D

D. The fourth letter of the English alphabet. It is used as an abbreviation for a number of words, the more important and usual of which are as follows:

1. *Digestum*, or *Digesta*, that is, the Digest or Pandects in the Justinian collections of the civil law. Citations to this work are sometimes indicated by this abbreviation, but more commonly by "Dig."

2. *Dictum.* A remark or observation, as in the phrase *"obiter dictum,"* (*q. v.*)

3. *Demissione.* "On the demise." An action of ejectment is entitled "Doe *d.* Stiles v. Roe;" that is, "Doe, on the demise of Stiles, against Roe."

4. *"Doctor."* As in the abbreviated forms of certain academical degrees. "M. D.," "doctor of medicine;" LL.D.," "doctor of laws;" "D. C. L.," "doctor of civil law."

5. *"District."* Thus, "U. S. Cir. Ct. W. *D.* Pa." stands for "United States Circuit Court for the Western *District* of Pennsylvania."

6. *"Dialogue."* Used only in citations to the work called "Doctor and Student."

D. In the Roman system of notation, this letter stands for five hundred; and, when a horizontal dash or stroke is placed above it, it denotes five thousand.

D. B. E. An abbreviation for *de bene esse*, (*q. v.*)

D. B. N. An abbreviation for *de bonis non;* descriptive of a species of administration.

D. C. An abbreviation standing either for "District Court," or "District of Columbia."

D. E. R. I. C. An abbreviation used for *De ea re ita censuere*, (concerning that matter have so decreed,) in recording the decrees of the Roman senate. Tayl. Civil Law, 564, 566.

D. J. An abbreviation for "District Judge."

D. P. An abbreviation for *Domus Procerum*, the house of lords.

D. S. An abbreviation for "Deputy Sheriff."

D. S. B. An abbreviation for *debitum sine brevi*, or *debit sans breve.*

Da tua dum tua sunt, post mortem tunc tua non sunt. 3 Bulst. 18. Give the things which are yours whilst they are yours; after death they are not yours.

DABIS? DABO. Lat. (Will you give? I will give.) In the Roman law. One of the forms of making a verbal stipulation. Inst. 3, 15, 1; Bract. fol. 15b.

DACION. In Spanish law. The real and effective delivery of an object in the execution of a contract.

DAGGE. A kind of gun. 1 How. State Tr. 1124, 1125.

DAGUS, or DAIS. The raised floor at the upper end of a hall.

DAILY. Every day; every day in the week; every day in the week except one. A newspaper which is published six days in each week is a "daily" newspaper. Richardson v. Tobin, 45 Cal. 30; Tribune Pub. Co. v. Duluth, 45 Minn. 27, 47 N. W. 309; Kingman v. Waugh, 139 Mo. 360, 40 S. W. 884.

DAKER, or DIKER. Ten hides. Blount.

DALE and SALE. Fictitious names of places, used in the English books, as examples. "The manor of *Dale* and the manor of *Sale*, lying both in Vale."

DALUS, DAILUS, DAILIA. A certain measure of land; such narrow slips of pasture as are left between the plowed furrows in arable land. Cowell.

DAM. A construction of wood, stone, or other materials, made across a stream for the purpose of penning back the waters.

This word is used in two different senses. It properly means the work or structure, raised to obstruct the flow of the water in a river; but, by a well-settled usage, it is often applied to designate the pond of water created by this obstruction. Burnham v. Kempton, 44 N. H. 89; Colwell v. Water Power Co., 19 N. J. Eq. 248; Mining Co. v. Hancock, 101 Cal. 42, 31 Pac. 112.

DAMAGE. Loss, injury, or deterioration, caused by the negligence, design, or accident of one person to another, in respect of the latter's person or property. The word is to be distinguished from its plural,—"damages,"—which means a compensation in money for a loss or damage.

An injury produces a right in them who have suffered any damage by it to demand reparation of such damage from the authors of the injury. By damage, we understand every loss or diminution of what is a man's own, occasioned by the fault of another. 1 Ruth. Inst. 399.

—Damage-cleer. A fee assessed of the tenth part in the common pleas, and the twentieth part in the queen's bench and exchequer, out of all damages exceeding five marks recovered in

those courts, in actions upon the case, covenant, trespass, etc., wherein the damages were uncertain; which the plaintiff was obliged to pay to the prothonotary or the officer of the court wherein he recovered, before he could have execution for the damages. This was originally a gratuity given to the prothonotaries and their clerks for drawing special writs and pleadings; but it was taken away by statute, since which, if any officer in these courts took any money in the name of damage-cleer, or anything in lieu thereof, he forfeited treble the value. Wharton. **—Damage feasant or faisant.** Doing damage. A term applied to a person's cattle or beasts found upon another's land, doing damage by treading down the grass, grain, etc. 3 Bl. Comm. 7, 211; Tomlins. This phrase seems to have been introduced in the reign of Edward III., in place of the older expression "*en son damage*," (*in damno suo.*) Crabb, Eng. Law, 292.**—Damaged goods.** Goods, subject to duties, which have received some injury either in the voyage home or while bonded in warehouse.

DAMAGES. A pecuniary compensation or indemnity, which may be recovered in the courts by any person who has suffered loss, detriment, or injury, whether to his person, property, or rights, through the unlawful act or omission or negligence of another. Scott v. Donald, 165 U. S. 58, 17 Sup. Ct. 265, 41 L. Ed. 632; Crane v. Peer, 43 N. J. Eq. 553, 4 Atl. 72; Cincinnati v. Hafer, 49 Ohio St. 60, 30 N. E. 197; Wainscott v. Loan Ass'n, 98 Cal. 253, 33 Pac. 88; Carvill v. Jacks, 43 Ark. 449; Collins v. Railroad Co., 9 Heisk. (Tenn.) 850; New York v. Lord, 17 Wend. (N. Y.) 293; O'Connor v. Dils, 43 W. Va. 54, 26 S. E. 354.

A sum of money assessed by a jury, on finding for the plaintiff or successful party in an action, as a compensation for the injury done him by the opposite party. 2 Bl. Comm. 438; Co. Litt. 257*a;* 2 Tidd, Pr. 869, 870.

Every person who suffers detriment from the unlawful act or omission of another may recover from the person in fault a compensation therefor in money, which is called "damages." Civ. Code Cal. § 3281; Civ. Code Dak. § 1940.

In the ancient usage, the word "damages" was employed in two significations. According to Coke, its proper and general sense included the costs of suit, while its strict or relative sense was exclusive of costs. 10 Coke, 116, 117; Co. Litt. 257*a;* 9 East, 299. The latter meaning has alone survived.

Classification. Damages are either *general* or *special.* General damages are such as the law itself implies or presumes to have accrued from the wrong complained of, for the reason that they are its immediate, direct, and proximate result, or such as necessarily result from the injury, or such as did in fact result from the wrong, directly and proximately, and without reference to the special character, condition, or circumstances of the plaintiff. Mood v. Telegraph Co., 40 S. C. 524, 19 S. E. 67; Manufacturing Co. v. Gridley, 28 Conn. 212; Irrigation Co. v. Canal Co., 23 Utah, 199, 63 Pac. 812; Smith v. Railway Co., 30 Minn. 169, 14 N. W. 797; Loftus v. Bennett, 68 App. Div. 128, 74 N. Y. Supp. 290. Special damages are those which are the actual, but not the necessary, result of the injury complained of, and which in fact follow it as a natural and proximate consequence in the particular case, that is, by reason of special circumstances or conditions. Hence general damages are such as might accrue to any person similarly injured, while special damages are such as did in fact accrue to the particular individual by reason of the particular circumstances of the case. Wallace v. Ah Sam, 71 Cal. 197, 12 Pac. 46, 60 Am. Rep. 534; Manufacturing Co. v. Gridley, 28 Conn. 212; Lawrence v. Porter, 63 Fed. 62, 11 C. C. A. 27, 26 L. R. A. 167; Roberts v. Graham, 6 Wall. 579, 18 L. Ed. 791; Fry v. McCord, 95 Tenn. 678, 33 S. W. 568.

Direct and consequential. Direct damages are such as follow immediately upon the act done; while consequential damages are the necessary and connected effect of the wrongful act, flowing from some of its consequences or results, though to some extent depending on other circumstances. Civ. Code Ga. 1895, § 3911; Pearson v. Spartanburg County, 51 S. C. 480, 29 S. E. 193; Eaton v. Railroad Co., 51 N. H. 504, 12 Am. Rep. 147.

Liquidated and unliquidated. The former term is applicable when the amount of the damages has been ascertained by the judgment in the action, or when a specific sum of money has been expressly stipulated by the parties to a bond or other contract as the amount of damages to be recovered by either party for a breach of the agreement by the other. Watts v. Sheppard, 2 Ala. 445; Smith v. Smith, 4 Wend. (N. Y.) 470; Keeble v. Keeble, 85 Ala. 552, 5 South. 149; Eakin v. Scott, 70 Tex. 442, 7 S. W. 777. Unliquidated damages are such as are not yet reduced to a certainty in respect of amount, nothing more being established than the plaintiff's right to recover; or such as cannot be fixed by a mere mathematical calculation from ascertained data in the case. Cox v. McLaughlin, 76 Cal. 60, 18 Pac. 100, 9 Am. St. Rep. 164.

Nominal and substantial. Nominal damages are a trifling sum awarded to a plaintiff in an action, where there is no substantial loss or injury to be compensated, but still the law recognizes a technical invasion of his rights or a breach of the defendant's duty, or in cases where, although there has been a real injury, the plaintiff's evidence entirely fails to show its amount. Maher v. Wilson, 139 Cal. 514, 73 Pac. 418; Stanton v. Railroad Co., 59 Conn. 272, 22 Atl. 300, 21 Am. St. Rep. 110; Springer v. Fuel Co., 196 Pa. 156, 46 Atl. 370; Telegraph Co. v. Lawson, 66 Kan. 660, 72 Pac. 283; Railroad Co. v. Watson, 37 Kan. 773, 15 Pac. 877. Substantial damages are considerable in amount, and intended as a real compensation for a real injury.

Compensatory and exemplary. Compensatory damages are such as will compensate the injured party for the injury sustained, and nothing more; such as will simply make good or replace the loss caused by the wrong or injury. McKnight v. Denny, 198 Pa. 323, 47 Atl. 970; Reid v. Terwilliger, 116 N. Y. 530, 22 N. E. 1091; Monongahela Nav. Co. v. U. S., 148 U. S. 312, 13 Sup. Ct. 622, 37 L. Ed. 463; Wade v. Power Co., 51 S. C. 296, 29 S. E. 233, 64 Am. St. Rep. 676; Gatzow v. Buening, 106 Wis. 1, 81 N. W. 1003, 49 L. R. A. 475, 80 Am. St. Rep. 1. Exemplary damages are damages on an increased scale, awarded to the plaintiff over and above what will barely compensate him for his property loss, where the wrong done to him was aggravated by circumstances of violence, oppression, malice, fraud, or wanton and wicked conduct on the part of the defendant, and are intended to solace the plaintiff for mental anguish, laceration of his feelings, shame, degradation, or other aggravations of the original wrong, or else to punish the defendant for his evil behavior or to make an example of him, for which reason they are also called "punitive" or "punitory" damages or "vindictive" damages, and (vulgarly) "smart-money." Reid

v. Terwilliger, 116 N. Y. 530, 22 N. E. 1091; Springer v. Fuel Co., 196 Pa. St. 156, 46 Atl. 370; Scott v. Donald, 165 U. S. 58, 17 Sup. Ct. 265, 41 L. Ed. 632; Gillingham v. Railroad Co., 35 W. Va. 588, 14 S. E. 243, 14 L. R. A. 798, 29 Am. St. Rep. 827; Boydan v. Haberstumpf, 129 Mich. 137, 88 N. W. 386; Oliver v. Railroad Co., 65 S. C. 1, 43 S. E. 307; Murphy v. Hobbs, 7 Colo. 541, 5 Pac. 119, 49 Am. Rep. 366.

Proximate and remote. Proximate damages are the immediate and direct damages and natural results of the act complained of, and such as are usual and might have been expected. Remote damages are those attributable immediately to an intervening cause, though it forms a link in an unbroken chain of causation, so that the remote damage would not have occurred if its elements had not been set in motion by the original act or event. Henry v. Railroad Co., 50 Cal. 183; Kuhn v. Jewett, 32 N. J. Eq. 649; Pielke v. Railroad Co., 5 Dak. 444, 41 N. W. 669. The terms "remote damages" and "consequential damages" are not synonymous nor to be used interchangeably; all remote damage is consequential, but it is by no means true that all consequential damage is remote. Eaton v. Railroad Co., 51 N. H. 511, 12 Am. Rep. 147.

Other compound and descriptive terms.—Actual damages are real, substantial and just damages, or the amount awarded to a complainant in compensation for his actual and real loss or injury, as opposed on the one hand to "nominal" damages, and on the other to "exemplary" or "punitive" damages. Ross v. Leggett, 61 Mich. 445, 28 N. W. 695, 1 Am. St. Rep. 608; Lord v. Wood, 120 Iowa, 303, 94 N. W. 842; Western Union Tel. Co. v. Lawson, 66 Kan. 660, 72 Pac. 283; Field v. Munster, 11 Tex. Civ. App. 341, 32 S. W. 417; Oliver v. Columbia, etc., R. Co., 65 S. C. 1, 43 S. E. 307; Gatzow v. Buening, 106 Wis. 1, 81 N. W. 1003, 49 L. R. A. 475, 80 Am. St. Rep. 1; Osborn v. Leach, 135 N. C. 628, 47 S. E. 811, 66 L. R. A. 648; Gen. St. Minn. 1894, § 5418.—**Affirmative damages.** In admiralty law, affirmative damages are damages which a respondent in a libel for injuries to a vessel may recover, which may be in excess of any amount which the libellant would be entitled to claim. Ebert v. The Reuben Doud (D. C.) 3 Fed. 520.—**Civil damages.** Those awarded against a liquor-seller to the relative, guardian, or employer of the person to whom the sales were made, on a showing that the plaintiff has been thereby injured in person, property, or means of support. Headington v. Smith, 113 Iowa, 107, 84 N. W. 982.—**Contingent damages.** Where a demurrer has been filed to one or more counts in a declaration, and its consideration is postponed, and meanwhile other counts in the same declaration, not demurred to, are taken as issues, and tried, and damages awarded upon them, such damages are called "contingent damages."—**Continuing damages** are such as accrue from the same injury, or from the repetition of similar acts, between two specified periods of time.—**Double damages.** Twice the amount of actual damages as found by the verdict of a jury allowed by statute in some cases of injuries by negligence, fraud, or trespass. Cross v. United States, 6 Fed. Cas. 892; Daniel v. Vaccaro, 41 Ark. 329.—**Excessive damages.** Damages awarded by a jury which are grossly in excess of the amount warranted by law on the facts and circumstances of the case; unreasonable or outrageous damages. A verdict giving excessive damages is ground for a new trial. Taylor v. Giger, Hardin (Ky.) 587; Harvesting Mach. Co. v. Gray, 114 Ind. 340, 16 N. E. 787.—**Fee damages.** Damages sustained by and awarded to an abutting owner of real property occasioned by the construction and operation of an elevated railroad in a city street, are so called, because compensation is made to the owner for the injury to, or deprivation of, his easements of light, air, and access, and these are parts of the fee. Dode v. Railway Co., 70 Hun, 374, 24 N. Y. Supp. 422; People v. Barker, 165 N. Y. 305, 59 N. E. 151.—**Inadequate damages.** Damages are called "inadequate," within the rule that an injunction will not be granted where adequate damages at law could be recovered for the injury sought to be prevented, when such a recovery at law would not compensate the parties and place them in the position in which they formerly stood. Insurance Co. v. Bonner, 7 Colo. App. 97, 42 Pac. 681.—**Imaginary damages.** This term is sometimes used as equivalent to "exemplary," "vindictive," or "punitive" damages. Murphy v. Hobbs, 7 Colo. 541, 5 Pac. 119, 49 Am. Rep. 366.—**Intervening damages.** Such damages to an appellee as result from the delay caused by the appeal. McGregor v. Balch, 17 Vt. 568; Peasely v. Buckminster, 1 Tyler (Vt.) 267; Roberts v. Warner, 17 Vt. 46, 42 Am. Dec. 478.—**Land damages.** A term sometimes applied to the amount of compensation to be paid for land taken under the power of eminent domain or for injury to, or depreciation of, land adjoining that taken. People v. Hilts, 27 Misc. Rep. 290, 58 N. Y. Supp. 434; In re Lent, 47 App. Div. 349, 62 N. Y. Supp. 227.—**Necessary damages.** A term said to be of much wider scope in the law of damages than "pecuniary." It embraces all those consequences of an injury usually denominated "general" damages, as distinguished from special damages; whereas the phrase "pecuniary damages" covers a smaller class of damages within the larger class of "general" damages. Browning v. Wabash Western R. Co. (Mo.) 24 S. W. 746.—**Pecuniary damages.** Such as can be estimated in and compensated by money; not merely the loss of money or salable property or rights, but all such loss, deprivation, or injury as can be made the subject of calculation and of recompense in money. Walker v. McNeill, 17 Wash. 582, 50 Pac. 518; Searle v. Railroad Co., 32 W. Va. 370, 9 S. E. 248; McIntyre v. Railroad Co., 37 N. Y. 295; Davidson Benedict Co. v. Severson, 109 Tenn. 572, 72 S. W. 967.—**Presumptive damages.** A term occasionally used as the equivalent of "exemplary" or "punitive" damages. Murphy v. Hobbs, 7 Colo. 541, 5 Pac. 119, 49 Am. Rep. 366.—**Prospective damages.** Damages which are expected to follow from the act or state of facts made the basis of a plaintiff's suit; damages which have not yet accrued, at the time of the trial, but which, in the nature of things, must necessarily, or most probably, result from the acts or facts complained of.—**Speculative damages.** Prospective or anticipated damages from the same acts or facts constituting the present cause of action, but which depend upon future developments which are contingent, conjectural, or improbable.—**Damages ultra.** Additional damages claimed by a plaintiff not satisfied with those paid into court by the defendant.

DAMAIOUSE. In old English law. Causing damage or loss, as distinguished from *torcenouse*, wrongful. Britt. c. 61.

DAME. In English law. The legal designation of the wife of a knight or baronet.

DAMNA. Damages, both inclusive and exclusive of costs.

DAMNATUS. In old English law. Condemned; prohibited by law; unlawful. *Damnatus coitus*, an unlawful connection.

DAMNI INJURIÆ ACTIO. An action given by the civil law for the damage done

by one who intentionally injured the slave or beast of another. Calvin.

DAMNIFICATION. That which causes damage or loss.

DAMNIFY. To cause damage or injurious loss to a person or put him in a position where he must sustain it. A surety is "damnified" when a judgment has been obtained against him. McLean v. Bank, 16 Fed. Cas. 278.

DAMNOSA HÆREDITAS. In the civil law. A losing inheritance; an inheritance that was a charge, instead of a benefit. Dig. 50, 16, 119.

The term has also been applied to that species of property of a bankrupt which, so far from being valuable, would be a charge to the creditors; for example, a term of years where the rent would exceed the revenue. 7 East, 342; 3 Camp. 340; 1 Esp. N. P. 234; Provident L. & Trust Co. v. Fidelity, etc., Co., 203 Pa. 82, 52 Atl. 34.

DAMNUM. Lat. In the civil law. Damage; the loss or diminution of what is a man's own, either by fraud, carelessness, or accident.

In pleading and old English law. Damage; loss.

—Damnum fatale. Fatal damage; damage from fate; loss happening from a cause beyond human control, (*quod ex fato contingit,*) or an act of God, and for which bailees are not liable; such as shipwreck, lightning, and the like. Dig. 4, 9, 3, 1; Story, Bailm. § 465. The civilians included in the phrase "*damnum fatale*" all those accidents which are summed up in the common-law expression, "Act of God or public enemies;" though, perhaps, it embraced some which would not now be admitted as occurring from an irresistible force. Thickstun v. Howard, 8 Blackf. (Ind.) 535.—**Damnum infectum.** In Roman law. Damage not yet committed, but threatened or impending. A preventive interdict might be obtained to prevent such damage from happening; and it was treated as a *quasi-delict*, because of the imminence of the danger.—**Damnum rei amissæ.** In the civil law. A loss arising from a payment made by a party in consequence of an error of law. Mackeld. Rom. Law, § 178.

DAMNUM ABSQUE INJURIA. Loss, hurt, or harm without injury in the legal sense, that is, without such an invasion of rights as is redressible by an action. A loss which does not give rise to an action of damages against the person causing it; as where a person blocks up the windows of a new house overlooking his land, or injures a person's trade by setting up an establishment of the same kind in the neighborhood. Broom, Com. Law, 75; Marbury v. Madison, 1 Cranch, 164, 2 L. Ed. 60; West Virginia Transp. Co. v. Standard Oil Co., 50 W. Va. 611, 40 S. E. 591, 56 L. R. A. 804, 88 Am. St. Rep. 895; Irwin v. Askew, 74 Ga. 581; Chase v. Silverstone, 62 Me. 175, 16 Am. Rep. 419; Lumber Co. v. U. S., 69 Fed. 326, 16 C. C. A. 460.

Damnum sine injuriâ esse potest. Lofft, 112. There may be damage or injury inflicted without any act of injustice.

DAN. Anciently the better sort of men in England had this title; so the Spanish *Don*. The old term of honor for men, as we now say Master or Mister. Wharton.

DANEGELT, DANEGELD. A tribute of 1s. and afterwards of 2s. upon every hide of land through the realm, levied by the Anglo-Saxons, for maintaining such a number of forces as were thought sufficient to clear the British seas of Danish pirates, who greatly annoyed their coasts. It continued a tax until the time of Stephen, and was one of the rights of the crown. Wharton.

DANELAGE. A system of laws introduced by the Danes on their invasion and conquest of England, and which was principally maintained in some of the midland counties, and also on the eastern coast. 1 Bl. Comm. 65; 4 Bl. Comm. 411; 1 Steph. Comm. 42.

DANGER. Jeopardy; exposure to loss or injury; peril. U. S. v. Mays, 1 Idaho, 770.

—Dangers of navigation. The same as "dangers of the sea" or "perils of the sea." See *infra*.—**Dangers of the river.** This phrase, as used in bills of lading, means only the natural accidents incident to river navigation, and does not embrace such as may be avoided by the exercise of that skill, judgment, or foresight which are demanded from persons in a particular occupation. 35 Mo. 213. It includes dangers arising from unknown reefs which have suddenly formed in the channel, and are not discoverable by care and skill. Hill v. Sturgeon, 35 Mo. 213, 86 Am. Dec. 149; Garrison v. Insurance Co., 19 How. 312, 15 L. Ed. 656; Hibernia Ins. Co. v. Transp. Co., 120 U. S. 166, 7 Sup. Ct. 550, 30 L. Ed. 621; Johnson v. Friar, 4 Yerg. 48, 26 Am. Dec. 215.—**Dangers of the road.** This phrase, in a bill of lading, when it refers to inland transportation, means such dangers as are immediately caused by roads, as the overturning of carriages in rough and precipitous places. 7 Exch. 743. —**Dangers of the sea.** The expression "dangers of the sea" means those accidents peculiar to navigation that are of an extraordinary nature, or arise from irresistible force or overwhelming power, which cannot be guarded against by the ordinary exertions of human skill and prudence. Walker v. Western Transp. Co., 3 Wall. 150, 18 L. Ed. 172; The Portsmouth, 9 Wall. 682, 19 L. Ed. 754; Hibernia Ins. Co. v. Transp. Co., 120 U. S. 166, 7 Sup. Ct. 550, 30 L. Ed. 621; Hill v. Sturgeon, 28 Mo. 327.

DANGERIA. In old English law. A money payment made by forest-tenants, that they might have liberty to plow and sow in time of pannage, or mast feeding.

DANGEROUS WEAPON. One dangerous to life; one by the use of which a fatal wound may probably or possibly be given.

As the manner of use enters into the consideration as well as other circumstances, the question is for the jury. U. S. v. Reeves, (C. C.) 38 Fed. 404; State v. Hammond, 14 S. D. 545, 86 N. W. 627; State v. Lynch, 88 Me. 195, 33 Atl. 978; State v. Scott, 39 La. Ann. 943, 3 South. 83.

DANISM. The act of lending money on usury.

DANO. In Spanish law. Damage; the deterioration, injury, or destruction which a man suffers with respect to his person or his property by the fault (*culpa*) of another. White, New Recop. b. 2, tit. 19, c. 3, § 1.

Dans et retinens, nihil dat. One who gives and yet retains does not give effectually. Tray. Lat. Max. 129. Or, one who gives, yet retains, [possession,] gives nothing.

DAPIFER. A steward either of a king or lord. Spelman.

DARE. Lat. In the civil law. To transfer property. When this transfer is made in order to discharge a debt, it is *datio solvendi animo;* when in order to receive an equivalent, to create an obligation, it is *datio contrahendi animo;* lastly, when made *donandi animo*, from mere liberality, it is a gift, *dono datio*.

DARE AD REMANENTIAM. To give away in fee, or forever.

DARRAIGN. To clear a legal account; to answer an accusation; to settle a controversy.

DARREIN. L. Fr. Last.

—Darrein continuance. The last continuance.—**Darrein presentment.** In old English law. The last presentment. See ASSISE OF DARREIN PRESENTMENT.—**Darrein seisin.** Last seisin. A plea which lay in some cases for the tenant in a writ of right. See 1 Rosc. Real Act. 206.

DATA. In old practice and conveyancing. The date of a deed; the time when it was *given;* that is, executed.

Grounds whereon to proceed; facts from which to draw a conclusion.

DATE. The specification or mention, in a written instrument, of the time (day and year) when it was made. Also the time so specified.

That part of a deed or writing which expresses the day of the month and year in which it was made or *given*. 2 Bl. Comm. 304; Tomlins.

The primary signification of *date* is not time in the abstract, nor time taken absolutely, but time given or specified; time in some way ascertained and fixed. When we speak of the date of a deed, we do not mean the time when it was actually executed, but the time of its execution, as given or stated in the deed itself. The date of an item, or of a charge in a book-account, is not necessarily the time when the article charged was, in fact, furnished, but rather the time given or set down in the account, in connection with such charge. And so the expression "the date of the last work done, or materials furnished," in a mechanic's lien law, may be taken, in the absence of anything in the act indicating a different intention, to mean the time when such work was done or materials furnished, as specified in the plaintiff's written claim. Bement v. Manufacturing Co., 32 N. J. Law, 513.

DATE CERTAINE. In French law. A deed is said to have a *date certaine* (fixed date) when it has been subjected to the formality of registration; after this formality has been complied with, the parties to the deed cannot by mutual consent change the date thereof. Arg. Fr. Merc. Law, 555.

DATIO. In the civil law. A giving, or act of giving. *Datio in solutum;* a giving in payment; a species of accord and satisfaction. Called, in modern law, "dation."

DATION. In the civil law. A gift; a giving of something. It is not exactly synonymous with "donation," for the latter implies generosity or liberality in making a gift, while dation may mean the giving of something to which the recipient is already entitled.

—Dation en paiement. In French law. A giving by the debtor and receipt by the creditor of something in payment of a debt, instead of a sum of money. It is somewhat like the accord and satisfaction of the common law. 16 Toullier, no. 45; Poth. Vente, no. 601.

DATIVE. A word derived from the Roman law, signifying "appointed by public authority." Thus, in Scotland, an executor-dative is an executor appointed by a court of justice, corresponding to an English *administrator*. Mozley & Whitley.

In old English law. In one's gift; that may be given and disposed of at will and pleasure.

DATUM. A first principle; a thing given; a date.

DATUR DIGNIORI. It is given to the more worthy. 2 Vent. 268.

DAUGHTER. An immediate female descendant. People v. Kaiser, 119 Cal. 456, 51 Pac. 702. May include the issue of a daughter. Buchanan v. Lloyd, 88 Md. 462, 41 Atl. 1075; Jamison v. Hay, 46 Mo. 546. May designate a natural or illegitimate female child. State v. Laurence, 95 N. C. 659.

DAUGHTER-IN-LAW. The wife of one's son.

DAUPHIN. In French law. The title of the eldest sons of the kings of France. Disused since 1830.

DAY. 1. A period of time consisting of twenty-four hours and including the solar

day and the night. Co. Litt. 135*a*; Fox v. Abel, 2 Conn. 541.

2. The space of time which elapses between two successive midnights. 2 Bl. Comm. 141; Henderson v. Reynolds, 84 Ga. 159, 10 S. E. 734, 7 L. R. A. 327; State v. Brown, 22 Minn. 483; State v. Michel, 52 La. Ann. 936, 27 South. 565, 49 L. R. A. 218, 78 Am. St. Rep. 364; Benson v. Adams, 69 Ind. 353, 35 Am. Rep. 220; Zimmerman v. Cowan, 107 Ill. 631, 47 Am. Rep. 476; Pulling v. People, 8 Barb. (N. Y.) 386.

3. That portion of time during which the sun is above the horizon, and, in addition, that part of the morning and evening during which there is sufficient light for the features of a man to be reasonably discerned. 3 Inst. 63; Nicholls v. State, 68 Wis. 416, 32 N. W. 543, 60 Am. Rep. 870; Trull v. Wilson, 9 Mass. 154; State v. McKnight, 111 N. C. 690, 16 S. E. 319.

4. An artificial period of time, computed from one fixed point to another twenty-four hours later, without any reference to the prevalence of light or darkness. Fuller v. Schroeder, 20 Neb. 631, 31 N. W. 109.

5. The period of time, within the limits of a natural day, set apart either by law or by common usage for the transaction of particular business or the performance of labor; as in banking, in laws regulating the hours of labor, in contracts for so many "days' work," and the like, the word "day" may signify six, eight, ten, or any number of hours. Hinton v. Locke, 5 Hill (N. Y.) 439; Fay v. Brown, 96 Wis. 434, 71 N. W. 895; McCulsky v. Klosterman, 20 Or. 108, 25 Pac. 366, 10 L. R. A. 785.

6. In practice and pleading. A particular time assigned or given for the appearance of parties in court, the return of writs, etc.

—Astronomical day. The period of twenty-four hours beginning and ending at noon.—**Artificial day.** The time between the rising and setting of the sun; that is, day or day-time as distinguished from night.—**Civil day.** The solar day, measured by the diurnal revolution of the earth, and denoting the interval of time which elapses between the successive transits of the sun over the same hour circle, so that the "civil day" commences and ends at midnight. Pedersen v. Eugster, 14 Fed. 422.—**Calendar days.** See CALENDAR.—**Clear days.** See CLEAR.—**Common day.** In old English practice. An ordinary day in court. Cowell; Termes de la Ley.—**Day certain.** A fixed or appointed day; a specified particular day; a day in term. Regina v. Conyers, 8 Q. B. 991.—**Days in bank.** (L. Lat. *dies in banco.*) In practice. Certain stated days in term appointed for the appearance of parties, the return of process, etc., originally peculiar to the court of common pleas, or bench, (bank,) as it was anciently called. 3 Bl. Comm. 277.—**Day in court.** The time appointed for one whose rights are called judicially in question, or liable to be affected by judicial action, to appear in court and be heard in his own behalf. This phrase, as generally used, means not so much the time appointed for a hearing as the opportunity to present one's claims or rights in a proper forensic hearing before a competent tribunal. See Ferry v. Car Wheel Co., 71 Vt 457, 45 Atl. 1035, 76 Am. St. Rep. 782.—**Days of grace.** A number of days allowed, as a matter of favor or *grace*, to a person who has to perform some act, or make some payment, after the time originally limited for the purpose has elapsed. In old practice. Three days allowed to persons summoned in the English courts, beyond the day named in the writ, to make their appearance; the last day being called the "*quarto die post.*" 3 Bl. Comm. 278. In mercantile law. A certain number of days (generally three) allowed to the maker or acceptor of a bill, draft, or note, in which to make payment, after the expiration of the time expressed in the paper itself. Originally these days were granted only as a matter of *grace* or favor, but the allowance of them became an established custom of merchants, and was sanctioned by the courts, (and in some cases prescribed by statute,) so that they are now demandable as of right. Perkins v. Bank, 21 Pick. (Mass.) 485; Bell v. Bank, 115 U. S. 373, 6 Sup. Ct. 105, 29 L. Ed. 409; Thomas v. Shoemaker, 6 Watts & S. (Pa.) 182; Renner v. Bank, 9 Wheat. 581, 6 L. Ed. 166.—**Day-time.** The time during which there is the light of day, as distinguished from night or night-time. That portion of the twenty-four hours during which a man's person and countenance are distinguishable. Trull v. Wilson, 9 Mass. 154; Rex v. Tandy, 1 Car. & P. 297; Linnen v. Banfield, 114 Mich. 93, 72 N. W. 1. In law, this term is chiefly used in the definition of certain crimes, as to which it is material whether the act was committed by day or by night.—**Judicial day.** A day on which the court is actually in session. Heffner v. Heffner, 48 La. Ann. 1088, 20 South. 281.—**Juridical day.** A day proper for the transaction of business in court; one on which the court may lawfully sit, excluding Sundays and some holidays.—**Law day.** The day prescribed in a bond, mortgage, or defeasible deed for payment of the debt secured thereby, or, in default of payment, the forfeiture of the property mortgaged. But this does not now occur until foreclosure. Ward v. Lord, 100 Ga. 407, 28 S. E. 446; Moore v. Norman, 43 Minn. 428, 45 N. W. 857, 9 L. R. A. 55, 19 Am. St. Rep. 247; Kortright v. Cady, 21 N. Y. 345, 78 Am. Rep. 145.—**Legal day.** A juridical day. See *supra.* And see Heffner v. Heffner, 48 La. Ann. 1088, 20 South. 281.—**Natural day.** Properly the period of twenty-four hours from midnight to midnight. Co. Litt. 135; Fox v. Abel, 2 Conn. 541; People v. Hatch, 33 Ill. 13. Though sometimes taken to mean the "day-time" or time between sunrise and sunset. In re Ten Hour Law, 24 R. I. 603, 54 Atl. 602, 61 L. R. A. 612.—**Non-judicial day.** One on which process cannot ordinarily issue or be served or returned and on which the courts do not ordinarily sit. Whitney v. Blackburn, 17 Or. 564, 21 Pac. 874, 11 Am. St. Rep. 857. More properly "non-juridical day."—**Solar day.** A term sometimes used as meaning that portion of the day when the sun is above the horizon, but properly it is the time between two complete (apparent) revolutions of the sun, or between two consecutive positions of the sun over any given terrestrial meridian, and hence, according to the usual method of reckoning, from noon to noon at any given place.

DAY-BOOK. A tradesman's account book; a book in which all the occurrences of the day are set down. It is usually a book of original entries.

DAY-RULE, or DAY-WRIT. In English law. A permission granted to a prisoner to go out of prison, for the purpose of transacting his business, as to hear a case in

which he is concerned at the assizes, etc. Abolished by 5 & 6 Vict. c. 22, § 12.

DAYERIA. A dairy. Cowell.

DAYLIGHT. That portion of time before sunrise, and after sunset, which is accounted part of the day, (as distinguished from *night*,) in defining the offense of burglary. 4 Bl. Comm. 224; Cro. Jac. 106.

DAYSMAN. An arbitrator, umpire, or elected judge. Cowell.

DAYWERE. In old English law. A term applied to land, and signifying as much arable ground as could be plowed up in one day's work. Cowell.

DE. A Latin preposition, signifying of; by; from; out of; affecting; concerning; respecting.

DE ACQUIRENDO RERUM DOMINIO. Of (about) acquiring the ownership of things. Dig. 41, 1; Bract. lib. 2, fol. 8*b*.

DE ADMENSURATIONE. Of admeasurement. Thus, *de admensuratione dotis* was a writ for the admeasurement of dower, and *de admensuratione pasturæ* was a writ for the admeasurement of pasture.

DE ADVISAMENTO CONSILII NOSTRI. L. Lat. With or by the advice of our council. A phrase used in the old writs of summons to parliament. Crabb, Eng. Law, 240.

DE ÆQUITATE. In equity. *De jure stricto, nihil possum vendicare, de æquitate tamen, nullo modo hoc obtinet;* in strict law, I can claim nothing, but in equity this by no means obtains. Fleta, lib. 3, c. 2, § 10.

DE ÆSTIMATO. In Roman law. One of the innominate contracts, and, in effect, a sale of land or goods at a price fixed, (*æstimato*,) and guarantied by some third party, who undertook to find a purchaser.

DE ÆTATE PROBANDA. For proving age. A writ which formerly lay to summon a jury in order to determine the age of the heir of a tenant *in capite* who claimed his estate as being of full age. Fitzh. Nat. Brev. 257; Reg. Orig. 294.

DE ALEATORIBUS. About gamesters. The name of a title in the Pandects. Dig. 11, 5.

DE ALLOCATIONE FACIENDA, *Breve.* Writ for making an allowance. An old writ directed to the lord treasurer and barons of the exchequer, for allowing certain officers (as collectors of customs) in their accounts certain payments made by them. Reg. Orig. 192.

DE ALTO ET BASSO. Of high and low. A phrase anciently used to denote the absolute submission of all differences to arbitration. Cowell.

DE AMBITU. Lat. Concerning bribery. A phrase descriptive of the subject-matter of several of the Roman laws; as the *Lex Aufidia*, the *Lex Pompeia*, the *Lex Tullia*, and others. See AMBITUS.

DE AMPLIORI GRATIA. Of more abundant or especial grace. Townsh. Pl. 18.

DE ANNO BISSEXTILI. Of the bissextile or leap year. The title of a statute passed in the twenty-first year of Henry III., which in fact, however, is nothing more than a sort of writ or direction to the justices of the bench, instructing them how the extraordinary day in the leap year was to be reckoned in cases where persons had a day to appear at the distance of a year, as on the essoin *de malo lecti*, and the like. It was thereby directed that the additional day should, together with that which went before, be reckoned only as one, and so, of course, within the preceding year. 1 Reeve, Eng. Law, 266.

DE ANNUA PENSIONE, *Breve.* Writ of annual pension. An ancient writ by which the king, having a yearly pension due him out of an abbey or priory for any of his chaplains, demanded the same of the abbot or prior, for the person named in the writ. Reg. Orig. 265*b*, 307; Fitzh. Nat. Brev. 231 G.

DE ANNUO REDITU. For a yearly rent. A writ to recover an annuity, no matter how payable, in goods or money. 2 Reeve, Eng. Law, 258.

DE APOSTATA CAPIENDO, *Breve.* Writ for taking an apostate. A writ which anciently lay against one who, having entered and professed some order of religion, left it and wandered up and down the country, contrary to the rules of his order, commanding the sheriff to apprehend him and deliver him again to his abbot or prior. Reg. Orig. 71*b*, 267; Fitzh. Nat. Brev. 233, 234.

DE ARBITRATIONE FACTA. (Lat. Of arbitration had.) A writ formerly used when an action was brought for a cause which had been settled by arbitration. Wats. Arb. 256.

DE ARRESTANDIS BONIS NE DISSIPENTUR. An old writ which lay to seize goods in the hands of a party during the pendency of a suit, to prevent their being made away with. Reg. Orig. 126*b*.

DE ARRESTANDO IPSUM QUI PECUNIAM RECEPIT. A writ which lay for the arrest of one who had taken the

king's money to serve in the war, and hid himself to escape going. Reg. Orig. 24*b*.

DE ARTE ET PARTE. Of art and part. A phrase in old Scotch law.

DE ASPORTATIS RELIGIOSORUM. Concerning the property of religious persons carried away. The title of the statute 35 Edward I. passed to check the abuses of clerical possessions, one of which was the waste they suffered by being drained into foreign countries. 2 Reeve, Eng. Law, 157; 2 Inst. 580.

DE ASSISA PROROGANDA. (Lat. For proroguing assise.) A writ to put off an assise, issuing to the justices, where one of the parties is engaged in the service of the king.

DE ATTORNATO RECIPIENDO. A writ which lay to the judges of a court, requiring them to receive and admit an attorney for a party. Reg. Orig. 172; Fitzh. Nat. Brev. 156.

DE AUDIENDO ET TERMINANDO. For hearing and determining; to hear and determine. The name of a writ, or rather commission granted to certain justices to hear and determine cases of heinous misdemeanor, trespass, riotous breach of the peace, etc. Reg. Orig. 123, *et seq.;* Fitzh. Nat. Brev. 110 B. See OYER AND TERMINER.

DE AVERIIS CAPTIS IN WITHERNAMIUM. Writ for taking cattle in withernam. A writ which lay where the sheriff returned to a *pluries* writ of replevin that the cattle or goods, etc., were eloined, etc.; by which he was commanded to take the cattle of the defendant in withernam, (or reprisal,) and detain them until he could replevy the other cattle. Reg. Orig. 82; Fitzh. Nat. Brev. 73, E. F. See WITHERNAM.

DE AVERIIS REPLEGIANDIS. A writ to replevy beasts. 3 Bl. Comm. 149.

DE AVERIIS RETORNANDIS. For returning the cattle. A term applied to pledges given in the old action of replevin. 2 Reeve, Eng. Law, 177.

DE BANCO. Of the bench. A term formerly applied in England to the justices of the court of common pleas, or "bench," as it was originally styled.

DE BENE ESSE. Conditionally; provisionally; in anticipation of future need. A phrase applied to proceedings which are taken *ex parte* or provisionally, and are allowed to stand as *well done* for the present, but which may be subject to future exception or challenge, and must then stand or fall according to their intrinsic merit and regularity.

Thus, "in certain cases, the courts will allow evidence to be taken out of the regular course, in order to prevent the evidence being lost by the death or the absence of the witness. This is called 'taking evidence *de bene esse*,' and is looked upon as a temporary and conditional examination, to be used only in case the witness cannot afterwards be examined in the suit in the regular way." Hunt, Eq. 75; Haynes, Eq. 183; Mitf. Eq. Pl. 52, 149.

DE BIEN ET DE MAL. L. Fr. For good and evil. A phrase by which a party accused of a crime anciently put himself upon a jury, indicating his entire submission to their verdict.

DE BIENS LE MORT. L. Fr. Of the goods of the deceased. Dyer, 32.

DE BIGAMIS. Concerning men twice married. The title of the statute 4 Edw. I. St. 3; so called from the initial words of the fifth chapter. 2 Inst. 272; 2 Reeve, Eng. Law, 142.

DE BONE MEMORIE. L. Fr. Of good memory; of sound mind. 2 Inst. 510.

DE BONIS ASPORTATIS. For goods taken away; for taking away goods. The action of trespass for taking personal property is technically called "trespass *de bonis asportatis*." 1 Tidd, Pr. 5.

DE BONIS NON. An abbreviation of *De bonis non administratis*, (*q. v.*) 1 Strange, 34.

DE BONIS NON ADMINISTRATIS. Of the goods not administered. When an administrator is appointed to succeed another, who has left the estate partially unsettled, he is said to be granted "administration *de bonis non*;" that is, of the goods not already administered.

DE BONIS NON AMOVENDIS. Writ for not removing goods. A writ anciently directed to the sheriffs of London, commanding them, in cases where a writ of error was brought by a defendant against whom a judgment was recovered, to see that his *goods* and chattels were safely kept *without being removed*, while the error remained undetermined, so that execution might be had of them, etc. Reg. Orig. 131*b;* Termes de la Ley.

DE BONIS PROPRIIS. Of his own goods. The technical name of a judgment against an administrator or executor to be satisfied from his own property, and not from the estate of the deceased, as in cases where he has been guilty of a *devastavit* or of a false plea of *plene administravit*.

DE BONIS TESTATORIS, or INTESTATI. Of the goods of the testator, or intestate. A term applied to a judgment awarding execution against the property of a testator or intestate, as distinguished from the individual property of his executor or administrator. 2 Archb. Pr. K. B. 148, 149.

DE BONIS TESTATORIS AC SI. (Lat. From the goods of the testator, *if he has any*, and, if *not, from those of the executor.*) A judgment rendered where an executor falsely pleads any matter as a release, or, generally, in any case where he is to be charged in case his testator's estate is insufficient. 1 Williams' Saund. 336*b*; Bac. Abr. "Executor," B, 3; 2 Archb. Pr. K. B. 148.

DE BONO ET MALO. "For good and ill." The Latin form of the law French phrase "*De bien et de mal.*" In ancient criminal pleading, this was the expression with which the prisoner put himself upon a jury, indicating his absolute submission to their verdict.

This was also the name of the special writ of jail delivery formerly in use in England, which issued for each particular prisoner, of course. It was superseded by the general commission of jail delivery.

DE BONO GESTU. For good behavior; for good abearance.

DE CÆTERO. Henceforth.

DE CALCETO REPARANDO. Writ for repairing a causeway. An old writ by which the sheriff was commanded to distrain the inhabitants of a place to repair and maintain a causeway, etc. Reg. Orig. 154.

DE CAPITALIBUS DOMINIS FEODI. Of the chief lords of the fee.

DE CAPITE MINUTIS. Of those who have lost their *status*, or civil condition. Dig. 4, 5. The name of a title in the Pandects. See CAPITIS DEMINUTIO.

DE CARTIS REDDENDIS. (For restoring charters.) A writ to secure the delivery of charters or deeds; a writ of detinue. Reg. Orig. 159*b*.

DE CATALLIS REDDENDIS. (For restoring chattels.) A writ to secure the return specifically of chattels detained from the owner. Cowell.

DE CAUTIONE ADMITTENDA. Writ to take caution or security. A writ which anciently lay against a bishop who held an excommunicated person in prison for his contempt, notwithstanding he had offered sufficient security (*idoneam cautionem*) to obey the commands of the church; commanding him to take such security and release the prisoner. Reg. Orig. 66; Fitzh. Nat. Brev. 63, C.

DE CERTIFICANDO. A writ requiring a thing to be certified. A kind of *certiorari*. Reg. Orig. 151, 152.

DE CERTIORANDO. A writ for certifying. A writ directed to the sheriff, requiring him to certify to a particular fact. Reg. Orig. 24.

DE CHAMPERTIA. Writ of champerty. A writ directed to the justices of the bench, commanding the enforcement of the statute of *champertors*. Reg. Orig. 183; Fitzh. Nat. Brev. 172.

DE CHAR ET DE SANK. L. Fr. Of flesh and blood. *Affaire rechat de char et de sank.* Words used in claiming a person to be a villein, in the time of Edward II. Y. B. P. 1 Edw. II. p. 4.

DE CHIMINO. A writ for the enforcement of a right of way. Reg. Orig. 155.

DE CIBARIIS UTENDIS. Of victuals to be used. The title of a sumptuary statute passed 10 Edw. III. St. 3, to restrain the expense of entertainments. Barring. Ob. St. 240.

DE CLAMEA ADMITTENDA IN ITINERE PER ATTORNATUM. See CLAMEA ADMITTENDA, etc.

DE CLARO DIE. By daylight. Fleta, lib. 2, c. 76, § 8.

DE CLAUSO FRACTO. Of close broken; of breach of close. See CLAUSUM FREGIT.

DE CLERICO ADMITTENDO. See ADMITTENDO CLERICO.

DE CLERICO CAPTO PER STATUTUM MERCATORIUM DELIBERANDO. Writ for delivering a clerk arrested on a statute merchant. A writ for the delivery of a clerk out of prison, who had been taken and imprisoned upon the breach of a statute merchant. Reg. Orig. 147*b*.

DE CLERICO CONVICTO DELIBERANDO. See CLERICO CONVICTO, etc.

DE CLERICO INFRA SACROS ORDINES CONSTITUTO NON ELIGENDO IN OFFICIUM. See CLERICO INFRA SACROS, etc.

DE CLERO. Concerning the clergy. The title of the statute 25 Edw. III. St. 3; containing a variety of provisions on the subject of presentations, indictments of spiritual persons, and the like. 2 Reeve, Eng. Law, 378.

DE COMBUSTIONE DOMORUM. Of house burning. One of the kinds of appeal formerly in use in England. Bract. fol. 146*b*; 2 Reeve, Eng. Law, 38.

DE COMMUNI DIVIDUNDO. For dividing a thing held in common. The name of an action given by the civil law. Mackeld. Rom. Law, § 499.

DE COMON DROIT. L. Fr. Of common right; that is, by the common law. Co. Litt. 142*a*.

DE COMPUTO. Writ of account. A writ commanding a defendant to render a reasonable account to the plaintiff, or show cause to the contrary. Reg. Orig. 135–138; Fitzh. Nat. Brev. 117, E. The foundation of the modern action of account.

DE CONCILIO CURIÆ. By the advice (or direction) of the court.

DE CONFLICTU LEGUM. Concerning the conflict of laws. The title of several works written on that subject. 2 Kent, Comm. 455.

DE CONJUNCTIM FEOFFATIS. Concerning persons jointly enfeoffed, or seised. The title of the statute 34 Edw. I., which was passed to prevent the delay occasioned by tenants in novel disseisin, and other writs, pleading that some one else was seised jointly with them. 2 Reeve, Eng. Law, 243.

DE CONSANGUINEO, and DE CONSANGUINITATE. Writs of cosinage, (*q. v.*)

DE CONSILIO. In old criminal law. Of counsel; concerning counsel or advice to commit a crime. Fleta, lib. 1, c. 31, § 8.

DE CONSILIO CURIÆ. By the advice or direction of the court. Bract. fol. 345*b*.

DE CONTINUANDO ASSISAM. Writ to continue an assise. Reg. Orig. 217*b*.

DE CONTUMACE CAPIENDO. Writ for taking a contumacious person. A writ which issues out of the English court of chancery, in cases where a person has been pronounced by an ecclesiastical court to be contumacious, and in contempt. Shelf. Mar. & Div. 494–496, and notes. It is a commitment for contempt. Id.

DE COPIA LIBELLI DELIBERANDA. Writ for delivering the copy of a libel. An ancient writ directed to the judge of a spiritual court, commanding him to *deliver* to a defendant a *copy* of the libel filed against him in such court. Reg. Orig. 58. The writ in the register is directed to the Dean of the Arches, and his commissary. Id.

DE CORONATORE ELIGENDO. Writ for electing a coroner. A writ issued to the sheriff in England, commanding him to proceed to the election of a coroner, which is done in full county court, the freeholders being the electors. Sewell, Sheriffs, 372.

DE CORONATORE EXONERANDO. Writ for discharging or removing a coroner. A writ by which a coroner in England may be removed from office for some cause therein assigned. Fitzh. Nat. Brev. 163, 164; 1 Bl. Comm. 348.

DE CORPORE COMITATUS. From the body of the county at large, as distinguished from a particular neighborhood, (*de vicineto.*) 3 Bl. Comm. 360. Used with reference to the composition of a jury. State v. Kemp, 34 Minn. 61, 24 N. W. 349.

DE CORRODIO HABENDO. Writ for having a corody. A writ to exact a corody from a religious house. Reg. Orig. 264, Fitzh. Nat. Brev. 230. See CORODY.

DE CUJUS. Lat. From whom. A term used to designate the person by, through, from, or under whom another claims. Brent v. New Orleans, 41 La. Ann. 1098, 6 South. 793.

DE CURIA CLAUDENDA. An obsolete writ, to require a defendant to fence in his court or land about his house, where it was left open to the injury of his neighbor's freehold. 1 Crabb, Real Prop. 314; Rust v. Low, 6 Mass. 90.

DE CURSU. Of course. The usual, necessary, and formal proceedings in an action are said to be *de cursu;* as distinguished from *summary* proceedings, or such as are incidental and may be taken on summons or motion. Writs *de cursu* are such as are issued of course, as distinguished from prerogative writs.

DE CUSTODE ADMITTENDO. Writ for admitting a guardian. Reg. Orig. 93*b*, 198.

DE CUSTODE AMOVENDO. Writ for removing a guardian. Reg. Orig. 198.

DE CUSTODIA TERRÆ ET HÆREDIS, *Breve.* L. Lat. Writ of ward, or writ of right of ward. A writ which lay for a guardian in knight's service or in socage, to recover the possession and custody of the infant, or the *wardship of the land and heir.* Reg. Orig. 161*b;* Fitzh. Nat. Brev. 139, B; 3 Bl. Comm. 141.

DE DEBITO. A writ of debt. Reg. Orig. 139.

DE DEBITORE IN PARTES SECANDO. In Roman law. "Of cutting a debtor

in pieces." This was the name of a law contained in the Twelve Tables, the meaning of which has occasioned much controversy. Some commentators have concluded that it was literally the privilege of the creditors of an insolvent debtor (all other means failing) to cut his body into pieces and distribute it among them. Others contend that the language of this law must be taken figuratively, denoting a cutting up and apportionment of the debtor's *estate*.

The latter view has been adopted by Montesquieu, Bynkershoek, Heineccius, and Taylor. (Esprit des Lois, liv. 29, c. 2; Bynk. Obs. Jur. Rom. l. 1, c. 1; Heinecc. Ant. Rom. lib. 3, tit. 30, § 4; Tayl. Comm. in Leg. Decemv.) The literal meaning, on the other hand, is advocated by Aulus Gellius and other writers of antiquity, and receives support from an expression (*semoto omni cruciatu*) in the Roman code itself. (Aul. Gel. Noctes Atticæ, lib. 20, c. 1; Code, 7, 7, 8.) This is also the opinion of Gibbon, Gravina, Pothier, Hugo, and Niehbuhr. (3 Gib. Rom. Emp., Am. Ed., p. 183; Grav. de Jur. Nat. Gent. et XII. Tab. § 72; Poth. Introd. Pand.; Hugo, Hist. du Droit Rom. tom. i., p. 233, § 149; 2 Neibh. Hist. Rom. p. 597; 1 Kent, Comm. 523, note.) Burrill.

DE DECEPTIONE. A writ of deceit which lay against one who acted in the name of another whereby the latter was damnified and deceived. Reg. Orig. 112.

DE DEONERANDA PRO RATA PORTIONIS. A writ that lay where one was distrained for rent that ought to be paid by others proportionably with him. Fitzh. Nat. Brev. 234; Termes de la Ley.

DE DIE IN DIEM. From day to day. Bract. fol. 205*b*.

DE DIVERSIS REGULIS JURIS ANTIQUI. Of divers rules of the ancient law. A celebrated title of the Digests, and the last in that collection. It consists of two hundred and eleven rules or maxims. Dig. 50, 17.

DE DOLO MALO. Of or founded upon fraud. Dig. 4, 3. See ACTIO DE DOLO MALO.

DE DOMO REPARANDA. A writ which lay for one tenant in common to compel his co-tenant to contribute towards the repair of the common property.

DE DONIS. Concerning gifts, (or more fully, *de donis conditionalibus*, concerning conditional gifts.) The name of a celebrated English statute, passed in the thirteenth year of Edw. I., and constituting the first chapter of the statute of Westm. 2, by virtue of which estates in fee-simple conditional (formerly known as "*dona conditionalia*") were converted into estates in fee-tail, and which, by rendering such estates inalienable, introduced perpetuities, and so strengthened the power of the nobles. See 2 Bl. Comm. 112.

DE DOTE ASSIGNANDA. Writ for assigning dower. A writ which lay for the widow of a tenant *in capite*, commanding the king's escheater to cause her dower to be assigned to her. Reg. Orig. 297; Fitzh. Nat. Brev. 263, C.

DE DOTE UNDE NIHIL HABET. A writ of dower which lay for a widow where no part of her dower had been assigned to her. It is now much disused; but a form closely resembling it is still sometimes used in the United States. 4 Kent, Comm. 63; Stearns, Real Act. 302; 1 Washb. Real Prop. 230.

DE EJECTIONE CUSTODIÆ. A writ which lay for a guardian who had been forcibly ejected from his wardship. Reg. Orig. 162.

DE EJECTIONE FIRMÆ. A writ which lay at the suit of the tenant for years against the lessor, reversioner, remainderman, or stranger who had himself deprived the tenant of the occupation of the land during his term. 3 Bl. Comm. 199.

By a gradual extension of the scope of this form of action its object was made to include not only damages for the unlawful detainer, but also the possession for the remainder of the term, and eventually the possession of land generally. And, as it turned on the right of possession, this involved a determination of the right of property, or the title, and thus arose the modern action of ejectment.

DE ESCÆTA. Writ of escheat. A writ which a lord had, where his tenant died without heir, to recover the land. Reg. Orig. 164*b*; Fitzh. Nat. Brev. 143, 144, E.

DE ESCAMBIO MONETÆ. A writ of exchange of money. An ancient writ to authorize a merchant to make a bill of exchange, (*literas cambitorias facere.*) Reg. Orig. 194.

DE ESSE IN PEREGRINATIONE. Of being on a journey. A species of essoin. 1 Reeve, Eng. Law, 119.

DE ESSENDO QUIETUM DE TOLONIO. A writ which lay for those who were by privilege free from the payment of toll, on their being molested therein. Fitzh. Nat. Brev. 226; Reg. Orig. 258*b*.

DE ESSONIO DE MALO LECTI. A writ which issued upon an essoin of *malum lecti* being cast, to examine whether the party was in fact sick or not. Reg. Orig. 8*b*.

DE ESTOVERIIS HABENDIS. Writ for having estovers. A writ which lay for a wife divorced *a mensa et thoro*, to recover her alimony or estovers. 1 Bl. Comm. 441; 1 Lev. 6.

DE ESTREPAMENTO. A writ which lay to prevent or stay waste by a tenant, during the pendency of a suit against him to recover the lands. Reg. Orig. 76*b*. Fitzh. Nat. Brev. 60.

DE EU ET TRENE. L. Fr. Of water and whip of three cords. A term applied to a neife, that is, a bond woman or female villein, as employed in servile work, and subject to corporal punishment. Co. Litt. 25*b*.

DE EVE ET DE TREVE. A law French phrase, equivalent to the Latin *de avo et de tritavo*, descriptive of the ancestral rights of lords in their villeins. Literally, "from grandfather and from great-grandfather's great-grandfather." It occurs in the Year Books.

DE EXCOMMUNICATO CAPIENDO. A writ commanding the sheriff to arrest one who was excommunicated, and imprison him till he should become reconciled to the church. 3 Bl. Comm. 102. Smith v. Nelson, 18 Vt. 511.

DE EXCOMMUNICATO DELIBERANDO. A writ to deliver an excommunicated person, who has made satisfaction to the church, from prison. 3 Bl. Comm. 102.

DE EXCOMMUNICATO RECAPIENDO. Writ for retaking an excommunicated person, where he had been liberated from prison without making satisfaction to the church, or giving security for that purpose. Reg. Orig. 67.

DE EXCUSATIONIBUS. "Concerning excuses." This is the title of book 27 of the Pandects, (in the *Corpus Juris Civilis*.) It treats of the circumstances which excuse one from filling the office of tutor or curator. The bulk of the extracts are from Modestinus.

DE EXECUTIONE FACIENDA IN WITHERNAMIUM. Writ for making execution in withernam. Reg. Orig. 82*b*. A species of *capias in withernam*.

DE EXECUTIONE JUDICII. A writ directed to a sheriff or bailiff, commanding him to do execution upon a judgment. Reg. Orig. 18; Fitzh. Nat. Brev. 20.

DE EXEMPLIFICATIONE. Writ of exemplification. A writ granted for the exemplification of an original. Reg. Orig. 290*b*.

DE EXONERATIONE SECTÆ. Writ for exoneration of suit. A writ that lay for the king's ward to be discharged of all suit to the county court, hundred, leet, or court-baron, during the time of his wardship. Fitzh. Nat. Brev. 158; New Nat. Brev. 352.

DE EXPENSIS CIVIUM ET BURGENSIUM. An obsolete writ addressed to the sheriff to levy the expenses of every citizen and burgess of parliament. 4 Inst. 46.

DE EXPENSIS MILITUM LEVANDIS. Writ for levying the expenses of knights. A writ directed to the sheriff for levying the allowance for knights of the shire in parliament. Reg. Orig. 191*b*, 192.

DE FACTO. In fact, in deed, actually. This phrase is used to characterize an officer, a government, a past action, or a state of affairs which exists actually and must be accepted for all practical purposes, but which is illegal or illegitimate. In this sense it is the contrary of *de jure*, which means rightful, legitimate, just, or constitutional. Thus, an officer, king, or government *de facto* is one who is in actual possession of the office or supreme power, but by usurpation, or without respect to lawful title; while an officer, king, or governor *de jure* is one who has just claim and rightful title to the office or power, but who has never had plenary possession of the same, or is not now in actual possession. 4 Bl. Comm. 77, 78. So a wife *de facto* is one whose marriage is voidable by decree, as distinguished from a wife *de jure*, or lawful wife. 4 Kent, Comm. 36.

But the term is also frequently used independently of any distinction from *de jure;* thus a blockade *de facto* is a blockade which is actually maintained, as distinguished from a mere paper blockade.

As to *de facto* "Corporation," "Court," "Domicile," "Government," and "Officer," see those titles.

In old English law. *De facto* means respecting or concerning the principal act of a murder, which was technically denominated *factum*. See Fleta, lib. 1, c. 27, § 18.

—De facto contract. One which has purported to pass the property from the owner to another. Bank v. Logan, 74 N. Y. 575; Edmunds v. Transp. Co., 135 Mass. 283.

DE FAIRE ECHELLE. In French law. A clause commonly inserted in policies of marine insurance, equivalent to a license to touch and trade at intermediate ports. American Ins. Co. v. Griswold, 14 Wend. (N. Y.) 491.

DE FALSO JUDICIO. Writ of false judgment. Reg. Orig. 15; Fitzh. Nat. Brev. 18. See FALSE JUDGMENT.

DE FALSO MONETA. Of false money. The title of the statute 27 Edw. I. ordaining that persons importing certain coins, called "pollards," and "crokards," should forfeit their lives and goods, and everything they could forfeit. 2 Reeve, Eng. Law, 228, 229.

De fide et officio judicis non recipitur quæstio, sed de scientia, sive sit error

juris, sive facti. Concerning the fidelity and official conduct of a judge, no question is [will be] entertained; but [only] concerning his knowledge, whether the error [committed] be of law or of fact. Bac. Max. 68, reg. 17. The *bona fides* and honesty of purpose of a judge cannot be questioned, but his decision may be impugned for error either of law or fact. Broom, Max. 85. The law doth so much respect the certainty of judgments, and the credit and authority of judges, that it will not permit any error to be assigned which impeacheth them in their *trust* and *office*, and in willful abuse of the same; but only in ignorance and mistaking either of the law, or of the case and matter of fact. Bac. Max. ubi supra. Thus, it cannot be assigned for error that a judge did that which he ought not to do; as that he entered a verdict for the plaintiff, where the jury gave it for the defendant. Fitzh. Nat. Brev. 20, 21; Bac. Max. ubi supra; Hardr. 127, arg.

DE FIDEI LÆSIONE. Of breach of faith or fidelity. 4 Reeve, Eng. Law, 99.

DE FINE FORCE. L. Fr. Of necessity; of pure necessity. See FINE FORCE.

DE FINE NON CAPIENDO PRO PULCHRE PLACITANDO. A writ prohibiting the taking of fines for beau pleader. Reg. Orig. 179.

DE FINE PRO REDISSEISINA CAPIENDO. A writ which lay for the release of one imprisoned for a re-disseisin, on payment of a reasonable fine. Reg. Orig. 222*b*.

DE FINIBUS LEVATIS. Concerning fines levied. The title of the statute 27 Edw. I. requiring fines thereafter to be levied, to be read openly and solemnly in court. 2 Inst. 521.

DE FORISFACTURA MARITAGII. Writ of forfeiture of marriage. Reg. Orig. 163, 164.

DE FRANGENTIBUS PRISONAM. Concerning those that break prison. The title of the statute 1 Edw. II. ordaining that none from thenceforth who broke prison should have judgment of life or limb for breaking prison only, unless the cause for which he was taken and imprisoned required such a judgment if he was lawfully convicted thereof. 2 Reeve, Eng. Law, 290; 2 Inst. 589.

DE FURTO. Of theft. One of the kinds of criminal appeal formerly in use in England. 2 Reeve, Eng. Law, 40.

DE GESTU ET FAMA. Of behavior and reputation. An old writ which lay in cases where a person's conduct and reputation were impeached.

DE GRATIA. Of grace or favor, by favor. *De speciali gratia*, of special grace or favor.

De gratia speciali certa scientia et mero motu, talis clausula non valet in his in quibus præsumitur principem esse ignorantem. 1 Coke, 53. The clause "of our special grace, certain knowledge, and mere motion," is of no avail in those things in which it is presumed that the prince was ignorant.

De grossis arboribus decimæ non dabuntur sed de sylvia cædua decimæ dabuntur. 2 Rolle, 123. Of whole trees, tithes are not given; but of wood cut to be used, tithes are given.

DE HÆREDE DELIBERANDO ILLI QUI HABET CUSTODIAM TERRÆ. Writ for delivering an heir to him who has wardship of the land. A writ directed to the sheriff, to require one that had the body of him that was ward to another to deliver him to the person whose ward he was by reason of his land. Reg. Orig. 161.

DE HÆREDE RAPTO ET ABDUCTO. Writ concerning an heir ravished and carried away. A writ which anciently lay for a lord who, having by right the wardship of his tenant under age could not obtain his body, the same being carried away by another person. Reg. Orig. 163; Old Nat. Brev. 93.

DE HÆRETICO COMBURENDO. (Lat. For burning a heretic.) A writ which lay where a heretic had been convicted of heresy, had abjured, and had relapsed into heresy. It is said to be very ancient. Fitzh. Nat. Brev. 269; 4 Bl. Comm. 46.

DE HOMAGIO RESPECTUANDO. A writ for respiting or postponing homage. Fitzh. Nat. Brev. 269, A.

DE HOMINE CAPTO IN WITHERNAM. (Lat. For taking a man in withernam.) A writ to take a man who had carried away a bondman or bondwoman into another country beyond the reach of a writ of replevin.

DE HOMINE REPLEGIANDO. (Lat. For replevying a man.) A writ which lies to replevy a man out of prison, or out of the custody of a private person, upon giving security to the sheriff that the man shall be forthcoming to answer any charge against him. Fitzh. Nat. Brev. 66; 3 Bl. Comm. 129.

This writ has been superseded almost wholly, in modern practice, by that of *habeas corpus;* but it is still used, in some of the states, in an amended and altered form. See 1 Kent, Comm. 404*n;* 34 Me. 136.

DE IDENTITATE NOMINIS. A writ which lay for one arrested in a personal action and committed to prison under a mistake as to his identity, the proper defendant bearing the same name. Reg. Orig. 194.

DE IDIOTA INQUIRENDO. An old common-law writ, long obsolete, to inquire whether a man be an idiot or not. 2 Steph. Comm. 509.

DE IIS QUI PONENDI SUNT IN ASSISIS. Of those who are to be put on assises. The title of a statute passed 21 Edw. I. defining the qualifications of jurors. Crabb, Eng. Law, 167, 189; 2 Reeve, Eng. Law, 184.

DE INCREMENTO. Of increase; in addition. Costs *de incremento*, or costs of increase, are the costs adjudged by the court in civil actions, *in addition* to the damages and nominal costs found by the jury. Gilb. Com. Pl. 260.

DE INFIRMITATE. Of infirmity. The principal essoin in the time of Glanville; afterwards called "*de malo*." 1 Reeve, Eng. Law, 115. See DE MALO; ESSOIN.

DE INGRESSU. A writ of entry. Reg. Orig. 227*b*, et seq.

DE INJURIA. Of [his own] wrong. In the technical language of pleading, a replication *de injuria* is one that may be made in an action of tort where the defendant has admitted the acts complained of, but alleges, in his plea, certain new matter by way of justification or excuse; by this replication the plaintiff avers that the defendant committed the grievances in question "of his own wrong, and without any such cause," or motive or excuse, as that alleged in the plea, (*de injuria sua propria absque tali causa;*) or, admitting part of the matter pleaded, "without the rest of the cause" alleged, (*absque residuo causæ.*)

In form it is a species of traverse, and it is frequently used when the pleading of the defendant, in answer to which it is directed, consists merely of matter of excuse of the alleged trespass, grievance, breach of contract, or other cause of action. Its comprehensive character in putting in issue all the material facts of the defendant's plea has also obtained for it the title of the general replication. Holthouse.

DE INOFFICIOSO TESTAMENTO. Concerning an inofficious or undutiful will. A title of the civil law. Inst. 2, 18.

DE INTEGRO. Anew; a second time. As it was before.

DE INTRUSIONE. A writ of intrusion; where a stranger entered after the death of the tenant, to the injury of the reversioner. Reg. Orig. 233*b*.

DE JACTURA EVITANDA. For avoiding a loss. A phrase applied to a defendant, as *de lucro captando* is to a plaintiff. Jones v. Sevier, 1 Litt. (Ky.) 51, 13 Am. Dec. 218.

DE JUDAISMO, STATUTUM. The name of a statute passed in the reign of Edward I. which enacted severe and arbitrary penalties against the Jews.

DE JUDICATO SOLVENDO. For payment of the amount adjudged. A term applied in the Scotch law to bail to the action, or special bail.

DE JUDICIIS. Of judicial proceedings. The title of the second part of the Digests or Pandects, including the fifth, sixth, seventh, eighth, ninth, tenth, and eleventh books. See Dig. procem. § 3.

DE JUDICIO SISTI. For appearing in court. A term applied in the Scotch and admiralty law, to bail for a defendant's appearance.

DE JURE. Of right; legitimate; lawful; by right and just title. In this sense it is the contrary of *de facto*, (which see.) It may also be contrasted with *de gratia*, in which case it means "as a matter of right," as *de gratia* means "by grace or favor." Again it may be contrasted with *de æquitate;* here meaning "by law," as the latter means "by equity." See GOVERNMENT.

De jure decimarum, originem ducens de jure patronatus, tunc cognitio spectat at legem civilem, i. e., communem. Godb. 63. With regard to the right of tithes, deducing its origin from the right of the patron, then the cognizance of them belongs to the civil law; that is, the common law.

DE LA PLUIS BEALE, or BELLE. L. Fr. Of the most fair. A term applied to a species of dower, which was assigned out of the fairest of the husband's tenements. Litt. § 48. This was abolished with the military tenures. 2 Bl. Comm. 132; 1 Steph. Comm. 252.

DE LATERE. From the side; on the side; collaterally; of collaterals. Cod. 5, 5, 6.

DE LEGATIS ET FIDEI COMMISSIS. Of legacies and trusts. The name of a title of the Pandects. Dig. 30.

DE LEPROSO AMOVENDO. Writ for removing a leper. A writ to remove a leper who thrust himself into the company of his

neighbors in any parish, in public or private places, to their annoyance. Reg. Orig. 267; Fitzh. Nat. Brev. 234, E; New Nat. Brev. 521.

DE LIBERA FALDA. Writ of free fold. A species of *quod permittat*. Reg. Orig. 155.

DE LIBERA PISCARIA. Writ of free fishery. A species of *quod permittat*. Reg. Orig. 155.

DE LIBERO PASSAGIO. Writ of free passage. A species of *quod permittat*. Reg. Orig. 155.

DE LIBERTATE PROBANDA. Writ for proving liberty. A writ which lay for such as, being demanded for villeins or niefs, offered to prove themselves free. Reg. Orig. 87*b*; Fitzh. Nat. Brev. 77, F.

DE LIBERTATIBUS ALLOCANDIS. A writ of various forms, to enable a citizen to recover the liberties to which he was entitled. Fitzh. Nat. Brev. 229; Reg. Orig. 262.

DE LICENTIA TRANSFRETANDI. Writ of permission to cross the sea. An old writ directed to the wardens of the port of Dover, or other seaport in England, commanding them to permit the persons named in the writ to cross the sea from such port, on certain conditions. Reg. Orig. 193*b*.

DE LUNATICO INQUIRENDO. The name of a writ directed to the sheriff, directing him to inquire by good and lawful men whether the party charged is a lunatic or not.

DE MAGNA ASSISA ELIGENDA. A writ by which the grand assise was chosen and summoned. Reg. Orig. 8; Fitzh. Nat. Brev. 4.

De majori et minori non variant jura. Concerning greater and less laws do not vary. 2 Vern. 552.

DE MALO. Of illness. This phrase was frequently used to designate several species of essoin, (*q. v.*,) such as *de malo lecti*, of illness in bed; *de malo veniendi*, of illness (or misfortune) in coming to the place where the court sat; *de malo villæ*, of illness in the town where the court sat.

DE MANUCAPTIONE. Writ of manucaption, or mainprise. A writ which lay for one who, being taken and imprisoned on a charge of felony, had offered bail, which had been refused; requiring the sheriff to discharge him on his finding sufficient mainpernors or bail. Reg. Orig. 268*b*; Fitzh. Nat. Brev. 249, G.

DE MANUTENENDO. Writ of maintenance. A writ which lay against a person for the offense of maintenance. Reg. Orig. 189, 182*b*.

DE MEDIETATE LINGUÆ. Of the half tongue; half of one tongue and half of another. This phrase describes that species of jury which, at common law, was allowed in both civil and criminal cases where one of the parties was an alien, not speaking or understanding English. It was composed of six English denizens or natives and six of the alien's own countrymen.

DE MEDIO. A writ in the nature of a writ of right, which lay where upon a subinfeudation the *mesne* (or middle) lord suffered his under-tenant or tenant *paravail* to be distrained upon by the lord paramount for the rent due him from the *mesne* lord. Booth, Real Act. 136.

DE MELIORIBUS DAMNIS. Of or for the better damages. A term used in practice to denote the election by a plaintiff against which of several defendants (where the damages have been assessed separately) he will take judgment. 1 Arch. Pr. K. B. 219; Knickerbacker v. Colver, 8 Cow. (N. Y.) 111.

DE MERCATORIBUS. "Concerning merchants." The name of a statute passed in the eleventh year of Edw. I. (1233,) more commonly called the "Statute of Acton Burnel," authorizing the recognizance by statute merchant. See 2 Reeve, Eng. Law, 160–162; 2 Bl. Comm. 161.

De minimis non curat lex. The law does not care for, or take notice of, very small or trifling matters. The law does not concern itself about trifles. Cro. Eliz. 353. Thus, error in calculation of a fractional part of a penny will not be regarded. Hob. 88. So, the law will not, in general, notice the fraction of a day. Broom, Max. 142.

DE MINIS. Writ of threats. A writ which lay where a person was threatened with personal violence, or the destruction of his property, to compel the offender to keep the peace. Reg. Orig. 88*b*, 89; Fitzh. Nat. Brev. 79, G, 80.

DE MITTENDO TENOREM RECORDI. A writ to send the tenor of a record, or to exemplify it under the great seal. Reg. Orig. 220*b*.

DE MODERATA MISERICORDIA CAPIENDA. Writ for taking a moderate amercement. A writ, founded on *Magna Charta*, (c. 14,) which lay for one who was excessively amerced in a court not of record, directed to the lord of the court, or his bail-

iff, commanding him *to take a moderate amercement* of the party. Reg. Orig. 86*b*; Fitzh. Nat. Brev. 75, 76.

DE MODO DECIMANDI. Of a *modus* of tithing. A term applied in English ecclesiastical law to a prescription to have a special manner of tithing. 2 Bl. Comm. 29; 3 Steph. Comm. 130.

De molendino de novo erecto non jacet prohibitio. Cro. Jac. 429. A prohibition lies not against a newly-erected mill.

De morte hominis nulla est cunctatio longa. Where the death of a human being is concerned, [in a matter of life and death,] no delay is [considered] long. Co. Litt. 134.

DE NATIVO HABENDO. A writ which lay for a lord directed to the sheriff, commanding him to apprehend a fugitive villein, and restore him, with all his chattels, to the lord. Reg. Orig. 87; Fitzh. Nat. Brev. 77.

De nomine proprio non est curandum cum in substantia non erretur; quia nomina mutabilia sunt, res autem immobiles. 6 Coke, 66. As to the proper name, it is not to be regarded where it errs not in substance, because names are changeable, but things immutable.

De non apparentibus, et non existentibus, eadem est ratio. 5 Coke, 6. As to things not apparent, and those not existing, the rule is the same.

DE NON DECIMANDO. Of not paying tithes. A term applied in English ecclesiastical law to a prescription or claim to be entirely discharged of tithes, and to pay no compensation in lieu of them. 2 Bl. Comm. 31.

DE NON PROCEDENDO AD ASSISAM. A writ forbidding the justices from holding an assise in a particular case. Reg. Orig. 221.

DE NON RESIDENTIA CLERICI REGIS. An ancient writ where a parson was employed in the royal service, etc., to excuse and discharge him of non-residence. 2 Inst. 264.

DE NON SANE MEMORIE. L. Fr. Of unsound memory or mind; a phrase synonymous with *non compos mentis*.

DE NOVI OPERIS NUNCIATIONE. In the civil law. A form of interdict or injunction which lies in some cases where the defendant is about to erect a "new work" (*q. v.*) in derogation or injury of the plaintiff's rights.

DE NOVO. Anew; afresh; a second time. A *venire de novo* is a writ for summoning a jury for the second trial of a case which has been sent back from above for a new trial.

De nullo, quod est sua natura indivisibile, et divisionem non patitur, nullam partem habebit vidua, sed satisfaciat ei ad valentiam. Co. Litt. 32. A widow shall have no part of that which in its own nature is indivisible, and is not susceptible of division, but let the heir satisfy her with an equivalent.

De nullo tenemento, quod tenetur ad terminum, fit homagii, fit tamen inde fidelitatis sacramentum. In no tenement which is held for a term of years is there an avail of homage; but there is the oath of fealty. Co. Litt. 67*b*.

DE ODIO ET ATIA. A writ directed to the sheriff, commanding him to inquire whether a prisoner charged with murder was committed upon just cause of suspicion, or merely *propter odium et atiam*, (through hatred and ill will;) and if, upon the inquisition, due cause of suspicion did not appear, then there issued another writ for the sheriff to admit him to bail. 3 Bl. Comm. 128.

DE OFFICE. L. Fr. Of office; in virtue of office; officially; in the discharge of ordinary duty.

DE ONERANDO PRO RATA PORTIONE. Writ for charging according to a rateable proportion. A writ which lay for a joint tenant, or tenant in common, who was distrained for more rent than his proportion of the land came to. Reg. Orig. 182; Fitzh. Nat. Brev. 234, H.

DE PACE ET LEGALITATE TENENDA. For keeping the peace, and for good behavior.

DE PACE ET PLAGIS. Of peace, (breach of peace,) and wounds. One of the kinds of criminal appeal formerly in use in England, and which lay in cases of assault, wounding, and breach of the peace. Bract. fol. 144; 2 Reeve, Eng. Law, 33.

DE PACE ET ROBERIA. Of peace [breach of peace] and robbery. One of the kinds of criminal appeal formerly in use in England, and which lay in cases of robbery and breach of the peace. Bract. fol. 146; 2 Reeve, Eng. Law, 37.

DE PALABRA. Span. By word; by parol. White, New Recop. b. 2, tit. 19, c. 8, § 2.

DE PARCO FRACTO. A writ or action for damages caused by a pound-breach, (*q. v.*) It has long been obsolete. Co. Litt. 47*b*; 3 Bl. Comm. 146.

DE PARTITIONE FACIENDA. A writ which lay to make partition of lands or tenements held by several as coparceners, tenants in common, etc. Reg. Orig. 76; Fitzh. Nat. Brev. 61, R; Old Nat. Brev. 142.

DE PERAMBULATIONE FACIENDA. A writ which lay where there was a dispute as to the boundaries of two adjacent lordships or towns, directed to the sheriff, commanding him to take with him twelve discreet and lawful knights of his county and make the perambulation and set the bounds and limits in certainty. Fitzh. Nat. Brev. 309, D.

DE PIGNORE SURREPTO FURTI, ACTIO. In the civil law. An action to recover a pledge stolen. Inst. 4, 1, 14.

DE PIPA VINI CARIANDA. A writ of trespass for carrying a pipe of wine so carelessly that it was stove, and the contents lost. Reg. Orig. 110. Alluded to by Sir William Jones in his remarks on the case of Coggs v. Bernard, 2 Ld. Raym. 909. Jones, Bailm. 59.

DE PLACITO. Of a plea; of or in an action. Formal words used in declarations and other proceedings, as descriptive of the particular action brought.

DE PLAGIS ET MAHEMIO. Of wounds and mayhem. The name of a criminal appeal formerly in use in England, in cases of wounding and maiming. Bract. fol. 144*b*; 2 Reeve, Eng. Law, 34. See APPEAL.

DE PLANO. Lat. On the ground; on a level. A term of the Roman law descriptive of the method of hearding causes, when the prætor stood on the ground with the suitors, instead of the more formal method when he occupied a bench or tribunal; hence informal, or summary.

DE PLEGIIS ACQUIETANDIS. Writ for acquitting or releasing pledges. A writ that lay for a surety, against him for whom he had become surety for the payment of a certain sum of money at a certain day, where the latter had not paid the money at the appointed day, and the surety was compelled to pay it. Reg. Orig. 158; Fitzh. Nat. Brev. 137, C; 3 Reeve, Eng. Law, 65.

DE PONENDO SIGILLUM AD EXCEPTIONEM. Writ for putting a seal to an exception. A writ by which justices were formerly commanded to put their seals to exceptions taken by a party in a suit. Reg. Orig. 182.

DE POST DISSEISINA. Writ of post disseisin. A writ which lay for him who, having recovered lands or tenements by *præcipe quod reddat*, on default, or reddition, was again disseised by the former disseisor. Reg. Orig. 208; Fitzh. Nat. Brev. 190.

DE PRÆROGATIVA REGIS. The statute 17 Edw. I., St. 1, c. 9, defining the prerogatives of the crown on certain subjects, but especially directing that the king shall have ward of the lands of idiots, taking the profits without waste, and finding them necessaries. 2 Steph. Comm. 529.

DE PRÆSENTI. Of the present; in the present tense. See PER VERBA DE PRÆSENTI.

DE PROPRIETATE PROBANDA. Writ for proving property. A writ directed to the sheriff, to inquire of the property or goods distrained, where the defendant in an action of replevin claims the property. 3 Bl. Comm. 148; Reg. Orig. 85*b*.

DE QUARANTINA HABENDA. At common law, a writ which a widow entitled to quarantine might sue out in case the heir or other persons ejected her. It seems to have been a summary process, and required the sheriff, if no just cause were shown against it, speedily to put her into possession. Aiken v. Aiken, 12 Or. 203, 6 Pac. 682.

DE QUIBUS SUR DISSEISIN. An ancient writ of entry.

DE QUO, and DE QUIBUS. Of which. Formal words in the simple writ of entry, from which it was called a writ of entry "in the *quo*," or "in the *quibus*." 3 Reeve, Eng. Law, 33.

DE QUOTA LITIS. In the civil law. A contract by which one who has a claim difficult to recover agrees with another to give a part, for the purpose of obtaining his services to recover the rest. 1 Duval, note 201.

DE RAPTU VIRGINUM. Of the ravishment of maids. The name of an appeal formerly in use in England in cases of rape. Bract. fol. 147; 2 Reeve, Eng. Law, 38.

DE RATIONABILI PARTE BONORUM. A writ which lay for the wife and children of a deceased person against his executors, to recover their reasonable part or share of his goods. 2 Bl. Comm. 492; Fitzh. Nat. Brev. 122, L; Hopkins v. Wright, 17 Tex. 36.

DE RATIONABILIBUS DIVISIS. Writ for fixing reasonable boundaries. A writ which lay to settle the boundaries between the lands of persons in different towns, where one complained of encroachment. Reg. Orig. 157*b*; Fitzh. Nat. Brev. 128, M; Rosc. Real Act. 31; 3 Reeve, Eng. Law, 48.

DE REBUS. Of things. The title of the third part of the Digests or Pandects, comprising books 12–19, inclusive.

DE REBUS DUBIIS. Of doubtful things or matters. Dig. 34, 5.

DE RECORDO ET PROCESSU MITTENDIS. Writ to send the record and process of a cause to a superior court; a species of writ of error. Reg. Orig. 209.

DE RECTO. Writ of right. Reg. Orig. 1, 2; Bract. fol. 327*b*. See WRIT OF RIGHT.

DE RECTO DE ADVOCATIONE. Writ of right of advowson. Reg. Orig. 29*b*. A writ which lay for one who had an estate in an advowson to him and his heirs in fee-simple, if he were disturbed to present. Fitzh. Nat. Brev. 30, B. Abolished by St. 3 & 4 Wm. IV. c. 27.

DE RECTO DE RATIONABILI PARTE. Writ of right, of reasonable part. A writ which lay between privies in blood, as between brothers in gavelkind, or between sisters or other coparceners for lands in fee-simple, where one was deprived of his or her share by another. Reg. Orig. 3*b*; Fitzh. Nat. Brev. 9, B. Abolished by St. 3 & 4 Wm. IV. c. 27.

DE RECTO PATENS. Writ of right patent. Reg. Orig. 1.

DE REDISSEISINA. Writ of redisseisin. A writ which lay where a man recovered by assise of novel disseisin land, rent, or common, and the like, and was put in possession thereof by verdict, and afterwards was disseised of the same land, rent, or common, by him by whom he was disseised before. Reg. Orig. 206*b*; Fitzh. Nat. Brev. 188, B.

DE REPARATIONE FACIENDA. A writ by which one tenant in common seeks to compel another to aid in repairing the property held in common. 8 Barn. & C. 269.

DE RESCUSSU. Writ of rescue or rescous. A writ which lay where cattle distrained, or persons arrested, were rescued from those taking them. Reg. Orig. 117, 118; Fitzh. Nat. Brev. 101, C, G.

DE RETORNO HABENDO. For having a return; to have a return. A term applied to the judgment for the defendant in an action of replevin, awarding him a return of the goods replevied; and to the writ or execution issued thereon. 2 Tidd, Pr. 993, 1038; 3 Bl. Comm. 149. Applied also to the sureties given by the plaintiff on commencing the action. Id. 147.

DE RIEN CULPABLE. L. Fr. Guilty of nothing; not guilty.

DE SA VIE. L. Fr. Of his or her life; of his own life; as distinguished from *pur autre vie*, for another's life. Litt. §§ 35, 36.

DE SALVA GARDIA. A writ of safeguard allowed to strangers seeking their rights in English courts, and apprehending violence or injury to their persons or property. Reg. Orig. 26.

DE SALVO CONDUCTU. A writ of safe conduct. Reg. Orig. 25*b*, 26.

DE SCACCARIO. Of or concerning the exchequer. The title of a statute passed in the fifty-first year of Henry III. 2 Reeve, Eng. Law, 61.

DE SCUTAGIO HABENDO. Writ for having (or to have) escuage or scutage. A writ which anciently lay against tenants by knight-service, to compel them to serve in the king's wars or send substitutes or to pay escuage; that is a sum of money. Fitzh. Nat. Brev. 83, C. The same writ lay for one who had already served in the king's army, or paid a fine instead, against those who held of him by knight-service, to recover his escuage or scutage. Reg. Orig. 88; Fitzh. Nat. Brev. 83, D, F.

DE SE BENE GERENDO. For behaving himself well; for his good behavior Yelv. 90, 154.

DE SECTA AD MOLENDINUM. Of suit to a mill. A writ which lay to compel one to continue his custom (of grinding) at a mill. 3 Bl. Comm. 235; Fitzh. Nat. Brev. 122, M.

De similibus ad similia eadem ratione procedendum est. From like things to like things we are to proceed by the same rule or reason, [*i. e.*, we are allowed to argue from the analogy of cases.] Branch, Princ.

De similibus idem est judicandum. Of [respecting] like things, [in like cases,] the judgment is to be the same. 7 Coke, 18.

DE SON TORT. L. Fr. Of his own wrong. A stranger who takes upon him to act as an executor without any just authority is called an "executor of his own wrong," (*de son tort.*) 2 Bl. Comm. 507; 2 Steph. Comm. 244.

DE SON TORT DEMESNE. Of his own wrong. The law French equivalent of the Latin phrase *de injuria*, (*q. v.*)

DE STATUTO MERCATORIO. The writ of statute merchant. Reg. Orig. 146*b*.

DE STATUTO STAPULÆ. The writ of statute staple. Reg. Orig. 151.

DE SUPERONERATIONE PASTURÆ. Writ of surcharge of pasture. A judicial writ which lay for him who was impleaded in the county court, for surcharging a common with his cattle, in a case where he was formerly impleaded for it in the same court, and the cause was removed into one of the courts at Westminster. Reg. Jud. 36*b*.

DE TABULIS EXHIBENDIS. Of showing the tablets of a will. Dig. 43, 5.

DE TALLAGIO NON CONCEDENDO. Of not allowing talliage. The name given to the statutes 25 and 34 Edw. I., restricting the power of the king to grant talliage. 2 Inst. 532; 2 Reeve, Eng. Law, 104.

DE TEMPORE CUJUS CONTRARIUM MEMORIA HOMINUM NON EXISTIT. From time whereof the memory of man does not exist to the contrary. Litt. § 170.

DE TEMPORE IN TEMPUS ET AD OMNIA TEMPORA. From time to time, and at all times. Townsh. Pl. 17.

DE TEMPS DONT MEMORIE NE COURT. L. Fr. From time whereof memory runneth not; time out of memory of man. Litt. §§ 143, 145, 170.

DE TESTAMENTIS. Of testaments. The title of the fifth part of the Digests or Pandects; comprising the twenty-eighth to the thirty-sixth books, both inclusive.

DE THEOLONIO. A writ which lay for a person who was prevented from taking toll. Reg. Orig. 103.

DE TRANSGRESSIONE. A writ of trespass. Reg. Orig. 92.

DE TRANSGRESSIONE, AD AUDIENDUM ET TERMINANDUM. A writ or commission for the hearing and determining any outrage or misdemeanor.

DE UNA PARTE. A deed *de una parte* is one where only one party grants, gives, or binds himself to do a thing to another. It differs from a deed *inter partes*, (*q. v.*) 2 Bouv. Inst. no. 2001.

DE UXORE RAPTA ET ABDUCTA. A writ which lay where a man's wife had been ravished and carried away. A species of writ of trespass. Reg. Orig. 97; Fitzh. Nat. Brev. 89, O; 3 Bl. Comm. 139.

DE VASTO. Writ of waste. A writ which might be brought by him who had the immediate estate of inheritance in reversion or remainder, against the tenant for life, in dower, by curtesy, or for years, where the latter had committed *waste* in lands; calling upon the tenant to appear and show cause why he committed waste and destruction in the place named, to the disinherison (*ad exhæredationem*) of the plaintiff. Fitzh. Nat. Brev. 55, C; 3 Bl. Comm. 227, 228. Abolished by St. 3 & 4 Wm. IV. c. 27. 3 Steph. Comm. 506.

DE VENTRE INSPICIENDO. A writ to inspect the body, where a woman feigns to be pregnant, to see whether she is with child. It lies for the heir presumptive to examine a widow suspected to be feigning pregnancy in order to enable a supposititious heir to obtain the estate. 1 Bl. Comm. 456; 2 Steph. Comm. 287.

It lay also where a woman sentenced to death pleaded pregnancy. 4 Bl. Comm. 495. This writ has been recognized in America. 2 Chand. Crim. Tr. 381.

DE VERBO IN VERBUM. Word for word. Bract. fol. 138*b*. Literally, from word to word.

DE VERBORUM SIGNIFICATIONE. Of the signification of words. An important title of the Digests or Pandects, (Dig. 50, 16,) consisting entirely of definitions of words and phrases used in the Roman law.

DE VI LAICA AMOVENDA. Writ of (or for) removing lay force. A writ which lay where two parsons contended for a church, and one of them entered into it with a great number of *laymen*, and held out the other *vi et armis;* then he that was holden out had this writ directed to the sheriff, that he remove the force. Reg. Orig. 59; Fitzh. Nat. Brev. 54, D.

DE VICINETO. From the neighborhood, or vicinage. 3 Bl. Comm. 360. A term applied to a jury.

DE WARRANTIA CHARTÆ. Writ of warranty of charter. A writ which lay for him who was enfeoffed, with clause of warranty, [in the charter of feoffment,] and was afterwards impleaded in an assise or other action, in which he could not *vouch* or call to warranty; in which case he might have this writ against the feoffor, or his heir, to compel him to warrant the land unto him. Reg. Orig. 157*b;* Fitzh. Nat. Brev. 134, D. Abolished by St. 3 & 4 Wm. IV. c. 27.

DE WARRANTIA DIEI. A writ that lay where a man had a day in any action to appear in proper person, and the king at that day, or before, employed him in some service, so that he could not appear at the day in court. It was directed to the justices, that they should not record him to be in default for his not appearing. Fitzh. Nat. Brev. 17, A; Termes de la Ley.

DEACON. In ecclesiastical law. A minister or servant in the church, whose office is

to assist the priest in divine service and the distribution of the sacrament. It is the lowest order in the Church of England.

DEAD BODY. A corpse. The body of a human being, deprived of life, but not yet entirely disintegrated. Meads v. Dougherty County, 98 Ga. 697, 25 S. E. 915.

DEAD FREIGHT. When a merchant who has chartered a vessel puts on board a part only of the intended cargo, but yet, having chartered the whole vessel, is bound to pay freight for the unoccupied capacity, the freight thus due is called "dead freight." Gray v. Carr, L. R. 6 Q. B. 528; Phillips v. Rodie, 15 East. 547.

DEAD LETTERS. Letters which the postal department has not been able to deliver to the persons for whom they were intended. They are sent to the "dead-letter office," where they are opened, and returned to the writer if his address can be ascertained.

DEAD MAN'S PART. In English law. That portion of the effects of a deceased person which, by the custom of London and York, is allowed to the administrator; being, where the deceased leaves a widow and children, one-third; where he leaves only a widow or only children, one-half; and, where he leaves neither, the whole. This portion the administrator was wont to apply to his own use, till the statue 1 Jac. II. c. 17, declared that the same should be subject to the statute of distributions. 2 Bl. Comm. 518; 2 Steph. Comm. 254; 4 Reeve, Eng. Law, 83. A similar portion in Scotch law is called "dead's part," (*q. v.*)

DEAD-PLEDGE. A mortgage; *mortuum vadium.*

DEAD RENT. In English law. A rent payable on a mining lease in addition to a royalty, so called because it is payable although the mine may not be worked.

DEAD USE. A future use.

DEADHEAD. This term is applied to persons other than the officers, agents, or employes of a railroad company who are permitted by the company to travel on the road without paying any fare therefor. Gardner v. Hall, 61 N. C. 21.

DEADLY FEUD. In old European law. A profession of irreconcilable hatred till a person is revenged even by the death of his enemy.

DEADLY WEAPON. Such weapons or instruments as are made and designed for offensive or defensive purposes, or for the destruction of life or the infliction of injury. Com. v. Branham, 8 Bush (Ky.) 387.

A deadly weapon is one likely to produce death or great bodily harm. People v. Fuqua, 58 Cal. 245.

A deadly weapon is one which in the manner used is capable of producing death, or of inflicting great bodily injury, or seriously wounding. McReynolds v. State, 4 Tex. App. 327.

DEAD'S PART. In Scotch law. The part remaining over beyond the shares secured to the widow and children by law. Of this the testator had the unqualified disposal. Bell.

DEAF AND DUMB. A man that is born deaf, dumb, and blind is looked upon by the law as in the same state with an idiot, he being supposed incapable of any understanding. 1 Bl. Comm. 304. Nevertheless, a deaf and dumb person may be tried for felony if the prisoner can be made to understand by means of signs. 1 Leach, C. L. 102.

DEAFFOREST. In old English law. To discharge from being forest. To free from forest laws.

DEAL. To traffic; to transact business; to trade. Makers of an accommodation note are deemed dealers with whoever discounts it. Vernon v. Manhattan Co., 17 Wend. (N. Y.) 524.

—Dealer. A dealer, in the popular, and therefore in the statutory, sense of the word, is not one who buys to keep, or makes to sell, but one who buys to sell again. Norris v. Com., 27 Pa. 496; Com. v. Campbell, 33 Pa. 380.—**Dealings.** Transactions in the course of trade or business. Held to include payments to a bankrupt. Moody & M. 137; 3 Car. & P. 85.—**Dealers' talk.** The puffing of goods to induce the sale thereof; not regarded in law as fraudulent unless accompanied by some artifice to deceive the purchaser and throw him off his guard or some concealment of intrinsic defects not easily discoverable. Kimball v. Bangs, 144 Mass. 321, 11 N. E. 113; Reynolds v. Palmer (C. C.) 21 Fed. 433.

DEAN. In English ecclesiastical law. An ecclesiastical dignitary who presides over the chapter of a cathedral, and is next in rank to the bishop. So called from having been originally appointed to superintend *ten* canons or prebendaries. 1 Bl. Comm. 382; Co. Litt. 95; Spelman.

There are several kinds of deans, namely: Deans of chapters; deans of peculiars; rural deans; deans in the colleges; honorary deans; deans of provinces.

—Dean and chapter. In ecclesiastical law. The council of a bishop, to assist him with their advice in the religious and also in the temporal affairs of the see. 3 Coke, 75; 1 Bl. Comm. 382; Co. Litt. 103, 300.—**Dean of the arches.** The presiding judge of the Court of Arches. He is also an assistant judge in the court of admiralty. 1 Kent, Comm. 371; 3 Steph. Comm. 727.

DEATH. The extinction of life; the departure of the soul from the body; defined by physicians as a total stoppage of the circulation of the blood, and a cessation of the

animal and vital functions consequent thereon, such as respiration, pulsation, etc.

In legal contemplation, it is of two kinds: (1) *Natural* death, *i. e.*, the extinction of life; (2) *Civil* death, which is that change in a person's legal and civil condition which deprives him of civic rights and juridical capacities and qualifications, as natural death extinguishes his natural condition. It follows as a consequence of being attainted of treason or felony, in English law, and anciently of entering a monastery or abjuring the realm. The person in this condition is said to be *civiliter mortuus*, civilly dead, or dead in law. Baltimore v. Chester, 53 Vt. 319, 38 Am. Rep. 677; Avery v. Everett, 110 N. Y. 317, 18 N. E. 148, 1 L. R. A. 264, 6 Am. St. Rep. 368; In re Donnelly's Estate, 125 Cal. 417, 58 Pac. 61, 73 Am. St. Rep. 62; Troup v. Wood, 4 Johns. Ch. (N. Y.) 248; Coffee v. Haynes, 124 Cal. 561, 57 Pac. 482, 71 Am. St. Rep. 99.

"Natural" death is also used to denote a death which occurs by the unassisted operation of natural causes, as distinguished from a "violent" death, or one caused or accelerated by the interference of human agency.

Death warrant. A warrant from the proper executive authority appointing the time and place for the execution of the sentence of death upon a convict judicially condemned to suffer that penalty.

Death watch. A special guard set to watch a prisoner condemned to death, for some days before the time for the execution, the special purpose being to prevent any escape or any attempt to anticipate the sentence.

DEATH-BED. In Scotch law. A state of sickness which ends in death. Ersk. Inst. 3, 8, 95.

—Death-bed deed. In Scotch law. A deed made by a person while laboring under a distemper of which he afterwards died. Ersk. Inst. 3, 8, 96. A deed is understood to be in death-bed, if, before signing and delivery thereof, the grantor was sick, and never convalesced thereafter. 1 Forbes, Inst. pt. 3, b. 2, c. 4, tit. 1, § 1. But it is not necessary that he should be actually confined to his bed at the time of making the deed. Bell.

DEATH'S PART. See DEAD'S PART; DEAD MAN'S PART.

DEATHSMAN. The executioner; hangman; he that executes the extreme penalty of the law.

DEBAUCH. To entice, to corrupt, and, when used of a woman, to seduce. Originally, the term had a limited signification, meaning to entice or draw one away from his work, employment, or duty; and from this sense its application has enlarged to include the corruption of manners and violation of the person. In its modern legal sense, the word carries with it the idea of "carnal knowledge," aggravated by assault, violent seduction, ravishment. Koenig v. Nott, 2 Hilt. (N. Y.) 323. And see Wood v. Mathews, 47 Iowa, 410; State v. Curran, 51 Iowa, 112, 49 N. W. 1006.

DEBENTURE. A certificate given by the collector of a port, under the United States customs laws, to the effect that an importer of merchandise therein named is entitled to a drawback, (*q. v.*,) specifying the amount and time when payable. See Act Cong. March 2, 1799, § 80.

In English law. A security for a loan of money issued by a public company, usually creating a charge on the whole or a part of the company's stock and property, though not necessarily in the form of a mortgage. They are subject to certain regulations as to the mode of transfer, and ordinarily have coupons attached to facilitate the payment of interest. They are generally issued in a series, with provision that they shall rank *pari passu* in proportion to their amounts. See Bank v. Atkins, 72 Vt. 33, 47 Atl. 176.

An instrument in use in some government departments, by which government is charged to pay to a creditor or his assigns the sum found due on auditing his accounts. Brande; Blount.

DEBENTURE STOCK. A stock or fund representing money borrowed by a company or public body, in England, and charged on the whole or part of its property.

Debet esse finis litium. There ought to be an end of suits; there should be some period put to litigation. Jenk. Cent. 61.

DEBET ET DETINET. He owes and detains. Words anciently used in the original writ, (and now, in English, in the plaintiff's declaration,) in an action of debt, where it was brought by one of the original contracting parties who personally gave the credit, against the other who personally incurred the debt, or against his heirs, if they were bound to the payment; as by the obligee against the obligor, by the landlord against the tenant, etc. The declaration, in such cases, states that the defendant "*owes* to," as well as "*detains* from," the plaintiff the debt or thing in question; and hence the action is said to be "in the *debet et detinet*." Where the declaration merely states that the defendant *detains* the debt, (as in actions by and against an executor for a debt due to or from the testator,) the action is said to be "in the *detinet*" alone. Fitzh. Nat. Brev. 119, G.; 3 Bl. Comm. 155.

DEBET ET SOLET. (Lat. He owes and is used to.) Where a man sues in a writ of right or to recover any right of which he is for the first time disseised, as of a suit at a mill or in case of a writ of *quod permittat*,

he brings his writ in the *debet et solet*. Reg. Orig. 144*a*; Fitzh. Nat. Brev. 122, M.

Debet quis juri subjacere ubi delinquit. One [every one] ought to be subject to the law [of the place] where he offends. 3 Inst. 34. This maxim is taken from Bracton. Bract. fol. 154*b*.

Debet sua cuique domus esse perfugium tutissimum. Every man's house should be a perfectly safe refuge. Clason v. Shotwell, 12 Johns. (N. Y.) 31, 54.

Debile fundamentum fallit opus. A weak foundation frustrates [or renders vain] the work [built upon it.] Shep. Touch. 60; Noy, Max. 5, max. 12; Finch, Law, b. 1, ch. 3. When the foundation fails, all goes to the ground; as, where the cause of action fails, the action itself must of necessity fail. Wing, Max., 113, 114, max. 40; Broom, Max. 180.

DEBIT. A sum charged as due or owing. The term is used in book-keeping to denote the charging of a person or an account with all that is supplied to or paid out for him or for the subject of the account.

DEBITA FUNDI. L. Lat. In Scotch law. Debts secured upon land. Ersk. Inst. 4, 1, 11.

DEBITA LAICORUM. L. Lat. In old English law. Debts of the laity, or of lay persons. Debts recoverable in the civil courts were anciently so called. Crabb, Eng. Law, 107.

Debita sequuntur personam debitoris. Debts follow the person of the debtor; that is, they have no locality, and may be collected wherever the debtor can be found. 2 Kent, Comm. 429; Story, Confl. Laws, § 362.

DEBITOR. In the civil and old English law. A debtor.

Debitor non præsumitur donare. A debtor is not presumed to make a gift. Whatever disposition he makes of his property is supposed to be in satisfaction of his debts. 1 Kames, Eq. 212. Where a debtor gives money or goods, or grants land to his creditor, the natural presumption is that he means to get free from his obligation, and not to make a present, unless donation be expressed. Ersk. Inst. 3, 3, 93.

Debitorum pactionibus creditorum petitio nec tolli nec minui potest. 1 Poth. Obl. 108; Broom, Max. 697. The rights of creditors can neither be taken away nor diminished by agreements among the debtors.

DEBITRIX. A female debtor.

DEBITUM. Something due, or owing; a debt.

Debitum et contractus sunt nullius loci. Debt and contract are of [belong to] no place; have no particular locality. The obligation in these cases is purely personal, and actions to enforce it may be brought anywhere. 2 Inst. 231; Story, Confl. Laws, § 362; 1 Smith, Lead. Cas. 340, 363.

DEBITUM IN PRÆSENTI SOLVENDUM IN FUTURO. A debt or obligation complete when contracted, but of which the performance cannot be required till some future period.

DEBITUM SINE BREVI. L. Lat. Debt without writ; debt without a declaration. In old practice, this term denoted an action begun by original bill, instead of by writ. In modern usage, it is sometimes applied to a debt evidenced by confession of judgment without suit. The equivalent Norman-French phrase was *"debit sans breve."* Both are abbreviated to *d. s. b.*

DEBT. A sum of money due by certain and express agreement; as by bond for a determinate sum, a bill or note, a special bargain, or a rent reserved on a lease, where the amount is fixed and specific, and does not depend upon any subsequent valuation to settle it. 3 Bl. Comm. 154; Camden v. Allen, 26 N. J. Law, 398; Appeal of City of Erie, 91 Pa. 398; Dickey v. Leonard, 77 Ga. 151; Hagar v. Reclamation Dist., 111 U. S. 701, 4 Sup. Ct. 663, 28 L. Ed. 569; Appeal Tax Court v. Rice, 50 Md. 302.

A debt is a sum of money due by contract. It is most frequently due by a certain and express agreement, which fixes the amount, independent of extrinsic circumstances. But it is not essential that the contract should be express, or that it should fix the precise amount to be paid. U. S. v. Colt, 1 Pet. C. C. 145, Fed. Cas. No. 14,839.

Standing alone, the word "debt" is as applicable to a sum of money which has been promised at a future day, as to a sum of money now due and payable. To distinguish between the two, it may be said of the former that it is a debt owing, and of the latter that it is a debt due. Whether a claim or demand is a debt or not is in no respect determined by a reference to the time of payment. A sum of money which is certainly and in all events payable is a debt, without regard to the fact whether it be payable now or at a future time. A sum payable upon a contingency, however, is not a debt, or does not become a debt until the contingency has happened. People v. Arguello, 37 Cal. 524.

The word "debt" is of large import, including not only debts of record, or judgments, and debts by specialty, but also obligations arising under simple contract, to a very wide extent; and in its popular sense includes all that is due to a man under any form of obligation or promise. Gray v. Bennett, 3 Metc. (Mass.) 522, 526.

"Debt" has been differently defined, owing to the different subject-matter of the statutes in which it has been used. Ordinarily, it imports

a sum of money arising upon a contract, express or implied. In its more general sense, it is defined to be that which is due from one person to another, whether money, goods, or services; that which one person is bound to pay or perform to another. Under the legal-tender statutes, it seems to import any obligation by contract, express or implied, which may be discharged by money through the voluntary action of the party bound. Wherever he may be at liberty to perform his obligation by the payment of a specific sum of money, the party owing the obligation is subject to what, in these statutes, is termed "debt." Kimpton v. Bronson, 45 Barb. (N. Y.) 618.

The word is sometimes used to denote an aggregate of separate debts, or the total sum of the existing claims against a person or company. Thus we speak of the "national debt," the "bonded debt" of a corporation, etc.

Synonyms. The term "demand" is of much broader import than "debt," and embraces rights of action belonging to the debtor beyond those which could appropriately be called "debts." In this respect the term "demand" is one of very extensive import. In re Denny, 2 Hill (N. Y.) 223.

The words "debt" and "liability" are not synonymous. As applied to the pecuniary relations of parties, liability is a term of broader significance than debt. The legal acceptation of debt is a sum of money due by certain and express agreement. Liability is responsibility; the state of one who is bound in law and justice to do something which may be enforced by action. This liability may arise from contracts either express or implied, or in consequence of torts committed. McElfresh v. Kirkendall, 36 Iowa, 226.

"Debt" is not exactly synonymous with "duty." A debt is a legal liability to pay a specific sum of money; a duty is a legal obligation to perform some act. Allen v. Dickson, Minor (Ala.) 120.

In practice. The name of a common-law action, which lies to recover a certain specific sum of money, or a sum that can readily be reduced to a certainty. 3 Bl. Comm. 154; 3 Steph. Comm. 461; 1 Tidd. Pr. 3.

It is said to lie in the *debet* and *detinet*, (when it is stated that the defendant owes and detains,) or in the *detinet*, (when it is stated merely that he detains.) Debt in the *detinet* for goods differs from detinue, because it is not essential in this action, as in detinue, that the specific property in the goods should have been vested in the plaintiff at the time the action is brought. Dyer, 24*b*.

—Debt by simple contract. A debt or demand founded upon a verbal or implied contract, or upon any written agreement that is not under seal.**—Debt by specialty.** A debt due, or acknowledged to be due, by some deed or instrument under seal; as a deed of covenant or sale, a lease reserving rent, or a bond or obligation. 2 Bl. Comm. 465; Kerr v. Lydecker, 51 Ohio St. 240, 37 N. E. 267, 23 L. R. A. 842; Marriott v. Thompson, Willes, 189. **—Debt ex mutuo.** A species of debt or obligation mentioned by Glanville and Bracton, and which arose *ex mutuo*, out of a certain kind of loan. Glan. lib. 10, c. 3; Bract. fol. 99. See MUTUUM; EX MUTUO.**—Debt of record.** A debt which appears to be due by the evidence of a court of record, as by a judgment or recognizance. 2 Bl. Comm. 465.**—Legal debts.** Those that are recoverable in a court of common law, as debt on a bill of exchange, a bond, or a simple contract. Rogers v. Daniell, 8 Allen (Mass.) 348; Guild v. Walter, 182 Mass. 225, 65 N. E. 68.**—Mutual debts.** Money due on both sides between two persons.**—Passive debt.** A debt upon which, by agreement between the debtor and creditor, no interest is payable, as distinguished from *active* debt; *i. e.*, a debt upon which interest is payable. In this sense, the terms "active" and "passive" are applied to certain debts due from the Spanish government to Great Britain. Wharton. In another sense of the words, a debt is "active" or "passive" according as the person of the creditor or debtor is regarded; a passive debt being that which a man owes; an active debt that which is owing to him. In this meaning every debt is both active and passive,—active as regards the creditor, passive as regards the debtor. **—Public debt.** That which is due or owing by the government of a state or nation. The terms "public debt" and "public securities," used in legislation, are terms generally applied to national or state obligations and dues, and would rarely, if ever, be construed to include town debts or obligations; nor would the term "public revenue" ordinarily be applied to funds arising from town taxes. Morgan v. Cree, 46 Vt. 773, 14 Am. Rep. 640.**—Pure debt.** In Scotch law. A debt due now and unconditionally is so called. It is thus distinguished from a *future* debt,—payable at a fixed day in the future,—and a *contingent* debt, which will only become due upon the happening of a certain contingency.**—Simple contract debt.** One where the contract upon which the obligation arises is neither ascertained by matter of record nor yet by deed or special instrument, but by mere oral evidence the most simple of any, or by notes unsealed, which are capable of a more easy proof, and therefore only better than a verbal promise. 2 Bl. Comm. 466.

DEBTEE. A person to whom a debt is due; a creditor. 3 Bl. Comm. 18; Plowd. 543. Not used.

DEBTOR. One who owes a debt; he who may be compelled to pay a claim or demand.

—Common debtor. In Scotch law. A debtor whose effects have been arrested by several creditors. In regard to these creditors, he is their common debtor, and by this term is distinguished in the proceedings that take place in the competition. Bell.**—Debtor's act 1869.** The statute 32 & 33 Vict. c. 62, abolishing imprisonment for debt in England, and for the punishment of fraudulent debtors. 2 Steph. Comm. 159–164. Not to be confounded with the Bankruptcy Act of 1869. Mozley & Whitley.**—Debtor's summons.** In English law. A summons issuing from a court having jurisdiction in bankruptcy, upon the creditor proving a liquidated debt of not less than £50, which he has failed to collect after reasonable effort, stating that if the debtor fail, within one week if a trader, and within three weeks if a non-trader, to pay or compound for the sum specified, a petition may be presented against him praying that he may be adjudged a bankrupt. Bankruptcy Act 1869, § 7; Robs. Bankr.; Mozley & Whitley.

DECALOGUE. The ten commandments given by God to Moses. The Jews called them the "Ten Words," hence the name.

DECANATUS. A deanery. Spelman. A company of ten persons. Calvin.

DECANIA. The office, jurisdiction, territory, or command of a *decanus*, or dean. Spelman.

DECANUS. In ecclesiastical and old European law. An officer having supervision over *ten;* a dean. A term applied not only to ecclesiastical, but to civil and military, officers. *Decanus monasticus;* a monastic dean, or dean of a monastery; an officer over ten monks. *Decanus in majori ecclesiæ;* dean of a cathedral church, presiding over ten prebendaries. *Decanus episcopi;* a bishop's or rural dean, presiding over ten clerks or parishes. *Decanus friborgi;* dean of a friborg. An officer among the Saxons who presided over a friborg, tithing, decennary, or association of ten inhabitants; otherwise called a "tithing man," or "borsholder." *Decanus militaris;* a military officer, having command of ten soldiers. Spelman.

In Roman law. An officer having the command of a company or "mess" of ten soldiers. Also an officer at Constantinople having charge of the burial of the dead.

DECAPITATION. The act of beheading. A mode of capital punishment by cutting off the head.

DECEASE, *n.* Death; departure from life, not including civil death, (see DEATH.) In re Zeph's Estate, 50 Hun, 523, 3 N. Y. Supp. 460.

DECEASE, *v.* To die; to depart life, or from life. This has always been a common term in Scotch law. "Gif ane man *deceasis.*" Skene.

DECEDENT. A deceased person; one who has lately died. Etymologically the word denotes a person who is *dying*, but it has come to be used in law as signifying any defunct person, (testate or intestate,) but always with reference to the settlement of his estate or the execution of his will. In re Zeph's Estate, 50 Hun, 523, 3 N. Y. Supp. 460.

DECEIT. A fraudulent and cheating misrepresentation, artifice, or device, used by one or more persons to deceive and trick another, who is ignorant of the true facts, to the prejudice and damage of the party imposed upon. People v. Chadwick, 143 Cal. 116, 76 Pac. 884; Reynolds v. Palmer (C. C.) 21 Fed. 433; French v. Vining, 102 Mass. 132, 3 Am. Rep. 440; Swift v. Rounds, 19 R. I. 527, 35 Atl. 45, 33 L. R. A. 561, 61 Am. St. Rep. 791; In re Post, 54 Hun, 634, 7 N. Y. Supp. 438; Civ. Code Mont. 1895, § 2292.

A subtle trick or device, whereunto may be referred all manner of craft and collusion used to deceive and defraud another by any means whatsoever, which hath no other or more proper name than *deceit* to distinguish the offense. [West Symb. § 68;] Jacob.

The word "deceit," as well as "fraud," excludes the idea of mistake, and imports knowledge that the artifice or device used to deceive or defraud is untrue. Farwell v. Metcalf, 61 Ill. 373.

In old English law. The name of an original writ, and the action founded on it, which lay to recover damages for any injury committed *deceitfully*, either in the name of another, (as by bringing an action in another's name, and then suffering a nonsuit, whereby the plaintiff became liable to costs,) or by a fraudulent warranty of goods, or other personal injury committed contrary to good faith and honesty. Reg. Orig. 112–116; Fitzh. Nat. Brev. 95, E, 98.

Also the name of a judicial writ which formerly lay to recover lands which had been lost by default by the tenant in a real action, in consequence of his not having been summoned by the sheriff, or by the collusion of his attorney. Rosc. Real Act. 136; 3 Bl. Comm. 166.

—Deceitful plea. A sham plea; one alleging as facts things which are obviously false on the face of the plea. Gray v. Gidiere, 4 Strob. (S. C.) 443.

DECEM TALES. (Ten such; or ten tales, jurors.) In practice. The name of a writ which issues in England, where, on a trial at bar, *ten* jurors are necessary to make up a full panel, commanding the sheriff to summon the requisite number. 3 Bl. Comm. 364; Reg. Jud. 30*b*; 3 Steph. Comm. 602.

DECEMVIRI LITIBUS JUDICANDIS. Lat. In the Roman law. Ten persons (five senators and five *equites*) who acted as the council or assistants of the prætor, when he decided on matters of law. Hallifax, Civil Law, b. 3, c. 8. According to others, they were themselves judges. Calvin.

DECENNA. In old English law. A tithing or decennary; the precinct of a frankpledge; consisting of ten freeholders with their families. Spelman.

DECENNARIUS. Lat. One who held one-half a virgate of land. Du Cange. One of the ten freeholders in a *decennary.* Id.; Calvin. *Decennier.* One of the *decennarii*, or ten freeholders making up a tithing. Spelman.

DECENNARY. A tithing, composed of ten neighboring families. 1 Reeve, Eng. Law, 13; 1 Bl. Comm. 114.

Deceptis non decipientibus, jura subveniunt. The laws help persons who are deceived, not those deceiving. Tray. Lat. Max. 149.

DECERN. In Scotch law. To decree. "Decernit and ordainit." 1 How. State Tr. 927. "Decerns." Shaw, 16.

DECESSUS. In the civil and old English law. Death; departure.

Decet tamen principem servare leges quibus ipse servatus est. It behoves, indeed, the prince to keep the laws by which he himself is preserved.

DECIDE. To decide includes the power and right to deliberate, to weigh the reasons for and against, to see which preponderate, and to be governed by that preponderance. Darden v. Lines, 2 Fla. 571; Com. v. Anthes, 5 Gray (Mass.) 253; In re Milford & M. R. Co., 68 N. H. 570, 36 Atl. 545.

DECIES TANTUM. (Ten times as much.) The name of an ancient writ that was used against a juror who had taken a bribe in money for his verdict. The injured party could thus recover ten times the amount of the bribe.

DECIMÆ. In ecclesiastical law. Tenths, or tithes. The tenth part of the annual profit of each living, payable formerly to the pope. There were several valuations made of these livings at different times. The *decimæ* (tenths) were appropriated to the crown, and a new valuation established, by 26 Hen. VIII., c. 3. 1 Bl. Comm. 284. See TITHES.

Decimæ debentur parocho. Tithes are due to the parish priest.

Decimæ de decimatis solvi non debent. Tithes are not to be paid from that which is given for tithes.

Decimæ de jure divino et canonica institutione pertinent ad personam. Dal. 50. Tithes belong to the parson by divine right and canonical institution.

Decimæ non debent solvi, ubi non est annua renovatio; et ex annuatis renovantibus simul semel. Cro. Jac. 42. Tithes ought not to be paid where there is not an annual renovation, and from annual renovations once only.

DECIMATION. The punishing every tenth soldier by lot, for mutiny or other failure of duty, was termed "*decimatio legionis*" by the Romans. Sometimes only the twentieth man was punished, (*vicesimatio,*) or the hundredth, (*centesimatio.*)

DECIME. A French coin of the value of the tenth part of a franc, or nearly two cents.

Decipi quam fallere est tutius. It is safer to be deceived than to deceive. Lofft, 396.

DECISION. In practice. A judgment or decree pronounced by a court in settlement of a controversy submitted to it and by way of authoritative answer to the questions raised before it. Adams v. Railroad Co., 77 Miss. 194, 24 South. 317, 60 L. R. A. 33; Board of Education v. State, 7 Kan. App. 620, 52 Pac. 466; Halbert v. Alford (Tex.) 16 S. W. 814.

"Decision" is not synonymous with "opinion." A decision of the court is its judgment; the opinion is the reasons given for that judgment. Houston v. Williams, 13 Cal. 27, 73 Am. Dec. 565; Craig v. Bennett, 158 Ind. 9, 62 N. E. 273.

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

DECLARANT. A person who makes a declaration.

DECLARATION. In pleading. The first of the pleadings on the part of the plaintiff in an action at law, being a formal and methodical specification of the facts and circumstances constituting his cause of action. It commonly comprises several sections or divisions, called "counts," and its formal parts follow each other in this order: Title, venue, commencement, cause of action, counts, conclusion. The declaration, at common law, answers to the "libel" in ecclesiastical and admiralty law, the "bill" in equity, the "petition" in civil law, the "complaint" in code pleading, and the "count" in real actions. U. S. v. Ambrose, 108 U. S. 336, 2 Sup. Ct. 682, 27 L. Ed. 746; Buckingham v. Murray, 7 Houst. (Del.) 176, 30 Atl. 779; Smith v. Fowle, 12 Wend. (N. Y.) 10; Railway Co. v. Nugent, 86 Md. 349, 38 Atl. 779, 39 L. R. A. 161.

In evidence. An unsworn statement or narration of facts made by a party to the transaction, or by one who has an interest in the existence of the facts recounted. Or a similar statement made by a person since deceased, which is admissible in evidence in some cases, contrary to the general rule, *e. g.*, a "dying declaration."

In practice. The declaration or declaratory part of a judgment, decree, or order is that part which gives the decision or opinion of the court on the question of law in the case. Thus, in an action raising a question as to the construction of a will, the judgment or order declares that, according to the true construction of the will, the plaintiff has become entitled to the residue of the testator's estate, or the like. Sweet.

In Scotch practice. The statement of a criminal or prisoner, taken before a magistrate. 2 Alis. Crim. Pr. 555.

—Declaration of Independence. A formal declaration or announcement, promulgated July

4, 1776, by the congress of the United States of America, in the name and behalf of the people of the colonies, asserting and proclaiming their independence of the British crown, vindicating their pretensions to political autonomy, and announcing themselves to the world as a free and independent nation.—**Declaration of intention.** A declaration made by an alien, as a preliminary to naturalization, before a court of record, to the effect that it is *bona fide* his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty whereof at the time he may be a citizen or subject. Rev. St. § 2165 (U. S. Comp. St. 1901, p. 1329).—**Declaration of Paris.** The name given to an agreement announcing four important rules of international law effected between the principal European powers at the Congress of Paris in 1856. These rules are: (1) Privateering is and remains abolished; (2) the neutral flag covers enemy's goods, except contraband of war; (3) neutral goods, except contraband of war, are not liable to confiscation under a hostile flag; (4) blockades, to be binding, must be effective.—**Declaration of right.** See BILL OF RIGHTS.—**Declaration of trust.** The act by which the person who holds the legal title to property or an estate acknowledges and declares that he holds the same in trust to the use of another person or for certain specified purposes. The name is also used to designate the deed or other writing embodying such a declaration. Griffith v. Maxfield, 66 Ark. 513, 51 S. W. 832.—**Declaration of war.** A public and formal proclamation by a nation, through its executive or legislative department, that a state of war exists between itself and another nation, and forbidding all persons to aid or assist the enemy.—**Dying declarations.** Statements made by a person who is lying at the point of death, and is conscious of his approaching dissolution, in reference to the manner in which he received the injuries of which he is dying, or other immediate cause of his death, and in reference to the person who inflicted such injuries or the connection with such injuries of a person who is charged or suspected of having committed them; which statements are admissible in evidence in a trial for homicide where the killing of the declarant is the crime charged to the defendant. Simons v. People, 150 Ill. 66, 36 N. E. 1019; State v. Trusty, 1 Pennewill (Del.) 319, 40 Atl. 766; State v. Jones, 47 La. Ann. 1524, 18 South. 515; Bell v. State, 72 Miss. 507, 17 South. 232; People v. Fuhrig, 127 Cal. 412, 59 Pac. 693; State v. Parham, 48 La. Ann. 1309, 20 South. 727.

DECLARATOR. In Scotch law. An action whereby it is sought to have some right of property, or of *status*, or other right judicially ascertained and declared. Bell.

—**Declarator of trust.** An action resorted to against a trustee who holds property upon titles *ex facie* for his own benefit. Bell.

DECLARATORY. Explanatory; designed to fix or elucidate what before was uncertain or doubtful.

—**Declaratory action.** In Scotch law. An action in which the right of the pursuer (or plaintiff) is craved to be *declared*, but nothing claimed to be done by the defender, (defendant.) Ersk. Inst. 5, 1, 46. Otherwise called an "action of declarator."—**Declaratory decree.** In practice. A binding declaration of right in equity without consequential relief.—**Declaratory judgment.** A declaratory judgment is one which simply declares the rights of the parties, or expresses the opinion of the court on a question of law, without ordering anything to be done.—**Declaratory part of a law.** That which clearly defines rights to be observed and wrongs to be eschewed.—**Declaratory statute.** One enacted for the purpose of removing doubts or putting an end to conflicting decisions in regard to what the law is in relation to a particular matter. It may either be expressive of the common law, (1 Bl. Comm. 86; Gray v. Bennett, 3 Metc. [Mass.] 527;) or may declare what shall be taken to be the true meaning and intention of a previous statute, though in the latter case such enactments are more commonly called "expository statutes."

DECLARE. To solemnly assert a fact before witnesses, *e. g.*, where a testator *declares* a paper signed by him to be his last will and testament. Lane v. Lane, 95 N. Y. 498.

This also is one of the words customarily used in the promise given by a person who is *affirmed* as a witness,—"sincerely and truly declare and affirm." Hence, to make a positive and solemn asseveration. Bassett v. Denn, 17 N. J. Law, 433.

With reference to pleadings, it means to draw up, serve, and file a declaration; *e. g.*, a "rule to declare." Also to allege in a declaration as a ground or cause of action; as "he declares upon a promissory note."

DECLINATION. In Scotch law. A plea to the jurisdiction, on the ground that the judge is interested in the suit.

DÉCLINATOIRES. In French law. Pleas to the jurisdiction of the court; also of *lis pendens*, and of *connexité*, (*q. v.*)

DECLINATORY PLEA. In English practice. The plea of sanctuary, or of benefit of clergy, before trial or conviction. 2 Hale, P. C. 236; 4 Bl. Comm. 333. Now abolished. 4 Steph. Comm. 400, note; Id. 436, note.

DECLINATURE. In Scotch practice. An objection to the jurisdiction of a judge. Bell.

DECOCTION. The act of boiling a substance in water, for extracting its virtues. Also the liquor in which a substance has been boiled; water impregnated with the principles of any animal or vegetable substance boiled in it. Webster; Sykes v. Magone (C. C.) 38 Fed. 497.

In an indictment "decoction" and "infusion" are *ejusdem generis;* and if one is alleged to have been administered, instead of the other, the variance is immaterial. 3 Camp. 74.

DECOCTOR. In the Roman law. A bankrupt; a spendthrift; a squanderer of public funds. Calvin.

DECOLLATIO. In old English and Scotch law. Decollation; the punishment of beheading. Fleta, lib. 1, c. 21, § 6.

DECONFES. In French law. A name formerly given to those persons who died

without confession, whether they refused to confess or whether they were criminals to whom the sacrament was refused.

DECOY. To inveigle, entice, tempt, or lure; as, to decoy a person within the jurisdiction of a court so that he may be served with process, or to decoy a fugitive criminal to a place where he may be arrested without extradition papers, or to decoy one away from his place of residence for the purpose of kidnapping him and as a part of that act. In all these uses, the word implies enticement or luring by means of some fraud, trick, or temptation, but excludes the idea of force. Eberling v. State, 136 Ind. 117, 35 N. E. 1023; John v. State, 6 Wyo. 203, 44 Pac. 51; Campbell v. Hudson, 106 Mich. 523, 64 N. W. 483.

—Decoy letter. A letter prepared and mailed for the purpose of detecting a criminal, particularly one who is perpetrating frauds upon the postal or revenue laws. U. S. v. Whittier, 5 Dill. 39, Fed. Cas. No. 16,688.**—Decoy pond.** A pond used for the breeding and maintenance of water-fowl. Keeble v. Hickeringshall, 3 Salk. 10.

DECREE. In practice. The judgment of a court of equity or admiralty, answering to the judgment of a court of common law. A decree in equity is a sentence or order of the court, pronounced on hearing and understanding all the points in issue, and determining the right of all the parties to the suit, according to equity and good conscience. 2 Daniell, Ch. Pr. 986; Wooster v. Handy (C. C.) 23 Fed. 56; Rowley v. Van Benthuysen, 16 Wend. (N. Y.) 383; Vance v. Rockwell, 3 Colo. 243; Halbert v. Alford (Tex.) 16 S. W. 814.

Decree is the judgment of a court of equity, and is, to most intents and purposes, the same as a judgment of a court of common law. A decree, as distinguished from an order, is final, and is made at the hearing of the cause, whereas an order is interlocutory, and is made on motion or petition. Wherever an order may, in a certain event resulting from the direction contained in the order, lead to the termination of the suit in like manner as a decree made at the hearing, it is called a "decretal order." Brown.

In French law. Certain acts of the legislature or of the sovereign which have the force of law are called *"decrees;"* as the Berlin and Milan decrees.

In Scotch law. A final judgment or sentence of court by which the question at issue between the parties is decided.

Classification. Decrees in equity are either *final* or *interlocutory*. A final decree is one which fully and finally disposes of the whole litigation, determining all questions raised by the case, and leaving nothing that requires further judicial action. Travis v. Waters, 12 Johns. (N. Y.) 508; Mills v. Hoag, 7 Paige (N. Y.) 19, 31 Am. Dec. 271; Core v. Strickler, 24 W. Va. 689; Ex parte Crittenden, 10 Ark. 339. An interlocutory decree is a provisional or preliminary decree, which is not final and does not determine the suit, but directs some further proceedings preparatory to the final decree. A decree pronounced for the purpose of ascertaining matter of law or fact preparatory to a final decree. 1 Barb. Ch. Pr. 326, 327. Teaff v. Hewitt, 1 Ohio St. 520, 59 Am. Dec. 634; Wooster v. Handy (C. C.) 23 Fed. 56; Beebe v. Russell, 19 How. 283, 15 L. Ed. 668; Jenkins v. Wild, 14 Wend. (N. Y.) 543.

—Consent decree. One entered by consent of the parties; it is not properly a judicial sentence, but is in the nature of a solemn contract or agreement of the parties, made under the sanction of the court, and in effect an admission by them that the decree is a just determination of their rights upon the real facts of the case, if such facts had been proved. Allen v. Richardson, 9 Rich. Eq. (S. C.) 53; Kelly v. Milan (C. C.) 21 Fed. 842; Schmidt v. Mining Co., 28 Or. 9, 40 Pac. 1014, 52 Am. St. Rep. 759.**—Decree dative.** In Scotch law. An order of a probate court appointing an administrator.**—Decree nisi.** A provisional decree, which will be made absolute on motion unless cause be shown against it. In English practice, it is the order made by the court for divorce, on satisfactory proof being given in support of a petition for dissolution of marriage; it remains imperfect for at least six months, (which period may be shortened by the court down to three,) and then, unless sufficient cause be shown, it is made absolute on motion, and the dissolution takes effect, subject to appeal. Wharton.**—Decree of constitution.** In Scotch practice. A decree by which a debt is ascertained. Bell. In technical language, a decree which is requisite to found a title in the person of the creditor, whether that necessity arises from the death of the debtor or of the creditor. Id.**—Decree of forthcoming.** In Scotch law. A decree made after an arrestment (*q. v.*) ordering the debt to be paid or the effects of the debtor to be delivered to the arresting creditor. Bell.**—Decree of insolvency.** One entered in a probate court, declaring the estate in question to be insolvent, that is, that the assets are not sufficient to pay the debts in full. Bush v. Coleman, 121 Ala. 548, 25 South. 569; Walker v. Newton, 85 Me. 458, 27 Atl. 347.**—Decree of locality.** In Scotch law. The decree of a teind court allocating stipend upon different heritors. It is equivalent to the apportionment of a tithe rent-charge.**—Decree of modification.** In Scotch law. A decree of the teind court modifying or fixing a stipend.**—Decree of nullity.** One entered in a suit for the annullment of a marriage, and adjudging the marriage to have been null and void *ab initio*. See NULLITY.**—Decree of registration.** In Scotch law. A proceeding giving immediate execution to the creditor; similar to a warrant of attorney to confess judgment.**—Decree pro confesso.** One entered in a court of equity in favor of the complainant where the defendant has made no answer to the bill and its allegations are consequently taken "as confessed." Ohio Cent. R. Co. v. Central Trust Co., 133 U. S. 83, 10 Sup. Ct. 235, 33 L. Ed. 561.

DECREET. In Scotch law. The final judgment or sentence of a court.

—Decreet absolvitor. A decree dismissing a claim, or acquitting a defendant. 2 Kames, Eq. 367.**—Decreet arbitral.** An award of arbitrators. 1 Kames, Eq. 312, 313; 2 Kames Eq. 367.**—Decreet cognitionis causâ.** When a creditor brings his action against the heir of his debtor in order to constitute the debt against him and attach the lands, and the heir appears and renounces the succession, the court then pronounces a decree *cognitionis causâ*. Bell.**—Decreet condemnator.** One where

the decision is in favor of the plaintiff. Ersk. Inst. 4, 3, 5.—**Decreet of valuation of teinds.** A sentence of the court of sessions, (who are now in the place of the commissioners for the valuation of teinds,) determining the extent and value of teinds. Bell.

DECREMENTUM MARIS. Lat. In old English law. Decrease of the sea; the receding of the sea from the land. Callis, Sewers, (53,) 65. See RELICTION.

DECREPIT. This term designates a person who is disabled, incapable, or incompetent, either from physical or mental weakness or defects, whether produced by age or other causes, to such an extent as to render the individual comparatively helpless in a personal conflict with one possessed of ordinary health and strength. Hall v. State, 16 Tex. App. 11, 49 Am. Rep. 824.

DECRETA. In the Roman law. Judicial sentences given by the emperor as supreme judge.

Decreta conciliorum non ligant reges nostros. Moore, 906. The decrees of councils bind not our kings.

DECRETAL ORDER. See DECREE; ORDER.

DECRETALES BONIFACII OCTAVI. A supplemental collection of the canon law, published by Boniface VIII. in 1298, called, also, "*Liber Sextus Decretalium*," (Sixth Book of the Decretals.)

DECRETALES GREGORII NONI. The decretals of Gregory the Ninth. A collection of the laws of the church, published by order of Gregory IX. in 1227. It is composed of five books, subdivided into titles, and each title is divided into chapters. They are cited by using an X, (or *extra;*) thus "*Cap.* 8 X *de Regulis Juris*," etc.

DECRETALS. In ecclesiastical law. Letters of the pope, written at the suit or instance of one or more persons, determining some point or question in ecclesiastical law, and possessing the force of law. The decretals form the second part of the body of canon law.

This is also the title of the second of the two great divisions of the canon law, the first being called the "*Decree*," (decretum.)

DECRETO. In Spanish colonial law. An order emanating from some superior tribunal, promulgated in the name and by the authority of the sovereign, in relation to ecclesiastical matters. Schm. Civil Law, 93, note.

DECRETUM. In the civil law. A species of imperial constitution, being a judgment or sentence given by the emperor upon hearing of a cause, (*quod imperator cognoscens decrevit.*) Inst. 1, 2, 6.

In canon law. An ecclesiastical law, in contradistinction to a secular law, (*lex.*) 1 Mackeld. Civil Law, p. 81, § 93, (Kaufmann's note.)

DECRETUM GRATIANI. Gratian's decree, or *decretum.* A collection of ecclesiastical law in three books or parts, made in the year 1151, by Gratian, a Benedictine monk of Bologna, being the oldest as well as the first in order of the collections which together form the body of the Roman canon law. 1 Bl. Comm. 82; 1 Reeve, Eng. Law, 67.

DECROWNING. The act of depriving of a crown.

DECRY. To cry down; to deprive of credit. "The king may at any time *decry* or cry down any coin of the kingdom, and make it no longer current." 1 Bl. Comm. 278.

DECURIO. Lat. A decurion. In the provincial administration of the Roman empire, the decurions were the chief men or official personages of the large towns. Taken as a body, the decurions of a city were charged with the entire control and administration of its internal affairs; having powers both magisterial and legislative. See 1 Spence, Eq. Jur. 54.

DEDBANA. In Saxon law. An actual homicide or manslaughter.

DEDI. (Lat. I have given.) A word used in deeds and other instruments of conveyance when such instruments were made in Latin, and anciently held to imply a warranty of title. Deakins v. Hollis, 7 Gill & J. (Md.) 315.

DEDI ET CONCESSI. I have given and granted. The operative words of conveyance in ancient charters of feoffment, and deeds of gift and grant; the English "*given and granted*" being still the most proper, though not the essential, words by which such conveyances are made. 2 Bl. Comm. 53, 316, 317; 1 Steph. Comm. 164, 177, 473, 474.

DEDICATE. To appropriate and set apart one's private property to some public use; as to make a private way public by acts evincing an intention to do so.

DEDICATION. In real property law. An appropriation of land to some public use, made by the owner, and accepted for such use by or on behalf of the public; a deliberate appropriation of land by its owner for any general and public uses, reserving to himself no other rights than such as are compatible with the full exercise and enjoyment

of the public uses to which the property has been devoted. People v. Marin County, 103 Cal. 223, 37 Pac. 203, 26 L. R. A. 659; Grogan v. Hayward (C. C.) 4 Fed. 161; Gowan v. Philadelphia Exch. Co., 5 Watts & S. (Pa.) 141, 40 Am. Dec. 489; Alden Coal Co. v. Challis, 200 Ill. 222, 65 N. E. 665; Barteau v. West, 23 Wis. 416; Wood v. Hurd, 34 N. J. Law, 87.

Express or implied. A dedication may be express, as where the intention to dedicate is expressly manifested by a deed or an explicit oral or written declaration of the owner, or some other explicit manifestation of his purpose to devote the land to the public use. An implied dedication may be shown by some act or course of conduct on the part of the owner from which a reasonable inference of intent may be drawn, or which is inconsistent with any other theory than that he intended a dedication. Culmer v. Salt Lake City, 27 Utah, 252, 75 Pac. 620; San Antonio v. Sullivan, 23 Tex. Civ. App. 619, 57 S. W. 42; Kent v. Pratt, 73 Conn. 573, 48 Atl. 418; Hurley v. West St. Paul, 83 Minn. 401, 86 N. W. 427; People v. Marin County, 103 Cal. 223, 37 Pac. 203, 26 L. R. A. 659.

Common-law or statutory. A common-law dedication is one made as above described, and may be either express or implied. A statutory dedication is one made under and in conformity with the provisions of a statute regulating the subject, and is of course necessarily express. San Antonio v. Sullivan, 23 Tex. Civ. App. 619, 57 S. W. 42; People v. Marin County, 103 Cal. 223, 37 Pac. 203, 26 L. R. A. 659.

In copyright law. The first publication of a work, without having secured a copyright, is a dedication of it to the public; that having been done, any one may republish it. Bartlett v. Crittenden, 5 McLean, 32, Fed. Cas. No. 1,076.

DEDICATION-DAY. The feast of dedication of churches, or rather the feast day of the saint and patron of a church, which was celebrated not only by the inhabitants of the place, but by those of all the neighboring villages, who usually came thither; and such assemblies were allowed as lawful. It was usual for the people to feast and to drink on those days. Cowell.

DEDIMUS ET CONCESSIMUS. (Lat. We have given and granted.) Words used by the king, or where there were more grantors than one, instead of *dedi et concessi.*

DEDIMUS POTESTATEM. (We have given power.) In English practice. A writ or commission issuing out of chancery, empowering the persons named therein to perform certain acts, as to administer oaths to defendants in chancery and take their answers, to administer oaths of office to justices of the peace, etc. 3 Bl. Comm. 447. It was anciently allowed for many purposes not now in use, as to make an attorney, to take the acknowledgment of a fine, etc.

In the United States, a commission to take testimony is sometimes termed a "*dedimus potestatem.*" Buddicum v. Kirk, 3 Cranch, 293, 2 L. Ed. 444; Sergeant's Lessee v. Biddle, 4 Wheat. 508, 4 L. Ed. 627.

DEDIMUS POTESTATEM DE ATTORNO FACIENDO. In old English practice. A writ, issued by royal authority, empowering an attorney to appear for a defendant. Prior to the statute of Westminster 2, a party could not appear in court by attorney without this writ.

DEDITION. The act of yielding up anything; surrender.

DEDITITII. In Roman law. Criminals who had been marked in the face or on the body with fire or an iron, so that the mark could not be erased, and subsequently manumitted. Calvin.

DEDUCTION. By "deduction" is understood a portion or thing which an heir has a right to take from the mass of the succession before any partition takes place. Civil Code La. art. 1358.

DEDUCTION FOR NEW. In marine insurance. An allowance or drawback credited to the insurers on the cost of repairing a vessel for damage arising from the perils of the sea insured against. This allowance is usually one-third, and is made on the theory that the parts restored with new materials are better, in that proportion than they were before the damage.

DEED. A sealed instrument, containing a contract or covenant, delivered by the party to be bound thereby, and accepted by the party to whom the contract or covenant runs.

A writing containing a contract sealed and delivered to the party thereto. 3 Washb. Real Prop. 239.

In its legal sense, a "deed" is an instrument in writing, upon paper or parchment, between parties able to contract, subscribed, sealed, and delivered. Insurance Co. v. Avery, 60 Ind. 572; 4 Kent, Comm. 452.

In a more restricted sense, a written agreement, signed, sealed, and delivered, by which one person conveys land, tenements, or hereditaments to another. This is its ordinary modern meaning. Sanders v. Riedinger, 30 App. Div. 277, 51 N. Y. Supp. 937; Reed v. Hazleton, 37 Kan. 321, 15 Pac. 177; Dudley v. Sumner, 5 Mass. 470; Fisher v. Pender, 52 N. C. 485.

The term is also used as synonymous with "fact," "actuality," or "act of parties." Thus a thing "in deed" is one that has been really or expressly done; as opposed to "in law," which means that it is merely implied or presumed to have been done.

—Deed in fee. A deed conveying the title to land in fee simple with the usual covenants. Rudd v. Savelli, 44 Ark. 152; Moody v. Railway Co., 5 Wash. 699, 32 Pac. 751.**—Deed indented, or indenture.** In conveyancing. A deed executed or purporting to be executed in

parts, between two or more parties, and distinguished by having the edge of the paper or parchment on which it is written indented or cut at the top in a particular manner. This was formerly done at the top or side, in a line resembling the teeth of a saw; a formality derived from the ancient practice of dividing chirographs; but the cutting is now made either in a waving line, or more commonly by notching or nicking the paper at the edge. 2 Bl. Comm. 295, 296; Litt. § 370; Smith, Cont. 12.—**Deed of covenant.** Covenants are sometimes entered into by a separate deed, for title, or for the indemnity of a purchaser or mortgagee, or for the production of title-deeds. A covenant with a penalty is sometimes taken for the payment of a debt, instead of a bond with a condition, but the legal remedy is the same in either case. —**Deed of release.** One releasing property from the incumbrance of a mortgage or similar pledge upon payment or performance of the conditions; more specifically, where a deed of trust to one or more trustees has been executed, pledging real property for the payment of a debt or the performance of other conditions, substantially as in the case of a mortgage, a deed of release is the conveyance executed by the trustees, after payment or performance, for the purpose of divesting themselves of the legal title and revesting it in the original owner. See Swain v. McMillan, 30 Mont. 433, 76 Pac. 943.—**Deed of separation.** An instrument by which, through the medium of some third person acting as trustee, provision is made by a husband for separation from his wife and for her separate maintenance. Whitney v. Whitney, 15 Misc. Rep. 72, 36 N. Y. Supp. 891.—**Deed of trust.** An instrument in use in many states, taking the place and serving the uses of a common-law mortgage, by which the legal title to real property is placed in one or more trustees, to secure the repayment of a sum of money or the performance of other conditions. Bank v. Pierce, 144 Cal. 434, 77 Pac. 1012. See TRUST DEED.—**Deed poll.** In conveyancing. A deed of one part or made by one party only; and originally so called because the edge of the paper or parchment was *polled* or cut in a straight line, wherein it was distinguished from a deed indented or indenture. As to a special use of this term in Pennsylvania in colonial times, see Herron v. Dater, 120 U. S. 464, 7 Sup. Ct. 620, 30 L. Ed. 748.—**Deed to declare uses.** A deed made after a fine or common recovery, to show the object thereof.—**Deed to lead uses.** A deed made before a fine or common recovery, to show the object thereof.

As to "Quitclaim" deed, "Tax Deed," "Trust Deed," and "Warranty" deed, see those titles.

DEEM. To hold; consider; adjudge; condemn. Cory v. Spencer, 67 Kan. 648, 73 Pac. 920, 63 L. R. A. 275; Blaufus v. People, 69 N. Y. 111, 25 Am. Rep. 148; U. S. v. Doherty (D. C.) 27 Fed. 730; Leonard v. Grant (C. C.) 5 Fed. 11. When, by statute, certain acts are "deemed" to be a crime of a particular nature, they are such crime, and not a semblance of it, nor a mere fanciful approximation to or designation of the offense. Com. v. Pratt, 132 Mass. 247.

DEEMSTERS. Judges in the Isle of Man, who decide all controversies without process, writings, or any charges. These judges are chosen by the people, and are said by Spelman to be two in number. Spelman.

DEER-FALD. A park or fold for deer.

DEER-HAYES. Engines or great nets made of cord to catch deer. 19 Hen. VIII. c. 11.

DEFACE. To mar or destroy the face (that is, the physical appearance of written or inscribed characters as expressive of a definite meaning) of a written instrument, signature, inscription, etc., by obliteration, erasure, cancellation, or superinscription, so as to render it illegible or unrecognizable. Linney v. State, 6 Tex. 1, 55 Am. Dec. 756. See CANCEL.

DEFALCATION. The act of a defaulter; misappropriation of trust funds or money held in any fiduciary capacity; failure to properly account for such funds. Usually spoken of officers of corporations or public officials. In re Butts (D. C.) 120 Fed. 970; Crawford v. Burke, 201 Ill. 581, 66 N. E. 833.

Also set-off. The diminution of a debt or claim by deducting from it a smaller claim held by the debtor or payor. Iron Works v. Cuppey, 41 Iowa, 104; Houk v. Foley, 2 Pen. & W. (Pa.) 250; McDonald v. Lee, 12 La. 435.

DEFALK. To set off one claim against another; to deduct a debt due to one from a debt which one owes. Johnson v. Signal Co., 57 N. J. Eq. 79, 40 Atl. 193; Pepper v. Warren, 2 Marv. (Del.) 225, 43 Atl. 91. This verb corresponds only to the second meaning of "defalcation" as given above; a public officer or trustee who misappropriates or embezzles funds in his hands is not said to "defalk."

DEFAMATION. The taking from one's reputation. The offense of injuring a person's character, fame, or reputation by false and malicious statements. The term seems to be comprehensive of both libel and slander. Printing Co. v. Moulden, 15 Tex. Civ. App. 574, 41 S. W. 381; Moore v. Francis, 121 N. Y. 199, 23 N. E. 1127, 8 L. R. A. 214, 18 Am. St. Rep. 810; Hollenbeck v. Hall, 103 Iowa, 214, 72 N. W. 518, 39 L. R. A. 734, 64 Am. St. Rep. 175; Mosnat v. Snyder, 105 Iowa, 500, 75 N. W. 356.

DEFAMES. L. Fr. Infamous. Britt. c. 15.

DEFAULT. The omission or failure to fulfill a duty, observe a promise, discharge an obligation, or perform an agreement. State v. Moores, 52 Neb. 770, 73 N. W. 299; Osborn v. Rogers, 49 Hun, 245, 1 N. Y. Supp. 623; Mason v. Aldrich, 36 Minn. 283, 30 N. W. 884.

In practice. Omission; neglect or failure. When a defendant in an action at law omits to plead within the time allowed him for that purpose, or fails to appear on the trial, he is said to *make default*, and the judgment entered in the former case is technically called a "judgment by default." 3 Bl.

Comm. 396; 1 Tidd, Pr. 562; Page v. Sutton, 29 Ark. 306.

—Default of issue. Failure to have living children or descendants at a given time or fixed point. George v. Morgan, 16 Pa. 106.**—Defaulter.** One who makes default. One who misappropriates money held by him in an official or fiduciary character, or fails to account for such money.**—Judgment by default.** One entered upon the failure of a party to appear or plead at the time appointed. See JUDGMENT.

DEFEASANCE. An instrument which defeats the force or operation of some other deed or estate. That which is in the same deed is called a "condition;" and that which is in another deed is a "defeasance." Com. Dig. "Defeasance."

In conveyancing. A collateral deed made at the same time with a feoffment or other conveyance, containing certain conditions, upon the performance of which the estate then created may be *defeated* or totally undone. 2 Bl. Comm. 327; Co. Litt. 236, 237.

An instrument accompanying a bond, recognizance, or judgment, containing a condition which, when performed, *defeats* or undoes it. 2 Bl. Comm. 342; Co. Litt. 236, 237; Miller v. Quick, 158 Mo. 495, 59 S. W. 955; Harrison v. Philips' Academy, 12 Mass. 456; Lippincott v. Tilton, 14 N. J. Law, 361; Nugent v. Riley, 1 Metc. (Mass.) 119, 35 Am. Dec. 355.

DEFEASIBLE. Subject to be defeated, annulled, revoked, or undone upon the happening of a future event or the performance of a condition subsequent, or by a conditional limitation. Usually spoken of estates and interests in land. For instance, a mortgagee's estate is defeasible (liable to be defeated) by the mortgagor's equity of redemption.

—Defeasible fee. An estate in fee but which is liable to be defeated by some future contingency; *e. g.*, a vested remainder which might be defeated by the death of the remainderman before the time fixed for the taking effect of the devise. Forsythe v. Lansing, 109 Ky. 518, 59 S. W. 854; Wills v. Wills, 85 Ky. 486, 3 S. W. 900.**—Defeasible title:** One that is liable to be annulled or made void, but not one that is already void or an absolute nullity. Elder v. Schumacher, 18 Colo. 433, 33 Pac. 175.

DEFEAT. To prevent, frustrate, or circumvent; as in the phrase "hinder, delay, or defeat creditors." Coleman v. Walker, 3 Metc. (Ky.) 65, 77 Am. Dec. 163; Walker v. Sayers, 5 Bush (Ky.) 581.

To overcome or prevail against in any contest; as in speaking of the "defeated party" in an action at law. Wood v. Bailey, 21 Wall. 642, 22 L. Ed. 689; Goff v. Wilburn (Ky.) 79 S. W. 233.

To annul, undo, or terminate; as, a title or estate. See DEFEASIBLE.

DEFECT. The want or absence of some legal requisite; deficiency; imperfection; insufficiency. Haney-Campbell Co. v. Creamery Ass'n, 119 Iowa, 188, 93 N. W. 297; Bliven v. Sioux City, 85 Iowa, 346, 52 N. W. 246.

—Defect of form. An imperfection in the style, manner, arrangement, or non-essential parts of a legal instrument, plea, indictment, etc., as distinguished from a "defect of substance." See *infra*.**—Defect of parties.** In pleading and practice. Insufficiency of the parties before a court in any given proceeding to give it jurisdiction and authority to decide the controversy, arising from the omission or failus to join plaintiffs or defendants who should have been brought in; never applied to a superfluity of parties or the improper addition of plaintiffs or defendants. Mader v. Plano Mfg. Co., 17 S. D. 553, 97 N. W. 843; Railroad Co. v. Schuyler, 17 N. Y. 603; Palmer v. Davis, 28 N. Y. 245; Beach v. Water Co., 25 Mont. 379, 65 Pac. 111; Weatherby v. Meiklejohn, 61 Wis. 67, 20 N. W. 374.**—Defect of substance.** An imperfection in the body or substantive part of a legal instrument, plea, indictment, etc., consisting in the omission of something which is essential to be set forth. State v. Startup, 39 N. J. Law, 432; Flexner v. Dickerson, 65 Ala. 132.

DEFECTIVE. Lacking in some particular which is essential to the completeness, legal sufficiency, or security of the object spoken of; as, a "defective" highway or bridge, (Munson v. Derby, 37 Conn. 310, 9 Am. Rep. 332; Whitney v. Ticonderoga, 53 Hun, 214, 6 N. Y. Supp. 844;) machinery, (Machinery Co. v. Brady, 60 Ill. App. 379;) writ or recognizance, (State v. Lavalley, 9 Mo. 836; McArthur v. Boynton, 19 Colo. App. 234, 74 Pac. 542;) or title, (Copertini v. Oppermann, 76 Cal. 181, 18 Pac. 256.)

DEFECTUS. Lat. Defect; default; want; imperfection; disqualification.

—Challenge propter defectum. A challenge to a juror on account of some legal disqualification, such as infancy, etc. See CHALLENGE.**—Defectus sanguinis.** Failure of the blood, *i. e.*, failure or want of issue.

DEFEND. To prohibit or forbid. To deny. To contest and endeavor to defeat a claim or demand made against one in a court of justice. Boehmer v. Irrigation Dist., 117 Cal. 19, 48 Pac. 908. To oppose, repel, or resist.

In covenants of warranty in deeds, it means to protect, to maintain or keep secure, to guaranty, to agree to indemnify.

DEFENDANT. The person defending or denying; the party against whom relief or recovery is sought in an action or suit. Jewett Car Co. v. Kirkpatrick Const. Co. (C. C.) 107 Fed. 622; Brower v. Nellis, 6 Ind. App. 323, 33 N. E. 672; Tyler v. State, 63 Vt. 300, 21 Atl. 611; Insurance Co. v. Alexandre (D. C.) 16 Fed. 281.

In common usage, this term is applied to the party put upon his defense, or summoned to answer a charge or complaint, in any species of action, civil or criminal, at law or in equity. Strictly, however, it does not apply to the person against whom a real action is brought, for in that proceeding the technical usage is to call

the parties respectively the "demandant" and the "tenant."

—**Defendant in error.** The distinctive term appropriate to the party against whom a writ of error is sued out.

DEFENDEMUS. *Lat.* A word used in grants and donations, which binds the donor and his heirs to defend the donee, if any one go about to lay any incumbrance on the thing given other than what is contained in the deed of donation. Bract. l. 2, c. 16.

DEFENDER. (Fr.) To deny; to defend; to conduct a suit for a defendant; to forbid; to prevent; to protect.

DEFENDER. In Scotch and canon law. A defendant.

DEFENDER OF THE FAITH. A peculiar title belonging to the sovereign of England, as that of "Catholic" to the king of Spain, and that of "Most Christian" to the king of France. These titles were originally given by the popes of Rome; and that of *Defensor Fidei* was first conferred by Pope Leo X. on King Henry VIII., as a reward for writing against Martin Luther; and the bull for it bears date *quinto Idus Octob.*, 1521. Enc. Lond.

DEFENDERE SE PER CORPUS SUUM. To offer duel or combat as a legal trial and appeal. Abolished by 59 Geo. III. § 46. See BATTEL.

DEFENDERE UNICÂ MANU. To wage law; a denial of an accusation upon oath. See WAGER OF LAW.

DEFENDIT VIM ET INJURIAM. He defends the force and injury. Fleta, lib. 5, c. 39, § 1.

DEFENDOUR. L. Fr. A defender or defendant; the party accused in an appeal. Britt. c. 22.

DEFENERATION. The act of lending money on usury.

DEFENSA. In old English law. A park or place fenced in for deer, and defended as a property and peculiar for that use and service. Cowell.

DEFENSE. That which is offered and alleged by the party proceeded against in an action or suit, as a reason in law or fact why the plaintiff should not recover or establish what he seeks; what is put forward to defeat an action. More properly what is *sufficient* when offered for this purpose. In either of these senses it may be either a denial, justification, or confession and avoidance of the facts averred as a ground of action, or an exception to their sufficiency in point of law. Whitfield v. Insurance Co. (C. C.) 125 Fed. 270; Miller v. Martin, 8 N. J. Law, 204; Baier v. Humpall, 16 Neb. 127, 20 N. W. 108; Cohn v. Hussen, 66 How. Prac. (N. Y.) 151; Railroad Co. v. Hinchcliffe, 34 Misc. Rep. 49, 68 N. Y. Supp. 556; Brower v. Nellis, 6 Ind. App. 323, 33 N. E. 672.

In a stricter sense, defense is used to denote the answer made by the defendant to the plaintiff's action, by demurrer or plea at law or answer in equity. This is the meaning of the term in Scotch law. Ersk. Inst. 4, 1, 66.

Half defense was that which was made by the form "defends the force and injury, and says," (*defendit vim et injuriam, et dicit.*)

Full defense was that which was made by the form "defends the force and injury when and where it shall behoove him, and the damages, and whatever else he ought to defend," (*defendit vim et injuriam quando et ubi curia consideravit, et damna et quicquid quod ipse defendere debet, et dicit,*) commonly shortened into "defends the force and injury when," etc. Gilb. Com. Pl. 188; 8 Term, 632; 3 Bos. & P. 9, note; Co. Litt. 127*b*.

In matrimonial suits, in England, defenses are divided into *absolute, i. e.*, such as, being established to the satisfaction of the court, are a complete answer to the petition, so that the court can exercise no discretion, but is bound to dismiss the petition; and *discretionary*, or such as, being established, leave to the court a discretion whether it will pronounce a decree or dismiss the petition. Thus, in a suit for dissolution, condonation is an absolute, adultery by the petitioner a discretionary, defense. Browne, Div. 30.

Defense also means the forcible repelling of an attack made unlawfully with force and violence.

In old statutes and records, the term means prohibition; denial or refusal. *Enconter le defense et le commandement de roy;* against the prohibition and commandment of the king. St. Westm. 1, c. 1. Also a state of severalty, or of several or exclusive occupancy; a state of inclosure.

—**Affidavit of defense.** See AFFIDAVIT.—**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. Bank, 33 Misc. Rep. 128, 67 N. Y. Supp. 300.—**Equitable defense.** In English practice, a defense to an action on grounds which, prior to the passage of the common-law procedure act, (17 & 18 Vict. c. 125,) would have been cognizable only in a court of equity. In American practice, a defense which is cognizable in a court of equity, but which is available there only, and not in an action at law, except under the reformed codes of practice. Kelly v. Hurt, 74 Mo. 570; New York v. Holzderber, 44 Misc. Rep. 509, 90 N. Y. Supp. 63.—**Frivolous defense.** One which at first glance can be seen to be merely pretensive, setting up some ground which cannot be sustained by argument. Dominion Nat. Bank v. Olympia Cotton Mills (C. C.) 128 Fed. 182.—**Meritorious defense.** One going to the merits, substance, or essentials of the case, as distinguished from dilatory or technical objections. Cooper v. Lumber Co., 61 Ark. 36, 31 S. W. 981.—**Partial defense.** One which goes only to a part of the cause of action, or which only tends to mitigate the damages to be awarded. Carter v. Bank, 33 Misc. Rep. 128, 67 N. Y. Supp. 300.—**Peremptory defense.** A defense which insists that the plaintiff never had the right to institute the suit, or that, if he had, the original right is extinguished or determined. 4

Bouv. Inst. no. 4206.—**Pretermitted defense.** One which was available to a party and of which he might have had the benefit if he had pleaded it in due season, but which cannot afterwards be heard as a basis for affirmative relief. Swennes v. Sprain, 120 Wis. 68, 97 N. W. 511.—**Sham defense.** A false or fictitious defense, interposed in bad faith, and manifestly untrue, insufficient, or irrelevant on its face.—**Self-defense.** See that title.—**Defense au fond en droit.** In French and Canadian law. A demurrer.—**Defense au fond en fait.** In French and Canadian law. The general issue. 3 Low. Can. 421.—**Legal defense.** (1) A defense which is complete and adequate in point of law. (2) A defense which may be set up in a court of law; as distinguished from an "equitable defense," which is cognizable only in a court of equity or court possessing equitable powers.

DEFENSIVA. In old English law. A lord or earl of the marches, who was the warden and defender of his country. Cowell.

DEFENSIVE ALLEGATION. In English ecclesiastical law. A species of pleading, where the defendant, instead of denying the plaintiff's charge upon oath, has any circumstances to offer in his defense. This entitles him, in his turn, to the plaintiff's answer upon oath, upon which he may proceed to proofs as well as his antagonist. 3 Bl. Comm. 100; 3 Steph. Comm. 720.

DEFENSIVE WAR. A war in defense of, or for the protection of, national rights. It may be *defensive* in its principles, though *offensive* in its operations. 1 Kent, Comm. 50, note.

DEFENSO. That part of any open field or place that was allotted for corn or hay, and upon which there was no common or feeding, was anciently said to be *in defenso;* so of any meadow ground that was laid in for hay only. The same term was applied to a wood where part was inclosed or fenced, to secure the growth of the underwood from the injury of cattle. Cowell.

DEFENSOR. In the civil law. A defender; one who assumed the defense of another's case in court. Also an advocate. A tutor or curator.

In canon law. The advocate or patron of a church. An officer who had charge of the temporalities of the church.

In old English law. A guardian, defender, or protector. The defendant in an action. A person vouched in to warranty.

—**Defensor civitatis.** Defender or protector of a city or municipality. An officer under the Roman empire, whose duty it was to protect the people against the injustice of the magistrates, the insolence of the subaltern officers, and the rapacity of the money-lenders. Schm. Civil Law, Introd. 16; Cod. 1, 55, 4. He had the powers of a judge, with jurisdiction of pecuniary causes to a limited amount, and the lighter species of offenses. Cod. 1, 55, 1; Nov. 15, c. 3, § 2; Id. c. 6, § 1: He had also the care of the public records, and powers similar to those of a notary in regard to the execution of wills and conveyances.—**Defensor fidei.** Defender of the faith. See DEFENDER.

DEFENSUM. An inclosure of land; any fenced ground. See DEFENSO.

DEFERRED. Delayed; put off; remanded; postponed to a future time.

—**Deferred life annuities.** In English law. Annuities for the life of the purchaser, but not commencing until a date subsequent to the date of buying them, so that, if the purchaser die before that date, the purchase money is lost. Granted by the commissioners for reduction of the national debt. See 16 & 17 Vict. c. 45, § 2. Wharton.—**Deferred stock.** See STOCK.

DEFICIENCY. A lack, shortage, or insufficiency. The difference between the total amount of the debt or payment meant to be secured by a mortgage and that realized on foreclosure and sale when less than the total. A judgment or decree for the amount of such deficiency is called a "deficiency judgment" or "decree." Goldsmith v. Brown, 35 Barb. (N. Y.) 492.

—**Deficiency bill.** In parliamentary practice, an appropriation bill covering items of expense omitted from the general appropriation bill or bills, or for which insufficient appropriations were made. If intended to cover a variety of such items, it is commonly called a "general deficiency bill;" if intended to make provision for expenses which must be met immediately, or which cannot wait the ordinary course of the general appropriation bills, it is called an "urgent deficiency bill."

Deficiente uno sanguine non potest esse hæres. 3 Coke, 41. One blood being wanting, he cannot be heir. But see 3 & 4 Wm. IV. c. 106, § 9, and 33 & 34 Vict. c. 23, § 1.

DEFICIT. Something wanting, generally in the accounts of one intrusted with money, or in the money received by him. Mutual L. & B. Ass'n v. Price, 19 Fla. 135.

DEFILE. To debauch, deflower, or corrupt the chastity of a woman. The term does not necessarily imply force or ravishment, nor does it connote previous immaculateness. State v. Montgomery, 79 Iowa, 737, 45 N. W. 292; State v. Fernald, 88 Iowa, 553, 55 N. W. 534.

DEFINE. To explain or state the exact meaning of words and phrases; to settle, make clear, establish boundaries. U. S. v. Smith, 5 Wheat. 160, 5 L. Ed. 57; Walters v. Richardson, 93 Ky. 374, 20 S. W. 279; Miller v. Improvement Co., 99 Va. 747, 40 S. E. 27, 86 Am. St. Rep. 924; Gould v. Hutchins, 10 Me. 145.

"An examination of our Session Laws will show that acts have frequently been passed, the constitutionality of which has never been questioned, where the powers and duties conferred could not be considered as merely explaining or making more clear those previously conferred or attempted to be, although the word 'define' was used in the title. In legislation it

is frequently used in the creation, enlarging, and extending the powers and duties of boards and officers, in defining certain offenses and providing punishment for the same, and thus enlarging and extending the scope of the criminal law. And it is properly used in the title where the object of the act is to determine or fix boundaries, more especially where a dispute has arisen concerning them. It is used between different governments, as to define the extent of a kingdom or country." People v. Bradley, 36 Mich. 452.

DEFINITIO. Lat. Definition, or, more strictly, limiting or bounding; as in the maxim of the civil law: *Omnis definitio periculosa est, parum est enim ut non subverti possit*, (Dig. 50, 17, 202;) i. e., the attempt to bring the law within the boundaries of precise definitions is hazardous, as there are but few cases in which such a limitation cannot be subverted.

DEFINITION. A description of a thing by its properties; an explanation of the meaning of a word or term. Webster. The process of stating the exact meaning of a word by means of other words. Worcester. See Warner v. Beers, 23 Wend. (N. Y.) 103; Marvin v. State, 19 Ind. 181; Mickle v. Miles, 1 Grant, Cas. (Pa.) 328.

DEFINITIVE. That which finally and completely ends and settles a controversy. A definitive sentence or judgment is put in opposition to an interlocutory judgment.

A distinction may be taken between a *final* and a *definitive* judgment. The former term is applicable when the judgment exhausts the powers of the particular court in which it is rendered; while the latter word designates a judgment that is above any review or contingency of reversal. U. S. v. The Peggy, 1 Cranch, 103, 2 L. Ed. 49.

—Definitive sentence. The final judgment, decree, or sentence of an ecclesiastical court. 3 Bl. Comm. 101.

DEFLORATION. Seduction or debauching. The act by which a woman is deprived of her virginity.

DEFORCE. In English law. To withhold wrongfully; to withhold the possession of lands from one who is lawfully entitled to them. 3 Bl. Comm. 172; Phelps v. Baldwin, 17 Conn. 212.

In Scotch law. To resist the execution of the law; to oppose by force a public officer in the execution of his duty. Bell.

DEFORCEMENT. Deforcement is where a man wrongfully holds lands to which another person is entitled. It therefore includes disseisin, abatement, discontinuance, and intrusion. Co. Litt. 277*b*, 331*b*; Foxworth v. White, 5 Strob. (S. C.) 115; Woodruff v. Brown, 17 N. J. Law, 269; Hopper v. Hopper, 21 N. J. Law, 543. But it is applied especially to cases, not falling under those heads, where the person entitled to the freehold has never had possession; thus, where a lord has a seignory, and lands escheat to him *propter defectum sanguinis*, but the seisin is withheld from him, this is a deforcement, and the person who withholds the seisin is called a "deforceor." 3 Bl. Comm. 172.

In Scotch law. The opposition or resistance made to messengers or other public officers while they are actually engaged in the exercise of their offices. Ersk. Inst. 4, 4, 32.

DEFORCIANT. One who wrongfully keeps the owner of lands and tenements out of the possession of them. 2 Bl. Comm. 350.

DEFORCIARE. L. Lat. To withhold lands or tenements from the rightful owner. This is a word of art which cannot be supplied by any other word. Co. Litt. 331*b*.

DEFORCIATIO. L. Lat. In old English law. A distress, distraint, or seizure of goods for satisfaction of a lawful debt. Cowell.

DEFOSSION. The punishment of being buried alive.

DEFRAUD. To practice fraud; to cheat or trick; to deprive a person of property or any interest, estate, or right by fraud, deceit, or artifice. People v. Wiman, 148 N. Y. 29, 42 N. E. 408; Alderman v. People, 4 Mich. 424, 69 Am. Dec. 321; U. S. v. Curley (C. C.) 122 Fed. 740; Weber v. Mick, 131 Ill. 520, 23 N. E. 646; Edgell v. Smith, 50 W. Va. 349, 40 S. E. 402; Curley v. U. S. 130 Fed. 1, 64 C. C. A. 369.

DEFRAUDACION. In Spanish law. The crime committed by a person who fraudulently avoids the payment of some public tax.

DEFRAUDATION. Privation by fraud.

DEFUNCT. Deceased; a deceased person. A common term in Scotch law.

DEFUNCTUS. Lat. Dead. "Defunctus sine prole," dead without (leaving) issue.

DEGASTER. L. Fr. To waste.

DEGRADATION. A deprivation of dignity; dismission from office. An ecclesiastical censure, whereby a clergyman is divested of his holy orders. There are two sorts by the canon law,—one *summary*, by word only; the other *solemn*, by stripping the party degraded of those ornaments and rights which are the ensigns of his degree. Degradation is otherwise called "deposition," but the canonists have distinguished between these two terms, deeming the former as the greater punishment of the two. There is likewise a degradation of a lord or

knight at common law, and also by act of parliament. Wharton.

DEGRADATIONS. A term for waste in the French law.

DEGRADING. Reviling; holding one up to public obloquy; lowering a person in the estimation of the public.

DEGREE. In the law of descent and family relations. A step or grade, *i. e.*, the distance, or number of removes, which separates two persons who are related by consanguinity. Thus we speak of cousins in the "second degree."

In criminal law. The term "degree" denotes a division or classification of one specific crime into several grades or *stadia* of guilt, according to the circumstances attending its commission. Thus, in some states, there may be "murder in the second degree."

DEHORS. L. Fr. Out of; without; beyond; foreign to; unconnected with. *Dehors* the record; foreign to the record. 3 Bl. Comm. 387.

DEI GRATIA. Lat. By the grace of God. A phrase used in the formal title of a king or queen, importing a claim of sovereignty by the favor or commission of God. In ancient times it was incorporated in the titles of inferior officers, (especially ecclesiastical,) but in later use was reserved as an assertion of "the divine right of kings."

DEI JUDICIUM. The judgment of God. The old Saxon trial by ordeal, so called because it was thought to be an appeal to God for the justice of a cause, and it was believed that the decision was according to the will and pleasure of Divine Providence. Wharton.

DEJACION. In Spanish law. Surrender; release; abandonment; *e. g.*, the act of an insolvent in surrendering his property for the benefit of his creditors, of an heir in renouncing the succession, the abandonment of insured property to the underwriters.

DEJERATION. A taking of a solemn oath.

DEL BIEN ESTRE. L. Fr. In old English practice. Of well being; of form. The same as *de bene esse*. Britt. c. 39.

DEL CREDERE. In mercantile law. A phrase borrowed from the Italians, equivalent to our word "guaranty" or "warranty," or the Scotch term "warrandice;" an agreement by which a factor, when he sells goods on credit, for an additional commission, (called a "*del credere* commission,") guaranties the solvency of the purchaser and his performance of the contract. Such a factor is called a "*del credere* agent." He is a mere surety, liable only to his principal in case the purchaser makes default. Story, Ag. 28; Loeb v. Hellman, 83 N. Y. 603; Lewis v. Brehme, 33 Md. 424, 3 Am. Rep. 190; Leverick v. Meigs, 1 Cow. (N. Y.) 663; Ruffner v. Hewitt, 7 W. Va. 604.

DELAISSEMENT. In French marine law. Abandonment. Emerig. Tr. des Ass. ch. 17.

DELATE. In Scotch law. To accuse. Delated, accused. *Delatit off arte and parte*, accused of being accessary to. 3 How. St. Tr. 425, 440.

DELATIO. In the civil law. An accusation or information.

DELATOR. An accuser; an informer; a sycophant.

DELATURA. In old English law. The reward of an informer. Whishaw.

DELAY. To retard; obstruct; put off; hinder; interpose obstacles; as, when it is said that a conveyance was made to "hinder and delay creditors." Mercantile Co. v. Arnold, 108 Ga. 449, 34 S. E. 176; Ellis v. Valentine, 65 Tex. 532.

DELECTUS PERSONÆ. Lat. Choice of the person. By this term is understood the right of a partner to exercise his choice and preference as to the admission of any new members to the firm, and as to the persons to be so admitted, if any.

In Scotch law. The personal preference which is supposed to have been exercised by a landlord in selecting his tenant, by the members of a firm in making choice of partners, in the appointment of persons to office, and other cases. Nearly equivalent to personal trust, as a doctrine in law. Bell.

Delegata potestas non potest delegari. 2 Inst. 597. A delegated power cannot be delegated.

DELEGATE. A person who is delegated or commissioned to act in the stead of another; a person to whom affairs are committed by another; an attorney.

A person elected or appointed to be a member of a representative assembly. Usually spoken of one sent to a special or occasional assembly or convention. Manston v. McIntosh, 58 Minn. 525, 60 N. W. 672, 28 L. R. A. 605.

The representative in congress of one of the organized territories of the United States.

—Delegates, the high court of. In English law. Formerly the court of appeal from the ecclesiastical and admiralty courts. Abolished upon the judicial committee of the privy council being constituted the court of appeal in such cases.

DELEGATION. A sending away; a putting into commission; the assignment of a debt to another; the intrusting another with a general power to act for the good of those who depute him.

At common law. The transfer of authority by one person to another; the act of making or commissioning a delegate.

The whole body of delegates or representatives sent to a convention or assembly from one district, place, or political unit are collectively spoken of as a "delegation."

In the civil law. A species of novation which consists in the change of one debtor for another, when he who is indebted substitutes a third person who obligates himself in his stead to the creditor, so that the first debtor is acquitted and his obligation extinguished, and the creditor contents himself with the obligation of the second debtor. Delegation is essentially distinguished from any other species of novation, in this: that the former demands the consent of all three parties, but the latter that only of the two parties to the new debt. 1 Domat, § 2318; Adams v. Power, 48 Miss. 454.

Delegation is novation effected by the intervention of another person whom the debtor, in order to be liberated from his creditor, gives to such creditor, or to him whom the creditor appoints; and such person so given becomes obliged to the creditor in the place of the original debtor. Burge, Sur. 173.

Delegatus non potest delegare. A delegate cannot delegate; an agent cannot delegate his functions to a subagent without the knowledge or consent of the principal; the person to whom an office or duty is delegated cannot lawfully devolve the duty on another, unless he be expressly authorized so to do. 9 Coke, 77; Broom, Max. 840; 2 Kent, Comm. 633; 2 Steph. Comm. 119.

DELESTAGE. In French marine law. A discharging of ballast (*lest*) from a vessel.

DELETE. In Scotch law. To erase; to strike out.

DELF. A quarry or mine. 31 Eliz. c. 7.

Deliberandum est diu quod statuendum est semel. 12 Coke, 74. That which is to be resolved once for all should be long deliberated upon.

DELIBERATE, *v.* To weigh, ponder, discuss. To examine, to consult, in order to form an opinion.

DELIBERATE, *adj.* By the use of this word, in describing a crime, the idea is conveyed that the perpetrator weighs the motives for the act and its consequences, the nature of the crime, or other things connected with his intentions, with a view to a decision thereon; that he carefully considers all these; and that the act is not suddenly committed. It implies that the perpetrator must be capable of the exercise of such mental powers as are called into use by deliberation and the consideration and weighing of motives and consequences. State v. Boyle, 28 Iowa, 524.

"Deliberation" and "premeditation" are of the same character of mental operations, differing only in degree. Deliberation is but prolonged premeditation. In other words, in law, deliberation is premeditation in a cool state of the blood, or, where there has been heat of passion, it is premeditation continued beyond the period within which there has been time for the blood to cool, in the given case. Deliberation is not only to think of beforehand, which may be but for an instant, but the inclination to do the act is considered, weighed, pondered upon, for such a length of time after a provocation is given as the jury may find was sufficient for the blood to cool. One in a heat of passion may premeditate without deliberating. Deliberation is only exercised in a cool state of the blood, while premeditation may be either in that state of the blood or in the heat of passion. State v. Kotovsky, 74 Mo. 249; State v. Lindgrind, 33 Wash. 440, 74 Pac. 565; State v. Dodds, 54 W. Va. 289, 46 S. E. 228; State v. Fairlamb, 121 Mo. 137, 25 S. W. 895; Milton v. State, 6 Neb. 143; State v. Greenleaf, 71 N. H. 606, 54 Atl. 38; State v. Fiske, 63 Conn. 388, 28 Atl. 572; Craft v. State, 3 Kan. 481; State v. Sneed, 91 Mo. 552, 4 S. W. 411; Debney v. State, 45 Neb. 856, 64 N. W. 446, 34 L. R. A. 851; Cannon v. State, 60 Ark. 564, 31 S. W. 150.

DELIBERATION. The act or process of deliberating. The act of weighing and examining the reasons for and against a contemplated act or course of conduct or a choice of acts or means. See DELIBERATE.

Delicatus debitor est odiosus in lege. A luxurious debtor is odious in law. 2 Bulst. 148. Imprisonment for debt has now, however, been generally abolished.

DELICT. In the Roman and civil law. A wrong or injury; an offense; a violation of public or private duty.

It will be observed that this word, taken in its most general sense, is wider in both directions than our English term "tort." On the one hand, it includes those wrongful acts which, while directly affecting some individual or his property, yet extend in their injurious consequences to the peace or security of the community at large, and hence rise to the grade of crimes or misdemeanors. These acts were termed in the Roman law "public delicts;" while those for which the only penalty exacted was compensation to the person primarily injured were denominated "private delicts." On the other hand, the term appears to have included injurious actions which transpired without any malicious intention on the part of the doer. Thus Pothier gives the name "*quasi* delicts" to the acts of a person who, without malignity, but by an inexcusable imprudence, causes an injury to another. Poth. Obl. 116. But the term is used in modern jurisprudence as a convenient synonym of "tort;" that is, a wrongful and injurious violation of a *jus in rem* or right available against all the world. This appears in the two contrasted phrases, "actions *ex contractu*" and "actions *ex delicto*."

Quasi delict. An act whereby a person without malice, but by fault, negligence, or im-

prudence not legally excusable, causes injury to another. They were four in number, viz.: (1) *Qui judex litem suam fecit*, being the offense of partiality or excess in the *judex*, (juryman;) *e. g.*, in assessing the damages at a figure in excess of the extreme limit permitted by the formula. (2) *Dejectum effusumve aliquid*, being the tort committed by one's servant in emptying or throwing something out of an attic or upper story upon a person passing beneath. (3) *Damnum infectum*, being the offense of hanging dangerous articles over the heads of persons passing along the king's highway. (4) Torts committed by one's agents (*e. g.*, stable-boys, shop-managers, etc.) in the course of their employment. Brown.

DELICTUM. Lat. A delict, tort, wrong, injury, or offense. Actions *ex delicto* are such as are founded on a tort, as distinguished from actions on contract.

Culpability, blameworthiness, or legal delinquency. The word occurs in this sense in the maxim, "*In pari delicto melior est conditio defendentis*," (which see.)

A challenge of a juror *propter delictum* is for some crime or misdemeanor that affects his credit and renders him infamous. 3 Bl. Comm. 363; 2 Kent, Comm. 241.

DELIMIT. To mark or lay out the limits or boundary line of a territory or country.

DELIMITATION. The act of fixing, marking off, or describing the limits or boundary line of a territory or country.

Delinquens per iram provocatus puniri debet mitius. 3 Inst. 55. A delinquent provoked by anger ought to be punished more mildly.

DELINQUENT, *n.* In the civil law. He who has been guilty of some crime, offense, or failure of duty.

DELINQUENT, *adj.* As applied to a debt or claim, it means simply due and unpaid at the time appointed by law or fixed by contract; as, a delinquent tax. Chauncey v. Wass, 35 Minn. 1, 30 N. W. 826; Gallup v. Schmidt, 154 Ind. 196, 56 N. E. 450. As applied to a person, it commonly means that he is grossly negligent or in willful default in regard to his pecuniary obligations, or even that he is dishonest and unworthy of credit. Boyce v. Ewart, Rice (S. C.) 140; Ferguson v. Pittsburgh, 159 Pa. 435, 28 Atl. 118; Grocers' Ass'n v. Exton, 18 Ohio Cir. Ct. R. 321.

DELIRIUM. In medical jurisprudence. Delirium is that state of the mind in which it acts without being directed by the power of volition, which is wholly or partially suspended. This happens most perfectly in dreams. But what is commonly called "delirium" is always preceded or attended by a feverish and highly diseased state of the body. The patient in delirium is wholly unconscious of surrounding objects, or conceives them to be different from what they really are. His thoughts seem to drift about, wildering and tossing amidst distracted dreams. And his observations, when he makes any, as often happens, are wild and incoherent; or, from excess of pain, he sinks into a low muttering, or silent and death-like stupor. The law contemplates this species of mental derangement as an intellectual eclipse; as a darkness occasioned by a cloud of disease passing over the mind; and which must soon terminate in health or in death. Owing's Case, 1 Bland (Md.) 386, 17 Am. Dec. 311; Supreme Lodge v. Lapp, 74 S. W. 656, 25 Ky. Law Rep. 74; Clark v. Ellis, 9 Or. 132; Brogden v. Brown, 2 Add. 441.

—Delirium febrile. In medical jurisprudence. A form of mental aberration incident to fevers, and sometimes to the last stages of chronic diseases.

DELIRIUM TREMENS. A disorder of the nervous system, involving the brain and setting up an attack of temporary delusional insanity, sometimes attended with violent excitement or mania, caused by excessive and long continued indulgence in alcoholic liquors, or by the abrupt cessation of such use after a protracted debauch. See INSANITY.

DELITO. In Spanish law. Crime; a crime, offense, or delict. White, New. Recop. b. 2, tit. 19, c. 1, § 4.

DELIVERANCE. In practice. The verdict rendered by a jury.

—Second deliverance. In practice. A writ allowed a plaintiff in replevin, where the defendant has obtained judgment for return of the goods, by default on nonsuit, in order to have the same distress again delivered to him, on giving the same security as before. 3 Bl. Comm. 150; 3 Steph. Comm. 668.

DELIVERY. In conveyancing. The final and absolute transfer of a deed, properly executed, to the grantee, or to some person for his use, in such manner that it cannot be recalled by the grantor. Black v. Shreve, 13 N. J. Eq. 461; Kirk v. Turner, 16 N. C. 14.

In the law of sales. The tradition or transfer of the possession of personal property from one person to another.

In medical jurisprudence. The act of a woman giving birth to her offspring. Blake v. Junkins, 35 Me. 433.

Absolute and conditional delivery. An absolute delivery of a deed, as distinguished from conditional delivery or delivery in escrow, is one which is complete upon the actual transfer of the instrument from the possession of the grantor. Dyer v. Skadan, 128 Mich. 348, 87 N. W. 277, 92 Am. St. Rep. 461. A conditional delivery of a deed is one which passes the deed from the possession of the grantor, but is not to be completed by possession of the grantee, or a third person as his agent, until the happening of a specified event. Dyer v. Skadan, 128 Mich. 348, 87 N. W. 277, 92 Am. St. Rep. 461; Schmidt v. Deegan, 69 Wis. 300, 34 N. W. 83.

Actual and constructive. In the law of sales, actual delivery consists in the giving real

possession of the thing sold to the vendee or his servants or special agents who are identified with him in law and represent him. Constructive delivery is a general term, comprehending all those acts which, although not truly conferring a real possession of the thing sold on the vendee, have been held, by construction of law, equivalent to acts of real delivery. In this sense constructive delivery includes symbolic delivery and all those *traditiones fictæ* which have been admitted into the law as sufficient to vest the absolute property in the vendee and bar the rights of lien and stoppage *in transitu*, such as marking and setting apart the goods as belonging to the vendee, charging him with warehouse rent, etc. Bolin v. Huffnagle, 1 Rawle (Pa.) 19. A constructive delivery of personalty takes place when the goods are set apart and notice given to the person to whom they are to be delivered (The Titania, 131 Fed. 229, 65 C. C. A. 215), or when, without actual transfer of the goods or their symbol, the conduct of the parties is such as to be inconsistent with any other supposition than that there has been a change in the nature of the holding. Swafford v. Spratt, 93 Mo. App. 631, 67 S. W. 701; Holliday v. White, 33 Tex. 459.

Symbolical delivery. The constructive delivery of the subject-matter of a sale, where it is cumbersome or inaccessible, by the actual delivery of some article which is conventionally accepted as the symbol or representative of it, or which renders access to it possible, or which is the evidence of the purchaser's title to it; as the key of a warehouse, or a bill of lading of goods on shipboard. Winslow v. Fletcher, 53 Conn. 390, 4 Atl. 250; Miller v. Lacey, 7 Houst. (Del.) 8, 30 Atl. 640.

—Delivery bond. A bond given upon the seizure of goods (as under the revenue laws) conditioned for their restoration to the defendant, or the payment of their value, if so adjudged. **—Delivery order.** An order addressed, in England, by the owner of goods to a person holding them on his behalf, requesting him to deliver them to a person named in the order. Delivery orders are chiefly used in the case of goods held by dock companies, wharfingers, etc.

DELUSION. In medical jurisprudence. An insane delusion is an unreasoning and incorrigible belief in the existence of facts which are either impossible absolutely, or, at least, impossible under the circumstances of the individual. It is never the result of reasoning and reflection; it is not generated by them, and it cannot be dispelled by them; and hence it is not to be confounded with an *opinion*, however fantastic the latter may be. Guiteau's Case (D. C.) 10 Fed. 170. See INSANITY.

DEM. An abbreviation for "demise;" *e. g., Doe dem. Smith*, Doe, on the demise of Smith.

DEMAIN. See DEMESNE.

DEMAND, *v.* In practice. To claim as one's due; to require; to ask relief. To summon; to call in court. "Although solemnly *demanded*, comes not, but makes default."

DEMAND, *n.* A claim; the assertion of a legal right; a legal obligation asserted in the courts. "Demand" is a word of art of an extent greater in its signification than any other word except "claim." Co. Litt. 291; In re Denny, 2 Hill (N. Y.) 220.

Demand embraces all sorts of actions, rights, and titles, conditions before or after breach, executions, appeals, rents of all kinds, covenants, annuities, contracts, recognizances, statutes, commons, etc. A release of all demands to date bars an action for damages accruing after the date from a nuisance previously erected. Vedder v. Vedder, 1 Denio (N. Y.) 257.

Demand is more comprehensive in import than "debt" or "duty." Sands v. Codwise, 4 Johns. (N. Y.) 536, 4 Am. Dec. 305.

Demand, or claim, is properly used in reference to a cause of action. Saddlesvene v. Arms, 32 How. Prac. (N. Y.) 280.

An imperative request preferred by one person to another, under a claim of right, requiring the latter to do or yield something or to abstain from some act.

—Demand in reconvention. A demand which the defendant institutes in consequence of that which the plaintiff has brought against him. Used in Louisiana. Equivalent to a "counterclaim" elsewhere. McLeod v. Bertschey, 33 Wis. 177, 14 Am. Rep. 755. **—Legal demand.** A demand properly made, as to form, time, and place, by a person lawfully authorized. Foss v. Norris, 70 Me. 118. **—On demand.** A promissory note payable "on demand" is a present debt, and is payable without any actual demand, or, if a demand is necessary, the bringing of a suit is enough. Appeal of Andress, 99 Pa. 424. **—Personal demand.** A demand for payment of a bill or note, made upon the drawer, acceptor, or maker, in person. See 1 Daniel, Neg. Inst. § 589.

DEMANDA. In Spanish law. The petition of a plaintiff, setting forth his demand. Las Partidas, pt. 3, tit. 10, l. 3.

DEMANDANT. The plaintiff or party suing in a real action. Co. Litt. 127.

DEMANDRESS. A female demandant.

DEMEASE. In old English law. Death.

DEMEMBRATION. In Scotch law. Maliciously cutting off or otherwise separating one limb from another. 1 Hume, 323; Bell.

DEMENS. One whose mental faculties are enfeebled; one who has lost his mind; distinguishable from *amens*, one totally insane. 4 Coke, 128.

DEMENTED. Of unsound mind.

DEMENTENANT EN AVANT. L. Fr. From this time forward. Kelham.

DEMENTIA. See INSANITY.

DEMESNE. Domain; dominical; held in one's own right, and not of a superior; not allotted to tenants.

In the language of pleading, own; proper; original. Thus, *son assault demesne*, his own assault, his assault originally or in the first place.

—Ancient demesne, see ANCIENT. **—Demesne as of fee.** A man is said to be seised

in his demesne as of fee of a corporeal inheritance, because he has a property, *dominicum* or *demesne*, in the *thing* itself. But when he has no dominion in the thing itself, as in the case of an incorporeal hereditament, he is said to be *seised* as of fee, and not in his *demesne* as of fee. 2 Bl. Comm. 106; Littleton, § 10; Barnet v. Ihrie, 17 Serg. & R. (Pa.) 196.—**Demesne lands.** In English law. Those lands of a manor not granted out in tenancy, but reserved by the lord for his own use and occupation. Lands set apart and appropriated by the lord for his own private use, as for the supply of his table, and the maintenance of his family; the opposite of *tenemental* lands. Tenancy and demesne, however, were not in every sense the opposites of each other; lands held for years or at will being included among demesne lands, as well as those in the lord's actual possession. Spelman; 2 Bl. Comm. 90.—**Demesne lands of the crown.** That share of lands reserved to the crown at the original distribution of landed property, or which came to it afterwards by forfeiture or otherwise. 1 Bl. Comm. 286; 2 Steph. Comm. 550.—**Demesnial.** Pertaining to a *demesne*.

DEMI. French. Half; the half. Used chiefly in composition.

As to demi "Mark," "Official," "Vill," see those titles.

DEMI-SANGUE, or DEMY-SANGUE. Half-blood.

DEMIDIETAS. In old records. A half or moiety.

DEMIES. In some universities and colleges this term is synonymous with "scholars."

DEMINUTIO. In the civil law. A taking away; loss or deprivation. See CAPITIS DEMINUTIO.

DEMISE, *v.* In conveyancing. To convey or create an estate for years or life; to lease. The usual and operative word in leases: "Have granted, *demised*, and to farm let, and by these presents do grant, *demise*, and to farm let." 2 Bl. Comm. 317; 1 Steph. Comm. 476; Co. Litt. 45*a*.

DEMISE, *n.* In conveyancing. A conveyance of an estate to another for life, for years, or at will; most commonly for years; a lease. 1 Steph. Comm. 475. Voorhees v. Church, 5 How. Prac. (N. Y.) 71; Gilmore v. Hamilton, 83 Ind. 196.

Originally a posthumous grant; commonly a lease or conveyance for a term of years; sometimes applied to any conveyance, in fee, for life, or for years. Pub. St. Mass. 1882, p. 1289.

"Demise" is synonymous with "lease" or "let," except that demise *ex vi termini* implies a covenant for title, and also a covenant for quiet enjoyment, whereas lease or let implies neither of these covenants. Brown.

The word is also used as a synonym for "decease" or "death." In England it is especially employed to denote the death of the sovereign.

—**Demise and redemise.** In conveyancing. Mutual leases made from one party to another on each side, of the same land, or something out of it; as when A. grants a lease to B. at a nominal rent, (as of a pepper corn,) and B. redemises the same property to A. for a shorter time at a real, substantial rent. Jacob; Whishaw.—**Demise of the crown.** The natural dissolution of the king is generally so called; an expression which signifies merely a transfer of property. By demise of the crown we mean only that, in consequence of the disunion of the king's natural body from his body politic, the kingdom is transferred or demised to his successor, and so the royal dignity remains perpetual. 1 Bl. Comm. 249; Plowd. 234.—**Several demises.** In English practice. In the action of ejectment, it was formerly customary, in case there were any doubt as to the legal estate being in the plaintiff, to insert in the declaration several demises from as many different persons; but this was rendered unnecessary by the provisions of the common-law procedure acts.—**Single demise.** A declaration in ejectment might contain either one demise or several. When it contained only one, it was called a "declaration with a single demise."

DEMISI. Lat. I have demised or leased. *Demisi, concessi, et ad firmam tradidi;* have demised, granted, and to farm let. The usual operative words in ancient leases, as the corresponding English words are in the modern forms. 2 Bl. Comm. 317, 318. Koch v. Hustis, 113 Wis. 599, 87 N. W. 834; Kinney v. Watts, 14 Wend. (N. Y.) 40.

DEMISSIO. L. Lat. A demise or letting. Chiefly used in the phrase *ex demissione* (on the demise), which formed part of the title of the cause in the old actions of ejectment, where it signified that the nominal plaintiff (a fictitious person) held the estate "on the demise" of, that is, by a lease from, the real plaintiff.

DEMOBILIZATION. In military law. The dismissal of an army or body of troops from active service.

DEMOCRACY. That form of government in which the sovereign power resides in and is exercised by the whole body of free citizens; as distinguished from a monarchy, aristocracy, or oligarchy. According to the theory of a pure democracy, every citizen should participate directly in the business of governing, and the legislative assembly should comprise the whole people. But the ultimate lodgment of the sovereignty being the distinguishing feature, the introduction of the representative system does not remove a government from this type. However, a government of the latter kind is sometimes specifically described as a "representative democracy."

DEMOCRATIC. Of or pertaining to democracy, or to the party of the democrats.

DEMONETIZATION. The disuse of a particular metal for purposes of coinage. The withdrawal of the value of a metal as money.

DEMONSTRATIO. Lat. Description; addition; denomination. Occurring often in the phrase, "*Falsa demonstratio non nocet*," (a false description does not harm.)

DEMONSTRATION. Description; pointing out. That which is said or written to designate a thing or person.

In evidence. Absolutely convincing proof. That proof which excludes all possibility of error. Treadwell v. Whittier, 80 Cal. 574, 22 Pac. 266, 5 L. R. A. 498, 13 Am. St. Rep. 175; Boetgen v. Railroad Co. (Sup.) 50 N. Y. Supp. 332.

DEMONSTRATIVE LEGACY. See LEGACY.

DEMPSTER. In Scotch law. A doomsman. One who pronounced the sentence of court. 1 How. State Tr. 937.

DEMUR. To present a demurrer; to take an exception to the sufficiency in point of law of a pleading or state of facts alleged. See DEMURRER.

—Demurrable. A pleading, petition, or the like, is said to be demurrable when it does not state such facts as support the claim, prayer, or defense put forward. 5 Ch. Div. 979.**—Demurrant.** One who demurs; the party who, in pleading, interposes a demurrer.

DEMURRAGE. In maritime law. The sum which is fixed by the contract of carriage, or which is allowed, as remuneration to the owner of a ship for the detention of his vessel beyond the number of days allowed by the charter-party for loading and unloading or for sailing. Also the detention of the vessel by the freighter beyond such time. See 3 Kent, Comm. 203; 2 Steph. Comm. 185. The Apollon, 9 Wheat. 378, 6 L. Ed. 111; Fisher v. Abeel, 44 How. Prac. (N. Y.) 440; Wordin v. Bemis, 32 Conn. 273, 85 Am. Dec. 255; Cross v. Beard, 26 N. Y. 85; The J. E. Owen (D. C.) 54 Fed. 185; Falkenburg v. Clark, 11 R. I. 283.

Demurrage is only an extended freight or reward to the vessel, in compensation for the earnings she is improperly caused to lose. Every improper detention of a vessel may be considered a demurrage, and compensation under that name be obtained for it. Donaldson v. McDowell, Holmes, 290, Fed. Cas. No. 3,985.

Demurrage is the allowance or compensation due to the master or owners of a ship, by the freighter, for the time the vessel may have been detained beyond the time specified or implied in the contract of affreightment or the charter-party. Bell.

DEMURRER. In pleading. The formal mode of disputing the sufficiency in law of the pleading of the other side. In effect it is an allegation that, even if the facts as stated in the pleading to which objection is taken be true, yet their legal consequences are not such as to put the demurring party to the necessity of answering them or proceeding further with the cause. Reid v. Field, 83 Va. 26, 1 S. E. 395; Parish v. Sloan, 38 N. C. 609; Goodman v. Ford, 23 Miss. 595; Hostetter Co. v. Lyons Co. (C. C.) 99 Fed. 735.

An objection made by one party to his opponent's pleading, alleging that he ought not to answer it, for some defect in law in the pleading. It admits the facts, and refers the law arising thereon to the court. 7 How. 581.

It imports that the objecting party will not proceed, but will wait the judgment of the court whether he is bound so to do. Co. Litt. 71*b*; Steph. Pl. 61.

In Equity. An allegation of a defendant, which, admitting the matters of fact alleged by the bill to be true, shows that as they are therein set forth they are insufficient for the plaintiff to proceed upon or to oblige the defendant to answer; or that, for some reason apparent on the face of the bill, or on account of the omission of some matter which ought to be contained therein, or for want of some circumstances which ought to be attendant thereon, the defendant ought not to be compelled to answer to the whole bill, or to some certain part thereof. Mitf. Eq. Pl. 107.

Classification and varieties. A *general* demurrer is a demurrer framed in general terms, without showing specifically the nature of the objection, and which is usually resorted to where the objection is to matter of substance. Steph. Pl. 140–142; 1 Chit. Pl. 663. See Reid v. Field, 83 Va. 26, 1 S. E. 395; U. S. v. National Bank (C. C.) 73 Fed. 381; McGuire v. Van Pelt, 55 Ala. 344; Taylor v. Taylor, 87 Mich. 64, 49 N. W. 519. A *special* demurrer is one which excepts to the sufficiency of the pleadings on the opposite side, and shows specifically the nature of the objection, and the particular ground of the exception. 3 Bouv. Inst. no. 3022. Darcey v. Lake, 46 Miss. 117; Christmas v. Russell, 5 Wall. 303, 18 L. Ed. 475; Shaw v. Chase, 77 Mich. 436, 43 N. W. 883. A *speaking* demurrer is one which, in order to sustain itself, requires the aid of a fact not appearing on the face of the pleading objected to, or, in other words, which alleges or assumes the existence of a fact not already pleaded, and which constitutes the ground of objection. Wright v. Weber, 17 Pa. Super. Ct. 455; Walker v. Conant, 65 Mich. 194, 31 N. W. 786; Brooks v. Gibbons, 4 Paige (N. Y.) 375; Clarke v. Land Co., 113 Ga. 21, 38 S. E. 323. A *parol* demurrer (not properly a demurrer at all) was a staying of the pleadings; a suspension of the proceedings in an action during the nonage of an infant, especially in a real action. Now abolished. 3 Bl. Comm. 300. **—Demurrer book.** In practice. A record of the issue on a demurrer at law, containing a transcript of the pleadings, with proper entries; and intended for the use of the court and counsel on the argument. 3 Bl. Comm. 317; 3 Steph. Comm. 581.**—Demurrer ore tenus.** This name is sometimes given to a ruling on an objection to evidence, but is not properly a demurrer at all. Mandelert v. Land Co., 104 Wis. 423, 80 N. W. 726.**—Demurrer to evidence.** This proceeding (now practically obsolete) was analogous to a demurrer to a pleading. It was an objection or exception by one of the parties in an action at law, to the effect that the evidence which his adversary had produced was insufficient in point of law (whether true or not) to make out his case or sustain the issue. Upon joinder in demurrer, the jury was discharged, and the case was ar

gued to the court *in banc*, who gave judgment upon the facts as shown in evidence. See 3 Bl. Comm. 372; Bass v. Rublee, 76 Vt. 395, 57 Atl. 966; Patteson v. Ford, 2 Grat. (Va.) 18; Suydam v. Williamson, 20 How. 436, 15 L. Ed. 978; Railroad Co. v. McArthur, 43 Miss. 180.—**Demurrer to interrogatories.** Where a witness objects to a question propounded (particularly on the taking of a deposition) and states his reason for objecting or refusing to answer, it is called a "demurrer to the interrogatory," though the term cannot here be understood as used in its technical sense.

DEMY SANKE, DEMY SANGUE. Half-blood. A corruption of *demi-sang*.

DEN. A valley. Blount. A hollow place among woods. Cowell.

DEN AND STROND. In old English law. Liberty for ships or vessels to run aground, or come ashore. Cowell.

DENARIATE. In old English law. As much land as is worth one penny *per annum*.

DENARII. An ancient general term for any sort of *pecunia numerata*, or ready money. The French use the word "*denier*" in the same sense,—*payer de ses propres deniers*.

—**Denarii de caritate.** In English law. Customary oblations made to a cathedral church at Pentecost.—**Denarii S. Petri.** (Commonly called "Peter's Pence.") An annual payment on St. Peter's feast of a penny from every family to the pope, during the time that the Roman Catholic religion was established in England.

DENARIUS. The chief silver coin among the Romans, worth 8d.; it was the seventh part of a Roman ounce. Also an English penny. The denarius was first coined five years before the first Punic war, B. C. 269. In later times a copper coin was called "*denarius*." Smith, Dict. Antiq.

—**Denarius Dei.** (Lat. "God's penny.") Earnest money; money given as a token of the completion of a bargain. It differs from *arrhæ* in this: that *arrhæ* is a part of the consideration, while the *denarius Dei* is no part of it. The latter was given away in charity; whence the name.—**Denarius tertius comitatûs.** In old English law. A third part or penny of the county paid to its earl, the other two parts being reserved to the crown.

DENIAL. A traverse in the pleading of one party of an allegation of fact set up by the other; a defense. See Flack v. O'Brien, 19 Misc. Rep. 399, 43 N. Y. Supp. 854; Mott v. Baxter, 29 Colo. 418, 68 Pac. 220.

General and specific. In code pleading, a general denial is one which puts in issue all the material averments of the complaint or petition, and permits the defendant to prove any and all facts tending to negative those averments or any of them. Mauldin v. Ball, 5 Mont. 96, 1 Pac. 409; Goode v. Elwood Lodge, 160 Ind. 251, 66 N. E. 742. A specific denial is a separate denial applicable to one particular allegation of the complaint. Gas Co. v. San Francisco, 9 Cal. 470; Sands v. Maclay, 2 Mont. 38; Seward v. Miller, 6 How. Prac. (N. Y.) 312.

DENIER. L. Fr. In old English law. Denial; refusal. *Denier* is when the rent (being demanded upon the land) is not paid. Finch, Law, b. 3, c. 5.

DENIER A DIEU. In French law. Earnest money; a sum of money given in token of the completion of a bargain. The phrase is a translation of the Latin *Denarius Dei*, (*q. v.*)

DENIZATION. The act of making one a denizen; the conferring of the privileges of citizenship upon an alien born. Cro. Jac. 540. See DENIZEN.

DENIZE. To make a man a denizen or citizen.

DENIZEN. In English law. A person who, being an alien born, has obtained, *ex donatione regis*, letters patent to make him an English subject,—a high and incommunicable branch of the royal prerogative. A denizen is in a kind of middle state between an alien and a natural-born subject, and partakes of the *status* of both of these. 1 Bl. Comm. 374; 7 Coke, 6.

The term is used to signify a person who, being an alien by birth, has obtained letters patent making him an English subject. The king may denize, but not naturalize, a man; the latter requiring the consent of parliament, as under the naturalization act, 1870, (33 & 34 Vict. c. 14.) A denizen holds a position midway between an alien and a natural-born or naturalized subject, being able to take lands by purchase or devise, (which an alien could not until 1870 do,) but not able to take lands by descent, (which a natural-born or naturalized subject may do.) Brown.

The word is also used in this sense in South Carolina. See McClenaghan v. McClenaghan, 1 Strob. Eq. (S. C.) 319, 47 Am. Dec. 532.

A denizen, in the primary, but obsolete, sense of the word, is a natural-born subject of a country. Co. Litt. 129*a*.

DENMAN'S (LORD) ACT. An English statute, for the amendment of the law of evidence, (6 & 7 Vict. c. 85,) which provides that no person offered as a witness shall thereafter be excluded by reason of incapacity, from crime or interest, from giving evidence.

DENMAN'S (MR.) ACT. An English statute, for the amendment of procedure in criminal trials, (28 & 29 Vict. c. 18,) allowing counsel to sum up the evidence in criminal as in civil trials, provided the prisoner be defended by counsel.

DENOMBREMENT. In French feudal law. A minute or act drawn up, on the creation of a fief, containing a description of

the fief, and all the rights and incidents belonging to it. Guyot, Inst. Feud. c. 3.

Denominatio fieri debet a dignioribus. Denomination should be made from the more worthy.

DENOUNCE. An act or thing is "denounced" when the law declares it a crime and prescribes a punishment for it. State v. De Hart, 109 La. 570, 33 South. 605. The word is also used (not technically but popularly) as the equivalent of "accuse" or "inform against."

DENOUNCEMENT. In Spanish and Mexican law. A denouncement was a judicial proceeding, and, though real property might be acquired by an alien in fraud of the law,—that is, without observing its requirements,—he nevertheless retained his right and title to it, but was liable to be deprived of it by the proper proceeding of denouncement, which in its substantive characteristics was equivalent to the inquest of office found, at common law. De Merle v. Mathews, 26 Cal. 477.

The "denouncement of a new work" is a proceeding to obtain an order of court, in the nature of an injunction, against the construction of a new building or other work, which, if completed, would injuriously affect the plaintiff's property. Von Schmidt v. Huntington, 1 Cal. 55.

In Mexican mining law. Denouncement is an application to the authorities for a grant of the right to work a mine, either on the ground of new discovery, or on the ground of forfeiture of the rights of a former owner, through abandonment or contravention of the mining law. Cent. Dict. See Castillero v. U. S., 2 Black, 109, 17 L. Ed. 360.

DENSHIRING OF LAND. (Otherwise called "burn-beating.") A method of improving land by casting parings of earth, turf, and stubble into heaps, which when dried are burned into ashes for a compost. Cowell.

DENUMERATION. The act of present payment.

DENUNCIA DE OBRA NUEVA. In Spanish law. The denouncement of a new work; being a proceeding to restrain the erection of some new work, as, for instance, a building which may, if completed, injuriously affect the property of the complainant; it is of a character similar to the interdicts of possession. Escriche; Von Schmidt v. Huntington, 1 Cal. 63.

DENUNCIATION. In the civil law. The act by which an individual informs a public officer, whose duty it is to prosecute offenders, that a crime has been committed.

In Scotch practice. The act, by which a person is declared to be a rebel, who has disobeyed the charge given on letters of horning. Bell.

DENUNTIATIO. In old English law. A public notice or summons. Bract. 202*b*.

DEODAND. (L. Lat. *Deo dandum*, a thing to be given to God.) In English law. Any personal chattel which was the immediate occasion of the death of any reasonable creature, and which was forfeited to the crown to be applied to *pious* uses, and distributed in alms by the high almoner. 1 Hale, P. C. 419; Fleta, lib. 1, c. 25; 1 Bl. Comm. 300; 2 Steph. Comm. 365.

DEOR HEDGE. In old English law. The hedge inclosing a deer park.

DEPART. In pleading. To forsake or abandon the ground assumed in a former pleading, and assume a new one. See DEPARTURE.

In maritime law. To leave a port; to be out of a port. To *depart* imports more than to *sail*, or set sail. A warranty in a policy that a vessel shall *depart* on or before a particular day is a warranty not only that she shall sail, but that she shall be *out of the port* on or before that day. 3 Maule & S. 461; 3 Kent, Comm. 307, note. "To depart" does not mean merely to break ground, but fairly to set forward upon the voyage. Moir v. Assur. Co., 6 Taunt. 241; Young v. The Orpheus, 119 Mass. 185; The Helen Brown (D. C.) 28 Fed. 111.

DEPARTMENT. 1. One of the territorial divisions of a country. The term is chiefly used in this sense in France, where the division of the country into departments is somewhat analogous, both territorially and for governmental purposes, to the division of an American state into counties.

2. One of the divisions of the executive branch of government. Used in this sense in the United States, where each department is charged with a specific class of duties, and comprises an organized staff of officials; *e. g.*, the department of state, department of war, etc.

DEPARTURE. In maritime law. A deviation from the course prescribed in the policy of insurance.

In pleading. The statement of matter in a replication, rejoinder, or subsequent pleading, as a cause of action or defense, which is not pursuant to the previous pleading of the same party, and which does not support and fortify it. 2 Williams, Saund. 84*a*, note 1; 2 Wils. 98; Co. Litt. 304*a*; Railway Co.

v. Wyler, 158 U. S. 285, 15 Sup. Ct. 877, 39 L. Ed. 983.

A departure, in pleading, is when a party quits or departs from the case or defense which he has first made, and has recourse to another. White v. Joy, 13 N. Y. 83; Allen v. Watson, 16 Johns. (N. Y.) 205; Kimberlin v. Carter, 49 Ind. 111.

A departure takes place when, in any pleading, the party deserts the ground that he took in his last anteeedent pleading, and resorts to another. Steph. Pl. 410. Or, in other words, when the second pleading contains matter not pursuant to the former, and which does not support and fortify it. Co. Litt. 304*a*. Hence a departure obviously can never take place till the replication. Steph. Pl. 410. Each subsequent pleading must pursue or support the former one; *i. e.*, the replication must support the declaration, and the rejoinder the plea, without departing out of it. 3 Bl. Comm. 310.

DEPARTURE IN DESPITE OF COURT. In old English practice. The tenant in a real action, having once appeared, was considered as constructively present in court until again called upon. Hence if, upon being demanded, he failed to appear, he was said to have "departed in despite [*i. e.*, contempt] of the court."

DEPASTURE. In old English law. To pasture. "If a man *depastures* unprofitable cattle in his ground." Bunb. 1, case 1.

DEPECULATION. A robbing of the prince or commonwealth; an embezzling of the public treasure.

DEPENDENCY. A territory distinct from the country in which the supreme sovereign power resides, but belonging rightfully to it, and subject to the laws and regulations which the sovereign may think proper to prescribe. U. S. v. The Nancy, 3 Wash. C. C. 286, Fed. Cas. No. 15,854.

It differs from a *colony*, because it is not settled by the citizens of the sovereign or mother state; and from *possession*, because it is held by other title than that of mere conquest.

DEPENDENT. Deriving existence, support, or direction from another; conditioned, in respect to force or obligation, upon an extraneous act or fact.

—Dependent contract. One which depends or is conditional upon another. One which it is not the duty of the contractor to perform until some obligation contained in the same agreement has been performed by the other party. Ham. Parties, 17, 29, 30, 109.—**Dependent covenant.** See COVENANT.

DEPENDING. In practice. Pending or undetermined; in progress. See 5 Coke, 47.

DEPESAS. In Spanish-American law. Spaces of ground in towns reserved for commons or public pasturage. 12 Pet. 443, note, 9 L. Ed. 1150.

DEPONE. In Scotch practice. To depose; to make oath in writing.

DEPONENT. In practice. One who *deposes* (that is, testifies or makes oath in *writing*) to the truth of certain facts; one who gives under oath testimony which is reduced to writing; one who makes oath to a written statement. The party making an affidavit is generally so called.

The word "depone," from which is derived "deponent," has relation to the mode in which the oath is administered, (by the witness placing his hand upon the book of the holy evangelists,) and not as to whether the testimony is delivered orally or reduced to writing. "Deponent" is included in the term "witness," but "witness" is more general. Bliss v. Shuman, 47 Me. 248.

DEPONER. In old Scotch practice. A deponent. 3 How. State Tr. 695.

DEPOPULATIO AGRORUM. In old English law. The crime of destroying, ravaging, or laying waste a country. 2 Hale, P. C. 333; 4 Bl. Comm. 373.

DEPOPULATION. In old English law. A species of waste by which the population of the kingdom was diminished. Depopulation of houses was a public offense. 12 Coke, 30, 31.

DEPORTATIO. Lat. In the civil law. A kind of banishment, where a condemned person was sent or carried away to some foreign country, usually to an island, (*in insulam deportatur*,) and thus taken out of the number of Roman citizens.

DEPORTATION. Banishment to a foreign country, attended with confiscation of property and deprivation of civil rights. A punishment derived from the *deportatio* (*q. v.*) of the Roman law, and still in use in France.

In Roman law. A perpetual banishment, depriving the banished of his rights as a citizen; it differed from relegation (*q. v.*) and exile, (*q. v.*) 1 Brown, Civil & Adm. Law, 125, note; Inst. 1, 12, 1, and 2; Dig. 48, 22, 14, 1.

In American law. The removal or sending back of an alien to the country from which he came, as a measure of national police and without any implication of punishment or penalty.

"Transportation," "extradition," and "deportation," although each has the effect of removing a person from a country, are different things and for different purposes. Transportation is by way of punishment of one convicted of an offense against the laws of the country; extradition is the surrender to another country of one accused of an offense against its laws, there to be tried and punished if found guilty. Deportation is the removing of an alien out of the country simply because his presence is deemed inconsistent with the public welfare, and without any punishment being imposed or contemplated, either under the laws of the country out of which he is sent, or under those of the country to which he is taken. Fong Yue Ting v. U. S., 149 U. S. 698, 13 Sup. Ct. 1016, 37 L. Ed. 905.

DEPOSE. In practice. In ancient usage, to testify as a witness; to give evidence under oath.

In modern usage. To make a deposition; to give evidence in the shape of a deposition; to make statements which are written down and sworn to; to give testimony which is reduced to writing by a duly-qualified officer and sworn to by the deponent.

To deprive an individual of a public employment or office against his will. Wolffius, Inst. § 1063. The term is usually applied to the deprivation of all authority of a sovereign.

DEPOSIT. A naked bailment of goods to be kept for the depositor without reward, and to be returned when he shall require it. Jones, Bailm. 36, 117; National Bank v. Washington County Bank, 5 Hun (N. Y.) 607; Payne v. Gardiner, 29 N. Y. 167; Montgomery v. Evans, 8 Ga. 180; Rozelle v. Rhodes, 116 Pa. 129, 9 Atl. 160, 2 Am. St. Rep. 591; In re Patterson, 18 Hun (N. Y.) 222.

A bailment of goods to be kept by the bailee without reward, and delivered according to the object or purpose of the original trust. Story, Bailm. § 41.

A *deposit*, in general, is an act by which a person receives the property of another, binding himself to preserve it and return it in kind. Civ. Code La. art. 2926.

When chattels are delivered by one person to another to keep for the use of the bailor, it is called a "deposit." Code Ga. 1882, § 2103.

The word is also sometimes used to designate money lodged with a person as an earnest or security for the performance of some contract, to be forfeited if the depositor fails in his undertaking.

Classification. According to the classification of the civil law, deposits are of the following several sorts: (1) *Necessary*, made upon some sudden emergency, and from some pressing necessity; as, for instance, in case of a fire, a shipwreck, or other overwhelming calamity, when property is confided to any person whom the depositor may meet without proper opportunity for reflection or choice, and thence it is called "*miserabile depositum.*" (2) *Voluntary*, which arises from the mere consent and agreement of the parties. Civ. Code La. art. 2964; Dig. 16, 3, 2; Story, Bailm. § 44. The common law has made no such division. There is another class of deposits called "involuntary," which may be without the assent or even knowledge of the depositor; as lumber, etc., left upon another's land by the subsidence of a flood. The civilians again divide deposits into "simple deposits," made by one or more persons having a common interest, and "sequestrations," made by one or more persons, each of whom has a different and adverse interest in controversy touching it; and these last are of two sorts, —"conventional," or such as are made by the mere agreement of the parties without any judicial act; and "judicial," or such as are made by order of a court in the course of some proceeding. Civ. Code La. art. 2979.

There is another class of deposits called "irregular," as when a person, having a sum of money which he does not think safe in his own hands, confides it to another, who is to return to him, not the same money, but a like sum when he shall demand it. Poth. du Depot. 82, 83; Story, Bailm. § 84. A *regular* deposit is a strict or special deposit; a deposit which must be returned *in specie; i. e.*, the thing deposited must be returned. A *quasi* deposit is a kind of implied or involuntary deposit, which takes place where a party comes lawfully to the possession of another person's property, by finding it. Story, Bailm. § 85. Particularly with reference to money, deposits are also classed as *general* or *special*. A general deposit is where the money deposited is not itself to be returned, but an equivalent in money (that is, a like sum) is to be returned. It is equivalent to a loan, and the money deposited becomes the property of the depositary. Insurance Co. v. Landers, 43 Ala. 138. A special deposit is a deposit in which the identical thing deposited is to be returned to the depositor. The particular object of this kind of deposit is safe-keeping. Koetting v. State, 88 Wis. 502, 60 N. W. 822. In banking law, this kind of deposit is contrasted with a "general" deposit, as above; but in the civil law it is the antithesis of an "irregular" deposit. A *gratuitous* or *naked* deposit is a bailment of goods to be kept for the depositor without hire or reward on either side, or one for which the depositary receives no consideration beyond the mere possession of the thing deposited. Civ. Code Ga. 1895, § 2921; Civ. Code Cal. § 1844. Properly and originally, all deposits are of this description; for according to the Roman law, a bailment of goods for which hire or a price is to be paid, is not called "depositum" but "locatio." If the owner of the property pays for its custody or care, it is a "locatio custodiæ;" if, on the other hand, the bailee pays for the use of it, it is "locatio rei." (See LOCATIO.) But in the modern law of those states which have been influenced by the Roman jurisprudence, a gratuitous or naked deposit is distinguished from a "deposit for hire," in which the bailee is to be paid for his services in keeping the article. Civ. Code Cal. 1903, § 1851; Civ. Code Ga. 1895, § 2921.

In banking law. The act of placing or lodging money in the custody of a bank or banker, for safety or convenience, to be withdrawn at the will of the depositor or under rules and regulations agreed on; also the money so deposited.

General and special deposits. Deposits of money in a bank are either general or special.

A general deposit (the ordinary form) is one which is to be repaid on demand, in whole or in part as called for, in any current money, not the same pieces of money deposited. In this case, the title to the money deposited passes to the bank, which becomes debtor to the depositor for the amount. A special deposit is one in which the depositor is entitled to the return of the identical thing deposited (gold, bullion, securities, etc.) and the title to the property remains in him, the deposit being usually made only for purposes of safe-keeping. Shipman v. State Bank, 59 Hun, 621, 13 N. Y. Supp. 475; State v. Clark, 4 Ind. 315; Brahm v. Adkins, 77 Ill. 263; Marine Bank v. Fulton Bank, 2 Wall. 252, 17 L. Ed. 785. There is also a *specific* deposit, which exists where money or property is given to a bank for some specific and particular purpose, as a note for collection, money to pay a particular note, or property for some other specific purpose. Officer v. Officer, 120 Iowa, 389, 94 N. W. 947, 98 Am. St. Rep. 365. **—Deposit account.** An account of sums lodged with a bank not to be drawn upon by checks, and usually not to be withdrawn except after a fixed notice.**—Deposit company.** A company whose business is the safe-keeping of securities or other valuables deposited in boxes or safes in its building which are leased to the depositors.**—Deposit of title-deeds.** A method of pledging real property as security for a loan, by placing the title-deeds of the land in the keeping of the lender as pledgee.

DEPOSITARY. The party receiving a deposit; one with whom anything is lodged in trust, as "depository" is the place where it is put. The obligation on the part of the depositary is that he keep the thing with reasonable care, and, upon request, restore it to the depositor, or otherwise deliver it, according to the original trust.

DEPOSITATION. In Scotch law. Deposit or *depositum*, the species of bailment so called. Bell.

DEPOSITION. The testimony of a witness taken upon interrogatories, not in open court, but in pursuance of a commission to take testimony issued by a court, or under a general law on the subject, and reduced to writing and duly authenticated, and intended to be used upon the trial of an action in court. Lutcher v. U. S., 72 Fed. 972, 19 C. C. A. 259; Indianapolis Water Co. v. American Strawboard Co. (C. C.) 65 Fed. 535.

A deposition is a written declaration under oath, made upon notice to the adverse party for the purpose of enabling him to attend and cross-examine; or upon written interrogatories. Code Civ. Proc. Cal. § 2004; Code Civ. Proc. Dak. § 465.

A deposition is evidence given by a witness under interrogatories, oral or written, and usually written down by an official person. In its generic sense, it embraces all written evidence verified by oath, and includes affidavits; but, in legal language, a distinction is maintained between depositions and affidavits. Stimpson v. Brooks, 3 Blatchf. 456, Fed. Cas. No. 13,454.

The term sometimes is used in a special sense to denote a statement made orally by a person on oath before an examiner, commissioner, or officer of the court, (but not in open court,) and taken down in writing by the examiner or under his direction. Sweet.

In ecclesiastical law. The act of depriving a clergyman, by a competent tribunal, of his clerical orders, to punish him for some offense and to prevent his acting in future in his clerical character. Ayl. Par. 206.

DEPOSITO. In Spanish law. Deposit; the species of bailment so called. Schm. Civil Law, 193.

DEPOSITOR. One who makes a deposit.

DEPOSITORY. The place where a deposit (*q. v.*) is placed and kept.

United States depositories. Banks selected and designated to receive deposits of the public funds of the United States are so called.

DEPOSITUM. Lat. In the civil law. One of the forms of the contract of bailment, being a naked bailment of goods to be kept for the use of the bailor without reward. Foster v. Essex Bank, 17 Mass. 498, 9 Am. Dec. 168; Coggs v. Bernard, 2 Ld. Raym. 912. See DEPOSIT.

One of the four real contracts specified by Justinian, and having the following characteristics: (1) The depositary or depositee is not liable for negligence, however extreme, but only for fraud, *dolus;* (2) the property remains in the depositor, the depositary having only the possession. *Precarium* and *sequestre* were two varieties of the *depositum*.

DÉPÔT. In French law. The *depositum* of the Roman and the deposit of the English law. It is of two kinds, being either (1) *dépôt* simply so called, and which may be either voluntary or necessary, and (2) *séquestre*, which is a deposit made either under an agreement of the parties, and to abide the event of pending litigation regarding it, or by virtue of the direction of the court or a judge, pending litigation regarding it. Brown; Civ. Code La. 2897.

In American law. (1) A railroad freight or passenger station; a place on the line of a railroad where passengers may enter and leave the trains and where freight is deposited for delivery; but more properly, only a place where the carrier is accustomed to receive merchandise, deposit it, and keep it ready for transportation or delivery. Maghee v. Transportation Co., 45 N. Y. 520, 6 Am. Rep. 124; Hill v. Railroad Co. (Tex. Civ. App.) 75 S. W. 876; Karnes v. Drake, 103 Ky. 134, 44 S. W. 444; Railroad Co. v. Smith, 71 Ark. 189, 71 S. W. 947; State v. New Haven & N. Co., 37 Conn. 163. (2) A place where military stores or supplies are kept or troops assembled. U. S. v. Caldwell, 19 Wall. 268, 22 L. Ed. 114.

DEPRAVE. To defame; vilify; exhibit contempt for. In England it is a criminal offense to "deprave" the Lord's supper or the Book of Common Prayer. Steph. Crim. Dig. 99.

DEPREDATION. In French law. Pillage, waste, or spoliation of goods, particularly of the estate of a decedent.

DEPRIVATION. In English ecclesiastical law. The taking away from a clergyman his benefice or other spiritual promotion or dignity, either by sentence declaratory in the proper court for fit and sufficient causes or in pursuance of divers penal statutes which declare the benefice void for some nonfeasance or neglect, or some malfeasance or crime. 3 Steph. Comm. 87, 88; Burn, Ecc. Law, tit. "Deprivation."

DEPRIVE. In a constitutional provision that no person shall be "*deprived* of his property" without due process of law, this word is equivalent to the term "take," and denotes a taking altogether, a seizure, a direct appropriation, dispossession of the owner. Sharpless v. Philadelphia, 21 Pa. 167, 59 Am. Dec. 759; Wynehamer v. People, 13 N. Y. 467; Munn v. People, 69 Ill. 88; Grant v. Courter, 24 Barb. (N. Y.) 238.

DEPUTIZE. To appoint a deputy; to appoint or commission one to act as deputy to an officer. In a general sense, the term is descriptive of empowering one person to act for another in any capacity or relation, but in law it is almost always restricted to the substitution of a person appointed to act for an officer of the law.

DEPUTY. A substitute; a person duly authorized by an officer to exercise some or all of the functions pertaining to the office, in the place and stead of the latter. Carter v. Hornback, 139 Mo. 238, 40 S. W. 893; Herring v. Lee, 22 W. Va. 667; Erwin v. U. S. (D. C.) 37 Fed. 476, 2 L. R. A. 229; Willingham v. State, 21 Fla. 776; Ellison v. Stevenson, 6 T. B. Mon. (Ky.) 271; People v. Barker, 14 Misc. Rep. 360, 35 N. Y. Supp. 727.

A deputy differs from an assignee, in that an assignee has an interest in the office itself, and does all things in his own name, for whom his grantor shall not answer, except in special cases; but a deputy has not any interest in the office, and is only the shadow of the officer in whose name he acts. And there is a distinction in doing an act by an agent and by a deputy. An agent can only bind his principal when he does the act in the name of the principal. But a deputy may do the act and sign his own name, and it binds his principal; for a deputy has, in law, the whole power of his principal. Wharton.

—Deputy consul. See CONSUL.—**Deputy lieutenant.** The deputy of a lord lieutenant of a county in England.—**Deputy sheriff.** One appointed to act in the place and stead of the sheriff in the official business of the latter's office. A *general* deputy (sometimes called "undersheriff") is one who, by virtue of his appointment, has authority to execute all the ordinary duties of the office of sheriff, and who executes process without any special authority from his principal. A *special* deputy, who is an officer *pro hac vice*, is one appointed for a special occasion or a special service, as, to serve a particular writ or to assist in keeping the peace when a riot or tumult is expected or in progress. He acts under a specific and not a general appointment and authority. Allen v. Smith, 12 N. J. Law, 162; Wilson v. Russell, 4 Dak. 376, 31 N. W. 645.—**Deputy steward.** A steward of a manor may depute or authorize another to hold a court; and the acts done in a court so holden will be as legal as if the court had been holden by the chief steward in person. So an under steward or deputy may authorize another as subdeputy, *pro hac vice*, to hold a court for him; such limited authority not being inconsistent with the rule *delegatus non potest delegare*. Wharton.

DERAIGN. Seems to mean, literally, to confound and disorder, or to turn out of course, or displace; as deraignment or departure out of religion, in St. 31 Hen. VIII. c. 6. In the common law, the word is used generally in the sense of to prove; viz., to deraign a right, deraign the warranty, etc. Glanv. lib. 2, c. 6; Fitzh. Nat. Brev. 146. Perhaps this word "deraign," and the word "deraignment," derived from it, may be used in the sense of to prove and a proving, by disproving of what is asserted in opposition to truth and fact. Jacob.

DERECHO. In Spanish law. Law or right. *Derecho comun*, common law. The civil law is so called. A right. *Derechos*, rights. Also, specifically, an impost laid upon goods or provisions, or upon persons or lands, by way of tax or contribution. Noe v. Card, 14 Cal. 576, 608.

DERELICT. Forsaken; abandoned; deserted; cast away.

Personal property abandoned or thrown away by the owner in such manner as to indicate that he intends to make no further claim thereto. 2 Bl. Comm. 9; 2 Reeve, Eng. Law, 9.

Land left uncovered by the receding of water from its former bed. 2 Rolle, Abr. 170; 2 Bl. Comm. 262; 1 Crabb, Real Prop. 109.

In maritime law. A boat or vessel found entirely deserted or abandoned on the sea, without hope or intention of recovery or return by the master or crew, whether resulting from wreck, accident, necessity, or voluntary abandonment. U. S. v. Stone (C. C.) 8 Fed. 243; Cromwell v. The Island City, 1 Black, 121, 17 L. Ed. 70; The Hyderabad (D. C.) 11 Fed. 754; The Fairfield (D. C.) 30 Fed. 700; The Aquila, 1 C. Rob. 41.

—Quasi derelict. When a vessel, without being abandoned, is no longer under the control or direction of those on board, (as where part of the crew are dead, and the remainder are physically and mentally incapable of providing for their own safety,) she is said to be *quasi derelict*. Sturtevant v. Nicholaus, 1 Newb. Adm. 449, Fed. Cas. No. 13,578.

DERELICTION. The gaining of land from the water, in consequence of the sea shrinking back below the usual water mark; the opposite of *alluvion*, (*q. v.*) Dyer, 326*b*; 2 Bl. Comm. 262; 1 Steph. Comm. 419; Linthicum v. Coan, 64 Md. 439, 2 Atl. 826, 54 Am. Rep. 775; Warren v. Chambers, 25 Ark. 120, 91 Am. Dec. 538, 4 Am. Rep. 23; Sapp v.

Frazier, 51 La. Ann. 1718, 26 South. 378, 72 Am. St. Rep. 493.

In the civil law. The voluntary abandonment of goods by the owner, without the hope or the purpose of returning to the possession. Jones v. Nunn, 12 Ga. 473; Livermore v. White, 74 Me. 456, 43 Am. Rep. 600.

Derivativa potestas non potest esse major primitiva. Noy, Max.; Wing. Max. 66. The derivative power cannot be greater than the primitive.

DERIVATIVE. Coming from another; taken from something preceding; secondary; that which has not its origin in itself, but owes its existence to something foregoing.

—Derivative conveyances. Conveyances which presuppose some other conveyance precedent, and only serve to enlarge, confirm, alter, restrain, restore, or transfer the interest granted by such original conveyance. They are releases, confirmations, surrenders, assignments, and defeasances. 2 Bl. Comm. 324.

DEROGATION. The partial repeal or abolishing of a law, as by a subsequent act which limits its scope or impairs its utility and force. Distinguished from *abrogation*, which means the entire repeal and annulment of a law. Dig. 50, 17, 102.

DEROGATORY CLAUSE. In a will, this is a sentence or secret character inserted by the testator, of which he reserves the knowledge to himself, with a condition that no will he may make thereafter should be valid, unless this clause be inserted word for word. This is done as a precaution to guard against later wills being extorted by violence, or otherwise improperly obtained. By the law of England such a clause would be void, as tending to make the will irrevocable. Wharton.

Derogatur legi, cum pars detrahitur; abrogatur legi, cum prorsus tollitur. To derogate from a law is to take away part of it; to abrogate a law is to abolish it entirely. Dig. 50, 17, 102.

DESAFUERO. In Spanish law. An irregular action committed with violence against law, custom, or reason.

DESAMORTIZACION. In Mexican law. The *desamortizacion* of property is to take it out of mortmain, (dead hands;) that is, to unloose it from the grasp, as it were, of ecclesiastical or civil corporations. The term has no equivalent in English. Hall, Mex. Law, § 749.

DESCENDANT. One who is descended from another; a person who proceeds from the body of another, such as a child, grandchild, etc., to the remotest degree. The term is the opposite of "ascendant," (*q. v.*)

Descendants is a good term of description in a will, and includes all who proceed from the body of the person named; as grandchildren and great-grandchildren. Amb. 397; 2 Hil. Real. Prop. 242.

DESCENDER. Descent; in the descent. See FORMEDON.

DESCENDIBLE. Capable of passing by descent, or of being inherited or transmitted by devise, (spoken of estates, titles, offices, and other property.) Collins v. Smith, 105 Ga. 525, 31 S. E. 449.

DESCENT. Hereditary succession. Succession to the ownership of an estate by inheritance, or by any act of law, as distinguished from "purchase." Title by descent is the title by which one person, upon the death of another, acquires the real estate of the latter as his heir at law. 2 Bl. Comm. 201; Com. Dig. "Descent," A; Adams v. Akerlund, 168 Ill. 632, 48 N. E. 454; Starr v. Hamilton, 22 Fed. Cas. 1,107; In re Donahue's Estate, 36 Cal. 332; Shippen v. Izard, 1 Serg. & R. (Pa.) 224; Brower v. Hunt, 18 Ohio St. 338; Allen v. Bland, 134 Ind. 78, 33 N. E. 774.

Classification. Descents are of two sorts, *lineal* and *collateral*. Lineal descent is descent in a direct or right line, as from father or grandfather to son or grandson. Collateral descent is descent in a collateral or oblique line, that is, up to the common ancestor and then down from him, as from brother to brother, or between cousins. Levy v. McCartee, 6 Pet. 112, 8 L. Ed. 334. They are also distinguished into *mediate* and *immediate* descents. But these terms are used in different senses. A descent may be said to be a mediate or immediate descent of the estate or right; or it may be said to be mediate or immediate, in regard to the mediateness or immediateness of the pedigree or consanguinity. Thus, a descent from the grandfather, who dies in possession, to the grandchild, the father being then dead, or from the uncle to the nephew, the brother being dead, is, in the former sense, in law, immediate descent, although the one is collateral and the other lineal; for the heir is in the *per*, and not in the *per* and *cui*. On the other hand, with reference to the line of pedigree or consanguinity, a descent is often said to be immediate, when the ancestor from whom the party derives his blood is immediate, and without any intervening link or degrees; and mediate, when the kindred is derived from him *mediante altero*, another ancestor intervening between them. Thus a descent in lineals from father to son is in this sense immediate; but a descent from grandfather to grandson, the father being dead, or from uncle to nephew, the brother being dead, is deemed mediate; the father and the brother being, in these latter cases, the *medium deferens*, as it is called, of the descent or consanguinity. Levy v. McCartee, 6 Pet. 112, 8 L. Ed. 334; Furenes v. Mickelson, 86 Iowa, 508, 53 N. W. 416; Garner v. Wood, 71 Md. 37, 17 Atl. 1031.

Descent was denoted, in the Roman law, by the term "*successio*," which is also used by Bracton, and from which has been derived the *succession* of the Scotch and French jurisprudence.

—Descent cast. The devolving of realty upon the heir on the death of his ancestor intestate.

DESCRIPTIO PERSONÆ. Lat. Description of the person. By this is meant a word or phrase used merely for the purpose of identifying or pointing out the person intended, and not as an intimation that the language in connection with which it occurs is to apply to him only in the official or technical character which might appear to be indicated by the word.

DESCRIPTION. 1. A delineation or account of a particular subject by the recital of its characteristic accidents and qualities.

2. A written enumeration of items composing an estate, or of its condition, or of titles or documents; like an inventory, but with more particularity, and without involving the idea of an appraisement.

3. An exact written account of an article, mechanical device, or process which is the subject of an application for a patent.

4. A method of pointing out a particular person by referring to his relationship to some other person or his character as an officer, trustee, executor, etc.

5. That part of a conveyance, advertisement of sale, etc., which identifies the land intended to be affected.

DESERT. To leave or quit with an intention to cause a permanent separation; to forsake utterly; to abandon.

DESERTION. The act by which a person abandons and forsakes, without justification, or unauthorized, a station or condition of public or social life, renouncing its responsibilities and evading its duties.

In matrimonial and divorce law. An actual abandonment or breaking off of matrimonial cohabitation, by either of the parties, and a renouncing or refusal of the duties and obligations of the relation, with an intent to abandon or forsake entirely and not to return to or resume marital relations, occurring without legal justification either in the consent or the wrongful conduct of the other party. State v. Baker, 112 La. 801, 36 South. 703; Bailey v. Bailey, 21 Grat. (Va.) 47; Ingersoll v. Ingersoll, 49 Pa. 250, 88 Am. Dec. 500; Droege v. Droege, 55 Mo. App. 482; Barnett v. Barnett, 27 Ind. App. 466, 61 N. E. 737; Williams v. Williams, 130 N. Y. 193, 29 N. E. 98, 14 L. R. A. 220, 27 Am. St. Rep. 517; Magrath v. Magrath, 103 Mass. 579, 4 Am. Rep. 579; Cass v. Cass, 31 N. J. Eq. 626; Ogilvie v. Ogilvie, 37 Or. 171, 61 Pac. 627; Tirrell v. Tirrell, 72 Conn. 567, 45 Atl. 153, 47 L. R. A. 750; State v. Weber, 48 Mo. App. 504.

In military law. An offense which consists in the abandonment of his post and duties by a person commissioned or enlisted in the army or navy, without leave and with the intention not to return. Hollingsworth v. Shaw, 19 Ohio St. 432, 2 Am. Rep. 411; In re Sutherland (D. C.) 53 Fed. 551. There is a difference between desertion and simple "absence without leave;" in order to constitute the former, there must be an intention not to return to the service. Hanson v. South Scituate, 115 Mass. 336.

In maritime law. The act by which a seaman deserts and abandons a ship or vessel, in which he had engaged to perform a voyage, before the expiration of his time, and without leave. By desertion, in the maritime law, is meant, not a mere unauthorized absence from the ship without leave, but an unauthorized absence from the ship, with an intention not to return to her service, or, as it is often expressed, *animo non revertendi;* that is, with an intention to desert. Coffin v. Jenkins, 3 Story, 108, Fed. Cas. No. 2,948; The Union (D. C.) 20 Fed. 539; The Mary C. Conery (D. C.) 9 Fed. 223; The George, 10 Fed. Cas. 204.

DESHONORA. In Spanish law. Dishonor; injury; slander. Las Partidas, pt. 7, tit. 9, l. 1, 6.

DESIGN. In the law of evidence. Purpose or intention, combined with plan, or implying a plan in the mind. Burrill, Circ. Ev. 331; State v. Grant, 86 Iowa, 216, 53 N. W. 120; Ernest v. State, 20 Fla. 388; Hogan v. State, 36 Wis. 226.

As a term of art, the giving of a visible form to the conceptions of the mind, or invention. Binns v. Woodruff, 4 Wash. C. C. 48, Fed. Cas. No. 1,424.

In patent law. The drawing or depiction of an original plan or conception for a novel pattern, model, shape, or configuration, to be used in the manufacturing or textile arts or the fine arts, and chiefly of a decorative or ornamental character. "Design patents" are contrasted with "utility patents," but equally involve the exercise of the inventive or originative faculty. Gorham Co. v. White, 14 Wall. 524, 20 L. Ed. 731; Manufacturing Co. v. Odell (D. C.) 18 Fed. 321; Binns v. Woodruff, 3 Fed. Cas. 424; Henderson v. Tompkins (C. C.) 60 Fed. 758.

"Design, in the view of the patent law, is that characteristic of a physical substance which, by means of lines, images, configuration, and the like, taken as a whole, makes an impression, through the eye, upon the mind of the observer. The essence of a design resides, not in the elements individually, nor in their method of arrangement, but in the tout ensemble—in that indefinable whole that awakens some sensation in the observer's mind. Impressions thus imparted may be complex or simple; in one a mingled impression of gracefulness and strength, in another the impression of strength alone. But whatever the impression, there is attached in the mind of the observer, to the object observed, a sense of uniqueness and character." Pelouze Scale Co. v. American Cutlery Co., 102 Fed. 918, 43 C. C. A. 52.

Designatio justiciariorum est a rege; jurisdictio vero ordinaria a lege. 4 Inst. 74. The appointment of justices is by the

king, but their ordinary jurisdiction by the law.

DESIGNATIO PERSONÆ. The description of a person or a party to a deed or contract.

Designatio unius est exclusio alterius, et expressum facit cessare tacitum. Co. Litt. 210. The specifying of one is the exclusion of another, and that which is expressed makes that which is understood to cease.

DESIGNATION. A description or descriptive expression by which a person or thing is denoted in a will without using the name.

DESIRE. This term, used in a will in relation to the management and distribution of property, has been interpreted by the courts with different shades of meaning, varying from the mere expression of a preference to a positive command. See McMurry v. Stanley, 69 Tex. 227, 6 S. W. 412; Stewart v. Stewart, 61 N. J. Eq. 25, 47 Atl. 633; In re Marti's Estate, 132 Cal. 666, 61 Pac. 964; Weber v. Bryant, 161 Mass. 400, 37 N. E. 203; Appeal of City of Philadelphia, 112 Pa. 470, 4 Atl. 4; Meehan v. Brennan, 16 App. Div. 395, 45 N. Y. Supp. 57; Brasher v. Marsh, 15 Ohio St. 111; Major v. Herndon, 78 Ky. 123.

DESLINDE. A term used in the Spanish law, denoting the act by which the boundaries of an estate or portion of a country are determined.

DESMEMORIADOS. In Spanish law. Persons deprived of memory. White, New Recop. b. 1, tit. 2, c. 1, § 4.

DESPACHEURS. In maritime law. Persons appointed to settle cases of average.

DESPATCHES. Official communications of official persons on the affairs of government.

DESPERATE. Hopeless; worthless. This term is used in inventories and schedules of assets, particularly by executors, etc., to describe debts or claims which are considered impossible or hopeless of collection. See Schultz v. Pulver, 11 Wend. (N. Y.) 365.

—**Desperate debt.** A hopeless debt; an irrecoverable obligation.

DESPITE. Contempt. *Despitz*, contempts. Kelham.

DESPITUS. Contempt. See DESPITE. A contemptible person. Fleta, lib. 4, c. 5.

DESPOJAR. A possessory action of the Mexican law. It is brought to recover possession of immovable property, of which one has been despoiled (*despojado*) by another.

DESPOIL. This word involves, in its signification, violence or clandestine means by which one is deprived of that which he possesses. Its Spanish equivalent, *despojar*, is a term used in Mexican law. Sunol v. Hepburn, 1 Cal. 268.

DESPONSATION. The act of betrothing persons to each other.

DESPOSORIO. In Spanish law. Espousals; mutual promises of future marriage. White, New Recop. b. 1, tit. 6, c. 1, § 1.

DESPOT. This word, in its original and most simple acceptation, signifies *master and supreme lord;* it is synonymous with monarch; but taken in bad part, as it is usually employed, it signifies a tyrant. In some states, despot is the title given to the sovereign, as king is given in others. Enc. Lond.

—**Despotism.** That abuse of government where the sovereign power is not divided, but united in the hands of a single man, whatever may be his official title. It is not, properly, a form of government. Toullier, Dr. Civ. Fr. tit. prél. n. 32. "Despotism" is not exactly synonymous with "autocracy," for the former involves the idea of tyranny or abuse of power, which is not necessarily implied by the latter. Every despotism is autocratic; but an autocracy is not necessarily despotic.—**Despotize.** To act as a despot. Webster.

DESRENABLE. L. Fr. Unreasonable. Britt. c. 121.

DESSAISISSEMENT. In French law. When a person is declared bankrupt, he is immediately deprived of the enjoyment and administration of all his property; this deprivation, which extends to all his rights, is called "*dessaisissement.*" Arg. Fr. Merc. Law, 556.

DESTINATION. The purpose to which it is intended an article or a fund shall be applied. A testator gives a destination to a legacy when he prescribes the specific use to which it shall be put.

The port at which a ship is to end her voyage is called her "port of destination." Pardessus, no. 600.

DESTITUTE. A "destitute person" is one who has no money or other property available for his maintenance or support. Norridgewock v. Solon, 49 Me. 385; Woods v. Perkins, 43 La. Ann. 347, 9 South. 48.

DESTROY. As used in policies of insurance, leases, and in maritime law, this term is often applied to an act which renders the subject useless for its intended purpose, though it does not literally demolish or annihilate it. In re McCabe, 11 Pa. Super. Ct. 564; Solomon v. Kingston, 24 Hun (N. Y.) 564; Insurance Co. v. Feibelman, 118 Ala. 308, 23 South. 759; Spalding v. Munford, 37 Mo. App. 281. To "destroy" a vessel means to unfit it for further service, beyond the

hope of recovery by ordinary means. U. S. v. Johns, 26 Fed. Cas. 618.

In relation to wills, contracts, and other documents, the term "destroy" does not import the annihilation of the instrument or its resolution into other forms of matter, but a destruction of its legal efficacy, which may be by cancellation, obliterating, tearing into fragments, etc. Appeal of Evans, 58 Pa. 244; Allen v. State Bank, 21 N. C. 12; In re Gangwere's Estate, 14 Pa. 417, 53 Am. Dec. 554; Johnson v. Brailsford, 2 Nott & McC. (S. C.) 272, 10 Am. Dec. 601.

DESTRUCTION. A term used in old English law, generally in connection with *waste*, and having, according to some, the same meaning. 1 Reeve, Eng. Law, 385; 3 Bl. Comm. 223. Britton, however, makes a distinction between waste of woods and destruction of houses. Britt. c. 66.

DESUBITO. To weary a person with continual barkings, and then to bite; spoken of dogs. Leg Alured. 26, cited in Cunningham's Dict.

DESUETUDE. Disuse; cessation or discontinuance of use. Applied to obsolete statutes. James v. Comm., 12 Serg. & R. (Pa.) 227.

DETACHIARE. To seize or take into custody another's goods or person.

DETAINER. The act (or the juridical fact) of withholding from a person lawfully entitled the possession of land or goods; or the restraint of a man's personal liberty against his will.

The wrongful keeping of a person's goods is called an "unlawful detainer" although the original taking may have been lawful. As, if one distrains another's cattle, *damage feasant*, and before they are impounded the owner tenders sufficient amends; now, though the original taking was lawful, the subsequent detention of them after tender of amends is not lawful, and the owner has an action of replevin to recover them, in which he will recover damages for the *detention*, and not for the *caption*, because the original taking was lawful. 3 Steph. Comm. 548.

In practice. A writ or instrument, issued or made by a competent officer, authorizing the keeper of a prison to keep in his custody a person therein named. A detainer may be lodged against one within the walls of a prison, on what account soever he is there. Com. Dig. "Process," E, (3 B.) This writ was superseded by 1 & 2 Vict. c. 110, §§ 1, 2.

Forcible detainer. See that title.

DETAINMENT. This term is used in policies of marine insurance, in the clause relating to "arrests, restraints, and detainments." The last two words are construed as equivalents, each meaning the effect of superior force operating directly on the vessel. Schmidt v. Insurance Co., 1 Johns. (N. Y.) 262, 3 Am. Dec. 319; Bradlie v. Insurance Co., 12 Pet. 402, 9 L. Ed. 1123; Simpson v. Insurance Co., Dud. Law (S. C.) 242.

DETENTIO. In the civil law. That condition of fact under which one can exercise his power over a corporeal thing at his pleasure, to the exclusion of all others. It forms the substance of possession in all its varieties. Mackeld. Rom. Law, § 238.

DETENTION. The act of keeping back or withholding, either accidentally or by design, a person or thing. See DETAINER.

—Detention in a reformatory, as a punishment or measure of prevention, is where a juvenile offender is sentenced to be sent to a reformatory school, to be there detained for a certain period of time. 1 Russ. Crimes, 82.

DETERMINABLE. That which may cease or determine upon the happening of a certain contingency. 2 Bl. Comm. 121.

As to determinable "Fee" and "Freehold," see those titles.

DETERMINATE. That which is ascertained; what is particularly designated.

DETERMINATION. The decision of a court of justice. Shirley v. Birch, 16 Or. 1, 18 Pac. 344; Henavie v. Railroad Co., 154 N. Y. 278, 48 N. E. 525. The ending or expiration of an estate or interest in property, or of a right, power, or authority.

DETERMINE. To come to an end. To bring to an end. 2 Bl. Comm. 121; 1 Washb. Real Prop. 380.

DETESTATIO. Lat. In the civil law. A summoning made, or notice given, in the presence of witnesses, (*denuntiatio facta cum testatione.*) Dig. 50, 16, 40.

DETINET. Lat. He detains. In old English law. A species of action of debt, which lay for the specific recovery of goods, under a contract to deliver them. 1 Reeves, Eng. Law, 159.

In pleading. An action of *debt* is said to be in the *detinet* when it is alleged merely that the defendant witholds or unjustly detains from the plaintiff the thing or amount demanded.

An action of *replevin* is said to be in the *detinet* when the defendant retains possession of the property until after judgment in the action. Bull. N. P. 52; Chit. Pl. 145.

DETINUE. In practice. A form of action which lies for the recovery, *in specie*, of personal chattels from one who acquired possession of them lawfully, but retains it without right, together with damages for the detention. 3 Bl. Comm. 152. Sinnott v. Feiock, 165 N. Y. 444, 59 N. E. 265, 53 L. R. A. 565, 80 Am. St. Rep. 736; Penny v. Davis,

8 B. Mon. (Ky.) 314; Guille v. Fook, 13 Or. 577, 11 Pac. 277.

The action of *detinue* is defined in the old books as a remedy founded upon the delivery of goods by the owner to another to keep, who afterwards refuses to redeliver them to the bailor; and it is said that, to authorize the maintenance of the action, it is necessary that the defendant should have come lawfully into the possession of the chattel, either by delivery to him or by finding it. In fact, it was once understood to be the law that *detinue* does not lie where the property had been tortiously taken. But it is, upon principle, very unimportant in what manner the defendant's possession commenced, since the gist of the action is the wrongful detainer, and not the original taking. It is only incumbent upon the plaintiff to prove property in himself, and possession in the defendant. At present, the action of *detinue* is proper in every case where the owner prefers recovering the specific property to damages for its conversion, and no regard is had to the manner in which the defendant acquired the possession. Peirce v. Hill, 9 Port. (Ala.) 151, 33 Am. Dec. 306.

DETINUE OF GOODS IN FRANK MARRIAGE. A writ formerly available to a wife after a divorce, for the recovery of the goods given with her in marriage. Mozley & Whitley.

DETINUIT. In pleading. An action of replevin is said to be in the *detinuit* when the plaintiff acquires possession of the property claimed by means of the writ. The right to retain is, of course, subject in such case to the judgment of the court upon his title to the property claimed. Bull. N. P. 521.

DETRACTARI. To be torn in pieces by horses. Fleta, l. 1, c. 37.

DETRACTION. The removal of property from one state to another upon a transfer of the title to it by will or inheritance. Frederickson v. Louisiana, 23 How. 445, 16 L. Ed. 577.

DETRIMENT. Any loss or harm suffered in person or property; *e. g.*, the consideration for a contract may consist not only in a payment or other thing of value given, but also in loss or "detriment" suffered by the party. Civ. Code Mont. 1895, § 4271; Civ. Code S. D. 1903, § 2287; Rev. St. Okl. 1903, § 2724.

DETUNICARI. To discover or lay open to the world. Matt. Westm. 1240.

DEUNX, pl. DEUNCES. Lat. In the Roman law. A division of the *as*, containing eleven *unciæ* or duodecimal parts; the proportion of eleven-twelfths. 2 Bl. Comm. 462, note. See As.

Deus solus hæredem facere potest, non homo. God alone, and not man, can make an heir. Co. Litt. 7*b*; Broom, Max. 516.

DEUTEROGAMY. The act, or condition, of one who marries a wife after the death of a former wife.

DEVADIATUS, or DIVADIATUS. An offender without sureties or pledges. Cowell.

DEVASTATION. Wasteful use of the property of a deceased person, as for extravagant funeral or other unnecessary expenses. 2 Bl. Comm. 508.

DEVASTAVERUNT. They have wasted. A term applied in old English law to waste by executors and administrators, and to the process issued against them therefor. Cowell. See DEVASTAVIT.

DEVASTAVIT. Lat. He has wasted. The act of an executor or administrator in wasting the goods of the deceased; mismanagement of the estate by which a loss occurs; a breach of trust or misappropriation of assets held in a fiduciary character; any violation or neglect of duty by an executor or administrator, involving loss to the decedent's estate, which makes him personally responsible to heirs, creditors, or legatees. Clift v. White, 12 N. Y. 531; Beardsley v. Marsteller, 120 Ind. 319, 22 N. E. 315; Steel v. Holladay, 20 Or. 70, 25 Pac. 69, 10 L. R. A. 670; Dawes v. Boylston, 9 Mass. 353, 6 Am. Dec. 72; McGlaughlin v. McGlaughlin, 43 W. Va. 226, 27 S. E. 378.

Also, if plaintiff, in an action against an executor or administrator, has obtained judgment, the usual execution runs *de bonis testatoris;* but, if the sheriff returns to such a writ *nulla bona testatoris nec propria*, the plaintiff may, forthwith, upon this return, sue out an execution against the property or person of the executor or administrator, in as full a manner as in an action against him, sued in his own right. Such a return is called a "*devastavit.*" Brown.

DEVENERUNT. A writ, now obsolete, directed to the king's escheators when any of the king's tenants *in capite* dies, and when his son and heir dies within age and in the king's custody, commanding the escheators, that by the oaths of twelve good and lawful men they shall inquire what lands or tenements by the death of the tenant have come to the king. Dyer, 360; Termes de la Ley.

DEVEST. To deprive; to take away; to withdraw. Usually spoken of an authority, power, property, or title; as the estate is devested.

Devest is opposite to invest. As to invest signifies to deliver the possession of anything to another, so to devest signifies to take it away. Jacob.

It is sometimes written "divest" but "devest" has the support of the best authority. Burrill.

DEVIATION. In insurance. Varying from the risks insured against, as described in the policy, without necessity or just cause, after the risk has begun. 1 Phil. Ins. § 977, *et seq.;* 1 Arn. Ins. 415, *et seq.* Hostetter v. Park, 137 U. S. 30, 11 Sup. Ct. 1, 34 L. Ed. 568; Wilkins v. Insurance Co., 30 Ohio St. 317, 27 Am. Rep. 455; Bell v. Insurance Co., 5 Rob. (La.) 445, 39 Am. Dec. 542; Audenreid v. Insurance Co., 60 N. Y. 484, 19 Am. Rep. 204; Crosby v. Fitch, 12 Conn. 420, 31 Am. Dec. 745; The Iroquois, 118 Fed. 1003, 55 C. C. A. 497.

Any unnecessary or unexcused departure from the usual or general mode of carrying on the voyage insured. 15 Amer. Law Rev. 108.

Deviation is a departure from the course of the voyage insured, or an unreasonable delay in pursuing the voyage, or the commencement of an entirely different voyage. Civil Code Cal. § 2694.

A deviation is a voluntary departure from or delay in the usual and regular course of a voyage insured, without necessity or reasonable cause. This discharges the insurer, from the time of the deviation. Coffin v. Newburyport Marine Ins. Co., 9 Mass. 436.

In contracts. A change made in the progress of a work from the original terms or design or method agreed upon.

DEVICE. An invention or contrivance; any result of design; as in the phrase "gambling device," which means a machine or contrivance of any kind for the playing of an unlawful game of chance or hazard. State v. Blackstone, 115 Mo. 424, 22 S. W. 370. Also, a plan or project; a scheme to trick or deceive; a stratagem or artifice; as in the laws relating to fraud and cheating. State v. Smith, 82 Minn. 342, 85 N. W. 12. Also an emblem, pictorial representation, or distinguishing mark or sign of any kind; as in the laws prohibiting the marking of ballots used in public elections with "any device." Baxter v. Ellis, 111 N. C. 124, 15 S. E. 938, 17 L. R. A. 382; Owens v. State, 64 Tex. 509; Steele v. Calhoun, 61 Miss. 556.

In a statute against gaming devices, this term is to be understood as meaning something formed by design, a contrivance, an invention. It is to be distinguished from "substitute," which means something put in the place of another thing, or used instead of something else. Henderson v. State, 59 Ala. 91.

In patent law. A plan or contrivance, or an application, adjustment, shaping, or combination of materials or members, for the purpose of accomplishing a particular result or serving a particular use, chiefly by mechanical means and usually simple in character or not highly complex, but involving the exercise of the inventive faculty.

DEVIL ON THE NECK. An instrument of torture, formerly used to extort confessions, etc. It was made of several irons, which were fastened to the neck and legs, and wrenched together so as to break the back. Cowell.

DEVISABLE. Capable of being devised. 1 Pow. Dev. 165; 2 Bl. Comm. 373.

DEVISAVIT VEL NON. In practice. The name of an issue sent out of a court of chancery, or one which exercises chancery jurisdiction, to a court of law, to try the validity of a paper asserted and denied to be a will, to ascertain whether or not the testator did devise, or whether or not that paper was his will. 7 Brown, Parl. Cas. 437; 2 Atk. 424; Asay v. Hoover, 5 Pa. 21, 45 Am. Dec. 713.

DEVISE. A testamentary disposition of land or realty; a gift of real property by the last will and testament of the donor. Scholle v. Scholle, 113 N. Y. 261, 21 N. E. 84; Ferebee v. Procter, 19 N. C. 440; Pratt v. McGhee, 17 S. C. 428; In re Fetrow's Estate, 58 Pa. 427; Jenkins v. Tobin, 31 Ark. 306; In re Dailey's Estate, 43 Misc. Rep. 552, 89 N. Y. Supp. 541.

Synonyms. The term "devise" is properly restricted to real property, and is not applicable to testamentary dispositions of personal property, which are properly called "bequests" or "legacies." But this distinction will not be allowed in law to defeat the purpose of a testator; and all of these terms may be construed interchangeably or applied indifferently to either real or personal property, if the context shows that such was the intention of the testator. Ladd v. Harvey, 21 N. H. 528; Borgner v. Brown, 133 Ind. 391, 33 N. E. 92; Oothout v. Rogers, 59 Hun, 97, 13 N. Y. Supp. 120; McCorkle v. Sherrill, 41 N. C. 176.

Classification. Devises are *contingent* or *vested;* that is, after the death of the testator. Contingent, when the vesting of any estate in the devisee is made to depend upon some future event, in which case, if the event never occur, or until it does occur, no estate vests under the devise. But, when the future event is referred to merely to determine the time at which the devisee shall come into the use of the estate, this does not hinder the vesting of the estate at the death of the testator. 1 Jarm. Wills, c. 26. Devises are also classed as *general* or *specific.* A general devise is one which passes lands of the testator without a particular enumeration or description of them; as, a devise of "all my lands" or "all my other lands." In a more restricted sense, a general devise is one which grants a parcel of land without the addition of any words to show how great an estate is meant to be given, or without words indicating either a grant in perpetuity or a grant for a limited term; in this case it is construed as granting a life estate. Hitch v. Patten, 8 Houst. (Del.) 334, 16 Atl. 558, 2 L. R. A. 724. Specific devises are devises of lands particularly specified in the terms of the devise, as opposed to general and residuary devises of land, in which the local or other particular descriptions are not expressed. For example, "I devise my Hendon Hall estate" is a specific devise; but "I devise all my lands," or, "all other my lands," is a *general* devise or a *residuary* devise. But all devises are (in effect) specific, even residuary devises being so. L. R. 3 Ch. 420; Id. 136. A *conditional* devise is one which depends upon the occurrence of some uncertain event, by which it is either to take effect or be defeated. Civ. Code Cal. § 1345. An *executory* devise of lands is such a disposition

of them by will that thereby no estate vests at the death of the devisor, but only on some future contingency. It differs from a remainder in three very material points: (1) That it needs not any particular estate to support it; (2) that by it a fee-simple or other less estate may be limited after a fee-simple; (3) that by this means a remainder may be limited of a chattel interest, after a particular estate for life created in the same. 2 Bl. Comm. 172. In a stricter sense, a limitation by will of a future contingent interest in lands, contrary to the rules of the common law. 4 Kent, Comm. 263; 1 Steph. Comm. 564. A limitation by will of a future estate or interest in land, which cannot, consistently with the rules of law, take effect as a remainder. 2 Pow. Dev. (by Jarman,) 237. See Poor v. Considine, 6 Wall. 474, 18 L. Ed. 869; Bristol v. Atwater, 50 Conn. 406; Mangum v. Piester, 16 S. C. 325; Civ. Code Ga. 1895, § 3339; Thompson v. Hoop, 6 Ohio St. 487; Burleigh v. Clough, 52 N. H. 273, 13 Am. Rep. 23; In re Brown's Estate, 38 Pa. 294; Glover v. Condell, 163 Ill. 566, 45 N. E. 173, 35 L. R. A. 360. *Lapsed* devise. A devise which fails, or takes no effect, in consequence of the death of the devisee before the testator; the subject-matter of it being considered as not disposed of by the will. 1 Steph. Comm. 559; 4 Kent, Comm. 541. Murphy v. McKeon, 53 N. J. Eq. 406, 32 Atl. 374. *Residuary* devise. A devise of all the residue of the testator's real property, that is, all that remains over and above the other devises.

DEVISEE. The person to whom lands or other real property are devised or given by will. 1 Pow. Dev. c. 7.

—Residuary devisee. The person named in a will, who is to take all the real property remaining over and above the other devises.

DEVISOR. A giver of lands or real estate by will; the maker of a will of lands; a testator.

DEVOIR. Fr. Duty. It is used in the statute of 2 Rich. II. c. 3, in the sense of duties or customs.

DEVOLUTION. The transfer or transition from one person to another of a right, liability, title, estate, or office. Francisco v. Aguirre, 94 Cal. 180, 29 Pac. 495; Owen v. Insurance Co., 56 Hun, 455, 10 N. Y. Supp. 75.

In ecclesiastical law. The forfeiture of a right or power (as the right of presentation to a living) in consequence of its non-user by the person holding it, or of some other act or omission on his part, and its resulting transfer to the person next entitled.

In Scotch law. The transference of the right of purchase, from the highest bidder at an auction sale, to the next highest, when the former fails to pay his bid or furnish security for its payment within the time appointed. Also, the reference of a matter in controversy to a third person (called "oversman") by two arbitrators to whom it has been submitted and who are unable to agree.

DEVOLUTIVE APPEAL. In the law of Louisiana, one which does not suspend the execution of the judgment appealed from. State v. Allen, 51 La. Ann. 1842, 26 South. 434.

DEVOLVE. To pass or be transferred from one person to another; to fall on, or accrue to, one person as the successor of another; as, a title, right, office, liability. The term is said to be peculiarly appropriate to the passing of an estate from a person dying to a person living. Parr v. Parr, 1 Mylne & K. 648; Babcock v. Maxwell, 29 Mont. 31, 74 Pac. 64. See DEVOLUTION.

DEVY. L. Fr. Dies; deceases. Bendloe, 5.

DEXTANS. Lat. In Roman law. A division of the *as*, consisting of ten *unciæ;* ten-twelfths, or five-sixths. 2 Bl. Comm. 462, note *m*.

DEXTRARIUS. One at the right hand of another.

DEXTRAS DARE. To shake hands in token of friendship; or to give up oneself to the power of another person.

DI COLONNA. In maritime law. The contract which takes place between the owner of a ship, the captain, and the mariners, who agree that the voyage shall be for the benefit of all. The term is used in the Italian law. Emerig. Mar. Loans, § 5.

DI. ET FI. L. Lat. In old writs. An abbreviation of *dilecto et fideli,* (to his beloved and faithful.)

DIACONATE. The office of a deacon.

DIACONUS. A deacon.

DIAGNOSIS. A medical term, meaning the discovery of the source of a patient's illness or the determination of the nature of his disease from a study of its symptoms. Said to be little more than a guess enlightened by experience. Swan v. Railroad Co., 79 Hun, 612, 29 N. Y. Supp. 337.

DIALECTICS. That branch of logic which teaches the rules and modes of reasoning.

DIALLAGE. A rhetorical figure in which arguments are placed in various points of view, and then turned to one point. Enc. Lond.

DIALOGUS DE SCACCARIO. Dialogue of or about the exchequer. An ancient treatise on the court of exchequer, attributed by some to Gervase of Tilbury, by others to Richard Fitz Nigel, bishop of London in the reign of Richard I. It is quoted by Lord Coke under the name of Ockham. Crabb, Eng. Law, 71.

DIANATIC. A logical reasoning in a progressive manner, proceeding from one subject to another. Enc. Lond.

DIARIUM. Daily food, or as much as will suffice for the day. Du Cange.

DIATIM. In old records. Daily; every day; from day to day. Spelman.

DICA. In old English law. A tally for accounts, by number of cuts, (*taillees,*) marks, or notches. Cowell. See TALLIA, TALLY.

DICAST. An officer in ancient Greece answering in some respects to our juryman, but combining, on trials had before them, the functions of both judge and jury. The dicasts sat together in numbers varying, according to the importance of the case, from one to five hundred.

DICE. Small cubes of bone or ivory, marked with figures or devices on their several sides, used in playing certain games of chance. See Wetmore v. State, 55 Ala. 198.

DICTATE. To order or instruct what is to be said or written. To pronounce, word by word, what is meant to be written by another. Hamilton v. Hamilton, 6 Mart. (N. S.) (La.) 143.

DICTATION. In Louisiana, this term is used in a technical sense, and means to pronounce orally what is destined to be written at the same time by another. It is used in reference to nuncupative wills. Prendergast v. Prendergast, 16 La. Ann. 220, 79 Am. Dec. 575.

DICTATOR. A magistrate invested with unlimited power, and created in times of national distress and peril. Among the Romans, he continued in office for six months only, and had unlimited power and authority over both the property and lives of the citizens.

DICTORES. Arbitrators.

DICTUM. In general. A statement, remark, or observation. *Gratis dictum;* a gratuitous or voluntary representation; one which a party is not bound to make. 2 Kent, Comm. 486. *Simplex dictum;* a mere assertion; an assertion without proof. Bract. fol. 320.

The word is generally used as an abbreviated form of *obiter dictum,* "a remark by the way;" that is, an observation or remark made by a judge in pronouncing an opinion upon a cause, concerning some rule, principle, or application of law, or the solution of a question suggested by the case at bar, but not necessarily involved in the case or essential to its determination; any statement of the law enunciated by the court merely by way of illustration, argument, analogy, or suggestion. See Railroad Co. v. Schutte, 103 U. S. 118, 143, 26 L. Ed. 327; In re Woodruff (D. C.) 96 Fed. 317; Hart v. Stribling, 25 Fla. 433, 6 South. 455; Buchner v. Railroad Co., 60 Wis. 264, 19 N. W. 56; Rush v. French, 1 Ariz. 99, 25 Pac. 816; State v. Clarke, 3 Nev. 572.

Dicta are opinions of a judge which do not embody the resolution or determination of the court, and made without argument, or full consideration of the point, are not the professed deliberate determinations of the judge himself. *Obiter dicta* are such opinions uttered by the way, not upon the point or question pending, as if turning aside for the time from the main topic of the case to collateral subjects. Rohrbach v. Insurance Co., 62 N. Y. 47, 58, 20 Am. Rep. 451.

In old English law. *Dictum* meant an arbitrament, or the award of arbitrators.

In French law. The report of a judgment made by one of the judges who has given it. Poth. Proc. Civil, pt. 1, c. 5, art. 2.

—Dictum de Kenilworth. The edict or declaration of Kenilworth. An edict or award between King Henry III. and all the barons and others who had been in arms against him; and so called because it was made at Kenilworth Castle in Warwickshire, in the fifty-first year of his reign, containing a composition of five years' rent for the lands and estates of those who had forfeited them in that rebellion. Blount; 2 Reeve, Eng. Law, 62.

DIE WITHOUT ISSUE. See DYING WITHOUT ISSUE.

DIEI DICTIO. Lat. In Roman law. This name was given to a notice promulgated by a magistrate of his intention to present an impeachment against a citizen before the people, specifying the day appointed, the name of the accused, and the crime charged.

DIEM CLAUSIT EXTREMUM. (Lat. He has closed his last day,—died.) A writ which formerly lay on the death of a tenant *in capite,* to ascertain the lands of which he died seised, and reclaim them into the king's hands. It was directed to the king's escheators. Fitzh. Nat. Brev. 251, K; 2 Reeve, Eng. Law, 327.

A writ awarded out of the exchequer after the death of a crown debtor, the sheriff being commanded by it to inquire by a jury when and where the crown debtor died, and what chattels, debts, and lands he had at the time of his decease, and to take and seize them into the crown's hands. 4 Steph. Comm. 47, 48.

DIES. Lat. A day; days. Days for appearance in court. Provisions or maintenance for a day. The king's rents were anciently reserved by so many days' provisions. Spelman; Cowell; Blount.

—Dies a quo. (The day from which.) In the civil law. The day from which a transaction begins; the commencement of it; the conclusion being the *dies ad quem.* Mackeld. Rom. Law, § 185.**—Dies amoris.** A day of favor. The name given to the appearance day of the term on the fourth day, or *quarto die post.* It was the day given by the favor and indulgence of the court to the defendant for his appear-

ance, when all parties appeared in court, and had their appearance recorded by the proper officer. Wharton.—**Dies cedit.** The day begins; *dies venit*, the day has come. Two expressions in Roman law which signify the vesting or fixing of an interest, and the interest becoming a present one. Sandars' Just. Inst. (5th Ed.) 225, 232.—**Dies communes in banco.** Regular days for appearance in court; called, also "common return-days." 2 Reeve, Eng. Law, 57.—**Dies datus.** A day given or allowed, (to a defendant in an action;) amounting to a continuance. But the name was appropriate only to a continuance before a declaration filed; if afterwards allowed, it was called an "imparlance."—**Dies datus in banco.** A day given in the *bench*, (or court of common pleas.) Bract. fols. 257*b*, 361. A day given in bank, as distinguished from a day at *nisi prius*. Co. Litt. 135.—**Dies datus partibus.** A day given to the parties to an action; an adjournment or continuance. Crabb, Eng. Law, 217.—**Dies datus prece partium.** A day given on the prayer of the parties. Bract. fol. 358; Gilb. Comm. Pl. 41; 2 Reeve, Eng. Law, 60.—**Dies dominicus.** The Lord's day; Sunday.—**Dies excrescens.** In old English law. The added or increasing day in leap year. Bract. fols. 359, 359*b*.—**Dies fasti.** In Roman law. Days on which the courts were open, and justice could be legally administered; days on which it was lawful for the prætor to pronounce (*fari*) the *three* words, "*do*," "*dico*," "*addico*." Mackeld. Rom. Law, § 39, and note; 3 Bl. Comm. 424, note; Calvin. Hence called "*triverbial* days," answering to the *dies juridici* of the English law.—**Dies feriati.** In the civil law. Holidays. Dig. 2, 12, 2, 9.—**Dies gratiæ.** In old English practice. A day of grace, courtesy, or favor. Co. Litt. 134*b*. The *quarto die post* was sometimes so called. Id. 135*a*.—**Dies intercisi.** In Roman law. Divided days; days on which the courts were open for a part of the day. Calvin.—**Dies juridicus.** A lawful day for the transaction of judicial or court business; a day on which the courts are or may be open for the transaction of business. Didsbury v. Van Tassell, 56 Hun, 423, 10 N. Y. Supp. 32.—**Dies legitimus.** In the civil and old English law. A lawful or law day; a term day; a day of appearance.—**Dies marchiæ.** In old English law. The day of meeting of English and Scotch, which was annually held on the marches or borders to adjust their differences and preserve peace.—**Dies nefasti.** In Roman law. Days on which the courts were closed, and it was unlawful to administer justice; answering to the *dies non juridici* of the English law. Mackeld. Rom. Law, § 39, note.—**Dies non.** An abbreviation of *Dies non juridicus*, (*q. v.*)—**Dies non juridicus.** In practice. A day not juridical; not a court day. A day on which courts are not open for business, such as Sundays and some holidays. Havens v. Stiles, 8 Idaho, 250, 67 Pac. 921, 56 L. R. A. 736, 101 Am. St. Rep. 195; State v. Ricketts, 74 N. C. 193.—**Dies pacis.** (Day of peace.) The year was formerly divided into the days of the peace of the church and the days of the peace of the king, including in the two divisions all the days of the year. Crabb, Eng. Law, 35.—**Dies solaris.** In old English law. A solar day, as distinguished from what was called "*dies lunaris*," (a lunar day;) both composing an artificial day. Bract. fol. 264. See DAY.—**Dies solis.** In the civil and old English law. Sunday, (literally, the day of the sun.) See Cod. 3, 12, 7.—**Dies utiles.** Juridical days; useful or available days. A term of the Roman law, used to designate those especial days occurring within the limits of a prescribed period of time upon which it was lawful, or possible, to do a specific act.

Dies dominicus non est juridicus. Sunday is not a court day, or day for judicial proceedings, or legal purposes. Co. Litt. 135*a*; Noy, Max. 2; Wing. Max. 7, max. 5; Broom, Max. 21.

Dies inceptus pro completo habetur. A day begun is held as complete.

Dies incertus pro conditione habetur. An uncertain day is held as a condition.

DIET. A general legislative assembly is sometimes so called on the continent of Europe.

In Scotch practice. The sitting of a court. An appearance day. A day fixed for the trial of a criminal cause. A criminal cause as prepared for trial.

DIETA. A day's journey; a day's work; a day's expenses.

DIETS OF COMPEARANCE. In Scotch law. The days within which parties in civil and criminal prosecutions are cited to appear. Bell.

DIEU ET MON DROIT. Fr. God and my right. The motto of the royal arms of England, first assumed by Richard I.

DIEU SON ACTE. L. Fr. In old law. God his act; God's act. An event beyond human foresight or control. Termes de la Ley.

DIFFACERE. To destroy; to disfigure or deface.

DIFFERENCE. In an agreement for submission to arbitration, "difference" means disagreement or dispute. Fravert v. Fesler, 11 Colo. App. 387, 53 Pac. 288; Pioneer Mfg. Co. v. Phœnix Assur. Co., 106 N. C. 28, 10 S. E. 1057.

Difficile est ut unus homo vicem duorum sustineat. 4 Coke, 118. It is difficult that one man should sustain the place of two.

DIFFICULT. For the meaning of the phrase "difficult and extraordinary case," as used in New York statutes and practice, see Standard Trust Co. v. New York, etc., R. Co., 178 N. Y. 407, 70 N. E. 925; Fox v. Gould, 5 How. Prac. (N. Y.) 278; Horgan v. McKenzie (Com. Pl.) 17 N. Y. Supp. 174; Dyckman v. McDonald, 5 How. Prac. (N. Y.) 121.

DIFFORCIARE. In old English law. To deny, or keep from one. *Differciare rectum*, to deny justice to any one, after having been required to do it.

DIGAMA, or DIGAMY. Second marriage; marriage to a second wife after the death of the first, as "bigamy," in law, is having two wives at once. Originally, a man who married a widow, or married again after the death of his wife, was said to be guilty of bigamy. Co. Litt. 40*b*, note.

DIGEST. A collection or compilation, embodying the chief matter of numerous books in one, disposed under proper heads or titles, and usually by an alphabetical arrangement, for facility in reference.

As a legal term, "digest" is to be distinguished from "abridgment." The latter is a summary or epitome of the contents of a single work, in which, as a rule, the original order or sequence of parts is preserved, and in which the principal labor of the compiler is in the matter of consolidation. A digest is wider in its scope; is made up of quotations or paraphrased passages; and has its own system of classification and arrangement. An "index" merely points out the places where particular matters may be found, without purporting to give such matters *in extenso*. A "treatise" or "commentary" is not a compilation, but an original composition, though it may include quotations and excerpts.

A reference to the "Digest," or "Dig.," is always understood to designate the Digest (or Pandects) of the Justinian collection; that being the digest *par eminence*, and the authoritative compilation of the Roman law.

DIGESTA. Digests. One of the titles of the Pandects of Justinian. Inst. *præm*, § 4. Bracton uses the singular, "*Digestum*." Bract. fol. 19.

DIGESTS. The ordinary name of the Pandects of Justinian, which are now usually cited by the abbreviation "Dig." instead of "Ff.," as formerly. Sometimes called "Digest," in the singular.

DIGGING. Has been held as synonymous with "excavating," and not confined to the removal of earth. Sherman v. New York, 1 N. Y. 316.

DIGNITARY. In canon law. A person holding an ecclesiastical benefice or dignity, which gave him some pre-eminence above mere priests and canons. To this class exclusively belonged all bishops, deans, archdeacons, etc.; but it now includes all the prebendaries and canons of the church. Brande.

DIGNITY. In English law. An honor; a title, station, or distinction of honor. Dignities are a species of incorporeal hereditaments, in which a person may have a property or estate. 2 Bl. Comm. 37; 1 Bl. Comm. 396; 1 Crabb, Real Prop. 468, et seq.

DIJUDICATION. Judicial decision or determination.

DILACION. In Spanish law. A space of time granted to a party to a suit in which to answer a demand or produce evidence of a disputed fact.

DILAPIDATION. A species of ecclesiastical waste which occurs whenever the incumbent suffers any edifices of his ecclesiastical living to go to ruin or decay. It is either voluntary, by pulling down, or permissive, by suffering the church, parsonage-houses, and other buildings thereunto belonging, to decay. And the remedy for either lies either in the spiritual court, where the canon law prevails, or in the courts of common law. It is also held to be good cause of deprivation if the bishop, parson, or other ecclesiastical person dilapidates buildings or cuts down timber growing on the patrimony of the church, unless for necessary repairs; and that a writ of prohibition will also lie against him in the common-law courts. 3 Bl. Comm. 91.

The term is also used, in the law of landlord and tenant, to signify the neglect of necessary repairs to a building, or suffering it to fall into a state of decay, or the pulling down of the building or any part of it.

Dilationes in lege sunt odiosæ. Delays in law are odious. Branch, Princ.

DILATORY. Tending or intended to cause delay or to gain time or to put off a decision.

—Dilatory defense. In chancery practice. One the object of which is to dismiss, suspend, or obstruct the suit, without touching the merits, until the impediment or obstacle insisted on shall be removed. 3 Bl. Comm. 301, 302.**—Dilatory pleas.** A class of defenses at common law, founded on some matter of fact not connected with the merits of the case, but such as might exist without impeaching the right of action itself. They were either pleas to the *jurisdiction*, showing that, by reason of some matter therein stated, the case was not within the jurisdiction of the court; or pleas in *suspension*, showing some matter of temporary incapacity to proceed with the suit; or pleas in *abatement*, showing some matter for abatement or quashing the declaration. 3 Steph. Comm. 576. Parks v. McClellan, 44 N. J. Law, 558; Mahoney v. Loan Ass'n (C. C.) 70 Fed. 515.

DILIGENCE. Prudence; vigilant activity; attentiveness; or care, of which there are infinite shades, from the slightest momentary thought to the most vigilant anxiety; but the law recognizes only three degrees of diligence: (1) Common or ordinary, which men, in general, exert in respect of their own concerns; the standard is necessarily variable with respect to the facts, although it may be uniform with respect to the principle. (2) High or great, which is extraordinary diligence, or that which very prudent persons take of their own concerns. (3) Low or slight, which is that which persons of less than common prudence, or indeed of no prudence at all, take of their own concerns.

The civil law is in perfect conformity with the common law. It lays down three degrees of diligence,—ordinary, (*diligentia;*) extraordinary, (*exactissima diligentia;*) slight, (*levissima diligentia.*) Story, Bailm. 19.

There may be a high degree of diligence, a common degree of diligence, and a slight degree of diligence, with their corresponding degrees of negligence; and these can be clearly enough defined for all practical purposes, and,

with a view to the business of life, seem to be all that are really necessary. Common or ordinary diligence is that degree of diligence which men in general exercise in respect to their own concerns; high or great diligence is of course extraordinary diligence, or that which very prudent persons take of their own concerns; and low or slight diligence is that which persons of less than common prudence, or indeed of any prudence at all, take of their own concerns. Ordinary negligence is the want of ordinary diligence; slight, or less than ordinary, negligence is the want of great diligence; and gross or more than ordinary negligence is the want of slight diligence. Railroad Co. v. Rollins, 5 Kan. 180.

Other classifications and compound terms.—Due diligence. Such a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case. Perry v. Cedar Falls, 87 Iowa, 315, 54 N. W. 225; Dillman v. Nadelhoffer, 160 Ill. 121, 43 N. E. 378; Hendricks v. W. U. Tel. Co., 126 N. C. 304, 35 S. E. 543, 78 Am. St. Rep. 658; Highland Ditch Co. v. Mumford, 5 Colo. 336.—**Extraordinary diligence.** That extreme measure of care and caution which persons of unusual prudence and circumspection use for securing and preserving their own property or rights. Civ. Code Ga. 1895, § 2899; Railroad Co. v. Huggins, 89 Ga. 494, 15 S. E. 848; Railroad Co. v. White, 88 Ga. 805, 15 S. E. 802.—**Great diligence.** Such a measure of care, prudence, and assiduity as persons of unusual prudence and discretion exercise in regard to any and all of their own affairs, or such as persons of ordinary prudence exercise in regard to very important affairs of their own. Railway Co. v. Rollins, 5 Kan. 180; Litchfield v. White, 7 N. Y. 438, 57 Am. Dec. 534; Rev. Codes N. Dak. 1899, § 5109.—**High diligence.** The same as great diligence.—**Low diligence.** The same as slight diligence.—**Necessary diligence.** That degree of diligence which a person placed in a particular situation must exercise in order to entitle him to the protection of the law in respect to rights or claims growing out of that situation, or to avoid being left without redress on account of his own culpable carelessness or negligence. Garahy v. Bayley, 25 Tex. Supp. 302; Sanderson v. Brown, 57 Me. 312.—**Ordinary diligence** is that degree of care which men of common prudence generally exercise in their affairs, in the country and the age in which they live. Erie Bank v. Smith, 3 Brewst. (Pa.) 9; Zell v. Dunkle, 156 Pa. 353, 27 Atl. 38; Railroad Co. v. Scott, 42 Ill. 143; Briggs v. Taylor, 28 Vt. 184; Railroad Co. v. Fisher, 49 Kan. 460, 30 Pac. 462; Railroad Co. v. Mitchell, 92 Ga. 77, 18 S. E. 290.—**Reasonable diligence.** A fair, proper, and due degree of care and activity, measured with reference to the particular circumstances; such diligence, care, or attention as might be expected from a man of ordinary prudence and activity. Railroad Co. v. Gist, 31 Tex. Civ. App. 662, 73 S. W. 857; Bacon v. Steamboat Co., 90 Me. 46, 37 Atl. 328; Latta v. Clifford (C. C.) 47 Fed. 620; Rice v. Brook (C. C.) 20 Fed. 614.—**Special diligence.** The measure of diligence and skill exercised by a good business man in his particular specialty, which must be commensurate with the duty to be performed and the individual circumstances of the case; not merely the diligence of an ordinary person or non-specialist. Brady v. Jefferson, 5 Houst. (Del.) 79.

In Scotch law and practice. Process of law, by which persons, lands, or effects are seized in execution or in security for debt. Ersk. Inst. 2, 11, 1. Brande. Process for enforcing the attendance of witnesses, or the production of writings. Ersk. Inst. 4, 1, 71.

DILIGIATUS. (Fr. *De lege ejectus*, Lat.) Outlawed.

DILLIGROUT. In old English law. Pottage formerly made for the king's table on the coronation day. There was a tenure in serjeantry, by which lands were held of the king by the service of finding this pottage at that solemnity.

DIME. A silver coin of the United States, of the value of ten cents, or one-tenth of the dollar.

DIMIDIA, DIMIDIUM, DIMIDIUS. Half; a half; the half.

DIMIDIETAS. The moiety or half of a thing.

DIMINUTIO. In the civil law. Diminution; a taking away; loss or deprivation. *Diminutio capitis*, loss of *status* or condition. See CAPITIS DIMINUTIO.

DIMINUTION. Incompleteness. A word signifying that the record sent up from an inferior to a superior court for review is incomplete, or not fully certified. In such case the party may suggest a "diminution of the record," which may be rectified by a *certiorari*. 2 Tidd, Pr. 1109.

DIMISI. In old conveyancing. I have demised. *Dimisi, concessi, et ad firmam tradidi*, have demised, granted, and to farm let. The usual words of operation in a lease. 2 Bl. Comm. 317, 318.

DIMISIT. In old conveyancing. [He] has demised. See DIMISI.

DIMISSORIÆ LITTERÆ. In the civil law. Letters dimissory or dismissory, commonly called "apostles," (*quæ vulgo apostoli dicuntur.*) Dig. 50, 16, 106. See APOSTOLI, APOSTLES.

DIMISSORY LETTERS. Where a candidate for holy orders has a title of ordination in one diocese in England, and is to be ordained in another, the bishop of the former diocese gives letters dimissory to the bishop of the latter to enable him to ordain the candidate. Holthouse.

DINARCHY. A government of two persons.

DINERO. In Spanish law. Money. *Dinero contado*, money counted. White, New Recop. b. 2, tit. 13, c. 1, § 1.

In Roman law. A civil division of the Roman empire, embracing several provinces. Calvin.

DIOCESAN. Belonging to a diocese; a bishop, as he stands related to his own clergy or flock.

DIOCESAN COURTS. In English law. The consistorial courts of each diocese, exercising general jurisdiction of all matters arising locally within their respective limits, with the exception of places subject to *peculiar* jurisdiction; deciding all matters of spiritual discipline,—suspending or depriving clergymen,—and administering the other branches of the ecclesiastical law. 2 Steph. Comm. 672.

DIOCESE. The territorial extent of a bishop's jurisdiction. The circuit of every bishop's jurisdiction. Co. Litt. 94; 1 Bl. Comm. 111.

DIOICHIA. The district over which a bishop exercised his spiritual functions.

DIP. In mining law. The line of declination of strata; the angle which measures the deviation of a mineralized vein or lode from the vertical plane; the slope or slant of a vein, away from the perpendicular, as it goes downward into the earth; distinguished from the "strike" of the vein, which is its extension in the horizontal plane, or its lengthwise trend or course with reference to the points of the compass. King v. Mining Co., 9 Mont. 543, 24 Pac. 200; Duggan v. Davey, 4 Dak. 110, 26 N. W. 887.

DIPLOMA. In the civil law. A royal charter; letters patent granted by a prince or sovereign. Calvin.

An instrument given by colleges and societies on the conferring of any degrees. State v. Gregory, 83 Mo. 130, 53 Am. Rep. 565; Halliday v. Butt, 40 Ala. 183.

A license granted to a physician, etc., to practice his art or profession. See Brooks v. State, 88 Ala. 122, 6 South. 902.

DIPLOMACY. The science which treats of the relations and interests of nations with nations.

Negotiation or intercourse between nations through their representatives. The rules, customs, and privileges of representatives at foreign courts.

DIPLOMATIC AGENT. In international law. A general name for all classes of persons charged with the negotiation, transaction, or superintendence of the diplomatic business of one nation at the court of another. See Rev. St. U. S. § 1674 (U. S. Comp. St. 1901, p. 1149).

DIPLOMATICS. The science of diplomas, or of ancient writings and documents; the art of judging of ancient charters, public documents, diplomas, etc., and discriminating the true from the false. Webster.

DIPSOMANIAC. A person subject to dipsomania. One who has an irresistible desire for alcoholic liquors. See INSANITY.

DIPTYCHA. Diptychs; tablets of wood, metal, or other substance, used among the Romans for the purpose of writing, and folded like a book of two leaves. The diptychs of antiquity were especially employed for public registers. They were used in the Greek, and afterwards in the Roman, church, as registers of the names of those for whom supplication was to be made, and are ranked among the earliest monastic records. Burrill.

DIRECT. Immediate; by the shortest course; without circuity; operating by an immediate connection or relation, instead of operating through a medium; the opposite of *indirect*.

In the usual or natural course or line; immediately upwards or downwards; as distinguished from that which is out of the line, or on the side of it; the opposite of *collateral*.

In the usual or regular course or order, as distinguished from that which diverts, interrupts, or opposes; the opposite of *cross* or contrary.

—Direct attack. A direct attack on a judgment or decree is an attempt, for sufficient cause, to have it annulled, reversed, vacated, corrected, declared void, or enjoined, in a proceeding instituted for that specific purpose, such as an appeal, writ of error, bill of review, or injunction to restrain its execution; distinguished from a collateral attack, which is an attempt to impeach the validity or binding force of the judgment or decree as a side issue or in a proceeding instituted for some other purpose. Schneider v. Sellers, 25 Tex. Civ. App. 226, 61 S. W. 541; Smith v. Morrill, 12 Colo. App. 233, 55 Pac. 824; Morrill v. Morrill, 20 Or. 96, 25 Pac. 362, 11 L. R. A. 155, 23 Am. St. Rep. 95; Crawford v. McDonald, 88 Tex. 626, 33 S. W. 325; Eichhoff v. Eichhoff, 107 Cal. 42, 40 Pac. 24, 48 Am. St. Rep. 110.—**Direct interest.** A direct interest, such as would render the interested party incompetent to testify in regard to the matter, is an interest which is certain, and not contingent or doubtful. A matter which is dependent alone on the successful prosecution of an execution cannot be considered as uncertain, or otherwise than direct, in this sense. In re Van Alstine's Estate, 26 Utah, 193, 72 Pac. 942.—**Direct line.** Property is said to descend or be inherited in the direct line when it passes in lineal succession; from ancestor to son, grandson, great-grandson, and so on.—**Direct payment.** One which is absolute and unconditional as to the time, amount, and the persons by whom and to whom it is to be made. People v. Boylan (C. C.) 25 Fed. 595. See Ancient Order of Hibernians v. Sparrow, 29 Mont. 132, 74 Pac. 197, 64 L. R. A. 128, 101 Am. St. Rep. 563; Hurd v. McClellan, 14 Colo. 213, 23 Pac. 792.

As to direct "Consanguinity," "Contempt," "Damages," "Evidence," "Examination," "Interrogatories," "Loss," "Tax," and "Trust," see those titles.

DIRECTION. **1.** The act of governing; management; superintendence. Also the body of persons (called "directors") who are charged with the management and administration of a corporation or institution.

2. The charge or instruction given by the court to a jury upon a point of law arising

or involved in the case, to be by them applied to the facts in evidence.

3. The clause of a bill in equity containing the address of the bill to the court.

DIRECTOR OF THE MINT. An officer having the control, management, and superintendence of the United States mint and its branches. He is appointed by the president, by and with the advice and consent of the senate.

DIRECTORS. Persons appointed or elected according to law, authorized to manage and direct the affairs of a corporation or company. The whole of the directors collectively form the board of directors. Brandt v. Godwin (City Ct.) 3 N. Y. Supp. 809; Maynard v. Insurance Co., 34 Cal. 48, 91 Am. Dec. 672; Pen. Code N. Y. 1903, § 614; Rev. St. Tex. 1895, art. 3096*a*; Ky. St. 1903, § 575.

DIRECTORY. A provision in a statute, rule of procedure, or the like, is said to be directory when it is to be considered as a mere direction or instruction of no obligatory force, and involving no invalidating consequence for its disregard, as opposed to an imperative or mandatory provision, which must be followed. The general rule is that the prescriptions of a statute relating to the performance of a public duty are so far directory that, though neglect of them may be punishable, yet it does not affect the validity of the acts done under them, as in the case of a statute requiring an officer to prepare and deliver a document to another officer on or before a certain day. Maxw. Interp. St. 330, et seq. And see Pearse v. Morrice, 2 Adol. & El. 94; Nelms v. Vaughan, 84 Va. 696, 5 S. E. 704; State v. Conner, 86 Tex. 133, 23 S. W. 1103; Payne v. Fresco, 4 Kulp (Pa.) 26; Bladen v. Philadelphia, 60 Pa. 466.

—**Directory trust.** Where, by the terms of a trust, the fund is directed to be vested in a particular manner till the period arrives at which it is to be appropriated, this is called a "directory trust." It is distinguished from a discretionary trust, in which the trustee has a discretion as to the management of the fund. Deaderick v. Cantrell, 10 Yerg. 272, 31 Am. Dec. 576.

DIRIBITORES. In Roman law. Officers who distributed ballots to the people, to be used in voting. Tayl. Civil Law, 192.

DIRIMENT IMPEDIMENTS. In canon law. Absolute bars to marriage, which would make it null *ab initio*.

DISABILITY. The want of legal ability or capacity to exercise legal rights, either special or ordinary, or to do certain acts with proper legal effect, or to enjoy certain privileges or powers of free action. Berkin v. Marsh, 18 Mont. 152, 44 Pac. 528, 56 Am. St. Rep. 565.

At the present day, disability is generally used to indicate an incapacity for the full enjoyment of ordinary legal rights; thus married women, persons under age, insane persons, and felons convict are said to be under disability. Sometimes the term is used in a more limited sense, as when it signifies an impediment to marriage, or the restraints placed upon clergymen by reason of their spiritual avocations. Mozley & Whitley.

Classification. Disability is either *general* or *special;* the former when it incapacitates the person for the performance of all legal acts of a general class, or giving to them their ordinary legal effect; the latter when it debars him from one specific act. Disability is also either *personal* or *absolute;* the former where it attaches to the particular person, and arises out of his *status*, his previous act, or his natural or juridical incapacity; the latter where it originates with a particular person, but extends also to his descendants or successors. Lord de le Warre's Case, 6 Coke, 1*a;* Avegno v. Schmidt, 113 U. S. 293, 5 Sup. Ct. 487, 28 L. Ed. 976. Considered with special reference to the capacity to contract a marriage, disability is either *canonical* or *civil;* a disability of the former class makes the marriage voidable only, while the latter, in general, avoids it entirely. The term *civil* disability is also used as equivalent to *legal* disability, both these expressions meaning disabilities or disqualifications created by positive law, as distinguished from *physical* disabilities. Ingalls v. Campbell, 18 Or. 461, 24 Pac. 904; Harland v. Territory, 3 Wash. T. 131, 13 Pac. 453; Meeks v. Vassault, 16 Fed. Cas. 1317; Wiesner v. Zaum, 39 Wis. 206; Bauman v. Grubbs, 26 Ind. 421; Supreme Council v. Fairman, 62 How. Prac. (N. Y.) 390. A *physical* disability is a disability or incapacity caused by physical defect or infirmity, or bodily imperfection, or mental weakness or alienation; as distinguished from *civil* disability, which relates to the civil *status* or condition of the person, and is imposed by the law.

DISABLE. In its ordinary sense, to disable is to cause a disability, (*q. v.*)

In the old language of pleading, to disable is to take advantage of one's own or another's disability. Thus, it is "an express maxim of the common law that the party shall not disable himself;" but "this disability to disable himself * * * is personal." 4 Coke, 123*b*.

DISABLING STATUTES. These are acts of parliament, restraining and regulating the exercise of a right or the power of alienation; the term is specially applied to 1 Eliz. c. 19, and similar acts restraining the power of ecclesiastical corporations to make leases.

DISADVOCARE. To deny a thing.

DISAFFIRM. To repudiate; to revoke a consent once given; to recall an affirmance. To refuse one's subsequent sanction to a former act; to disclaim the intention of being bound by an antecedent transaction.

DISAFFIRMANCE. The repudiation of a former transaction. The refusal by one who has the right to refuse, (as in the case of a voidable contract,) to abide by his former acts, or accept the legal consequences of the same. It may either be "express" (in words) or "implied" from acts expressing

the intention of the party to disregard the obligations of the contract.

DISAFFOREST. To restore to their former condition lands which have been turned into forests. To remove from the operation of the forest laws. 2 Bl. Comm. 416.

DISAGREEMENT. Difference of opinion or want of uniformity or concurrence of views; as, a disagreement among the members of a jury, among the judges of a court, or between arbitrators. Darnell v. Lyon, 85 Tex. 466, 22 S. W. 304; Insurance Co. v. Doying, 55 N. J. Law, 569, 27 Atl. 927; Fowble v. Insurance Co., 106 Mo. App. 527, 81 S. W. 485.

In real property law. The refusal by a grantee, lessee, etc., to accept an estate, lease, etc., made to him; the annulling of a thing that had essence before. No estate can be vested in a person against his will. Consequently no one can become a grantee, etc., without his *agreement*. The law implies such an agreement until the contrary is shown, but his disagreement renders the grant, etc., inoperative. Wharton.

DISALT. To disable a person.

DISAPPROPRIATION. In ecclesiastical law. This is where the appropriation of a benefice is severed, either by the patron presenting a clerk or by the corporation which has the appropriation being dissolved. 1 Bl. Comm. 385.

DISAVOW. To repudiate the unauthorized acts of an agent; to deny the authority by which he assumed to act.

DISBAR. In England, to deprive a barrister permanently of the privileges of his position; it is analogous to striking an attorney off the rolls. In America, the word describes the act of a court in withdrawing from an attorney the right to practise at its bar.

DISBOCATIO. In old English law. A conversion of wood grounds into arable or pasture; an assarting. Cowell. See ASSART.

DISBURSEMENTS. Money expended by an executor, guardian, trustee, etc., for the benefit of the estate in his hands, or in connection with its administration.

The term is also used under the codes of civil procedure, to designate the expenditures necessarily made by a party in the progress of an action, aside from the fees of officers and court costs, which are allowed, *eo nomine*, together with costs. Fertilizer Co. v. Glenn, 48 S. C. 494, 26 S. E. 796; De Chambrun v. Cox, 60 Fed. 479, 9 C. C. A. 86; Bilyeu v. Smith, 18 Or. 335, 22 Pac. 1073.

DISCARCARE. In old English law. To discharge, to unload; as a vessel. *Carcare et discarcare;* to charge and discharge; to load and unload. Cowell.

DISCARGARE. In old European law. To discharge or unload, as a wagon. Spelman.

DISCEPTIO CAUSÆ. In Roman law. The argument of a cause by the counsel on both sides. Calvin.

DISCHARGE. The opposite of *charge;* hence to release; liberate; annul; unburden; disincumber.

In the law of contracts. To cancel or unloose the obligation of a contract; to make an agreement or contract null and inoperative. As a noun, the word means the act or instrument by which the binding force of a contract is terminated, irrespective of whether the contract is carried out to the full extent contemplated (in which case the discharge is the result of *performance*) or is broken off before complete execution. Cort v. Railway Co., 17 Q. B. 145; Com. v. Talbot, 2 Allen (Mass.) 162; Rivers v. Blom, 163 Mo. 442, 63 S. W. 812.

Discharge is a generic term; its principal species are rescission, release, accord and satisfaction, performance, judgment, composition, bankruptcy, merger, (*q. v.*) Leake, Cont. 413.

As applied to demands, claims, rights of action, incumbrances, etc., to discharge the debt or claim is to extinguish it, to annul its obligatory force, to satisfy it. And here also the term is generic; thus a debt, a mortgage, a legacy, may be discharged by payment or performance, or by any act short of that, lawful in itself, which the creditor accepts as sufficient. Blackwood v. Brown, 29 Mich. 484; Rangely v. Spring, 28 Me. 151. To discharge a person is to liberate him from the binding force of an obligation, debt, or claim.

Discharge by operation of law is where the discharge takes place, whether it was intended by the parties or not; thus, if a creditor appoints his debtor his executor, the debt is discharged by operation of law, because the executor cannot have an action against himself. Co. Litt. 264*b*, note 1; Williams, Ex'rs, 1216; Chit. Cont. 714.

In civil practice. To discharge a rule, an order, an injunction, a certificate, process of execution, or in general any proceeding in a court, is to cancel or annul it, or to revoke it, or to refuse to confirm its original provisional force. Nichols v. Chittenden, 14 Colo. App. 49, 59 Pac. 954.

To discharge a jury is to relieve them from any further consideration of a cause. This is done when the continuance of the trial is, by any cause, rendered impossible; also when the jury, after deliberation, cannot agree on a verdict.

In equity practice. In the process of accounting before a master in chancery, the *discharge* is a statement of expenses and

counter-claims brought in and filed, by way of set-off, by the accounting defendant; which follows the *charge* in order.

In criminal practice. The act by which a person in confinement, held on an accusation of some crime or misdemeanor, is set at liberty. The writing containing the order for his being so set at liberty is also called a "discharge." Morgan v. Hughes, 2 Term, 231; State v. Garthwaite, 23 N. J. Law, 143; Ex parte Paris, 18 Fed. Cas. 1104.

In bankruptcy practice. The discharge of the bankrupt is the step which regularly follows the adjudication of bankruptcy and the administration of his estate. By it he is released from the obligation of all his debts which were or might be proved in the proceedings, so that they are no longer a charge upon him, and so that he may thereafter engage in business and acquire property without its being liable for the satisfaction of such former debts. Southern L. & T. Co. v. Benbow (D. C.) 96 Fed. 528; In re Adler, 103 Fed. 444; Colton v. Depew, 59 N. J. Eq. 126, 44 Atl. 662.

In maritime law. The unlading or unlivery of a cargo from a vessel. The Bird of Paradise v. Heyneman, 5 Wall. 557, 18 L. Ed. 662; Kimball v. Kimball, 14 Fed. Cas. 486; Certain Logs of Mahogany, 5 Fed. Cas. 374.

In military law. The release or dismissal of a soldier, sailor, or marine, from further military service, either at the expiration of his term of enlistment, or previous thereto on special application therefor, or as a punishment. An "honorable" discharge is one granted at the end of an enlistment and accompanied by an official certificate of good conduct during the service. A "dishonorable" discharge is a dismissal from the service for bad conduct or as a punishment imposed by sentence of a court-martial for offenses against the military law. There is also in occasional use a form of "discharge without honor," which implies censure, but is not in itself a punishment. See Rev. St. U. S. §§ 1284, 1342, 1426 (U. S. Comp. St. 1901, pp. 913, 944, 1010); Williams v. U. S., 137 U. S. 113, 11 Sup. Ct. 43, 34 L. Ed. 590; U. S. v. Sweet, 189 U. S. 471, 23 Sup. Ct. 638, 47 L. Ed. 907.

DISCLAIMER. The repudiation or renunciation of a right or claim vested in a person or which he had formerly alleged to be his. The refusal, waiver, or denial of an estate or right offered to a person. The disavowal, denial, or renunciation of an interest, right, or property imputed to a person or alleged to be his. Also the declaration, or the instrument, by which such disclaimer is published. Moores v. Clackamas County, 40 Or. 536, 67 Pac. 662.

Of estates. The act by which a party refuses to accept an estate which has been conveyed to him. Thus, a trustee is said to disclaim who releases to his fellow-trustees his estate, and relieves himself of the trust. Watson v. Watson, 13 Conn. 85; Kentucky Union Co. v. Cornett, 112 Ky. 677, 66 S. W. 728.

A renunciation or a denial by a tenant of his landlord's title, either by refusing to pay rent, denying any obligation to pay, or by setting up a title in himself or a third person, and this is a distinct ground of forfeiture of the lease or other tenancy, whether of land or tithe. See 16 Ch. Div. 730.

In pleading. A renunciation by the defendant of all claim to the subject of the demand made by the plaintiff's bill. Coop. Eq. Pl. 309; Mitf. Eq. Pl. 318.

In patent law. When the title and specifications of a patent do not agree, or when part of that which it covers is not strictly patentable, because neither new nor useful, the patentee is empowered, with leave of the court, to enter a disclaimer of any part of either the title or the specification, and the disclaimer is then deemed to be part of the letters patent or specification, so as to render them valid for the future. Johns. Pat. 151.

DISCLAMATION. In Scotch law. Disavowal of tenure; denial that one holds lands of another. Bell.

DISCOMMON. To deprive commonable lands of their commonable quality, by inclosing and appropriating or improving them.

DISCONTINUANCE. In practice. The termination of an action, in consequence of the plaintiff's omitting to continue the process or proceedings by proper entries on the record. 3 Bl. Comm. 296; 1 Tidd, Pr. 678; 2 Arch. Pr. K. B. 233. Hadwin v. Railway Co., 67 S. C. 463, 45 S. E. 1019; Gillespie v. Bailey, 12 W. Va. 70, 29 Am. Rep. 455; Kennedy v. McNickle, 7 Phila. (Pa.) 217; Insurance Co. v. Francis, 52 Miss. 467, 24 Am. Rep. 674.

In practice, a discontinuance is a chasm or gap left by neglecting to enter a continuance. By our practice, a neglect to enter a continuance, even in a defaulted action, by no means puts an end to it, and such actions may always be brought forward. Taft v. Northern Transp. Co., 56 N. H. 416.

The cessation of the proceedings in an action where the plaintiff voluntarily puts an end to it, either by giving notice in writing to the defendant before any step has been taken in the action subsequent to the answer, or at any other time by order of the court or a judge.

In practice, discontinuance and dismissal import the same thing, viz., that the cause is sent out of court. Thurman v. James, 48 Mo. 235.

In pleading. That technical interruption of the proceedings in an action which follows where a defendant does not answer the whole

of the plaintiff's declaration, and the plaintiff omits to take judgment for the part unanswered. Steph. Pl. 216, 217.

DISCONTINUANCE OF AN ESTATE. The termination or suspension of an estate-tail, in consequence of the act of the tenant in tail, in conveying a larger estate in the land than he was by law entitled to do. 2 Bl. Comm. 275; 3 Bl. Comm. 171. An alienation made or suffered by tenant in tail, or by any that is seised in *auter droit*, whereby the issue in tail, or the heir or successor, or those in reversion or remainder, are driven to their action, and cannot enter. Co. Litt. 325*a*. The cesser of a seisin under an estate, and the acquisition of a seisin under a new and necessarily a wrongful title. Prest. Merg. c. ii.

Discontinuare nihil aliud significat quam intermittere, desuescere, interrumpere. Co. Litt. 325. To discontinue signifies nothing else than to intermit, to disuse, to interrupt.

DISCONTINUOUS. Occasional; intermittent; characterized by separate repeated acts; as, discontinuous easements and servitudes. See EASEMENT.

DISCONVENABLE. L. Fr. Improper; unfit. Kelham.

DISCOUNT. In a general sense, an allowance or deduction made from a gross sum on any account whatever. In a more limited and technical sense, the taking of interest in advance.

By the language of the commercial world and the settled practice of banks, a discount by a bank means a drawback or deduction made upon its advances or loans of money, upon negotiable paper or other evidences of debt payable at a future day, which are transferred to the bank. Fleckner v. Bank, 8 Wheat. 338, 5 L. Ed. 631; Bank v. Baker, 15 Ohio St. 87.

Although the discounting of notes or bills, in its most comprehensive sense, may mean lending money and taking notes in payment, yet, in its more ordinary sense, the discounting of notes or bills means advancing a consideration for a bill or note, deducting or discounting the interest which will accrue for the time the note has to run. Loan Co. v. Towner, 13 Conn. 249.

Discounting by a bank means lending money upon a note, and deducting the interest or premium in advance. Bank v. Bruce, 17 N. Y. 507; State v. Sav. Inst., 48 Mo. 189.

The ordinary meaning of the term "to discount" is to take interest in advance, and in banking is a mode of loaning money. It is the advance of money not due till some future period, less the interest which would be due thereon when payable. Weckler v. Bank, 42 Md. 592, 20 Am. Rep. 95.

Discount, as we have seen, is the difference between the price and the amount of the debt, the evidence of which is transferred. That difference represents interest charged, being at the same rate, according to which the price paid, if invested until the maturity of the debt, will just produce its amount. Bank v. Johnson, 104 U. S. 276, 26 L. Ed. 742.

Discounting a note and buying it are not identical in meaning, the latter expression being used to denote the transaction when the seller does not indorse the note, and is not accountable for it. Bank v. Baldwin, 23 Minn. 206, 23 Am. Rep. 683.

In practice. A set-off or defalcation in an action. Vin. Abr. "Discount." But see Trabue's Ex'r v. Harris, 1 Metc. (Ky.) 597.

—Discount broker. A bill broker; one who discounts bills of exchange and promissory notes, and advances money on securities.

DISCOVERT. Not married; not subject to the disabilities of a coverture. It applies equally to a maid and a widow.

DISCOVERY. In a general sense, the ascertainment of that which was previously unknown; the disclosure or coming to light of what was previously hidden; the acquisition of notice or knowledge of given acts or facts; as, in regard to the "discovery" of fraud affecting the running of the statute of limitations, or the granting of a new trial for newly "discovered" evidence. Francis v. Wallace, 77 Iowa, 373, 42 N. W. 323; Parker v. Kuhn, 21 Neb. 413, 32 N. W. 74, 59 Am. Rep. 852; Laird v. Kilbourne, 70 Iowa, 83, 30 N. W. 9; Howton v. Roberts, 49 S. W. 340, 20 Ky. Law Rep. 1331; Marbourg v. McCormick, 23 Kan. 43.

In international law. As the foundation for a claim of national ownership or sovereignty, discovery is the finding of a country, continent, or island previously unknown, or previously known only to its uncivilized inhabitants. Martin v. Waddell, 16 Pet. 409, 10 L. Ed. 997.

In patent law. The finding out some substance, mechanical device, improvement, or application, not previously known. In re Kemper, 14 Fed. Cas. 287; Dunbar v. Meyers, 94 U. S. 197, 24 L. Ed. 34.

Discovery, as used in the patent laws, depends upon invention. Every invention may, in a certain sense, embrace more or less of discovery, for it must always include something that is new; but it by no means follows that every discovery is an invention. Morton v. Infirmary, 5 Blatchf. 121, Fed. Cas. No. 9,865.

In practice. The disclosure by the defendant of facts, titles, documents, or other things which are in his exclusive knowledge or possession, and which are necessary to the party seeking the discovery as a part of a cause or action pending or to be brought in another court, or as evidence of his rights or title in such proceeding. Tucker v. U. S., 151 U. S. 164, 14 Sup. Ct. 299, 38 L. Ed. 112; Kelley v. Boettcher, 85 Fed. 55, 29 C. C. A. 14.

Also used of the disclosure by a bankrupt of his property for the benefit of creditors.

In mining law. As the basis of the right to locate a mining claim upon the public domain, discovery means the finding of mineralized rock in place. Migeon v. Railroad

Co., 77 Fed. 249, 23 C. C. A. 156; Book v. Mining Co. (C. C.) 58 Fed. 106; Muldrick v. Brown, 37 Or. 185, 61 Pac. 428; Mining Co. v. Rutter, 87 Fed. 806, 31 C. C. A. 223.

—Discovery, bill of. In equity pleading. A bill for the discovery of facts resting in the knowledge of the defendant, or of deeds or writings, or other things in his custody or power; but seeking no relief in consequence of the discovery, though it may pray for a stay of proceedings at law till the discovery is made. Story, Eq. Pl. §§ 311, 312, and notes; Mitf. Eq. Pl. 53.

DISCREDIT. To destroy or impair the credibility of a person; to impeach; to lessen the degree of credit to be accorded to a witness or document, as by impugning the veracity of the one or the genuineness of the other; to disparage or weaken the reliance upon the testimony of a witness, or upon documentary evidence, by any means whatever.

DISCREPANCY. A difference between two things which ought to be identical, as between one writing and another; a variance, (*q. v.*)

Discretio est discernere per legem quid sit justum. 10 Coke, 140. Discretion is to know through law what is just.

DISCRETION. A liberty or privilege allowed to a judge, within the confines of right and justice, but independent of narrow and unbending rules of positive law, to decide and act in accordance with what is fair, equitable, and wholesome, as determined upon the peculiar circumstances of the case, and as discerned by his personal wisdom and experience, guided by the spirit, principles, and analogies of the law. Osborn v. United States Bank, 9 Wheat. 866, 6 L. Ed. 204; Ex parte Chase, 43 Ala. 310; Lent v. Tillson, 140 U. S. 316, 11 Sup. Ct. 825, 35 L. Ed. 419; State v. Cummings, 36 Mo. 278; Murray v. Buell, 74 Wis. 14, 41 N. W. 1010; Perry v. Salt Lake City Council, 7 Utah, 143, 25 Pac. 998, 11 L. R. A. 446.

When applied to public functionaries, discretion means a power or right conferred upon them by law of acting officially in certain circumstances, according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others. This discretion undoubtedly is to some extent regulated by usage, or, if the term is preferred, by fixed principles. But by this is to be understood nothing more than that the same court cannot, consistently with its own dignity, and with its character and duty of administering impartial justice, decide in different ways two cases in every respect exactly alike. The question of fact whether the two cases are alike in every color, circumstance, and feature is of necessity to be submitted to the judgment of some tribunal. Judges v. People, 18 Wend. (N. Y.) 79, 99.

Lord Coke defines judicial discretion to be "*discernere per legem quid sit justum*," to see what would be just according to the laws in the premises. It does not mean a wild self-willfulness, which may prompt to any and every act; but this judicial discretion is guided by the law, (see what the law declares upon a certain statement of facts, and then decide in accordance with the law,) so as to do substantial equity and justice. Faber v. Bruner, 13 Mo. 543.

True, it is a matter of discretion; but then the discretion is not willful or arbitrary, but legal. And, although its exercise be not purely a matter of law, yet it "*involves* a matter of law or legal inference," in the language of the Code, and an appeal will lie. Lovinier v. Pearce, 70 N. C. 171.

In criminal law and the law of torts, it means the capacity to distinguish between what is right and wrong, lawful or unlawful, wise or foolish, sufficiently to render one amenable and responsible for his acts. Towle v. State, 3 Fla. 214.

—Judicial discretion, legal discretion. These terms are applied to the discretionary action of a judge or court, and mean discretion as above defined, that is, discretion bounded by the rules and principles of law, and not arbitrary, capricious, or unrestrained.

DISCRETIONARY TRUSTS. Such as are not marked out on fixed lines, but allow a certain amount of discretion in their exercise. Those which cannot be duly administered without the application of a certain degree of prudence and judgment.

DISCUSSION. **In the civil law.** A proceeding, at the instance of a surety, by which the creditor is obliged to exhaust the property of the principal debtor, towards the satisfaction of the debt, before having recourse to the surety; and this right of the surety is termed the "benefit of discussion." Civ. Code La. art. 3045, *et seq.*

In Scotch law. The ranking of the proper order in which heirs are liable to satisfy the debts of the deceased. Bell.

DISEASE. In construing a policy of life insurance, it is generally true that, before any temporary ailment can be called a "disease," it must be such as to indicate a vice in the constitution, or be so serious as to have some bearing upon general health and the continuance of life, or such as, according to common understanding, would be called a "disease." Cushman v. Insurance Co., 70 N. Y. 77; Insurance Co. v. Yung, 113 Ind. 159, 15 N. E. 220, 3 Am. St. Rep. 630; Insurance Co. v. Simpson, 88 Tex. 333, 31 S. W. 501, 28 L. R. A. 765, 53 Am. St. Rep. 757; Delaney v. Modern Acc. Club, 121 Iowa, 528, 97 N. W. 91, 63 L. R. A. 603.

DISENTAILING DEED. In English law. An enrolled assurance barring an entail, pursuant to 3 & 4 Wm. IV. c. 74.

DISFRANCHISE. To deprive of the rights and privileges of a free citizen; to deprive of chartered rights and immunities; to deprive of any franchise, as of the right of voting in elections, etc. Webster.

DISFRANCHISEMENT. The act of disfranchising. The act of depriving a member of a corporation of his right as such, by expulsion. 1 Bouv. Inst. no. 192. Richards v. Clarksburg, 30 W. Va. 491, 4 S. E. 774; White v. Brownell, 4 Abb. Prac. (N. S.) (N. Y.) 192.

It differs from amotion, (*q. v.*) which is applicable to the removal of an officer from office, leaving him his rights as a member. Willcock, Mun. Corp. no. 708; Ang. & A. Corp. 237.

In a more popular sense, the taking away of the elective franchise (that is, the right of voting in public elections) from any citizen or class of citizens.

DISGAVEL. In English law. To deprive lands of that principal quality of gavelkind tenure by which they descend equally among all the sons of the tenant. 2 Wood. Lect. 76; 2 Bl. Comm. 85.

DISGRACE. Ignominy; shame; dishonor. No witness is required to disgrace himself. 13 How. State Tr. 17, 334.

DISGRADING. In old English law. The depriving of an order or dignity.

DISGUISE. A counterfeit habit; a dress intended to conceal the person who wears it. Webster.

Anything worn upon the person with the intention of so altering the wearer's appearance that he shall not be recognized by those familiar with him, or that he shall be taken for another person.

A person lying in ambush, or concealed behind bushes, is not in "disguise," within the meaning of a statute declaring the county liable in damages to the next of kin of any one murdered by persons in disguise. Dale County v. Gunter, 46 Ala. 118, 142.

DISHERISON. Disinheritance; depriving one of an inheritance. Obsolete. See Abernethy v. Orton, 42 Or. 437, 71 Pac. 327, 95 Am. St. Rep. 774.

DISHONOR. In mercantile law and usage. To refuse or decline to accept a bill of exchange, or to refuse or neglect to pay a bill or note at maturity. Shelton v. Braithwaite, 7 Mees. & W. 436; Brewster v. Arnold, 1 Wis. 276.

A negotiable instrument is dishonored when it is either not paid or not accepted, according to its tenor, on presentment for that purpose, or without presentment, where that is excused. Civ. Code Cal. § 3141.

—Notice of dishonor. When a negotiable bill or note is dishonored by nonacceptance on presentment for acceptance, or by non-payment at its maturity, it is the duty of the holder to give immediate notice of such dishonor to the drawer, if it be a bill, and to the indorser, whether it be a bill or note. 2 Daniel, Neg. Inst. § 970.

DISINCARCERATE. To set at liberty, to free from prison.

DISINHERISON. In the civil law. The act of depriving a forced heir of the inheritance which the law gives him.

DISINHERITANCE. The act by which the owner of an estate deprives a person of the right to inherit the same, who would otherwise be his heir.

DISINTER. To exhume, unbury, take out of the grave. People v. Baumgartner, 135 Cal. 72, 66 Pac. 974.

DISINTERESTED. Not concerned, in respect to possible gain or loss, in the result of the pending proceedings; impartial, not biased or prejudiced. Chase v. Rutland, 47 Vt. 393; In re Big Run, 137 Pa. 590, 20 Atl. 711; McGilvery v. Staples, 81 Me. 101, 16 Atl. 404; Wolcott v. Ely, 2 Allen (Mass.) 340; Hickerson v. Insurance Co., 96 Tenn. 193, 33 S. W. 1041, 32 L. R. A. 172.

—Disinterested witness. One who has no interest in the cause or matter in issue, and who is lawfully competent to testify. Jones v. Larrabee, 47 Me. 474; Warren v. Baxter, 48 Me. 195; Appeal of Combs, 105 Pa. 155; State v. Easterlin, 61 S. C. 71, 39 S. E. 250.

DISJUNCTIM. Lat. In the civil law. Separately; severally. The opposite of *conjunctim*, (*q. v.*) Inst. 2, 20, 8.

DISJUNCTIVE ALLEGATION. A statement in a pleading or indictment which expresses or charges a thing alternatively, with the conjunction "or;" for instance, an averment that defendant "murdered or caused to be murdered," etc., would be of this character.

DISJUNCTIVE TERM. One which is placed between two contraries, by the affirming of one of which the other is taken away; it is usually expressed by the word "or."

DISMES. Tenths; tithes, (*q. v.*) The original form of "dime," the name of the American coin.

DISMISS. To send away; to discharge; to cause to be removed. To dismiss an action or suit is to send it out of court without any further consideration or hearing. Bosley v. Bruner, 24 Miss. 462; Taft v. Northern Transp. Co., 56 N. H. 417; Goldsmith v. Smith (C. C.) 21 Fed. 614.

DISMISSAL. The dismissal of an action, suit, motion, etc., is an order or judgment finally disposing of it by sending it out of court, though without a trial of the issues involved. Frederick v. Bank, 106 Ill. 149; Dowling v. Polack, 18 Cal. 627; Brackenridge v. State, 27 Tex. App. 513, 11 S. W. 630, 4 L. R. A. 360.

—Dismissal agreed. A dismissal entered in accordance with the agreement of the parties, amounting to an adjudication of the matters in dispute between them or to a renunciation by the complainant of the claims asserted in his

pleadings. Root v. Water Supply Co., 46 Kan. 183, 26 Pac. 398; Lindsay v. Allen, 112 Tenn. 637, 82 S. W. 171. See Haldeman v. U. S., 91 U. S. 586, 23 L. Ed. 433.—**Dismissal without prejudice.** Dismissal of a bill in equity without prejudice to the right of the complainant to sue again on the same cause of action. The effect of the words "without prejudice" is to prevent the decree of dismissal from operating as a bar to a subsequent suit. Lang v. Waring, 25 Ala. 625, 60 Am. Dec. 533.

DISMORTGAGE. To redeem from mortgage.

DISORDER. Turbulent or riotous behavior; immoral or indecent conduct. The breach of the public decorum and morality.

DISORDERLY. Contrary to the rules of good order and behavior; violative of the public peace or good order; turbulent, riotous, or indecent.

—**Disorderly conduct.** A term of loose and indefinite meaning (except as occasionally defined in statutes), but signifying generally any behavior that is contrary to law, and more particularly such as tends to disturb the public peace or decorum, scandalize the community, or shock the public sense of morality. People v. Keeper of State Reformatory, 176 N. Y. 465, 68 N. E. 884; People v. Davis, 80 App. Div. 448, 80 N. Y. Supp. 872; City of Mt. Sterling v. Holly, 108 Ky. 621, 57 S. W. 491; Pratt v. Brown, 80 Tex. 608, 16 S. W. 443; Kahn v. Macon, 95 Ga. 419, 22 S. E. 641; People v. Miller, 38 Hun, 82; Tyrrell v. Jersey City, 25 N. J. Law, 536.—**Disorderly house.** In criminal law. A house the inmates of which behave so badly as to become a nuisance to the neighborhood. It has a wide meaning, and includes bawdy houses, common gaming houses, and places of a like character. 1 Bish. Crim. Law, § 1106; State v. Wilson, 93 N. C. 608; Hickey v. State, 53 Ala. 514; State v. Garity, 46 N. H. 61; State v. Grosofski, 89 Minn. 343, 94 N. W. 1077; Cheek v. Com., 79 Ky. 359; State v. McGahan, 48 W. Va. 438, 37 S. E. 573.—**Disorderly persons.** Such as are dangerous or hurtful to the public peace and welfare by reason of their misconduct or vicious habits, and are therefore amendable to police regulation. The phrase is chiefly used in statutes, and the scope of the term depends on local regulations. See 4 Bl. Comm. 169. Code Cr. Proc. N. Y. 1903, § 899.

DISPARAGARE. In old English law. To bring together those that are unequal, (*dispares conferre;*) to connect in an indecorous and unworthy manner; to connect in marriage those that are unequal in blood and parentage.

DISPARAGATIO. In old English law. Disparagement. *Hæredes maritentur absque disparagatione*, heirs shall be married without disparagement. *Magna Charta*, (9 Hen. III.) c. 6.

DISPARAGATION. L. Fr. Disparagement; the matching an heir, etc., in marriage, under his or her degree or condition, or against the rules of decency. Kelham.

DISPARAGE. To connect unequally; to match unsuitably.

DISPARAGEMENT. In old English law. An injury by union or comparison with some person or thing of inferior rank or excellence.

Marriage without *disparagement* was marriage to one of suitable rank and character. 2 Bl. Comm. 70; Co. Litt. 82*b*. Shutt v. Carloss, 36 N. C. 232.

DISPARAGIUM. In old Scotch law. Inequality in blood, honor, dignity, or otherwise. Skene de Verb. Sign.

Disparata non debent jungi. Things unlike ought not to be joined. Jenk. Cent. 24, marg.

DISPARK. To dissolve a park. Cro. Car. 59. To convert it into ordinary ground.

DISPATCH, or DESPATCH. A message, letter, or order sent with speed on affairs of state; a telegraphic message.

In maritime law. Diligence, due activity, or proper speed in the discharge of a cargo; the opposite of delay. Terjesen v. Carter, 9 Daly (N. Y.) 193; Moody v. Laths (D. C.) 2 Fed. 607; Sleeper v. Puig, 22 Fed. Cas. 321.

—**Customary dispatch.** Such as accords with the rules, customs, and usages of the port where the discharge is made.—**Quick dispatch.** Speedy discharge of cargo without allowance for the customs or rules of the port or for delay from the crowded state of the harbor or wharf. Mott v. Frost (D. C.) 47 Fed. 82; Bjorkquist v. Certain Steel Rail Crop Ends (D. C.) 3 Fed. 717; Davis v. Wallace, 7 Fed. Cas. 182.

DISPAUPER. When a person, by reason of his poverty, is admitted to sue *in formâ pauperis*, and afterwards, before the suit be ended, acquires any lands, or personal estate, or is guilty of anything whereby he is liable to have this privilege taken from him, then he loses the right to sue *in formâ pauperis*, and is said to be dispaupered. Wharton.

Dispensatio est mali prohibiti provida relaxatio, utilitate seu necessitate pensata; et est de jure domino regi concessa, propter impossibilitatem prævidendi de omnibus particularibus. A dispensation is the provident relaxation of a *malum prohibitum* weighed from utility or necessity; and it is conceded by law to the king on account of the impossibility of foreknowledge concerning all particulars. 10 Coke, 88.

Dispensatio est vulnus, quod vulnerat jus commune. A dispensation is a wound, which wounds common law. Dav. Ir. K. B. 69.

DISPENSATION. An exemption from some laws; a permission to do something forbidden; an allowance to omit something commanded; the canonistic name for a license. Wharton; Baldwin v. Taylor, 166

Pa. 507, 31 Atl. 250; Viele v. Insurance Co., 26 Iowa, 56, 96 Am. Dec. 83.

A relaxation of law for the benefit or advantage of an individual. In the United States, no power exists, except in the legislature, to dispense with law; and then it is not so much a dispensation as a change of the law. Bouvier.

DISPERSONARE. To scandalize or disparage. Blount.

DISPLACE. This term, as used in shipping articles, means "disrate," and does not import authority of the master to discharge a second mate, notwithstanding a usage in the whaling trade never to disrate an officer to a seaman. Potter v. Smith, 103 Mass. 68.

DISPONE. In Scotch law. To grant or convey. A technical word essential to the conveyance of heritable property, and for which no equivalent is accepted, however clear may be the meaning of the party. Paters. Comp.

DISPONO. Lat. To dispose of, grant, or convey. *Disponet*, he grants or alienates. *Jus disponendi*, the right of disposition, *i. e.*, of transferring the title to property.

DISPOSE. To alienate or direct the ownership of property, as disposition by will. Used also of the determination of suits. Called a word of large extent. Koerner v. Wilkinson, 96 Mo. App. 510, 70 S. W. 509; Love v. Pamplin (C. C.) 21 Fed. 760; U. S. v. Hacker (D. C.) 73 Fed. 294; Benz v. Fabian, 54 N. J. Eq. 615, 35 Atl. 760; Elston v. Schilling, 42 N. Y. 79; Beard v. Knox, 5 Cal. 256, 63 Am. Dec. 125.

DISPOSABLE PORTION. That portion of a man's property which he is free to dispose of by will to beneficiaries other than his wife and children. By the ancient common law, this amounted to one-third of his estate if he was survived by both wife and children. 2 Bl. Comm. 492; Hopkins v. Wright, 17 Tex. 36. In the civil law (by the *Lex Falcidia*) it amounted to three-fourths. Mackeld. Rom. Law, §§ 708, 771.

DISPOSING CAPACITY OR MIND. These are alternative or synonymous phrases in the law of wills for "sound mind," and "testamentary capacity," (*q. v.*)

DISPOSITION. In Scotch law. A deed of alienation by which a right to property is conveyed. Bell.

DISPOSITIVE FACTS. Such as produce or bring about the origination, transfer, or extinction of rights. They are either *investitive*, those by means of which a right comes into existence, *divestitive*, those through which it terminates, or *translative*, those through which it passes from one person to another.

DISPOSSESS PROCEEDINGS. Summary process by a landlord to oust the tenant and regain possession of the premises for non-payment of rent or other breach of the conditions of the lease. Of local origin and colloquial use in New York.

DISPOSSESSION. Ouster; a wrong that carries with it the amotion of possession. An act whereby the wrong-doer gets the actual occupation of the land or hereditament. It includes abatement, intrusion, disseisin, discontinuance, deforcement. 3 Bl. Comm. 167.

DISPROVE. To refute; to prove to be false or erroneous; not necessarily by mere denial, but by affirmative evidence to the contrary. Irsch v. Irsch, 12 N. Y. Civ. Proc. R. 182.

DISPUNISHABLE. In old English law. Not answerable. Co. Litt. 27*b*, 53. 1 Steph. Comm. 245. Not punishable. "This murder is dispunishable." 1 Leon. 270.

DISPUTATIO FORI. In the civil law. Discussion or argument before a court. Mackeld. Rom. Law, § 38; Dig. 1, 2, 2, 5.

DISPUTE. A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other. Slaven v. Wheeler, 58 Tex. 25; Keith v. Levi (C. C.) 2 Fed. 745; Ft. Pitt Gas Co. v. Borough of Sewickley, 198 Pa. 201, 47 Atl. 957; Railroad Co. v. Clark, 92 Fed. 968, 35 C. C. A. 120.

—Disputable presumption. A presumption of law, which may be rebutted or disproved. See PRESUMPTIONS.—**Matter in dispute.** The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined. Lee v. Watson, 1 Wall. 339, 17 L. Ed. 557; Smith v. Adams, 130 U. S. 167, 9 Sup. Ct. 566, 32 L. Ed. 985.

DISQUALIFY. To divest or deprive of qualifications; to incapacitate; to render ineligible or unfit; as, in speaking of the "disqualification" of a judge by reason of his interest in the case, of a juror by reason of his holding a fixed preconceived opinion, or of a candidate for public office by reason of non-residence, lack of statutory age, previous commission of crime, etc. In re Tyers' Estate, 41 Misc. Rep. 378, 84 N. Y. Supp. 934; In re Maguire, 57 Cal. 606, 40 Am. Rep. 125; Carroll v. Green, 148 Ind. 362, 47 N. E. 223; In re Nevitt, 117 Fed. 448, 54 C. C. A. 622; State v. Blair, 53 Vt. 28.

DISRATE. In maritime law. To deprive a seaman or petty officer of his "rating" or rank; to reduce to a lower rate or rank.

DISRATIONARE, or DIRATIONARE. To justify; to clear one's self of a fault; to traverse an indictment; to disprove. Enc. Lond.

DISSASINA. In old Scotch law. Disseisin; dispossession. Skene.

DISSECTION. The anatomical examination of a dead body by cutting into pieces or exscinding one or more parts or organs. Wehle v. Accident Ass'n, 11 Misc. Rep. 36, 31 N. Y. Supp. 865; Sudduth v. Insurance Co. (C. C.) 106 Fed. 822; Rhodes v. Brandt, 21 Hun (N. Y.) 3.

DISSEISE. To dispossess; to deprive.

DISSEISEE. One who is wrongfully put out of possession of his lands; one who is disseised.

DISSEISIN. Dispossession; a deprivation of possession; a privation of seisin; a usurpation of the right of seisin and possession, and an exercise of such powers and privileges of ownership as to keep out or displace him to whom these rightfully belong. 3 Washb. Real Prop. 125; Probst v. Trustees, 129 U. S. 182, 9 Sup. Ct. 263, 32 L. Ed. 642; Bond v. O'Gara, 177 Mass. 139, 58 N. E. 275, 83 Am. St. Rep. 265; Moody v. Fleming, 4 Ga. 115, 48 Am. Dec. 210; Clapp v. Bromagham, 9 Cow. (N. Y.) 553; Washburn v. Cutter, 17 Minn. 368 (Gil. 335).

It is a wrongful putting out of him that is seised of the freehold, not, as in *abatement* or *intrusion*, a wrongful entry, where the possession was vacant, but an attack upon him who is in actual possession, and turning him out. It is an ouster from a freehold in deed, as abatement and intrusion are ousters in law. 3 Steph. Comm. 386.

When one man invades the possession of another, and by force or surprise turns him out of the occupation of his lands, this is termed a "disseisin," being a deprivation of that actual seisin or corporal possession of the freehold which the tenant before enjoyed. In other words, a disseisin is said to be when one enters intending to usurp the possession, and to oust another from the freehold. To constitute an entry a disseisin, there must be an ouster of the freehold, either by taking the profits or by claiming the inheritance. Brown.

According to the modern authorities, there seems to be no legal difference between the words "seisin" and "possession," although there is a difference between the words "disseisin" and "dispossession;" the former meaning an estate gained by wrong and injury, whereas the latter may be by right or by wrong; the former denoting an ouster of the disseisee, or some act equivalent to it, whereas by the latter no such act is implied. Slater v. Rawson, 6 Metc. (Mass.) 439.

Equitable disseisin is where a person is wrongfully deprived of the equitable seisin of land, *e. g.*, of the rents and profits. 2 Meriv. 171; 2 Jac. & W. 166.

Disseisin by election is where a person alleges or admits himself to be disseised when he has not really been so.

Disseisinam satis facit, qui uti non permittit possessorem, vel minus commode, licet omnino non expellat. Co. Litt. 331. He makes disseisin enough who does not permit the possessor to enjoy, or makes his enjoyment less beneficial, although he does not expel him altogether.

DISSEISITRIX. A female disseisor; a disseisoress. Fleta, lib. 4, c. 12, § 4.

DISSEISOR. One who puts another out of the possession of his lands wrongfully.

DISSEISORESS. A woman who unlawfully puts another out of his land.

DISSENSUS. Lat. In the civil law. The mutual agreement of the parties to a simple contract obligation that it shall be dissolved or annulled; technically, an undoing of the *consensus* which created the obligation. Mackeld. Rom. Law, § 541.

DISSENT. Contrariety of opinion; refusal to agree with something already stated or adjudged or to an act previously performed.

The term is most commonly used in American law to denote the explicit disagreement of one or more judges of a court with the decision passed by the majority upon a case before them. In such event, the non-concurring judge is reported as "dissenting."

—Dissenting opinion. The opinion in which a judge announces his dissent from the conclusions held by the majority of the court, and expounds his own views.

DISSENTERS. Protestant seceders from the established church of England. They are of many denominations, principally Presbyterians, Independents, Methodists, and Baptists; but, as to church government, the Baptists are Independents.

DISSIGNARE. In old law. To break open a seal. Whishaw.

Dissimilium dissimilis est ratio. Co. Litt. 191. Of dissimilars the rule is dissimilar.

Dissimulatione tollitur injuria. An injury is extinguished by the forgiveness or reconcilement of the party injured. Ersk. Inst. 4, 4, 108.

DISSOLUTION. In contracts. The dissolution of a contract is the cancellation or abrogation of it by the parties themselves, with the effect of annulling the binding force of the agreement, and restoring each party to his original rights. In this sense it is frequently used in the phrase "dissolution of a partnership." Williston v. Camp, 9 Mont. 88, 22 Pac. 501.

Of corporations. The dissolution of a corporation is the termination of its exist-

ence as a body politic. This may take place in several ways; as by act of the legislature, where that is constitutional; by surrender or forfeiture of its charter; by expiration of its charter by lapse of time; by proceedings for winding it up under the law; by loss of all its members or their reduction below the statutory limit. Matthews v. Bank, 60 S. C. 183, 38 S. E. 437; Lyons-Thomas Hardware Co. v. Perry Stove Mfg. Co., 86 Tex. 143, 24 S. W. 16, 22 L. R. A. 802; Theis v. Gaslight Co., 34 Wash. 23, 74 Pac. 1004.

In practice. The act of rendering a legal proceeding null, abrogating or revoking it; unloosing its constraining force; as when an injunction is dissolved by the court. Jones v. Hill, 6 N. C. 131.

DISSOLUTION OF PARLIAMENT. The crown may dissolve parliament either in person or by proclamation; the dissolution is usually by proclamation, after a prorogation. No parliament may last for a longer period than seven years. Septennial Act, 1 Geo. I. c. 38. Under 6 Anne, c. 37, upon a demise of the crown, parliament became *ipso facto* dissolved six months afterwards, but under the Reform Act, 1867, its continuance is now nowise affected by such demise. May, Parl. Pr. (6th Ed.) 48. Brown.

DISSOLVE. To terminate; abrogate; cancel; annul; disintegrate. To release or unloose the binding force of anything. As to "dissolve a corporation," to "dissolve an injunction." See DISSOLUTION.

DISSOLVING BOND. A bond given to obtain the dissolution of a legal writ or process, particularly an attachment or an injunction, and conditioned to indemnify the opposite party or to abide the judgment to be given. See Sanger v. Hibbard, 2 Ind. T. 547, 53 S. W. 330.

DISSUADE. In criminal law. To advise and procure a person not to do an act.

To dissuade a witness from giving evidence against a person indicted is an indictable offense at common law. Hawk. P. C. b. 1, c. 21, § 15.

DISTILL. To subject to a process of distillation, *i. e.*, vaporizing the more volatile parts of a substance and then condensing the vapor so formed. In law, the term is chiefly used in connection with the manufacture of intoxicating liquors.

—Distilled liquor or distilled spirits. A term which includes all potable alcoholic liquors obtained by the process of distillation, (such as whisky, brandy, rum, and gin) but excludes fermented and malt liquors, such as wine and beer. U. S. Rev. St. §§ 3248, 3289, 3299 (U. S. Comp. St. 1901, pp. 2107, 2132, 2153); U. S. v. Anthony, 14 Blatchf. 92, Fed. Cas. No. 14,460; State v. Williamson, 21 Mo. 496; Boyd v. U. S., 3 Fed. Cas. 1098; Sarlls v. U. S., 152 U. S. 570, 14 Sup. Ct. 720, 38 L. Ed. 556.—**Distiller.** Every person who produces distilled spirits, or who brews or makes mash, wort, or wash, fit for distillation or for the production of spirits, or who, by any process of evaporization, separates alcoholic spirit from any fermented substance, or who, making or keeping mash, wort, or wash, has also in his possession or use a still, shall be regarded as a distiller. Rev. St. U. S. § 3247 (U. S. Comp. St. 1901, p. 2107). See Johnson v. State, 44 Ala. 416; U. S. v. Frerichs, 25 Fed. Cas. 1218; U. S. v. Wittig, 28 Fed. Cas. 745; U. S. v. Ridenour (D. C.) 119 Fed. 411.—**Distillery.** The strict meaning of "distillery" is a place or building where alcoholic liquors are distilled or manufactured; not every building where the process of distillation is used. Atlantic Dock Co. v. Libby, 45 N. Y. 499; U. S. v. Blaisdell, 24 Fed. Cas. 1162.

DISTINCTE ET APERTE. In old English practice. Distinctly and openly. Formal words in writs of error, referring to the return required to be made to them. Reg. Orig. 17.

Distinguenda sunt tempora. The time is to be considered. 1 Coke, 16*a*; Bloss v. Tobey, 2 Pick. (Mass.) 327; Owens v. Missionary Society, 14 N. Y. 380, 393, 67 Am. Dec. 160.

Distinguenda sunt tempora; aliud est facere, aliud perficere. Times must be distinguished; it is one thing to do, another to perfect. 3 Leon. 243; Branch, Princ.

Distinguenda sunt tempora; distingue tempora et concordabis leges. Times are to be distinguished; distinguish times, and you will harmonize laws. 1 Coke, 24. A maxim applied to the construction of statutes.

DISTINGUISH. To point out an essential difference; to prove a case cited as applicable, inapplicable.

DISTRACTED PERSON. A term used in the statutes of Illinois (Rev. Laws, Ill. 1833, p. 332) and New Hampshire (Dig. N. H. Laws, 1830, p. 339) to express a state of insanity. Snyder v. Snyder, 142 Ill. 60, 31 N. E. 303.

DISTRACTIO. Lat. In the civil law. A separation or division into parts; also an alienation or sale. Sometimes applied to the act of a guardian in appropriating the property of his ward.

—Distractio bonorum. The sale at retail of the property of an insolvent estate, under the management of a curator appointed in the interest of the creditors, and for the purpose of realizing as much as possible for the satisfaction of their claim. Mackeld. Rom. Law, § 524. **—Distractio pignoris.** The sale of a thing pledged or hypothecated, by the creditor or pledgee, to obtain satisfaction of his claim on the debtor's failure to pay or redeem. Idem. § 348.

DISTRAHERE. To sell; to draw apart; to dissolve a contract; to divorce. Calvin.

DISTRAIN. To take as a pledge property of another, and keep the same until he performs his obligation or until the property is replevied by the sheriff. It was used to secure an appearance in court, payment of rent, performance of services, etc. 3 Bl. Comm. 231; Fitzh. Nat. Brev. 32, B, C, 223. Boyd v. Howden, 3 Daly (N. Y.) 457; Byers v. Ferguson, 41 Or. 77, 68 Pac. 5.

Distress is now generally resorted to for the purpose of enforcing the payment of rent, taxes, or other duties.

DISTRAINER, or DISTRAINOR. He who seizes a distress.

DISTRAINT. Seizure; the act of distraining or making a distress.

DISTRESS. The taking a personal chattel out of the possession of a wrong-doer into the custody of the party injured, to procure a satisfaction for a wrong committed; as for non-payment of rent, or injury done by cattle. 3 Bl. Comm. 6, 7; Co. Litt. 47; Emig v. Cunningham, 62 Md. 460; Hard v. Nearing, 44 Barb. (N. Y.) 488; Owen v. Boyle, 22 Me. 61; Evans v. Lincoln Co., 204 Pa. 448, 54 Atl. 321. The taking of beasts or other personal property by way of pledge, to enforce the performance of something due from the party distrained upon. 3 Bl. Comm. 231. The taking of a defendant's goods, in order to compel an appearance in court. Id. 280; 3 Steph. Comm. 361, 363. The seizure of personal property to enforce payment of taxes, to be followed by its public sale if the taxes are not voluntarily paid. Marshall v. Wadsworth, 64 N. H. 386, 10 Atl. 685. Also the thing taken by distraining, that which is seized to procure satisfaction. And in old Scotch law, a pledge taken by the sheriff from those attending fairs or markets, to secure their good behavior, and returnable to them at the close of the fair or market if they had been guilty of no wrong.

—Distress infinite. One that has no bounds with regard to its quantity, and may be repeated from time to time, until the stubbornness of the party is conquered. Such are distresses for fealty or suit of court, and for compelling jurors to attend. 3 Bl. Comm. 231.—**Distress warrant.** A writ authorizing an officer to made a distraint; particularly, a writ authorizing the levy of a distress on the chattels of a tenant for non-payment of rent. Baileyville v. Lowell, 20 Me. 181; Bagwell v. Jamison, Cheves (S. C.) 252.—**Grand distress, writ of.** A writ formerly issued in the real action of *quare impedit*, when no appearance had been entered after the attachment; it commanded the sheriff to distrain the defendant's lands and chattels in order to compel appearance. It is no longer used, 23 & 24 Vict. c. 126, § 26, having abolished the action of *quare impedit*, and substituted for it the procedure in an ordinary action. Wharton.—**Second distress.** A supplementary distress for rent in arrear, allowed by law in some cases, where the goods seized under the first distress are not of sufficient value to satisfy the claim.

DISTRIBUTEE. An heir; a person entitled to share in the distribution of an estate. This term is admissible to denote one of the persons who are entitled, under the statute of distributions, to the personal estate of one who is dead intestate. Henry v. Henry, 31 N. C. 278; Kitchen v. Southern Ry., 68 S. C. 554, 48 S. E. 4.

DISTRIBUTION. In practice. The apportionment and division, under authority of a court, of the remainder of the estate of an intestate, after payment of the debts and charges, among those who are legally entitled to share in the same. Rogers v. Gillett, 56 Iowa, 266, 9 N. W. 204; William Hill Co. v. Lawler, 116 Cal. 359, 48 Pac. 323; In re Creighton, 12 Neb. 280, 11 N. W. 313; Thomson v. Tracy, 60 N. Y. 180.

—Statute of distributions. A law prescribing the manner of the distribution of the estate of an intestate among his heirs or relatives. Such statutes exist in all the states.

DISTRIBUTIVE. Exercising or accomplishing distribution; apportioning, dividing, and assigning in separate items or shares.

—Distributive finding of the issue. The jury are bound to give their verdict for that party who, upon the evidence, appears to them to have succeeded in establishing his side of the issue. But there are cases in which an issue may be found distributively, *i. e.*, in part for plaintiff, and in part for defendant. Thus, in an action for goods sold and work done, if the defendant pleaded that he never was indebted, on which issue was joined, a verdict might be found for the plaintiff as to the goods, and for the defendant as to the work. Steph. Pl. (7th Ed.) 77*d*.—**Distributive justice.** See JUSTICE.—**Distributive share.** The share or portion which a given heir receives on the legal distribution of an intestate estate, People v. Beckwith, 10 N. Y. St. Rep. 97; Page v. Rives, 18 Fed. Cas. 992. Sometimes, by an extension of meaning, the share or portion assigned to a given person on the distribution of any estate or fund, as, under an assignment for creditors or under insolvency proceedings.

DISTRICT. One of the portions into which an entire state or country may be divided, for judicial, political, or administrative purposes.

The United States are divided into judicial districts, in each of which is established a district court. They are also divided into election districts, collection districts, etc.

The circuit or territory within which a person may be compelled to appear. Cowell. Circuit of authority; province. Enc. Lond.

—District attorney. The prosecuting officer of the United States government in each of the federal judicial districts. Also, under the state governments, the prosecuting officer who represents the state in each of its judicial districts. In some states, where the territory is divided, for judicial purposes, into sections called by some other name than "districts," the same officer is denominated "county attorney" or "state's attorney." Smith v. Scranton, 3 C. P. Rep. (Pa.) 84; State v. Salge, 2 Nev. 324.—**District clerk.** The clerk of a district court of either a state or the United States.—**District courts.** Courts of the United States, each having territorial jurisdiction over a *dis-*

trict, which may include a whole state or only part of it. Each of these courts is presided over by one judge, who must reside within the district. These courts have original jurisdiction over all admiralty and maritime causes and all proceedings in bankruptcy, and over all penal and criminal matters cognizable under the laws of the United States, exclusive jurisdiction over which is not vested either in the supreme or circuit courts. Also inferior courts of record in California, Connecticut, Iowa, Kansas, Louisiana, Minnesota, Nebraska, Nevada, Ohio, and Texas are also called "district courts." Their jurisdiction is for the most part similar to that of county courts, (*q. v.*)—**District judge.** The judge of a United States district court; also, in some states, the judge of a district court of the state.—**District parishes.** Ecclesiastical divisions of parishes in England, for all purposes of worship, and for the celebration of marriages, christenings, churchings, and burials, formed at the instance of the queen's commissioners for building new churches. See 3 Steph. Comm. 744.—**District registry.** By the English judicature act, 1873, § 60, it is provided that to facilitate proceedings in country districts the crown may, from time to time, by order in council, create district registries, and appoint district registrars for the purpose of issuing writs of summons, and for other purposes. Documents sealed in any such district registry shall be received in evidence without further proof, (section 61;) and the district registrars may administer oaths or do other things as provided by rules or a special order of the court, (section 62.) Power, however, is given to a judge to remove proceedings from a district registry to the office of the high court. Section 65. By order in council of 12th of August, 1875, a number of district registries have been established in the places mentioned in that order; and the prothonotaries in Liverpool, Manchester, and Preston, the district registrar of the court of admiralty at Liverpool, and the county court registrars in the other places named, have been appointed district registrars. Wharton.

As to "Fire," "Judicial," "Land," "Levee," "Mineral," "Mining," "Road," "School," and "Taxing" districts, see those titles.

DISTRICT OF COLUMBIA. A territory situated on the Potomac river, and being the seat of government of the United States. It was originally ten miles square, and was composed of portions of Maryland and Virginia ceded by those states to the United States; but in 1846 the tract coming from Virginia was retroceded. Legally it is neither a state nor a territory, but is made subject, by the constitution, to the exclusive jurisdiction of congress.

DISTRICTIO. Lat. A distress; a distraint. Cowell.

DISTRINGAS. In English practice. A writ directed to the sheriff of the county in which a defendant resides, or has any goods or chattels, commanding him to *distrain* upon the goods and chattels of the defendant for forty shillings, in order to compel his appearance. 3 Steph. Comm. 567. This writ issues in cases where it is found impracticable to get at the defendant personally, so as to serve a summons upon him. Id.

A *distringas* is also used in equity, as the first process to compel the appearance of a corporation aggregate. St. 11 Geo. IV. and 1 Wm. IV. c. 36.

A form of execution in the actions of detinue and assise of nuisance. Brooke, Abr. pl. 26; Barnet v. Ihrie, 1 Rawle (Pa.) 44.

—**Distringas juratores.** A writ commanding the sheriff to have the bodies of the jurors, or to *distrain* them by their lands and goods, that they may appear upon the day appointed. 3 Bl. Comm. 354. It issues at the same time with the *venire*, though in theory afterwards, founded on the supposed neglect of the juror to attend. 3 Steph. Comm. 590.—**Distringas nuper vice comitem.** A writ to distrain the goods of one who lately filled the office of sheriff, to compel him to do some act which he ought to have done before leaving the office; as to bring in the body of a defendant, or to sell goods attached under a *fi. fa.*—**Distringas vice comitem.** A writ of *distringas*, directed to the coroner, may be issued against a sheriff if he neglects to execute a writ of *venditioni exponas*. Arch. Pr. 584.

DISTRINGERE. In feudal and old English law. To distrain; to coerce or compel. Spelman; Calvin.

DISTURBANCE. **1.** Any act causing annoyance, disquiet, agitation, or derangement to another, or interrupting his peace, or interfering with him in the pursuit of a lawful and appropriate occupation. Richardson v. State, 5 Tex. App. 472; State v. Stuth, 11 Wash. 423, 39 Pac. 665; George v. George, 47 N. H. 33; Varney v. French, 19 N. H. 233.

2. A wrong done to an incorporeal hereditament by hindering or disquieting the owner in the enjoyment of it. Finch, 187; 3 Bl. Comm. 235.

—**Disturbance of common.** The doing any act by which the right of another to his common is incommoded or diminished; as where one who has no right of common puts his cattle into the land, or where one who has a right of common puts in cattle which are not commonable, or surcharges the common; or where the owner of the land, or other person, incloses or otherwise obstructs it. 3 Bl. Comm. 237–241; 3 Steph. Comm. 511, 512.—**Disturbance of franchise.** The disturbing or incommoding a man in the lawful exercise of his franchise, whereby the profits arising from it are diminished. 3 Bl. Comm. 236; 3 Steph. Comm. 510; 2 Crabb, Real Prop. p. 1074, § 2472*a*.—**Disturbance of patronage.** The hindrance or obstruction of a patron from presenting his clerk to a benefice. 3 Bl. Comm. 242; 3 Steph. Comm. 514.—**Disturbance of public worship.** Any acts or conduct which interfere with the peace and good order of an assembly of persons lawfully met together for religious exercises. Lancaster v. State, 53 Ala. 398, 25 Am. Rep. 625; Brown v. State, 46 Ala. 183; McElroy v. State, 25 Tex. 507.—**Disturbance of tenure.** In the law of tenure, disturbance is where a stranger, by menaces, force, persuasion, or otherwise, causes a tenant to leave his tenancy; this disturbance of tenure is an injury to the lord for which an action will lie. 3 Steph. Comm. 414.—**Disturbance of the peace.** Interruption of the peace, quiet, and good order of a neighborhood or community, particularly by unnecessary and distracting noises. City of St. Charles v. Meyer, 58 Mo. 89; Yokum v. State (Tex. Cr. App.) 21 S. W. 191. —**Disturbance of ways.** This happens where a person who has a right of way over another's

ground by grant or prescription is obstructed by inclosures or other obstacles, or by plowing across it, by which means he cannot enjoy his right of way, or at least in so commodious a manner as he might have done. 3 Bl. Comm. 241.

DISTURBER. If a bishop refuse or neglect to examine or admit a patron's clerk, without reason assigned or notice given, he is styled a "disturber" by the law, and shall not have any title to present by lapse; for no man shall take advantage of his own wrong. 2 Bl. Comm. 278.

DITCH. The words "ditch" and "drain" have no technical or exact meaning. They both may mean a hollow space in the ground, natural or artificial, where water is collected or passes off. Goldthwait v. East Bridgewater, 5 Gray (Mass.) 64; Wetmore v. Fiske, 15 R. I. 354, 5 Atl. 375.

DITES OUSTER. L. Fr. Say over. The form of awarding a *respondeas ouster*, in the Year Books, M. 6 Edw. III. 49.

DITTAY. In Scotch law. A technical term in civil law, signifying the matter of charge or ground of indictment against a person accused of crime. *Taking up dittay* is obtaining informations and presentments of crime in order to trial. Skene, de Verb. Sign.; Bell.

DIVERS. Various, several, sundry; a collective term grouping a number of unspecified persons, objects, or acts. Com. v. Butts, 124 Mass. 452; State v. Hodgson, 66 Vt. 134, 28 Atl. 1089; Munro v. Alaire, 2 Caines (N. Y.) 326.

DIVERSION. A turning aside or altering the natural course of a thing. The term is chiefly applied to the unauthorized changing the course of a water-course to the prejudice of a lower proprietor. Merritt v. Parker, 1 N. J. Law, 460; Parker v. Griswold, 17 Conn. 299, 42 Am. Dec. 739.

DIVERSITE DES COURTS. A treatise on courts and their jurisdiction, written in French in the reign of Edward III. as is supposed, and by some attributed to Fitzherbert. It was first printed in 1525, and again in 1534. Crabb, Eng. Law, 330, 483.

DIVERSITY. In criminal pleading. A plea by the prisoner in bar of execution, alleging that he is not the same who was attainted, upon which a jury is immediately impaneled to try the collateral issue thus raised, viz., the identity of the person, and not whether he is guilty or innocent, for that has been already decided. 4 Bl. Comm. 396.

DIVERSO INTUITU. Lat. With a different view, purpose, or design; in a different view or point of view; by a different course or process. 1 W. Bl. 89; 4 Kent, Comm. 211, note.

DIVERSORIUM. In old English law. A lodging or inn. Townsh. Pl. 38.

DIVERT. To turn aside; to turn out of the way; to alter the course of things. Usually applied to water-courses. Ang. Water-Courses, § 97 et seq. Sometimes to roads. 8 East, 394.

DIVES. In the practice of the English chancery division, "dives costs" are costs on the ordinary scale, as opposed to the costs formerly allowed to a successful pauper suing or defending *in formâ pauperis*, and which consisted only of his costs out of pocket. Daniell, Ch. Pr. 43.

DIVEST. Equivalent to devest, (*q. v.*)

DIVESTITIVE FACT. A fact by means of which a right is divested, terminated, or extinguished; as the right of a tenant terminates with the expiration of his lease, and the right of a creditor is at an end when his debt has been paid. Holl. Jur. 132.

Divide et impera, cum radix et vertex imperii in obedientium consensu rata sunt. 4 Inst. 35. Divide and govern, since the foundation and crown of empire are established in the consent of the obedient.

DIVIDEND. A fund to be divided. The share allotted to each of several persons entitled to share in a division of profits or property. Thus, dividend may denote a fund set apart by a corporation out of its profits, to be apportioned among the shareholders, or the proportional amount falling to each. In bankruptcy or insolvency practice, a dividend is a proportional payment to the creditors out of the insolvent estate. State v. Comptroller of State, 54 N. J. Law, 135, 23 Atl. 122; Trustees of University v. North Carolina R. Co., 76 N. C. 103, 22 Am. Rep. 671; De Koven v. Alsop, 205 Ill. 309, 68 N. E. 930, 63 L. R. A. 587; Hyatt v. Allen, 56 N. Y. 553, 15 Am. Rep. 449; Cary v. Savings Union, 22 Wall. 38, 22 L. Ed. 779; In re Ft. Wayne Electric Corp. (D. C.) 94 Fed. 109; In re Fielding (D. C.) 96 Fed. 800.

In old English law. The term denotes one part of an indenture, (*q. v.*)

—Preferred dividend. One paid on the preferred stock of a corporation; a dividend paid to one class of shareholders in priority to that paid to another. Chaffee v. Railroad Co., 55 Vt. 129; Taft v. Railroad Co., 8 R. I. 310, 5 Am. Rep. 575.—**Scrip dividend.** One paid in scrip, or in certificates of the ownership of a corresponding amount of capital stock of the company thereafter to be issued. Bailey v. Railroad Co., 22 Wall. 604, 22 L. Ed. 840.—**Stock dividend.** One paid in stock, that is, not in money, but in a proportional number of shares of the capital stock of the company, which is ordinarily increased for this purpose to a corresponding extent. Kaufman v. Char-

lottesville Woolen Mills Co., 93 Va. 673, 25 S. E. 1003; Thomas v. Gregg, 78 Md. 545, 28 Atl. 565, 44 Am. St. Rep. 310.—**Ex dividend.** A phrase used by stock brokers, meaning that a sale of corporate stock does not carry with it the seller's right to receive his proportionate share of a dividend already declared and shortly payable.

DIVIDENDA. In old records. An indenture; one counterpart of an indenture.

DIVINARE. Lat. To divine; to conjecture or guess; to foretell. *Divinatio*, a conjecturing or guessing.

Divinatio, non interpretatio est, quæ omnino recedit a litera. That is guessing, not interpretation, which altogether departs from the letter. Bac. Max. 18, (in reg. 3,) citing Yearb. 3 Hen. VI. 20.

DIVINE LAWS. As distinguished from those of human origin, divine laws are those of which the authorship is ascribed to God, being either positive or revealed laws or the laws of nature. Mayer v. Frobe, 40 W. Va. 246, 22 S. E. 58; Borden v. State, 11 Ark. 527, 44 Am. Dec. 217.

DIVINE SERVICE. Divine service was the name of a feudal tenure, by which the tenants were obliged to do some special divine services in certain; as to sing so many masses, to distribute such a sum in alms, and the like. (2 Bl. Comm. 102; 1 Steph. Comm. 227.) It differed from tenure in *frankalmoign*, in this: that, in case of the tenure by divine service, the lord of whom the lands were holden might distrain for its nonperformance, whereas, in case of *frankalmoign*, the lord has no remedy by distraint for neglect of the service, but merely a right of complaint to the visitor to correct it. Mozley & Whitley.

DIVISA. In old English law. A device, award, or decree; also a devise; also bounds or limits of division of a parish or farm, etc. Cowell. Also a court held on the boundary, in order to settle disputes of the tenants.

Divisibilis est semper divisibilis. A thing divisible may be forever divided.

DIVISIBLE. That which is susceptible of being divided.

—**Divisible contract.** One which is in its nature and purposes susceptible of division and apportionment, having two or more parts in respect to matters and things contemplated and embraced by it, not necessarily dependent on each other nor intended by the parties so to be. Horseman v. Horseman, 43 Or. 83, 72 Pac. 698.

DIVISIM. In old English law. Severally; separately. Bract. fol. 47.

DIVISION. In English law. One of the smaller subdivisions of a county. Used in Lincolnshire as synonymous with "riding" in Yorkshire.

DIVISION OF OPINION. In the practice of appellate courts, this term denotes such a disagreement among the judges that there is not a majority in favor of any one view, and hence no decision can be rendered on the case. But it sometimes also denotes a division into two classes, one of which may comprise a majority of the judges; as when we speak of a decision having proceeded from a "divided court."

DIVISIONAL COURTS. Courts in England, consisting of two or (in special cases) more judges of the high court of justice, sitting to transact certain kinds of business which cannot be disposed of by one judge.

DIVISUM IMPERIUM. Lat. A divided jurisdiction. Applied, *e. g.*, to the jurisdiction of courts of common law and equity over the same subject. 1 Kent, Comm. 366; 4 Steph. Comm. 9.

DIVORCE. The legal separation of man and wife, effected, for cause, by the judgment of a court, and either totally dissolving the marriage relation, or suspending its effects so far as concerns the cohabitation of the parties. Atherton v. Atherton, 181 U. S. 155, 21 Sup. Ct. 544, 45 L. Ed. 794; Miller v. Miller, 33 Cal. 355; Cast v. Cast, 1 Utah, 112.

The dissolution is termed "divorce from the bond of matrimony," or, in the Latin form of the expression, "*a vinculo matrimonii;*" the suspension, "divorce from bed and board," "*a mensa et thoro.*" The former divorce puts an end to the marriage; the latter leaves it in full force. 2 Bish. Mar. & Div. § 225.

The term "divorce" is now applied, in England, both to decrees of nullity and decrees of dissolution of marriage, while in America it is used only in cases of divorce *a mensa* or *a vinculo*, a decree of nullity of marriage being granted for the causes for which a divorce *a vinculo* was formerly obtainable in England.

—**Divorce a mensa et thoro.** A divorce from table and bed, or from bed and board. A partial or qualified divorce, by which the parties are separated and forbidden to live or cohabit together, without affecting the marriage itself. 1 Bl. Comm. 440; 3 Bl. Comm. 94; 2 Steph. Comm. 311; 2 Bish. Mar. & Div. § 225; Miller v. Clark, 23 Ind. 370; Rudolph v. Rudolph (Super. Buff.) 12 N. Y. Supp. 81; Zule v. Zule, 1 N. J. Eq. 99.—**Divorce a vinculo matrimonii.** A divorce from the bond of marriage. A total divorce of husband and wife, dissolving the marriage tie, and releasing the parties wholly from their matrimonial obligations. 1 Bl. Comm. 440; 2 Steph. Comm. 310, 311; 2 Bish. Mar. & Div. § 225; De Roche v. De Roche, 12 N. D. 17, 94 N. W. 770.—**Foreign divorce.** A divorce obtained out of the state or country where the marriage was solemnized. 2 Kent, Comm. 106, et seq.—**Limited divorce.** A divorce from bed and board; or a judicial separation of husband and wife not dissolving the marriage tie.

Divortium dicitur a divertendo, quia vir divertitur ab uxore. Co. Litt. 235. Divorce is called from *divertendo*, because a man is diverted from his wife.

DIXIEME. Fr. Tenth; the tenth part. Ord. Mar. liv. 1, tit. 1, art. 9.

In old French law. An income tax payable to the crown. Steph. Lect. 359.

DO. Lat. I give. The ancient and aptest word of feoffment and of gift. 2 Bl. Comm. 310, 316; Co. Litt. 9.

DO, DICO, ADDICO. Lat. I give, I say, I adjudge. Three words used in the Roman law, to express the extent of the civil jurisdiction of the prætor. *Do* denoted that he *gave* or granted actions, exceptions, and judices; *dico*, that he pronounced judgment; *addico*, that he adjudged the controverted property, or the goods of the debtor, etc., to the plaintiff. Mackeld. Rom. Law, § 39.

DO, LEGO. Lat. I give, I bequeath; or I give and bequeath. The formal words of making a bequest or legacy, in the Roman law. *Titio et Seio hominem Stichum do, lego*, I give and bequeath to Titius and Seius my man Stichus. Inst. 2, 20, 8, 30, 31. The expression is literally retained in modern wills.

DO UT DES. Lat. I give that you may give; I give [you] that you may give [me.] A formula in the civil law, constituting a general division under which those contracts (termed "innominate") were classed in which something was *given* by one party as a consideration for something *given* by the other. Dig. 19, 4; Id. 19, 5, 5; 2 Bl. Comm. 444.

DO UT FACIAS. Lat. I give that you may do; I give [you] that you may do or make [for me.] A formula in the civil law, under which those contracts were classed in which one party *gave* or agreed to give money, in consideration the other party *did* or performed certain work. Dig. 19, 5, 5; 2 Bl. Comm. 444.

In this and the foregoing phrase, the conjunction "*ut*" is not to be taken as the technical means of expressing a consideration. In the Roman usage, this word imported a *modus*, that is, a qualification; while a consideration (*causa*) was more aptly expressed by the word "*quia*."

DOCIMASIA PULMONUM. In medical jurisprudence. The hydrostatic test used chiefly in cases of alleged infanticide to determine whether the child was born alive or dead, which consists in immersion of the fœtal lungs in water. If they have never been inflated they will sink, but will float if the child has breathed.

DOCK, *v.* To curtail or diminish, as to dock an entail.

DOCK, *n.* The cage or inclosed space in a criminal court where prisoners stand when brought in for trial.

The space, in a river or harbor, inclosed between two wharves. City of Boston v. Lecraw, 17 How. 434, 15 L. Ed. 118; Bingham v. Doané, 9 Ohio, 167.

"A dock is an artificial basin in connection with a harbor, used for the reception of vessels in the taking on or discharging of their cargoes, and provided with gates for preventing the rise and fall of the waters occasioned by the tides, and keeping a uniform level within the docks." Perry v. Haines, 191 U. S. 17, 24 Sup. Ct. 8, 48 L. Ed. 73.

—Dockage. A charge against vessels for the privilege of mooring to the wharves or in the slips. People v. Roberts, 92 Cal. 659, 28 Pac. 689. A pecuniary compensation for the use of a dock while a vessel is undergoing repairs. Ives v. The Buckeye State, 13 Fed. Cas. 184. **—Dock-master.** An officer invested with powers within the docks, and a certain distance therefrom, to direct the mooring and removing of ships, so as to prevent obstruction to the dock entrances. Mozley & Whitley.— **Dock warrant.** In English law. A warrant given by dock-owners to the owner of merchandise imported and warehoused on the dock, upon the faith of the bills of lading, as a recognition of his title to the goods. It is a negotiable instrument. Pull. Port of London, p. 375.

DOCKET, *v.* To abstract and enter in a book. 3 Bl. Comm. 397, 398. To make a brief entry of any proceeding in a court of justice in the docket.

DOCKET, *n.* A minute, abstract, or brief entry; or the book containing such entries. A small piece of paper or parchment having the effect of a larger. Blount.

In practice. A formal record, entered in brief, of the proceedings in a court of justice.

A book containing an entry in brief of all the important acts done in court in the conduct of each case, from its inception to its conclusion. Pub. St. Mass. 1882, p. 1290.

The name of "docket" or "trial docket" is sometimes given to the list or calendar of causes set to be tried at a specified term, prepared by the clerks for the use of the court and bar.

Kinds of dockets. An *appearance* docket is one in which the appearances in actions are entered, containing also a brief abstract of the successive steps in each action. A *bar* docket is an unofficial paper consisting of a transcript of the docket for a term of court, printed for distribution to members of the bar. Gifford v. Cole, 57 Iowa, 272, 10 N. W. 672. An *execution* docket is a list of the executions sued out or pending in the sheriff's office. A *judgment* docket is a list or docket of the judgments entered in a given court, methodically kept by the clerk or other proper officer, open to public inspection, and intended to afford official notice to interested parties of the existence or lien of judgments.

—Docket fee. An attorney's fee, of a fixed sum, chargeable with or as a part of the costs of the action, for the attorney of the successful party; so called because chargeable on the docket, not as a fee for making docket entries. Bank v. Neill, 13 Mont. 377, 34 Pac. 180; Goodyear v. Sawyer (C. C.) 17 Fed. 2.— **Docket, striking a.** A phrase formerly used in English bankruptcy practice. It referred to the entry of certain papers at the bankruptcy office, preliminary to the prosecution of the fiat against a trader who had become bankrupt. These papers consisted of the affidavit, the bond,

and the petition of the creditor, and their object was to obtain from the lord chancellor his fiat, authorizing the petitioner to prosecute his complaint against the bankrupt in the bankruptcy courts. Brown.

DOCTOR. A learned man; one qualified to give instruction of the higher order in a science or art; particularly, one who has received the highest academical degree in his art or faculty, as, a doctor of laws, medicine, or theology. In colloquial language, however, the term is practically restricted to practitioners of medicine. Harrison v. State, 102 Ala. 170, 15 South. 563; State v. McKnight, 131 N. C. 717, 42 S. E. 580, 59 L. R. A. 187.

This term means, simply, practitioner of physic, without respect to system pursued. A certificate of a homœpathic physician is a "doctor's certificate." Corsi v. Maretzek, 4 E. D. Smith (N. Y.) 1.

DOCTOR AND STUDENT. The title of a work written by St. Germain in the reign of Henry VIII. in which many principles of the common law are discussed in a popular manner. It is in the form of a dialogue between a doctor of divinity and a student in law, and has always been considered a book of merit and authority. 1 Kent, Comm. 504; Crabb, Eng. Law, 482.

DOCTORS' COMMONS. An institution near St. Paul's Churchyard, in London, where, for a long time previous to 1857, the ecclesiastical and admiralty courts used to be held.

DOCTRINE. A rule, principle, theory, or tenet of the law; as, the doctrine of merger, the doctrine of relation, etc.

Doctrinal interpretation. See INTERPRETATION.

DOCUMENT. An instrument on which is recorded, by means of letters, figures, or marks, matter which may be evidentially used. In this sense the term "document" applies to writings; to words printed, lithographed, or photographed; to seals, plates, or stones on which inscriptions are cut or engraved; to photographs and pictures; to maps and plans. The inscription may be on stone or gems, or on wood, as well as on paper or parchment. 1 Whart. Ev. § 614; Johnson Steel Street-Rail Co. v. North Branch Steel Co. (C. C.) 48 Fed. 194; Arnold v. Water Co., 18 R. I. 189, 26 Atl. 55, 19 L. R. A. 602; Hayden v. Van Cortlandt, 84 Hun, 150, 32 N. Y. Supp. 507.

In the plural, the deeds, agreements, title-papers, letters, receipts, and other written instruments used to prove a fact.

In the civil law. Evidence delivered in the forms established by law, of whatever nature such evidence may be. The term is, however, applied principally to the testimony of witnesses. Sav. Dr. Rom. § 165.

—Ancient documents. Deeds, wills, and other writings more than thirty years old are so called; they are presumed to be genuine without express proof, when coming from the proper custody.—**Foreign document.** One which was prepared or executed in, or which comes from, a foreign state or country.—**Judicial documents.** Proceedings relating to litigation. They are divided into (1) judgments, decrees, and verdicts; (2) depositions, examinations, and inquisitions taken in the course of a legal process; (3) writs, warrants, pleadings, etc., which are incident to any judicial proceedings. See 1 Starkie, Ev. 252.—**Public document.** A state paper, or other instrument of public importance or interest, issued or published by authority of congress or a state legislature. Also any document or record, evidencing or connected with the public business or the administration of public affairs, preserved in or issued by any department of the government. See Hammatt v. Emerson, 27 Me. 335, 46 Am. Dec. 598.—**Documentary evidence.** Such evidence as is furnished by written instruments, inscriptions, documents of all kinds, and also any inanimate objects admissible for the purpose, as distinguished from "oral" evidence, or that delivered by human beings viva voce.

DODRANS. Lat. In Roman law. A subdivision of the *as*, containing nine *unciæ;* the proportion of nine-twelfths, or three-fourths. 2 Bl. Comm. 462, note.

DOE, JOHN. The name of the fictitious plaintiff in the action of ejectment. 3 Steph. Comm. 618.

DOED-BANA. In Saxon law. The actual perpetrator of a homicide.

DOER. In Scotch law. An agent or attorney. 1 Kames, Eq. 325.

DOG-DRAW. In old forest law. The manifest deprehension of an offender against venison in a forest, when he was found drawing after a deer by the scent of a hound led in his hand; or where a person had wounded a deer or wild beast, by shooting at him, or otherwise, and was caught with a dog drawing after him to receive the same. Manwood, Forest Law, 2, c. 8.

DOG-LATIN. The Latin of illiterate persons; Latin words put together on the English grammatical system.

DOGGER. In maritime law. A light ship or vessel; *dogger-fish*, fish brought in ships. Cowell.

DOGGER-MEN. Fishermen that belong to dogger-ships.

DOGMA. In the civil law. A word occasionally used as descriptive of an ordinance of the senate. See Nov. 2, 1, 1; Dig. 27, 1, 6.

DOING. The formal word by which *services* were reserved and expressed in old conveyances; as "rendering" (*reddendo*) was expressive of *rent*. Perk. c. 10, §§ 625, 635, 638.

DOITKIN, or DOIT. A base coin of small value, prohibited by St. 3 Hen. V. c. 1. We still retain the phrase, in the common saying, when we would undervalue a man, that he is not worth a doit. Jacob.

DOLE. A part or portion of a meadow is so called; and the word has the general signification of share, portion, or the like; as "to dole out" anything among so many poor persons, meaning to deal or distribute in portions to them. Holthouse.

In Scotch law. Criminal intent; evil design. Bell, Dict. voc. "Crime."

DOLES, or DOOLS. Slips of pasture left between the furrows of plowed land.

DOLG. Sax. A wound. Spelman.

DOLG-BOTE. A recompense for a scar or wound. Cowell.

DOLI. Lat. See DOLUS.

DOLLAR. The unit employed in the United States in calculating money values. It is coined both in gold and silver, and is of the value of one hundred cents.

DOLO. In Spanish law. Bad or mischievous design. White, New Recop. b. 1, tit. 1, c. 1, § 3.

Dolo facit qui petit quod redditurus est. He acts with guile who demands that which he will have to return. Broom, Max. 846.

Dolo malo pactum se non servaturum. Dig. 2, 14, 7, § 9. An agreement induced by fraud cannot stand.

Dolosus versatur in generalibus. A person intending to deceive deals in general terms. Wing. Max. 636; 2 Coke, 34*a*; 6 Clark & F. 699; Broom, Max. 289.

Dolum ex indiciis perspicuis probari convenit. Fraud should be proved by clear tokens. Code, 2, 21, 6; 1 Story, Cont. § 625.

DOLUS. In the civil law. Guile; deceitfulness; malicious fraud. A fraudulent address or trick used to deceive some one; a fraud. Dig. 4, 3, 1. Any subtle contrivance by words or acts with a design to circumvent. 2 Kent, Comm. 560; Code, 2, 21.

Such acts or omissions as operate as a deception upon the other party, or violate the just confidence reposed by him, whether there be a deceitful intent (*malus animus*) or not. Poth. Traité de Dépôt, nn. 23, 27; Story, Bailm. § 20*a*; 2 Kent, Comm. 506, note.

Fraud, willfulness, or intentionality. In that use it is opposed to *culpa*, which is negligence merely, in greater or less degree. The policy of the law may sometimes treat extreme *culpa* as if it were *dolus*, upon the maxim *culpa dolo comparatur*. A person is always liable for *dolus* producing damage, but not always for *culpa* producing damage, even though extreme, *e. g.*, a depositary is only liable for *dolus*, and not for negligence. Brown.

—Dolus bonus, dolus malus. In a wide sense, the Roman law distinguishes between "good," or rather "permissible" *dolus* and "bad" or fraudulent *dolus*. The former is justifiable or allowable deceit; it is that which a man may employ in self-defense against an unlawful attack, or for another permissible purpose, as when one dissembles the truth to prevent a lunatic from injuring himself or others. The latter exists where one intentionally misleads another or takes advantage of another's error wrongfully, by any form of deception, fraud, or cheating. Mackeld. Rom. Law, § 179; Broom, Max. 349; 2 Kent, Comm. 560, note.—**Dolus dans locum contractui.** Fraud (or deceit) giving rise to the contract; that is, a fraudulent misrepresentation made by one of the parties to the contract, and relied upon by the other, and which was actually instrumental in inducing the latter to enter into the contract.—**Doli capax.** Capable of malice or criminal intention; having sufficient discretion and intelligence to distinguish between right and wrong, and so to become amenable to the criminal laws.—**Doli incapax.** Incapable of criminal intention or malice; not of the age of discretion; not possessed of sufficient discretion and intelligence to distinguish between right and wrong to the extent of being criminally responsible for his actions.

Dolus auctoris non nocet successori. The fraud of a predecessor prejudices not his successor.

Dolus circuitu non purgatur. Fraud is not purged by circuity. Bac. Max. 4; Broom, Max. 228.

Dolus est machinatio, cum aliud dissimulat aliud agit. Lane, 47. Deceit is an artifice, since it pretends one thing and does another.

Dolus et fraus nemini patrocinentur, (patrocinari debent.) Deceit and fraud shall excuse or benefit no man. Yearb. 14 Hen. VIII. 8; Best, Ev. p. 469, § 428; 1 Story, Eq. Jur. § 395.

Dolus latet in generalibus. Fraud lurks in generalities. Tray. Lat. Max. 162.

Dolus versatur in generalibus. Fraud deals in generalities. 2 Coke, 34*a*; 3 Coke, 81*a*.

DOM. PROC. An abbreviation of *Domus Procerum* or *Domo Procerum;* the house of lords in England. Sometimes expressed by the letters D. P.

DOMAIN. The complete and absolute ownership of land; a paramount and individual right of property in land. People v. Shearer, 30 Cal. 658. Also the real es-

tate so owned. The inherent sovereign power claimed by the legislature of a state, of controlling private property for public uses, is termed the "right of eminent domain." 2 Kent, Comm. 339. See EMINENT DOMAIN.

A distinction has been made between "property" and "domain." The former is said to be that quality which is conceived to be in the thing itself, considered as belonging to such or such person, exclusively of all others. By the latter is understood that right which the owner has of disposing of the thing. Hence "domain" and "property" are said to be correlative terms. The one is the active right to dispose of; the other a passive quality which follows the thing and places it at the disposition of the owner. 3 Toullier, no. 83.

—National domain. A term sometimes applied to the aggregate of the property owned directly by a nation. Civ. Code La. 1900, art. 486.**—Public domain.** This term embraces all lands, the title to which is in the United States, including as well land occupied for the purposes of federal buildings, arsenals, dock-yards, etc., as land of an agricultural or mineral character not yet granted to private owners. Barker v. Harvey, 181 U. S. 481, 21 Sup. Ct. 690, 45 L. Ed. 963; Day Land & Cattle Co. v. State, 68 Tex. 526, 4 S. W. 865.

DOMBEC, DOMBOC. (Sax. From *dom*, judgment, and *bec*, *boc*, a book.) Dome-book or doom-book. A name given among the Saxons to a code of laws. Several of the Saxon kings published *dombocs*, but the most important one was that attributed to Alfred. Crabb, Com. Law, 7. This is sometimes confounded with the celebrated *Domesday-Book*. See DOME-BOOK, DOMESDAY.

DOME. (Sax.) Doom; sentence; judgment. An oath. The homager's oath in the black book of Hereford. Blount.

DOME-BOOK. A book or code said to have been compiled under the direction of Alfred, for the general use of the whole kingdom of England; containing, as is supposed, the principal maxims of the common law, the penalties for misdemeanors, and the forms of judicial proceedings. It is said to have been extant so late as the reign of Edward IV., but is now lost. 1 Bl. Comm. 64, 65.

DOMESDAY, DOMESDAY-BOOK. (Sax.) An ancient record made in the time of William the Conqueror, and now remaining in the English exchequer, consisting of two volumes of unequal size, containing minute and accurate surveys of the lands in England. 2 Bl. Comm. 49, 50. The work was begun by five justices in each county in 1081, and finished in 1086.

DOMESMEN. (Sax.) An inferior kind of judges. Men appointed to doom (judge) in matters in controversy. Cowell. Suitors in a court of a manor in ancient demesne, who are judges there. Blount; Whishaw; Termes de la Ley.

DOMESTIC, *n.* Domestics, or, in full, domestic servants, are servants who reside in the same house with the master they serve. The term does not extend to workmen or laborers employed out of doors. Ex parte Meason, 5 Bin. (Pa.) 167.

The Louisiana Civil Code enumerates as domestics those who receive wages and stay in the house of the person paying and employing them, for his own service or that of his family; such as valets, footmen, cooks, butlers, and others who reside in the house. Persons employed in public houses are not included. Cook v. Dodge, 6 La. Ann. 276.

DOMESTIC, *adj.* Pertaining, belonging, or relating to a home, a domicile, or to the place of birth, origin, creation, or transaction.

—Domestic animals. Such as are habituated to live in or about the habitations of men, or such as contribute to the support of a family or the wealth of the community. This term includes horses, (State v. Gould, 26 W. Va. 264; Osborn v. Lenox, 2 Allen [Mass.] 207,) but may or may not include dogs. See Wilcox v. State, 101 Ga. 593, 28 S. E. 981, 39 L. R. A. 709; State v. Harriman, 75 Me. 562, 46 Am. Rep. 423; Hurley v. State, 30 Tex. App. 333, 17 S. W. 455, 28 Am. St. Rep. 916.**—Domestic courts.** Those existing and having jurisdiction at the place of the party's residence or domicile. Dickinson v. Railroad Co., 7 W. Va. 417.

As to domestic "Administrators," "Attachment," "Bill of Exchange," "Commerce," "Corporations," "Creditors," "Factors," "Fixtures," "Judgment," and "Manufactures," see those titles.

DOMESTICUS. In old European law. A *seneschal*, steward, or *major domo;* a judge's assistant; an assessor, (*q. v.*) Spelman.

DOMICELLA. In old English law. A damsel. Fleta, lib. 1, c. 20, § 80.

DOMICELLUS. In old English law. A better sort of servant in monasteries; also an appellation of a king's bastard.

DOMICILE. That place in which a man has voluntarily fixed the habitation of himself and family, not for a mere special or temporary purpose, but with the present intention of making a permanent home, until some unexpected event shall occur to induce him to adopt some other permanent home. In re Garneau, 127 Fed. 677, 62 C. C. A. 403.

In its ordinary acceptation, a person's domicile is the place where he lives or has his home. In a strict and legal sense, that is properly the domicile of a person where he has his true, fixed, permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning. Anderson v. Anderson, 42 Vt. 350, 1 Am. Rep. 334.

Domicile is but the established, fixed, permanent, or ordinary dwelling-place or place of residence of a person, as distinguished from his temporary and transient, though actual, place of residence. It is his legal residence, as distinguished from his temporary place of abode;

or his home, as distinguished from a place to which business or pleasure may temporarily call him. Salem v. Lyme, 29 Conn. 74.

Domicile is the place where a person has fixed his habitation and has a permanent residence, without any present intention of removing therefrom. Crawford v. Wilson, 4 Barb. (N. Y.) 504, 520.

One's domicile is the place where one's family permanently resides. Daniel v. Sullivan, 46 Ga. 277.

In international law, "domicile" means a residence at a particular place, accompanied with positive or presumptive proof of intending to continue there for an unlimited time. State v. Collector of Bordentown, 32 N. J. Law, 192.

"Domicile" and "residence" are not synonymous. The domicile is the home, the fixed place of habitation; while residence is a transient place of dwelling. Bartlett v. New York, 5 Sandf. (N. Y.) 44.

The domicile is the habitation fixed in any place with an intention of always staying there, while simple residence is much more temporary in its character. New York v. Genet, 4 Hun (N. Y.) 489.

Classification. Domicile is of three sorts,—domicile by birth, domicile by choice, and domicile by operation of law. The first is the common case of the place of birth, *domicilium originis;* the second is that which is voluntarily acquired by a party, *proprio motu;* the last is consequential, as that of the wife arising from marriage. Story, Confl. Laws, § 46. And see Railroad Co. v. Kimbrough, 115 Ky. 512, 74 S. W. 229; Price v. Price, 156 Pa. 617, 27 Atl. 291; White v. Brown, 29 Fed. Cas. 992. The following terms are also used: **Commercial domicile.** A domicile acquired by the maintenance of a commercial establishment; a domicile which a citizen of a foreign country may acquire by conducting business in another country. U. S. v. Chin Quong Look (D. C.) 52 Fed. 204; Lau Ow Bew v. U. S., 144 U. S. 47, 12 Sup. Ct. 517, 36 L. Ed. 340.—**De facto domicile.** In French law, permanent and fixed residence in France of an alien who has not acquired French citizenship nor taken steps to do so, but who intends to make his home permanently or indefinitely in that country; called domicile "de facto" because domicile in the full sense of that term, as used in France, can only be acquired by an act equivalent to naturalization. In re Cruger's Will, 36 Misc. Rep. 477, 73 N. Y. Supp. 812.—**Domicile of origin.** The home of the parents. Phillim. Dom. 25, 101. That which arises from a man's birth and connections. 5 Ves. 750. The domicile of the parents at the time of birth, or what is termed the "domicile of origin," constitutes the domicile of an infant, and continues until abandoned, or until the acquisition of a new domicile in a different place. Prentiss v. Barton, 1 Brock. 389, 393, Fed. Cas. No. 11,384.—**Domicile of succession.** This term, as distinguished from a commercial, political, or forensic domicile, means the actual residence of a person within some jurisdiction, of such a character as shall, according to the well-established principles of public law, give direction to the succession of his personal estate. Smith v. Croom, 7 Fla. 81.—**Elected domicile.** The domicile of parties fixed in a contract between them for the purposes of such contract. Woodworth v. Bank of America, 19 Johns. (N. Y.) 417, 10 Am. Dec. 239.—**Foreign domicile.** A domicile established by a citizen or subject of one sovereignty within the territory of another.—**National domicile.** The domicile of a person, considered as being within the territory of a particular nation, and not with reference to a particular locality or subdivision of a nation.—**Natural domicile.** The same as domicile of origin or domicile by birth. Johnson v. Twenty-One Bales, 13 Fed. Cas. 863.—**Necessary domicile.** That kind of domicile which exists by operation of law, as distinguished from voluntary domicile or domicile of choice. Phillim. Dom. 27–97.

DOMICILED. Established in a given domicile; belonging to a given state or jurisdiction by right of domicile.

DOMICILIARY. Pertaining to domicile; relating to one's domicile. Existing or created at, or connected with, the domicile of a suitor or of a decedent.

DOMICILIATE. To establish one's domicile; to take up one's fixed residence in a given place. To establish the domicile of another person whose legal residence follows one's own.

DOMICILIATION. In Spanish law. The acquisition of domiciliary rights and status, nearly equivalent to naturalization, which may be accomplished by being born in the kingdom, by conversion to the Catholic faith there, by taking up a permanent residence in some settlement and marrying a native woman, and by attaching oneself to the soil, purchasing or acquiring real property and possessions. Yates v. Iams, 10 Tex. 168.

DOMICILIUM. Lat. Domicile, (*q. v.*)

DOMIGERIUM. In old English law. Power over another; also danger. Bract. l. 4, t. 1, c. 10.

DOMINA, (DAME.) A title given to honorable women, who anciently, in their own right of inheritance, held a barony. Cowell.

DOMINANT TENEMENT. A term used in the civil and Scotch law, and thence in ours, relating to servitudes, meaning the tenement or subject in favor of which the service is constituted; as the tenement over which the servitude extends is called the "servient tenement." Wharton; Walker v. Clifford, 128 Ala. 67, 29 South. 588, 86 Am. St. Rep. 74; Dillman v. Hoffman, 38 Wis. 572; Stevens v. Dennett, 51 N. H. 339.

DOMINATIO. In old English law. Lordship.

DOMINICA PALMARUM. (*Dominica in ramis palmarum.*) L. Lat. Palm Sunday. Townsh. Pl. 131; Cowell; Blount.

DOMINICAL. That which denotes the Lord's day, or Sunday.

DOMINICIDE. The act of killing one's lord or master.

DOMINICUM. Lat. Domain; demain; demesne. A lordship. That of which one has the lordship or ownership. That which

remains under the lord's immediate charge and control. Spelman.

Property; domain; anything pertaining to a lord. Cowell.

In ecclesiastical law. A church, or any other building consecrated to God. Du Cange.

DOMINICUM ANTIQUUM. In old English law. Ancient demesne. Bract. fol. 369*b*.

DOMINIO. Sp. In Spanish law. A term corresponding to and derived from the Latin *dominium*, (*q. v.*) *Dominio alto*, eminent domain; *dominio directo*, immediate ownership; *dominio utile*, beneficial ownership. Hart v. Burnett, 15 Cal. 556.

DOMINION. Ownership, or right to property. 2 Bl. Comm. 1. Title to an article of property which arises from the power of disposition and the right of claiming it. Baker v. Westcott, 73 Tex. 129, 11 S. W. 157. "The holder has the dominion of the bill." 8 East, 579.

Sovereignty or lordship; as the dominion of the seas. Moll. de Jure Mar. 91, 92.

In the civil law, with reference to the title to property which is transferred by a sale of it, dominion is said to be either "proximate" or "remote," the former being the kind of title vesting in the purchaser when he has acquired both the ownership and the possession of the article, the latter describing the nature of his title when he has legitimately acquired the ownership of the property but there has been no delivery. Coles v. Perry, 7 Tex. 109.

DOMINIUM. In the civil and old English law. Ownership; property in the largest sense, including both the right of property and the right of possession or use.

The mere right of property, as distinguished from the possession or usufruct. Dig. 41, 2, 17, 1; Calvin. The right which a lord had in the fee of his tenant. In this sense the word is very clearly distinguished by Bracton from *dominicum*.

The estate of a feoffee to uses. "The feoffees to use shall have the *dominium*, and the *cestui que use* the disposition." Latch. 137.

Sovereignty or dominion. *Dominium maris*, the sovereignty of the sea.

—Dominium directum. In the civil law. Strict ownership; that which was founded on strict law, as distinguished from equity. In later law. Property without use; the right of a landlord. Tayl. Civil Law, 478. In feudal law. Right or proper ownership; the right of a superior or lord, as distinguished from that of his vassal or tenant. The title or property which the sovereign in England is considered as possessing in all the lands of the kingdom, they being holden either immediately or mediately of him as lord paramount.—**Dominium directum et utile.** The complete and absolute dominion in property; the union of the title and the exclusive use. Fairfax v. Hunter, 7 Cranch, 603, 3 L. Ed. 453.—**Dominium eminens.** Eminent domain.—**Dominium plenum.** Full ownership; the union of the *dominium directum* with the *dominium utile*. Tayl. Civil Law, 478.—**Dominium utile.** In the civil law. Equitable or prætorian ownership; that which was founded on equity. Mackeld. Rom. Law, § 327, note. In later law. Use without property; the right of a tenant. Tayl. Civil Law, 478. In feudal law. Useful or beneficial ownership; the usufruct, or right to the use and profits of the soil, as distinguished from the *dominium directum*, (*q. v.*,) or ownership of the soil itself; the right of a vassal or tenant. 2 Bl. Comm. 105.

Dominium non potest esse in pendenti. Lordship cannot be in suspense, *i. e.*, property cannot remain in abeyance. Halk. Law Max. 39.

DOMINO VOLENTE. Lat. The owner being willing; with the consent of the owner.

DOMINUS. In feudal and ecclesiastical law. A lord, or feudal superior. *Dominus rex*, the lord the king; the king's title as lord paramount. 1 Bl. Comm. 367. *Dominus capitalis*, a chief lord. *Dominus medius*, a mesne or intermediate lord. *Dominus ligius*, liege lord or sovereign. Id.

Lord or sir; a title of distinction. It usually denoted a knight or clergyman; and, according to Cowell, was sometimes given to a gentleman of quality, though not a knight, especially if he were lord of a manor.

The owner or proprietor of a thing, as distinguished from him who uses it merely. Calvin. A master or principal, as distinguished from an agent or attorney. Story, Ag. § 3.

In the civil law. A husband. A family. Vicat.

Dominus capitalis loco hæredis habetur, quoties per defectum vel delictum extinguitur sanguis sui tenentis. Co. Litt. 18. The supreme lord takes the place of the heir, as often as the blood of the tenant is extinct through deficiency or crime.

DOMINUS LITIS. Lat. The master of the suit; *i. e.*, the person who was really and directly interested in the suit as a party, as distinguished from his attorney or advocate. But the term is also applied to one who, though not originally a party, has made himself such, by intervention or otherwise, and has assumed entire control and responsibility for one side, and is treated by the court as liable for costs. See In re Stover, 1 Curt. 201, Fed. Cas. No. 13,507.

DOMINUS NAVIS. In the civil law. The owner of a vessel. Dig. 39, 4, 11, 2.

Dominus non maritabit pupillum nisi semel. Co. Litt. 9. A lord cannot give a ward in marriage but once.

Dominus rex nullum habere potest parem, multo minus superiorem. The king cannot have an equal, much less a superior. 1 Reeve, Eng. Law, 115.

DOMITÆ. Lat. Tame; domesticated; not wild. Applied to domestic animals, in which a man may have an absolute property. 2 Bl. Comm. 391.

DOMMAGES INTERETS. In French law. Damages.

DOMO REPARANDA. A writ that lay for one against his neighbor, by the anticipated fall of whose house he feared a damage and injury to his own. Reg. Orig. 153.

DOMUS. Lat. In the civil and old English law. A house or dwelling; a habitation. Inst. 4, 4, 8; Townsh. Pl. 183–185. Bennet v. Bittle, 4 Rawle (Pa.) 342.

—Domus capitularis. In old records. A chapter-house; the chapter-house. Dyer, 26*b*. **—Domus conversorum.** An ancient house built or appointed by King Henry III. for such Jews as were converted to the Christian faith; but King Edward III., who expelled the Jews from the kingdom, deputed the place for the custody of the rolls and records of the chancery. Jacob.—**Domus Dei.** The house of God; a name applied to many hospitals and religious houses.—**Domus mansionalis.** A mansion house. 1 Hale, P. C. 558; State v. Brooks, 4 Conn. 446; State v. Sutcliffe, 4 Strob. (S. C.) 376.—**Domus procerum.** The house of lords, abbreviated into *Dom. Proc.*, or *D. P.*

Domus sua cuique est tutissimum refugium. To every man his own house is his safest refuge. 5 Coke, 91*b;* 11 Coke, 82; 3 Inst. 162. The house of every one is to him as his castle and fortress, as well for his defense against injury and violence as for his repose. 5 Coke, 91*b;* Say. 227; Broom, Max. 432. A man's dwelling-house is his castle, not for his own personal protection merely, but also for the protection of his family and his property therein. Curtis v. Hubbard, 4 Hill (N. Y.) 437.

Domus tutissimum cuique refugium atque receptaculum sit. A man's house should be his safest refuge and shelter. A maxim of the Roman law. Dig. 2, 4, 18.

Dona clandestina sunt semper suspiciosa. 3 Coke, 81. Clandestine gifts are always suspicious.

Donari videtur, quod nullo jure cogente conceditur. Dig. 50, 17, 82. A thing is said to be given when it is yielded otherwise than by virtue of right.

DONATARIUS. A donee; one to whom something is given.

DONATIO. Lat. A gift. A transfer of the title to property to one who receives it without paying for it. Vicat. The act by which the owner of a thing voluntarily transfers the title and possession of the same from himself to another person, without any consideration.

Its literal translation, "gift" has acquired in real law a more limited meaning, being applied to the conveyance of estates tail. 2 Bl. Comm. 316; Littleton, § 59; West, Symb. § 254; 4 Cruise, Dig. 51.

Classification. By the civil law (adopted into the English and American law) donations are either *inter vivos* (between living persons) or *mortis causa* (in anticipation of death.) As to these forms, see *infra*. A *donatio* or gift as between living persons is called *donatio mera* or *pura* when it is a simple gift without compulsion or consideration, that is, resting solely on the generosity of the donor, as in the case of most charitable gifts. It is called *donatio remuneratoria* when given as a reward for past services, but still not under any legal compulsion, as in the case of pensions and land-grants. It is called *donatio sub modo* (or *modalis*) when given for the attainment of some special object or on condition that the donee shall do something not specially for the benefit of the donor, as in the case of the endowment of hospitals, colleges, etc., coupled with the condition that they shall be established and maintained. Mackeld. Rom. Law, § 466; Fisk v. Flores, 43 Tex. 340; Noe v. Card, 14 Cal. 576. The following terms are also used: *Donatio conditionalis*, a conditional gift; *donatio relata*, a gift made with reference to some service already done, (Fisk v. Flores, 43 Tex. 340;) *donatio stricta et coarctura*, a restricted gift, as an estate tail.

—Donatio inofficiosa. An inofficious (undutiful) gift; a gift of so great a part of the donor's property that the birthright portion of his heirs is diminished. Mackeld. Rom. Law, § 469. **—Donatio inter vivos.** A gift between the living. The ordinary kind of gift by one person to another. 2 Kent, Comm. 438; 2 Steph. Comm. 102. A term derived from the civil law. Inst. 2, 7, 2. A donation *inter vivos* (between living persons) is an act by which the donee divests himself at present and irrevocably of the thing given in favor of the donee who accepts it. Civ. Code La. art. 1468.—**Donatio mortis causa.** A gift made by a person in sickness, who, apprehending his dissolution near, delivers, or causes to be delivered, to another the possession of any personal goods, to keep as his own in case of the donor's decease. 2 Bl. Comm. 514. The civil law defines it to be a gift under apprehension of death; as when anything is given upon condition that, if the donor dies, the donee shall possess it absolutely, or return it if the donor should survive or should repent of having made the gift, or if the donee should die before the donor. Adams v. Nicholas, 1 Miles (Pa.) 109–117. A gift in view of death is one which is made in contemplation, fear, or peril of death, and with intent that it shall take effect only in case of the death of the giver. Civ. Code Cal. § 1149. A donation *mortis causa* (in prospect of death) is an act to take effect when the donor shall no longer exist, by which he disposes of the whole or a part of his property, and which is irrevocable. Civ. Code La. art. 1469. **—Donatio propter nuptias.** A gift on account of marriage. In Roman law, the bridegroom's gift to the bride in antipication of marriage and to secure her *dos* was called "*donatio ante nuptias;*" but by an ordinance of Justinian such gift might be made after as well as before marriage, and in that case it was called "*donatio propter nuptias.*" Mackeld. Rom. Law, § 572.

Donatio non præsumitur. A gift is not presumed. Jenk. Cent. 109.

Donatio perficitur possessione accipientis. A gift is perfected [made complete] by the possession of the receiver. Jenk. Cent. 109, case 9. A gift is incomplete until possession is delivered. 2 Kent, Comm. 438.

Donatio principis intelligitur sine præjudicio tertii. Dav. Ir. K. B. 75. A gift of the prince is understood without prejudice to a third party.

DONATION. In ecclesiastical law. A mode of acquiring a benefice by deed of gift alone, without presentation, institution, or induction. 3 Steph. Comm. 81.

In general. A gift. See DONATIO.

DONATIVE ADVOWSON. In ecclesiastical law. A species of advowson, where the benefice is conferred on the clerk by the patron's deed of donation, without presentation, institution, or induction. 2 Bl. Comm. 23; Termes de la Ley.

DONATOR. A donor; one who makes a gift, (*donatio.*)

Donator nunquam desinit possidere, antequam donatorius incipiat possidere. The donor never ceases to possess, until the donee begins to possess. Bract. fol. 41*b*.

DONATORIUS. A donee; a person to whom a gift is made; a purchaser. Bract. fol. 13, et seq.

DONATORY. The person on whom the king bestows his right to any forfeiture that has fallen to the crown.

DONE. Distinguished from "made." "A 'deed made' may no doubt mean an 'instrument made;' but a 'deed done' is not an 'instrument done,'—it is an 'act done;' and therefore these words, 'made and done,' apply to acts, as well as deeds." Lord Brougham, 4 Bell, App. Cas. 38.

DONEE. In old English law. He to whom lands were given; the party to whom a *donatio* was made.

In later law. He to whom lands or tenements are given in tail. Litt. § 57.

In modern and American law. The party executing a power; otherwise called the "appointer." 4 Kent, Comm. 316.

DONIS, STATUTE DE. See DE DONIS, THE STATUTE.

DONNEUR D'AVAL. In French law. Guarantor of negotiable paper other than by indorsement.

DONOR. In old English law. He by whom lands were given to another; the party making a *donatio.*

In later law. He who gives lands or tenements to another in tail. Litt. § 57; Termes de la Ley.

In modern and American law. The party conferring a power. 4 Kent, Comm. 316.

DONUM. Lat. In the civil law. A gift; a free gift. Calvin. Distinguished from *munus.* Dig. 50, 16, 194.

DOOM. In Scotch law. Judicial sentence, or judgment. The decision or sentence of a court orally pronounced by an officer called a "dempster" or "deemster." In modern usage, criminal sentences still end with the words "which is pronounced for doom."

DOOMSDAY-BOOK. See DOMESDAY-BOOK.

DOOR. The place of usual entrance in a house, or into a room in the house. State v. McBeth, 49 Kan. 584, 31 Pac. 145.

DORMANT. Literally, sleeping; hence inactive; in abeyance; unknown; concealed.

—Dormant claim. One which is in abeyance.—**Dormant execution.** One which a creditor delivers to the sheriff with directions to levy only, and not to sell, until further orders, or until a junior execution is received. **—Dormant judgment.** One which has not been satisfied, nor extinguished by lapse of time, but which has remained so long unexecuted that execution cannot now be issued upon it without first reviving the judgment, or one which has lost its lien on land from the failure to issue execution on it or take other steps to enforce it within the time limited by statute. 1 Black, Judgm. (2d Ed.) § 462; Draper v. Nixon, 93 Ala. 436, 8 South. 489.—**Dormant partner.** See PARTNERS.

Dormiunt aliquando leges, nunquam moriuntur. 2 Inst. 161. The laws sometimes sleep, never die.

DORSUM. Lat. The back. *In dorso recordi,* on the back of the record. 5 Coke, 44*b*.

DORTURE. (Contracted from *dormiture.*) A dormitory of a convent; a place to sleep in.

DOS. In Roman law. Dowry; a wife's marriage portion; all that property which on marriage is transferred by the wife herself or by another to the husband with a view of diminishing the burden which the marriage will entail upon him. It is of three kinds. *Profectitia dos* is that which is derived from the property of the wife's father or paternal grandfather. That *dos* is termed *adventitia* which is not *profectitia* in respect to its source, whether it is given by the wife from her own estate or by the wife's mother or a third person. It is termed *receptitia dos* when accompanied by a stipulation for its reclamation by the constitutor on the termination of the marriage. See Mackeld. Rom. Law, §§ 561, 563.

In old English law. The portion given to the wife by the husband at the church door, in consideration of the marriage; dower; the wife's portion out of her deceased husband's estate in case he had not endowed her.

—Dos rationabilis. A reasonable marriage portion. A reasonable part of her husband's

estate, to which every widow is entitled, of lands of which her husband may have endowed her on the day of marriage. Co. Litt. 336. Dower, at common law. 2 Bl. Comm. 134.

Dos de dote peti non debet. Dower ought not to be demanded of dower. Co. Litt. 31; 4 Coke, 122*b*. A widow is not dowable of lands assigned to another woman in dower. 1 Hill. Real Prop. 135.

Dos rationabilis vel legitima est cujuslibet mulieris de quocunque tenemento tertia pars omnium terrarum et tenementorum, quæ vir suus tenuit in dominio suo ut de feodo, etc. Co. Litt. 336. Reasonable or legitimate dower belongs to every woman of a third part of all the lands and tenements of which her husband was seised in his demesne, as of fee, etc.

DOT. (A French word, adopted in Louisiana.) The fortune, portion, or dowry which a woman brings to her husband by the marriage.

DOTAGE. Dotage is that feebleness of the mental faculties which proceeds from old age. It is a diminution or decay of that intellectual power which was once possessed. It is the slow approach of death; of that irrevocable cessation, without hurt or disease, of all the functions which once belonged to the living animal. The external functions gradually cease; the senses waste away by degrees; and the mind is imperceptibly visited by decay. Owing's Case, 1 Bland (Md.) 389, 17 Am. Dec. 311.

DOTAL. Relating to the *dos* or portion of a woman; constituting her portion; comprised in her portion.

—Dotal property. In the civil law, in Louisiana, by this term is understood that property which the wife brings to the husband to assist him in bearing the expenses of the marriage establishment. Extradotal property, otherwise called "paraphernal property," is that which forms no part of the dowry. Civ. Code La. art. 2335; Fleitas v. Richardson, 147 U. S. 550, 13 Sup. Ct. 495, 37 L. Ed. 276.

DOTALITIUM. In canon and feudal law. Dower. Spelman, voc. "Doarium;" Calvin. 2 Bl. Comm. 129. Used as early as A. D. 841.

DOTATION. The act of giving a dowry or portion; endowment in general, including the endowment of a hospital or other charitable institution.

DOTE, *n.* In Spanish law. The marriage portion of a wife. White, New Recop. b. 1, tit. 6, c. 1. The property which the wife gives to the husband on account of marriage, or for the purpose of supporting the matrimonial expenses. Id. b. 1, tit. 7, c. 1, § 1; Schm. Civil Law, 75; Cutter v. Waddingham, 22 Mo. 254; Hart v. Burnett, 15 Cal. 566.

DOTE, *v.* "To besot" is to stupefy, to make dull or senseless, to make to dote; and "to dote" is to be delirious, silly, or insane. Gates v. Meredith, 7 Ind. 441.

DOTE ASSIGNANDA. A writ which lay for a widow, when it was judicially ascertained that a tenant to the king was seised of tenements in fee or fee-tail at the day of his death, and that he held of the king in chief. In such case the widow might come into chancery, and then make oath that she would not marry without the king's leave, and then she might have this writ. These widows were called the "king's widows." Jacob; Holthouse.

DOTE UNDE NIHIL HABET. A writ which lies for a widow to whom no dower has been assigned. 3 Bl. Comm. 182. By 23 & 24 Vict. c. 126, an ordinary action commenced by writ of summons has taken its place; but it remains in force in the United States. Dower *unde nihil habet* (which title see.)

Doti lex favet; præmium pudoris est; ideo parcatur. Co. Litt. 31. The law favors dower; it is the reward of chastity; therefore let it be preserved.

DOTIS ADMINISTRATIO. Admeasurement of dower, where the widow holds more than her share, etc.

DOTISSA. A dowager.

DOUBLE. Twofold; acting in two capacities or having two aspects; multiplied by two. This term has ordinarily the same meaning in law as in popular speech. The principal compound terms into which it enters are noted below.

—Double adultery. Adultery committed by two persons each of whom is married to another as distinguished from "single" adultery, where one of the participants is unmarried. Hunter v. U. S., 1 Pin. (Wis.) 91, 39 Am. Dec. 277.**—Double avail of marriage.** In Scotch law. Double the ordinary or single value of a marriage. Bell. See DUPLEX VALOR MARITAGII.**—Double bond.** In Scotch law. A bond with a penalty, as distinguished from a single bond. 2 Kames, Eq. 359.**—Double complaint, or double quarrel.** In ecclesiastical law. A grievance made known by a clerk or other person, to the archbishop of the province, against the ordinary, for delaying or refusing to do justice in some cause ecclesiastical, as to give sentence, institute a clerk, etc. It is termed a "double complaint," because it is most commonly made against both the judge and him at whose suit justice is denied or delayed; the effect whereof is that the archbishop, taking notice of the delay, directs his letters, under his authentical seal, to all clerks of his province, commanding them to admonish the ordinary, within a certain number of days, to do the justice required, or otherwise to appear before him or his official, and there allege the cause of his delay; and to signify to the ordinary that if he neither perform the thing enjoined, nor appear nor show cause against it, he himself, in his court of audience, will forthwith proceed to do the justice that is due.

Cowell.—**Double costs.** See COSTS.—**Double damages.** See DAMAGES.—**Double eagle.** A gold coin of the United States of the value of twenty dollars.—**Double entry.** A system of mercantile book-keeping, in which the entries in the day-book, etc., are posted twice into the ledger. First, to a personal account, that is, to the account of the person with whom the dealing to which any given entry refers has taken place; secondly, to an impersonal account, as "goods." Mozley & Whitley.—**Double fine.** In old English law. A fine *sur done grant et render* was called a "double fine," because it comprehended the fine *sur cognizance de droit come ceo*, etc., and the fine *sur concessit*. 2 Bl. Comm. 353—**Double insurance** is where divers insurances are made upon the same interest in the same subject against the same risks in favor of the same assured, in proportions exceeding the value. 1 Phill. Ins. §§ 359, 366. A double insurance exists where the same person is insured by several insurers separately in respect to the same subject and interest. Civ. Code Cal. § 2641; Wells v. Insurance Co., 9 Serg. & R. (Pa.) 107; Insurance Co. v. Gwathmey, 82 Va. 923, 1 S. E. 209; Perkins v. Insurance Co., 12 Mass, 218; Lowell Mfg. Co. v. Safeguard F. Ins. Co., 88 N. Y. 597.—**Double plea, double pleading.** See DUPLICITY; PLEA; PLEADING.—**Double possibility.** A possibility upon a possibility. 2 Bl. Comm. 170.—**Double rent.** In English law. Rent payable by a tenant who continues in possession after the time for which he has given notice to quit, until the time of his quitting possession. St. 11 Geo. II. c. 19.—**Double taxation.** The taxing of the same item or piece of property twice to the same person, or taxing it as the property of one person and again as the property of another; but this does not include the imposition of different taxes concurrently on the same property (*e. g.*, a city tax and a school tax), nor the taxation of the same piece of property to different persons when they hold different interests in it or when it represents different values in their hands, as when both the mortgagor and mortgagee of property are taxed in respect to their interests in it, or when a tax is laid upon the capital or property of a corporation and also upon the value of its shares of stock in the hands of the separate stockholders. Cook v. Burlington, 59 Iowa, 251, 13 N. W. 113, 44 Am. Rep. 679; Cheshire County Tel. Co. v. State, 63 N. H. 167; Detroit Common Council v. Detroit Assessors, 91 Mich. 78, 51 N. W. 787, 16 L. R. A. 59.—**Double use.** In patent law. An application of a principle or process, previously known and applied, to some new use, but which does not lead to a new result or the production of a new article. De Lamar v. De Lamar Min. Co. (C. C.) 110 Fed. 542; In re Blandy, 3 Fed. Cas. 671.—**Double value.** In English law. This is a penalty on a tenant holding over after his landlord's notice to quit. By 4 Geo. II. c. 28. § 1, it is enacted that if any tenant for life or years hold over any lands, etc., after the determination of his estate, after demand made, and notice in writing given, for delivering the possession thereof, by the landlord, or the person having the reversion or remainder therein, or his agent thereunto lawfully authorized, such tenant so holding over shall pay to the person so kept out of possession at the rate of *double* the yearly value of the lands, etc., so detained, for so long a time as the same are detained. See Woodf. Landl. & Ten. (12th Ed.) 717, *et seq.*—**Double voucher.** This was when a common recovery was had, and an estate of freehold was first conveyed to any indifferent person against whom the *præcipe* was brought, and then he vouched the tenant in tail, who vouched over the common vouchee. For, if a recovery were had immediately against a tenant in tail, it barred only the estate in the premises of which he was then actually seised, whereas, if the recovery were had against another person, and the tenant in tail were vouchee, it barred every latent right and interest which he might have in the lands recovered. 2 Bl. Comm. 359.—**Double waste.** When a tenant bound to repair suffers a house to be wasted, and then unlawfully fells timber to repair it, he is said to commit double waste. Co. Litt. 53.—**Double will.** A will in which two persons join, each leaving his property and estate to the other, so that the survivor takes the whole. Evans v. Smith, 28 Ga. 98, 73 Am. Dec. 751.

DOUBLES. Letters-patent. Cowell.

DOUBT. Uncertainty of mind; the absence of a settled opinion or conviction; the attitude of mind towards the acceptance of or belief in a proposition, theory, or statement, in which the judgment is not at rest but inclines alternately to either side. Rowe v. Baber, 93 Ala. 422, 8 South. 865; Smith v. Railway Co., 143 Mo. 33, 44 S. W. 718; West Jersey Traction Co. v. Camden Horse R. Co., 52 N. J. Eq. 452, 29 Atl. 333.

Reasonable doubt. This is a term often used, probably pretty well understood, but not easily defined. It does not mean a mere possible doubt, because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge. Donnelly v. State, 26 N. J. Law, 601, 615. A reasonable doubt is deemed to exist, within the rule that the jury should not convict unless satisfied beyond a reasonable doubt, when the evidence is not sufficient to satisfy the judgment of the truth of a proposition with such certainty that a prudent man would feel safe in acting upon it in his own important affairs. Arnold v. State, 23 Ind. 170. The burden of proof is upon the prosecutor. All the presumptions of law independent of evidence are in favor of innocence; and every person is presumed to be innocent until he is proved guilty. If upon such proof there is reasonable doubt remaining, the accused is entitled to the benefit of it by an acquittal; for it is not sufficient to establish a probability, though a strong one, arising from the doctrine of chances, that the fact charged is more likely to be true than the contrary, but the evidence must establish the truth of the fact to a reasonable and moral certainty,—a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it. This is proof beyond reasonable doubt; because if the law, which mostly depends upon considerations of a moral nature, should go further than this, and require absolute certainty, it would exclude circumstantial evidence altogether. Per Shaw, C. J., in Com. v. Webster, 5 Cush. (Mass.) 320, 52 Am. Dec. 711. And see further, Tompkins v. Butterfield (C. C.) 25 Fed. 558; State v. Zdanowicz, 69 N. J. Law, 619, 55 Atl. 743; U. S. v. Youtsey (C. C.) 91 Fed. 868; State v. May, 172 Mo. 630, 72 S. W. 918; Com. v. Childs, 2 Pittsb. R. (Pa.) 400; State v. Hennessy, 55 Iowa, 300, 7 N. W. 641; Harris v. State, 155 Ind. 265, 58 N. E. 75; Knight v. State, 74 Miss. 140, 20 South. 860; Carleton v. State, 43 Neb. 373, 61 N. W. 699; State v. Reed, 62 Me. 129; State v. Ching Ling, 16 Or. 419, 18 Pac. 844; Stout v. State, 90 Ind. 1; Bradley v. State, 31 Ind. 505; Allen v. State, 111 Ala. 80, 20 South. 494; State v. Rover, 11

Nev. 344; Jones v. State, 120 Ala. 303, 25 South. 204; Sibeiry v. State, 133 Ind. 677, 33 N. E. 681; Purkey v. State, 3 Heisk. (Tenn.) 28; U. S. v. Post (D. C.) 128 Fed. 957; U. S. v. Breese (D. C.) 131 Fed. 917.

DOUBTFUL TITLE. One as to the validity of which there exists some doubt, either as to matter of fact or of law; one which invites or exposes the party holding it to litigation. Distinguished from a "marketable" title, which is of such a character that the courts will compel its acceptance by a purchaser who has agreed to buy the property or has bid it in at public sale. Herman v. Somers, 158 Pa. 424, 27 Atl. 1050, 38 Am. St. Rep. 851.

DOUN. L. Fr. A gift. Otherwise written "*don*" and "*done.*" The thirty-fourth chapter of Britton is entitled "*De Douns.*"

DOVE. Doves are animals *feræ naturæ*, and not the subject of larceny unless they are in the owner's custody; as, for example, in a dove-house, or when in the nest before they can fly. Com. v. Chace, 9 Pick. (Mass.) 15, 19 Am. Dec. 348; Ruckman v. Outwater, 28 N. J. Law, 581.

DOWABLE. Subject to be charged with dower; as dowable lands.

Entitled or entitling to dower. Thus, a dowable interest in lands is such as entitles the owner to have such lands charged with dower.

DOWAGER. A widow who is endowed, or who has a jointure in lieu of dower. In England, this is a title or addition given to the widows of princes, dukes, earls, and other noblemen, to distinguish them from the wives of the heirs, who have right to bear the title. 1 Bl. Comm. 224.

—Dowager-queen. The widow of the king. As such she enjoys most of the privileges belonging to her as queen consort. It is not treason to conspire her death or violate her chastity, because the succession to the crown is not thereby endangered. No man, however, can marry her without a special license from the sovereign, on pain of forfeiting his lands or goods. 1 Bl. Comm. 233.

DOWER. The provision which the law makes for a widow out of the lands or tenements of her husband, for her support and the nurture of her children. Co. Litt. 30*a*; 2 Bl. Comm. 130; 4 Kent, Comm. 35; 1 Washb. Real Prop. 146; Chapin v. Hill, 1 R. I. 452; Hill v. Mitchell, 5 Ark. 610; Smith v. Hines, 10 Fla. 258; Hoy v. Varner, 100 Va. 600, 42 S. E. 690.

Dower is an estate for the life of the widow in a certain portion of the following real estate of her husband, to which she has not relinquished her right during the marriage: (1) Of all lands of which the husband was seised in fee during the marriage; (2) of all lands to which another was seised in fee to his use; (3) of all lands to which, at the time of his death, he had a perfect equity, having paid all the purchase money therefor. Code Ala. 1886, § 1892.

The term, both technically and in popular acceptation, has reference to real estate exclusively.

"Dower," in modern use, is and should be distinguished from "dowry." The former is a provision for a widow on her husband's death; the latter is a bride's portion on her marriage. Wendler v. Lambeth, 163 Mo. 428, 63 S. W. 684.

—Dower ad ostium ecclesiæ. Dower at the church door or porch. An ancient kind of dower in England, where a man, (being tenant in fee-simple, of full age,) openly *at the church door*, where all marriages were formerly celebrated, after affiance made and troth plighted between them, *endowed* his wife with the whole of his lands, or such quantity as he pleased, at the same time specifying and ascertaining the same. Litt. § 39; 2 Bl. Comm. 133. **—Dower by the common law.** The ordinary kind of dower in English and American law, consisting of a life interest in one-third of the lands of which the husband was seised in fee at any time during the coverture. Litt. § 36; 2 Bl. Comm. 132; 2 Steph. Comm. 302; 4 Kent, Comm. 35. **—Dower by custom.** A kind of dower in England, regulated by custom, where the quantity allowed the wife differed from the proportion of the common law; as that the wife should have half the husband's lands; or, in some places, the whole; and, in some, only a quarter. 2 Bl. Comm. 132; Litt. § 37. **—Dower de la pluis belle.** L. Fr. Dower of the fairest [part.] A species of ancient English dower, incident to the old tenures, where there was a guardian in chivalry, and the wife occupied lands of the heir as guardian in socage. If the wife brought a writ of dower against such guardian in chivalry, he might show this matter, and pray that the wife might be endowed *de la pluis belle* of the tenement in socage. Litt. § 48. This kind of dower was abolished with the military tenures. 2 Bl. Comm. 132. **—Dower ex assensu patris.** Dower by the father's assent. A species of dower *ad ostium ecclesiæ*, made when the husband's father was alive, and the son, by his consent expressly given, endowed his wife with parcel of his father's lands. Litt. § 40; 2 Bl. Comm. 133; Grogan v. Garrison, 27 Ohio St. 61. **—Dower unde nihil habet.** A writ of right which lay for a widow to whom no dower had been assigned.

DOWLE STONES. Stones dividing lands, etc. Cowell.

DOWMENT. In old English law. Endowment; dower. Grogan v. Garrison, 27 Ohio St. 61.

DOWRESS. A woman entitled to dower; a tenant in dower. 2 P. Wms. 707.

DOWRY. The property which a woman brings to her husband in marriage; now more commonly called a "portion."

By dowry is meant the effects which the wife brings to the husband to support the expenses of marriage. Civil Code La. art. 2337.

This word expresses the proper meaning of the "*dos*" of the Roman, the "*dot*" of the French, and the "*dote*" of the Spanish, law, but is a very different thing from "dower,"

with which it has sometimes been confounded.

By dowry, in the Louisiana Civil Code, is meant the effects which the wife brings to the husband to support the expenses of marriage. It is given to the husband, to be enjoyed by him so long as the marriage shall last, and the income of it belongs to him. He alone has the administration of it during marriage, and his wife cannot deprive him of it. The real estate settled as dowry is inalienable during marriage, unless the marriage contract contains a stipulation to the contrary. De Young v. De Young, 6 La. Ann. 786.

DOZEIN. L. Fr. Twelve; a person twelve years of age. St. 18 Edw. II.; Barring. Ob. St. 208.

DOZEN PEERS. Twelve peers assembled at the instance of the barons, in the reign of Henry III., to be privy counselors, or rather conservators of the kingdom.

DR. An abbreviation for "doctor;" also, in commercial usage, for "debtor," indicating the items or particulars in a bill or in an account-book chargeable against the person to whom the bill is rendered or in whose name the account stands, as opposed to "Cr." ("credit" or "creditor"), which indicates the items for which he is given credit. Jaqua v. Shewalter, 10 Ind. App. 234, 37 N. E. 1072.

DRACHMA. A term employed in old pleadings and records, to denote a groat. Townsh. Pl. 180.

An Athenian silver coin, of the value of about fifteen cents.

DRACO REGIS. The standard, ensign, or military colors borne in war by the ancient kings of England, having the figure of a dragon painted thereon.

DRACONIAN LAWS. A code of laws prepared by Draco, the celebrated lawgiver of Athens. These laws were exceedingly severe, and the term is now sometimes applied to any laws of unusual harshness.

DRAFT. The common term for a bill of exchange; as being *drawn* by one person on another. Hinnemann v. Rosenback, 39 N. Y. 100; Douglass v. Wilkeson, 6 Wend. (N. Y.) 643.

An order for the payment of money drawn by one person on another. It is said to be a *nomen generalissimum*, and to include all such orders. Wildes v. Savage, 1 Story, 30, 29 Fed. Cas. 1226; State v. Warner, 60 Kan. 94, 55 Pac. 342.

Draft also signifies a tentative, provisional, or preparatory writing out of any document (as a will, contract, lease, etc.) for purposes of discussion and correction, and which is afterwards to be copied out in its final shape.

Also a small arbitrary deduction or allowance made to a merchant or importer, in the case of goods sold by weight or taxable by weight, to cover possible loss of weight in handling or from differences in scales. Marriott v. Brune, 9 How. 633, 13 L. Ed. 282; Seeberger v. Mfg. Co., 157 U. S. 183, 15 Sup. Ct. 583, 39 L. Ed. 665; Napier v. Barney, 17 Fed. Cas. 1149.

DRAFTSMAN. Any one who draws or frames a legal document, *e. g.*, a will, conveyance, pleading, etc.

DRAGOMAN. An interpreter employed in the east, and particularly at the Turkish court.

DRAIN, *v.* To make dry; to draw off water; to rid land of its superfluous moisture by adapting or improving natural watercourses and supplementing them, when necessary, by artificial ditches. People v. Parks, 58 Cal. 639.

DRAIN, *n.* A trench or ditch to convey water from wet land; a channel through which water may flow off.

The word has no technical legal meaning. Any hollow space in the ground, natural or artificial, where water is collected and passes off, is a ditch or drain. Goldthwait v. East Bridgewater, 5 Gray (Mass.) 61.

The word "drain" also sometimes denotes the easement or servitude (acquired by grant or prescription) which consists in the right to drain water through another's land. See 3 Kent, Comm. 436.

DRAM. In common parlance, this term means a drink of some substance containing alcohol, something which can produce intoxication. Lacy v. State, 32 Tex. 228.

—Dram-shop. A drinking saloon, where liquors are sold to be drunk on the premises. Wright v. People, 101 Ill. 129; Brockway v. State, 36 Ark. 636; Com. v. Marzynski, 149 Mass. 68, 21 N. E. 228.

DRAMATIC COMPOSITION. In copyright law. A literary work setting forth a story, incident, or scene from life, in which, however, the narrative is not related, but is represented by a dialogue and action; may include a descriptive poem set to music, or a pantomine, but not a composition for musical instruments alone, nor a mere spectacular exhibition or stage dance. Daly v. Palmer, 6 Fed. Cas. 1132; Carte v. Duff (C. C.) 25 Fed. 183; Tompkins v. Halleck, 133 Mass. 35, 43 Am. Rep. 480; Russell v. Smith, 12 Adol. & El. 236; Martinetti v. McGuire, 16 Fed. Cas. 920; Fuller v. Bemis (C. C.) 50 Fed. 926.

DRAW, *n.* **1.** A movable section of a bridge, which may be raised up or turned to one side, so as to admit the passage of vessels. Gildersleeve v. Railroad Co., (D. C.) 82 Fed. 766; Hughes v. Railroad Co.

(C. C.) 18 Fed. 114; Railroad Co. v. Daniels, 90 Ga. 608, 17 S. E. 647.

2. A depression in the surface of the earth, in the nature of a shallow ravine or gulch, sometimes many miles in length, forming a channel for the escape of rain and melting snow draining into it from either side. Railroad Co. v. Sutherland, 44 Neb. 526, 62 N. W. 859.

DRAW, *v.* In old criminal practice. To drag (on a hurdle) to the place of execution. Anciently no hurdle was allowed, but the criminal was actually dragged along the road to the place of execution. A part of the ancient punishment of traitors was the being thus drawn. 4 Bl. Comm. 92, 377.

In mercantile law. To draw a bill of exchange is to write (or cause it to be written) and sign it.

In pleading, conveyancing, etc. To prepare a draft; to compose and write out in due form, as, a deed, complaint, petition, memorial, etc. Winnebago County State Bank v. Hustel, 119 Iowa, 115, 93 N. W. 70; Hawkins v. State, 28 Fla. 363, 9 South. 652.

In practice. To draw a jury is to select the persons who are to compose it, either by taking their names successively, but at hazard, from the jury box, or by summoning them individually to attend the court. Smith v. State, 136 Ala. 1, 34 South. 168.

In fiscal law and administration. To take out money from a bank, treasury, or other depository in the exercise of a lawful right and in a lawful manner. "No money shall be *drawn* from the treasury but in consequence of appropriations made by law." Const. U. S. art. 1, § 9. But to "draw a warrant" is not to draw the money; it is to make or execute the instrument which authorizes the drawing of the money. Brown v. Fleischner, 4 Or. 149.

DRAWBACK. In the customs laws, this term denotes an allowance made by the government upon the duties due on imported merchandise when the importer, instead of selling it here, re-exports it; or the refunding of such duties if already paid. This allowance amounts, in some cases, to the whole of the original duties; in others, to a part only.

A drawback is a device resorted to for enabling a commodity affected by taxes to be exported and sold in the foreign market on the same terms as if it had not been taxed at all. It differs in this from a bounty, that the latter enables a commodity to be sold for *less* than its natural cost, whereas a drawback enables it to be sold exactly at its natural cost. Downs v. U. S., 113 Fed. 144, 51 C. C. A. 100.

DRAWEE. A person to whom a bill of exchange is addressed, and who is requested to pay the amount of money therein mentioned.

DRAWER. The person making a bill of exchange and addressing it to the drawee. Stevenson v. Walton, 2 Smedes & M. (Miss.) 265; Winnebago County State Bank v. Hustel, 119 Iowa, 115, 93 N. W. 70.

DRAWING. In patent law. A representation of the appearance of material objects by means of lines and marks upon paper, card-board, or other substance. Ampt v. Cincinnati, 8 Ohio Dec. 628.

DRAWLATCHES. Thieves; robbers. Cowell.

DRAYAGE. A charge for the transportation of property in wheeled vehicles, such as drays, wagons, and carts. Soule v. San Francisco Gaslight Co., 54 Cal. 242.

DREIT-DREIT. Droit-droit. Double right. A union of the right of possession and the right of property. 2 Bl. Comm. 199.

DRENCHES, or DRENGES. In Saxon law. Tenants *in capite*. They are said to be such as, at the coming of William the Conqueror, being put out of their estates, were afterwards restored to them, on their making it appear that they were the true owners thereof, and neither *in auxilio* or *consilio* against him. Spelman.

DRENGAGE. The tenure by which the drenches, or drenges, held their lands.

DRIFT. In mining law. An underground passage driven horizontally along the course of a mineralized vein or approximately so. Distinguished from "shaft," which is an opening made at the surface and extending downward into the earth vertically, or nearly so, upon the vein or intended to reach it; and from "tunnel," which is a lateral or horizontal passage underground intended to reach the vein or mineral deposit, where drifting may begin. Jurgenson v. Diller, 114 Cal. 491, 46 Pac. 610, 55 Am. St. Rep. 83.

In old English law. A driving, especially of cattle.

—Driftland, drofland, or dryfland. A Saxon word, signifying a tribute or yearly payment made by some tenants to the king, or their landlords, for driving their cattle through a manor to fairs or markets. Cowell.—**Drifts of the forest.** A view or examination of what cattle are in a forest, chase, etc., that it may be known whether it be surcharged or not; and whose the beasts are, and whether they are commonable. These drifts are made at certain times in the year by the officers of the forest, when all cattle are driven into some pound or place inclosed, for the before-mentioned purposes, and also to discover whether any cattle of strangers be there, which ought not to common. Manwood, p. 2, c. 15.—**Driftway.** A road or way over which cattle are driven. 1 Taunt. 279. Smith v. Ladd, 41 Me. 314.

DRIFT-STUFF. This term signifies, not goods which are the subject of salvage, but

matters floating at random, without any known or discoverable ownership, which, if cast ashore, will probably never be reclaimed, but will, as a matter of course, accrue to the riparian proprietor. Watson v. Knowles, 13 R. I. 641.

DRINCLEAN. Sax. A contribution of tenants, in the time of the Saxons, towards a potation, or ale, provided to entertain the lord, or his steward. Cowell. See CERVISARII.

DRINKING-SHOP. A place where intoxicating liquors are sold, bartered, or delivered to be drunk on the premises. Portland v. Schmidt, 13 Or. 17, 6 Pac. 221.

DRIP. A species of easement or servitude obligating one man to permit the water falling from another man's house to fall upon his own land. 3 Kent, Comm. 436.

DRIVER. One employed in conducting a coach, carriage, wagon, or other vehicle, with horses, mules, or other animals, or a bicycle, tricycle, or motor car, though not a street railroad car. See Davis v. Petrinovich, 112 Ala. 654, 21 South. 344, 36 L. R. A. 615; Gen. St. Conn. 1902, § 2038; Isaacs v. Railroad Co., 47 N. Y. 122, 7 Am. Rep. 418.

DROFDEN, or DROFDENNE. A grove or woody place where cattle are kept. Jacob.

DROFLAND. Sax. A quit rent, or yearly payment, formerly made by some tenants to the king, or their landlords, for *driving* their cattle through a manor to fairs or markets. Cowell; Blount.

DROIT. In French law. Right, justice, equity, law, the whole body of law; also a right.

This term exhibits the same ambiguity which is discoverable in the German equivalent, "*recht*" and the English word "*right*." On the one hand, these terms answer to the Roman "*jus*," and thus indicate law in the abstract, considered as the foundation of all rights, or the complex of underlying moral principles which impart the character of justice to all positive law, or give it an ethical content. Taken in this abstract sense, the terms may be adjectives, in which case they are equivalent to "just," or nouns, in which case they may be paraphrased by the expressions "justice," "morality," or "equity." On the other hand, they serve to point out *a* right; that is, a power, privilege, faculty, or demand, inherent in one person, and incident upon another. In the latter signification, *droit* (or *recht* or *right*) is the correlative of "duty" or "obligation." In the former sense, it may be considered as opposed to wrong, injustice, or the absence of law. *Droit* has the further ambiguity that it is sometimes used to denote the existing body of law considered as one whole, or the sum total of a number of individual laws taken together. See JUS; RECHT; RIGHT.

—Droit d'accession. That property which is acquired by making a new species out of the material of another. It is equivalent to the Roman "*specificatio*."—**Droit d'aubaine.** A rule by which all the property of a deceased foreigner, whether movable or immovable, was confiscated to the use of the state, to the exclusion of his heirs, whether claiming *ab intestato* or under a will of the deceased. Finally abolished in 1819. Opel v. Shoup, 100 Iowa, 407, 69 N. W. 560, 37 L. R. A. 583.—**Droit d'execution.** The right of a stockbroker to sell the securities bought by him for account of a client, if the latter does not accept delivery thereof. The same expression is also applied to the sale by a stockbroker of securities deposited with him by his client, in order to guaranty the payment of operations for which the latter has given instructions. Arg. Fr. Merc. Law, 557.—**Droit de bris.** A right formerly claimed by the lords of the coasts of certain parts of France, to shipwrecks, by which not only the property, but the persons of those who were cast away, were confiscated for the prince who was lord of the coast. Otherwise called "*droit de bris sur le naufrage*." This right prevailed chiefly in Bretagne, and was solemnly abrogated by Henry III. as duke of Normandy, Aquitaine, and Guienne, in a charter granted A. D. 1226, preserved among the rolls at Bordeaux.—**Droit de garde.** In French feudal law. Right of ward. The guardianship of the estate and person of a noble vassal, to which the king, during his minority, was entitled. Steph. Lect. 250.—**Droit de gite.** In French feudal law. The duty incumbent on a *roturier*, holding lands within the royal domain, of supplying board and lodging to the king and to his suite while on a royal progress. Steph. Lect. 351.—**Droit de greffe.** In old French law. The right of selling various offices connected with the custody of judicial records or notarial acts. Steph. Lect. 354. A privilege of the French kings. —**Droit de maitrise.** In old French law. A charge payable to the crown by any one who, after having served his apprenticeship in any commercial guild or brotherhood, sought to become a master workman in it on his own account. Steph. Lect. 354.—**Droit de prise.** In French feudal law. The duty (incumbent on a *roturier*) of supplying to the king on credit, during a certain period, such articles of domestic consumption as might be required for the royal household. Steph. Lect. 351.—**Droit de quint.** In French feudal law. A relief payable by a noble vassal to the king as his *seigneur*, on every change in the ownership of his fief. Steph. Lect. 350.—**Droit de suite.** The right of a creditor to pursue the debtor's property into the hands of third persons for the enforcement of his claim.—**Droits civils.** This phrase in French law denotes private rights, the exercise of which is independent of the *status* (*qualité*) of citizen. Foreigners enjoy them; and the extent of that enjoyment is determined by the principle of reciprocity. Conversely, foreigners may be sued on contracts made by them in France. Brown.—**Droit écrit.** In French law. (The written law.) The Roman civil law, or *Corpus Juris Civilis*. Steph. Lect. 130.—**Droit international.** International law.—**Droit maritime.** Maritime law.

In old English law. Law; right; a writ of right. Co. Litt. 158*b*.

—Autre droit. The right of another.—**Droit-close.** An ancient writ, directed to the lord of ancient demesne on behalf of those of his tenants who held their lands and tenements by charter in fee-simple, in fee-tail, for life, or in

dower. Fitzh. Nat. Brev. 23.—**Droit common.** The common law. Litt. § 213; Co. Litt. 142*a*. —**Droit-droit.** A double right; that is, the right of possession, and the right of property. These two rights were, by the theory of our ancient law, distinct; and the above phrase was used to indicate the concurrence of both in one person, which concurrence was necessary to constitute a complete title to land. Mozley & Whitley.—**Droits of admiralty.** Rights or perquisites of the admiralty. A term applied to goods found derelict at sea. Applied also to property captured in time of war by non-commissioned vessels of a belligerent nation. 1 Kent, Comm. 96.

Droit ne done plnis que soit demaunde. The law gives not more than is demanded. 2 Inst. 286.

Droit ne poet pas morier. Right cannot die. Jenk. Cent. 100, case 95.

DROITURAL. What belongs of right; relating to right; as real actions are either droitural or possessory,—*droitural* when the plaintiff seeks to recover the property. Finch, Law, 257.

DROMONES, DROMOS, DROMUNDA. These were at first high ships of great burden, but afterwards those which we now call "men-of-war." Jacob.

DROP. In English practice. When the members of a court are equally divided on the argument showing cause against a rule *nisi*, no order is made, *i. e.*, the rule is neither discharged nor made absolute, and the rule is said to *drop*. In practice, there being a right to appeal, it has been usual to make an order in one way, the junior judge withdrawing his judgment. Wharton.

DROP-LETTER. A letter addressed for delivery in the same city or district in which it is posted.

DROVE. A number of animals collected and driven together in a body; a flock or herd of cattle in process of being driven; indefinite as to number, but including at least several. Caldwell v. State, 2 Tex. App. 54; McConvill v. Jersey City, 39 N. J. Law, 43.

—**Drove-road.** In Scotch law. A road for driving cattle. 7 Bell. App. Cas. 43, 53, 57. A drift-road. Lord Brougham, Id.—**Drove-stance.** In Scotch law. A place adjoining a drove-road, for resting and refreshing sheep and cattle on their journey. 7 Bell, App. Cas. 53, 57.—**Drover's pass.** A free pass given by a railroad company, accepting a drove of cattle for transportation, to the drover who accompanies and cares for the cattle on the train. Railroad Co. v. Tanner, 100 Va. 379, 41 S. E. 721; Railway Co. v. Ivy, 71 Tex. 409, 9 S. W. 346, 1 L. R. A. 500, 10 Am. St. Rep. 758.

DROWN. To merge or sink. "In some cases a right of freehold shall *drown* in a chattel." Co. Litt. 266*a*, 321*a*.

DRU. A thicket of wood in a valley. Domesday.

DRUG. The general name of substances used in medicine; any substance, vegetable, animal, or mineral, used in the composition or preparation of medicines. The term is also applied to materials used in dyeing and in chemistry. See Collins v. Banking Co., 79 N. C. 281, 28 Am. Rep. 322; U. S. v. Merck, 66 Fed. 251, 13 C. C. A. 432; Cowl v. U. S. (C. C.) 124 Fed. 475; Insurance Co. v. Flemming, 65 Ark. 54, 44 S. W. 464, 39 L. R. A. 789, 67 Am. St. Rep. 900; Gault v. State, 34 Ga 533.

DRUGGIST. A dealer in drugs; one whose business is to sell drugs and medicines. In strict usage, this term is to be distinguished from "apothecary." A druggist deals in the uncompounded medicinal substances; the business of an apothecary is to mix and compound them. But in America the two words are used interchangeably, as the same persons usually discharge both functions. State v. Holmes, 28 La. Ann. 767, 26 Am. Rep. 110; Hainline v. Com., 13 Bush (Ky.) 352; State v. Donaldson, 41 Minn. 74, 42 N. W. 781.

DRUMMER. A term applied to commercial agents who travel for wholesale merchants and supply the retail trade with goods, or take orders for goods to be shipped to the retail dealer. Robbins v. Shelby County Taxing Dist., 120 U. S. 489, 7 Sup. Ct. 592, 30 L. Ed. 694; Singleton v. Fritsch, 4 Lea (Tenn.) 96; Thomas v. Hot Springs, 34 Ark. 557, 36 Am. Rep. 24; Strain v. Chicago Portrait Co. (C. C.) 126 Fed. 835.

DRUNGARIUS. In old European law. The commander of a *drungus*, or band of soldiers. Applied also to a naval commander. Spelman.

DRUNGUS. In old European law. A band of soldiers, (*globus militum.*) Spelman.

DRUNK. A person is "drunk" when he is so far under the influence of liquor that his passions are visibly excited or his judgment impaired, or when his brain is so far affected by potations of liquor that his intelligence, sense-perceptions, judgment, continuity of thought or of ideas, speech, and co-ordination of volition with muscular action (or some of these faculties or processes) are impaired or not under normal control. State v. Pierce, 65 Iowa, 85, 21 N. W. 195; Elkin v. Buschner (Pa.) 16 Atl. 104; Sapp v. State, 116 Ga. 182, 42 S. E. 411; Ring v. Ring, 112 Ga. 854, 38 S. E. 330; State v. Savage, 89 Ala. 1, 7 South. 183, 7 L. R. A. 426; Lewis v. Jones, 50 Barb. (N. Y.) 667.

DRUNKARD. He is a drunkard whose habit it is to get drunk; whose ebriety has

become habitual. The terms "drunkard" and "habitual drunkard" mean the same thing. Com. v. Whitney, 5 Gray (Mass.) 85; Gourlay v. Gourlay, 16 R. I. 705, 19 Atl. 142.

A "common" drunkard is defined by statute in some states as a person who has been convicted of drunkenness (or proved to have been drunk) a certain number of times within a limited period. State v. Kelly, 12 R. I. 535; State v. Flynn, 16 R. I. 10, 11 Atl. 170. Elsewhere the word "common" in this connection is understood as being equivalent to "habitual," (State v. Savage, 89 Ala. 1, 7 South. 183, 7 L. R. A. 426; Com. v. McNamee, 112 Mass. 286; State v. Ryan, 70 Wis. 676, 36 N. W. 823;) or perhaps as synonymous with "public," (Com. v. Whitney, 5 Gray [Mass.] 86.)

DRUNKENNESS. In medical jurisprudence. The condition of a man whose mind is affected by the immediate use of intoxicating drinks; the state of one who is "drunk." See DRUNK.

DRY. In the vernacular, this term means desiccated or free from moisture; but, in legal use, it signifies formal or nominal, without imposing any duty or responsibility, or unfruitful, without bringing any profit or advantage.

—Dry exchange. See EXCHANGE.—**Dry mortgage.** One which creates a lien on land for the payment of money, but does not impose any personal liability upon the mortgagor, collateral to or over and above the value of the premises. Frowenfeld v. Hastings, 134 Cal. 128, 66 Pac. 178.—**Dry-multures.** In Scotch law. Corn paid to the owner of a mill, whether the payers grind or not.—**Dry rent.** Rentseck; a rent reserved without a clause of distress.—**Dry trust.** A passive trust; one which requires no action on the part of the trustee beyond turning over money or property to the *cestui que trust*. Bradford v. Robinson, 7 Houst. (Del.) 29, 30 Atl. 670; Cornwell v. Wulff, 148 Mo. 542, 50 S. W. 439, 45 L. R. A. 53.—**Dry weight.** In tariff laws, this term does not mean the weight of an article after desiccation in a kiln, but its air-dry weight as understood in commerce. U. S. v. Perkins, 66 Fed. 50, 13 C. C. A. 324.

DRY-CRÆFT. Witchcraft; magic. Anc. Inst. Eng.

DUARCHY. A form of government where two reign jointly.

Duas uxores eodem tempore habere non licet. It is not lawful to have two wives at the same time. Inst. 1, 10, 6; 1 Bl. Comm. 436.

DUBITANS. Doubting. Dobbin, J., *dubitans*. 1 Show. 364.

DUBITANTE. Doubting. Is affixed to the name of a judge, in the reports, to signify that he doubted the decision rendered.

DUBITATUR. It is doubted. A word frequently used in the reports to indicate that a point is considered doubtful.

DUBITAVIT. Doubted. Vaughan, C. J., *dubitavit*. Freem. 150.

DUCAT. A foreign coin, varying in value in different countries, but usually worth about $2.26 of our money.

DUCATUS. In feudal and old English law. A duchy, the dignity or territory of a duke.

DUCES TECUM. (Lat. Bring with you.) The name of certain species of writs, of which the *subpœna duces tecum* is the most usual, requiring a party who is summoned to appear in court to bring with him some document, piece of evidence, or other thing to be used or inspected by the court.

DUCES TECUM LICET LANGUIDUS. (Bring with you, although sick.) In practice. An ancient writ, now obsolete, directed to the sheriff, upon a return that he could not bring his prisoner without danger of death, he being *adeo languidus*, (so sick;) whereupon the court granted a *habeas corpus* in the nature of a *duces tecum licet languidus*. Cowell; Blount.

DUCHY OF LANCASTER. Those lands which formerly belonged to the dukes of Lancaster, and now belong to the crown in right of the duchy. The duchy is distinct from the county palatine of Lancaster, and includes not only the county, but also much territory at a distance from it, especially the Savoy in London and some land near Westminster. 3 Bl. Comm. 78.

—Duchy court of Lancaster. A tribunal of special jurisdiction, held before the chancellor of the duchy, or his deputy, concerning all matters of equity relating to lands holden of the crown in right of the duchy of Lancaster; which is a thing very distinct from the county palatine, (which has also its separate chancery, for sealing of writs, and the like,) and comprises much territory which lies at a vast distance from it; as particularly a very large district surrounded by the city of Westminster. The proceedings in this court are the same as were those on the equity side of the court of chancery, so that it seems not to be a court of record; and, indeed, it has been holden that the court of chancery has a concurrent jurisdiction with the duchy court, and may take cognizance of the same causes. The appeal from this court lies to the court of appeal. Jud. Act 1873, § 18; 3 Bl. Comm. 78.

DUCKING-STOOL. See CASTIGATORY.

DUCROIRE. In French law. Guaranty; equivalent to *del credere*, (which see.)

DUE. **1.** Just; proper; regular; lawful; sufficient; as in the phrases "due care," "due process of law," "due notice."

2. Owing; payable; justly owed. That which one contracts to pay or perform to another; that which law or justice requires to be paid or done.

3. Owed, or owing, as distinguished from payable. A debt is often said to be *due* from

a person where he is the party owing it, or primarily bound to pay, whether the time for payment has or has not arrived.

4. Payable. A bill or note is commonly said to be *due* when the time for payment of it has arrived.

The word "due" always imports a fixed and settled obligation or liability, but with reference to the time for its payment there is considerable ambiguity in the use of the term, as will appear from the foregoing definitions, the precise signification being determined in each case from the context. It may mean that the debt or claim in question is now (presently or immediately) matured and enforceable, or that it matured at some time in the past and yet remains unsatisfied, or that it is fixed and certain but the day appointed for its payment has not yet arrived. But commonly, and in the absence of any qualifying expressions, the word "due" is restricted to the first of these meanings, the second being expressed by the term "overdue," and the third by the word "payable." See Feeser v. Feeser, 93 Md. 716, 50 Atl. 406; Ames v. Ames, 128 Mass. 277; Van Hook v. Walton, 28 Tex. 75; Leggett v. Bank, 24 N. Y. 286; Scudder v. Scudder, 10 N. J. Law, 345; Barnes v. Arnold, 45 App. Div. 314, 61 N. Y. Supp. 85; Yocum v. Allen, 58 Ohio St. 280, 50 N. E. 909; Gies v. Bechtner, 12 Minn. 284 (Gil. 183); Marstiller v. Ward, 52 W. Va. 74, 43 S. E. 178.

—Due care. Just, proper, and sufficient care, so far as the circumstances demand it; the absence of negligence. This term, as usually understood in cases where the gist of the action is the defendant's negligence, implies not only that a party has not been negligent or careless, but that he has been guilty of no violation of law in relation to the subject-matter or transaction which constitutes the cause of action. Evidence that a party is guilty of a violation of law supports the issue of a want of proper care; nor can it be doubted that in these and similar actions the averment in the declaration of the use of due care, and the denial of it in the answer, properly and distinctly put in issue the legality of the conduct of the party as contributing to the accident or injury which forms the groundwork of the action. No specific averment of the particular unlawful act which caused or contributed to produce the result complained of should, in such cases, be deemed necessary. See Ryan v. Bristol, 63 Conn. 26, 27 Atl. 309; Paden v. Van Blarcom, 100 Mo. App. 185, 74 S. W. 124; Joyner v. Railway Co., 26 S. C. 49, 1 S. E. 52; Nicholas v. Peck, 21 R. I. 404, 43 Atl. 1038; Railroad Co. v. Yorty, 158 Ill. 321, 42 N. E. 64; Schmidt v. Sinnott, 103 Ill. 165; Butterfield v. Western R. Corp., 10 Allen (Mass.) 532, 87 Am. Dec. 678; Jones v. Andover, 10 Allen (Mass.) 20.**—Due course of law.** This phrase is synonymous with "due process of law," or "the law of the land," and the general definition thereof is "law in its regular course of administration through courts of justice;" and, while not always necessarily confined to judicial proceedings, yet these words have such a signification, when used to designate the kind of an eviction, or ouster, from real estate by which a party is dispossessed, as to preclude thereunder proof of a constructive eviction resulting from the purchase of a paramount title when hostilely asserted by the party holding it. See Adler v. Whitbeck, 44 Ohio St. 569, 9 N. E. 672; In re Dorsey, 7 Port. (Ala.) 404; Backus v. Shipherd, 11 Wend. (N. Y.) 635; Dwight v. Williams, 8 Fed. Cas. 187.**—Due notice.** No fixed rule can be established as to what shall constitute "due notice." "Due" is a relative term, and must be applied to each case in the exercise of the discretion of the court in view of the particular circumstances. Lawrence v. Bowman, 1 McAll. 420, 15 Fed. Cas. 21; Slattery v. Doyle, 180 Mass. 27, 61 N. E. 264; Wilde v. Wilde, 2 Nev. 306.**—Due process of law.** Law in its regular course of administration through courts of justice. 3 Story, Const. 264, 661. "Due process of law in each particular case means such an exercise of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs." Cooley, Const. Lim. 441. Whatever difficulty may be experienced in giving to those terms a definition which will embrace every permissible exertion of power affecting private rights, and exclude such as is forbidden, there can be no doubt of their meaning when applied to judicial proceedings. They then mean a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the enforcement and protection of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution—that is, by the law of its creation—to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the state, or his voluntary appearance. Pennoyer v. Neff, 95 U. S. 733, 24 L. Ed. 565. Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law. Zeigler v. Railroad Co., 58 Ala. 599. These phrases in the constitution do not mean the general body of the law, common and statute, as it was at the time the constitution took effect; for that would seem to deny the right of the legislature to amend or repeal the law. They refer to certain fundamental rights, which that system of jurisprudence, of which ours is a derivative, has always recognized. Brown v. Levee Com'rs, 50 Miss. 468. "Due process of law," as used in the constitution, cannot mean less than a prosecution or suit instituted and conducted according to the prescribed forms and solemnities for ascertaining guilt, or determining the title to property. Embury v. Conner, 3 N. Y. 511, 517, 53 Am. Dec. 325; Taylor v. Porter, 4 Hill (N. Y.) 140, 40 Am. Dec. 274; Burch v. Newbury, 10 N. Y. 374, 397. And see, generally, Davidson v. New Orleans, 96 U. S. 104, 24 L. Ed. 616; Adler v. Whitbeck, 44 Ohio St. 539; Duncan v. Missouri, 152 U. S. 377, 14 Sup. Ct. 571, 38 L. Ed. 485; Cantini v. Tillman (C. C.) 54 Fed. 975; Griffin v. Mixon, 38 Miss. 458; East Kingston v. Towle, 48 N. H. 57, 97 Am. Dec. 575, 2 Am. Rep. 174; Hallenbeck v. Hahn, 2 Neb. 377; Stuart v. Palmer, 74 N. Y. 191, 30 Am. Rep. 289; Bailey v. People, 190 Ill. 28, 60 N. E. 98, 54 L. R. A. 838, 83 Am. St. Rep. 116; Eames v. Savage, 77 Me. 221, 52 Am. Rep. 751; Brown v. New Jersey, 175 U. S. 172, 20 Sup. Ct. 77, 44 L. Ed. 119; Hagar v. Reclamation Dist., 111 U. S. 701, 4 Sup. Ct. 663, 28 L. Ed. 569; Wynehamer v. People, 13 N. Y. 395; State v. Beswick, 13 R. I. 211, 43 Am. Rep. 26; In re Rosser, 101 Fed. 567, 41 C. C. A. 497.

DUE-BILL. A brief written acknowledgment of a debt. It is not made payable to order, like a promissory note. See Feeser

Feeser, 93 Md. 716, 50 Atl. 406; Marrigan v. Page, 4 Humph. (Tenn.) 247; Currier v. Lockwood, 40 Conn. 350, 16 Am. Rep. 40; Lee v. Balcom, 9 Colo. 216, 11 Pac. 74. See I. O. U.

DUEL. A duel is any combat with deadly weapons, fought between two or more persons, by previous agreement or upon a previous quarrel. Pen. Code Cal. § 225; State v. Fritz, 133 N. C. 725, 45 S. E. 957; State v. Herriott, 1 McMul. (S. C.) 130; Bassett v. State, 44 Fla. 2, 33 South. 262; Davis v. Modern Woodmen, 98 Mo. App. 713, 73 S. W. 923.

DUELLUM. The trial by battel or judicial combat. See BATTEL.

DUES. Certain payments; rates or taxes. See Ward v. Joslin, 105 Fed. 227, 44 C. C. A. 456; Warwick v. Supreme Conclave, 107 Ga. 115, 32 S. E. 951; Whitman v. National Bank, 176 U. S. 559, 20 Sup. Ct. 477, 44 L. Ed. 587.

DUKE, in English law, is a title of nobility, ranking immediately next to the Prince of Wales. It is only a title of dignity. Conferring it does not give any domain, territory, or jurisdiction over the place whence the title is taken. *Duchess,* the consort of a duke. Wharton.

DUKE OF EXETER'S DAUGHTER. The name of a rack in the Tower, so called after a minister of Henry VI., who sought to introduce it into England.

DULOCRACY. A government where servants and slaves have so much license and privilege that they domineer. Wharton.

DULY. In due or proper form or manner; according to legal requirements.

Regularly; upon a proper foundation, as distinguished from mere form. Robertson v. Perkins, 129 U. S. 233, 9 Sup. Ct. 279, 32 L. Ed. 686; Brownell v. Greenwich, 114 N. Y. 518, 22 N. E. 24, 4 L. R. A. 685; Lethbridge v. New York (Super. N. Y.) 15 N. Y. Supp. 562; Allen v. Pancoast, 20 N. J. Law, 74; Van Arsdale v. Van Arsdale, 26 N. J. Law, 423; Dunning v. Coleman, 27 La. Ann. 48; Young v. Wright, 52 Cal. 410; White v. Johnson, 27 Or. 282, 40 Pac. 511, 50 Am. St. Rep. 726.

DUM. Lat. While; as long as; until; upon condition that; provided that.

—Dum bene se gesserit. While he shall conduct himself well; during good behavior. Expressive of a tenure of office not dependent upon the pleasure of the appointing power, nor for a limited period, but terminable only upon the death or misconduct of the incumbent.—**Dum fervet opus.** While the work glows; in the heat of action. 1 Kent, Comm. 120.—**Dum fuit in prisona.** In English law. A writ which lay for a man who had aliened lands under duress by imprisonment, to restore to him his proper estates. 2 Inst. 482. Abolished by St. 3 & 4 Wm. IV. c. 27.—**Dum fuit infra ætatem.** (While he was within age.) In old English practice. A writ of entry which formerly lay for an infant after he had attained his full age, to recover lands which he had aliened in fee, in tail, or for life, during his infancy; and, after his death, his heir had the same remedy. Reg. Orig. 228*b;* Fitzh. Nat. Brev. 192, G; Litt. § 406; Co. Litt. 247*b*.—**Dum non fuit compos mentis.** The name of a writ which the heirs of a person who was *non compos mentis,* and who aliened his lands, might have sued out to restore him to his rights. Abolished by 3 & 4 Wm. IV. c. 27.—**Dum recens fuit maleficium.** While the offense was fresh. A term employed in the old law of appeal of rape. Bract. fol. 147.—**Dum sola.** While sole, or single. *Dum sola fuerit,* while she shall remain sole. *Dum sola et casta vixerit,* while she lives single and chaste. Words of limitation in old conveyances. Co. Litt. 235*a*. Also applied generally to an unmarried woman in connection with something that was or might be done during that condition.

DUMB. One who cannot speak; a person who is mute.

DUMB-BIDDING. In sales at auction, when the minimum amount which the owner will take for the article is written on a piece of paper, and placed by the owner under a candlestick, or other thing, and it is agreed that no bidding shall avail unless equal to that, this is called "dumb-bidding." Bab. Auct. 44.

DUMMODO. Provided; provided that. A word of limitation in the Latin forms of conveyances, of frequent use in introducing a reservation; as in reserving a rent.

DUN. A mountain or high open place. The names of places ending in *dun* or *don* were either built on hills or near them in open places.

DUNA. In old records. A bank of earth cast up; the side of a ditch. Cowell.

DUNGEON. Such an under-ground prison or cell as was formerly placed in the strongest part of a fortress; a dark or subterraneous prison.

DUNIO. A double; a kind of base coin less than a farthing.

DUNNAGE. Pieces of wood placed against the sides and bottom of the hold of a vessel, to preserve the cargo from the effect of leakage, according to its nature and quality. Abb. Shipp. 227.

There is considerable resemblance between dunnage and ballast. The latter is used for trimming the ship, and bringing it down to a draft of water proper and safe for sailing. Dunnage is placed under the cargo to keep it from being wetted by water getting into the hold, or between the different parcels to

keep them from bruising and injuring each other. Great Western Ins. Co. v. Thwing, 13 Wall. 674, 20 L. Ed. 607; Richards v. Hansen (C. C.) 1 Fed. 56.

DUNSETS. People that dwell on hilly places or mountains. Jacob.

Duo non possunt in solido unam rem possidere. Two cannot possess one thing in entirety. Co. Litt. 368.

Duo sunt instrumenta ad omnes res aut confirmandas aut impugnandas, ratio et authoritas. There are two instruments for confirming or impugning all things, —reason and authority. 8 Coke, 16.

DUODECEMVIRALE JUDICIUM. The trial by twelve men, or by jury. Applied to juries *de medietate linguæ*. Mol. de Jure Mar. 448.

DUODECIMA MANUS. Twelve hands. The oaths of twelve men, including himself, by whom the defendant was allowed to make his law. 3 Bl. Comm. 343.

DUODENA. In old records. A jury of twelve men. Cowell.

DUODENA MANU. A dozen hands, *i. e.*, twelve witnesses to purge a criminal of an offense.

Duorum in solidum dominium vel possessio esse non potest. Ownership or possession in entirety cannot be in two persons of the same thing. Dig. 13, 6, 5, 15; Mackeld. Rom. Law, § 245. Bract. fol. 28*b*.

DUPLA. In the civil law. Double the price of a thing. Dig. 21, 2, 2.

DUPLEX QUERELA. A double complaint. An ecclesiastical proceeding, which is in the nature of an appeal from an ordinary's refusal to institute, to his next immediate superior; as from a bishop to the archbishop. If the superior adjudges the cause of refusal to be insufficient, he will grant institution to the appellant. Phillim. Ecc. Law, 440.

DULPEX VALOR MARITAGII. In old English law. Double the value of the marriage. While an infant was in ward, the guardian had the power of tendering him or her a suitable match, without disparagement, which if the infants refused, they forfeited the value of the marriage to their guardian, that is, so much as a jury would assess or any one would give to the guardian for such an alliance; and, if the infants married themselves without the guardian's consent, they forfeited double the value of the marriage. 2 Bl. Comm. 70; Litt. § 110; Co. Litt. 82*b*.

DUPLICATE. When two written documents are substantially alike, so that each might be a copy or transcript from the other, while both stand on the same footing as original instruments, they are called "duplicates." Agreements, deeds, and other documents are frequently executed in duplicate, in order that each party may have an original in his possession. State v. Graffam, 74 Wis. 643, 43 N. W. 727; Grant v. Griffith, 39 App. Div. 107, 56 N. Y. Supp. 791; Trust Co. v. Codington County, 9 S. D. 159, 68 N. W. 314; Nelson v. Blakey, 54 Ind. 36.

A duplicate is sometimes defined to be the "copy" of a thing; but, though generally a copy, a duplicate differs from a mere copy, in having all the validity of an original. Nor, it seems, need it be an exact copy. Defined also to be the "counterpart" of an instrument; but in indentures there is a distinction between *counterparts* executed by the several parties respectively, each party affixing his or her seal to only one counterpart, and *duplicate originals*, each executed by all the parties. Toms v. Cuming, 7 Man. & G. 91, note. The old indentures, charters, or chirographs seem to have had the character of duplicates. Burrill.

The term is also frequently used to signify a new original, made to take the place of an instrument that has been lost or destroyed, and to have the same force and effect. Benton v. Martin, 40 N. Y. 347.

In English law. The certificate of discharge given to an insolvent debtor who takes the benefit of the act for the relief of insolvent debtors.

The ticket given by a pawnbroker to the pawner of a chattel.

—Duplicate taxation. The same as "double" taxation. See DOUBLE.—**Duplicate will.** A term used in England, where a testator executes two copies of his will, one to keep himself, and the other to be deposited with another person. Upon application for probate of a duplicate will, both copies must be deposited in the registry of the court of probate.

DUPLICATIO. In the civil law. The defendant's answer to the plaintiff's replication; corresponding to the rejoinder of the common law.

Duplicationem possibilitatis lex non patitur. The law does not allow the doubling of a possibility. 1 Rolle, 321.

DUPLICATUM JUS. Double right. Bract. fol. 283*b*. See DROIT-DROIT.

DUPLICITY. The technical fault, in pleading, of uniting two or more causes of action in one count in a writ, or two or more grounds of defense in one plea, or two or more breaches in a replication, or two or more offenses in the same count of an indictment. Tucker v. State, 6 Tex. App. 253; Waters v. People, 104 Ill. 547; Mullin v. Blumenthal, 1 Pennewill (Del.) 476, 42 Atl. 175; Devino v. Railroad Co., 63 Vt. 98, 20 Atl. 953; Tucker v. Ladd, 7 Cow. (N. Y.) 452.

DUPLY, *n.* (From Lat. *duplicatio, q. v.*) In Scotch pleading. The defendant's answer to the plaintiff's replication.

DUPLY, *v.* In Scotch pleading. To rejoin. "It is *duplyed* by the panel." 3 State Trials, 471.

DURANTE. Lat. During. A word of limitation in old conveyances. Co. Litt. 234*b*.

—Durante absentia. During absence. In some jurisdictions, administration of a decedent's estate is said to be granted *durante absentia* in cases where the absence of the proper proponents of the will, or of an executor, delays or imperils the settlement of the estate.—**Durante bene placito.** During good pleasure. The ancient tenure of English judges was *durante bene placito.* 1 Bl. Comm. 267, 342.—**Durante minore ætate.** During minority. 2 Bl. Comm. 503; 5 Coke, 29, 30. Words taken from the old form of letters of administration. 5 Coke, *ubi supra.*—**Durante viduitate.** During widowhood. 2 Bl. Comm. 124. *Durante casta viduitate,* during chaste widowhood. 10 East, 520.—**Durante virginitate.** During virginity, (so long as she remains unmarried.) —**Durante vita.** During life.

DURBAR. In India. A court, audience, or levee. Mozley & Whitley.

DURESS, *v.* To subject to duress. A word used by Lord Bacon. "If the party *duressed* do make any motion," etc. Bac. Max. 89, reg. 22.

DURESS, *n.* Unlawful constraint exercised upon a man whereby he is forced to do some act against his will. It may be either "duress of imprisonment," where the person is deprived of his liberty in order to force him to compliance, or by violence, beating, or other actual injury, or duress *per minas,* consisting in threats of imprisonment or great physical injury or death. Duress may also include the same injuries, threats, or restraint exercised upon the man's wife, child, or parent. Noble v. Enos, 19 Ind. 78; Bank v. Sargent, 65 Neb. 594, 91 N. W. 597, 59 L. R. A. 296; Pierce v. Brown, 7 Wall. 214, 19 L. Ed. 134; Galusha v. Sherman, 105 Wis. 263, 81 N. W. 495, 47 L. R. A. 417; Radich v. Hutchins, 95 U. S. 213, 24 L. Ed. 409; Rollings v. Cate, 1 Heisk. (Tenn.) 97; Joannin v. Ogilvie, 49 Minn. 564, 52 N. W. 217, 16 L. R. A. 376, 32 Am. St. Rep. 581; Burnes v. Burnes (C. C.) 132 Fed. 493.

Duress consists in any illegal imprisonment, or legal imprisonment used for an illegal purpose, or threats of bodily or other harm, or other means amounting to or tending to coerce the will of another, and actually inducing him to do an act contrary to his free will. Code Ga. 1882, § 2637.

By duress, in its more extended sense, is meant that degree of severity, either threatened or impending or actually inflicted, which is sufficient to overcome the mind and will of a person of ordinary firmness. Duress *per minas* is restricted to fear of loss of life, or of mayhem, or loss of limb, or other remediless harm to the person. Fellows v. School Dist., 39 Me. 559.

—Duress of imprisonment. The wrongful imprisonment of a person, or the illegal restraint of his liberty, in order to compel him to do some act. 1 Bl. Comm. 130, 131, 136, 137; 1 Steph. Comm. 137; 2 Kent, Comm. 453.—**Duress per minas.** Duress by threats. The use of threats and menaces to compel a person, by the fear of death, or grievous bodily harm, as mayhem or loss of limb, to do some lawful act, or to commit a misdemeanor. 1 Bl. Comm. 130; 4 Bl. Comm. 30; 4 Steph. Comm. 83. See METUS.

DURESSOR. One who subjects another to duress; one who compels another to do a thing, as by menace. Bac. Max. 90, reg. 22.

DURHAM. A county palatine in England, the jurisdiction of which was vested in the Bishop of Durham until the statute 6 & 7 Wm. IV. c. 19, vested it as a separate franchise and royalty in the crown. The jurisdiction of the Durham court of pleas was transferred to the supreme court of judicature by the judicature act of 1873.

DURSLEY. In old English law. Blows without wounding or bloodshed; dry blows. Blount.

DUSTUCK. A term used in Hindostan for a passport, permit, or order from the English East Indian Company. It generally meant a permit under their seal exempting goods from the payment of duties. Enc. Lond.

DUTCH AUCTION. See AUCTION.

DUTIES. In its most usual signification this word is the synonym of imposts or customs; but it is sometimes used in a broader sense, as including all manner of taxes, charges, or governmental impositions. Pollock v. Farmers' L. & T. Co., 158 U. S. 601, 15 Sup. Ct. 912, 39 L. Ed. 1108; Alexander v. Railroad Co., 3 Strob. (S. C.) 595; Pacific Ins. Co. v. Soule, 7 Wall. 433, 19 L. Ed. 95; Cooley v. Board of Wardens, 12 How. 299, 13 L. Ed. 996; Blake v. Baker, 115 Mass. 188.

—Duties of detraction. Taxes levied upon the removal from one state to another of property acquired by succession or testamentary disposition. Frederickson v. Louisiana, 23 How. 445, 16 L. Ed. 577; In re Strobel's Estate, 5 App. Div. 621, 39 N. Y. Supp. 169.—**Duties on imports.** This term signifies not merely a duty on the act of importation, but a duty on the thing imported. It is not confined to a duty levied while the article is entering the country, but extends to a duty levied after it has entered the country. Brown v. Maryland, 12 Wheat. 437, 6 L. Ed. 678.

DUTY. In its use in jurisprudence, this word is the correlative of *right.* Thus, wherever there exists a right in any person, there also rests a corresponding duty upon

some other person or upon all persons generally. But it is also used, in a wider sense, to designate that class of moral obligations which lie outside the jural sphere; such, namely, as rest upon an imperative ethical basis, but have not been recognized by the law as within its proper province for purposes of enforcement or redress. Thus, gratitude towards a benefactor is a *duty*, but its refusal will not ground an action. In this meaning "duty" is the equivalent of "moral obligation," as distinguished from a "legal obligation." See Kentucky v. Dennison, 24 How. 107, 16 L. Ed. 717; Harrison v. Bush, 5 El. & Bl. 349.

As a technical term of the law, "duty" signifies a thing due; that which is due from a person; that which a person owes to another. An obligation to do a thing. A word of more extensive signification than "debt," although both are expressed by the same Latin word "*debitum*." Beach v. Boynton, 26 Vt. 725, 733.

But in practice it is commonly reserved as the designation of those obligations of performance, care, or observance which rest upon a person in an official or fiduciary capacity; as the *duty* of an executor, trustee, manager, etc.

It also denotes a tax or impost due to the government upon the importation or exportation of goods.

—**Legal duty.** An obligation arising from contract of the parties or the operation of the law. Riddell v. Ventilating Co., 27 Mont. 44, 69 Pac. 241. That which the law requires to be done or forborne to a determinate person or the public at large, correlative to a vested and coextensive right in such person or the public, and the breach of which constitutes negligence. Heaven v. Pender, 11 Q. B. Div. 506; Smith v. Clarke Hardware Co., 100 Ga. 163, 28 S. E. 73, 39 L. R. A. 607; Railroad Co. v. Ballentine, 84 Fed. 935, 28 C. C. A. 572.

DUUMVIRI. (From *duo*, two, and *viri*, men.) A general appellation among the ancient Romans, given to any magistrates elected in pairs to fill any office, or perform any function. Brande.

Duumviri municipales were two annual magistrates in the towns and colonies, having judicial powers. Calvin.

Duumviri navales were officers appointed to man, equip, and refit the navy. Id.

DUX. In Roman law. A leader or military commander. The commander of an army. Dig. 3, 2, 2, pr.

In feudal and old European law. Duke; a title of honor, or order of nobility. 1 Bl. Comm. 397; Crabb, Eng. Law, 236.

In later law. A military governor of a province. See Cod. 1, 27, 2. A military officer having charge of the borders or frontiers of the empire, called "*dux limitis*." Cod. 1, 49, 1, pr. At this period, the word began to be used as a title of honor or dignity.

D. W. I. In genealogical tables, a common abbreviation for "died without issue."

DWELL. To have an abode; to inhabit; to live in a place. Gardener v. Wagner, 9 Fed. Cas. 1,154; Ex parte Blumer, 27 Tex. 736; Putnam v. Johnson, 10 Mass. 502; Eatontown v. Shrewsbury, 49 N. J. Law, 188, 6 Atl. 319.

DWELLING-HOUSE. The house in which a man lives with his family; a residence; the apartment or building, or group of buildings, occupied by a family as a place of residence.

In conveyancing. Includes all buildings attached to or connected with the house. 2 Hil. Real Prop. 338, and note.

In the law of burglary. A house in which the occupier and his family usually reside, or, in other words, dwell and lie in. Whart. Crim. Law, 357.

DWELLING-PLACE. This term is not synonymous with a "place of pauper settlement." Lisbon v. Lyman, 49 N. H. 553.

Dwelling-place, or home, means some permanent abode or residence, with intention to remain; and is not synonymous with "domicile," as used in international law, but has a more limited and restricted meaning. Jefferson v. Washington, 19 Me. 293.

DYING DECLARATION. See DECLARATION.

DYING WITHOUT ISSUE. At common law this phrase imports an indefinite failure of issue, and not a dying without issue surviving at the time of the death of the first taker. But this rule has been changed in some of the states, by statute or decisions, and in England by St. 7 Wm. IV., and 1 Vict. c. 26, § 29.

The words "die without issue," and "die without leaving issue," in a devise of real estate, import an indefinite failure of issue, and not the failure of issue at the death of the first taker. And no distinction is to be made between the words "without issue" and "without leaving issue." Wilson v. Wilson, 32 Barb. (N. Y.) 328; McGraw v. Davenport, 6 Port. (Ala.) 319.

In Connecticut, it has been repeatedly held that the expression "dying without issue," and like expressions, have reference to the time of the death of the party, and not to an indefinite failure of issue. Phelps v. Phelps, 55 Conn. 359, 11 Atl. 596.

Dying without children imports not a failure of issue at any indefinite future period, but a leaving no children at the death of the legatee. Condict v. King, 13 N. J. Eq. 375.

DYKE-REED, or DYKE-REEVE. An officer who has the care and oversight of the *dykes* and *drains* in fenny counties.

DYSNOMY. Bad legislation; the enactment of bad laws.

DYSPAREUNIA. In medical jurisprudence. Incapacity of a woman to sustain the act of sexual intercourse except with great difficulty and pain.

DYSPESIA. A state of the stomach in which its functions are disturbed, without the presence of other diseases, or when, if other diseases are present, they are of minor importance. Dungl. Med. Dict.

DYVOUR. In Scotch law. A bankrupt.

—Dyvour's habit. In Scotch law. A habit which debtors who are set free on a *cessio bonorum* are obliged to wear, unless in the summons and process of *cessio* it be libeled, sustained, and proved that the bankruptcy proceeds from misfortune. And bankrupts are condemned to submit to the habit, even where no suspicion of fraud lies against them, if they have been dealers in an illicit trade. Ersk. Prin. 4, 3, 13.