ass'n v. Clay, 162 Ky. 409, 172 S. W. 922, 923.

ASSESSMENT CONTRACT. One wherein the payment of the benefit is in any manner or degree dependent on the collection of an assessment levied on persons holding similar contracts. Folkens v. Insurance Co., 98 Mo. App. 480, 72 S. W. 720.

ASSESSMENT DISTRICT. In taxation. Any subdivision of territory, whether the whole or part of any municipality, in which by law a separate assessment of taxable property is made by the officers elected or appointed therefor. Rev. Stat. Wis. 1898, § 1031 (St. 1931, § 70.04).

ASSESSMENT FUND. The assessment fund of a mutual benefit association is the balance of the assessments, less expenses, out of which beneficiaries are paid. Kerr v. Ben. Ass'n, 39 Minn. 174, 39 N. W. 312, 12 Am. St. Rep. 631.

ASSESSMENT LABOR. These words in Act Feb. 12, 1903 (30 USCA § 102), providing that

such labor on oil claims may be done on one of a group of contiguous claims refers to the annual labor required of the locator of a mineral claim after discovery by Rev. St. § 2324 (30 USCA § 28), and not to work before discovery. Union Oil Co. of California v. Smith, 249 U. S. 337, 39 S. Ct. 308, 311, 63 L. Ed. 635. See Assessment, under the heading "In Mining."

ASSESSMENT LIST. The list furnished by the assessor to the board of equalization. Adsit v. Park, 144 La. 934, 81 So. 430, 434.

ASSESSMENT ROLL. In taxation. The list or roll of taxable persons and property, completed, verified, and deposited by the assessors, not as it appears after review and equalization. Bank v. Genoa, 28 Misc. 71, 59 N. Y. S. 829; Adams v. Brennan, 72 Miss. 894, 18 So. 482. See Esmeralda County v. Mineral County, 37 Nev. 180, 141 P. 73.

ASSESSMENT WORK. Under the mining laws of the United States, the holder of an unpatented mining claim on the public domain is required, in order to hold his claim, to do labor or make improvements upon it to the extent of at least one hundred dollars in each year. Rev. St. U. S. § 2324 (30 USCA § 28). This is commonly called by miners "doing assessment work."

ASSESSOR. An officer chosen or appointed to appraise, value, or assess property.

The assessing power, and not merely the county assessor. Board of Com'rs of San Miguel County v. Floaten, 66 Colo. 540, 181 P. 122.

In Civil and Scotch Law

Persons skilled in law, selected to advise the judges of the inferior courts. Bell; Dig. 1, 22; Cod. 1, 51.

A person learned in some particular science or industry, who sits with the judge on the trial of a cause requiring such special knowledge and gives his advice.

In England it is the practice in admiralty business to call in assessors, in cases involving questions of navigation or seamanship. They are called "nautical assessors" (*q. v.*), and are always Brethern of the Trinity House.

ASSETS.

In Probate Law

Property of a decedent available for the payment of debts and legacies; the estate coming to the heir or personal representative which is chargeable, in law or equity, with the obligations which such heir or representative is required, in his representative capacity, to discharge.

In an accurate and legal sense, all the personal property of the deceased which is of a salable nature, and may be converted into ready money, is deemed *assets*. But the word is not confined to such property; for all other property of the deceased, real or personal, tangible or intangible, legal or equitable, which can be made available for or can be appropriated to payment of debts, is, in a large sense, assets. In re Carter's Estate, 113 Okl. 182, 240 P. 727, 729; Agee v. Saunders, 127 Tenn. 680, 157 S. W. 64, 65, 46 L. R. A. (N. S.) 788; Fremd v. Hogg, 68 Fla. 331, 67 So. 75, 76, Ann. Cas. 1917B, 155; 1 Story, Eq. Jur. § 531; Marvin v. Railroad Co. (C. C.) 49 Fed. 436; Trust Co. v. Earle, 110 U. S. 710, 4 Sup. Ct. 231, 28 L. Ed. 301.

In Commercial Law

The aggregate of available property, stock in trade, cash, etc., belonging to a merchant or mercantile company.

The word "assets," though more generally used to denote everything which comes to the representatives of a deceased person, yet is by no means confined to that use, but has come to signify everything which can be made available for the payment of debts, whether belonging to the estate of a deceased person or not. Hence we speak of the assets of a bank or other monied corporation, the assets of an insolvent debtor, and the assets of an individual or private copartnership; and we always use this word when we speak of the means which a party has, as compared with his liabilities or debts. Stanton v. Lewis, 26 Conn. 449; Vaiden v. Hawkins, 59 Miss. 419; Pelican v. Rock Falls, 81 Wis. 428, 51 N. W. 871, 52 N. W. 1049; Warren v. Warren, 36 R. I. 167, 89 A. 651, 658; Lane v. Barnard, 170 N. Y. S. 946, 947, 103 Misc. 707. The term "assets," as applied to a bank, is broad enough to cover anything which is or may be available to pay creditors; but, as usually understood, it refers to the tangible property of the corporation, and not to the liability of stockholders contingent upon insolvency. Hill v. Smathers, 173 N. C. 642, 92 S. E. 607, 609. But when the individual liability of stockholders has been enforced by the superintendent of banks, funds collected by him thereunder are "assets." Bennett v. Wilkes County, 164 Ga. 790, 139 S. E. 566, 568.

The property or effects of a bankrupt or insolvent, applicable to the payment of his debts.

The term "assets" includes all property of every kind and nature, chargeable with the debts of the bankrupt, that comes into the hands of and under the control of the assignee; and the value thereof is not to be considered a less sum than that actually realized out of said property, and received by the assignee for it. In re Taggert, 16 N. B. R. 351, Fed. Cas. No. 13,725; Progressive Building & Loan Co. v. Hall (C. C. A.) 220 F. 45, 46.

The term "assets," as used in a prosecution of a private banker for receiving deposits while insolvent, means the property of accused, real and personal, his bills receivable, notes, obligations due him, of any and every character, considering the solvency of the makers, indorsers, and guarantors, and the value of the securities thereon, if any, and all stocks held by him as his property. Brown v. State, 71 Tex. Cr. R. 353, 162 S. W. 339, 346.

In General

—Assets entre mains. L. Fr. Assets in hand; assets in the hands of executors or administrators, applicable for the payment of debts. Termes de la Ley; 2 Bl. Comm. 510; 1 Crabb, Real Prop. 23; Favorite v. Booher, 17 Ohio St. 557.

—Assets per descent. That portion of the ancestor's estate which descends to the heir, and which is sufficient to charge him, as far as it goes, with the specialty debts of his ancestors. 2 Williams, Ex'rs, 1011.

—Equitable assets. Equitable assets are all assets which are chargeable with the payment of debts or legacies in equity, and which do not fall under the description of legal assets. 1 Story, Eq. Jur. § 552. Those portions of the property which by the ordinary rules of law are exempt from debts, but which the testator has voluntarily charged as assets, or which, being non-existent at law, have been created in equity. Adams, Eq. 254, et seq. They are so called because they can be reached only by the aid and instrumentality of a court of equity, and because their distribution is governed by a different rule from that which governs the distribution of legal assets. 2 Fonbl. Eq. b. 4, pt. 2, c. 2, § 1, and notes; Story, Eq. Jur. § 552.

—Legal assets. That portion of the assets of a deceased party which by law is directly liable, in the hands of his executor or administrator, to the payment of debts and legacies. 1 Story, Eq. Jur. § 551. Such assets as can be reached in the hands of an executor or administrator, by a suit at law against him.

—Personal assets. Chattels, money, and other personal property belonging to a bankrupt, insolvent, or decedent estate, which go to the assignee or executor.

—Quick assets. This term was used in a corporation credit statement merely to distinguish liquid assets from those permanently invested in the business, like real estate and machinery, and, included amounts charged against officers for return of part of salaries paid them in a previous year, in accordance with the agreement of employment. In re American Knit Goods Mfg. Co., 173 F. 480, 97 C. C. A. 486, aff (D. C.) 155 F. 906.

—Real assets. Lands or real estate in the hands of an heir, chargeable with the payment of the debts of the ancestor. 2 Bl. Comm. 244, 302.

ASSEVERATION. An affirmation; a positive assertion; a solemn declaration. This word is seldom, if ever, used for a declaration made under oath, but denotes a declaration accompanied with solemnity or an appeal to conscience, whereas by an oath one appeals to God as a witness of the truth of what one says.

ASSEWIARE. To draw or drain water from marsh grounds. Cowell.

ASSIGN, *v.*

In Conveyancing

To make or set over to another; to transfer; as to assign property, or some interest therein. Cowell; 2 Bl. Comm. 326; Bump v. Van Orsdale, 11 Barb. (N. Y.) 638; Hoag v. Mendenhall, 19 Minn. 336 (Gil. 289); Kramer v. Spradlin, 148 Ga. 805, 98 S. E. 487, 488. To transfer the title or ownership, as of choses in action. Burkett v. Doty, 176 Cal. 89, 167 P. 518, 520. Insured property is not "assigned" in violation of a provision of the policy by giving a bill of sale as security which was in legal effect a chattel mortgage. King v. Hartford Fire Ins. Co. of Hartford, Conn., 133 Minn. 322, 158 N. W. 435, Ann. Cas. 1918D, 861.

In Practice

To appoint, allot, select, or designate for a particular purpose, or duty. Thus, in England, justices are said to be "*assigned* to take the assises," "*assigned* to hold pleas," "*assigned* to make gaol delivery," "*assigned* to keep the peace," etc. St. Westm. 2, c. 30; Reg. Orig. 68, 69; 3 Bl. Comm. 58, 59, 353; 1 Bl. Comm. 351.

To transfer persons, as a sheriff is said to assign prisoners in his custody.

To point at, or point out; to set forth, or specify; to mark out or designate; as to *assign errors* on a writ of error; to *assign breaches* of a covenant. 2 Tidd, Pr. 1168; 1 Tidd, 686. Where the owner of six separate tracts of land executed a written instrument whereby, in consideration of love and affection, he divided and assigned a tract to each of his six children, "assigned" was used in the sense of dividing and pointing out. Dantzler v. Riley, 109 S. C. 44, 95 S. E. 132.

ASSIGNABLE. That may be assigned or transferred; transferable; negotiable, as a bill of exchange. Comb. 176; Story, Bills, § 17.

ASSIGNATION.

In French Law

A writ of summons.

In Scotch Law

A term equivalent to assignment.

ASSIGNATION HOUSE. A bawdyhouse. State v. Bragg (Mo. App.) 220 S. W. 25, 26. See, also, People v. Arcega, 49 Cal. App. 239, 193 P. 264, 266.

Assignatus utitur jure auctoris. An assignee uses the right of his principal; an assignee is clothed with the rights of his principal. Halk. Max. 14; Broom, Max. 465, 477; Wing. Max. 56; 1 Exch. 32; 18 Q. B. 878.

ASSIGNAY. In Scotch law. An assignee.

ASSIGNEE. A person to whom an assignment is made. Allen v. Pancoast, 20 N. J. Law, 74; Ely v. Com'rs, 49 Mich. 17, 12 N. W. 893, 13 N. W. 784. The term is commonly used in reference to personal property; but it is not incorrect, in some cases, to apply it to realty, *e. g.*, "assignee of the reversion."

Assignee in fact is one to whom an assignment has been made in fact by the party having the right. Starkweather v. Insurance Co., 22 Fed. Cas. 1091; Tucker v. West, 31 Ark. 643.

Assignee in law is one in whom the law vests the right; as an executor or administrator. Idem.

The word has a special and distinctive use as employed to designate one to whom, under an insolvent or bankrupt law, the whole estate of a debtor is transferred to be administered for the benefit of creditors.

In Old Law

A person deputed or appointed by another to do any act, or perform any business. Blount. An *assignee*, however, was distinguished from a *deputy*, being said to occupy a thing in his own right, while a deputy acted in right of another. Cowell.

ASSIGNMENT. A transfer or making over to another of the whole of any property, real or personal, in possession or in action, or of any estate or right therein. This definition is adopted in Love v. Clayton, 287 Pa. 205, 134 A. 422; Talty v. Schoenholz, 224 Ill. App. 158; Stannard v. Marboe, 159 Minn. 119, 198 N. W. 127; Kramer v. Spradlin, 148 Ga. 805, 98 S. E. 487, 488. It includes transfers of all kinds of property, but is ordinarily limited to transfers of choses in action and to rights in or connected with property, as distinguished from the particular item of property. In re Beffa's Estate, 54 Cal. App. 186, 201 P. 616, 617. It is generally appropriate to the transfer of equitable interests. Kavanaugh v. Cohoes Power & Light Corporation, 187 N. Y. S. 216, 228, 114 Misc. 590.

A transfer by writing, as distinguished from one by delivery.

The transfer of the interest one has in *lands* and *tenements*; more particularly applied to the unexpired residue of a term or estate for life or years; Cruise, Dig. tit. xxxii. (Deed) c. vii, § 15; 1 Steph. Com. 507.

The deed by which the transfer is made. Comyns, Dig.; Bacon, Abr.; Humphrey v. Coquillard Wagon Works, 37 Okl. 714, 132 P. 899, 902, 49 L. R. A. (N. S.) 600.

The word "assignment" has a comprehensive meaning, and has been held to include gift of a debt by will. Elwood v. State Soldiers' Compensation Board, 117 Kan. 753, 232 P. 1049. But see Hight v. Sackett, 34 N. Y. 447.

A transfer of the title to a bill, note, or check.

An assignment at common law differs from an indorsement in that by an assignment the assignor passed title to the assignee but did not subject himself to any contractual liability, whereas an indorser, in addition to passing title, impliedly contracts to pay note at maturity on demand and notice on maker's failure to so do. Jones County Trust & Savings Bank v. Kurt, 192 Iowa, 965, 182 N. W. 409, 413; Johnson v. Beickey, 64 Utah, 43, 228 P. 189, 191.

In patent law, the transfer of the entire interest in a patented invention or of an undivided portion of such entire interest as to every section of the United States. Rob. Pat. § 762. It differs from grant in relation to the territorial area to which they relate. A grant is the transfer of the exclusive right in a specific part of the United States. It is an exclusive sectional right. A license is a transfer of a less or different interest than either the interest in a whole patent or an undivided part of such whole interest or an exclusive sectional interest. Potter v. Holland, 4 Blatch. 206, Fed. Cas. No. 11,329. See Littlefield v. Perry, 21 Wall. 205, 22 L. Ed. 577.

A license is distinguished from an assignment and a grant in that the latter transfers the monopoly as well as the invention, while a license transfers only the invention and does not affect the monopoly otherwise than by estopping the licensor from exercising his prohibitory powers in derogation of the privileges conferred by him upon the licensee. Rob. Pat. § 806. See Pope Mfg. Co. v. Mfg. Co., 144 U. S. 248, 12 Sup. Ct. 641, 36 L. Ed. 423.

—Assignment for benefit of creditors. An assignment in trust made by insolvent and other debtors for the payment of their debts. These are usually regulated by state statutes. Barnett v. Kinney, 147 U. S. 476, 13 S. Ct. 403, 37 L. Ed. 247; Boyum v. Jordan, 146 Minn. 66, 178 N. W. 158, 161; Stuart v. Bloch, 39 Okl. 556, 135 P. 1147, 1148; Woodard v. Morrissey, 115 Kan. 511, 223 P. 306, 307. The distinctive test between an "assignment" and a sale, where another creditor is to be paid off, is that in the former case such other creditor is to receive some of the property or its proceeds, and in the latter the creditor to whom title is passed takes for himself the whole property, stipulating to pay the other creditor out of his own means and not out of the property or its proceeds. Silver & Goldstein v. Chapman, 163 Ga. 604, 136 S. E. 914, 919.

—Assignment of dower. The act by which the share of a widow in her deceased husband's real estate is ascertained and set apart to her. Bettis v. McNider, 137 Ala. 588, 34 So. 813, 97 Am. St. Rep. 59; Pierce v. Williams, 3 N. J. Law, 709; Meserve v. Meserve, 19 N. H. 240; Blood v. Blood, 23 Pick. (Mass.) 80; Chaplin v. Simmons' Heirs, 7 T. B. Monr. (Ky.) 337; Stedman v. Fortune, 5 Conn. 462.

—Assignment of error. See Error.

—Assignment with preferences. An assignment for the benefit of creditors, with directions to the assignee to prefer a specified creditor or class of creditors, by paying their

claims in full before the others receive any dividend, or in some other manner. More usually termed a "preferential assignment."

—Foreign assignment. An assignment made in a foreign country, or in another state. 2 Kent, Comm. 405, *et seq.*

—General assignment. An assignment made for the benefit of *all* the assignor's creditors, instead of a few only; or one which transfers the *whole* of his estate to the assignee, instead of a part only. Royer Wheel Co. v. Fielding, 101 N. Y. 504, 5 N. E. 431; Halsey v. Connell, 111 Ala. 221, 20 South. 445; Mussey v. Noyes, 26 Vt. 471.

—Voluntary assignment. An assignment for the benefit of his creditors made by a debtor voluntarily; as distinguished from a compulsory assignment which takes place by operation of law in proceedings in bankruptcy or insolvency. Presumably it means an assignment of a debtor's property in trust to pay his debts generally, in distinction from a transfer of property to a particular creditor in payment of his demand, or to a conveyance by way of collateral security or mortgage. Dias v. Bouchaud, 10 Paige (N. Y.) 445.

ASSIGNOR. One who makes an assignment of any kind; one who assigns or transfers property.

ASSIGNS. Assignees; those to whom property shall have been transferred. Now seldom used except in the phrase, in deeds, "heirs, administrators, and assigns." Grant v. Carpenter, 8 R. I. 36; Baily v. De Crespigny, 10 Best & S. 12; Tennison v. Walker (Mo. Sup.) 190 S. W. 9, 12; McKee v. Elwell, 69 Colo. 316, 194 P. 616; Whittier v. Riley, 104 Neb. 805, 178 N. W. 762, 763; Stannard v. Marboe, 159 Minn. 119, 198 N. W. 127.

The word "assigns" generally comprehends all those who take either immediately or remotely from or under the assignor, whether by conveyance, devise, descent, or act of law. Ferrell v. Deverick, 85 W. Va. 1, 100 S. E. 850, 853.

ASSISA. In old English and Scotch law. An assise; a kind of jury or inquest; a writ; a sitting of a court; an ordinance or statute; a fixed or specific time, number, quantity, quality, price, or weight; a tribute, fine, or tax; a real action; the name of a writ. See Assise.

ASSISA ARMORUM. Assise of arms. A statute or ordinance requiring the keeping of arms for the common defense. Hale, Com. Law, c. 11.

ASSISA CADERE. To fail in the assise; *i. e.*, to be nonsuited. Cowell; 3 Bl. Comm. 402.

ASSISA CADIT IN JURATUM. The assise falls (turns) into a jury; hence to submit a controversy to trial by jury.

ASSISA CONTINUANDA. An ancient writ addressed to the justices of assise for the continuation of a cause, when certain facts put in issue could not have been proved in time by the party alleging them. Reg. Orig. 217.

ASSISA DE CLARENDON. The assise of Clarendon. A statute or ordinance passed in the tenth year of Henry II., by which those that were accused of any heinous crime, and not able to purge themselves, but must abjure the realm, had liberty of forty days to stay and try what succor they could get of their friends towards their sustenance in exile. Bract. fol. 136; Co. Litt. 159*a*; Cowell.

ASSISA DE FORESTA. Assise of the forest; a statute concerning orders to be observed in the royal forests.

ASSISA DE MENSURIS. Assise of measures. A common rule for weights and measures, established throughout England by Richard I., in the eighth year of his reign. Hale, Com. Law, c. 7.

ASSISA DE NOCUMENTO. An assise of nuisance; a writ to abate or redress a nuisance.

ASSISA DE UTRUM. An obsolete writ, which lay for the parson of a church whose predecessor had alienated the land and rents of it.

ASSISA FRISCÆ FORTIÆ. Assise of fresh force, which see.

ASSISA MORTIS D'ANCESTORIS. Assise of *mort d'ancestor*, which see.

ASSISA NOVÆ DISSEYSINÆ. Assise of novel disseisin, which see.

ASSISA PANIS ET CEREVISIÆ. Assise of bread and ale, or beer. The name of a statute passed in the fifty-first year of Henry III., containing regulations for the sale of bread and ale; sometimes called the "statute of bread and ale." Co. Litt. 159*b*; 2 Reeve, Hist. Eng. Law, 56; Cowell; Bract. fol. 155.

ASSISA PROROGANDA. An obsolete writ, which was directed to the judges assigned to take assises, to stay proceedings, by reason of a party to them being employed in the king's business. Reg. Orig. 208.

ASSISA ULTIMÆ PRÆSENTATIONIS. Assise of darrein presentment, (*q. v.*).

ASSISA VENALIUM. The assise of salable commodities, or of things exposed for sale.

ASSISE, or ASSIZE. An ancient species of court, consisting of a certain number of men, usually twelve, who were summoned together to try a disputed cause, performing the functions of a jury, except that they gave a verdict from their own investigation and knowledge and not upon evidence adduced. From

the fact that they sat together, (*assideo*,) they were called the "assise." See Bract. 4, 1, 6; Co. Litt. 153*b*, 159*b*.

A court composed of an assembly of knights and other substantial men, with the baron or justice, in a certain place, at an appointed time. Grand Cou. cc. 24, 25.

The verdict or judgment of the jurors or recognitors of assise. 3 Bl. Comm. 57, 59.

In modern English law, the name "assises" or "assizes" is given to the court, time, or place where the judges of assise and *nisi prius*, who are sent by special commission from the crown on circuits through the kingdom, proceed to take indictments, and to try such disputed causes issuing out of the courts at Westminster as are then ready for trial, with the assistance of a jury from the particular county; the regular sessions of the judges at *nisi prius*.

Anything reduced to a certainty in respect to time, number, quantity, quality, weight, measure, etc. Spelman.

An ordinance, statute, or regulation. Spelman gives this meaning of the word the first place among his definitions, observing that *statutes* were in England called "assises" down to the reign of Henry III.

A species of writ, or real action, said to have been invented by Glanville, chief justice to Henry II., and having for its object to determine the right of possession of lands, and to recover the possession. 3 Bl. Comm. 184, 185.

The whole proceedings in court upon a writ of assise. Co. Litt. 159*b*. The verdict or finding of the jury upon such a writ. 3 Bl. Comm. 57.

—Assise of Clarendon. See Assisa.

—Assise of darrein presentment. A writ of assise which formerly lay when a man or his ancestors under whom he claimed presented a clerk to a benefice, who was instituted, and afterwards, upon the next avoidance, a stranger presented a clerk and thereby disturbed the real patron. 3 Bl. Comm. 245; St. 13 Edw. I. (Westm. 2) c. 5. It has given way to the remedy by *quare impedit*.

—Assise of fresh force. In old English practice. A writ which lay by the usage and custom of a city or borough, where a man was disseised of his lands and tenements in such city or borough. It was called "fresh force," because it was to be sued within forty days after the party's title accrued to him. Fitzh. Nat. Brev. 7 C.

—Assise of mort d'ancestor. A real action which lay to recover land of which a person had been deprived on the death of his ancestor by the abatement or intrusion of a stranger. 3 Bl. Comm. 185; Co. Litt. 159*a*. It was abolished by St. 3 & 4 Wm. IV. c. 27.

—Assise of Northhampton. A re-enactment and enlargement (1176) of the Assise of Clarendon. 1 Holdsw. Hist. E. L. 21.

—Assise of novel disseisin. A writ of assise which lay for the recovery of lands or tenements, where the claimant had been lately disseised.

—Assise of nuisance. A writ of assise which lay where a nuisance had been committed to the complainant's freehold; either for abatement of the nuisance or for damages.

—Assise of the forest. A statute touching orders to be observed in the king's forests. Manwood, 35.

—Assise of utrum. A writ of assise which lay for a parson to recover lands which his predecessor had improperly allowed the church to be deprived of. 3 Bla. Com. 257.

An assise for the trial of the question of whether land is a lay fee, or held in frankalmoigne. 1 Holdsw. Hist. E. L. 21.

—Assise rents. The certain established rents of the freeholders and ancient copyholders of a manor; so called because they are *assised*, or made precise and certain.

—Grand assize. A peculiar species of trial by jury, introduced in the time of Henry II., giving the tenant or defendant in a writ of right the alternative of a trial by battel, or by his peers. Abolished by 3 & 4 Wm. IV. c. 42, § 13. See 3 Bl. Comm. 341. See Battel.

ASSISER. An assessor; juror; an officer who has the care and oversight of weights and measures.

ASSISORS. In Scotch law. Jurors; the persons who formed that kind of court which in Scotland was called an "assise," for the purpose of inquiring into and judging divers civil causes, such as perambulations, cognitions, molestations, purprestures, and other matters; like jurors in England. Holthouse.

ASSIST. To help; aid; succor; lend countenance or encouragement to; participate in as an auxiliary. People v. Hayne, 83 Cal. 111, 23 Pac. 1, 7 L. R. A. 348, 17 Am. St. Rep. 211; Moss v. Peoples, 51 N. C. 142; Comitez v. Parkerson (C. C.) 50 Fed. 170. To contribute effort in the complete accomplishment of an ultimate purpose intended to be effected by those engaged. People v. Thurman, 62 Cal. App. 147, 216 P. 394, 395.

ASSISTANCE, or (ASSISTANTS) COURT OF. See Court of Assistants.

ASSISTANCE, WRIT OF. See Writ of Assistance.

ASSISTANT. A deputy, agent, or employee; as, an assistant assessor. Burns v. Waldron, 71 W. Va. 514, 76 S. E. 894, 895; Pryor Brown Transfer Co. v. Gibson, 154 Tenn. 260, 290 S. W. 33, 35, 51 A. L. R. 193. Being an "assistant," as an assistant engineer, imports subordination to another. Carson v. Chicago, M. & St. P. Ry. Co., 181 Iowa, 310, 164 N. W.

747. But a third assistant district attorney cannot be said to be a "clerk" in view of the difference in meaning in common speech between "assistant" and "clerk." Maginnis v. Schlottman, 271 Pa. 305, 114 A. 782, 783.

An "assistant," meaning one who assists, a helper, may be distinguished from a "deputy," being one appointed to substitute for another with power to act for him in his name or behalf. Saxby v. Sonnemann, 318 Ill. 600, 149 N. E. 526, 528.

ASSISTANT JUDGE. A judge of the English court of general or quarter sessions in Middlesex. He differs from the other justices in being a barrister of ten years' standing, and in being salaried. St. 7 & 8 Vict. c. 71; 22 & 23 Vict. c. 4; Pritch. Quar. Sess. 31.

ASSISTANT TEACHER. An "assistant teacher," meaning a classroom teacher of a subject, is not a "laboratory assistant," meaning a helper of a teacher who does no teaching. People ex rel. Becker v. Board of Education of City of New York (Sup.) 162 N. Y. S. 643, 648.

ASSISUS. Rented or farmed out for a specified assise; that is, a payment of a certain assessed rent in money or provisions.

ASSITHMENT. Weregild (*q. v.*) or compensation by a pecuniary mulct. Cowell.

ASSIZE. In the practice of the criminal courts of Scotland, the fifteen men who decide on the conviction or acquittal of an accused person are called the "assize," though in popular language, and even in statutes, they are called the "jury." Wharton. See Assise.

ASSIZES. Sessions of the justices or commissioners of assize. These assizes are held twice in each year in each of the various shires of England, with some exceptions, for the trial of matters of fact in issue in both civil and criminal cases. They still retain the ancient name in popular language, though the commission of assize is no longer issued. See Assise.

ASSIZES DE JERUSALEM. A code of feudal jurisprudence prepared by an assembly of barons and lords A. D. 1099, after the conquest of Jerusalem. It was compiled principally from the laws and customs of France.

ASSOCIATE. A partner in interest.

An officer in each of the English courts of common law, appointed by the chief judge of the court, and holding his office during good behavior, whose duties were to superintend the entry of causes, to attend the sittings of *nisi prius*, and there receive and enter verdicts, and to draw up the posteas and any orders of *nisi prius*. The associates are now officers of the Supreme Court of Judicature, and are styled "Masters of the Supreme Court." Wharton.

A person associated with the judges and clerk of assise in the commission of general jail delivery. Mozley & Whitley.

The term is frequently used of the judges of appellate courts, other than the presiding judge or chief justice.

ASSOCIATES IN OFFICE. "Associates in office" are those who are united in action; who have a common purpose; who share the responsibility or authority and among whom is reasonable equality; those who are authorized by law to perform the duties jointly or as a body. Barton v. Alexander, 27 Idaho, 286, 148 P. 471, 474, Ann. Cas. 1917D, 729.

ASSOCIATION. The act of a number of persons in uniting together for some special purpose or business. The persons so joining. It is a word of vague meaning used to indicate a collection of persons who have joined together for a certain object. Ruse v. Williams, 14 Ariz. 445, 130 P. 887, 888, 45 L. R. A. (N. S.) 923; Van Pelt v. Hilliard, 75 Fla. 792, 78 So. 693, 695, L. R. A. 1918E, 639; U. S. v. Martindale (D. C.) 146 F. 280, 284.

An unincorporated society; a body of persons united and acting together without a charter, but upon the methods and forms used by incorporated bodies for the prosecution of some common enterprise. Allen v. Stevens, 33 App. Div. 485, 54 N. Y. Supp. 23; State v. Steele, 37 Minn. 428, 34 N. W. 903; Mills v. State, 23 Tex. 303; Laycock v. State, 136 Ind. 217, 36 N. E. 137; Hecht v. Malley, 265 U. S. 144, 157, 44 S. Ct. 462, 467, 68 L. Ed. 949. It is not a legal entity separate from the persons who compose it. Meinhart v. Contresta (Sup.) 194 N. Y. S. 593, 594.

A "confederacy or union for particular purposes, good or ill. Johnson's Dict. In that sense it [the term "association"] is a generic term and may indifferently comprehend a voluntary confederacy, which is a partnership dissoluble by the persons who formed it, or a corporate confederacy, deriving its existence from a confederacy, and dissoluble only by the law." Thomas v. Dakin, 22 Wend. (N. Y.) 9, 104. See, also, In re Graves' Estate, 171 N. Y. 40, 63 N. E. 787, 789; St. John's Military Academy v. Edwards, 143 Wis. 51, 128 N. W. 113, 114, 139 Am. St. Rep. 1122; U. S. v. Munday, 222 U. S. 175, 32 S. Ct. 53, 56, 56 L. Ed. 149; State ex rel. Mullan v. Syndicate Land Co., 142 Iowa, 22, 120 N. W. 327, 329; Campbell v. Floyd, 153 Pa. 84, 25 A. 1033, 1036.

The word "association" means a body of persons invested with some, yet not full, corporate rights and powers, but will not include the state. State v. Taylor, 7 S. D. 533, 64 N. W. 548.

The word may be synonymous with "company." Lee Mut. Fire Ins. Co. v. State, 60 Miss. 395, 396.

"Association" and "society" are convertible terms. New York County Medical Ass'n v.

City of New York, 65 N. Y. S. 531, 32 Misc. 116; Sovereign Camp, W. O. W. v. Downer (Tex. Civ. App.) 241 S. W. 228, 229; Kribs v. United Order of Foresters, 191 Mo. App. 524, 177 S. W. 766, 769.

"Association" has been held to include a common-law or Massachusetts trust. State v. Hinkle, 126 Wash. 581, 219 P. 41, 43; Crocker v. Malley (C. C. A.) 250 F. 817, 820; Burke-Waggoner Oil Ass'n v. Hopkins, 269 U. S. 110, 46 S. Ct. 48, 49, 70 L. Ed. 183. Also a trade union or labor organization. Dowd v. United Man Workers of America (C. C. A.) 235 F. 1, 4; Cohn v. People, 149 Ill. 486, 37 N. E. 60, 62, 23 L. R. A. 821, 41 Am. St. Rep. 304; Tracy v. Banker, 170 Mass. 266, 49 N. E. 308, 39 L. R. A. 508.

In English Law

A writ directing certain persons (usually the clerk and his subordinate officers) to associate themselves with the justices and sergeants for the purpose of taking the assizes. 3 Bla. Comm. 59.

Articles of Association

See Articles.

National Banking Associations

The statutory title of corporations organized for the purpose of carrying on the business of banking under the laws of the United States. Rev. St. U. S. § 5133 (12 USCA § 21).

ASSOCIÉ EN NOM. In French law. In a *société en commandité* an *associé en nom* is one who is liable for the engagements of the undertaking to the whole extent of his property. This expression arises from the fact that the names of the *associés* so liable figure in the firm-name or form part of the *société en nom collectif*. Arg. Fr. Merc. Law, 546.

ASSOIL. (Spelled also *assoile, absoile, assoilyie.*) To absolve; acquit; to set free; to deliver from excommunication. St. 1 Hen. IV. c. 7; Cowell.

ASSOILZIE. In Scotch law. To acquit the defendant in an action; to find a criminal not guilty.

ASSUME. To pretend. To undertake; engage; promise. 1 Ld. Raym. 122; 4 Coke, 92; Hopkins v. Erskine, 118 Me. 276, 107 A. 829, 830. To take to or upon one's self. Springer v. De Wolf, 194 Ill. 218, 62 N. E. 542, 56 L. R. A. 465, 88 Am. St. Rep. 155; Anicker v. Doyle, 84 Okl. 62, 202 P. 281, 284. A contract to "assume" an interest-bearing debt means the taking over of the liability for interest as well as principal. Commonwealth of Virginia v. State of West Virginia, 238 U. S. 202, 35 S. Ct. 795, 808, 59 L. Ed. 1272.

ASSUMED RISK. See Assumption of Risk.

ASSUMPSIT. Lat. He undertook; he promised. A promise or engagement by which one person assumes or undertakes to do some act or pay something to another. It may be either oral or in writing, but is not under seal. It is *express* if the promisor puts his engagement in distinct and definite language; it is *implied* where the law infers a promise (though no formal one has passed) from the conduct of the party or the circumstances of the case. Willenborg v. Illinois Cent. R. Co., 11 Ill. App. 302.

In Practice

A form of action which lies for the recovery of damages for the non-performance of a parol or simple contract; or a contract that is neither of record nor under seal. 7 Term, 351; Ballard v. Walker, 3 Johns. Cas. (N. Y.) 60.

The ordinary division of this action is into (1) common or *indebitatus assumpsit*, brought for the most part on an implied promise; and (2) special *assumpsit*, founded on an express promise. Steph. Pl. 11, 13. See Special Assumpsit; General Assumpsit.

The action of *assumpsit* differs from *trespass* and *trover*, which are founded on a tort, not upon a contract; from *covenant* and *debt*, which are appropriate where the ground of recovery is a sealed instrument, or special obligation to pay a fixed sum; and from *replevin*, which seeks the recovery of specific property, if attainable, rather than of damages.

Special Assumpsit

An action of *assumpsit* is so called where the declaration sets out the precise language or effect of a special contract, which forms the ground of action; it is distinguished from a *general assumpsit*, in which the technical claim is for a debt alleged to grow out of the contract, not the agreement itself. An action brought on a promise or contract implied in law that the defendant, in equity and in good conscience, is bound to pay plaintiff the consideration of a benefit conferred. Ruse v. Williams, 14 Ariz. 445, 130 P. 887, 888, 45 L. R. A. (N. S.) 923.

ASSUMPTION. The act of conceding or taking for granted. Gordon v. Schellhorn, 95 N. J. Eq. 563, 123 A. 549, 552. The term is substantially synonymous with "inference," "probability," and "presumption." Ohio Bldg. Safety Vault Co. v. Industrial Board of Illinois, 277 Ill. 96, 115 N. E. 149, 154.

The act or agreement of assuming or taking upon one's self; the undertaking or adoption of a debt or obligation primarily resting upon another, as where the purchaser of real estate "assumes" a mortgage resting upon it, in which case he adopts the mortgage debt as his own and becomes personally liable for its payment. Eggleston v. Morrison, 84 Ill. App. 631; Locke v. Homer, 131 Mass. 93, 41 Am. Rep. 199; Springer v. De Wolf, 194 Ill. 218, 62 N. E. 542, 56 L. R. A. 465, 88 Am. St. Rep.

155; Lenz v. Railroad Co., 111 Wis. 198, 86 N. W. 607.

The difference between the purchaser of land assuming a mortgage on it and simply buying subject to the mortgage, is that in the former case he makes himself personally liable for the payment of the mortgage debt, while in the latter case he does not. Hancock v. Fleming, 103 Ind. 533, 3 N. E. 254; Braman v. Dowse, 12 Cush. (Mass.) 227. When he takes the conveyance subject to the mortgage, he is bound only to the extent of the property. Brichetto v. Raney, 76 Cal. App. 232, 245 P. 235, 241.

Where one "assumes" a lease, he takes to himself the obligations, contracts, agreements, and benefits to which the other contracting party was entitled under the terms of the lease. Cincinnati, etc., R. Co. v. Indiana, etc., R. Co., 44 Ohio St. 287, 314, 7 N. E. 152.

ASSUMPTION OF RISK. A term or condition in a contract of employment, either express or implied from the circumstances of the employment, by which the employee agrees that dangers of injury ordinarily or obviously incident to the discharge of his duty in the particular employment shall be at his own risk. Narramore v. Railway Co., 96 F. 301, 37 C. C. A. 499, 48 L. R. A. 68; Faulkner v. Mining Co., 23 Utah, 437, 66 P. 799; Railroad Co. v. Tuohey, 67 Ark. 209, 54 S. W. 577, 77 Am. St. Rep. 109; Bodie v. Railway Co., 61 S. C. 468, 39 S. E. 715; Martin v. Railroad Co., 118 Iowa, 148, 91 N. W. 1034, 59 L. R. A. 698, 96 Am. St. Rep. 371; Biskup v. Hoffman, 220 Mo. App. 542, 287 S. W. 865, 869; Alko-Nak Coal Co. v. Barton, 88 Okl. 212, 212 P. 591, 594; Hennessy v. Ginsberg, 46 N. D. 229, 180 N. W. 796, 800; Schuh v. R. H. Herron Co., 177 Cal. 13, 169 P. 682, 684; Galveston, H. & H. R. Co. v. Hodnett, 106 Tex. 190, 163 S. W. 13, 15; Carleton v. E. & T. Fairbanks & Co., 88 Vt. 537, 93 A. 462, 465. It has reference to dangers that are normally and necessarily incident to the occupation, which are deemed to be assumed by workmen of mature years, whether they are actually aware of them or not. Chesapeake, & O. Ry. Co. v. Cochran (C. C. A.) 22 F.(2d) 22, 25. It is founded upon the knowledge of the servant, either actual or constructive, as to the hazards to be encountered and his consent to take the chance of danger. Schuppenies v. Oregon Short Line R. Co., 38 Idaho, 672, 225 P. 501, 505. But it does not include the risks from the negligence of the master, or the gross negligence of his superior servant. Burton Const. Co. v. Metcalfe, 162 Ky. 366, 172 S. W. 698, 702; Frederick Cotton Oil & Mfg. Co. v. Traver, 36 Okl. 717, 129 P. 747, 748. The term is rightly applicable only to master and servant cases and is a result of a contract of hiring. City of Linton v. Maddox, 130 N. E. 810, 812, 75 Ind. App. 449. "Contributory negligence" is not synonymous with assumption of risk. Dolese Bros. Co. v. Kahl (C. C. A.) 203 F. 627, 630. "Assumed risk" is founded upon the knowledge of the employee, either actual or constructive, of the risks to be encountered, and his consent to take the chance of injury therefrom. Contributory negligence implies misconduct, the doing of an imprudent act by the injured party, or his dereliction in failing to take proper precaution for his personal safety. The doctrine of assumed risk is founded upon contract, while contributory negligence is solely matter of conduct. Cobia v. Atlantic Coast Line R. Co., 188 N. C. 487, 125 S. E. 18, 21; Gulf, C. & S. F. Ry. Co. v. Cooper (Tex. Civ. App.) 191 S. W. 579, 582; Chesapeake & O. Ry. Co. v. De Atley, 159 Ky. 687, 167 S. W. 933, 935; Barker v. Kansas City, M. & O. Ry. Co., 88 Kan. 767, 129 P. 1151, 1156, 43 L. R. A. (N. S.) 1121; Wheeler v. Tyler, 129 Minn. 206, 152 N. W. 137.

ASSUMPTION OF SKILL. The doctrine known as the "assumption of skill" on the part of the master sometimes makes the knowledge implied against the master relative to the safety of the place of work, and the nature, constituents, and general characteristics of the things used in the business, superior to that implied against the servant, especially where the servant is inexperienced. Burton v. Wadley Southern Ry. Co., 25 Ga. App. 380, 103 S. E. 881; Hines v. Little, 26 Ga. App. 136, 105 S. E. 618.

ASSURANCE.

In Conveyancing

A deed or instrument of conveyance. The legal evidences of the transfer of property are in England called the "common assurances" of the kingdom, whereby every man's estate is *assured* to him, and all controversies, doubts, and difficulties are either prevented or removed. 2 Bl. Comm. 294. State v. Farrand, 8 N. J. Law, 335.

In Commercial Law

A pledge, guaranty, or surety. National Watch Co. v. Weiss, 163 N. Y. S. 46, 47, 98 Misc. 453. Compare Gallagher v. Montpelier & Wells River R. R., 100 Vt. 299, 137 A. 207, 209, 52 A. L. R. 744, as to "assurance of safety" arising from presence of gates and automatic bell at railroad crossing.

A making secure; insurance. The term was formerly of very frequent use in the modern sense of insurance, particularly in English maritime law, and still appears in the policies of some companies, but is otherwise seldom seen of late years. There seems to be a tendency, however, to use *assurance* for the contracts of life insurance companies, and *insurance* for risks upon property.

ASSURANCE, FURTHER, COVENANT FOR. See Covenant for Further Assurance.

ASSURE. To make certain and put beyond doubt. Armour & Co. v. New York, N. H. & H. R. Co., 41 R. I. 361, 103 A. 1031, 1033.

ASSURED. A person who has been insured by some insurance company, or underwriter, against losses or perils mentioned in the policy of insurance. Brockway v. Insurance Co. (C. C.) 29 Fed. 766; Sanford v. Insurance Co., 12 Cush. (Mass.) 548.

The person for whose benefit the policy is issued and to whom the loss is payable, not necessarily the person on whose life or property the policy is written. Thus where a wife insures her husband's life for her own benefit and he has no interest in the policy, she is the "assured" and he the "insured." Hogle v. Insurance Co., 6 Rob. (N. Y.) 570; Ferdon v. Canfield, 104 N. Y. 143, 10 N. E. 146; Insurance Co. v. Luchs, 108 U. S. 498, 2 Sup. Ct. 949, 27 L. Ed. 800. But ordinarily the two words are synonymous. Thompson v. Northwestern Mut. Life Ins. Co., 161 Iowa, 446, 143 N. W. 518.

ASSURER. An insurer against certain perils and dangers; an underwriter; an indemnifier.

ASSYTHEMENT. In Scotch law. Damages awarded to the relative of a murdered person from the guilty party, who has not been convicted and punished. Paters. Comp.

ASTIPULATION. A mutual agreement, assent, and consent between parties; also a witness or record.

ASTITRARIUS HÆRES. An heir apparent who has been placed, by conveyance, in possession of his ancestor's estate during such ancestor's life-time. Co. Litt. 8.

ASTITUTION. An arraignment (*q. v.*).

ASTRARIUS. In old English law. A householder; belonging to the house; a person in actual possession of a house.

ASTRARIUS HÆRES. Where the ancestor by conveyance hath set his heir apparent and his family in a house in his lifetime. Cunningham, L. Dict.

ASTRER. In old English law. A householder, or occupant of a house or hearth.

ASTRICT. In Scotch law. To assign to a particular mill.

ASTRICTION TO A MILL. A servitude by which grain growing on certain lands or brought within them must be carried to a certain mill to be ground, a certain multure or price being paid for the same. Jacob.

ASTRIHILTET. In Saxon law. A penalty for a wrong done by one in the king's peace. The offender was to replace the damage twofold. Spelman.

ASTRUM. A house, or place of habitation. Bract. fol. 267*b*; Cowell.

ASYLUM. A sanctuary, or place of refuge and protection, where criminals and debtors found shelter, and from which they could not be taken without sacrilege. State v. Bacon, 6 Neb. 291; Cromie v. Institution of Mercy, 3 Bush (Ky.) 391.

Shelter; refuge; protection from the hand of justice. The word includes not only place, but also shelter, security, protection; and a fugitive from justice, who has committed a crime in a foreign country, "seeks an asylum" at all times when he claims the use of the territories of the United States. In re De Giacomo, 12 Blatchf. 395, Fed. Cas. No. 3,747. Every sovereign state has the right to offer an asylum to fugitives from other countries, but there is no corresponding right on the part of the alien to claim asylum. In recent years this right of asylum has been voluntarily limited by most states by treaties providing for the extradition (*q. v.*) of fugitive criminals.

In time of war, a place of refuge in neutral territory for belligerent war-ships.

An institution for the protection and relief of unfortunates, as asylums for the poor, for the deaf and dumb, or for the insane. Lawrence v. Leidigh, 58 Kan. 594, 50 Pac. 600, 62 Am. St. Rep. 631. The term may also include a hospital constructed and maintained by the United States government for the treatment of soldiers and ex-soldiers. Kemp v. Heebner, 77 Colo. 177, 234 P. 1068, 1069.

AT. A term of considerable elasticity of meaning, and somewhat indefinite. As used to fix a time, it does not necessarily mean eo instante or the identical time named, or even a fixed definite moment. Barnett v. Strain, 151 Ga. 553, 107 S. E. 530, 532. Under a statute making admissible evidence of other sales of intoxicating liquor "at the same time," "at" means the very day charged, People v. Fochtman, 226 Mich. 53, 197 N. W. 166, 169, and may likewise in other cases mean on the same day, Perry v. Gross, 172 Cal. 468, 156 P. 1031, 1032. But "at" may often express simply nearness and proximity, and consequently may denote a reasonable time. Childers v. Brown, 81 Or. 1, 158 P. 166, 168, Ann. Cas. 1918B, 170; Gregory v. Standard Oil Co. of Louisiana, 151 La. 228, 91 So. 717, 719.

The words "at any time" are often taken to mean merely within a reasonable time. Hawkins v. Duvall, 177 N. Y. S. 584, 586, 108 Misc. 333; Terry v. Crosswy (Tex. Civ. App.) 264 S. W. 718, 720; City of Erie v. Pennsylvania R. Co., 246 Pa. 238, 92 A. 192, 193.

Primarily, "at" means "near" or "near to," and involves the idea of proximity. Chesapeake & O. Ry. Co. v. Hill, 215 Ky. 222, 284 S. W. 1047, 1048, 48 A. L. R. 327; Abernathy v. Peterson, 38 Idaho, 727, 225 P. 132, 133; Fenolio v. Sebastian Bridge Dist., 133 Ark. 380, 200 S. W. 501, 504; Goninon v. Lee, 119 Wash. 471, 206 P. 2, 4. "At" a village or city may mean "near." Howell v. State, 164 Ga. 204, 138 S. E. 206, 209; Board of Trustees of Albany College v. Monteith, 64 Or. 356, 130 P. 633, 636. But a statute fixing compensation for the loss of a leg "at or above the

knee" has reference to the exact location of the knee, not near to it or below it. Cone v. Texas Employers' Ins. Ass'n (Tex. Civ. App.) 251 S. W. 262, 264.

Depending on the context, "at" may be equivalent to "in"; Feore v. Trammel, 212 Ala. 325, 102 So. 529, 531; Millikan v. Security Trust Co., 187 Ind. 307, 118 N. E. 568, 569 (*contra*: Fayette County Board of Education v. Tompkins, 212 Ky. 751, 280 S. W. 114, 116); "toward"; State v. Cunningham, 107 Miss. 140, 65 So. 115, 117, 51 L. R. A. (N. S.) 1179; "after"; Davis v. Godart, 131 Minn. 221, 154 N. W. 1091, 1092; Ex parte Szumrak (D. C.) 278 F. 803, 810; "not later than"; Smith v. Jacksonville Oil Mill Co., 21 Ga. App. 679, 94 S. E. 900, 901; or to the words on, by, about, under, over, through, from, to, etc.

AT ARM'S LENGTH. Beyond the reach of personal influence or control. Parties are said to deal "at arm's length" when each stands upon the strict letter of his rights, and conducts the business in a formal manner, without trusting to the other's fairness or integrity, and without being subject to the other's control or overmastering influence.

AT BAR. Before the court. "The case at bar," etc. Dyer, 31.

AT ISSUE. Whenever the parties come to a point in the pleadings which is affirmed on one side and denied on the other, they are said to be at an issue. Willard v. Zehr, 215 Ill. 154, 74 N. E. 107, 108.

AT LARGE. Not limited to any particular place, district, person, matter, or question; open to discussion or controversy; not precluded. Free; unrestrained; not under corporal control; as a ferocious animal so free from restraint as to be liable to do mischief. Fully; in detail; in an extended form. A *congressman at large* is one who is elected by the electors of an entire state.

AT LAW. According to law; by, for, or in law; particularly in distinction from that which is done in or according to equity; or in titles such as sergeant at law, barrister at law, attorney or counsellor at law. See Hooker v. Nichols, 116 N. C. 157, 21 S. E. 208.

AT ONCE. In contracts of various kinds the phrase "at once" is construed as synonymous with "immediately" and "forthwith," where the subject-matter is the giving of notice. The use of such term does not ordinarily call for instantaneous action, but rather that notice shall be given within such time as is reasonable in view of the circumstances. National Live Stock Ins. Co. v. Simmons, 62 Ind. App. 15, 111 N. E. 18, 19; Empire State Surety Co. v. Northwest Lumber Co. (C. C. A.) 203 F. 417, 420. Likewise, contracts or statutes requiring the performance of a particular act "at once" are usually held to mean simply within a reasonable time. Wichita Mill & Elevator Co. v. Liberal Elevator Co. (C. C. A.) 243 F. 99, 102; Rouleau v. Continental Life Ins. & Inv. Co., 45 Utah, 234, 144 P. 1096, 1099; Dixon v. U. S. Fidelity & Guaranty Co. (Tex. Civ. App.) 293 S. W. 291, 294; State ex rel. Conway v. Nolte (Mo. App.) 218 S. W. 862; Arizona Power Co. v. State, 19 Ariz. 114, 166 P. 275, 277. An order to "ship at once" was held to mean "with all reasonable haste consistent with fair business activity." Grays Harbor Commercial Co. v. Yakima Valley Producers' Ass'n, 130 Wash. 567, 228 P. 600, 601. As to other sale contracts requiring shipment "at once," see Lawson v. Hobbs, 120 Va. 690, 91 S. E. 750, 752; B. A. Collins & Co. v. Gus Blass Co., 154 Ark. 244, 242 S. W. 70; Gladney Milling Co. v. Dement (Tex. Civ. App.) 230 S. W. 1038, 1040; Christenson v. Gorton-Pew Fisheries Co. (C. C. A.) 8 F.(2d) 689, 691. As to sales involving warranties, see Monroe & Monroe v. Cowne, 133 Va. 181, 112 S. E. 848, 855; Wood, Stubbs & Co. v. Kaufmann, 233 Ill. App. 138, 142.

AT SEA. Out of the limits of any port or harbor on the sea-coast. The Harriet, 1 Story, 251, Fed. Cas. No. 6,099. See Wales v. Insurance Co., 8 Allen (Mass.) 380; Hubbard v. Hubbard, 8 N. Y. 199; Ex parte Thompson, 4 Bradf. Sur. (N. Y.) 158; Hutton v. Insurance Co., 7 Hill (N. Y.) 325; Bowen v. Insurance Co., 20 Pick. (Mass.) 276, 32 Am. Dec. 213; U. S. v. Symonds, 120 U. S. 46, 7 Sup. Ct. 411, 30 L. Ed. 557; U. S. v. Barnette, 165 U. S. 174, 17 Sup. Ct. 286, 41 L. Ed. 675.

ATAMITA. In the civil law. A great-great-great-grandfather's sister.

ATAVIA. In the civil law. A great-grandmother's grandmother.

ATAVUNCULUS. The brother of a great-grandfather's grandmother, or a great-great-great-grandfather's brother.

ATAVUS. The male ascendant in the fifth degree. The great-grandfather's or great-grandmother's grandfather; a fourth grandfather. The ascending line of lineal ancestry runs thus: *Pater, Avus, Proavus, Abavus, Atavus, Tritavus.* The seventh generation in the ascending scale will be *Tritavi-pater*, and the next above it *Proavi-atavus.*

ATHA. (Spelled also *Atta, Athe, Atte.*) In Saxon law. An oath; the power or privilege of exacting and administering an oath. Spelman.

ATHEIST. One who does not believe in the existence of a God. Gibson v. Insurance Co., 37 N. Y. 584; Thurston v. Whitney, 2 Cush. (Mass.) 110; Com. v. Hills, 10 Cush. (Mass.) 530.

ATIA. Hatred or ill-will. See De Odio et Atia.

ATILIUM. The tackle or rigging of a ship; the harness or tackle of a plow. Spelman.

ATMATERTERA. A great-grandfather's grandmother's sister, (*atavia soror*;) called by Bracton "*atmatertera magna.*" Bract. fol. 68*b*.

ATOMIZED. In ordinary use, "atomized" refers to the effect upon the form of liquids which have been projected by a blast of air, gas, or steam, breaking them up into very small particles. Graphic Arts Co. v. Photo-Chromotype Engraving Co. (C. C. A.) 231 F. 146, 155.

ATPATRUUS. The brother of a great-grandfather's grandfather.

ATRAVESADOS. In maritime law. A Spanish term signifying athwart, at right angles, or abeam; sometimes used as descriptive of the position of a vessel which is "lying to." The Hugo (D. C.) 57 Fed. 403, 410.

ATROCIOUS ASSAULT AND BATTERY. An assault by maiming and wounding. State v. Staw, 97 N. J. Law, 349, 116 A. 425.

ATROCITY. A word implying conduct that is outrageously or wantonly wicked, criminal, vile, cruel; extremely horrible and shocking. State v. Wyman, 56 Mont. 600, 186 P. 1, 3.

ATTACH. To take or apprehend by commandment of a writ or precept. Buckeye Pipe-Line Co. v. Fee, 62 Ohio St. 543, 57 N. E. 446, 78 Am. St. Rep. 743.

It differs from *arrest,* because it takes not only the body, but sometimes the goods, whereas an arrest is only against the person; besides, he who attaches keeps the party attached in order to produce him in court on the day named, but he who arrests lodges the person arrested in the custody of a higher power, to be forthwith disposed of. Fleta, lib. 5, c. 24. See Attachment.

In a broad sense, "attach" indicates any seizure of property for the purpose of bringing it within the custody of the court, and is not limited to a seizure on mesne process. In re Safady Bros. (D. C.) 228 F. 538, 540; In re Clark (D. C.) 11 F.(2d) 540, 541.

ATTACHÉ. A person attached to an embassy, to the suite of an ambassador, or to a foreign legation. Hence, one connected with an office, *e. g.*, a public office. Noel v. Lewis, 35 Cal. App. 658, 170 P. 857, 859.

ATTACHED. A term describing the physical union of two otherwise independent structures or objects, or the relation between two parts of a single structure, each having its own function. National Brake & Electric Co. v. Christensen (C. C. A.) 229 F. 564, 570. As applied to buildings, the term is often synonymous with "annexed." Williams Mfg. Co. v. Insurance Co. of North America, 93 Vt. 161, 106 A. 657, 659. For cases involving chattels attached (or not attached) to realty, see In re Banos (D. C.) 8 F.(2d) 95, 96; Cutler Mail Chute Co. v. Crawford, 167 App. Div. 246, 152 N. Y. S. 750, 752; Cohoes Iron Foundry & Machine Co. v. Glavin, 190 App. Div. 87, 179 N. Y. S. 357, 358.

The word "attached," in an affidavit of service of a notice, used to designate a notice appearing on the reverse side of the affidavit, is improper. Wood v. Yearous, 159 Iowa, 211, 140 N. W. 362, 364.

ATTACHIAMENTA. L. Lat. Attachment.

ATTACHIAMENTA BONORUM. A distress formerly taken upon goods and chattels, by the legal *attachiators* or bailiffs, as security to answer an action for personal estate or debt.

ATTACHIAMENTA DE PLACITUS CORONÆ. Attachment of pleas of the crown. Jewison v. Dyson, 9 Mees. & W. 544.

ATTACHIAMENTA DE SPINIS ET BOSCIS. A privilege granted to the officers of a forest to take to their own use thorns, brush, and windfalls, within their precincts. Kenn. Par. Antiq. 209.

ATTACHING CREDITOR. See Creditor.

ATTACHMENT. The act or process of taking, apprehending, or seizing persons or property, by virtue of a writ, summons, or other judicial order, and bringing the same into the custody of the law; used either for the purpose of bringing a person before the court, of acquiring jurisdiction over the property seized, to compel an appearance, to furnish security for debt or costs, or to arrest a fund in the hands of a third person who may become liable to pay it over.

Also the writ or other process for the accomplishment of the purposes above enumerated, this being the more common use of the word.

Of Persons

A writ issued by a court of record, commanding the sheriff to bring before it a person who has been guilty of contempt of court, either in neglect or abuse of its process or of subordinate powers. 3 Bl. Comm. 280; 4 Bl. Comm. 283; Burbach v. Light Co., 119 Wis. 384, 96 N. W. 829; 1 Term, 266; Stra. 441. See State v. M'Dermott, 10 N. J. Law, 63; Bacon v. Wilber, 1 Cow. (N. Y.) 121, n.; Commonwealth v. Shecter, 250 Pa. 282, 95 A. 468, 470.

Of Property

A species of mesne process, by which a writ is issued at the institution or during the progress of an action, commanding the sheriff to seize the property, rights, credits, or effects of the defendant to be held as security for the satisfaction of such judgment as the plaintiff may recover. It is principally used

against absconding, concealed, or fraudulent debtors. U. S. Capsule Co. v. Isaacs, 23 Ind. App. 533, 55 N. E. 832; Campbell v. Keys, 130 Mich. 127, 89 N. W. 720; Rempe v. Ravens, 68 Ohio St. 113, 67 N. E. 282; Daley v. Torrey, 71 Mont. 513, 230 P. 782, 783.

To Give Jurisdiction

Where the defendant is a non-resident, or beyond the territorial jurisdiction of the court, his goods or land within the territory may be seized upon process of attachment; whereby he will be compelled to enter an appearance, or the court acquires jurisdiction so far as to dispose of the property attached. This is sometimes called "foreign attachment." See the following paragraph. See, also, Drake, Att. § 4 *a*; Megee v. Beirne, 39 Pa. 50; Bray v. McClury, 55 Mo. 128. In such a case, the proceeding becomes in substance one in rem against the attached property. Clifford v. Pateros Transfer Co., 71 Wash. 665, 129 P. 369, 371.

Domestic and Foreign

In some jurisdictions it is common to give the name "domestic attachment" to one issuing against a resident debtor, (upon the special ground of fraud, intention to abscond, etc.,) and to designate an attachment against a non-resident, or his property, as "foreign." Longwell v. Hartwell, 164 Pa. 533, 30 A. 495; David E. Kennedy, Inc., v. Schleindl, 290 Pa. 38, 137 A. 815, 816, 53 A. L. R. 1020. But the term "foreign attachment" more properly belongs to the process otherwise familiarly known as "garnishment." It was a peculiar and ancient remedy open to creditors within the jurisdiction of the city of London, by which they were enabled to satisfy their own debts by attaching or seizing the money or goods of the debtor in the hands of a third person within the jurisdiction of the city. Welsh v. Blackwell, 14 N. J. Law, 346. This power and process survive in modern law, in all common-law jurisdictions, and are variously denominated "garnishment," "trustee process," or "factorizing." Raiguel v. McConnell, 25 Pa. 362, 363.

A garnishment proceeding under the statutes of Oklahoma is so effectually an attachment that it is included within the term "attachment." Berry-Beall Dry Goods Co. v. Adams, 87 Okl. 54, 211 P. 79, 81.

ATTACHMENT EXECUTION. A name given in some states to a process of garnishment for the satisfaction of a judgment. As to the judgment debtor it is an execution; but as to the garnishee it is an original process—a summons commanding him to appear and show cause, if any he has, why the judgment should not be levied on the goods and effects of the defendant in his hands. Kennedy v. Agricultural Ins. Co., 165 Pa. 179, 30 Atl. 724; Appeal of Lane, 105 Pa. 61, 51 Am. Rep. 166.

ATTACHMENT OF PRIVILEGE. In English law. A process by which a man, by virtue of his privilege, calls another to litigate in that court to which he himself belongs, and who has the privilege to answer there.

A writ issued to apprehend a person in a privileged place. *Termes de la Ley.*

ATTACHMENT OF THE FOREST. One of the three courts formerly held in forests. The highest court was called "justice in eyre's seat;" the middle, the "swainmote;" and the lowest, the "attachment." Manwood, 90, 99.

ATTAINDER. That extinction of civil rights and capacities which takes place whenever a person who has committed treason or felony receives sentence of death for his crime. 1 Steph. Com. 408; 1 Bish. Cr. L. § 641; Green v. Shumway, 39 N. Y. 431; In re Garland, 32 How. Prac. (N. Y.) 251; Cozens v. Long, 3 N. J. Law, 766; State v. Hastings, 37 Neb. 96, 55 N. W. 781.

It differs from conviction, in that it is *after* judgment, whereas conviction is upon the verdict of guilty, but *before* judgment pronounced, and may be quashed upon some point of law reserved, or judgment may be arrested. The consequences of attainder are forfeiture of property and corruption of blood. 4 Bl. Comm. 380.

At the common law, attainder resulted in three ways, viz.: *by confession*, *by verdict*, and *by process* or *outlawry*. The first case was where the prisoner pleaded guilty at the bar, or having fled to sanctuary, confessed his guilt and abjured the realm to save his life. The second was where the prisoner pleaded not guilty at the bar, and the jury brought in a verdict against him. The third, when the person accused made his escape and was outlawed. Coke, Litt. 391.

In England, by statute 33 & 34 Vict. c. 23, attainder upon conviction, with consequent corruption of blood, forfeiture, or escheat, is abolished. In the United States, the doctrine of attainder is now scarcely known, although during and shortly after the Revolution acts of attainder were passed by several of the states. The passage of such bills is expressly forbidden by the constitution.

Bill of Attainder

A legislative act, directed against a designated person, pronouncing him guilty of an alleged crime, (usually treason,) without trial or conviction according to the recognized rules of procedure, and passing sentence of death and attainder upon him. "Bills of attainder," as they are technically called, are such special acts of the legislature as inflict capital punishments upon persons supposed to be guilty of high offenses, such as treason and felony, without any conviction in the ordinary course of judicial proceedings. If an act inflicts a milder degree of punishment than death, it is called a "bill of pains and penalties," but both are included in the prohibition in the Federal constitution. Story,

Const. § 1344; Cummings v. Missouri, 4 Wall. 323, 18 L. Ed. 356; Ex parte Garland, 4 Wall. 387, 18 L. Ed. 366; People v. Hayes, 140 N. Y. 484, 35 N. E. 951, 23 L. R. A. 830, 37 Am. St. Rep. 572; Green v. Shumway, 39 N. Y. 431; In re Yung Sing Hee (C. C.) 36 Fed. 439. See, also, Bigelow v. Forrest, 9 Wall. 339, 19 L. Ed. 696; People v. Camperlingo, 69 Cal. App. 466, 231 P. 601, 603; Davis v. Berry (D. C.) 216 F. 413, 414; Butcher v. Maybury (D. C.) 8 F.(2d) 155, 159.

ATTAINT. Attainted, stained, or blackened. In old English practice. A writ which lay to inquire whether a jury of twelve men had given a false verdict, in order that the judgment might be reversed. 3 Bl. Comm. 402; Bract. fol. 288*b*–292; Fleta, 1, 5, c. 22, § 8. This inquiry was made by a grand assise or jury of twenty-four persons, usually knights, and, if they found the verdict a false one, the judgment was that the jurors should become infamous, should forfeit their goods and the profits of their lands, should themselves be imprisoned, and their wives and children thrust out of doors, should have their houses razed, their trees extirpated, and their meadows plowed up, and that the plaintiff should be restored to all that he lost by reason of the unjust verdict. 3 Bl. Comm. 404; Co. Litt. 294*b*.

ATTAINT D'UNE CAUSE. In French law. The gain of a suit.

ATTEMPT.

In Criminal Law

An effort or endeavor to accomplish a crime, amounting to more than mere preparation or planning for it, which, if not prevented, would have resulted in the full consummation of the act attempted, but which, in fact, does not bring to pass the party's ultimate design. People v. Moran, 123 N. Y. 254, 25 N. E. 412, 10 L. R. A. 109, 20 Am. St. Rep. 732; Gandy v. State, 13 Neb. 445, 14 N. W. 143; Scott v. People, 141 Ill. 195, 30 N. E. 329; Brown v. State, 27 Tex. App. 330, 11 S. W. 412; U. S. v. Ford (D. C.) 34 F. 26; Com. v. Eagan, 42 A. 374, 190 Pa. 10.

An intent to do a particular criminal thing combined with an act which falls short of the thing intended. 1 Bish. Crim. Law, § 728; Johnson v. State, 14 Ga. 55; People v. Lawton, 56 Barb. (N. Y.) 126; Cunningham v. State, 49 Miss. 685; Wooldridge v. United States (C. C. A.) 237 F. 775, 776; State v. Schwarzbach, 84 N. J. Law, 268, 86 A. 423, 424; Lahey v. Lahey, 109 Or. 146, 219 P. 807, 809; Gustine v. State, 86 Fla. 24, 97 So. 207, 208. An "attempt" to commit a crime consists of three elements: (1) The intent to commit the crime; (2) performance of some act toward the commission of a crime; and (3) the failure to consummate its commission. State v. Thompson, 118 Kan. 256, 234 P. 980, 981; People v. Lardner, 300 Ill. 264, 133 N. E. 375, 19 A. L. R. 721.

There is a marked distinction between "attempt" and "intent." The former conveys the idea of physical effort to accomplish an act; the latter, the quality of mind with which an act was done. To charge, in an indictment, an assault with an attempt to murder, is not equivalent to charging an assault with intent to murder. State v. Marshall, 14 Ala. 411. But an assault with intent to commit a crime necessarily embraces an "attempt" to commit the crime. People v. Akens, 25 Cal. App. 373, 143 P. 795, 796. Compare Cirul v. State, 83 Tex. Cr. R. 8, 200 S. W. 1088, holding that the word "attempt" is more comprehensive than the word "intent," implying both the purpose and an actual effort to carry that purpose into execution.

In Civil Matters

In statutes and in cases other than criminal prosecutions an "attempt" ordinarily means an intent combined with an act falling short of the thing intended. See Thompson v. Kreutzer, 103 Miss. 388, 60 So. 334, 335; Fox v. Denver City Tramway Co., 57 Colo. 511, 143 P. 278, 280; Northern Pac. Ry. Co. v. Snohomish County, 101 Wash. 686, 172 P. 878, 880; In re Bergland's Estate, 180 Cal. 629, 182 P. 277, 283, 5 A. L. R. 1363. It may be described as an endeavor to do an act, carried beyond mere preparation, but short of execution. Columbian Ins. Co. of Indiana v. Modern Laundry (C. C. A.) 217 F. 355, 358, 20 A. L. R. 1159; Follett v. Standard Fire Ins. Co., 77 N. H. 457, 92 A. 956, 957.

ATTENDANT, *n.* One who owes a duty or service to another, or in some sort depends upon him. Termes de la Ley. One who follows and waits upon another.

ATTENDANT, *adj.* Accompanying, or connected with. Fletcher v. Winnfield Bottling Works, 160 La. 261, 107 So. 103, 104.

ATTENDANT TERMS. In English law, terms, (usually mortgages,) for a long period of years, which are created or kept outstanding for the purpose of *attending* or waiting upon and protecting the inheritance. 1 Steph. Comm. 351.

A phrase used in conveyancing to denote estates which are kept alive, after the objects for which they were originally created have ceased, so that they might be deemed merged or satisfied, for the purpose of protecting or strengthening the title of the owner. Abbott.

ATTENTAT. Lat. He attempts. In the civil and canon law. Anything wrongfully innovated or *attempted* in a suit by an inferior judge (or judge *a quo*) pending an appeal. 1 Addams, 22, note; Shelf. Mar. & Div. 562; Ayliffe, Parerg. 100.

ATTENTION. Consideration; notice. The phrase "your bill shall have attention" was held to be ambiguous and not to amount to an acceptance of the bill. 2 B. & Ald. 113.

ATTERMINARE. In old English law. To put off to a succeeding term; to prolong the time of payment of a debt. Stat. Westm. 2, c. 4; Cowell; Blount.

ATTERMINING. In old English law. A putting off; the granting of a time or term, as for the payment of a debt. Cowell.

ATTERMOIEMENT. In canon law. A making terms; a composition, as with creditors. 7 Low. C. 272, 306.

ATTEST. To bear witness to; to affirm to be true or genuine. Ex parte Lockhart, 72 Mont. 136, 232 P. 183, 186. To witness the execution of a written instrument, at the request of him who makes it, and subscribe the same as a witness. White v. Magarahan, 87 Ga. 217, 13 S. E. 509; Logwood v. Hussey, 60 Ala. 424; Arrington v. Arrington, 122 Ala. 510, 26 So. 152. This is also the technical word by which, in the practice in many of the states, a certifying officer gives assurance of the genuineness and correctness of a copy. Thus, an "attested" copy of a document is one which has been examined and compared with the original, with a certificate or memorandum of its correctness, signed by the persons who have examined it. Goss, etc., Co. v. People, 4 Ill. App. 515; Donaldson v. Wood, 22 Wend. (N. Y.) 400; Gerner v. Mosher, 58 Neb. 135, 78 N. W. 384, 46 L. R. A. 244.

ATTESTATION. The act of witnessing an instrument in writing, at the request of the party making the same, and subscribing it as a witness. 3 P. Wms. 254; Shanks v. Christopher, 3 A. K. Marsh. (Ky.) 146; Hall v. Hall, 17 Pick. (Mass.) 373; In re Jones' Estate, 101 Wash. 128, 172 P. 206, 207. The act of witnessing the execution of a paper and subscribing the name of the witness in testimony of such fact. In re Drusch's Estate, 138 Minn. 322, 164 N. W. 1023, 1024; First Nat. Bank v. Devore, 110 Okl. 283, 234 P. 734, 735; In re Virgin (D. C.) 224 F. 128, 130; Quirk v. Pierson, 287 Ill. 176, 122 N. E. 518, 520. See Attest.

Execution and *attestation* are clearly distinct formalities; the former being the act of the party, the latter of the witnesses only.

Subscription differs from *attestation,* in that the former is the mere manual or mechanical act of signing—the act of the hand, whereas the latter signifies the mental act of bearing witness to—the act of the senses. Moore v. Walton, 158 Ga. 408, 123 S. E. 812, 814; In re Klufa's Estate, 78 Okl. 13, 188 P. 329, 330; Tilton v. Daniels, 79 N. H. 368, 109 A. 145, 8 A. L. R. 1073.

ATTESTATION CLAUSE. That clause wherein the witnesses certify that the instrument has been executed before them, and the manner of the execution of the same.

ATTESTED COPY. See Attest.

ATTESTING WITNESS. One who signs his name to an instrument, at the request of the party or parties, for the purpose of proving and identifying it. Skinner v. Bible Soc., 92 Wis. 209, 65 N. W. 1037; 3 Campb. 232; Jenkins v. Dawes, 115 Mass. 599; In re Reid's Estate, 130 Minn. 256, 153 N. W. 324, 325; In re McDonough's Estate, 201 App. Div. 203, 193 N. Y. S. 734, 736.

ATTESTOR. One who attests or vouches for.

ATTESTOR OF A CAUTIONER. In Scotch practice. A person who attests the sufficiency of a cautioner, and agrees to become *subsidiarie* liable for the debt. Bell.

ATTILE. In old English law. The rigging or furniture of a ship. Jacob, L. Dict. Rigging; tackle. Cowell.

ATTORN.

In Feudal Law

To turn over; to transfer to another money or goods; to assign to some particular use or service. Kennet, Paroch. Antiq. 283; 2 Bla. Comm. 288; Littleton § 551; 1 Spence, Eq. Jur. 137; 1 Washb. R. P. 28, n.

Where a lord aliened his seigniory, he might, with the consent of the tenant, and in some cases without, *attorn* or transfer the homage and service of the latter to the alienee or new lord. Bract. fols. 81*b*, 82.

In Modern Law

To consent to the transfer of a rent or reversion. To agree to become tenant to one as owner or landlord of an estate previously held of another, or to agree to recognize a new owner of a property or estate and promise payment of rent to him. Obermeier v. Mattison, 98 Or. 195, 193 P. 915; Hurley v. Stevens, 220 Mo. App. 1057, 279 S. W. 720, 722.

ATTORNARE. In feudal law. To attorn; to transfer or turn over; to appoint an attorney or substitute.

ATTORNARE REM. To turn over money or goods, *i. e.*, to assign or appropriate them to some particular use or service.

ATTORNATO FACIENDO VEL RECIPIENDO. An obsolete writ, which commanded a sheriff or steward of a county court or hundred court to receive and admit an attorney to appear for the person that owed suit of court. Fitz. N. B. 156, 349.

ATTORNE. L. Fr. In old English law. An attorney. Britt. c. 126.

ATTORNEY. In the most general sense this term denotes an agent or substitute, or one who is appointed and authorized to act in the place or stead of another. Baxter v. City of Venice, 271 Ill. 233, 111 N. E. 111, 112; In re Ricker, 66 N. H. 207, 29 A. 559, 24 L. R. A. 740; Eichelberger v. Sifford, 27 Md. 320.

It is "an ancient English word, and signifieth one that is set in the turne, stead, or place of another; and of these some be private * * * and some be publike, as attor-

neys at law." Co. Litt. 51*b*, 128*a*; Britt. 285*b*; Spelman; Termes de la Ley.

One who is appointed by another to do something in his absence, and who has authority to act in the place and turn of him by whom he is delegated.

When used with reference to the proceedings of courts, or the transaction of business in the courts, the term always means "attorney at law" (*q. v.*) unless a contrary meaning is clearly indicated. See People v. May, 3 Mich. 605; Kelly v. Herb, 147 Pa. 563, 23 A. 889; Clark v. Morse, 16 La. 576; In re Morse, 98 Vt. 85, 126 A. 550, 551, 36 A. L. R. 527.

"Lawyer" and "attorney" are synonymous. People v. Taylor, 56 Colo. 441, 138 P. 762, 763.

—Attorney ad hoc. See Ad hoc.

—Attorney at large. In old practice. An attorney who practiced in all the courts. Cowell.

—Attorney at law. An advocate, counsel, or official agent employed in preparing, managing, and trying cases in the courts. An officer in a court of justice, who is employed by a party in a cause to manage it for him. See Langen v. Borkowski, 188 Wis. 277, 206 N. W. 181, 190, 43 A. L. R. 622; City of Pittsburgh v. O'Brien, 239 Pa. 60, 86 A. 651, 652; In re Bergeron, 220 Mass. 472, 107 N. E. 1007, 1008, Ann. Cas. 1917A, 549.

In English law. A public officer belonging to the superior courts of common law at Westminster, who conducted legal proceedings on behalf of others, called his clients, by whom he was retained; he answered to the solicitor in the courts of chancery, and the proctor of the admiralty, ecclesiastical, probate, and divorce courts. An attorney was almost invariably also a solicitor. It is now provided by the judicature act, 1873, § 87, that solicitors, attorneys, or proctors of, or by law empowered to practise in, any court the jurisdiction of which is by that act transferred to the high court of justice or the court of appeal, shall be called "solicitors of the supreme court." Wharton.

The term "attorney at law," as used in the United States, usually includes "barrister," "counsellor," and "solicitor," in the sense in which those terms are used in England. In some states, as well as in the United States supreme court, "attorney" and "counsellor" are distinguishable, the former term being applied to the younger members of the bar, and to those who carry on the practice and formal parts of the suit, while "counsellor" is the adviser, or special counsel retained to try the cause. Rap. & L.

—Attorney in fact. A private attorney authorized by another to act in his place and stead, either for some particular purpose, as to do a particular act, or for the transaction of business in general, not of a legal character. This authority is conferred by an instrument in writing, called a "letter of attorney," or more commonly a "power of attorney." Treat v. Tolman, 113 F. 893, 51 C. C. A. 522; Hall v. Sawyer, 47 Barb. (N. Y.) 119; White v. Furgeson, 29 Ind. App. 144, 64 N. E. 49.

This term is employed to designate persons who act under a special agency, or a special letter of attorney, so that they are appointed *in factum*, for the deed, or special act to be performed; but in a more extended sense it includes all other agents employed in any business, or to do any act or acts *in pais* for another. Bacon, Abr. *Attorney;* Story, Ag. § 25.

—Attorney of record. The one whose name is entered on the record of an action or suit as the attorney of a designated party thereto. Delaney v. Husband, 64 N. J. Law, 275, 45 Atl. 265.

—Attorney of the wards and liveries. In English law. This was the third officer of the duchy court. Bac. Abr. "Attorney."

—Attorney's certificate. In English practice, a certificate of the commissioners of stamps that the attorney therein named has paid the annual tax or duty. This must be renewed yearly; and the penalty for practising without such certificate is fifty pounds; Stat. 37 Geo. III. c. 90, §§ 26, 28, 30. See also 7 & 8 Vict. c. 73, §§ 21–26; 16 & 17 Vict. c. 63.

—Attorney's lien. See Lien; Charging Lien.

—Letter of attorney. A power of attorney; a written instrument by which one person constitutes another his true and lawful attorney, in order that the latter may do for the former, and in his place and stead, some lawful act. People v. Smith, 112 Mich. 192, 70 N. W. 466, 67 Am. St. Rep. 392; Civ. Code La. art. 2985. An instrument of writing, appointing an attorney in fact for an avowed purpose and setting forth his powers and duties. Mullins v. Commonwealth, 179 Ky. 71, 200 S. W. 9, 11. It is, in effect, a mere contract of agency. Filtsch v. Bishop, 118 Okl. 272, 247 P. 1110, 1111. A *general* power authorizes the agent to act generally in behalf of the principal. A *special* power is one limited to particular acts.

—Public attorney. A name sometimes given to an attorney at law, as distinguished from a *private* attorney, or attorney in fact.

ATTORNEY GENERAL.

In English Law

The chief law officer of the realm, being created by letters patent, whose office is to exhibit informations and prosecute for the crown in matters criminal, and to file bills in the exchequer in any matter concerning the king's revenue. State v. Cunningham, 83 Wis. 90, 53 N. W. 35, 17 L. R. A. 145, 35 Am. St. Rep. 27; 3 Bla. Comm. 27; Termes de la Ley.

In American Law

The attorney general of the United States is the head of the department of justice, appointed by the president, and a member of the cabinet. He appears in behalf of the government in all cases in the supreme court in which the government is interested, and gives

his legal advice to the president and heads of departments upon questions submitted to him. Act of Sept. 24, 1789 (5 USCA §§ 291, 303, 309).

In each state also there is an attorney general, or similar officer, who appears for the people, as in England the attorney general appears for the crown. State v. District Court, 22 Mont. 25, 55 Pac. 916; People v. Kramer, 33 Misc. 209, 68 N. Y. Supp. 383; Com. v. Burrell, 7 Pa. 39; Platte Valley Drainage Dist. of Worth County v. National Surety Co., 221 Mo. App. 898, 295 S. W. 1083, 1088. He is the chief law officer of the state and head of the legal department. People v. Newcomer, 284 Ill. 315, 120 N. E. 244, 247.

ATTORNEYSHIP. The office of an agent or attorney.

ATTORNMENT. In feudal and old English law. A turning over or transfer by a lord of the services of his tenant to the grantee of his seigniory.

Attornment is the act of a person who holds a leasehold interest in land, or estate for life or years, by which he agrees to become the tenant of a stranger who has acquired the fee in the land, or the remainder or reversion, or the right to the rent or services by which the tenant holds. Lindley v. Dakin, 13 Ind. 388; Willis v. Moore, 59 Tex. 636, 46 Am. Rep. 284; Foster v. Morris, 3 A. K. Marsh. (Ky.) 610, 13 Am. Dec. 205; De Good v. Gettle, 119 Kan. 534, 240 P. 960, 961; Snyder v. Bernstein Bros., 201 Iowa, 931, 208 N. W. 503, 504. See Attorn.

The doctrine of attornment grew out of the peculiar relations existing between the landlord and his tenant under the feudal law, and the reasons for the rule never had any existence in this country, and is inconsistent with our laws, customs and institutions. Beyond its application to estop a tenant from denying the title of his landlord, it can serve but little, if any, useful purpose. Perrin v. Lepper, 34 Mich. 292.

ATTRACTIVE NUISANCE DOCTRINE. A doctrine which holds a property owner liable, when he knowingly leaves a dangerous instrumentality, which he may be charged with knowing is of a character to attract children, exposed in a place liable to be frequented by children, and, as a result, a child, who did not realize the danger, is injured. McKiddy v. Des Moines Electric Co., 202 Iowa, 225, 206 N. W. 815, 817; Union P. R. Co. v. McDonald, 152 U. S. 262, 14 Sup. Ct. 619, 38 L. Ed. 434. For illustrative cases applying this doctrine, see Lynch v. Nurdin, 1 Q. B. 29; Sandberg v. McGilvray, Raymond Granite Co., 66 Cal. App. 261, 226 P. 28, 30; Barrett v. Southern Pac. Co., 91 Cal. 296, 27 P. 666, 25 Am. St. Rep. 186; Keffe v. R. Co., 21 Minn. 207, 18 Am. Rep. 393. For cases to which the doctrine was deemed inapplicable, see Lineberry v. North Carolina Ry. Co., 187 N. C. 786, 123 S. E. 1, 4 (a railroad cut); State ex rel. Kansas City v. Ellison, 281 Mo. 667, 220 S. W. 498, 501 (a stone wall around a reservoir); Von Almen's Adm'r v. City of Louisville, 180 Ky. 441, 202 S. W. 880, 881 (a wall and pond); Giannini v. Campodonico, 176 Cal. 548, 169 P. 80, 82 (a stable); Smith v. Hines, 212 Ky. 30, 278 S. W. 142, 143, 45 A. L. R. 980 (a freight car); Cincinnati & H. S. Co. v. Brown, 32 Ind. App. 58, 69 N. E. 197 (a grove).

AU BESOIN. (Fr. in case of need. "*Au besoin chez Messieurs* —— *à* ——." "In case of need, apply to Messrs. —— at ——").

A phrase sometimes used in the direction of a bill of exchange, pointing out the person to whom application may be made for payment in case of failure or refusal of the drawee to pay. Story, Bills § 65.

AUBAINE. See Droit d'Aubaine.

AUCTION. A public sale of land or goods, at public outcry, to the highest bidder. Russell v. Miner, 61 Barb. (N. Y.) 539; Hibler v. Hoag, 1 Watts & S. (Pa.) 553; Crandall v. State, 28 Ohio St. 481; 19 Cent. L. J. 247; Bateman, Auct.; Civ. Code La. art. 2601; Bond v. Stephens, 161 Ga. 140, 129 S. E. 636, 638.

A sale by auction is a sale by public outcry to the highest bidder on the spot. Barber Lumber Co. v. Gifford, 25 Idaho, 654, 139 P. 557, 560.

While auction is very generally defined as a sale to the *highest* bidder, and this is the usual meaning, there may be a sale to the *lowest* bidder, as where land is sold for non-payment of taxes to whomsoever will take it for the shortest term; or where a contract is offered to the one who will perform it at the lowest price. And these appear fairly included in the term "auction." Abbott.

Dutch Auction

A method of sale by auction which consists in the public offer of the property at a price beyond its value, and then gradually lowering the price until some one becomes the purchaser. Crandall v. State, 28 Ohio St. 482.

Public Auction

A sale of property at auction, where any and all persons who choose are permitted to attend and offer bids. The phrase imports a sale to the highest and best bidder with absolute freedom for competitive bidding. State v. Miller, 52 Mont. 562, 160 P. 513, 515.

Though this phrase is frequently used, it is doubtful whether the word "public" adds anything to the force of the expression, since "auction" itself imports publicity. If there can be such a thing as a private auction, it must be one where the property is sold to the highest bidder, but only certain persons, or a certain class of persons, are permitted to be present or to offer bids.

Puffing the Bidding

See Bid.

AUCTIONARIÆ. Catalogues of goods for public sale or auction.

AUCTIONARIUS. A seller; a regrator; a retailer; one who bought and sold; an auctioneer, in the modern sense. Spelman, Gloss. One who buys poor, old, worn-out things to sell again at a greater price. Du Cange.

AUCTIONEER. A person authorized or licensed by law to sell lands or goods of other persons at public auction; one who sells at auction. City of Chicago v. Ornstein, 323 Ill. 258, 154 N. E. 100, 52 A. L. R. 489; Com. v. Harnden, 19 Pick. (Mass.) 482; Crandall v. State, 28 Ohio St. 481; Williams v. Millington, 1 H. Bl. 83; Russell v. Miner, 5 Lans. (N. Y.) 539.

Auctioneers differ from *brokers*, in that the latter may both buy and sell, whereas auctioneers can only sell; also brokers may sell by private contract only, and auctioneers by public auction only. Auctioneers can only sell goods for ready money, but factors may sell upon credit. Wilkes v. Ellis, 2 H. Bl. 557; Steward v. Winters, 4 Sandf. Ch. (N. Y.) 590.

AUCTOR.

In the Roman Law

An auctioneer.

In the Civil Law

A grantor or vendor of any kind.

In Old French Law

A plaintiff. Kelham.

AUCTÓRITAS.

In the Civil Law

Authority.

In Old European Law

A diploma, or royal charter. A word frequently used by Gregory of Tours and later writers. Spelman.

Auctoritates philosophorum, medicorum, et poetarum, sunt in causis allegandæ et tenendæ. The opinions of philosophers, physicians, and poets are to be alleged and received in causes. Co. Litt. 264.

Aucupia verborum sunt judice indigna. Catching at words is unworthy of a judge. Hob. 343.

Audi alteram partem. Hear the other side; hear both sides. No man should be condemned unheard. Broom, Max. 113; L. R. 2 P. C. 106; Lowry v. Inman, 46 N. Y. 119; Shaw v. Stone, 1 Cush. (Mass.) 243.

AUDIENCE. In international law. A hearing; interview with the sovereign. The king or other chief executive of a country grants an audience to a foreign minister who comes to him duly accredited; and, after the recall of a minister, an "audience of leave" ordinarily is accorded to him.

AUDIENCE COURT. In English law. A court belonging to the Archbishop of Canterbury, having jurisdiction of matters of form only, as the confirmation of bishops, and the like. This court has the same authority with the Court of Arches, but is of inferior dignity and antiquity. The Dean of the Arches is the official auditor of the Audience court. The Archbishop of York has also his Audience court.

AUDIENDO ET TERMINANDO. A writ or commission to certain persons to appease and punish any insurrection or great riot. Fitzh. Nat. Brev. 110.

AUDIT, *n.* The process of auditing accounts; the hearing and investigation had before an auditor. People v. Green, 5 Daly (N. Y.) 200; Machias River Co. v. Pope, 35 Me. 22; Cobb County v. Adams, 68 Ga. 51; Clement v. Lewiston, 97 Me. 95, 53 Atl. 985; People v. Barnes, 114 N. Y. 317, 20 N. E. 609; In re Clark, 5 Fed. Cas. 854.

AUDIT, *v.* To hear; to examine an account; and in a broad sense it includes its adjustment or allowance, disallowance, or rejection. New York Catholic Protectory v. Rockland County, 144 N. Y. S. 552, 556, 159 App. Div. 455; O'Neil v. State, 223 N. Y. 40, 119 N. E. 95, 96; State v. Kositzky, 38 N. D. 616, 166 N. W. 534, 537, L. R. A. 1918D, 237; Fuller & Hiller Hardware Co. v. Shannon & Willfong, 205 Iowa, 104, 215 N. W. 611, 613; Rinder v. City of Madison, 163 Wis. 525, 158 N. W. 302, 305; U. S. v. A. Bentley & Sons Co. (D. C.) 293 F. 229, 239.

AUDITA QUERELA. The name of a writ constituting the initial process in an action brought by a judgment defendant to obtain relief against the consequences of the judgment, on account of some matter of defense or discharge, arising since its rendition and which could not be taken advantage of otherwise. This definition is adopted in Kelley v. Kelley (Mo. App.) 290 S. W. 624, 628. See, also, Foss v. Witham, 9 Allen (Mass.) 572; Longworth v. Screven, 2 Hill (S. C.) 298, 27 Am. Dec. 381; McLean v. Bindley, 114 Pa. 559, 8 Atl. 1; Wetmore v. Law, 34 Barb. (N. Y.) 517; Manning v. Phillips, 65 Ga. 550; Coffin v. Ewer, 5 Metc. (Mass.) 228; Gleason v. Peck, 12 Vt. 56, 36 Am. Dec. 329.

In some states, where the same relief may be obtained by motion (Baker v. Judges, 4 Johns. (N. Y.) 191; Witherow v. Keller, 11 S. & R. (Pa.) 274), the remedy by motion has superseded the ancient remedy; Smock v. Dade, 5 Rand. (Va.) 639, 16 Am. Dec. 780; Longworth v. Screven, 2 Hill (S. C.) 298, 27 Am. Dec. 381; Marsh v. Haywood, 6 Humphr. (Tenn.) 210; Dunlap v. Clements, 18 Ala. 778; Chambers v. Neal, 13 B. Monr. (Ky.) 256.

AUDITOR. A public officer whose function is to examine and pass upon the accounts and vouchers of officers who have received and expended public money by lawful authority. An officer who examines accounts and verifies the accuracy of the statements therein. Hicks v. Davis, 100 Kan. 4, 163 P. 799.

In Practice

An officer (or officers) of the court, assigned to state the items of debit and credit between the parties in a suit where accounts are in question, and exhibit the balance. Whitwell v. Willard, 1 Metc. (Mass.) 218; Bartlett v. Trefethen, 14 N. H. 427; Campbell v. Crout, 3 R. I. 60.

In English Law

An officer or agent of the crown, or of a private individual, or corporation. who examines periodically the accounts of under officers, tenants, stewards, or bailiffs, and reports the state of their accounts to his principal.

In General

—Auditor of the imprest. Any of several officers in the English exchequer, who formerly had the charge of auditing the accounts of the customs, naval and military expenses, etc., now performed by the commissioners for auditing public accounts. Jacob.

—Auditor of the receipts. An officer of the English exchequer. 4 Inst. 107.

—State auditor. An officer whose business is to examine and certify accounts and claims against the state and to keep an account between the state and its treasurer. State v. Jorgenson, 29 N. D. 173, 150 N. W. 565, 567.

AUGMENTATION. The increase of the crown's revenues from the suppression of religious houses and the appropriation of their lands and revenues.

Also the name of a court (now abolished) erected 27 Hen. VIII., to determine suits and controversies relating to monasteries and abbey-lands. The court was dissolved in the reign of Mary, but the office of augmentations remained long after; Cowell.

A share of the great tithes temporarily granted to the vicars by the appropriators, and made perpetual by statute 29 Car. II. c. 8. The word is used in a similar sense in the Canadian law.

An increase of the assets of an insolvent estate by the commingling with it of a trust fund in such an appreciable and tangible way as to entitle the trust creditor to preference though the trust fund is incapable of identification or tracing. Russell v. Bank of Nampa, 31 Idaho, 59, 169 P. 180, 181. See, also, Leach v. Iowa State Sav. Bank of Sioux City, 204 Iowa, 497, 215 N. W. 728, 729.

Augusta legibus soluta non est. The empress or queen is not privileged or exempted from subjection to the laws. 1 Bl. Comm. 219; Dig. 1, 3, 31.

AULA. In old English law. A hall, or court; the court of a baron, or manor; a court baron. Spelman.

This word was employed in mediæval England along with *curia;* it was used of the meetings of the lord's men held there in the same way that the word *court* was used. McIlwain, High Court of Parl. 30.

AULA ECCLESIÆ. A nave or body of a church where temporal courts were anciently held.

AULA REGIS. (Called also *Aula Regia.*) The king's hall or palace. The chief court of England in early Norman times. It was established by William the Conqueror in his own hall. It was composed of the great officers of state, resident in the palace, and followed the king's household in all his expeditions. See, also, Curia Regis.

AULIC. Pertaining to a royal court.

AULIC COUNCIL. In the old German empire, the personal council of the emperor, and one of the two supreme courts of the empire which decided without appeal. It was instituted about 1502, was modified in 1654, and ceased to exist on the extinction of the German Empire in 1806. The title was also given to the Council of State of the former Emperor of Austria. Cent. Dict.

AULNAGE. See Alnager.

AULNAGER. See Alnager.

AUMEEN. In Indian law. Trustee; commissioner; a temporary collector or supervisor, appointed to the charge of a country on the removal of a zemindar, or for any other particular purpose of local investigation or arrangement.

AUMIL. In Indian law. Agent; officer; native collector of revenue; superintendent of a district or division of a country, either on the part of the government zemindar or renter.

AUMILDAR. In Indian law. Agent; the holder of an office; an intendant and collector of the revenue, uniting civil, military, and financial powers under the Mohammedan government.

AUMONE, SERVICE IN. Where lands are given in alms to some church or religious house, upon condition that a service or prayers shall be offered at certain times for the repose of the donor's soul. Britt. 164.

AUNCEL WEIGHT. In English law. An ancient mode of weighing, described by Cowell as "a kind of weight with scales hanging, or hooks fastened to each end of a staff, which a man, lifting up upon his forefinger or hand, discerneth the quality or difference between the weight and the thing weighed."

AUNT. The sister of one's father or mother, and a relation in the third degree, correlative to niece or nephew. See 2 Comyn, Dig. 474; Dane, Abr. c. 126, a. 3, § 4.

AURA EPILEPTICA. In medical jurisprudence, a term used to designate the sensation

of a cold vapor frequently experienced by epileptics before the loss of consciousness occurs in an epileptic fit. Aurentz v. Anderson, 3 Pittsb. R. (Pa.) 311.

AURES. A Saxon punishment by cutting off the ears, inflicted on those who robbed churches, or were guilty of any other theft.

AURUM REGINÆ. Queen's gold. A royal revenue belonging to every queen consort during her marriage with the king.

AUSTRALIAN WOOL. A fine grade of wool grown in Australia. Federal Trade Commission v. Winsted Hosiery Co., 258 U. S. 483, 42 S. Ct. 384, 385, 66 L. Ed. 729.

AUTER, Autre. L. Fr. Another; other. See Autre.

AUTHENTIC. Genuine; true; having the character and authority of an original; duly vested with all necessary formalities and legally attested; competent, credible, and reliable as evidence. Downing v. Brown, 3 Colo. 590.

AUTHENTIC ACT. In the civil law. An act which has been executed before a notary or public officer authorized to execute such functions, or which is testified by a public seal, or has been rendered public by the authority of a competent magistrate, or which is certified as being a copy of a public register. Nov. 73, c. 2; Cod. 7, 52, 6, 4, 21; Dig. 22, 4.

The *authentic act*, as relates to contracts, is that which has been executed before a notary public or other officer authorized to execute such functions, in presence of two witnesses, free, male, and aged at least fourteen years, or of three witnesses, if the party be blind. All *procès verbals* of sales of succession property, signed by the sheriff or other person making the same, by the purchaser and two witnesses, are authentic acts. Rev. Civil Code La. art. 2234, as amended and re-enacted by Act No. 67 of 1908 and Act No. 192 of 1918, § 1; West Louisiana Bank v. Dawson, 154 La. 830, 98 So. 262, 263.

AUTHENTICATION. In the law of evidence. The act or mode of giving authority or legal authenticity to a statute, record, or other written instrument, or a certified copy thereof, so as to render it legally admissible in evidence. Mayfield v. Sears, 133 Ind. 86, 32 N. E. 816; Hartley v. Ferrell, 9 Fla. 380; In re Fowler (C. C.) 4 Fed. 303; New Era Milling Co. v. Thompson 230 P. 486, 107 Okl. 114; Voloshin v. Ridenour (C. C. A.) 299 F. 134.

An attestation made by a proper officer by which he certifies that a record is in due form of law, and that the person who certifies it is the officer appointed so to do. Acts done with a view of causing an instrument to be known and identified.

AUTHENTICS. In the civil law. A Latin translation of the Novels of Justinian by an anonymous author; so called because the Novels were translated *entire*, in order to distinguish it from the epitome made by Julian. See 1 Mackeldey, Civ. Law, § 72.

A collection of extracts made from the Novels by a lawyer named Irnier, which he inserted in the code at the places to which they refer. These extracts have the reputation of not being correct. Merlin, *Répert. Authentique.*

AUTHENTICUM. In the civil law. An original instrument or writing; the original of a will or other instrument, as distinguished from a copy. Dig. 22, 4, 2; Id. 29, 3, 12.

AUTHOR. One who produces, by his own intellectual labor applied to the materials of his composition, an arrangement or compilation new in itself. Atwill v. Ferrett, 2 Blatchf. 39, Fed. Cas. No. 640; Nottage v. Jackson, 11 Q. B. Div. 637; Lithographic Co. v. Sarony, 111 U. S. 53, 4 Sup. Ct. 279, 28 L. Ed. 349.

AUTHORITIES. Citations to statutes, precedents, judicial decisions, and text-books of the law, made on the argument of questions of law or the trial of causes before a court, in support of the legal positions contended for, or adduced to fortify the opinion of a court or of a text writer upon any question.

AUTHORITY. Permission. People v. Howard, 31 Cal. App. 358, 160 P. 697, 701. Control over, jurisdiction. State v. Home Brewing Co. of Indianapolis, 182 Ind. 75, 105 N. E. 909, 916. Often synonymous with power. State v. District Court of Eighth Judicial Dist. in and for Natrona County, 33 Wyo. 281, 238 P. 545, 548; In re McKeown, 237 Pa. 626, 85 A. 1085, 1087. The power delegated by a principal to his agent. Clark v. Griffin, 95 N. J. Law, 508, 113 A. 234, 235.

In Governmental Law

Legal power; a right to command or to act; the right and power of public officers to require obedience to their orders lawfully issued in the scope of their public duties.

In the English law relating to public administration, an authority is a body having jurisdiction in certain matters of a public nature.

In General

—Authority by estoppel. Not actual, but apparent only, being imposed on the principal because his conduct has been such as to mislead, so that it would be unjust to let him deny it. Moore v. Switzer, 78 Colo. 63, 239 P. 874, 875. See Apparent authority.

—Authority coupled with an interest. Authority given to an agent for a valuable consideration, or which forms part of a security. See Unger v. Newlin Haines Co., 94 N. J. Eq. 458, 120 A. 331, 335.

—Apparent authority. That which, though not actually granted, the principal knowingly permits the agent to exercise, or which he holds him out as possessing. Johnson v. Evans, 134 Minn. 43, 158 N. W. 823; L. E. Mumford

Banking Co. v. Farmers' & Merchants' Bank of Kilmarnock, 116 Va. 449, 82 S. E. 112, 118. See Authority by estoppel.

—Express authority. That given explicitly, either in writing or orally.

—General authority. That which authorizes the agent to do everything connected with a particular business. Story, Ag. § 17. It empowers him to bind his principal by all acts within the scope of his employment; and it cannot be limited by any private direction not known to the party dealing with him. Paley, Ag. 199.

—Implied authority. Actual authority circumstantially proved. Koivisto v. Bankers' & Merchants' Fire Ins. Co., 148 Minn. 255, 181 N. W. 580, 582; Nertney v. National Fire Ins. Co. of Hartford, Conn., 199 Iowa, 1358, 203 N. W. 826, 827. That which the principal intends his agent to possess, and which is implied from the principal's conduct. Chamberlain v. Amalgamated Sugar Co., 42 Idaho, 604, 247 P. 12, 14; Moore v. Switzer, 78 Colo. 63, 239 P. 874, 875. It includes only such acts as are incident and necessary to the exercise of the authority expressly granted. First Nat. Bank v. Schirmer, 134 Minn. 387, 159 N. W. 800, 801; Coulson v. Stevens, 122 Miss. 797, 85 So. 83, 85.

—Limited authority. Such authority as the agent has when he is bound by precise instructions.

—Naked authority. That arising where the principal delegates the power to the agent wholly for the benefit of the former.

—Special authority. That which is confined to an individual transaction. Story, Ag. § 19; Whitehead v. Tuckett, 15 East, 400, 408; Andrews v. Kneeland, 6 Cow. (N. Y.) 354. Such an authority does not bind the principal, unless it is strictly pursued. Paley, Ag. 202.

—Unlimited authority. That possessed by an agent when he is left to pursue his own discretion.

Authority to execute a deed must be given by deed. Com. Dig. "Attorney," C, 5; 4 Term, 313; 7 Term, 207; 1 Holt, 141; Blood v. Goodrich, 9 Wend. (N. Y.) 68, 75, 24 Am. Dec. 121; Banorgee v. Hovey, 5 Mass. 11, 4 Am. Dec. 17; Cooper v. Rankin, 5 Bin. (Pa.) 613.

AUTHORIZE. To empower; to give a right or authority to act. Board of Com'rs of Sedgwick County v. Toland, 121 Kan. 109, 245 P. 1019, 1021; Superior Steel Corporation v. Commonwealth, 147 Va. 202, 136 S. E. 666, 667. To clothe with authority, warrant, or legal power. Arkansas & Memphis Ry. Bridge & Terminal Co. v. State, 174 Ark. 420, 295 S. W. 378, 380. To permit a thing to be done in the future. Gray v. Gill, 210 N. Y. S. 658, 660, 125 Misc. 70.

"Authorized" is sometimes construed as equivalent to "permitted"; Ward v. McDonald, 201 Ala. 237, 77 So. 827, 833; Crecelius v. Chicago, M. & St. P. Ry. Co., 274 Mo. 671, 205 S. W. 181, 186; Klinck v. Pounds (Sup.) 163 N. Y. S. 1008, 1009; Ferris v. McArdle, 92 N. J. Law, 580, 106 A. 460, 462; and sometimes as equivalent to "directed"; U. S. Sugar Equalization Board v. P. De Ronde & Co. (C. C. A.) 7 F.(2d) 981, 986; or to similar mandatory language: Catron v. Marron, 19 N. M. 200, 142 P. 380, 382; Berridge v. Nickell, 91 Or. 51, 178 P. 353; Chase v. U. S. (C. C. A.) 261 F. 833, 837.

AUTO ACORDADO. In Spanish colonial law. An order emanating from some superior tribunal, promulgated in the name and by the authority of the sovereign. Schm. Civil Law, 93.

AUTO LIVERY SERVICE. The business of furnishing for hire an automobile with a chauffeur, the car to be driven where the hirer directs. The term is also applied to the business of leasing driverless cars. See Collette v. Page, 44 R. I. 26, 114 A. 136, 18 A. L. R. 74; Rodenburg v. Clinton Auto & Garage Co., 84 N. J. Law, 545, 87 A. 71.

See Automobile; Drive it Yourself Cars.

AUTO STAGE. A motor vehicle used for the purpose of carrying passengers, baggage, or freight on a regular schedule of time and rates. State v. Ferry Line Auto Bus Co., 99 Wash. 64, 168 P. 893, 894. See Automobile.

AUTOCRACY. The name of an unlimited monarchical government. A government at the will of one man, (called an "autocrat,") unchecked by constitutional restrictions or limitations.

AUTOGRAPH. One's handwriting.

AUTOMATIC. Having inherent power of action or motion; self-acting or self-regulating; mechanical. Estes v. Edgar Zinc Co., 91 Kan. 138, 136 P. 910, 911; American Roll Gold Leaf Co. v. W. H. Coe Mfg. Co. (C. C. A.) 212 F. 720, 724.

AUTOMATISM. In medical jurisprudence, this term is applied to actions or conduct of an individual apparently occurring without will, purpose, or reasoned intention on his part; a condition sometimes observed in persons who, without being actually insane, suffer from an obscuration of the mental faculties, loss of volition or of memory, or kindred affections. "Ambulatory automatism" describes the pathological impulse to purposeless and irresponsible wanderings from place to place often characteristic of patients suffering from loss of memory with dissociation of personality.

AUTOMOBILE. A vehicle for the transportation of persons or property on the highway, carrying its own motive power and not

operated upon fixed tracks. Blashfield's Cyclopedia of Automobile Law, vol. 1, c. 1, § 1.

A wheeled vehicle propelled by gasoline, steam, or electricity. Stanley v. Tomlin, 143 Va. 187, 129 S. E. 379, 382; Carter v. State, 12 Ga. App. 430, 78 S. E. 205, 208. A self-propelled vehicle suitable for use on a street or roadway. State v. Freels, 136 Tenn. 483, 190 S. W. 454; American-La France Fire Engine Co. v. Riordan (D. C.) 294 F. 567, 571. A vehicle designed mainly for the transportation of persons, equipped with an internal combustion, hydrocarbon vapor engine furnishing the motive power and forming a structural portion thereof. American-La France Fire Engine Co. v. Riordan (C. C. A.) 6 F.(2d) 964, 967.

Etymologically, the term might include any self-propelled vehicle, as an electric street car, or a motor boat, but in popular and legal usage it is confined to a vehicle for the transportation of persons or property on terrestrial highways, carrying its own motive power and not operated upon fixed tracks. Bethlehem Motors Corporation v. Flynt, 178 N. C. 399, 100 S. E. 693, 694.

The term "automobile" is often deemed to be synonymous with "motor vehicle." State v. Ferry Line Auto Bus Co., 99 Wash. 64, 168 P. 893, 894.

See, also, Auto Stage.

AUTONOMY. The political independence of a nation; the right (and condition) of self-government; the negation of a state of political influence from without or from foreign powers. See Lieber, Civ. Lib.

AUTOPSY. The dissection of a dead body for the purpose of inquiring into the cause of death. Pub. St. Mass. 1882, p. 1288. Sudduth v. Insurance Co. (C. C.) 106 F. 823. A post mortem examination to determine the cause, seat, or nature of a disease. E. O. Painter Fertilizer Co. v. Boyd, 93 Fla. 354, 114 So. 444, 445.

AUTRE. Fr. Another.

AUTRE ACTION PENDANT. In pleading. Another action pending. A species of plea in abatement. 1 Chit. Pl. 454.

AUTRE DROIT. In right of another, *e. g.*, a trustee holds trust property in right of his *cestui que trust*. A *prochein amy* sues in right of an infant. 2 Bl. Comm. 176.

AUTRE VIE. Another's life. A person holding an estate for or during the life of another is called a tenant "*pur autre vie*," or "*pur terme d'autre vie*." Litt. § 56; 2 Bl. Comm. 120. See Estate Pur Autre Vie.

AUTREFOIS. L. Fr. At another time; formerly; before; heretofore.

AUTREFOIS ACQUIT. In criminal law. Formerly acquitted. The name of a plea in bar to a criminal action, stating that the defendant has been once already indicted and tried for the same alleged offense and has been acquitted. Simco v. State, 9 Tex. App. 348; U. S. v. Gilbert, 25 Fed. Cas. 1,294; Potter v. State, 91 Fla. 938, 109 So. 91, 92; Henwood v. People, 57 Colo. 544, 143 P. 373, 376, Ann. Cas. 1916A, 1111.

AUTREFOIS ATTAINT. In criminal law. Formerly attainted. A plea that the defendant has already been attainted for one felony, and therefore cannot be criminally prosecuted for another. 4 Bl. Comm. 336; 12 Mod. 109; R. & R. 268. This is not a good plea in bar in the United States, nor in England in modern law. 1 Bish. Cr. L. § 692; Singleton v. State, 71 Miss. 782, 16 So. 295, 42 Am. St. Rep. 488; Gaines v. State (Tex.) 53 S. W. 623; *contra*, State v. Jolly, 96 Mo. 435, 9 S. W. 897. See State v. McCarty, 1 Bay (S. C.) 334.

AUTREFOIS CONVICT. Formerly convicted. In criminal law. A plea by a criminal in bar to an indictment that he has been formerly convicted of the same crime. 4 Bl. Comm. 336; 4 Steph. Comm. 404; Simco v. State, 9 Tex. App. 348; U. S. v. Olsen (D. C.) 57 Fed. 582; Shepherd v. People, 25 N. Y. 420; State v. Cooper, 13 N. J. Law, 361, 25 Am. Dec. 490; U. S. v. Keen, 1 McLean 429, Fed. Cas. No. 15,510; State v. Nelson, 7 Ala. 610; State v. Chaffin, 2 Swan (Tenn.) 493; State v. Parish, 43 Wis. 395.

AUXILIARY. Aiding; attendant on; ancillary (*q. v.*); as, an auxiliary bill in equity, an auxiliary receiver. See Buckley v. Harrison, 10 Misc. 683, 31 N. Y. S. 1001; Bowman v. Stark (Tex. Civ. App.) 185 S. W. 921, 924.

AUXILIATOR. Lat. Helper or assistant; the word is closely related to the English word auxiliary. Esta Co. v. Burke (D. C.) 257 F. 743, 746.

AUXILIUM. In feudal and old English law. Aid; compulsory aid, hence a tax or tribute; a kind of tribute paid by the vassal to his lord, being one of the incidents of the tenure by knight's service. Spelman; Fitzh. Nat. Brev. 62.

AUXILIUM AD FILIUM MILITEM FACIENDUM ET FILIAM MARITANDAM. An ancient writ which was addressed to the sheriff to levy compulsorily an aid towards the knighting of a son and the marrying of a daughter of the tenants *in capite* of the crown.

AUXILIUM CURIÆ. In old English law. A precept or order of court citing and convening a party, at the suit and request of another, to warrant something. Kenn. Par. Ant. 477.

AUXILIUM REGIS. In English law. The king's aid or money levied for the royal use and the public service, as taxes granted by parliament. A subsidy paid to the king. Spelman.

AUXILIUM VICE COMITI. An ancient duty paid to sheriffs. Cowell.

AVAIL OF MARRIAGE.

In Feudal Law

The right of marriage, which the lord or guardian in chivalry had of disposing of his infant ward in matrimony. A guardian in socage had also the same right, but not attended with the same advantage. 2 Bl. Comm. 88.

In Scotch Law

A certain sum due by the heir of a deceased ward vassal, when the heir became of marriageable age. Ersk. Inst. 2, 5, 18.

AVAILABLE. Suitable; usable. Lively v. American Zinc Co. of Tennessee, 137 Tenn. 261, 191 S. W. 975, 979; Collins v. Twin Falls North Side Land & Water Co., 28 Idaho, 1, 152 P. 200, 202; Illinois Power & Light Corporation v. Parks, 322 Ill. 313, 153 N. E. 483, 487. At one's disposal. Schwabacher Hardware Co. v. A. W. Miller Sawmill Co., 90 Wash. 193, 155 P. 767, Ann. Cas. 1918A, 940. Having sufficient force or efficacy; effectual. Pittsburgh, C., C. & St. L. Ry. Co. v. Broderick, 56 Ind. App. 58, 102 N. E. 887, 891.

As used in a lease of coal lands providing for the removal of all available and merchantable coal, "available" coal includes all coal recoverable as a practical and reasonable mining proposition, considering actual conditions, cost, and all surrounding circumstances; and "merchantable" means, not coal which under all conditions can be handled at a profit, but coal which is ordinarily used, for sale, and can be usually sold at a profit. Big Vein Pocahontas Co. v. Browning, 137 Va. 34, 120 S. E. 247, 253. In determining the meaning of these terms, important elements are the location and condition of the coal in the mine and the disproportionate difference between the cost of operation therefor and the profits to be derived therefrom if mined and sold. Flavelle v. Red Jacket Consol. Coal & Coke Co., 82 W. Va. 295, 96 S. E. 600, 605.

AVAILABLE MEANS. This phrase, among mercantile men, is a term well understood to be anything which can readily be converted into money; but it is not necessarily or primarily money itself. McFadden v. Leeka, 48 Ohio St. 513, 28 N. E. 874; Benedict v. Huntington, 32 N. Y. 224; Brigham v. Tillinghast, 13 N. Y. 218.

AVAILS. Profits, proceeds, or use. In re Coughlin's Estate, 53 N. D. 188, 205 N. W. 14, 16; Cordes v. Harding, 27 Cal. App. 474, 150 P. 650, 651. With reference to wills, it means the *corpus* or proceeds of the estate after the payment of the debts. 1 Amer. & Eng. Enc. Law, 1039. See Allen v. De Witt, 3 N. Y. 279; McNaughton v. McNaughton, 34 N. Y. 201.

AVAL.

In French Law

The guaranty of a bill of exchange; so called because usually placed at the foot or bottom (*aval*) of the bill. Story, Bills, §§ 394, 454. See 11 Harv. L. Rev. 55.

In Canadian Law

The act of subscribing one's signature at the bottom of a promissory note or of a bill of exchange; properly an act of suretyship, by the party signing, in favor of the party to whom the note or bill is given. 1 Low. Can. 221; 9 Low. Can. 360.

AVANTURE. L. Fr. Chance; hazard; mischance.

AVARIA, AVARIE. Average; the loss and damage suffered in the course of a navigation. Poth. Mar. Louage, 105.

AVENAGE. A certain quantity of oats paid by a tenant to his landlord as rent, or in lieu of some other duties. Jacob, L. Dict.

AVENTURE, or ADVENTURE. A mischance causing the death of a man, as where a person is suddenly drowned or killed by any accident, without felony. Co. Litt. 391; Whishaw.

AVENUE. Any broad passageway, bordered on each side by trees. Greene v. Helme, 94 Vt. 392, 111 A. 557, 559. It may be synonymous with "street" but not with "boulevard." City of St. Louis v. Breuer (Mo. Sup.) 223 S. W. 108, 110.

AVER. L. Fr. To have.

—Aver et tener. In old conveyancing. To have and to hold.

AVER, *v.*

In Pleading

To declare or assert; to set out distinctly and formally; to allege.

In Old Pleading

To avouch or verify. Litt. § 691; Co. Litt. 362*b*. To make or prove true; to make good or justify a plea.

AVER, *n.* In old English and French. Property; substance, estate and particularly live stock or cattle; hence a working beast; a horse or bullock. Cowell; Kelham.

—Aver corn. A rent reserved to religious houses, to be paid in corn. Corn drawn by the tenant's cattle. Cowell.

—Aver land. In feudal law. Land plowed by the tenant for the proper use of the lord of the soil. Blount.

—Aver penny. Money paid towards the king's averages or carriages, and so to be freed thereof. Termes de la Ley.

—Aver silver. A custom or rent formerly so called. Cowell.

AVERA. A day's work of a ploughman, formerly valued at eight pence. Jacob, L. Dict.

AVERAGE. A medium, a mean proportion. Long v. Ottumwa Ry. & Light Co., 162 Iowa, 11, 142 N. W. 1008, 1015.

In ordinary usage the term signifies the mean between two or more quantities, measures, or numbers. If applied to something which is incapable of expression in terms of measure or amount, it signifies that the thing or person referred to is of the ordinary or usual type.

In Old English Law

A service by horse or carriage, anciently due by a tenant to his lord. Cowell. A labor or service performed with working cattle, horses, or oxen, or with wagons and carriages. Spelman.

Stubble, or remainder of straw and grass left in corn-fields after harvest. In Kent it is called "*gratten*," and in other parts "*roughings*."

In Maritime Law

Loss or damage accidentally happening to a vessel or to its cargo during a voyage.

Also a small duty paid to masters of ships, when goods are sent in another man's ship, for their care of the goods, over and above the freight.

In Marine Insurance

Where loss or damage occurs to a vessel or its cargo at sea, *average* is the adjustment and apportionment of such loss between the owner, the freight, and the cargo, in proportion to their respective interests and losses, in order that one may not suffer the whole loss, but each contribute ratably. Coster v. Insurance Co., 2 Wash. C. C. 51, 6 Fed. Cas. 611; Insurance Co. v. Bland, 9 Dana (Ky.) 147; Whitteridge v. Norris, 6 Mass. 125; Nickerson v. Tyson, 8 Mass. 467; Insurance Co. v. Jones, 2 Bin. (Pa.) 552.

General average (also called "gross") consists of expense purposely incurred, sacrifice made, or damage sustained for the common safety of the vessel, freight, and cargo, or the two of them, at risk, and is to be contributed for by the several interests in the proportion of their respective values exposed to the common danger, and ultimately surviving, including the amount of expense, sacrifice, or damage so incurred in the contributory value. 2 Phil. Ins. § 1269 et seq.; 3 Kent, Comm. 232; Padelford v. Boardman, 4 Mass. 548; The Roanoke, 46 F. 297; *id.*, 53 F. 270; *id.*, 59 F. 161, 8 C. C. A. 67; Wilson v. Cross, 33 Cal. 69; *Code de Com.* tit. xi.; Aluzet, *Trait des Av.* cxx.; Sturgess v. Cary, 2 Curt. C. C. 59, Fed. Cas. No. 13,572; Greely v. Ins. Co., 9 Cush. (Mass.) 415; McLoon's Adm'r v. Cummings, 73 Pa. 98; Star of Hope v. Annan, 9 Wall. 203, 19 L. Ed. 638; *Lex Rhodia*, Dig. 14, 2, 1.

"General average" is a contribution by the several interests engaged in a maritime venture to make good the loss of one of them for the voluntary sacrifice of a part of the ship or cargo to save the residue of the property and the lives of those on board, or for extraordinary expenses necessarily incurred for the common benefit and safety of all. California Canneries Co. v. Canton Ins. Office, 25 Cal. App. 303, 143 P. 549, 553; Fagan Iron Works v. Calumet Const. Co., 82 N. J. Eq. 345, 88 A. 1069; St. Paul Fire & Marine Ins. Co. v. Beacham, 128 Md. 414, 97 A. 708, 709, L. R. A. 1916F, 1168. The law of general average is part of the maritime law, and not of the municipal law, and applies to maritime adventures only. Ralli v. Troop, 157 U. S. 386, 15 S. Ct. 657. 39 L. Ed. 742.

Particular average is a loss happening to the ship, freight, or cargo which is not to be shared by contribution among all those interested, but must be borne by the owner of the subject to which it occurs. It is thus called in contradistinction to *general* average. Bargett v. Insurance Co., 3 Bosw. (N. Y.) 395.

Petty average denotes such charges and disbursements as, according to occurrences and the custom of every place, the master necessarily furnishes for the benefit of the ship and cargo, either at the place of loading or unloading, or on the voyage; such as the hire of a pilot for conducting a vessel from one place to another, towage, light money, beaconage, anchorage, bridge toll, quarantine and such like. Park, Ins. 100; Le Guidon, c. 5, a. 13; Weyt, de A. 3, 4; Weskett, art. Petty Av.; 2 Phill. Ins. § 1269, n. 1; 2 Arnould, Mar. Ins. 927.

Simple average is the same as "particular average" (*q. v.*).

In General

—Average charges. "Average charges for toll and transportation" are understood to mean, and do mean, charges made at a mean rate, obtained by dividing the entire receipts for toll and transportation by the whole quantity of tonnage carried, reduced to a common standard of tons moved one mile. Hersh v. Railway Co., 74 Pa. 190.

—Average prices. Such as are computed on all the prices of any articles sold within a certain period or district.

—Gross average. More commonly called "general average" (*q. v.*).

AVERIA. In old English law. A term applied to working cattle, such as horses, oxen, etc.

AVERIA CARRUCÆ. Beasts of the plow. 3 Bla. Comm. 9; 4 Term, 566.

AVERIIS CAPTIS IN WITHERNAM. A writ granted to one whose cattle were unlawfully distrained by another and driven out of the county in which they were taken, so that they could not be replevied by the sheriff. Reg. Orig. 82.

AVERIUM. Lat. Goods; property. A beast of burden. Spelman, Gloss.

AVERMENT.

In Pleading

A positive statement of facts, in opposition to argument or inference. 1 Chit. Pl. 320; Bacon, Abr. *Pleas*, B.

Averments were formerly said to be general and particular; but only particular averments are found in modern pleading. 1 Chit. Pl. 277.

Immaterial and *impertinent averments* (which are synonymous, 5 D. & R. 209) are those which need not be made, and, if made, need not be proved. Williamson v. Allison, 2 East, 446; Panton v. Holland, 17 Johns. (N. Y.) 92, 8 Am. Dec. 369.

Negative averments are those in which a negative is used.

Particular averments are the assertions of particular facts.

Unnecessary averments are statements of matters which need not be alleged, but which, if alleged, must be proved. Carth. 200.

In Old Pleading

An offer to prove a plea, or pleading. The concluding part of a plea, replication, or other pleading, containing new affirmative matter, by which the party offers or declares himself "ready to *verify*."

AVERRARE. In feudal law. A duty required from some customary tenants, to carry goods in a wagon or upon loaded horses. Jacob, L. Dict.

AVERSIO. In the civil law. An averting or turning away. A term applied to a species of sale in gross or bulk.

Letting a house altogether, instead of in chambers. 4 Kent, Comm. 517.

AVERSIO PERICULI. A turning away of peril. Used of a contract of insurance. 3 Kent, Comm. 263.

AVERUM. Goods, property, substance; a beast of burden. Spelman.

AVET. A term used in the Scotch law, signifying to abet or assist. Tomlin, Dict.

AVIA. In the civil law. A grandmother. Inst. 3, 6, 3.

AVIATICUS. In the civil law. A grandson.

AVIATION. The art or science of traveling through the air by means of airplanes.

AVIATION, ENGAGED IN. The phrase "engaged in aviation" within the meaning of an insurance policy denotes the act of flying in the air in a machine heavier than air, whether piloting or riding as a passenger. Masonic Acc. Ins. Co. v. Jackson (Ind. App.) 147 N. E. 156. See Aeronautics.

AVIZANDUM. In Scotch law. To make *avizandum* with a process is to take it from the public court to the private consideration of the judge. Bell.

AVOCAT. Fr. An advocate; a barrister.

AVOCATION. Often used in the sense of vocation or occupation. Stellhorn v. Board of Com'rs of Allen County, 60 Ind. App. 14, 110 N. E. 89, 90; National Bank of Baltimore v. Steele, 143 Md. 484, 122 A. 633, 634.

AVOID. To annul; cancel; make void; to destroy the efficacy of anything.

To evade; escape. Graves v. Apt, 233 Mass. 587, 124 N. E. 432, 433. But it has no sinister meaning, and does not imply subterfuge or artifice in escape. Booth v. Scott, 276 Mo. 1, 205 S. W. 633, 639.

AVOIDANCE. A making void, useless, empty, or of no effect; annulling, cancelling; escaping or evading.

In English Ecclesiastical Law

The term describes the condition of a benefice when it has no incumbent.

In Parliamentary Language

Avoidance of a decision signifies evading or superseding a question, or escaping the coming to a decision upon a pending question. Holthouse.

In Pleading

The allegation or statement of new matter, in opposition to a former pleading, which, admitting the facts alleged in such former pleading, shows cause why they should not have their ordinary legal effect. Mahaiwe Bank v. Douglass, 31 Conn. 175; Cooper v. Tappan, 9 Wis. 366; Meadows v. Insurance Co., 62 Iowa, 387, 17 N. W. 600; Uri v. Hirsch (C. C.) 123 F. 570. See Confession and avoidance.

AVOIRDUPOIS. The name of a system of weights (sixteen ounces to the pound) used in weighing articles other than medicines, metals, and precious stones; so named in distinction from the Troy weight.

AVOUCHER. The calling upon a warrantor of lands to fulfill his undertaking. See Voucher.

AVOUÉ. In French and Canadian law. A barrister, advocate, solicitor, or attorney. An officer charged with representing and defending parties before the tribunal to which he is attached. Duverger.

AVOW. In pleading. To acknowledge and justify an act done. 3 Bla. Comm. 150.

To make an avowry. For example, when replevin is brought for a thing distrained, and the party taking claims that he had a right to make the distress, he is said to avow. Newell Mill Co. v. Muxlow, 115 N. Y. 170, 21 N. E. 1048; Fleta, l. 1, c. 4; Cunningham, Dict. See Avowry; Justification.

AVOWANT. One who makes an avowry.

AVOWEE. In ecclesiastical law. An advocate of a church benefice.

AVOWRY. A pleading in the action of replevin, by which the defendant *avows*, that is, acknowledges, the taking of the distress or property complained of, where he took it in his own right, and sets forth the reason of it; as for rent in arrear, damage done, etc. 3 Bl. Comm. 149; 1 Tidd. Pr. 645. Brown v. Bissett, 21 N. J. Law, 274; Hill v. Miller, 5 Serg. & R. (Pa.) 357; State v. Patrick, 14 N. C. 478; Lawes, Pl. 35.

Avowry is the setting forth, as in a declaration, the nature and merits of the defendant's case, showing that the distress taken by him was lawful, which must be done with such sufficient authority as will entitle him to a *retorno habendo*. Hill v. Stocking, 6 Hill (N. Y.) 284.

An avowry must be distinguished from a *justification*. The former species of plea admits the plaintiff's ownership of the property, but alleges a right in the defendant sufficient to warrant him in taking the property and which still subsists. A justification, on the other hand, denies that the plaintiff had the right of property or possession in the subject-matter, alleging it to have been in the defendant or a third person, or avers a right sufficient to warrant the defendant in taking it, although such right has not continued in force to the time of making answer. See 2 W. Jones, 25.

AVOWTERER. In English law. An adulterer with whom a married woman continues in adultery. Termes de la Ley.

AVOWTRY. In old English law. Adultery. Termes de la Ley.

AVULSION. The removal of a considerable quantity of soil from the land of one man, and its deposit upon or annexation to the land of another, suddenly and by the perceptible action of water. 2 Washb. Real Prop. 452.

The property of the part thus separated continues in the original proprietor, in which respect avulsion differs from alluvion, by which an addition is insensibly made to a property by the gradual washing down of the river, and which addition becomes the property of the owner of the lands to which the addition is made. Wharton. And see Rees v. McDaniel, 115 Mo. 145, 21 S. W. 913; Nebraska v. Iowa, 143 U. S. 359, 12 Sup. Ct. 396, 36 L. Ed. 186; Bouvier v. Stricklett, 40 Neb. 792, 59 N. W. 550; Chicago v. Ward, 169 Ill. 392, 48 N. E. 927, 38 L. R. A. 849, 61 Am. St. Rep. 185; Attorney General v. Bay Boom Wild Rice & Fur Farm, 172 Wis. 363, 178 N. W. 569, 573.

The loss of lands, such as those bordering on the seashore, by sudden or violent action of the elements, perceptible while in progress. Schwartzstein v. B. B. Bathing Park, 197 N. Y. S. 490, 492, 203 App. Div. 700. And see People v. Steeplechase Park Co., 143 N. Y. S. 503, 508, 82 Misc. 247.

A sudden and rapid change of channel. Desha v. Erwin, 168 Ark. 555, 270 S. W. 965, 966. See Rees v. McDaniel, 115 Mo. 145, 21 S. W. 913. A change in the channel of a stream so as to cut off land in large quantities. Cawlfield v. Smyth, 69 Or. 41, 138 P. 227, 229.

A sudden abandonment of an old channel and the creation of a new one. Harper v. Holston, 119 Wash. 436, 205 P. 1062, 1064.

Where running streams are the boundaries between states, the same rule applies as between private proprietors, and, if the stream from any cause, natural or artificial, suddenly leaves its old bed and forms a new one by the process known as "avulsion," the resulting change of channel works no change of boundary, which remains in the middle of the old channel though no water may be flowing in it and irrespective of subsequent changes in the new channel. State of Arkansas v. State of Tennessee, 38 S. Ct. 301, 304, 246 U. S. 158, 62 L. Ed. 638, L. R. A. 1918D, 258.

See Accretion; Alluvion; Reliction.

AVUNCULUS. In the civil law. A mother's brother. 2 Bl. Comm. 230. *Avunculus magnus*, a great-uncle. *Avunculus major*, a great-grandmother's brother. *Avunculus maximus*, a great-great-grandmother's brother. See Dig. 38, 10, 10; Inst. 3, 6, 2.

AVUS. In the civil law. A grandfather. Inst. 3, 6, 1.

AWAIT. Used in old statutes to signify a lying in wait, or waylaying.

AWARD, *v.* To grant, concede, or adjudge to. To give or assign by sentence or judicial determination. Hobson v. Superior Court of Tulare County, 69 Cal. App. 60, 230 P. 456, 457. Thus, a jury *awards* damages; the court *awards* an injunction. Starkey v. Minneapolis, 19 Minn. 206 (Gil. 166). One *awards* a contract to a bidder. See Jackson v. State, 194 Ind. 130, 142 N. E. 1, 2 (holding that a finding that a contract was "awarded to" a bidder meant it was entered into with all required legal formalities).

AWARD, *n.* The decision or determination rendered by arbitrators or commissioners, or other private or extrajudicial deciders, upon a controversy submitted to them; also the writing or document embodying such decision. Halnon v. Halnon, 55 Vt. 321; Henderson v. Beaton, 52 Tex. 43; Peters v. Peirce, 8 Mass. 398; Benjamin v. U. S., 29 Ct. Cl. 417; Keiser v. Berks County, 253 Pa. 167, 97 A. 1067, 1068.

Under Workmen's Compensation Acts, the term may be used in the above sense, as signifying a decision or determination of the Industrial Board, or some equivalent body. Frankfort General Ins. Co. v. Conduitt, 74 Ind. App. 584, 127 N. E. 212, 215. It may also be used to refer to the amount of compensation fixed by the board, an "award" being an amount fixed by arbitration. Odrowski v. Swift & Co., 99 Kan. 163, 162 P. 268, 269. Hence, a compensation agreement, which is not approved by the Industrial Board, is not an award. Bruce v. Stutz Motor Car Co. of America, 83 Ind. App. 257, 148 N. E. 161, 162.

A judgment, sentence, or final decision. Higginbotham v. State, 20 Ala. App. 159, 101

So. 166. A finding or judgment based upon an appraisement. Riddell v. Rochester German Ins. Co. of New York, 36 R. I. 240, 89 A. 833, 835. See Arbitration.

AWAY-GOING CROP. A crop sown before the expiration of a tenancy, which cannot ripen until after its expiration to which, however, the tenant is entitled. Broom, Max. 412.

AWM. In old English statutes. A measure of wine, or vessel containing forty gallons.

AWN-HINDE. See Third-Night-Awn-Hinde.

AXIOM. In logic. A self-evident truth; an indisputable truth.

AXMINSTER. The trade-name of a certain kind of rug. The term now generally includes the machine-made product as well as the handmade. Beuttell & Sons v. U. S., 8 Ct. Cust. App. 409, 412.

AYANT CAUSE. In French law, and also in Louisiana, this term signifies one to whom a right has been assigned, either by will, gift, sale, exchange, or the like; an assignee. An *ayant cause* differs from an heir who acquires the right by inheritance. 8 Toullier, n. 245.

AYLE. See Aiel.

AYRE. In old Scotch law. Eyre; a circuit or iter.

AYUNTAMIENTO. In Spanish law. A congress of persons; the municipal council of a city or town. 1 White, Coll. 416; Friedman v. Goodwin, 9 Fed. Cas. 818; Strother v. Lucas, 12 Pet. 442, 9 L. Ed. 1137, notes.

AZURE. A term used in heraldry, signifying blue.