E

E. As an abbreviation, this letter may stand for "Exchequer," "English," "Edward," "Equity," "East," "Eastern," "Easter," or "Ecclesiastical."

E. A Latin preposition, meaning from, out of, after, or according. It occurs in many Latin phrases; but (in this form) only before a consonant. When the initial of the following word is a vowel, *ex* is used.

—**E contra.** From the opposite; on the contrary.—**E converso.** Conversely. On the other hand; on the contrary. Equivalent to *e contra*.—**E mera gratia.** Out of mere grace or favor.—**E pluribus unum.** One out of many. The motto of the United States of America.

E. G. An abbreviation of *exempli gratia*. For the sake of an example.

EA. Sax. The water or river; also the mouth of a river on the shore between high and low water-mark.

Ea est accipienda interpretatio, quæ vitio caret. That interpretation is to be received [or adopted] which is free from fault [or wrong.] The law will not intend a wrong. Bac. Max. 17, (in reg. 3.)

EA INTENTIONE. With that intent. Held not to make a condition, but a confidence and trust. Dyer, 138*b*.

Ea quæ, commendandi causa, in venditionibus dicuntur, si palam appareant, venditorem non obligant. Those things which are said on sales, in the way of commendation, if [the qualities of the thing sold] appear openly, do not bind the seller. Dig. 18, 1, 43, pr.

Ea quæ dari impossibilia sunt, vel quæ in rerum natura non sunt, pro non adjectis habentur. Those things which are impossible to be given, or which are not in the nature of things, are regarded as not added, [as no part of an agreement.] Dig. 50, 17, 135.

Ea quæ in curia nostra rite acta sunt debitæ executioni demandari debent. Co. Litt. 289. Those things which are properly transacted in our court ought to be committed to a due execution.

Ea quæ raro accidunt non temere in agendis negotiis computantur. Those things which rarely happen are not to be taken into account in the transaction of business, without sufficient reason. Dig. 50, 17, 64.

EACH. A distributive adjective pronoun, which denotes or refers to every one of the persons or things mentioned; every one of two or more persons or things, composing the whole, separately considered. The effect of this word, used in the covenants of a bond, is to create a several obligation. Seiler v. State, 160 Ind. 605, 67 N. E. 448; Knickerbocker v. People, 102 Ill. 233; Costigan v. Lunt, 104 Mass. 219.

Eadem causa diversis rationibus coram judicibus ecclesiasticis et secularibus ventilatur. 2 Inst. 622. The same cause is argued upon different principles before ecclesiastical and secular judges.

Eadem est ratio, eadem est lex. The same reason, the same law. Charles River Bridge v. Warren Bridge, 7 Pick. (Mass.) 493.

Eadem mens præsumitur regis quæ est juris et quæ esse debet, præsertim in dubiis. Hob. 154. The mind of the sovereign is presumed to be coincident with that of the law, and with that which it ought to be, especially in ambiguous matters.

EAGLE. A gold coin of the United States of the value of ten dollars.

EALDER, or EALDING. In old Saxon law. An elder or chief.

EALDERMAN, or EALDORMAN. The name of a Saxon magistrate; alderman; analogous to *earl* among the Danes, and *senator* among the Romans. See ALDERMAN.

EALDOR-BISCOP. An archbishop.

EALDORBURG. Sax. The metropolis; the chief city. Obsolete.

EALEHUS. (Fr. *eale*, Sax., ale, and *hus*, house.) An ale-house.

EALHORDA. Sax. The privilege of assising and selling beer. Obsolete.

EAR GRASS. In English law. Such grass which is upon the land after the mowing, until the feast of the Annunciation after. 3 Leon. 213.

EAR-MARK. A mark put upon a thing to distinguish it from another. Originally and literally, a mark upon the ear; a mode of marking sheep and other animals.

Property is said to be *ear-marked* when it can be identified or distinguished from other property of the same nature.

Money has no ear-mark, but it is an ordinary term for a privy mark made by any one on a coin.

EAR-WITNESS. In the law of evidence. One who attests or can attest anything as heard by himself.

EARL. A title of nobility, formerly the highest in England, now the third, ranking between a marquis and a viscount, and corresponding with the French "*comte*" and the German "*graf*." The title originated with the Saxons, and is the most ancient of the English peerage. William the Conqueror first made this title hereditary, giving it in fee to his nobles; and alloting them for the support of their state the third penny out of the sheriff's court, issuing out of all pleas of the shire, whence they had their ancient title "shiremen." At present the title is accompanied by no territory, private or judicial rights, but merely confers nobility and an hereditary seat in the house of lords. Wharton.

—Earl marshal of England. A great officer of state who had anciently several courts under his jurisdiction, as the court of chivalry and the court of honor. Under him is the herald's office, or college of arms. He was also a judge of the Marshalsea court, now abolished. This office is of great antiquity, and has been for several ages hereditary in the family of the Howards. 3 Bl. Comm. 68, 103; 3 Steph. Comm. 335, note.**—Earldom.** The dignity or jurisdiction of an earl. The dignity only remains now, as the jurisdiction has been given over to the sheriff. 1 Bl. Comm. 339.

EARLES-PENNY. Money given in part payment. See EARNEST.

EARNEST. The payment of a part of the price of goods sold, or the delivery of part of such goods, for the purpose of binding the contract. Howe v. Hayward, 108 Mass. 54, 11 Am. Rep. 306.

A token or pledge passing between the parties, by way of evidence, or ratification of the sale. 2 Kent, Comm. 495, note.

EARNINGS. This term is used to denote a larger class of credits than would be included in the term "wages." Somers v. Keliher, 115 Mass. 165; Jenks v. Dyer, 102 Mass. 235.

The gains of the person derived from his services or labor without the aid of capital. Brown v. Hebard, 20 Wis. 330, 91 Am. Dec. 408; Hoyt v. White, 46 N. H. 48.

—Gross earnings and net earnings. The gross earnings of a business or company are the total receipts before deducting expenditures. Net earnings are the excess of the gross earnings over the expenditures defrayed in producing them, and aside from and exclusive of capital laid out in constructing and equipping the works or plant. State v. Railroad Co., 30 Minn. 311, 15 N. W. 307; People v. Roberts, 32 App. Div. 113, 52 N. Y. Supp. 859; Cincinnati, S. & C. R. R. Co. v. Indiana, B. & N. Ry. Co., 44 Ohio St. 287, 7 N. E. 139; Mobile & O. R. Co. v. Tennessee, 153 U. S. 486, 14 Sup. Ct. 968, 38 L. Ed. 793; Union Pac. R. Co. v. U. S., 99 U. S. 420, 25 L. Ed. 274; Cotting v. Railway Co., 54 Conn. 156, 5 Atl. 851.**—Surplus earnings** of a company or corporation means the amount owned by the company over and above its capital and actual liabilities. People v. Com'rs of Taxes, 76 N. Y. 74.

EARTH. Soil of all kinds, including gravel, clay, loam, and the like, in distinction from the firm rock. Dickinson v. Poughkeepsie, 75 N. Y. 76.

EASEMENT. A right in the owner of one parcel of land, by reason of such ownership, to use the land of another for a special purpose not inconsistent with a general property in the owner. 2 Washb. Real Prop. 25.

A privilege which the owner of one adjacent tenement hath of another, existing in respect of their several tenements, by which that owner against whose tenement the privilege exists is obliged to suffer or not to do something on or in regard to his own land for the advantage of him in whose land the privilege exists. Termes de la Ley.

A private easement is a privilege, service, or convenience which one neighbor has of another, by prescription, grant, or necessary implication, and without profit; as a way over his land, a gate-way, water-course, and the like. Kitch. 105; 3 Cruise, Dig. 484. And see Harrison v. Boring, 44 Tex. 267; Albright v. Cortright, 64 N. J. Law, 330, 45 Atl. 634, 48 L. R. A. 616, 81 Am. St. Rep. 504; Wynn v. Garland, 19 Ark. 23, 68 Am. Dec. 190; Wessels v. Colebank, 174 Ill. 618, 51 N. E. 639; Terminal Land Co. v. Muir, 136 Cal. 36, 68 Pac. 308; Stevenson v. Wallace, 27 Grat. (Va.) 87.

The land against which the easement or privilege exists is called the "servient" tenement, and the estate to which it is annexed the "dominant" tenement; and their owners are called respectively the "servient" and "dominant" owner. These terms are taken from the civil law.

Synonyms. At the present day, the distinction between an "easement" and a "license" is well settled and fully recognized, although it becomes difficult in some of the cases to discover a substantial difference between them. An easement, it has appeared, is a liberty, privilege, or advantage in land, without profit, and existing distinct from the ownership of the soil; and it has appeared, also, that a claim for an easement must be founded upon a deed or writing, or upon prescription, which supposes one. It is a permanent interest in another's land, with a right to enjoy it fully and without obstruction. A license, on the other hand, is a bare authority to do a certain act or series of acts upon another's land, without possessing any estate therein; and, it being founded in personal confidence, it is not assignable, and it is gone if the owner of the land who gives the license transfers his title to another, or if either party die. Cook v. Railroad Co., 40 Iowa, 456; Nunnelly v. Iron Co., 94 Tenn. 397, 29 S. W. 361, 28 L. R. A. 421; Baldwin v. Taylor, 166 Pa. 507, 31 Atl. 250; Clark v. Glidden, 60 Vt. 702, 15 Atl. 358; Asher v. Johnson, 118 Ky. 702, 82 S. W. 300.

Classification. Easements are classified as *affirmative* or *negative;* the former being those where the servient estate must permit something to be done thereon, (as to pass over it, or to discharge water upon it;) the latter being those where the owner of the servient estate is

prohibited from doing something otherwise lawful upon his estate, because it will affect the dominant estate, (as interrupting the light and air from the latter by building on the former.) 2 Washb. Real Prop. 301. Equitable L. Assur. Soc. v. Brennan (Sup.) 24 N. Y. Supp. 788; Pierce v. Keator, 70 N. Y. 447, 26 Am. Rep. 612. They are also either *continuous* or *discontinuous*. An easement of the former kind is one that is self-perpetuating, independent of human intervention, as, the flow of a stream, or one which may be enjoyed without any act on the part of the person entitled thereto, such as a spout which discharges the water whenever it rains, a drain by which surface water is carried off, windows which admit light and air, and the like. Lampman v. Milks, 21 N. Y. 505; Bonelli v. Blakemore, 66 Miss. 136, 5 South. 228, 14 Am. St. Rep. 550; Providence Tool Co. v. Engine Co., 9 R. I. 571. A continuous easement is sometimes termed an "apparent" easement, and defined as one depending on some artificial structure upon, or natural conformation of, the servient tenement, obvious and permanent, which constitutes the easement or is the means of enjoying it. Fetters v. Humphreys, 18 N. J. Eq. 260; Larsen v. Peterson, 53 N. J. Eq. 88, 30 Atl. 1094; Whalen v. Land Co., 65 N. J. Law, 206, 47 Atl. 443. Discontinuous, non-continuous, or non-apparent easements are those the enjoyment of which can be had only by the interference of man, as, a right of way or a right to draw water. Outerbridge v. Phelps, 45 N. Y. Super. Ct. 570; Lampman v. Milks, 21 N. Y. 515. This distinction is derived from the French law. Easements are also classed as *private* or *public*, the former being an easement the enjoyment of which is restricted to one or a few individuals, while a public easement is one the right to the enjoyment of which is vested in the public generally or in an entire community; such as an easement of passage on the public streets and highways or of navigation on a stream. Kennelly v. Jersey City, 57 N. J. Law, 293, 30 Atl. 531, 26 L. R. A. 281; Nicoll v. Telephone Co., 62 N. J. Law, 733, 42 Atl. 583, 72 Am. St. Rep. 666. They may also be either *of necessity* or *of convenience*. The former is the case where the easement is indispensable to the enjoyment of the dominant estate; the latter, where the easement increases the facility, comfort, or convenience of the enjoyment of the dominant estate, or of some right connected with it. Easements are again either *appurtenant* or *in gross*. An appurtenant easement is one which is attached to and passes with the dominant tenement as an appurtenance thereof; while an easement in gross is not appurtenant to any estate in land (or not belonging to any person by virtue of his ownership of an estate in land) but a mere personal interest in, or right to use, the land of another. Cadwalader v. Bailey, 17 R. I. 495, 23 Atl. 20, 14 L. R. A. 300; Pinkum v. Eau Claire, 81 Wis. 301, 51 N. W. 550; Stovall v. Coggins Granite Co., 116 Ga. 376, 42 S. E. 723.

—Equitable easements. The special easements created by derivation of ownership of adjacent proprietors from a common source, with specific intentions as to buildings for certain purposes, or with implied privileges in regard to certain uses, are sometimes so called. U. S. v. Peachy (D. C.) 36 Fed. 162.**—Implied easements.** An implied easement is an easement resting upon the principle that, where the owner of two or more adjacent lots sells a part thereof, he grants by implication to the grantee all those apparent and visible easements which are necessary for the reasonable use of the property granted, which at the time of the grant are used by the owner of the entirety for the benefit of the part granted. Farley v. Howard, 83 Misc. Rep. 57, 68 N. Y. Supp. 159.**—Intermittent easement.** One which is usable or used only at times, and not continuously. Eaton v. Railroad Co., 51 N. H. 504, 12 Am. Rep. 147.**—Quasi easement.** An "easement," in the proper sense of the word, can only exist in respect of two adjoining pieces of land occupied by different persons, and can only impose a negative duty on the owner of the servient tenement. Hence an obligation on the owner of land to repair the fence between his and his neighbor's land is not a true easement, but is sometimes called a "*quasi* easement." Gale, Easem. 516; Sweet.**—Secondary easement.** One which is appurtenant to the primary or actual easement; every easement includes such "secondary easements," that is, the right to do such things as are necessary for the full enjoyment of the easement itself. Toothe v. Bryce, 50 N. J. Eq. 589, 25 Atl. 182; North Fork Water Co. v. Edwards, 121 Cal. 662, 54 Pac. 69.

EAST. In the customs laws of the United States, the term "countries *east* of the Cape of Good Hope" means countries with which, formerly, the United States ordinarily carried on commercial intercourse by passing around that cape. Powers v. Comley, 101 U. S. 790, 25 L. Ed. 805.

EAST GREENWICH. The name of a royal manor in the county of Kent, England; mentioned in royal grants or patents, as descriptive of the tenure of free socage.

EAST INDIA COMPANY. The East India Company was originally established for prosecuting the trade between England and India, which they acquired a right to carry on exclusively. Since the middle of the last century, however, the company's political affairs had become of more importance than their commerce. In 1858, by 21 & 22 Vict. c. 106, the government of the territories of the company was transferred to the crown. Wharton.

EASTER. A feast of the Christian church held in memory of our Saviour's resurrection. The Greeks and Latins call it "pascha," (passover,) to which Jewish feast our Easter answers. This feast has been annually celebrated since the time of the apostles, and is one of the most important festivals in the Christian calendar, being that which regulates and determines the times of all the other movable feasts. Enc. Lond.

—Easter-offerings, or Easter-dues. In English law. Small sums of money paid to the parochial clergy by the parishioners at Easter as a compensation for personal tithes, or the tithe for personal labor; recoverable under 7 & 8 Wm. III. c. 6, before justices of the peace. **—Easter term.** In English law. One of the four terms of the courts. It is now a fixed term, beginning on the 15th of April and ending on the 8th of May in every year, though sometimes prolonged so late as the 13th of May, under St. 11 Geo. IV. and 1 Wm. IV. c. 70. From November 2, 1875, the division of the legal year into terms is abolished so far as concerns the administration of justice. 3 Steph. Comm. 482–486; Mozley & Whitley.

EASTERLING. A coin struck by Richard II. which is supposed to have given rise to the name of "sterling," as applied to English money.

EASTERLY. This word, when used alone, will be construed to mean "due east." But that is a rule of necessity growing out of the indefiniteness of the term, and has no application where other words are used for the purpose of qualifying its meaning. Where such is the case, instead of meaning "due east," it means precisely what the qualifying word makes it mean. Fratt v. Woodward, 32 Cal. 227, 91 Am. Dec. 573; Scraper v. Pipes, 59 Ind. 164; Wiltsee v. Mill & Min. Co., 7 Ariz. 95, 60 Pac. 896.

EASTINUS. An easterly coast or country.

EAT INDE SINE DIE. In criminal practice. Words used on the acquittal of a defendant, *that he may go thence without a day, i. e.,* be dismissed without any further continuance or adjournment.

EATING-HOUSE. Any place where food or refreshments of any kind, not including spirits, wines, ale, beer, or other malt liquors, are provided for casual visitors, and sold for consumption therein. Act Cong. July 13, 1866, § 9 (14 St. at Large, 118). And see Carpenter v. Taylor, 1 Hilt. (N. Y.) 195; State v. Hall, 73 N. C. 253.

EAVES. The edge of a roof, built so as to project over the walls of a house, in order that the rain may drop therefrom to the ground instead of running down the wall. Center St. Church v. Machias Hotel Co., 51 Me. 413.

—Eaves-drip. The drip or dropping of water from the eaves of a house on the land of an adjacent owner; the easement of having the water so drip, or the servitude of submitting to such drip; the same as the *stillicidium* of the Roman law. See STILLICIDIUM.

EAVESDROPPING. In English criminal law. The offense of listening under walls or windows, or the *eaves* of a house, to hearken after discourse, and thereupon to frame slanderous and mischievous tales. 4 Bl. Comm. 168. It is a misdemeanor at common law, indictable at sessions, and punishable by fine and finding sureties for good behavior. Id.; Steph. Crim. Law, 109. See State v. Pennington, 3 Head (Tenn.) 300, 75 Am. Dec. 771; Com. v. Lovett, 4 Clark (Pa.) 5; Selden v. State, 74 Wis. 271, 42 N. W. 218, 17 Am. St. Rep. 144.

EBB AND FLOW. An expression used formerly in this country to denote the limits of admiralty jurisdiction. See United States v. Aborn, 3 Mason, 127, Fed. Cas. No. 14,418; Hale v. Washington Ins. Co., 2 Story, 176, Fed. Cas. No. 5,916; De Lovio v. Boit, 2 Gall. 398, Fed. Cas. No. 3,776; The Hine v. Trevor, 4 Wall. 562, 18 L. Ed. 451; The Eagle, 8 Wall. 15, 19 L. Ed. 365.

EBBA. In old English law. Ebb. *Ebba et fluctus;* ebb and flow of tide; ebb and flood. Bract. fols. 255, 338. The time occupied by one ebb and flood was anciently granted to persons essoined as being beyond sea, in addition to the period of forty days. See Fleta, lib. 6, c. 8, § 2.

EBDOMADARIUS. In ecclesiastical law. An officer in cathedral churches who supervised the regular performance of divine service, and prescribed the particular duties of each person in the choir.

EBEREMORTH, EBEREMORS, EBERE-MURDER. See ABEREMURDER.

EBRIETY. In criminal law and medical jurisprudence. Drunkenness; alcoholic intoxication. Com. v. Whitney, 11 Cush. (Mass.) 479.

Ecce modo mirum, quod fœmina fert breve regis, non nominando virum, conjunctum robore legis. Co. Litt. 132*b*. Behold, indeed, a wonder! that a woman has the king's writ without naming her husband, who by law is united to her.

ECCENTRICITY. In criminal law and medical jurisprudence. Personal or individual peculiarities of mind and disposition which markedly distinguish the subject from the ordinary, normal, or average types of men, but do not amount to mental unsoundness or insanity. Ekin v. McCracken, 11 Phila. (Pa.) 535.

ECCHYMOSIS. In medical jurisprudence. Blackness. It is an extravasation of blood by rupture of capillary vessels, and hence it follows contusion; but it may exist, as in cases of scurvy and other morbid conditions, without the latter. Ry. Med. Jur. 172.

ECCLESIA. Lat. An assembly. A Christian assembly; a church. A place of religious worship. Spelman.

Ecclesia ecclesiæ decimas solvere non debet. Cro. Eliz. 479. A church ought not to pay tithes to a church.

Ecclesia est domus mansionalis Omnipotentis Dei. 2 Inst. 164. The church is the mansion-house of the Omnipotent God.

Ecclesia est infra ætatem et in custodia domini regis, qui tenetur jura et hæreditates ejusdem manu tenere et defendere. 11 Coke, 49. The church is under age, and in the custody of the king, who is bound to uphold and defend its rights and inheritances.

Ecclesia fungitur vice minoris; meliorem conditionem suam facere potest, deteriorem nequaquam. Co. Litt. 341. The church enjoys the privilege of a minor;

it can make its own condition better, but not worse.

Ecclesia non moritur. 2 Inst. 3. The church does not die.

Ecclesiæ magis favendum est quam personæ. Godol. Ecc. Law, 172. The church is to be more favored than the parson.

ECCLESIÆ SCULPTURA. The image or sculpture of a church in ancient times was often cut out or cast in plate or other metal, and preserved as a religious treasure or relic, and to perpetuate the memory of some famous churches. Jacob.

ECCLESIARCH. The ruler of a church.

ECCLESIASTIC, *n.* A clergyman; a priest; a man consecrated to the service of the church.

ECCLESIASTICAL. Something belonging to or set apart for the church, as distinguished from "civil" or "secular," with regard to the world. Wharton.

—Ecclesiastical authorities. In England, the clergy, under the sovereign, as temporal head of the church, set apart from the rest of the people or laity, in order to superintend the public worship of God and the other ceremonies of religion, and to administer spiritual counsel and instruction. The several orders of the clergy are: (1) Archbishops and bishops; (2) deans and chapters; (3) archdeacons; (4) rural deans; (5) parsons (under whom are included appropriators) and vicars; (6) curates. Churchwardens or sidesmen, and parish clerks and sextons, inasmuch as their duties are connected with the church, may be considered to be a species of ecclesiastical authorities. Wharton. **—Ecclesiastical commissioners.** In English law. A body corporate, erected by St. 6 & 7 Wm. IV, c. 77, empowered to suggest measures conducive to the efficiency of the established church, to be ratified by orders in council. Wharton. See 3 Steph. Comm. 156, 157.**—Ecclesiastical corporation.** See CORPORATION. **—Ecclesiastical council.** In New England. A church court or tribunal, having functions partly judicial and partly advisory, appointed to determine questions relating to church discipline, orthodoxy, standing of ministers, controversies between ministers and their churches, differences and divisions in churches, and the like. Stearns v. First Parish, 21 Pick. (Mass.) 124; Sheldon v. Congregational Parish, 24 Pick. (Mass.) 281.**—Ecclesiastical courts.** A system of courts in England, held by authority of the sovereign, and having jurisdiction over matters pertaining to the religion and ritual of the established church, and the rights, duties, and discipline of ecclesiastical persons as such. They are as follows: The archdeacon's court, consistory court, court of arches, court of peculiars, prerogative court, court of delegates, court of convocation, court of audience, court of faculties, and court of commissioners of review. See those several titles; and see 3 Bl. Comm. 64–68. Equitable Life Assur. Soc. v. Paterson, 41 Ga. 364, 5 Am. Rep. 535.**—Ecclesiastical division of England.** This is a division into provinces, dioceses, archdeaconries, rural deaneries, and parishes.**—Ecclesiastical jurisdiction.** Jurisdiction over ecclesiastical cases and controversies; such as appertains to the ecclesiastical courts. Short v. Stotts, 58 Ind. 35.**—Ecclesiastical law.** The body of jurisprudence administered by the ecclesiastical courts of England; derived, in large measure, from the canon and civil law. As now restricted, it applies mainly to the affairs, and the doctrine, discipline, and worship, of the established church. De Witt v. De Witt, 67 Ohio St. 340, 66 N. E. 136.**—Ecclesiastical things.** This term, as used in the canon law, includes church buildings, church property, cemeteries, and property given to the church for the support of the poor or for any other pious use. Smith v. Bonhoof, 2 Mich. 115.

ECDICUS. The attorney, proctor, or advocate of a corporation. *Episcoporum ecdici;* bishops' proctors; church lawyers. 1 Reeve, Eng. Law, 65.

ECHANTILLON. In French law. One of the two parts or pieces of a wooden tally. That in possession of the debtor is properly called the "tally," the other "*echantillon.*" Poth. Obl. pt. 4, c. 1, art. 2, § 8.

ECHEVIN. In French law. A municipal officer corresponding with alderman or burgess, and having in some instances a civil jurisdiction in certain causes of trifling importance.

ECHOLALIA. In medical jurisprudence. The constant and senseless repetition of particular words or phrases, recognized as a sign or symptom of insanity or of aphasia.

ECHOUEMENT. In French marine law. Stranding. Emerig. Tr. des Ass. c. 12, s. 13, no. 1.

ECLAMPSIA PARTURIENTIUM. In medical jurisprudence. Puerperal convulsions; a convulsive seizure which sometimes suddenly attacks a woman in labor or directly after, generally attended by unconsciousness and occasionally by mental aberration.

ECLECTIC PRACTICE. In medicine. That system followed by physicians who select their modes of practice and medicines from various schools. Webster.

"Without professing to understand much of medical phraseology, we suppose that the terms 'allopathic practice' and 'legitimate business' mean the ordinary method commonly adopted by the great body of learned and eminent physicians, which is taught in their institutions, established by their highest authorities, and accepted by the larger and more respectable portion of the community. By 'eclectic practice,' without imputing to it, as the counsel for the plaintiff seem inclined to, an odor of illegality, we presume is intended another and different system, unusual and eccentric, not countenanced by the classes before referred to, but characterized by them as spurious and denounced as dangerous. It is sufficient to say that the two modes of treating human maladies are essentially distinct, and based upon different views of the nature and causes of diseases, their appropriate remedies, and the modes of applying them." Bradbury v. Bardin, 34 Conn. 453.

ECRIVAIN. In French marine law. The clerk of a ship. Emerig. Tr. des Ass. c. 11, s. 3, no. 2.

ECUMENICAL. General; universal; as an ecumenical council. Groesbeeck v. Dunscomb, 41 How. Prac. (N. Y.) 344.

EDDERBRECHE. In Saxon law. The offense of hedge-breaking. Obsolete.

EDESTIA. In old records. Buildings.

EDICT. A positive law promulgated by the sovereign of a country, and having reference either to the whole land or some of its divisions, but usually relating to affairs of state. It differs from a "public proclamation," in that it enacts a new statute, and carries with it the authority of law.

EDICTAL CITATION. In Scotch law. A citation published at the market-cross of Edinburgh, and pier and shore of Leith. Used against foreigners not within the kingdom, but having a landed estate there, and against natives out of the kingdom. Bell.

EDICTS OF JUSTINIAN. Thirteen constitutions or laws of this prince, found in most editions of the *Corpus Juris Civilis*, after the Novels. Being confined to matters of police in the provinces of the empire, they are of little use.

EDICTUM. In the Roman law. An edict; a mandate, or ordinance. An ordinance, or law, enacted by the emperor without the senate; belonging to the class of *constitutiones principis*. Inst. 1, 2, 6. An edict was a mere voluntary constitution of the emperor; differing from a rescript, in not being returned in the way of answer; and from a decree, in not being given in judgment; and from both, in not being founded upon solicitation. Tayl. Civil Law, 233.

A general order published by the prætor, on entering upon his office, containing the system of rules by which he would administer justice during the year of his office. Dig. 1, 2, 2, 10; Mackeld. Rom. Law, § 35. Tayl. Civil Law, 214. See Calvin.

—Edictum annuum. The annual edict or system of rules promulgated by a Roman prætor immediately upon assuming his office, setting forth the principles by which he would be guided in determining causes during his term of office. Mackeld. Rom. Law, § 36.—**Edictum perpetuum.** The perpetual edict. A compilation or system of law in fifty books, digested by Julian, a lawyer of great eminence under the reign of Adrian, from the prætor's edicts and other parts of the *Jus Honorarium*. All the remains of it which have come down to us are the extracts of it in the Digests. Butl. Hor. Jur. 52.—**Edictum provinciale.** An edict or system of rules for the administration of justice, similar to the edict of the prætor, put forth by the proconsuls and proprætors in the provinces of the Roman Empire. Mackeld. Rom. Law, § 36.—**Edictum Theodorici.** This is the first collection of law that was made after the downfall of the Roman power in Italy. It was promulgated by Theodoric, king of the Ostrogoths, at Rome in A. D. 500. It consists of 154 chapters, in which we recognize parts taken from the Code and Novellæ of Theodosius, from the Codices Gregorianus and Hermogenianus, and the Sententiæ of Paulus. The edict was doubtless drawn up by Roman writers, but the original sources are more disfigured and altered than in any other compilation. This collection of law was intended to apply both to the Goths and the Romans, so far as its provisions went; but, when it made no alteration in the Gothic law, that law was still to be in force. Savigny, Geschichte des R. R.—**Edictum tralatitium.** Where a Roman prætor, upon assuming office, did not publish a wholly new edict, but retained the whole or a principal part of the edict of his predecessor (as was usually the case) only adding to it such rules as appeared to be necessary to adapt it to changing social conditions or juristic ideas, it was called "edictum tralatitium." Mackeld. Rom. Law, § 36.

EDITUS. In old English law. Put forth or promulgated, when speaking of the passage of a statute; and brought forth, or born, when speaking of the birth of a child.

EDUCATION. Within the meaning of a statute relative to the powers and duties of guardians, this term comprehends not merely the instruction received at school or college, but the whole course of training, moral, intellectual, and physical. Education may be particularly directed to either the mental, moral, or physical powers and faculties, but in its broadest and best sense it relates to them all. Mount Herman Boys' School v. Gill, 145 Mass. 139, 13 N. E. 354; Cook v. State, 90 Tenn. 407, 16 S. W. 471; 13 L. R. A. 183; Ruohs v. Backer, 6 Heisk. (Tenn.) 400, 19 Am. Rep. 598.

EFFECT. The result which an instrument between parties will produce in their relative rights, or which a statute will produce upon the existing law, as discovered from the language used, the forms employed, or other materials for construing it.

The phrases "take effect," "be in force," "go into operation," etc., have been used interchangeably ever since the organization of the state. Maize v. State, 4 Ind. 342.

EFFECTS. Personal estate or property. This word has been held to be more comprehensive than the word "goods," as including fixtures, which "goods" will not include. Bank v. Byram, 131 Ill. 92, 22 N. E. 842.

In wills. The word "effects" is equivalent to "property," or "worldly substance," and, if used *simpliciter*, as in a gift of "all my effects," will carry the whole personal estate. Ves. Jr. 507; Ward, Leg. 209. The addition of the words "real and personal" will extend it so as to embrace the whole of the testator's real and personal estate. Hogan v. Jackson, Cowp. 304; The Alpena (D. C.) 7 Fed. 361.

This is a word often found in wills, and, being equivalent to "property," or "worldly substance," its force depends greatly upon the association of the adjectives "real" and "personal." "Real and personal effects"

would embrace the whole estate; but the word "effects" alone must be confined to personal estate simply, unless an intention appears to the contrary. Schouler, Wills, § 509. See Adams v. Akerlund, 168 Ill. 632, 48 N. E. 454; Ennis v. Smith, 14 How. 409, 14 L. Ed. 472.

Effectus sequitur causam. Wing. 226. The effect follows the cause.

EFFENDI. In Turkish language. Master; a title of respect.

EFFICIENT CAUSE. The working cause; that cause which produces effects or results; an intervening cause, which produces results which would not have come to pass except for its interposition, and for which, therefore, the person who set in motion the original chain of causes is not responsible. Central Coal & Iron Co. v. Pearce (Ky.) 80 S. W. 450; Pullman Palace Car Co. v. Laack, 143 Ill. 242, 32 N. E. 285, 18 L. R. A. 215.

EFFIGY. The corporeal representation of a person.

To make the effigy of a person with an intent to make him the object of ridicule is a libel. 2 Chit. Crim. Law, 866.

EFFLUX. The running of a prescribed period of time to its end; expiration by lapse of time. Particularly applied to the termination of a lease by the expiration of the term for which it was made.

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

EFFORCIALITER. Forcibly; applied to military force.

EFFRACTION. A breach made by the use of force.

EFFRACTOR. One who breaks through; one who commits a burglary.

EFFUSIO SANGUINIS. In old English law. The shedding of blood; the mulct, fine, *wite*, or penalty imposed for the shedding of blood, which the king granted to many lords of manors. Cowell; Tomlins. See BLOODWIT.

EFTERS. In Saxon law. Ways, walks, or hedges. Blount.

EGALITY. Owelty, (*q. v.*) Co. Litt. 169*a*.

EGO. I; myself. This term is used in forming genealogical tables, to represent the person who is the object of inquiry.

EGO, TALIS. I, such a one. Words used in describing the forms of old deeds. Fleta, lib. 3, c. 14, § 5.

EGREDIENS ET EXEUNS. In old pleading. Going forth and issuing out of (land.) Townsh. Pl. 17.

EGYPTIANS, commonly called "Gypsies," (in old English statutes,) are counterfeit rogues, Welsh or English, that disguise themselves in speech and apparel, and wander up and down the country, pretending to have skill in telling fortunes, and to deceive the common people, but live chiefly by filching and stealing, and, therefore, the statutes of 1 & 2 Mar. c. 4, and 5 Eliz. c. 20, were made to punish such as felons if they departed not the realm or continued to a month. Termes de la Ley.

Ei incumbit probatio, qui dicit, non qui negat; cum per rerum naturam factum negantis probatio nulla sit. The proof lies upon him who affirms, not upon him who denies; since, by the nature of things, he who denies a fact cannot produce any proof.

Ei nihil turpe, cui nihil satis. To him to whom nothing is enough, nothing is base. 4 Inst. 53.

EIA, or EY. An island. Cowell.

EIGNE. L. Fr. Eldest; eldest-born. The term is of common occurrence in the old books. Thus, *bastard eigne* means an illegitimate son whose parents afterwards marry and have a second son for lawful issue, the latter being called *mulier puisne*, (after-born.) *Eigne* is probably a corrupt form of the French "*ainé*." 2 Bl. Comm. 248; Litt. § 399.

EIK. In Scotch law. An addition; as, *eik* to a reversion, *eik*, to a confirmation. Bell.

EINECIA. Eldership. See ESNECY.

EINETIUS. In English law. The oldest; the first-born. Spelman.

EIRE, or EYRE. In old English law. A journey, route, or circuit. Justices *in eire* were judges who were sent by commission, every seven years, into various counties to hold the assizes and hear pleas of the crown. 3 Bl. Comm. 58.

EIRENARCHA. A name formerly given to a justice of the peace. In the Digests, the word is written "*irenarcha*."

Eisdem modis dissolvitur obligatio quæ nascitur ex contractu, vel quasi, quibus contrahitur. An obligation which arises from contract, or *quasi* contract, is dissolved in the same ways in which it is contracted. Fleta, lib. 2, c. 60, § 19.

EISNE. The senior; the oldest son. Spelled, also, *"eigne," "einsne," "aisne," "eign."* Termes de la Ley; Kelham.

EISNETIA, EINETIA. The share of the oldest son. The portion acquired by primogeniture. Termes de la Ley; Co. Litt. 166*b;* Cowell.

EITHER. May be used in the sense of "each." Chidester v. Railway Co., 59 Ill. 87.

This word does not mean "all;" but does mean one or the other of two or more specified things. Ft. Worth St. R. Co. v. Rosedale St. R. Co., 68 Tex. 169, 4 S. W. 534.

EJECT. To cast, or throw out; to oust, or dispossess; to put or turn out of possession. 3 Bl. Comm. 198, 199, 200. See Bohannon v. Southern Ry. Co., 112 Ky. 106, 65 S. W. 169.

EJECTA. In old English law. A woman ravished or deflowered, or cast forth from the virtuous. Blount.

EJECTION. A turning out of possession. 3 Bl. Comm. 199.

EJECTIONE CUSTODIÆ. In old English law. Ejectment of ward. This phrase, which is the Latin equivalent for the French *"ejectment de garde,"* was the title of a writ which lay for a guardian when turned out of any land of his ward during the minority of the latter. Brown.

EJECTIONE FIRMÆ. Ejection, or ejectment of farm. The name of a writ or action of trespass, which lay at common law where lands or tenements were let for a term of years, and afterwards the lessor, reversioner, remainder-man, or any stranger *ejected* or ousted the lessee of his term, *ferme,* or *farm, (ipsum a firma ejecit.)* In this case the latter might have his writ of *ejection,* by which he recovered at first damages for the trespass only, but it was afterwards made a remedy to recover back the term itself, or the remainder of it, with damages. Reg. Orig. 227*b;* Fitzh. Nat. Brev. 220, F, G; 3 Bl. Comm. 199; Litt. § 322; Crabb, Eng. Law, 290, 448. It is the foundation of the modern action of ejectment.

EJECTMENT. At common law, this was the name of a mixed action (springing from the earlier personal action of *ejectione firmæ*) which lay for the recovery of the possession of land, and for damages for the unlawful detention of its possession. The action was highly fictitious, being in theory only for the recovery of a term for years, and brought by a purely fictitious person, as lessee in a supposed lease from the real party in interest. The latter's title, however, must be established in order to warrant a recovery, and the establishment of such title, though nominally a mere incident, is in reality the object of the action. Hence this convenient form of suit came to be adopted as the usual method of trying titles to land. See 3 Bl. Comm. 199. French v. Robb, 67 N. J. Law, 260, 51 Atl. 509, 57 L. R. A. 956, 91 Am. St. Rep. 433; Crockett v. Lashbrook, 5 T. B. Mon. (Ky.) 538, 17 Am. Dec. 98; Wilson v. Wightman, 36 App. Div. 41, 55 N. Y. Supp. 806; Hoover v. King, 43 Or. 281, 72 Pac. 880, 65 L. R. A. 790, 99 Am. St. Rep. 754; Hawkins v. Reichert, 28 Cal. 536.

It was the only mixed action at common law, the whole method of proceeding in which was anomalous, and depended on fictions invented and upheld by the court for the convenience of justice, in order to escape from the inconveniences which were found to attend the ancient forms of real and mixed actions.

It is also a form of action by which possessory titles to corporeal hereditaments may be tried and possession obtained.

—Ejectment bill. A bill in equity brought merely for the recovery of real property, together with an account of the rents and profits, without setting out any distinct ground of equity jurisdiction; hence demurrable. Crane v. Conklin, 1 N. J. Eq. 353, 22 Am. Dec. 519. **—Equitable ejectment.** A proceeding in use in Pennsylvania, brought to enforce specific performance of a contract for the sale of land, and for some other purposes, which is in form an action of ejectment, but is in reality a substitute for a bill in equity. Riel v. Gannon, 161 Pa. 289, 29 Atl. 55; McKendry v. McKendry, 131 Pa. 24, 18 Atl. 1078, 6 L. R. A. 506. **—Justice ejectment.** A statutory proceeding in Vermont, for the eviction of a tenant holding over after termination of the lease or breach of its conditions. Foss v. Stanton, 76 Vt. 365, 57 Atl. 942.

EJECTOR. One who ejects, puts out, or dispossesses another.

—Casual ejector. The nominal defendant in an action of ejectment; so called because, by a fiction of law peculiar to that action, he is supposed to come casually or by accident upon the premises and to eject the lawful possessor. 3 Bl. Comm. 203.

EJECTUM. That which is thrown up by the sea. Also jetsam, wreck, etc.

EJECTUS. In old English law. A whoremonger. Blount

EJERCITORIA. In Spanish law. The name of an action lying against a ship's owner, upon the contracts or obligations made by the master for repairs or supplies. It coresponds to the *actio exercitoria* of the Roman law. Mackeld. Rom. Law, § 512.

EJIDOS. In Spanish law. Commons; lands used in common by the inhabitants of a city, pueblo, or town, for pasture, wood, threshing-ground, etc. Hart v. Burnett, 15 Cal. 554.

EJURATION. Renouncing or resigning one's place.

Ejus est interpretari cujus est condere. It is his to interpret whose it is to enact. Tayl. Civil Law, 96.

Ejus est nolle, qui potest velle. He who can will, [exercise volition,] has a right to refuse to will, [to withhold consent.] Dig. 50, 7, 3.

Ejus est periculum cujus est dominium aut commodum. He who has the dominion or advantage has the risk.

Ejus nulla culpa est, cui parere necesse sit. No guilt attaches to him who is compelled to obey. Dig. 50, 17, 169, pr. Obedience to existing laws is a sufficient extenuation of guilt before a civil tribunal. Broom, Max. 12, note.

EJUSDEM GENERIS. Of the same kind, class, or nature.

In statutory construction, the "ejusdem generis rule" is that where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned. Black, Interp. Laws, 141; Cutshaw v. Denver, 19 Colo. App. 341, 75 Pac. 22; Ex parte Leland, 1 Nott & McC. (S. C.) 462; Spalding v. People, 172 Ill. 40, 49 N. E. 993.

ELABORARE. In old European law. To gain, acquire, or purchase, as by labor and industry.

ELABORATUS. Property which is the acquisition of labor. Spelman.

ELDER BRETHREN. A distinguished body of men, elected as masters of Trinity House, an institution incorporated in the reign of Henry VIII., charged with numerous important duties relating to the marine, such as the superintendence of light-houses. Mozley & Whitley; 2 Steph. Comm. 502.

ELDER TITLE. A title of earlier date, but coming simultaneously into operation with a title of younger origin, is called the "elder title," and prevails.

ELDEST. He or she who has the greatest age.

The "eldest son" is the first-born son. If there is only one son, he may still be described as the "eldest." L. R. 7 H. L. 644.

Electa una via, non datur recursus ad alteram. He who has chosen one way cannot have recourse to another. 10 Toull. no. 170.

ELECTED. The word "elected," in its ordinary signification, carries with it the idea of a vote, generally popular, sometimes more restricted, and cannot be held the synonym of any other mode of filling a position. Magruder v. Swann, 25 Md. 213; State v. Harrison, 113 Ind. 434, 16 N. E. 384, 3 Am. St. Rep. 663; Kimberlin v. State, 130 Ind. 120, 29 N. E. 773, 14 L. R. A. 858, 30 Am. St. Rep. 208; Wickersham v. Brittan, 93 Cal. 34, 28 Pac. 792, 15 L. R. A. 106; State v. Irwin, 5 Nev. 111.

Electio est interna libera et spontanea separatio unius rei ab alia, sine compulsione, consistens in animo et voluntate. Dyer, 281. Election is an internal, free, and spontaneous separation of one thing from another, without compulsion, consisting in intention and will.

Electio semel facta, et placitum testatum non patitur regressum. Co. Litt. 146. Election once made, and plea witnessed, suffers not a recall.

ELECTION. The act of choosing or selecting one or more from a greater number of persons, things, courses, or rights. The choice of an alternative. State v. Tucker, 54 Ala. 210.

The internal, free, and spontaneous separation of one thing from another, without compulsion, consisting in intention and will. Dyer, 281.

The selection of one man from among several candidates to discharge certain duties in a state, corporation, or society. Maynard v. District Canvassers, 84 Mich. 228, 47 N. W. 756, 11 L. R. A. 332; Brown v. Phillips, 71 Wis. 239, 36 N. W. 242; Wickersham v. Brittan, 93 Cal. 34, 28 Pac. 792, 15 L. R. A. 106.

The choice which is open to a debtor who is bound in an alternative obligation to select either one of the alternatives.

In equity. The obligation imposed upon a party to choose between two inconsistent or alternative rights or claims, in cases where there is clear intention of the person from whom he derives one that he should not enjoy both. 2 Story, Eq. Jur. § 1075; Bliss v. Geer, 7 Ill. App. 617; Norwood v. Lassiter, 132 N. C. 52, 43 S. E. 509; Salentine v. Insurance Co., 79 Wis. 580, 48 N. W. 855, 12 L. R. A. 690.

The doctrine of election presupposes a plurality of gifts or rights, with an intention, express or implied, of the party who has a right to control one or both, that one should be a substitute for the other. 1 Swanst. 394, note *b*; 3 Wood. Lect. 491; 2 Rop. Leg. 480–578.

In practice. The liberty of choosing (or the act of choosing) one out of several means

afforded by law for the redress of an injury, or one out of several available forms of action. Almy v. Harris, 5 Johns. (N. Y.) 175.

In criminal law. The choice, by the prosecution, upon which of several counts in an indictment (charging distinct offenses of the same degree, but not parts of a continuous series of acts) it will proceed. Jackson v. State, 95 Ala. 17, 10 South. 657.

In the law of wills. A widow's election is her choice whether she will take under the will or under the statute; that is, whether she will accept the provision made for her in the will, and acquiesce in her husband's disposition of his property, or disregard it and claim what the law allows her. In re Cunningham's Estate, 137 Pa. 621, 20 Atl. 714, 21 Am. St. Rep. 901; Sill v. Sill, 31 Kan. 248, 1 Pac. 556; Burroughs v. De Couts, 70 Cal. 361, 11 Pac. 734.

—Election auditors. In English law. Officers annually appointed, to whom was committed the duty of taking and publishing the account of all expenses incurred at parliamentary elections. See 17 & 18 Vict. c. 102, §§ 18, 26–28. But these sections have been repealed by 26 Vict. c. 29, which throws the duty of preparing the accounts on the declared agent of the candidate, and the duty of publishing an abstract of it on the returning officer. Wharton.—**Election district.** A subdivision of territory, whether of state, county, or city, the boundaries of which are fixed by law, for convenience in local or general elections. Chase v. Miller, 41 Pa. 420; Lane v. Otis, 68 N. J. Law, 656, 54 Atl. 442.—**Election dower.** A name sometimes given to the provision which a law or statute makes for a widow in case she "elects" to reject the provision made for her in the will and take what the statute accords. Adams v. Adams, 183 Mo. 396, 82 S. W. 66. —**Election judges.** In English law. Judges of the high court selected in pursuance of 31 & 32 Vict. c. 125, § 11, and Jud. Act 1873, § 38, for the trial of election petitions.—**Election petitions.** Petitions for inquiry into the validity of elections of members of parliament, when it is alleged that the return of a member is invalid for bribery or any other reason. These petitions are heard by a judge of one of the common-law divisions of the high court.—**Equitable election.** The choice to be made by a person who may, under a will or other instrument, have either one of two alternative rights or benefits, but not both. Peters v. Bain, 133 U. S. 670, 10 Sup. Ct. 354, 33 L. Ed. 696; Drake v. Wild, 70 Vt. 52, 39 Atl. 248.—**General election.** (1) One at which the officers to be elected are such as belong to the *general* government,—that is, the general and central political organization of the whole state; as distinguished from an election of officers for a particular locality only. (2) One held for the selection of an officer after the expiration of the full term of the former officer; thus distinguished from a *special* election, which is one held to supply a vacancy in office occurring before the expiration of the full term for which the incumbent was elected. State v. King, 17 Mo. 514; Downs v. State, 78 Md. 128, 26 Atl. 1005; Mackin v. State, 62 Md. 247; Kenfield v. Irwin, 52 Cal. 169.—**Primary election.** An election by the voters of a ward, precinct, or other small district, belonging to a particular party, of representatives or delegates to a convention which is to meet and nominate the candidates of their party to stand at an approaching municipal or general election. See State v. Hirsch, 125 Ind. 207, 24 N. E. 1062, 9 L. R. A. 170; People v. Cavanaugh, 112 Cal. 676, 44 Pac. 1057; State v. Woodruff, 68 N. J. Law, 89, 52 Atl. 294.—**Regular election.** A general, usual, or stated election. When applied to elections, the terms "regular" and "general" are used interchangeably and synonymously. The word "regular" is used in reference to a general election occurring throughout the state. State v. Conrades, 45 Mo. 47; Ward v. Clark, 35 Kan. 315, 10 Pac. 827; People v. Babcock, 123 Cal. 307, 55 Pac. 1017.—**Special election.** An election for a particular emergency; out of the regular course; as one held to fill a vacancy arising by death of the incumbent of the office.

Electiones fiant rite et libere sine interruptione aliqua. Elections should be made in due form, and freely, without any interruption. 2 Inst. 169.

ELECTIVE. Dependent upon choice; bestowed or passing by election. Also pertaining or relating to elections; conferring the right or power to vote at elections.

—Elective franchise. The right of voting at public elections; the privilege of qualified voters to cast their ballots for the candidates they favor at elections authorized by law. Parks v. State, 100 Ala. 634, 13 South. 756; People v. Barber, 48 Hun (N. Y.) 198; State v. Staten, 6 Cold. (Tenn.) 255.—**Elective office.** One which is to be filled by popular election. Rev. Laws Mass. 1902, p. 104, c. 11, § 1.

ELECTOR. A duly qualified voter; one who has a vote in the choice of any officer; a constituent. Appeal of Cusick, 136 Pa. 459, 20 Atl. 574, 10 L. R. A. 228; Bergevin v. Curtz, 127 Cal. 86, 59 Pac. 312; State v. Tuttle, 53 Wis. 45, 9 N. W. 791. Also the title of certain German princes who formerly had a voice in the election of the German emperors.

—Electors of president. Persons chosen by the people at a so-called "presidential election," to elect a president and vice-president of the United States.

ELECTORAL. Pertaining to electors or elections; composed or consisting of electors.

—Electoral college. The body of princes formerly entitled to elect the emperor of Germany. Also a name sometimes given, in the United States, to the body of electors chosen by the people to elect the president and vice-president. Webster.

ELECTROCUTE. To put to death by passing through the body a current of electricity of high power. This term, descriptive of the method of inflicting the death penalty on convicted criminals in some of the states, is a vulgar neologism of hybrid origin, which should be discountenanced.

ELEEMOSYNA REGIS, and ELEEMOSYNA ARATRI, or CARUCARUM. A penny which King Ethelred ordered to be paid for every plow in England towards the support of the poor. Leg. Ethel. c. 1.

ELEEMOSYNÆ. Possessions belonging to the church. Blount.

ELEEMOSYNARIA. The place in a religious house where the common alms were deposited, and thence by the almoner distributed to the poor.

In old English law. The *aumerie, aumbry,* or *ambry;* words still used in common speech in the north of England, to denote a pantry or cupboard. Cowell.

The office of almoner. Cowell.

ELEEMOSYNARIUS. In old English law. An almoner, or chief officer, who received the eleemosynary rents anl gifts, and in due method distributed them to pious and charitable uses. Cowell; Wharton.

The name of an officer (lord almoner) of the English kings, in former times, who distributed the royal alms or bounty. Fleta, lib. 2, c. 23.

ELEEMOSYNARY. Relating to the distribution of alms, bounty, or charity; charitable.

—Eleemosynary corporations. See CORPORATIONS.

ELEGANTER. In the civil law. Accurately; with discrimination. Veazie v. Williams, 3 Story. 611, 636, Fed. Cas. No. 16,907.

ELEGIT. (Lat. He has chosen.) This is the name, in English practice, of a writ of execution first given by the statute of Westm. 2 (13 Edw. I. c. 18) either upon a judgment for a debt or damages or upon the forfeiture of a recognizance taken in the king's court. It is so called because it is in the choice or election of the plaintiff whether he will sue out this writ or a *fi. fa.* By it the defendant's goods and chattels are appraised and all of them (except oxen and beasts of the plow) are delivered to the plaintiff, at such reasonable appraisement and price, in part satisfaction of his debt. If the goods are not sufficient, then the moiety of his freehold lands, which he had at the time of the judgment given, are also to be delivered to the plaintiff, to hold till out of the rents and profits thereof the debt be levied, or till the defendant's interest be expired. During this period the plaintiff is called "tenant by *elegit,*" and his estate, an "estate by *elegit.*" This writ, or its analogue, is in use in some of the United States, as Virginia and Kentucky. See 3 Bl. Comm. 418; Hutcheson v. Grubbs, 80 Va. 254; North American F. Ins. Co. v. Graham, 5 Sandf. (N. Y.) 197.

ELEMENTS. The forces of nature. The elements are the means through which God acts, and "damages by the elements" means the same thing as "damages by the act of God." Polack v. Pioche, 35 Cal. 416, 95 Am. Dec. 115; Van Wormer v. Crane, 51 Mich. 363, 16 N. W. 686, 47 Am. Rep. 582; Hatch v. Stamper, 42 Conn. 30; Pope v. Milling Co., 130 Cal. 139, 62 Pac. 384, 53 L. R. A. 673, 80 Am. St. Rep. 87.

ELIGIBLE. As applied to a candidate for an elective office, this term means capable of being chosen; the subject of selection or choice; and also implies competency to hold the office if chosen. Demaree v. Scates, 50 Kan. 275, 32 Pac. 1123, 20 L. R. A. 97, 34 Am. St. Rep. 113; Carroll v. Green, 148 Ind. 362, 47 N. E. 223; Searcy v. Grow, 15 Cal. 121; People v. Purdy, 21 App. Div. 66, 47 N. Y. Supp. 601.

ELIMINATION. In old English law. The act of banishing or turning out of doors; rejection.

ELINGUATION. The punishment of cutting out the tongue.

ELISORS. In practice. Electors or choosers. Persons appointed by the court to execute writs of *venire,* in cases where both the sheriff and coroner are disqualified from acting, and whose duty is to *choose*—that is, name and return—the jury. 3 Bl. Comm. 355; Co. Litt. 158; 3 Steph. Comm. 597, note.

Persons appointed to execute *any* writ, in default of the sheriff and coroner, are also called "elisors." See Bruner v. Superior Court, 92 Cal. 239, 28 Pac. 341.

ELL. A measure of length, answering to the modern yard. 1 Bl. Comm. 275.

ELOGIUM. In the civil law. A will or testament.

ELOIGNE. In practice. (Fr. *éloigner,* to remove to a distance; to remove afar off.) A return to a writ of replevin, when the chattels have been removed out of the way of the sheriff.

ELOIGNMENT. The getting a thing or person out of the way; or removing it to a distance, so as to be out of reach. Garneau v. Mill Co., 8 Wash. 467, 36 Pac. 463.

ELONGATA. In practice. Eloigned; carried away to a distance. The old form of the return made by a sheriff to a writ of replevin, stating that the goods or beasts had been *eloigned;* that is, carried to a distance, to places to him unknown. 3 Bl. Comm. 148; 3 Steph. Comm. 522; Fitzh. Nat. Brev. 73, 74; Archb. N. Pract. 552.

ELONGATUS. Eloigned. A return made by a sheriff to a writ *de homine replegiando,* stating that the party to be replevied has been eloigned, or conveyed out of his jurisdiction. 3 Bl. Comm. 129.

ELONGAVIT. In England, where in a proceeding by foreign attachment the plain-

tiff has obtained judgment of appraisement, but by reason of some act of the garnishee the goods cannot be appraised, (as where he has removed them from the city, or has sold them, etc.,) the serjeant-at-mace returns that the garnishee has eloigned them, *i. e.*, removed them out of the jurisdiction, and on this return (called an "elongavit") judgment is given for the plaintiff that an inquiry be made of the goods eloigned. This inquiry is set down for trial, and the assessment is made by a jury after the manner of ordinary issues. Sweet.

ELOPEMENT. The act of a wife who voluntarily deserts her husband to cohabit with another man. 2 Bl. Comm. 130. To constitute an elopement, the wife must not only leave the husband, but go beyond his actual control; for if she abandons the husband, and goes and lives in adultery in a house belonging to him, it is said not to be an elopement. Cogswell v. Tibbetts, 3 N. H. 42.

ELSEWHERE. In another place; in any other place. See 1 Vern. 4, and note.

In shipping articles, this term, following the designation of the port of destination, must be construed either as void for uncertainty or as subordinate to the principal voyage stated in the preceding words. Brown v. Jones, 2 Gall. 477, Fed. Cas. No. 2,017.

ELUVIONES. In old pleading. Spring tides. Townsh. Pl. 197.

EMANCIPATION. The act by which one who was unfree, or under the power and control of another, is set at liberty and made his own master. Fremont v. Sandown, 56 N. H. 303; Porter v. Powell, 79 Iowa, 151, 44 N. W. 295, 7 L. R. A. 176, 18 Am. St. Rep. 353; Varney v. Young, 11 Vt. 258.

In Roman law. The enfranchisement of a son by his father, which was anciently done by the formality of an imaginary *sale*. This was abolished by Justinian, who substituted the simpler proceeding of a manumission before a magistrate. Inst. 1, 12, 6.

In Louisiana. The emancipation of minors is especially recognized and regulated by law.

In England. The term "emancipation" has been borrowed from the Roman law, and is constantly used in the law of parochial settlements. 7 Adol. & E. (N. S.) 574, note.

—Emancipation proclamation. An executive proclamation, declaring that all persons held in slavery in certain designated states and districts were and should remain free. It was issued January 1, 1863, by Abraham Lincoln, as president of the United States and commander in chief.

EMBARGO. A proclamation or order of state, usually issued in time of war or threatened hostilities, prohibiting the departure of ships or goods from some or all the ports of such state until further order. The William King, 2 Wheat. 148, 4 L. Ed. 206; Delano v. Bedford Ins. Co., 10 Mass. 351, 6 Am. Dec. 132; King v. Delaware Ins. Co., 14 Fed. Cas. 516.

Embargo is the hindering or detention by any government of ships of commerce in its ports. If the embargo is laid upon ships belonging to citizens of the state imposing it, it is called a "civil embargo;" if, as more commonly happens, it is laid upon ships belonging to the enemy, it is called a "hostile embargo." The effect of this latter embargo is that the vessels detained are restored to the rightful owners if no war follows, but are forfeited to the embargoing government if war does follow, the declaration of war being held to relate back to the original seizure and detention. Brown.

The temporary or permanent sequestration of the property of individuals for the purposes of a government, *e. g.*, to obtain vessels for the transport of troops, the owners being reimbursed for this forced service. Man. Int. Law, 143.

EMBASSADOR. See AMBASSADOR.

EMBASSAGE, or EMBASSY. The message or commission given by a sovereign or state to a minister, called an "ambassador," empowered to treat or communicate with another sovereign or state; also the establishment of an ambassador.

EMBER DAYS. In ecclesiastical law. Those days which the ancient fathers called "*quatuor tempora jejunii*" are of great antiquity in the church. They are observed on Wednesday, Friday, and Saturday next after Quadragesima Sunday, or the first Sunday in Lent, after Whitsuntide, Holyrood Day, in September, and St. Lucy's Day, about the middle of December. Brit. c. 53. Our almanacs call the weeks in which they fall the "Ember Weeks," and they are now chiefly noticed on account of the ordination of priests and deacons; because the canon appoints the Sundays next after the Ember weeks for the solemn times of ordination, though the bishops, if they please, may ordain on any Sunday or holiday. Enc. Lond.

EMBEZZLEMENT. The fraudulent appropriation to his own use or benefit of property or money intrusted to him by another, by a clerk, agent, trustee, public officer, or other person acting in a fiduciary character. See 4 Bl. Comm. 230, 231; 3 Kent, Comm. 194; 4 Steph. Comm. 168, 169, 219; Fagnan v. Knox, 40 N. Y. Super. Ct. 49; State v. Sullivan, 49 La. Ann. 197, 21 South. 688, 62 Am. St. Rep. 644; State v. Trolson, 21 Nev. 419, 32 Pac. 930; Moore v. U. S., 160 U. S. 268, 16 Sup. Ct. 294, 40 L. Ed. 422; Fulton v. Hammond (C. C.) 11 Fed. 293; People v. Gordon, 133 Cal. 328, 65 Pac. 746, 85 Am. St. Rep. 174.

Embezzlement is the fraudulent appropriation of property by a person to whom it has

been intrusted. Pen. Code Cal. § 503; Pen. Code Dak. § 596.

Embezzlement is a species of larceny, and the term is applicable to cases of furtive and fraudulent appropriation by clerks, servants, or carriers of property coming into their possession by virtue of their employment. It is distinguished from "larceny," properly so called, as being committed in respect of property which is not at the time in the actual or legal possession of the owner. People v. Burr, 41 How. Prac. (N. Y.) 294; 4 Steph. Comm. 168.

Embezzlement is not an offense at common law, but was created by statute. "Embezzle" includes in its meaning appropriation to one's own use, and therefore the use of the single word "embezzle," in the indictment or information, contains within itself the charge that the defendant appropriated the money or property to his own use. State v. Wolff, 34 La. Ann. 1153.

EMBLEMATA TRIBONIANI. In the Roman law. Alterations, modifications, and additions to the writings of the older jurists, selected to make up the body of the Pandects, introduced by Tribonian and his associates who constituted the commission appointed for that purpose, with a view to harmonize contradictions, exscind obsolete matter, and make the whole conform to the law as understood in Justinian's time, were called by this name. Mackeld. Rom. Law, § 71.

EMBLEMENTS. The vegetable chattels called "emblements" are the corn and other growth of the earth which are produced annually, not spontaneously, but by labor and industry, and thence are called "*fructus industriales.*" Reiff v. Reiff, 64 Pa. 137.

The growing crops of those vegetable productions of the soil which are annually produced by the labor of the cultivator. They are deemed personal property, and pass as such to the executor or administrator of the occupier, whether he were the owner in fee, or for life, or for years, if he die before he has actually cut, reaped, or gathered the same; and this, although, being affixed to the soil, they might for some purposes be considered, while growing, as part of the realty. Wharton.

The term also denotes the right of a tenant to take and carry away, after his tenancy has ended, such annual products of the land as have resulted from his own care and labor.

Emblements are the away-going crop; in other words, the crop which is upon the ground and unreaped when the tenant goes away, his lease having determined; and the right to emblements is the right in the tenant to take away the away-going crop, and for that purpose to come upon the land, and do all other necessary things thereon. Brown; Wood v. Noack, 84 Wis. 398, 54 N. W. 785; Davis v. Brocklebank, 9 N. H. 73; Cottle v. Spitzer, 65 Cal. 456, 4 Pac. 435, 52 Am. Rep. 305; Sparrow v. Pond, 49 Minn. 412, 52 N. W. 36, 16 L. R. A. 103, 32 Am. St. Rep. 571.

EMBLERS DE GENTZ. L. Fr. A stealing from the people. The phrase occurs in the old rolls of parliament: "Whereas divers murders, *emblers de gentz*, and robberies are committed," etc.

EMBOLISM. In medical jurisprudence. The mechanical obstruction of an artery or capillary by some body traveling in the blood current, as, a blood-clot (embolus), a globule of fat, or an air-bubble.

Embolism is to be distinguished from "thrombosis," a thrombus being a clot of blood formed in the heart or a blood vessel in consequence of some impediment of the circulation from pathological causes, as distinguished from mechanical causes, for example, an alteration of the blood or walls of the blood vessels. When embolism occurs in the brain (called "cerebral embolism") there is more or less coagulation of the blood in the surrounding parts, and there may be apoplectic shock or paralysis of the brain, and its functional activity may be so far disturbed as to cause entire or partial insanity. See Cundall v. Haswell, 23 R. I. 508, 51 Atl. 426.

EMBRACEOR. A person guilty of the offense of embracery, (*q. v.*) See Co. Litt. 369.

EMBRACERY. In criminal law. This offense consists in the attempt to influence a jury corruptly to one side or the other, by promises, persuasions, entreaties, entertainments, *douceurs*, and the like. The person guilty of it is called an "embraceor." Brown; State v. Williams, 136 Mo. 293, 38 S. W. 75; Grannis v. Branden, 5 Day (Conn.) 274, 5 Am. Dec. 143; State v. Brown, 95 N. C. 686; Brown v. Beauchamp, 5 T. B. Mon. (Ky.) 415, 17 Am. Dec. 81.

EMENDA. Amends; something given in reparation for a trespass; or, in old Saxon times, in compensation for an injury or crime. Spelman.

EMENDALS. An old word still made use of in the accounts of the society of the Inner Temple, where so much in *emendals* at the foot of an account on the balance thereof signifies so much money in the bank or stock of the houses, for reparation of losses, or other emergent occasions. Spelman.

EMENDARE. In Saxon law. To make amends or satisfaction for any crime or trespass committed; to pay a fine; to be fined. Spelman. *Emendare se*, to redeem, or ransom one's life, by payment of a weregild.

EMENDATIO. In old English law. Amendment, or correction. The power of amending and correcting abuses, according to certain rules and measures. Cowell.

In Saxon law. A pecuniary satisfaction for an injury; the same as *emenda*, (*q. v.*) Spelman.

—Emendatio panis et cerevisiæ. In old English law. The power of supervising and correcting the weights and measures of bread and ale, (assising bread and beer.) Cowell.

EMERGE. To arise; to come to light. "Unless a matter happen to *emerge* after issue joined." Hale, Anal. § 1.

EMERGENT YEAR. The epoch or date whence any people begin to compute their time.

EMIGRANT. One who quits his country for any lawful reason, with a design to settle elsewhere, and who takes his family and property, if he has any, with him. Vattel, b. 1, c. 19, § 224. See Williams v. Fears, 110 Ga. 584, 35 S. E. 699, 50 L. R. A. 685; The Danube (D. C.) 55 Fed. 995.

EMIGRATION. The act of changing one's domicile from one country or state to another.

It is to be distinguished from "expatriation." The latter means the abandonment of one's country and renunciation of one's citizenship in it, while emigration denotes merely the removal of person and property to a foreign state. The former is usually the consequence of the latter. Emigration is also used of the removal from one section to another of the same country.

EMINENCE. An honorary title given to cardinals. They were called "*illustrissimi*" and "*reverendissimi*" until the pontificate of Urban VIII.

EMINENT DOMAIN. Eminent domain is the right of the people or government to take private property for public use. Code Civ. Proc. Cal. § 1237; Cherokee Nation v. Southern Kan. R. Co. (D. C.) 33 Fed. 905; Comm. v. Alger, 7 Cush. (Mass.) 85; American Print Works v. Lawrence, 21 N. J. Law, 257; Twelfth St. Market Co. v. Philadelphia & R. T. R. Co., 142 Pa. 580, 21 Atl. 989; Todd v. Austin, 34 Conn. 88; Kohl v. U. S., 91 U. S. 371, 23 L. Ed. 449.

The right of eminent domain is the right of the state, through its regular organization, to reassert, either temporarily or permanently, its dominion over any portion of the soil of the state on account of public exigency and for the public good. Thus, in time of war or insurrection, the proper authorities may possess and hold any part of the territory of the state for the common safety; and in time of peace the legislature may authorize the appropriation of the same to public purposes, such as the opening of roads, construction of defenses, or providing channels for trade or travel. Code Ga. 1882, § 2222.

The right of society, or of the sovereign, to dispose, in case of necessity, and for the public safety, of all the wealth contained in the state, is called "eminent domain." Jones v. Walker, 2 Paine, 688, Fed. Cas. No. 7,507.

Eminent domain is the highest and most exact idea of property remaining in the government, or in the aggregate body of the people in their sovereign capacity. It gives a right to resume the possession of the property in the manner directed by the constitution and the laws of the state, whenever the public interest requires it. Beekman v. Saratoga & S. R. Co., 3 Paige (N. Y.) 45, 73, 22 Am. Dec. 679.

"The exaction of money from individuals under the right of taxation, and the appropriation of private property for public use by virtue of the power of eminent domain, must not be confused. In paying taxes the citizen contributes his just and ascertained share to the expenses of the government under which he lives. But when his property is taken under the power of eminent domain, he is compelled to surrender to the public something above and beyond his due proportion for the public benefit. The matter is special. It is in the nature of a compulsory sale to the state." Black, Tax-Titles, § 3.

The term "eminent domain" is sometimes (but inaccurately) applied to the land, buildings, etc., owned directly by the government, and which have not yet passed into any private ownership. This species of property is much better designated as the "public domain," or "national domain."

EMISSARY. A person sent upon a mission as the agent of another; also a secret agent sent to ascertain the sentiments and designs of others, and to propagate opinions favorable to his employer.

EMISSION. In medical jurisprudence. The ejection or throwing out of any secretion or other matter from the body; the expulsion of urine, semen, etc.

EMIT. In American law. To put forth or send out; to issue. "No state shall *emit* bills of credit." Const. U. S. art. 1, § 10.

To issue; to give forth with authority; to put into circulation. See BILL OF CREDIT.

The word "emit" is never employed in describing those contracts by which a state binds itself to pay money at a future day for services actually received, or for money borrowed for present use. Nor are instruments executed for such purposes, in common language, denominated "bills of credit." "To emit bills of credit" conveys to the mind the idea of issuing paper intended to circulate through the community, for its ordinary purposes, as money, which paper is redeemable at a future day. Briscoe v. Bank of Kentucky, 11 Pet. 316, 9 L. Ed. 709; Craig v. Missouri, 4 Pet. 418, 7 L. Ed. 903; Ramsey v. Cox, 28 Ark. 369; Houston & T. C. R. Co. v. Texas, 177 U. S. 66, 20 Sup. Ct. 545, 44 L. Ed. 673.

In Scotch practice. To speak out; to state in words. A prisoner is said to *emit* a declaration. 2 Alis. Crim. Pr. 560.

EMMENAGOGUES. In medical jurisprudence. The name of a class of medicines supposed to have the property of promoting the menstrual discharge, and sometimes used for the purpose of procuring abortion.

EMOLUMENT. The profit arising from office or employment; that which is received as a compensation for services, or which is annexed to the possession of office as salary, fees, and perquisites; advantage; gain, public or private. Webster. Any perquisite,

advantage, profit, or gain arising from the possession of an office. Apple v. Crawford County, 105 Pa. 303, 51 Am. Rep. 205; Hoyt v. U. S., 10 How. 135, 13 L. Ed. 348; Vansant v. State, 96 Md. 110, 53 Atl. 711.

EMOTIONAL INSANITY. The species of mental aberration produced by a violent excitement of the emotions or passions, though the reasoning faculties may remain unimpaired. See INSANITY.

EMPALEMENT. In ancient law. A mode of inflicting punishment, by thrusting a sharp pole up the fundament. Enc. Lond.

EMPANNEL. See IMPANEL.

EMPARLANCE. See IMPARLANCE.

EMPARNOURS. L. Fr. Undertakers of suits. Kelham.

EMPEROR. The title of the sovereign ruler of an empire. This designation was adopted by the rulers of the Roman world after the decay of the republic, and was assumed by those who claimed to be their successors in the "Holy Roman Empire," as also by Napoleon. It is now used as the title of the monarch of some single countries, as lately in Brazil, and some composite states, as Germany and Austria-Hungary, and by the king of England as "Emperor of India."

The title "emperor" seems to denote a power and dignity superior to that of a "king." It appears to be the appropriate style of the executive head of a federal government, constructed on the monarchial principle, and comprising in its organization several distinct kingdoms or other *quasi* sovereign states; as is the case with the German empire at the present day.

EMPHYTEUSIS. In the Roman and civil law. A contract by which a landed estate was leased to a tenant, either in perpetuity or for a long term of years, upon the reservation of an annual rent or *canon*, and upon the condition that the lessee should improve the property, by building, cultivating, or otherwise, and with a right in the lessee to alien the estate at pleasure or pass it to his heirs by descent, and free from any revocation, re-entry, or claim of forfeiture on the part of the grantor, except for non-payment of the rent. Inst. 3, 25, 3; 3 Bl. Comm. 232; Maine, Anc. Law, 289.

The right granted by such a contract, (*jus emphyteuticum*, or *emphyteuticarium*.) The real right by which a person is entitled to enjoy another's estate as if it were his own, and to dispose of its substance, as far as can be done without deteriorating it. Mackeld. Rom. Law, § 326.

EMPHYTEUTA. In the civil law. The person to whom an *emphyteusis* is granted; the lessee or tenant under a contract of *emphyteusis*.

EMPHYTEUTICUS. In the civil law. Founded on, growing out of, or having the character of, an *emphyteusis;* held under an *emphyteusis*. 3 Bl. Comm. 232.

EMPIRE. The dominion or jurisdiction of an emperor; the region over which the dominion of an emperor extends; imperial power; supreme dominion; sovereign command.

EMPIRIC. A practitioner in medicine or surgery, who proceeds on experience only, without science or legal qualification; a quack. Nelson v. State Board of Health, 108 Ky. 769, 57 S. W. 501, 50 L. R. A. 383; Parks v. State, 159 Ind. 211, 64 N. E. 862, 59 L. R. A. 190.

EMPLAZAMIENTO. In Spanish law. A summons or citation, issued by authority of a judge, requiring the person to whom it is addressed to appear before the tribunal at a designated day and hour.

EMPLEAD. To indict; to prefer a charge against; to accuse.

EMPLOI. In French law. Equitable conversion. When property covered by the *régime dotal* is sold, the proceeds of the sale must be reinvested for the benefit of the wife. It is the duty of the purchaser to see that the price is so reinvested. Arg. Fr. Merc. Law, 557.

EMPLOY. To engage in one's service; to use as an agent or substitute in transacting business; to commission and intrust with the management of one's affairs; and, when used in respect to a servant or hired laborer, the term is equivalent to hiring, which implies a request and a contract for a compensation, and has but this one meaning when used in the ordinary affairs and business of life. McCluskey v. Cromwell, 11 N. Y. 605; Murray v. Walker, 83 Iowa, 202, 48 N. W. 1075; Malloy v. Board of Education, 102 Cal. 642, 36 Pac. 948; Gurney v. Railroad Co., 58 N. Y. 371.

EMPLOYED. This signifies both the act of doing a thing and the being under contract or orders to do it. U. S. v. Morris, 14 Pet. 475, 10 L. Ed. 543; U. S. v. The Catharine, 2 Paine, 721, Fed. Cas. No. 14,755.

EMPLOYEE. This word "is from the French, but has become somewhat naturalized in our language. Strictly and etymologically, it means 'a person employed,' but, in practice in the French language, it ordinarily is used to signify a person in some official employment, and as generally used with us, though perhaps not confined to any offi-

cial employment, it is understood to mean some permanent employment or position." The word is more extensive than "clerk" or "officer." It signifies any one in place, or having charge or using a function, as well as one in office. See Ritter v. State, 111 Ind. 324, 12 N. E. 501; Palmer v. Van Santvoord, 153 N. Y. 612, 47 N. E. 915, 38 L. R. A. 402; Frick Co. v. Norfolk & O. V. R. Co., 86 Fed. 738, 32 C. C. A. 31; People v. Board of Police, 75 N. Y. 38; Finance Co v. Charleston, C. & C. R. Co. (C. C.) 52 Fed. 527; State v. Sarlls, 135 Ind. 195, 34 N. E. 1129; Hopkins v. Cromwell, 89 App. Div. 481, 85 N. Y. Supp. 839.

EMPLOYER. One who employs the services of others; one for whom employees work and who pays their wages or salaries.

—Employers' liability acts. Statutes defining or limiting the occasions and the extent to which employers shall be liable in damages for injuries to their employees occurring in the course of the employment, and particularly (in recent times) abolishing the common-law rule that the employer is not liable if the injury is caused by the fault or negligence of a fellow servant.

EMPLOYMENT. This word does not necessarily import an engagement or rendering services for another. A person may as well be "employed" about his own business as in the transaction of the same for a principal. State v. Canton, 43 Mo. 51.

EMPORIUM. A place for wholesale trade in commodities carried by sea. The name is sometimes applied to a seaport town, but it properly signifies only a particular place in such a town. Smith, Dict. Antiq.

EMPRESARIOS. In Mexican law. Undertakers or promoters of extensive enterprises, aided by concessions or monopolistic grants from government; particularly, persons receiving extensive land grants in consideration of their bringing emigrants into the country and settling them on the lands, with a view of increasing the population and developing the resources of the country. U. S. v. Maxwell Land-Grant Co., 121 U. S. 325, 7 Sup. Ct. 1015, 30 L. Ed. 949.

EMPRESTITO. In Spanish law. A loan. Something lent to the borrower at his request. Las Partidas, pt. 3, tit. 18, l. 70.

EMPTIO. In the Roman and civil law. The act of buying; a purchase.

—Emptio bonorum. A species of forced assignment for the benefit of creditors; being a public sale of an insolvent debtor's estate whereby the purchaser succeeded to all his property, rights, and claims, and became responsible for his debts and liabilities to the extent of a quota fixed before the transfer. See Mackeld. Rom. Law, § 521.—**Emptio et venditio.** Purchase and sale; sometimes translated "emption and vendition." The name of the contract of sale in the Roman law. Inst. 3, 23; Bract. fol. 61b. Sometimes made a compound word, *emptio-venditio.*—**Emptio rei speratæ.** A purchase in the hope of an uncertain future profit; the purchase of a thing not yet in existence or not yet in the possession of the seller, as, the cast of a net or a crop to be grown, and the price of which is to depend on the actual gain. On the other hand, if the price is fixed and not subject to fluctuation, but is to be paid whether the gain be greater or less, it is called *emptio spei.* Mackeld. Rom. Law, § 400.

EMPTOR. Lat. A buyer or purchaser. Used in the maxim "*caveat emptor*," let the buyer beware; *i. e.*, the buyer of an article must be on his guard and take the risks of his purchase.

Emptor emit quam minimo potest, venditor vendit quam maximo potest. The buyer purchases for the lowest price he can; the seller sells for the highest price he can. 2 Kent, Comm. 486.

EMTIO. In the civil law. Purchase. This form of the word is used in the Digests and Code. Dig. 18, 1; Cod. 4, 49. See EMPTIO.

EMTOR. In the civil law. A buyer or purchaser; the buyer. Dig. 18, 1; Cod. 4, 49.

EMTRIX. In the civil law. A female purchaser; the purchaser. Cod. 4, 54, 1.

EN ARERE. L. Fr. In time past. 2 Inst. 506.

EN AUTRE DROIT. In the right of another. See AUTER DROIT.

EN BANKE. L. Fr. In the bench. 1 Anders. 51.

EN BREVET. In French law. An *acte* is said to be *en brevet* when a copy of it has not been recorded by the notary who drew it.

EN DECLARATION DE SIMULATION. A form of action used in Louisiana. Its object is to have a contract declared judicially a simulation and a nullity, to remove a cloud from the title, and to bring back, for any legal purpose, the thing sold to the estate of the true owner. Edwards v. Ballard, 20 La. Ann. 169.

EN DEMEURE. In default. Used in Louisiana of a debtor who fails to pay on demand according to the terms of his obligation. See Bryan v. Cox, 3 Mart. (La. N. S.) 574.

En eschange il covient que les estates soient egales. Co. Litt. 50. In an exchange it is desirable that the estates be equal.

EN FAIT. Fr. In fact; in deed; actually.

EN GROS. Fr. In gross. Total; by wholesale.

EN JUICIO. Span. Judicially; in a court of law; in a suit at law. White, New Recop. b. 2, tit. 8, c. 1.

EN MASSE. Fr. In a mass; in a lump; at wholesale.

EN MORT MEYNE. L. Fr. In a dead hand; in mortmain. Britt. c. 43.

EN OWEL MAIN. L. Fr. In equal hand. The word "*owel*" occurs also in the phrase "*owelty* of partition."

EN RECOUVREMENT. Fr. In French law. An expression employed to denote that an indorsement made in favor of a person does not transfer to him the property in the bill of exchange, but merely constitutes an authority to such person to recover the amount of the bill. Arg. Fr. Merc. Law, 558.

EN ROUTE. Fr. On the way; in the course of a voyage or journey; in course of transportation. McLean v. U. S., 17 Ct. Cl. 90.

EN VENTRE SA MERE. L. Fr. In its mother's womb. A term descriptive of an unborn child. For some purposes the law regards an infant *en ventre* as in being. It may take a legacy; have a guardian; an estate may be limited to its use, etc. 1 Bl. Comm. 130.

EN VIE. L. Fr. In life; alive. Britt. c. 50.

ENABLING POWER. When the donor of a power, who is the owner of the estate, confers upon persons not seised of the fee the right of creating interests to take effect out of it, which could not be done by the donee of the power unless by such authority, this is called an "enabling power." 2 Bouv. Inst. no. 1928.

ENABLING STATUTE. The act of 32 Henry VIII. c. 28, by which tenants in tail, husbands seised in right of their wives, and others, were empowered to make leases for their lives or for twenty-one years, which they could not do before. 2 Bl. Comm. 319; Co. Litt. 44*a*. The phrase is also applied to any statute enabling persons or corporations to do what before they could not.

ENACH. In Saxon law. The satisfaction for a crime; the recompense for a fault. Skene.

ENACT. To establish by law; to perform or effect; to decree. The usual introductory formula in making laws is, "*Be it enacted.*" In re Senate File, 25 Neb. 864, 41 N. W. 981.

—**Enacting clause.** That part of a statute which declares its enactment and serves to identify it as an act of legislation proceeding from the proper legislative authority. Various formulas are used for this clause, such as "Be it enacted by the people of the state of Illinois represented in general assembly," "Be it enacted by the senate and house of representatives of the United States of America in congress assembled," "The general assembly do enact," etc. State v. Patterson, 98 N. C. 660, 4 S. E. 350; Pearce v. Vittum, 193 Ill. 192, 61 N. E. 1116; Territory v. Burns, 6 Mont. 72, 9 Pac. 432.

ENAJENACION. In Spanish and Mexican law. Alienation; transfer of property. The act by which the property in a thing, by lucrative title, is transferred, as a donation; or by onerous title, as by sale or barter. In a more extended sense, the term comprises also the contracts of emphyteusis, pledge, and mortgage, and even the creation of a servitude upon an estate. Escriche; Mulford v. Le Franc, 26 Cal. 88.

ENBREVER. L. Fr. To write down in short; to abbreviate, or, in old language, *imbreviate;* to put into a schedule. Britt. c. 1.

ENCAUSTUM. In the civil law. A kind of ink or writing fluid appropriate to the use of the emperor. Cod. 1, 23, 6.

ENCEINTE. Pregnant. See PREGNANCY.

ENCHESON. The occasion, cause, or reason for which anything is done. Termes de la Ley.

ENCLOSE. In the Scotch law. To shut up a jury after the case has been submitted to them. 2 Alis. Crim. Pr. 634. See INCLOSE.

ENCLOSURE. See INCLOSURE.

ENCOMIENDA. In Spanish law. A grant from the crown to a private person of a certain portion of territory in the Spanish colonies, together with the concession of a certain number of the native inhabitants, on the feudal principle of commendation. 2 Wools. Pol. Science, 161, 162. Also a royal grant of privileges to the military orders of Spain.

ENCOURAGE. In criminal law. To instigate; to incite to action; to give courage to; to inspirit; to embolden; to raise confidence; to make confident. Comitez v. Parkerson (C. C.) 50 Fed. 170; True v. Com., 90 Ky. 651, 14 S. W. 684; Johnson v. State, 4 Sneed (Tenn.) 621.

ENCROACH. To gain unlawfully upon the lands, property, or authority of another; as if one man presses upon the grounds of another too far, or if a tenant owe two shillings rent-service, and the lord exact three. So, too, the Spencers were said to

encroach the king's authority. Blount; Plowd. 94*a*.

In the law of easements. Where the owner of an easement alters the dominant tenement, so as to impose an additional restriction or burden on the servient tenement, he is said to commit an encroachment. Sweet.

ENCROACHMENT. An encroachment upon a street or highway is a fixture, such as a wall or fence, which intrudes into or invades the highway or incloses a portion of it, diminishing its width or area, but without closing it to public travel. State v. Kean, 69 N. H. 122, 45 Atl. 256, 48 L. R. A. 102; State v. Pomeroy, 73 Wis. 664, 41 N. W. 726; Barton v. Campbell, 54 Ohio St. 147, 42 N. E. 698; Grand Rapids v. Hughes, 15 Mich. 57; State v. Leaver, 62 Wis. 387, 22 N. W. 576.

ENCUMBER. See INCUMBER.

ENCUMBRANCE. See INCUMBRANCE.

END. Object; intent. Things are construed according to the end. Finch, Law, b. 1, c. 3, no. 10.

END LINES. In mining law, the end lines of a claim, as platted or laid down on the ground, are those which mark its boundaries on the shorter dimension, where it crosses the vein, while the "side lines" are those which mark its longer dimension, where it follows the course of the vein. But with reference to extra-lateral rights, if the claim as a whole crosses the vein, instead of following its course, the end lines will become side lines and vice versa. Consolidated Wyoming Gold Min. Co. v. Champion Min. Co. (C. C.) 63 Fed. 549; Del Monte Min. & Mill. Co. v. Last Chance Min. Co., 171 U. S. 55, 18 Sup. Ct. 895, 43 L. Ed. 72.

ENDENZIE, or ENDENIZEN. To make free; to enfranchise.

ENDOCARDITIS. In medical jurisprudence. An inflammation of the muscular tissue of the heart.

ENDORSE. See INDORSE.

ENDOWED SCHOOLS. In England, certain schools having endowments are distinctively known as "endowed schools;" and a series of acts of parliament regulating them are known as the "endowed schools acts." Mozley & Whitley.

ENDOWMENT. **1.** The assignment of dower; the setting off a woman's dower. 2 Bl. Comm. 135.

2. In appropriations of churches, (in English law,) the setting off a sufficient maintenance for the vicar in perpetuity. 1 Bl. Comm. 387.

3. The act of settling a fund, or permanent pecuniary provision, for the maintenance of a public institution, charity, college, etc.

4. A fund settled upon a public institution, etc., for its maintenance or use.

The words "endowment" and "fund," in a statute exempting from taxation the real estate, the furniture and personal property, and the "endowment or fund" of religious and educational corporations, are *ejusdem generis*, and intended to comprehend a class of property different from the other two, not real estate or chattels. The difference between the words is that "fund" is a general term, including the endowment, while "endowment" means that particular fund, or part of the fund, of the institution, bestowed for its more permanent uses, and usually kept sacred for the purposes intended. The word "endowment" does not, in such an enactment, include real estate. See First Reformed Dutch Church v. Lyon, 32 N. J. Law, 360; Appeal of Wagner Institute, 116 Pa. 555, 11 Atl. 402; Floyd v. Rankin, 86 Cal. 159, 24 Pac. 936; Liggett v. Ladd, 17 Or. 89, 21 Pac. 133.

—Endowment policy. In life insurance. A policy which is payable when the insured reaches a given age, or upon his decease, if that occurs earlier. Carr v. Hamilton, 129 U. S. 252, 9 Sup. Ct. 295, 32 L. Ed. 669; State v. Orear, 144 Mo. 157, 45 S. W. 1081.

ENEMY, in public law, signifies either the nation which is at war with another, or a citizen or subject of such nation.

—Alien enemy. An alien, that is, a citizen or subject of a foreign state or power, residing within a given country, is called an "alien ami" if the country where he lives is at peace with the country of which he is a citizen or subject; but if a state of war exists between the two countries, he is called an "alien enemy," and in that character is denied access to the courts or aid from any of the departments of government.**—Enemy's property.** In international law, and particularly in the usage of prize courts, this term designates any property which is engaged or used in illegal intercourse with the public enemy, whether belonging to an ally or a citizen, as the illegal traffic stamps it with the hostile character and attaches to it all the penal consequences. The Benito Estenger, 176 U. S. 568, 20 Sup. Ct. 489, 44 L. Ed. 592; The Sally, 8 Cranch, 382, 3 L. Ed. 597; Prize Cases, 2 Black, 674, 17 L. Ed. 459. **—Public enemy.** A nation at war with the United States; also every citizen or subject of such nation. Not including robbers, thieves, private depredators, or riotous mobs. State v. Moore, 74 Mo. 417, 41 Am. Rep. 322; Lewis v. Ludwick, 6 Cold. (Tenn.) 368, 98 Am. Dec. 454; Russell v. Fagan, 7 Houst. (Del.) 389, 8 Atl. 258; Missouri Pac. Ry. Co. v. Nevill, 60 Ark. 375, 30 S. W. 425, 28 L. R. A. 80, 46 Am. St. Rep. 208.

ENFEOFF. To invest with an estate by feoffment. To make a gift of any corporeal hereditaments to another. See FEOFFMENT.

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

ENFITEUSIS. In Spanish law. Emphyteusis, (*q. v.*) See Mulford v. Le Franc, 26 Cal. 103.

ENFORCE. To put into execution; to cause to take effect; to make effective; as, to enforce a writ, a judgment, or the collection of a debt or fine. Breitenbach v. Bush, 44 Pa. 320, 84 Am. Dec. 442; Emery v. Emery, 9 How. Prac. (N. Y.) 132; People v. Christerson, 59 Ill. 158.

ENFRANCHISE. To make free; to incorporate a man in a society or body politic.

ENFRANCHISEMENT. The act of making free; giving a franchise or freedom to; investiture with privileges or capacities of freedom, or municipal or political liberty. Admission to the freedom of a city; admission to political rights, and particularly the right of suffrage. Anciently, the acquisition of freedom by a villein from his lord.

The word is now used principally either of the manumission of slaves, (*q. v.*,) of giving to a borough or other constituency a right to return a member or members to parliament, or of the conversion of copyhold into freehold. Mozley & Whitley.

—Enfranchisement of copyholds. In English law. The conversion of copyhold into freehold tenure, by a conveyance of the fee-simple of the property from the lord of the manor to the copyholder, or by a release from the lord of all seigniorial rights, etc., which destroys the customary descent, and also all rights and privileges annexed to the copyholder's estate. 1 Watk. Copyh. 362; 2 Steph. Comm. 51.

ENGAGEMENT. In French law. A contract. The obligation arising from a *quasi* contract.

The terms "obligation" and "engagement" are said to be synonymous, (17 Toullier, no. 1;) but the Code seems specially to apply the term "engagement" to those obligations which the law imposes on a man without the intervention of any contract, either on the part of the obligor or the obligee, (article 1370.) An engagement to do or omit to do something amounts to a promise. Rue v. Rue, 21 N. J. Law, 369.

In English practice. The term has been appropriated to denote a contract entered into by a married woman with the intention of binding or charging her separate estate, or, with stricter accuracy, a promise which in the case of a person *sui juris* would be a contract, but in the case of a married woman is not a contract, because she cannot bind herself personally, even in equity. Her engagements, therefore, merely operate as dispositions or appointments *pro tanto* of her separate estate. Sweet.

ENGINE. This is said to be a word of very general signification; and, when used in an act, its meaning must be sought out from the act itself, and the language which surrounds it, and also from other acts *in pari materia*, in which it occurs. Abbott, J., 6 Maule & S. 192. In a large sense, it applies to all utensils and tools which afford the means of carrying on a trade. But in a more limited sense it means a thing of considerable dimensions, of a fixed or permanent nature, analogous to an erection or building. Id. 182. And see Lefler v. Forsberg, 1 App. D. C. 41; Brown v. Benson, 101 Ga. 753, 29 S. E. 215.

ENGLESHIRE. A law was made by Canute, for the preservation of his Danes, that, when a man was killed, the hundred or town should be liable to be amerced, unless it could be proved that the person killed was an Englishman. This proof was called "*Engleshire.*" 1 Hale, P. C. 447; 4 Bl. Comm. 195; Spelman.

ENGLETERRE. L. Fr. England.

ENGLISH INFORMATION. In English law. A proceeding in the court of exchequer in matters of revenue.

ENGLISH MARRIAGE. This phrase may refer to the place where the marriage is solemnized, or it may refer to the nationality and domicile of the parties between whom it is solemnized, the place where the union so created is to be enjoyed. 6 Prob. Div. 51.

ENGRAVING. In copyright law. The art of producing on hard material incised or raised patterns, lines, and the like, from which an impression or print is taken. The term may apply to a text or script, but is generally restricted to pictorial illustrations or works connected with the fine arts, not including the reproduction of pictures by means of photography. Wood v. Abbott, 5 Blatchf. 325, Fed. Cas. No. 17,938; Higgins v. Keuffel, 140 U. S. 428, 11 Sup. Ct. 731, 35 L. Ed. 470; In re American Bank Note Co., 27 Misc. Rep. 572, 58 N. Y. Supp. 276.

ENGROSS. To copy the rude draft of an instrument in a fair, large hand. To write out, in a large, fair hand, on parchment.

In old criminal law. To buy up so much of a commodity on the market as to obtain a monopoly and sell again at a forced price.

ENGROSSER. One who engrosses or writes on parchment in a large, fair hand.

One who purchases large quantities of any commodity in order to acquire a monopoly, and to sell them again at high prices.

ENGROSSING. In English law. The getting into one's possession, or buying up, large quantities of corn, or other dead victuals, with intent to sell them again. The total engrossing of any other commodity, with intent to sell it at an unreasonable price. 4 Bl. Comm. 158, 159. This was a misdemeanor, punishable by fine and imprisonment. Steph. Crim. Law, 95. Now repealed by 7 & 8 Vict. c. 24. 4 Steph. Comm. 291, note.

ENHANCED. This word, taken in an unqualified sense, is synonymous with "increased," and comprehends any increase of value, however caused or arising. Thornburn v. Doscher (C. C.) 32 Fed. 812.

ENHERITANCE. L. Fr. Inheritance.

ENITIA PARS. The share of the eldest. A term of the English law descriptive of the lot or share chosen by the eldest of coparceners when they make a voluntary partition. The first choice (*primer election*) belongs to the eldest. Co. Litt. 166.

Enitia pars semper præferenda est propter privilegium ætatis. Co. Litt. 166. The part of the elder sister is always to be preferred on account of the privilege of age.

ENJOIN. To require; command; positively direct. To require a person, by writ of injunction from a court of equity, to perform, or to abstain or desist from, some act. Clifford v. Stewart, 95 Me. 38, 49 Atl. 52; Lawrence v. Cooke, 32 Hun, 126.

ENJOYMENT. The exercise of a right; the possession and fruition of a right, privilege, or incorporeal hereditament.

—Adverse enjoyment. The possession or exercise of an easement, under a claim of right against the owner of the land out of which such easement is derived. 2 Washb. Real Prop. 42; Cox v. Forrest, 60 Md. 79.—**Enjoyment, quiet,** covenant for. See COVENANT.

ENLARGE. To make larger; to increase; to extend a time limit; to grant further time. Also to set at liberty one who has been imprisoned or in custody.

ENLARGER L'ESTATE. A species of release which inures by way of enlarging an estate, and consists of a conveyance of the ulterior interest to the particular tenant; as if there be tenant for life or years, remainder to another in fee, and he in remainder releases all his right to the particular tenant and his heirs, this gives him the estate in fee. 1 Steph. Comm. 518.

ENLARGING. Extending, or making more comprehensive; as an enlarging statute, which is a remedial statute enlarging or extending the common law. 1 Bl. Comm. 86, 87.

ENLISTMENT. The act of one who voluntarily enters the military or naval service of the government, contracting to serve in a subordinate capacity. Morrissey v. Perry, 137 U. S. 157, 11 Sup. Ct. 57, 34 L. Ed. 644; Babbitt v. U. S., 16 Ct. Cl. 213; Erichson v. Beach, 40 Conn. 286.

The words "enlist" and "enlistment," in law, as in common usage, may signify either the complete fact of entering into the military service, or the first step taken by the recruit towards that end. When used in the former sense, as in statutes conferring a right to compel the military service of enlisted men, the enlistment is not deemed completed until the man has been mustered into the service. Tyler v. Pomeroy, 8 Allen (Mass.) 480.

Enlistment does not include the entry of a person into the military service under a commission as an officer. Hilliard v. Stewartstown, 48 N. H. 280.

Enlisted applies to a drafted man as well as a volunteer, whose name is duly entered on the military rolls. Sheffield v. Otis, 107 Mass. 282.

ENORMIA. In old practice and pleading. Unlawful or wrongful acts; wrongs. *Et alia enormia*, and other wrongs. This phrase constantly occurs in the old writs and declarations of trespass.

ENORMOUS. Aggravated. "So enormous a trespass." Vaughan, 115. Written "enormious," in some of the old books. *Enormious* is where a thing is made without a rule or against law. Brownl. pt. 2, p. 19.

ENPLEET. Anciently used for implead. Cowell.

ENQUÊTE, or ENQUEST. In canon law. An examination of witnesses, taken down in writing, by or before an authorized judge, for the purpose of gathering testimony to be used on a trial.

ENRÉGISTREMENT. In French law. Registration. A formality which consists in inscribing on a register, specially kept for the purpose by the government, a summary analysis of certain deeds and documents. At the same time that such analysis is inscribed upon the register, the clerk places upon the deed a memorandum indicating the date upon which it was registered, and at the side of such memorandum an impression is made with a stamp. Arg. Fr. Merc. Law, 558.

ENROLL. To register; to make a record; to enter on the rolls of a court; to transcribe. Ream v. Com., 3 Serg. & R. (Pa.) 209.

—Enrolled bill. In legislative practice, a bill which has been duly introduced, finally passed by both houses, signed by the proper officers of each, approved by the governor (or president) and filed by the secretary of state. Sedgwick County Com'rs v. Bailey, 13 Kan. 608.

ENROLLMENT. In English law. The registering or entering on the rolls of chancery, king's bench, common pleas, or exchequer, or by the clerk of the peace in the records of the quarter sessions, of any lawful act; as a recognizance, a deed of bargain and sale, and the like. Jacob.

ENROLLMENT OF VESSELS. In the laws of the United States on the subject of merchant shipping, the recording and certification of vessels employed in coastwise or inland navigation; as distinguished from the "registration" of vessels employed in foreign commerce. U. S. v. Leetzel, 8 Wall. 566, 18 L. Ed. 67.

ENS LEGIS. L. Lat. A creature of the law; an artificial being, as contrasted with a natural person. Applied to corporations, considered as deriving their existence entirely from the law.

ENSCHEDULE. To insert in a list, account, or writing.

ENSEAL. To seal. *Ensealing* is still used as a formal word in conveyancing.

ENSERVER. L. Fr. To make subject to a service or servitude. Britt. c. 54.

ENTAIL, *v.* To settle or limit the succession to real property; to create an estate tail.

ENTAIL, *n.* A fee abridged or limited to the issue, or certain classes of issue, instead of descending to all the heirs. 1 Washb. Real Prop. 66; Cowell; 2 Bl. Comm. 112, note.

Entail, in legal treatises, is used to signify an estate tail, especially with reference to the restraint which such an estate imposes upon its owner, or, in other words, the points wherein such an estate differs from an estate in fee-simple. And this is often its popular sense; but sometimes it is, in popular language, used differently, so as to signify a succession of life-estates, as when it is said that "an entail ends with A.," meaning that A. is the first person who is entitled to bar or cut off the entail, being in law the first tenant in tail. Mozley & Whitley.

—Break or bar an entail. To free an estate from the limitations imposed by an entail and permit its free disposition, anciently by means of a fine or common recovery, but now by deed in which the tenant and next heir join.**—Quasi entail.** An estate *pur autre vie* may be granted, not only to a man and his heirs, but to a man and the heirs of his body, which is termed a "*quasi* entail;" the interest so granted not being properly an estate-tail. (for the statute *De Donis* applies only where the subject of the entail is an estate of inheritance,) but yet so far in the nature of an estate-tail that it will go to the heir of the body as special occupant during the life of the *cestui que vie*, in the same manner as an estate of inheritance would descend, if limited to the grantee and the heirs of his body. Wharton.

ENTAILED. Settled or limited to specified heirs, or in tail.

—Entailed money. Money directed to be invested in realty to be entailed. 3 & 4 Wm. IV, c. 74, §§ 70, 71, 72.

ENTENCION. In old English law. The plaintiff's count or declaration.

ENTENDMENT. The old form of *intendment*, (*q. v.*) derived directly from the French, and used to denote the true meaning or signification of a word or sentence; that is, the understanding or construction of law. Cowell.

ENTER. In the law of real property. To go upon land for the purpose of taking possession of it. In strict usage, the entering is preliminary to the taking possession but in common parlance the entry is now merged in the taking possession. See ENTRY.

In practice. To place anything before a court, or upon or among the records, in a formal and regular manner, and usually in writing; as to "enter an appearance," to "enter a judgment." In this sense the word is nearly equivalent to setting down formally in writing, in either a full or abridged form.

—Entering judgments. The formal entry of the judgment on the rolls of the court, which is necessary before bringing an appeal or an action on the judgment. Blatchford v. Newberry, 100 Ill. 491; Winstead v. Evans (Tex. Civ. App.) 33 S. W. 580; Coe v. Erb, 59 Ohio St. 259, 52 N. E. 640, 69 Am. St. Rep. 764.**—Entering short.** When bills not due are paid into a bank by a customer, it is the custom of some bankers not to carry the amount of the bills directly to his credit, but to "enter them short," as it is called, *i. e.*, to note down the receipt of the bills, their amounts, and the times when they become due in a previous column of the page, and the amounts when received are carried forward into the usual cash column. Sometimes, instead of entering such bills short, bankers credit the customer directly with the amount of the bills as cash, charging interest on any advances they may make on their account, and allow him at once to draw upon them to that amount. If the banker becomes bankrupt, the property in bills entered short does not pass to his assignees, but the customer is entitled to them if they remain in his hands, or to their proceeds, if received, subject to any lien the banker may have upon them. Wharton.

ENTERCEUR. L. Fr. A party challenging (claiming) goods; he who has placed them in the hands of a third person. Kelham.

ENTERTAINMENT. This word is synonymous with "board," and includes the ordinary necessaries of life. See Scattergood v. Waterman, 2 Miles (Pa.) 323; Lasar v. Johnson, 125 Cal. 549, 58 Pac. 161; In re Breslin, 45 Hun, 213.

ENTICE. To solicit, persuade, or procure. Nash v. Douglass, 12 Abb. Prac. N. S. (N. Y.) 190; People v. Carrier, 46 Mich. 442, 9 N. W. 487; Gould v. State, 71 Neb. 651, 99 N. W. 543.

ENTIRE. Whole; without division, separation, or diminution.

—Entire contract. See CONTRACT.**—Entire day.** This phrase signifies an undivided day, not parts of two days. An entire day must have a legal, fixed, precise time to begin, and a fixed, precise time to end. A day, in contemplation of law, comprises all the twenty-four hours, beginning and ending at twelve o'clock at night. Robertson v. State, 43 Ala. 325. In a statute requiring the closing of all liquor saloons during "the entire day of any election," etc., this phrase means the natural day of twenty-four hours, commencing and terminating at midnight. Haines v. State, 7 Tex. App. 30.**—Entire interest.** The whole interest or right, without diminution. Where a person in selling his tract of land sells also his entire interest in all improvements upon public land adjacent thereto, this vests in the purchaser only a quitclaim of his interest in the improvements. McLeroy v. Duckworth, 13 La. Ann.

410.—**Entire tenancy.** A sole possession by one person, called "severalty," which is contrary to several tenancy, where a joint or common possession is in one or more.—**Entire use, benefit, etc.** These words in the *habendum* of a trust-deed for the benefit of a married woman are equivalent to the words "sole use," or "sole and separate use," and consequently her husband takes nothing under such deed. Heathman v. Hall, 38 N. C. 414.

ENTIRETY. The whole, in contradistinction to a moiety or part only. When land is conveyed to husband and wife, they do not take by moieties, but both are seised of the *entirety*. 2 Kent, Comm. 132; 4 Kent, Comm. 362. Parceners, on the other hand, have not an *entirety* of interest, but each is properly entitled to the whole of a distinct moiety. 2 Bl. Comm. 188.

The word is also used to designate that which the law considers as one whole, and not capable of being divided into parts. Thus, a judgment, it is held, is an *entirety*, and, if void as to one of the two defendants, cannot be valid as to the other. So, if a contract is an *entirety*, no part of the consideration is due until the whole has been performed.

ENTITLE. In its usual sense, to entitle is to give a right or title. Therefore a person is said to be entitled to property when he has a right to it. Com. v. Moorhead, 7 Pa. Co. Ct. R. 516; Thompson v. Thompson, 107 Ala. 163, 18 South. 247.

In ecclesiastical law. To entitle is to give a title or ordination as a minister.

ENTREBAT. L. Fr. An intruder or interloper. Britt. c. 114.

ENTREGA. Span. Delivery. Las Partidas, pt. 6, tit. 14, l. 1.

ENTREPOT. A warehouse or magazine for the deposit of goods. In France, a building or place where goods from abroad may be deposited, and from whence they may be withdrawn for exportation to another country, without paying a duty. Brande; Webster.

ENTRY. 1. In real property law. Entry is the act of going peaceably upon a piece of land which is claimed as one's own, but which is held by another person, with the intention and for the purpose of taking possession of the same.

Entry is a remedy which the law affords to an injured party ousted of his lands by another person who has taken possession thereof without right. This remedy (which must in all cases be pursued peaceably) takes place in three only out of the five species of ouster, viz., abatement, intrusion, and disseisin; for, as in these three cases the original entry of the wrong-doer is unlawful, so the wrong may be remedied by the mere entry of the former possessor. But it is otherwise upon a discontinuance or deforcement, for in these latter two cases the former possessor cannot remedy the wrong by entry, but must do so by action, inasmuch as the original entry being in these cases lawful, and therefore conferring an apparent right of possession, the law will not suffer such apparent right to be overthrown by the mere act or entry of the claimant. Brown. See Innerarity v. Mims, 1 Ala. 674; Moore v. Hodgdon, 18 N. H. 149; Riley v. People, 29 Ill. App. 139; Johnson v. Cobb, 20 S. C. 372, 7 S. E. 601.

—**Forcible entry.** See that title.—**Re-entry.** The resumption of the possession of leased premises by the landlord on the tenant's failure to pay the stipulated rent or otherwise to keep the conditions of the lease.—**Open entry.** An entry upon real estate, for the purpose of taking possession, which is not clandestine nor effected by secret artifice or stratagem, and (in some states by statute) one which is accomplished in the presence of two witnesses. Thompson v. Kenyon, 100 Mass. 108.

2. In criminal law. Entry is the unlawful making one's way into a dwelling or other house, for the purpose of committing a crime therein.

In cases of burglary, the least entry with the whole or any part of the body, hand, or foot, or with any instrument or weapon, introduced for the purpose of committing a felony, is sufficient to complete the offense. 3 Inst. 64. And see Walker v. State, 63 Ala. 49, 35 Am. Rep. 1; Com. v. Glover, 111 Mass. 402; Franco v. State, 42 Tex. 280; State v. McCall, 4 Ala. 644, 39 Am. Dec. 314; Pen. Code N. Y. 1903, § 501; Pen. Code Tex. 1895, art. 840.

3. In practice. Entry denotes the formal inscription upon the rolls or records of a court of a note or minute of any of the proceedings in an action; and it is frequently applied to the filing of a proceeding in writing, such as a notice of appearance by a defendant, and, very generally, to the filing of the judgment roll as a record in the office of the court. Thomason v. Ruggles, 69 Cal. 465, 11 Pac. 20; State v. Lamm, 9 S. D. 418, 69 N. W. 592.

—**Entry of cause for trial.** In English practice. The proceeding by a plaintiff in an action who had given notice of trial, depositing with the proper officer of the court the *nisi prius* record, with the panel of jurors annexed, and thus bringing the issue before the court for trial.—**Entry on the roll.** In former times, the parties to an action, personally or by their counsel, used to appear in open court and make their mutual statements *vivâ voce*, instead of as at the present day delivering their mutual pleadings, until they arrived at the issue or precise point in dispute between them. During the progress of this oral statement, a minute of the various proceedings was made on parchment by an officer of the court appointed for that purpose. The parchment then became the record; in other words, the official history of the suit. Long after the practice of oral pleading had fallen into disuse, it continued necessary to enter the proceedings in like manner upon the parchment roll, and this was called "entry on the roll," or making up the "issue roll." But by a rule of H. T. 4 Wm. IV. the practice of making up the issue roll was abolished; and it was only necessary to make up the issue in the form prescribed for the purpose by a rule of H. T. 1853, and to deliver the same to the court and to the opposite party. The issue which was delivered to the court was called the "*nisi prius record*;" and that was regarded as the official history of the suit, in like manner as the issue roll formerly was. Under the present practice, the

issue roll or *nisi prius record* consists of the papers delivered to the court, to facilitate the trial of the action, these papers consisting of the pleadings simply, with the notice of trial. Brown.

4. In commercial law. Entry denotes the act of a merchant, trader, or other business man in recording in his account-books the facts and circumstances of a sale, loan, or other transaction. Also the note or record so made. Bissell v. Beckwith, 32 Conn. 517; U. S. v. Crecelius (D. C.) 34 Fed. 30. The books in which such memoranda are first (or originally) inscribed are called "books of original entry," and are *prima facie* evidence for certain purposes.

5. In revenue law. The entry of imported goods at the custom house consists in submitting them to the inspection of the revenue officers, together with a statement or description of such goods, and the original invoices of the same, for the purpose of estimating the duties to be paid thereon. U. S. v. Legg, 105 Fed. 930, 45 C. C. A. 134; U. S. v. Baker, 24 Fed. Cas. 953; U. S. v. Seidenberg (C. C.) 17 Fed. 230.

6. In parliamentary law. The "entry" of a proposed constitutional amendment or of any other document or transaction in the journal of a house of the legislature consists in recording it in writing in such journal, and (according to most of the authorities) at length. See Koehler v. Hill, 60 Iowa, 543, 15 N. W. 609; Thomason v. Ruggles, 69 Cal. 465, 11 Pac. 20; Oakland Pav. Co. v. Hilton, 69 Cal. 479, 11 Pac. 3.

7. In copyright law. Depositing with the register of copyrights the printed title of a book, pamphlet, etc., for the purpose of securing copyright on the same. The old formula for giving notice of copyright was, "Entered according to act of congress," etc.

8. In public land laws. Under the provisions of the land laws of the United States, the term "entry" denotes the filing at the land-office, or inscription upon its records, of the documents required to found a claim for a homestead or pre-emption right, and as preliminary to the issuing of a patent for the land. Chotard v. Pope, 12 Wheat. 588, 6 L. Ed. 737; Sturr v. Beck, 133 U. S. 541, 10 Sup. Ct. 350, 33 L. Ed. 761; Goddard v. Storch, 57 Kan. 714, 48 Pac. 15; Goodnow v. Wells, 67 Iowa, 654, 25 N. W. 864.

—Entryman. One who makes an entry of land under the public land laws of the United States.—**Homestead entry.** An entry under the United States land laws for the purpose of acquiring title to a portion of the public domain under the homestead laws, consisting of an affidavit of the claimant's right to enter, a formal application for the land, and payment of the money required. Hastings & D. R. Co. v. Whitney, 132 U. S. 357, 10 Sup. Ct. 112, 33 L. Ed. 363; Dealy v. U. S., 152 U. S. 539, 14 Sup. Ct. 680, 38 L. Ed. 545; McCune v. Essig (C. C.) 118 Fed. 277.—**Mineral land entry.** Filing a claim to hold or purchase lands belonging to the public domain and valuable for the minerals they contain, implying a prior discovery of ore and the opening of a mine. U. S. v. Four Bottles Sour Mash Whisky (D. C.) 90 Fed. 720.—**Pre-emption entry.** An entry of public lands for purchase under the pre-emption laws, giving the entryman a preferred right to acquire the land by virtue of his occupation and improvement of it. Hartman v. Warren, 76 Fed. 161, 22 C. C. A. 30; McFadden v. Mountain View Min. Co. (C. C.) 87 Fed. 154.—**Timber culture entry.** An entry of public lands under the various acts of congress opening portions of the public domain to settlement and to the acquisition of title by the settlers on condition of the planting and cultivation of timber trees. Hartman v. Warren, 76 Fed. 160, 22 C. C. A. 30.

9. In Scotch law. The term refers to the acknowledgment of the title of the heir, etc., to be admitted by the superior.

ENTRY, WRIT OF. In old English practice. This was a writ made use of in a form of real action brought to recover the possession of lands from one who wrongfully withheld the same from the demandant.

Its object was to regain the *possession* of lands of which the demandant, or his ancestors, had been unjustly deprived by the tenant of the freehold, or those under whom he claimed, and hence it belonged to the *possessory* division of real actions. It decided nothing with respect to the *right of property*, but only restored the demandant to that situation in which he was (or by law ought to have been) before the dispossession committed. 3 Bl. Comm. 180.

It was usual to specify in such writs the degree or degrees within which the writ was brought, and it was said to be "in the *per*" or "in the *per and cui*," according as there had been one or two descents or alienations from the original wrongdoer. If more than two such transfers had intervened, the writ was said to be "in the *post*." See 3 Bl. Comm. 181.

—Entry ad communem legem. Entry at common law. The name of a writ of entry which lay for a reversioner after the alienation and death of the particular tenant for life, against him who was in possession of the land. Brown.—**Entry ad terminum qui præteriit.** The writ of entry *ad terminum qui præteriit* lies where a man leases land to another for a term of years, and the tenant holds over his term. And if lands be leased to a man for the term of another's life, and he for whose life the lands are leased dies, and the lessee holds over, then the lessor shall have this writ. Termes de la Ley.—**Entry for marriage in speech.** A writ of entry *causa matrimonii præloquuti* lies where lands or tenements are given to a man upon condition that he shall take the donor to be his wife within a certain time, and he does not espouse her within the said term, or espouses another woman, or makes himself priest. Termes de la Ley.—**Entry in casu consimili.** A writ of entry *in casu consimili* lies where a tenant for life or by the curtesy aliens in fee. Termes de la Ley.—**Entry in the case provided.** A writ of entry *in casu proviso* lies if a tenant in dower alien in fee, or for life, or for another's life, living the tenant in dower. Termes de la Ley.—**Entry without assent of the chapter.** A writ of entry *sine assensu capituli* lies where an abbot, prior, or such as hath covent or common seal, aliens lands or tenements of the right of his church, without the assent of the covent or chapter, and dies. Termes de la Ley.

ENUMERATED. This term is often used in law as equivalent to "mentioned

specifically," "designated," or "expressly named or granted;" as in speaking of "enumerated" governmental powers, items of property, or articles in a tariff schedule. See Bloomer v. Todd, 3 Wash. T. 599, 19 Pac. 135, 1 L. R. A. 111; Wolff v. U. S., 71 Fed. 291, 18 C. C. A. 41; San Francisco v. Pennie, 93 Cal. 465, 29 Pac. 66; Cutting v. Cutting, 20 Hun, 365.

Enumeratio infirmat regulam in casibus non enumeratis. Enumeration disaffirms the rule in cases not enumerated. Bac. Aph. 17.

Enumeratio unius est exclusio alterius. The specification of one thing is the exclusion of a different thing. A maxim more generally expressed in the form *"expressio unius est exclusio alterius,"* (*q. v.*)

ENUMERATORS. Persons appointed to collect census papers or schedules. 33 & 34 Vict. c. 108, § 4.

ENURE. To operate or take effect. To serve to the use, benefit, or advantage of a person. A release to the tenant for life *enures* to him in reversion; that is, it has the same effect for him as for the tenant for life. Often written "inure."

ENVOY. In international law. A public minister of the second class, ranking next after an ambassador.

Envoys are either ordinary or extraordinary; by custom the latter is held in greater consideration.

EO DIE. Lat. On that day; on the same day.

EO INSTANTE. Lat. At that instant; at the very or same instant; immediately. 1 Bl. Comm. 196, 249; 2 Bl. Comm. 168; Co. Litt. 298*a;* 1 Coke. 138.

EO INTUITU. Lat. With or in that view; with that intent or object. Hale, Anal. § 2.

EO LOCI. Lat. In the civil law. In that state or condition; in that place, (*eo loco.*) Calvin.

EO NOMINE. Lat. Under that name; by that appellation. *Perinde ac si eo nomine tibi tradita fuisset,* just as if it had been delivered to you by that name. Inst. 2, 1, 43. A common phrase in the books.

Eodem ligamine quo ligatum est dissolvitur. A bond is released by the same formalities with which it is contracted. Co. Litt. 212*b;* Broom, Max. 891.

Eodem modo quo quid constituitur, dissolvitur. In the manner in which [by the same means by which] a thing is constituted, is it dissolved. 6 Coke, 53*b*.

EORLE. In Saxon law. An earl.

EOTH. In Saxon law. An oath.

EPIDEMIC. This term, in its ordinary and popular meaning, applies to *any* disease which is widely spread or generally prevailing at a given place and time. Pohalski v. Mutual L. Ins. Co., 36 N. Y. Super. Ct. 234.

EPILEPSY. In medical jurisprudence. A disease of the brain, which occurs in paroxysms with uncertain intervals between them.

The disease is generally organic, though it may be functional and symptomatic of irritation in other parts of the body. The attack is characterized by loss of consciousness, sudden falling down, distortion of the eyes and face, grinding or gnashing of the teeth, stertorous respiration, and more or less severe muscular spasms or convulsions. Epilepsy, though a disease of the brain, is not to be regarded as a form of insanity, in the sense that a person thus afflicted can be said to be permanently insane, for there may be little or no mental aberration in the intervals between the attacks. But the paroxysm is frequently followed by a temporary insanity, varying in particular instances from slight alienation to the most violent mania. In the latter form the affection is known as "epileptic fury." But this generally passes off within a few days. But the course of the principal disease is generally one of deterioration, the brain being gradually more and more deranged in its functions in the intervals of attack, and the memory and intellectual powers in general becoming enfeebled, leading to a greatly impaired state of mental efficiency, or to dementia, or a condition bordering on imbecility. See Aurentz v. Anderson, 3 Pittsb. R. (Pa.) 310; Lawton v. Sun Mutual Ins. Co., 2 Cush. (Mass.) 517.

—Hystero-epilepsy. A condition initiated by an apparently mild attack of convulsive hysteria, followed by an epileptiform convulsion, and succeeded by a period of "clownism" (Osler) in which the patient assumes a remarkable series of droll contortions or cataleptic poses, sometimes simulating attitudes expressive of various passions, as, fear, joy, erotism, etc. The final stage is one of delirium with unusual hallucinations. The attack differs from true epilepsy in that the convulsions may continue without serious result for several successive days, while true epilepsy, if persistent, is always serious, associated with fever, and frequently fatal.

EPIMENIA. Expenses or gifts. Blount.

EPIPHANY. A Christian festival, otherwise called the "Manifestation of Christ to the Gentiles," observed on the 6th of January, in honor of the appearance of the star to the three *magi*, or wise men, who came to adore the Messiah, and bring him presents. It is commonly called "Twelfth Day." Enc. Lond.

EPIQUEYA. In Spanish law. A term synonymous with "equity" in one of its senses, and defined as "the benignant and prudent interpretation of the law according to the circumstances of the time, place, and person."

EPISCOPACY. The office of overlooking or overseeing; the office of a bishop, who is to overlook and oversee the concerns of the church. A form of church government by diocesan bishops. Trustees of Diocese of Central New York v. Colgrove, 4 Hun (N. Y.) 366.

EPISCOPALIA. In ecclesiastical law. Synodals, pentecostals, and other customary payments from the clergy to their diocesan bishop, formerly collected by the rural deans. Cowell.

EPISCOPALIAN. Of or pertaining to episcopacy, or to the Episcopal Church.

EPISCOPATE. A bishopric. The dignity or office of a bishop.

EPISCOPUS. In the civil law. An overseer; an inspector. A municipal officer who had the charge and oversight of the bread and other provisions which served the citizens for their daily food. Vicat.

In medieval history. A bishop; a bishop of the Christian church.

—Episcopus puerorum. It was an old custom that upon certain feasts some lay person should plait his hair, and put on the garments of a bishop, and in them pretend to exercise episcopal jurisdiction, and do several ludicrous actions, for which reason he was called "bishop of the boys;" and this custom obtained in England long after several constitutions were made to abolish it. Blount.

Episcopus alterius mandato quam regis non tenetur obtemperare. Co. Litt. 134. A bishop needs not obey any mandate save the king's.

Episcopus teneat placitum, in curia christianitatis, de iis quæ mere sunt spiritualia. 12 Coke, 44. A bishop may hold plea in a Court Christian of things merely spiritual.

EPISTOLA. A letter; a charter; an instrument in writing for conveyance of lands or assurance of contracts. Calvin; Spelman.

EPISTOLÆ. In the civil law. Rescripts; opinions given by the emperors in cases submitted to them for decision.

Answers of the emperors to petitions.

The answers of counsellors, (*juris-consulti*,) as Ulpian and others, to questions of law proposed to them, were also called "*epistolæ*."

Opinions written out. The term originally signified the same as *literæ*. Vicat.

EPOCH. The time at which a new computation is begun; the time whence dates are numbered. Enc. Lond.

EQUAL. Alike; uniform; on the same plane or level with respect to efficiency, worth, value, amount, or rights. People v. Hoffman, 116 Ill. 587, 5 N. E. 600, 56 Am. Rep. 793.

—Equal and uniform taxation. Taxes are said to be "equal and uniform" when no person or class of persons in the taxing district, whether it be a state, county, or city, is taxed at a different rate than are other persons in the same district upon the same value or the same thing, and where the objects of taxation are the same, by whomsoever owned or whatsoever they may be. Norris v. Waco, 57 Tex. 641; People v. Whyler, 41 Cal. 355; The Railroad Tax Cases (C. C.) 13 Fed. 733; Ottawa County v. Nelson, 19 Kan. 239.**—Equal degree.** Persons are said to be related to a decedent "in equal degree" when they are all removed by an equal number of steps or degrees from the common ancestor. Fidler v. Higgins, 21 N. J. Eq. 162; Helmes v. Elliott, 89 Tenn. 446, 14 S. W. 930, 10 L. R. A. 535. **—Equal protection of the laws.** The equal protection of the laws of a state is extended to persons within its jurisdiction, within the meaning of the constitutional requirement, when its courts are open to them on the same conditions as to others, with like rules of evidence and modes of procedure, for the security of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; when they are subjected to no restrictions in the acquisition of property, the enjoyment of personal liberty, and the pursuit of happiness, which do not generally affect others; when they are liable to no other or greater burdens and charges than such as are laid upon others; and when no different or greater punishment is enforced against them for a violation of the laws. State v. Montgomery, 94 Me. 192, 47 Atl. 165, 80 Am. St. Rep. 386. And see Duncan v. Missouri, 152 U. S. 377, 14 Sup. Ct. 570, 38 L. Ed. 485; Northern Pac. R. Co. v. Carland, 5 Mont. 146, 3 Pac. 134; Missouri v. Lewis, 101 U. S. 25, 25 L. Ed. 989; Cotting v. Godard, 183 U. S. 79, 22 Sup. Ct. 30, 46 L. Ed. 92; State Board of Assessors v. Central R. Co., 48 N. J. Law, 146, 4 Atl. 578; Minneapolis & St. L. R. Co. v. Beckwith, 129 U. S. 26, 9 Sup. Ct. 207, 32 L. Ed. 585.

EQUALITY. The condition of possessing the same rights, privileges, and immunities, and being liable to the same duties.

Equality is equity. Fran. Max. 9, max. 3. Thus, where an heir buys in an incumbrance for less than is due upon it, (except it be to protect an incumbrance to which he himself is entitled,) he shall be allowed no more than what he really paid for it, as against other incumbrancers upon the estate. 2 Vent. 353; 1 Vern. 49; 1 Salk. 155.

EQUALIZATION. The act or process of making equal or bringing about conformity to a common standard. The process of equalizing assessments or taxes, as performed by "boards of equalization" in various states, consists in comparing the assessments made by the local officers of the various counties or other taxing districts within the jurisdiction of the board and reducing them to a common and uniform basis, increasing or diminishing by such percentage as may be necessary, so as to bring about, within the entire territory affected, a uniform and equal ratio between the assessed value and the

actual cash value of property. The term is also applied to a similar process of leveling or adjusting the assessments of individual taxpayers, so that the property of one shall not be assessed at a higher (or lower) percentage of its market value than the property of another. See Harney v. Mitchell County, 44 Iowa, 203; Wallace v. Bullen, 6 Okl. 757, 54 Pac. 974; Poe v. Howell (N. M.) 67 Pac. 62; Chamberlain v. Walter, 60 Fed. 792; State v. Karr, 64 Neb. 514, 90 N. W. 298.

EQUERRY. An officer of state under the master of the horse.

EQUES. Lat. In Roman and old English law. A knight.

EQUILOCUS. An equal. It is mentioned in Simeon Dunelm, A. D. 882. Jacob.

EQUINOXES. The two periods of the year (vernal equinox about March 21st, and autumnal equinox about September 22d) when the time from the rising of the sun to its setting is equal to the time from its setting to its rising. See Dig. 43, 13, 1, 8.

EQUITABLE. Just; conformable to the principles of natural justice and right.

Just, fair, and right, in consideration of the facts and circumstances of the individual case.

Existing in equity; available or sustainable only in equity, or only upon the rules and principles of equity.

—**Equitable action.** One founded on an equity or cognizable in a court of equity; or, more specifically, an action arising, not immediately from the contract in suit, but from an equity in favor of a third person, not a party to it, but for whose benefit certain stipulations or promises were made. Cragin v. Lovell, 109 U. S. 194, 3 Sup. Ct. 132, 27 L. Ed. 903; Thomas v. Musical Mut. Protective Union, 121 N. Y. 45, 24 N. E. 24, 8 L. R. A. 175; Wallis v. Shelly (C. C.) 30 Fed. 748.—**Equitable assignment.** An assignment which, though invalid at law, will be recognized and enforced in equity; *e. g.*, an assignment of a chose in action, or of future acquisitions of the assignor. Holmes v. Evans, 129 N. Y. 140, 29 N. E. 233; Story v. Hull, 143 Ill. 506, 32 N. E. 265; First Nat. Bank v. Coates (C. C.) 8 Fed. 542.

As to equitable "Assets," "Construction," "Conversion," "Defense," "Easement," "Ejectment," "Election," "Estate," "Estoppel," "Execution," "Garnishment," "Levy," "Lien," "Mortgage," "Title," and "Waste," see those titles.

EQUITATURA. In old English law. Traveling furniture, or riding equipments, including horses, horse harness, etc. Reg. Orig. 100*b*; St. Westm. 2, c. 39.

EQUITY. 1. In its broadest and most general signification, this term denotes the spirit and the habit of fairness, justness, and right dealing which would regulate the intercourse of men with men,—the rule of doing to all others as we desire them to do to us; or, as it is expressed by Justinian, "to live honestly, to harm nobody, to render to every man his due." Inst. 1, 1, 3. It is therefore the synonym of natural right or justice. But in this sense its obligation is ethical rather than jural, and its discussion belongs to the sphere of morals. It is grounded in the precepts of the conscience, not in any sanction of positive law.

2. In a more restricted sense, the word denotes equal and impartial justice as between two persons whose rights or claims are in conflict; justice, that is, as ascertained by natural reason or ethical insight, but independent of the formulated body of law. This is not a technical meaning of the term, except in so far as courts which administer equity seek to discover it by the agencies above mentioned, or apply it beyond the strict lines of positive law. See Miller v. Kennistson, 86 Me. 550, 30 Atl. 114.

3. In one of its technical meanings, equity is a body of jurisprudence, or field of jurisdiction, differing in its origin, theory, and methods from the common law.

It is a body of rules existing by the side of the original civil law, founded on distinct principles, and claiming incidentally to supersede the civil law in virtue of a superior sanctity inherent in those principles. Maine, Anc. Law, 27.

"As old rules become too narrow, or are felt to be out of harmony with advancing civilization, a machinery is needed for their gradual enlargement and adaptation to new views of society. One mode of accomplishing this object on a large scale, without appearing to disregard existing law, is the introduction, by the prerogative of some high functionary, of a more perfect body of rules, discoverable in his judicial conscience, which is to stand side by side with the law of the land, overriding it in case of conflict, as on some title of inherent superiority, but not purporting to repeal it. Such a body of rules has been called 'Equity.'" Holl. Jur. 59.

"Equity," in its technical sense, contradistinguished from natural and universal equity or justice, may well be described as a "portion of justice" or natural equity, not embodied in legislative enactments, or in the rules of common law, yet modified by a due regard thereto and to the complex relations and conveniences of an artificial state of society, and administered in regard to cases where the particular rights, in respect of which relief is sought come within some general class of rights enforced at law, or may be enforced without detriment or inconvenience to the community; but where, as to such particular rights, the ordinary courts of law cannot, or originally did not, clearly afford relief. Rob. Eq.

4. In a still more restricted sense, it is a system of jurisprudence, or branch of remedial justice, administered by certain tribunals, distinct from the common-law courts, and empowered to decree "equity" in the sense last above given. Here it becomes a complex of well-settled and well-understood rules, principles, and precedents. See Hamilton v. Avery, 20 Tex. 633; Dalton v. Vanderveer, 8 Misc. Rep. 484, 29 N. Y. Supp. 342; Parmeter v. Bourne, 8 Wash. 45, 35 Pac. 586;

Ellis v. Davis, 109 U. S. 485, 3 Sup. Ct. 327, 27 L. Ed. 1006.

"The meaning of the word 'equity,' as used in its technical sense in English jurisprudence, comes back to this: that it is simply a term descriptive of a certain field of jurisdiction exercised, in the English system, by certain courts, and of which the extent and boundaries are not marked by lines founded upon principle so much as by the features of the original constitution of the English scheme of remedial law, and the accidents of its development." Bisp. Eq. § 11.

A system of jurisprudence collateral to, and in some respects independent of, "law," properly so called; the object of which is to render the administration of justice more complete, by affording relief where the courts of law are incompetent to give it, or to give it with effect, or by exercising certain branches of jurisdiction independently of them. This is equity in its proper modern sense; an elaborate system of rules and process, administered in many cases by distinct tribunals, (termed "courts of chancery,") and with exclusive jurisdiction over certain subjects. It is "still distinguished by its original and animating principle that no right should be without an adequate remedy," and its doctrines are founded upon the same basis of natural justice; but its action has become systematized, deprived of any loose and arbitrary character which might once have belonged to it, and as carefully regulated by fixed rules and precedents as the law itself. Burrill.

Equity, in its technical and scientific legal use, means neither natural justice nor even all that portion of natural justice which is susceptible of being judicially enforced. It has a precise, limited, and definite signification, and is used to denote a system of justice which was administered in a particular court,—the English high court of chancery,—which system can only be understood and explained by studying the history of that court, and how it came to exercise what is known as its extraordinary jurisdiction. Bisp. Eq. § 1.

That part of the law which, having power to enforce discovery, (1) administers trusts, mortgages, and other fiduciary obligations; (2) administers and adjusts common-law rights where the courts of common law have no machinery; (3) supplies a specific and preventive remedy for common-law wrongs where courts of common law only give subsequent damages. Chute, Eq. 4.

—Equity, courts of. Courts which administer justice according to the system of equity, and according to a peculiar course of procedure or practice. Frequently termed "courts of chancery." See 1 Bl. Comm. 92.**—Equity jurisdiction.** This term includes not only the ordinary meaning of the word "jurisdiction," the power residing in a court to hear and determine an action, but also a consideration of the cases and occasions when that power is to be exercised, in other words, the question whether the action will lie in equity. Anderson v. Carr, 65 Hun, 179, 19 N. Y. Supp. 992; People v. McKane, 78 Hun, 154, 28 N. Y. Supp. 981.**—Equity jurisprudence.** That portion of remedial justice which is exclusively administered by courts of equity, as distinguished from courts of common law. Jackson v. Nimmo, 3 Lea (Tenn.) 609.**—Equity of a statute.** By this phrase is intended the rule of statutory construction which admits within the operation of a statute a class of cases which are neither expressly named nor excluded, but which, from their analogy to the cases that are named, are clearly and justly within the spirit and general meaning of the law; such cases are said to be "within the equity of the statute."**—Equity term.** An equity term of court is one devoted exclusively to equity business, that is, in which no criminal cases are tried nor any cases requiring the impaneling of a jury. Hesselgrave v. State, 63 Neb. 807, 89 N. W. 295.**—Natural equity.** A term sometimes employed in works on jurisprudence, possessing no very precise meaning, but used as equivalent to justice, honesty, or morality in business relations, or man's innate sense of right dealing and fair play. Inasmuch as equity, as now administered, is a complex system of rules, doctrines, and precedents, and possesses, within the range of its own fixed principles, but little more elasticity than the law, the term "natural equity" may be understood to denote, in a general way, that which strikes the ordinary conscience and sense of justice as being fair, right, and equitable, in advance of the question whether the technical jurisprudence of the chancery courts would so regard it.

5. Equity also signifies an equitable right, *i. e.*, a right enforceable in a court of equity; hence, a bill of complaint which did not show that the plaintiff had a right entitling him to relief was said to be demurrable for want of equity; and certain rights now recognized in all the courts are still known as "equities," from having been originally recognized only in the court of chancery. Sweet.

—Better equity. The right which, in a court of equity, a second incumbrancer has who has taken securities against subsequent dealings to his prejudice, which a prior incumbrancer neglected to take although he had an opportunity. 1 Ch. Prec. 470, note; Bouv. Law Dict. See 3 Bouv. Inst. note 2462.**—Countervailing equity.** A contrary and balancing equity; an equity or right opposed to that which is sought to be enforced or recognized, and which ought not to be sacrificed or subordinated to the latter, because it is of equal strength and justice, and equally deserving of consideration.**—Latent or secret equity.** An equitable claim or right, the knowledge of which has been confined to the parties for and against whom it exists, or which has been concealed from one or several persons interested in the subject-matter.**—Perfect equity.** An equitable title or right which lacks nothing to its completeness as a legal title or right except the formal conveyance or other investiture which would make it cognizable at law; particularly, the equity or interest of a purchaser of real estate who has paid the purchase price in full and fulfilled all conditions resting on him, but has not yet received a deed or patent. See Shaw v. Lindsey, 60 Ala. 344; Smith v. Cockrell, 66 Ala. 75.**—Equity of partners.** A term used to designate the right of each of them to have the firm's property applied to the payment of the firm's debts. Colwell v. Bank, 16 R. I. 288, 17 Atl. 913.**—Equity of redemption.** The right of the mortgagor of an estate to redeem the same after it has been forfeited, at law, by a breach of the condition of the mortgage, upon paying the amount of debt, interest and costs. Navassa Guano Co. v. Richardson, 26 S. C. 401, 2 S. E. 307; Sellwood v. Gray, 11 Or. 534, 5 Pac. 196; Pace v. Bartles, 47 N. J. Eq. 170, 20 Atl. 352; Simons v. Bryce, 10 S. C. 373.**—Equity to a settlement.** The equitable right of a wife, when her husband sues in equity for the reduction of her equitable estate to his own possession, to have the whole or a portion of such estate settled upon herself and her children. Also a similar right now recognized by the equity courts as directly to be asserted against the husband. Also called the "wife's equity." Poindexter v. Jeffries, 15 Grat. (Va.) 363; Clarke v. McCreary, 12 Smedes & M. (Miss.) 354.

Equity delights to do justice, and that not by halves. Tallman v. Varick, 5 Barb. (N. Y.) 277, 280; Story, Eq. Pl. § 72.

Equity follows the law. Talb. 52. Equity adopts and follows the rules of law in all cases to which those rules may, in terms, be applicable. Equity, in dealing with cases of an equitable nature, adopts and follows the analogies furnished by the rules of law. A leading maxim of equity jurisprudence, which, however, is not of universal application, but liable to many exceptions. Story, Eq. Jur. § 64.

Equity looks upon that as done which ought to have been done. 1 Story, Eq. Jur. § 64*g*. Equity will treat the subject-matter, as to collateral consequences and incidents, in the same manner as if the final acts contemplated by the parties had been executed exactly as they ought to have been; not as the parties might have executed them. Id.

Equity suffers not a right without a remedy. 4 Bouv. Inst. no. 3726.

EQUIVALENT. In patent law. Any act or substance which is known in the arts as a proper substitute for some other act or substance employed as an element in the invention, whose substitution for that other act or substance does not in any manner vary the idea of means. It possesses three characteristics: It must be capable of performing the same office in the invention as the act or substance whose place it supplies; it must relate to the form or embodiment alone and not affect in any degree the idea of means; and it must have been known to the arts at the date of the patent as endowed with this capability. Duff Mfg. Co. v. Forgie, 59 Fed. 772, 8 C. C. A. 261; Norton v. Jensen, 49 Fed. 868, 1 C. C. A. 452; Imhaeuser v. Buerk, 101 U. S. 655, 25 L. Ed. 945; Carter Mach. Co. v. Hanes (C. C.) 70 Fed. 859; Schillinger v. Cranford, 4 Mackey (D. C.) 466.

EQUIVOCAL. Having a double or several meanings or senses. See AMBIGUITY.

EQUULEUS. A kind of rack for extorting confessions.

EQUUS COOPERTUS. A horse equipped with saddle and furniture.

ERABILIS. A maple tree. Not to be confounded with *arabilis*, (arable land.)

ERASTIANS. The followers of Erastus. The sect obtained much influence in England, particularly among common lawyers in the time of Selden. They held that offenses against religion and morality should be punished by the civil power, and not by the censures of the church or by excommunication. Wharton.

ERASURE. The obliteration of words or marks from a written instrument by rubbing, scraping, or scratching them out. Also the place in a document where a word or words have been so removed. The term is sometimes used for the removal of parts of a writing by any means whatever, as by cancellation; but this is not an accurate use. Cloud v. Hewitt, 5 Fed. Cas. 1,085; Vallier v. Brakke, 7 S. D. 343, 64 N. W. 180.

ERCISCUNDUS. In the civil law. To be divided. *Judicium familiæ erciscundæ*, a suit for the partition of an inheritance. Inst. 4, 17, 4. An ancient phrase derived from the Twelve Tables. Calvin.

ERECT. One of the formal words of incorporation in royal charters. "We do, incorporate, *erect*, ordain, name, constitute, and establish."

ERECTION. Raising up; building; a completed building. In a statute on the "erection" of wooden buildings, this term does not include repairing, alteration, enlarging, or removal. See Shaw v. Hitchcock, 119 Mass. 256; Martine v. Nelson, 51 Ill. 422; Douglass v. Com., 2 Rawle (Pa.) 264; Brown v. Hunn, 27 Conn. 334, 71 Am. Dec. 71; McGary v. People, 45 N. Y. 160.

ERGO. Lat. Therefore; hence; because.

ERGOLABI. In the civil law. Undertakers of work; contractors. Cod. 4, 59.

ERIACH. A term of the Irish Brehon law, denoting a pecuniary mulct or recompense which a murderer was judicially condemned to pay to the family or relatives of his victim. It corresponded to the Saxon "weregild." See 4 Bl. Comm. 313.

ERIGIMUS. We erect. One of the words by which a corporation may be created in England by the king's charter. 1 Bl. Comm. 473.

ERMINE. By metonymy, this term is used to describe the office or functions of a judge, whose state robe, lined with ermine, is emblematical of purity and honor without stain. Webster.

ERNES. In old English law. The loose scattered ears of corn that are left on the ground after the binding.

EROSION. The gradual eating away of the soil by the operation of currents or tides. Distinguished from *submergence*, which is the disappearance of the soil under the water and the formation of a navigable body over it. Mulry v. Norton, 100 N. Y. 433, 3 N. E. 584, 53 Am. Rep. 206.

ERRANT. Wandering; itinerant; applied to justices on circuit, and bailiffs at large, etc.

ERRATICUM. In old law. A waif or stray; a wandering beast. Cowell.

ERRATUM. Lat. Error. Used in the Latin formula for assigning errors, and in the reply thereto, "in nullo est erratum," *i. e.*, there was no error, no error was committed.

ERRONEOUS. Involving error; deviating from the law. This term is never used by courts or law-writers as designating a corrupt or evil act. Thompson v. Doty, 72 Ind. 338.

ERRONICE. Lat. Erroneously; through error or mistake.

ERROR. A mistaken judgment or incorrect belief as to the existence or effect of matters of fact, or a false or mistaken conception or application of the law.

Such a mistaken or false conception or application of the law to the facts of a cause as will furnish ground for a review of the proceedings upon a writ of error; a mistake of law, or false or irregular application of it, such as vitiates the proceedings and warrants the reversal of the judgment.

Error is also used as an elliptical expression for "writ of error;" as in saying that *error* lies; that a judgment may be reversed *on error*.

—Assignment of errors. In practice. The statement of the plaintiff's case on a writ of error, setting forth the errors complained of; corresponding with the declaration in an ordinary action. 2 Tidd, Pr. 1168; 3 Steph. Comm. 644. Wells v. Martin, 1 Ohio St. 388; Lamy v. Lamy, 4 N. M. (Johns.) 43, 12 Pac. 650. A specification of the errors upon which the appellant will rely, with such fullness as to give aid to the court in the examination of the transcript. Squires v. Foorman, 10 Cal. 298.—**Clerical error.** See CLERICAL.—**Common error.** (Lat. *communis error, q. v.*) An error for which there are many precedents. "Common error goeth for a law." Finch, Law, b. 1, c. 3, no. 54.—**Error coram nobis.** Error committed in the proceedings "before us;" i. e., error assigned as a ground for reviewing, modifying, or vacating a judgment in the same court in which it was rendered.—**Error coram vobis.** Error in the proceedings "before you;" words used in a writ of error directed by a court of review to the court which tried the cause.—**Error in fact.** In judicial proceedings, error in fact occurs when, by reason of some fact which is unknown to the court and not apparent on the record (e. g., the coverture, infancy, or death of one of the parties), it renders a judgment which is void or voidable. Cruger v. McCracken, 87 Tex. 584, 30 S. W. 537; Kihlholz v. Wolff, 8 Ill. App. 371; Kasson v. Mills, 8 How. Prac. (N. Y.) 379; Tanner v Marsh, 53 Barb. (N. Y.) 440.—**Error in law.** An error of the court in applying the law to the case on trial, e. g., in ruling on the admission of evidence, or in charging the jury. McKenzie v. Bismarck Water Co., 6 N. D. 361, 71 N. W. 608; Scherrer v. Hale, 9 Mont. 63, 22 Pac. 151; Campbell v. Patterson, 7 Vt. 89.—**Error nominis.** Error of name. A mistake of detail in the name of a person; used in contradistinction to error *de personâ*, a mistake as to identity.—**Error of law.** He is under an error of law who is truly informed of the existence of facts, but who draws from them erroneous conclusions of law. Civ. Code La. art. 1822. Mowatt v. Wright, 1 Wend. (N. Y.) 360, 19 Am. Dec. 508.—**Error of fact.** That is called "error of fact" which proceeds either from ignorance of that which really exists or from a mistaken belief in the existence of that which has none. Civ. Code La. art. 1821. See Norton v. Marden, 15 Me. 45, 32 Am. Dec. 132; Mowatt v. Wright, 1 Wend. (N. Y.) 360, 19 Am. Dec. 508.—**Fundamental error.** In appellate practice. Error which goes to the merits of the plaintiff's cause of action, and which will be considered on review, whether assigned as error or not, where the justice of the case seems to require it. Hollywood v. Wellhausen, 28 Tex. Civ. App. 541, 68 S. W. 329.—**Harmless error.** In appellate practice. An error committed in the progress of the trial below, but which was not prejudicial to the rights of the party assigning it, and for which, therefore, the court will not reverse the judgment, as, where the error was neutralized or corrected by subsequent proceedings in the case, or where, notwithstanding the error, the particular issue was found in that party's favor, or where, even if the error had not been committed, he could not have been legally entitled to prevail.—**Invited error.** In appellate practice. The principle of "invited error" is that if, during the progress of a cause, a party requests or moves the court to make a ruling which is actually erroneous, and the court does so, that party cannot take advantage of the error on appeal or review. Gresham v. Harcourt, 93 Tex. 149, 53 S. W. 1019.—**Reversible error.** In appellate practice. Such an error as warrants the appellate court in reversing the judgment before it. New Mexican R. Co. v. Hendricks, 6 N. M. 611, 30 Pac. 901.—**Technical error.** In appellate practice. A merely abstract or theoretical error, which is practically not injurious to the party assigning it. Epps v. State, 102 Ind. 539, 1 N. E. 491.—**Errors excepted.** A phrase appended to an account stated, in order to excuse slight mistakes or oversights.—**Error, writ of.** See WRIT OF ERROR.

Error fucatus nuda veritate in multis est probabilior; et sæpenumero rationibus vincit veritatem error. Error artfully disguised [or colored] is, in many instances, more probable than naked truth; and frequently error overwhelms truth by [its show of] reasons. 2 Coke, 73.

Error juris nocet. Error of law injures. A mistake of the law has an injurious effect; that is, the party committing it must suffer the consequences. Mackeld. Rom. Law, § 178; 1 Story, Eq. Jur. § 139, note.

Error nominis nunquam nocet, si de identitate rei constat. A mistake in the name of a thing is never prejudicial, if it be clear as to the identity of the thing itself, [where the thing intended is certainly known.] 1 Duer, Ins. 171. This maxim is applicable only where the means of correcting the mistake are apparent on the face of the instrument to be construed. Id.

Error qui non resistitur approbatur. An error which is not resisted or opposed is approved. Doct. & Stud. c. 40.

Errores ad sua principia referre, est refellere. To refer errors to their sources is to refute them. 3 Inst. 15. To bring errors to their beginning is to see their last.

Errores scribentis nocere non debent. The mistakes of the writer ought not to harm. Jenk. Cent. 324.

ERTHMIOTUM. In old English law. A meeting of the neighborhood to compromise differences among themselves; a court held on the boundary of two lands.

Erubescit lex filios castigare parentes. 8 Coke, 116. The law blushes when children correct their parents.

ESBRANCATURA. In old law. A cutting off the branches or boughs of trees. Cowell; Spelman.

ESCALDARE. To scald. It is said that to *scald hogs* was one of the ancient tenures in serjeanty. Wharton.

ESCAMBIO. In old English law. A writ of exchange. A license in the shape of a writ, formerly granted to an English merchant to draw a bill of exchange on another in foreign parts. Reg. Orig. 194.

ESCAMBIUM. An old English law term, signifying exchange.

ESCAPE. The departure or deliverance out of custody of a person who was lawfully imprisoned, before he is entitled to his liberty by the process of law.

The voluntarily or negligently allowing any person lawfully in confinement to leave the place. 2 Bish. Crim. Law, § 917.

Escapes are either *voluntary* or *negligent*. The former is the case when the keeper voluntarily concedes to the prisoner any liberty not authorized by law. The latter is the case when the prisoner contrives to leave his prison by forcing his way out, or any other means, without the knowledge or against the will of the keeper, but through the latter's carelessness or the insecurity of the building. Cortis v. Dailey, 21 App. Div. 1, 47 N. Y. Supp. 454; Lansing v. Fleet, 2 Johns. Cas. (N. Y.) 3, 1 Am. Dec. 142; Atkinson v. Jameson, 5 Term, 25; Butler v. Washburn, 25 N. H. 258; Martin v. State, 32 Ark. 124; Adams v. Turrentine, 30 N. C. 147.

—Escape warrant. In English practice. This was a warrant granted to retake a prisoner committed to the custody of the king's prison who had escaped therefrom. It was obtained on affidavit from the judge of the court in which the action had been brought, and was directed to all the sheriffs throughout England, commanding them to retake the prisoner and commit him to gaol when and where taken, there to remain until the debt was satisfied. Jacob; Brown.

ESCAPIO QUIETUS. In old English law. Delivered from that punishment which by the laws of the forest lay upon those whose beasts were found upon forbidden land. Jacob.

ESCAPIUM. That which comes by chance or accident. Cowell.

ESCEPPA. A measure of corn. Cowell.

Eschæta derivatur a verbo Gallico eschoir, quod est accidere, quia accidit domino ex eventu et ex insperato. Co. Litt. 93. Escheat is derived from the French word "*eschoir*," which signifies to happen, because it falls to the lord from an event and from an unforeseen circumstance.

Eschætæ vulgo dicuntur quæ decidentibus iis quæ de rege tenent, cum non existit ratione sanguinis hæres, ad fiscum relabuntur. Co. Litt. 13. Those things are commonly called "escheats" which revert to the exchequer from a failure of issue in those who hold of the king, when there does not exist any heir by consanguinity.

ESCHEAT. In feudal law. Escheat is an obstruction of the course of descent, and consequent determination of the tenure, by some unforeseen contingency, in which case the land naturally results back, by a kind of reversion, to the original grantor, or lord of the fee. 2 Bl. Comm. 15; Wallace v. Harmstad, 44 Pa. 501; Marshall v. Lovelass, 1 N. C. 445.

It is the casual descent, in the nature of forfeiture, of lands and tenements within his manor, to a lord, either on failure of issue of the tenant dying seised or on account of the felony of such tenant. Jacob.

Also the land or fee itself, which thus fell back to the lord. Such lands were called "*excadentiæ*," or "*terræ excadentiales*." Fleta, lib. 6, c. 1; Co. Litt. 13*a*.

In American law. Escheat signifies a reversion of property to the state in consequence of a want of any individual competent to inherit. The state is deemed to occupy the place and hold the rights of the feudal lord. See 4 Kent, Comm. 423, 424. Hughes v. State, 41 Tex. 17; Crane v. Reeder, 21 Mich. 70, 4 Am. Rep. 430; Civ. Code Ga. 1895, § 3575.

"Escheat at feudal law was the right of the lord of a fee to re-enter upon the same when it became vacant by the extinction of the blood of the tenant. This extinction might either be *per defectum sanguinis* or else *per delictum tenentis*, where the course of descent was broken by the corruption of the blood of the tenant. As a fee might be holden either of the crown or from some inferior lord, the escheat was not always to the crown. The word 'escheat,' in this country, at the present time, merely indicates the preferable right of the state to an estate left vacant, and without there being any one in existence able to make claim thereto." 29 Am. Dec. 232, note.

—Escheat, writ of. A writ which anciently lay for a lord, to recover possession of lands that had escheated to him. Reg. Orig. 164*b*; Fitzh. Nat. Brev. 143.—**Single escheat.** When all a person's movables fall to the crown, as a casualty, because of his being declared rebel. Wharton.

ESCHEATOR. In English law. The name of an officer who was appointed in every county to look after the escheats which fell due to the king in that particular county,

and to certify the same into the exchequer. An escheator could continue in office for one year only, and was not re-eligible until three years. There does not appear to exist any such officer at the present day. Brown. See 10 Vin. Abr. 158; Co. Litt. 13*b*.

ESCHECCUM. In old English law. A jury or inquisition.

ESCHIPARE. To build or equip. Du Cange.

ESCOT. A tax formerly paid in boroughs and corporations towards the support of the community, which is called "scot and lot."

ESCRIBANO. In Spanish law. An officer, resembling a notary in French law, who has authority to set down in writing, and verify by his attestation, transactions and contracts between private persons, and also judicial acts and proceedings.

ESCRITURA. In Spanish law. A written instrument. Every deed that is made by the hand of a public *escribano*, or notary of a corporation or council (*concejo*,) or sealed with the seal of the king or other authorized persons. White, New Recop. b. 3, tit. 7, c. 5.

ESCROQUERIE. Fr. Fraud, swindling, cheating.

ESCROW. A scroll; a writing; a deed. Particularly a deed delivered by the grantor into the hands of a third person, to be held by the latter until the happening of a contingency or performance of a condition, and then by him delivered to the grantee. Thomas v. Sowards, 25 Wis. 631; Patrick v. McCormick, 10 Neb. 1, 4 N. W. 312; Cagger v. Lansing, 57 Barb. (N. Y.) 427; Davis v. Clark, 58 Kan. 100, 48 Pac. 563; Easton v. Driscoll, 18 R. I. 318, 27 Atl. 445.

A grant may be deposited by the grantor with a third person, to be delivered on the performance of a condition, and on delivery by the depositary it will take effect. While in the possession of the third person, and subject to condition, it is called an "escrow." Civil Code Cal. § 1057; Civil Code Dak. § 609.

The state or condition of a deed which is conditionally held by a third person, or the possession and retention of a deed by a third person pending a condition; as when an instrument is said to be delivered "in escrow." This use of the term, however, is a perversion of its meaning.

ESCROWL. In old English law. An escrow; a scroll. "And deliver the deed to a stranger, as an escrowl." Perk. c. 1, § 9; Id. c. 2, §§ 137, 138.

ESCUAGE. Service of the shield. One of the varieties of tenure in knight's service, the duty imposed being that of accompanying the king to the wars for forty days, at the tenant's own charge, or sending a substitute. In later times, this service was commuted for a certain payment in money, which was then called "escuage certain." See 2 Bl. Comm. 74, 75.

ESCURARE. To scour or cleanse. Cowell.

ESGLISE, or EGLISE. A church. Jacob.

ESKETORES. Robbers, or destroyers of other men's lands and fortunes. Cowell.

ESKIPPAMENTUM. Tackle or furniture; outfit. Certain towns in England were bound to furnish certain ships at their own expense and with double *skippage* or tackle. Cowell.

ESKIPPER, ESKIPPARE. To ship.

ESKIPPESON. Shippage, or passage by sea. Spelled, also, "*skippeson*." Cowell.

ESLISORS. See ELISORS.

ESNE. In old law. A hireling of servile condition.

ESNECY. Seniority; the condition or right of the eldest; the privilege of the eldest-born. Particularly used of the privilege of the eldest among coparceners to make a first choice of purparts upon a voluntary partition.

ESPERA. A period of time fixed by law or by a court within which certain acts are to be performed, *e. g.*, the production of papers, payment of debts, etc.

ESPERONS. L. Fr. Spurs.

ESPEDIENT. In Spanish law. A junction of all the separate papers made in the course of any one proceeding and which remains in the office at the close of it. Castillero v. U. S., 2 Black (U. S.) 109, 17 L. Ed. 360.

ESPLEES. An old term for the products which the ground or land yields; as the hay of the meadows, the herbage of the pasture, corn of arable fields, rent and services, etc. The word has been anciently applied to the land itself. Jacob; Fosgate v. Hydraulic Co., 9 Barb. (N. Y.) 293.

ESPOUSALS. A mutual promise between a man and a woman to marry each other at some other time. It differs from a marriage, because then the contract is completed. Wood, Inst. 57.

ESPURIO. Span. In Spanish law. A spurious child; one begotten on a woman

who has promiscuous intercourse with many men. White, New Recop. b. 1, tit. 5, c. 2, § 1.

ESQUIRE. In English law. A title of dignity next above gentleman, and below knight. Also a title of office given to sheriffs, serjeants, and barristers at law, justices of the peace, and others. 1 Bl. Comm. 406; 3 Steph. Comm. 15, note; Tomlins. On the use of this term in American law, particularly as applied to justices of the peace and other inferior judicial officers, see Call v. Foresman, 5 Watts (Pa.) 331; Christian v. Ashley County, 24 Ark. 151; Com. v. Vance, 15 Serg. & R. (Pa.) 37.

ESSARTER. L. Fr. To cut down woods to clear land of trees and underwood; properly to thin woods, by cutting trees, etc., at intervals. Spelman.

ESSARTUM. Woodlands turned into tillage by uprooting the trees and removing the underwood.

ESSENCE. That which is indispensable to that of which it is the essence.

—Essence of the contract. Any condition or stipulation in a contract which is mutually understood and agreed by the parties to be of such vital importance that a sufficient performance of the contract cannot be had without exact compliance with it is said to be "of the essence of the contract."

ESSENDI QUIETUM DE TOLONIO. A writ to be quit of toll; it lies for citizens and burgesses of any city or town who, by charter or prescription, ought to be exempted from toll, where the same is exacted of them. Reg. Orig. 258.

ESSOIN, *v.* In old English practice. To present or offer an excuse for not appearing in court on an appointed day in obedience to a summons; to cast an essoin. Spelman. This was anciently done by a person whom the party sent for that purpose, called an "essoiner."

ESSOIN, *n.* In old English law. An excuse for not appearing in court at the return of the process. Presentation of such excuse. Spelman; 1 Sel. Pr. 4; Com. Dig. "Exoine," B 1. Essoin is not now allowed at all in personal actions. 2 Term, 16; 16 East, 7*a*; 3 Bl. Comm. 278, note.

—Essoin day. Formerly the first general return-day of the term, on which the courts sat to receive essoins, *i. e.*, excuses for parties who did not appear in court, according to the summons of writs. 3 Bl. Comm. 278; Boote, Suit at Law, 130; Gilb. Com. Pl. 13; 1 Tidd, Pr. 107. But, by St. 11 Geo. IV. and 1 Wm. IV. c. 70, § 6, these days were done away with, as a part of the term.—**Essoin de malo villæ** is when the defendant is in court the first day; but gone without pleading, and being afterwards surprised by sickness, etc., cannot attend, but sends two essoiners, who openly protest in court that he is detained by sickness in such a village, that he cannot come *pro lucrari* and *pro perdere;* and this will be admitted, for it lieth on the plaintiff to prove whether the essoin is true or not. Jacob.—**Essoin roll.** A roll upon which essoins were formerly entered, together with the day to which they were adjourned. Boote, Suit at Law, 130; Rosc. Real Act. 162, 163; Gilb. Com. Pl. 13.

ESSOINIATOR. A person who made an essoin.

Est aliquid quod non oportet etiam si licet; quicquid vero non licet certe non oportet. Hob. 159. There is that which is not proper, even though permitted; but whatever is not permitted is certainly not proper.

EST ASCAVOIR. It is to be understood or known; "it is to-wit." Litt. §§ 9, 45, 46, 57, 59. A very common expression in Littleton, especially at the commencement of a section; and, according to Lord Coke, "it ever teacheth us some rule of law, or general or sure leading point." Co. Litt. 16.

Est autem jus publicum et privatum, quod ex naturalibus præceptis aut gentium, aut civilibus est collectum; et quod in jure scripto jus appellatur, id in lege Angliæ rectum esse dicitur. Public and private law is that which is collected from natural precepts, on the one hand of nations, on the other of citizens; and that which in the civil law is called "*jus*," that, in the law of England, is said to be right. Co. Litt. 558.

Est autem vis legem simulans. Violence may also put on the mask of law.

Est ipsorum legislatorum tanquam viva vox. The voice of the legislators themselves is like the living voice; that is, the language of a statute is to be understood and interpreted like ordinary spoken language. 10 Coke, 101*b*.

Est quiddam perfectius in rebus licitis. Hob. 159. There is something more perfect in things allowed.

ESTABLISH. This word occurs frequently in the constitution of the United States, and it is there used in different meanings: (1) To settle firmly, to fix unalterably; as to establish justice, which is the avowed object of the constitution. (2) To make or form; as to establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies, which evidently does not mean that these laws shall be unalterably established as justice. (3) To found, to create, to regulate; as: "Congress shall have power to establish post-roads and post-offices." (4) To found, recognize, confirm, or admit; as: "Congress shall make no law respecting an establishment of religion." (5) To create, to ratify, or confirm; as: "We,

the people," etc., "do ordain and establish this constitution." 1 Story, Const. § 454. And see Dickey v. Turnpike Co., 7 Dana (Ky.) 125; Ware v. U. S., 4 Wall. 632, 18 L. Ed. 389; U. S. v. Smith, 4 N. J. Law, 33.

Establish ordinarily means to settle certainly, or fix permanently, what was before uncertain, doubtful, or disputed. Smith v. Forrest, 49 N. H. 230.

ESTABLISHMENT. An ordinance or statute. Especially used of those ordinances or statutes passed in the reign of Edw. I. 2 Inst. 156; Britt. c. 21.

ESTABLISHMENT OF DOWER. The assurance of dower made by the husband, or his friends, before or at the time of the marriage. Britt. cc. 102, 103.

ESTACHE. A bridge or stank of stone or timber. Cowell.

ESTADAL. In Spanish law. In Spanish America this was a measure of land of sixteen square varas, or yards. 2 White, Recop. 139.

ESTADIA. In Spanish law. Delay in a voyage, or in the delivery of cargo, caused by the charterer or consignee, for which demurrage is payable.

ESTANDARD. L. Fr. A standard, (of weights and measures.) So called because it stands constant and immovable, and hath all other measures coming towards it for their conformity. Termes de la Ley.

ESTANQUES. Wears or kiddles in rivers.

ESTATE. **1.** The interest which any one has in lands, or in any other subject of property. 1 Prest. Est. 20. And see Van Rensselaer v. Poucher, 5 Denio (N. Y.) 40; Beall v. Holmes, 6 Har. & J. (Md.) 208; Mulford v. Le Franc, 26 Cal. 103; Robertson v. VanCleave, 129 Ind. 217, 22 N. E. 899, 29 N. E. 781, 15 L. R. A. 68; Ball v. Chadwick, 46 Ill. 31; Cutts v. Com., 2 Mass. 289; Jackson v. Parker, 9 Cow. (N. Y.) 81. An estate in lands, tenements, and hereditaments signifies such interest as the tenant has therein. 2 Bl. Comm. 103. The condition or circumstance in which the owner *stands* with regard to his property. 2 Crabb, Real Prop. p. 2, § 942. In this sense, "estate" is constantly used in conveyances in connection with the words "right," "title," and "interest," and is, in a great degree, synonymous with all of them. See Co. Litt. 345.

Classification. Estates, in this sense, may be either *absolute* or *conditional*. An absolute estate is a full and complete estate (Cooper v. Cooper, 56 N. J. Eq. 48, 38 Atl. 198) or an estate in lands not subject to be defeated upon any condition. In this phrase the word "absolute" is not used legally to distinguish a fee from a life-estate, but a qualified or conditional fee from a fee simple. Greenawalt v. Greenawalt, 71 Pa. 483. A conditional estate is one, the existence of which depends upon the happening or not happening of some uncertain event, whereby the estate may be either originally created, or enlarged, or finally defeated. 2 Bl. Comm. 151. Estates are also classed as *executed* or *executory*. The former is an estate whereby a present interest passes to and resides in the tenant, not dependent upon any subsequent circumstance or contingency. They are more commonly called "estates in possession." 2 Bl. Comm. 162. An estate where there is vested in the grantee a present and immediate right of present or future enjoyment. An executory estate is an estate or interest in lands, the vesting or enjoyment of which depends upon some future contingency. Such estate may be an *executory devise*, or an *executory remainder*, which is the same as a contingent remainder, because no present interest passes. Further, estates may be *legal* or *equitable*. The former is that kind of estate which is properly cognizable in the courts of common law, though noticed, also, in the courts of equity. 1 Steph. Comm. 217. And see Sayre v. Mohney, 30 Or. 238, 47 Pac. 197; In re Qualifications of Electors, 19 R. I. 387, 35 Atl. 213. An equitable estate is an estate an interest in which can only be enforced in a court of chancery. Avery v. Dufrees, 9 Ohio, 145. That is properly an equitable estate or interest for which a court of equity affords the only remedy; and of this nature, especially, is the benefit of every trust, express or implied, which is not converted into a legal estate by the statute of uses. The rest are equities of redemption, constructive trusts, and all equitable charges. Burt. Comp. c. 8. Brown v. Freed, 43 Ind. 253; In re Qualifications of Electors, 19 R. I. 387, 35 Atl. 213.

Other descriptive and compound terms. A *contingent* estate is one which depends for its effect upon an event which may or may not happen, as, where an estate is limited to a person not yet born. *Conventional* estates are those freeholds not of inheritance or estates for life, which are created by the express acts of the parties, in contradistinction to those which are legal and arise from the operation of law. A *dominant* estate, in the law of easements, is the estate for the benefit of which the easement exists, or the tenement whose owner, as such, enjoys an easement over an adjoining estate. An *expectant* estate is one which is not yet in possession, but the enjoyment of which is to begin at a future time; a present or vested contingent right of future enjoyment. Examples are remainders and reversions. A *future* estate is an estate which is not now vested in the grantee, but is to commence in possession at some future time. It includes remainders, reversions, and estates limited to commence *in futuro* without a particular estate to support them, which last are not good at common law, except in the case of chattel interests. See 2 Bl. Comm. 165. An estate limited to commence in possession at a future day, either without the intervention of a precedent estate, or on the determination by lapse of time, or otherwise, of a precedent estate created at the same time. 11 Rev. St. N. Y. (3d Ed.) § 10. See Griffin v. Shepard, 124 N. Y. 70, 26 N. E. 339; Sabledowsky v. Arbuckle, 50 Minn. 475, 52 N. W. 920; Ford v. Ford, 70 Wis. 19, 33 N. W. 188, 5 Am. St. Rep. 117. A *particular* estate is a limited estate which is taken out of the fee, and which precedes a remainder; as an estate for years to A., remainder to B. for life; or an estate for life to A., remainder to B. in tail. This precedent estate is called the "particular estate," and the tenant of such estate is called the "particular tenant." 2 Bl. Comm. 165; Bunting v. Speek, 41 Kan. 424, 21 Pac. 288, 3 L. R. A. 690. A *servient* estate, in the law of easements, is the estate upon which the easement is imposed or against which it is enjoyed;

an estate subjected to a burden or servitude for the benefit of another estate. Walker v. Clifford, 128 Ala. 67, 29 South. 588, 86 Am. St. Rep. 74; Stevens v. Dennett, 51 N. H. 330; Dillman v. Hoffman, 38 Wis. 572. A *settled* estate, in English law, is one created or limited under a settlement; that is, one in which the powers of alienation, devising, and transmission according to the ordinary rules of descent are restrained by the limitations of the settlement. Micklethwait v. Micklethwait, 4 C. B. (N. S.) 858. A *vested* estate is one in which there is an immediate right of present enjoyment or a present fixed right of future enjoyment; an estate as to which there is a person in being who would have an immediate right to the possession upon the ceasing of some intermediate or precedent estate. Tayloe v. Gould, 10 Barb. (N. Y.) 388; Flanner v. Fellows, 206 Ill. 136, 68 N. E. 1057.

—Original and derivative estates. An original is the first of several estates, bearing to each other the relation of a particular estate and a reversion. An original estate is contrasted with a derivative estate; and a derivative estate is a particular interest carved out of another estate of larger extent. Prest. Est. 125.

For the names and definitions of the various kinds of estates in land, see the following titles.

2. In another sense, the term denotes the property (real or personal) in which one has a right or interest; the subject-matter of ownership; the *corpus* of property. Thus, we speak of a "valuable estate," "all my estate," "separate estate," "trust estate," etc. This, also, is its meaning in the classification of property into "real estate" and "personal estate."

The word "estate" is a word of the greatest extension, and comprehends every species of property, real and personal. It describes both the *corpus* and the extent of interest. Deering v. Tucker, 55 Me. 284.

"Estate" comprehends everything a man owns, real and personal, and ought not to be limited in its construction, unless connected with some other word which must necessarily have that effect. Pulliam v. Pulliam (C. C.) 10 Fed. 40.

It means, ordinarily, the whole of the property owned by any one, the realty as well as the personalty. Hunter v. Husted, 45 N. C. 141.

Compound and descriptive terms.—Fast estate. Real property. A term sometimes used in wills. Lewis v. Smith, 9 N. Y. 502, 61 Am. Dec. 706.**—Real estate.** Landed property, including all estates and interests in lands which are held for life or for some greater estate, and whether such lands be of freehold or copyhold tenure. Wharton.**—Homestead estate.** See HOMESTEAD.**—Movable estate.** See MOVABLE.**—Residuary estate.** See RESIDUARY.**—Separate estate.** See SEPARATE.**—Trust estate.** See TRUST.

3. In a wider sense, the term "estate" denotes a man's whole financial *status* or condition,—the aggregate of his interests and concerns, so far as regards his situation with reference to wealth or its objects, including debts and obligations, as well as possessions and rights.

Here not only property, but indebtedness, is part of the idea. The estate does not consist of the assets only. If it did, such expressions as "insolvent estate" would be misnomers. Debts and assets, taken together, constitute the estate. It is only by regarding the demands against the original proprietor as constituting, together with his resources available to defray them, one entirety, that the phraseology of the law governing what is called "settlement of estates" can be justified. Abbott.

4. The word is also used to denote the aggregate of a man's financial concerns (as above) *personified*. Thus, we speak of "debts due the estate," or say that "A.'s estate is a stockholder in the bank." In this sense it is a fictitious or juridical person, the idea being that a man's business *status* continues his existence, for its special purposes, until its final settlement and dissolution.

5. In its broadest sense, "estate" signifies the social, civic, or political condition or standing of a person; or a class of persons considered as grouped for social, civic, or political purposes; as in the phrases, "the third estate," "the estates of the realm." See 1 Bl. Comm. 153.

"Estate" and "degree," when used in the sense of an individual's personal *status*, are synonymous, and indicate the individual's rank in life. State v. Bishop, 15 Me. 122.

ESTATE AD REMANENTIAM. An estate in fee-simple. Glan. l. 7, c. 1.

ESTATE AT SUFFERANCE. The interest of a tenant who has come rightfully into possession of lands by permission of the owner, and continues to occupy the same after the period for which he is entitled to hold by such permission. 1 Washb. Real Prop. 392; 2 Bl. Comm. 150; Co. Litt. 57*b*.

ESTATE AT WILL. A species of estate less than freehold, where lands and tenements are let by one man to another, to have and to hold at the will of the lessor; and the tenant by force of this lease obtains possession. 2 Bl. Comm. 145; 4 Kent, Comm. 110; Litt. § 68. Or it is where lands are let without limiting any certain and determinate estate. 2 Crabb, Real Prop. p. 403, § 1543.

ESTATE BY ELEGIT. See ELEGIT.

ESTATE BY STATUTE MERCHANT. An estate whereby the creditor, under the custom of London, retained the possession of all his debtor's lands until his debts were paid. 1 Greenl. Cruise, Dig. 515. See STATUTE MERCHANT.

ESTATE BY THE CURTESY. Tenant by the curtesy of England is where a man survives a wife who was seised in fee-simple or fee-tail of lands or tenements, and has had issue male or female by her born alive and capable of inheriting the wife's estate as heir to her; in which case he will, on the decease of his wife, hold the estate during his life as tenant by the curtesy of England. 2 Crabb, Real Prop. § 1074.

ESTATE FOR LIFE. A freehold estate, not of inheritance, but which is held by

the tenant for his own life or the life or lives of one or more other persons, or for an indefinite period, which may endure for the life or lives of persons in being, and not beyond the period of a life. 1 Washb. Real Prop. 88.

ESTATE FOR YEARS. A species of estate less than freehold, where a man has an interest in lands and tenements, and a possession thereof, by virtue of such interest, for some fixed and determinate period of time; as in the case where lands are let for the term of a certain number of years, agreed upon between the lessor and the lessee, and the lessee enters thereon. 1 Steph. Comm. 263, 264. Blackstone calls this estate a "contract" for the possession of lands or tenements for some determinate period. 2 Bl. Comm. 140. See Hutcheson v. Hodnett, 115 Ga. 990, 42 S. E. 422; Despard v. Churchill, 53 N. Y. 192; Brown v. Bragg, 22 Ind. 125.

ESTATE IN COMMON. An estate in lands held by two or more persons, with interests accruing under different titles; or accruing under the same title, but at different periods; or conferred by words of limitation importing that the grantees are to take in distinct shares. 1 Steph. Comm. 323. See TENANCY IN COMMON.

ESTATE IN COPARCENARY. An estate which several persons hold as one heir, whether male or female. This estate has the three unities of time, title, and possession; but the interests of the coparceners may be unequal. 1 Washb. Real Prop. 414; 2 Bl. Comm. 188. See COPARCENARY.

ESTATE IN DOWER. A species of life-estate which a woman is, by law, entitled to claim on the death of her husband, in the lands and tenements of which he was seised in fee during the marriage, and which her issue, if any, might by possibility have inherited. 1 Steph. Comm. 249; 2 Bl. Comm. 129; Cruise, Dig. tit. 6; 2 Crabb, Real Prop. p. 124, § 1117; 4 Kent, Comm. 35. See DOWER.

ESTATE IN EXPECTANCY. One which is not yet in possession, but the enjoyment of which is to begin at a future time; a present or vested contingent right of future enjoyment. These are remainders and reversions. Fenton v. Miller, 108 Mich. 246, 65 N. W. 966; In re Mericlo, 63 How. Prac. (N. Y.) 66; Greyston v. Clark, 41 Hun (N. Y.) 130; Ayers v. Trust Co., 187 Ill. 42, 58 N. E. 318.

ESTATE IN FEE-SIMPLE. The estate which a man has where lands are given to him and to his heirs absolutely without any end or limit put to his estate. 2 Bl. Comm. 106; Plowd. 557; 1 Prest. Est. 425; Litt. § 1. The word "fee," used alone, is a sufficient designation of this species of estate, and hence "simple" is not a necessary part of the title, but it is added as a means of clearly distinguishing this estate from a fee-tail or from any variety of conditional estates.

ESTATE IN FEE-TAIL, generally termed an "estate tail." An estate of inheritance which a man has, to hold to him and the heirs of his body, or to him and particular heirs of his body. 1 Steph. Comm. 228. An estate of inheritance by force of the statute *De Donis*, limited and restrained to some particular heirs of the donee, in exclusion of others. 2 Crabb, Real Prop. pp. 22, 23, § 971; Cruise, Dig. tit. 2, c. 1, § 12. See TAIL; FEE-TAIL.

ESTATE IN JOINT TENANCY. An estate in lands or tenements granted to two or more persons, to hold in fee-simple, fee-tail, for life, for years, or at will. 2 Bl. Comm. 180; 2 Crabb, Real Prop. 937. An estate acquired by two or more persons in the same land, by the same title, (not being a title by descent,) and at the same period; and without any limitation by words importing that they are to take in distinct shares. 1 Steph. Comm. 312. The most remarkable incident or consequence of this kind of estate is that it is subject to survivorship.

ESTATE IN POSSESSION. An estate whereby a present interest passes to and resides in the tenant, not depending on any subsequent circumstance or contingency. 2 Bl. Comm. 163. An estate where the tenant is in actual pernancy, or receipt of the rents and other advantages arising therefrom. 2 Crabb, Real Prop. p. 958, § 2322. Eberts v. Fisher, 44 Mich. 551, 7 N. W. 211; Sage v. Wheeler, 3 App. Div. 38, 37 N. Y. Supp. 1107.

ESTATE IN REMAINDER. An estate limited to take effect in possession, or in enjoyment, or in both, subject only to any term of years or contingent interest that may intervene, immediately after the regular expiration of a particular estate of freehold previously created together with it, by the same instrument, out of the same subject of property. 2 Fearne, Rem. § 159; 2 Bl. Comm. 163; 1 Greenl. Cruise, Dig. 701.

ESTATE IN REVERSION. A species of estate in expectancy, created by operation of law, being the residue of an estate left in the grantor, to commence in possession after the determination of some particular estate granted out by him. 2 Bl. Comm. 175; 2 Crabb, Real Prop. p. 978, § 2345. The residue of an estate left in the grantor or his heirs, or in the heirs of a testator, commencing in possession on the determination of a particular estate granted or devised. 1 Rev. St. N. Y. p. 718, (723,) § 12. An estate in reversion is where any estate is derived, by

grant or otherwise, out of a larger one, leaving in the original owner an ulterior estate immediately expectant on that which is so derived; the latter interest being called the "particular estate," (as being only a small part or *particula* of the original one,) and the ulterior interest, the "reversion." 1 Steph. Comm. 290. See REVERSION.

ESTATE IN SEVERALTY. An estate held by a person in his own right only, without any other person being joined or connected with him in point of interest, during his estate. This is the most common and usual way of holding an estate. 2 Bl. Comm. 179; Cruise, Dig. tit. 18, c. 1, § 1.

ESTATE IN VADIO. An estate in gage or pledge. 2 Bl. Comm. 157; 1 Steph. Comm. 282.

ESTATE OF FREEHOLD. An estate in land or other real property, of uncertain duration; that is, either of inheritance or which may possibly last for the life of the tenant at the least, (as distinguished from a leasehold;) and held by a free tenure, (as distinguished from copyhold or villeinage.)

ESTATE OF INHERITANCE. A species of freehold estate in lands, otherwise called a "fee," where the tenant is not only entitled to enjoy the land for his own life, but where, after his death, it is cast by the law upon the persons who successively represent him *in perpetuum*, in right of blood, according to a certain established order of descent. 1 Steph. Comm. 218; Litt. § 1; Nellis v. Munson, 108 N. Y. 453, 15 N. E. 739; Roulston v. Hall, 66 Ark. 305, 50 S. W. 690, 74 Am. St. Rep. 97; Ipswich v. Topsfield, 5 Metc. (Mass.) 351; Brown v. Freed, 43 Ind. 256.

ESTATE PUR AUTRE VIE. Estate for another's life. An estate in lands which a man holds for the life of another person. 2 Bl. Comm. 120; Litt. § 56.

ESTATE TAIL. See ESTATE IN FEE-TAIL.

ESTATE TAIL, QUASI. When a tenant for life grants his estate to a man and his heirs, as these words, though apt and proper to create an estate tail, cannot do so, because the grantor, being only tenant for life, cannot grant *in perpetuum*, therefore they are said to create an estate tail *quasi*, or improper. Brown.

ESTATE UPON CONDITION. An estate in lands, the existence of which depends upon the happening or not happening of some uncertain event, whereby the estate may be either originally created, or enlarged, or finally defeated. 2 Bl. Comm. 151; 1 Steph. Comm. 276; Co. Litt. 201*a*. An estate having a qualification annexed to it, by which it may, upon the happening of a particular event, be created, or enlarged, or destroyed. 4 Kent, Comm. 121.

—Estate upon condition expressed. An estate granted, either in fee-simple or otherwise, with an express qualification annexed, whereby the estate granted shall either commence, be enlarged, or be defeated upon performance or breach of such qualification or condition. 2 Bl. Comm. 154. An estate which is so expressly defined and limited by the words of its creation that it cannot endure for any longer time than till the contingency happens upon which the estate is to fail. 1 Steph. Comm. 278.**—Estate upon condition implied.** An estate having a condition annexed to it inseparably from its essence and constitution, although no condition be expressed in words. 2 Bl. Comm. 152; 4 Kent, Comm. 121.

ESTATES OF THE REALM. The lords spiritual, the lords temporal, and the commons of Great Britain. 1 Bl. Comm. 153. Sometimes called the "three estates."

ESTENDARD, ESTENDART, or STANDARD. An ensign for horsemen in war.

ESTER IN JUDGMENT. L. Fr. To appear before a tribunal either as plaintiff or defendant. Kelham.

ESTIMATE. This word is used to express the mind or judgment of the speaker or writer on the particular subject under consideration. It implies a calculation or computation, as to *estimate* the gain or loss of an enterprise. People v. Clark, 37 Hun (N. Y.) 203.

ESTOP. To stop, bar, or impede; to prevent; to preclude. Co. Litt. 352*a*. See ESTOPPEL.

ESTOPPEL. A bar, or impediment raised by the law, which precludes a man from alleging or from denying a certain fact or state of facts, in consequence of his previous allegation or denial or conduct or admission, or in consequence of a final adjudication of the matter in a court of law. Demarest v. Hopper, 22 N. J. Law, 619; Martin v. Railroad Co., 83 Me. 100, 21 Atl. 740; Veeder v. Mudgett, 95 N. Y. 295; South v. Deaton, 113 Ky. 312, 68 S. W. 137; Wilkins v. Suttles, 114 N. C. 550, 19 S. E. 606.

A preclusion, in law, which prevents a man from alleging or denying a fact, in consequence of his own previous act, allegation, or denial of a contrary tenor. Steph. Pl. 239.

An admission of so conclusive a nature that the party whom it affects is not permitted to aver against it or offer evidence to controvert it. 2 Smith, Lead. Cas. 778.

Estoppel is that which concludes and "shuts a man's mouth from speaking the truth." When a fact has been agreed on, or decided in a court of record, neither of the parties shall be allowed to call it in question, and have it tried over again at any time thereafter, so long as the judgment or decree stands unreversed; and

when parties, by deed or solemn act *in pais*, agree on a state of facts, and act on it, neither shall ever afterwards be allowed to gainsay a fact so agreed on, or be heard to dispute it; in other words, his mouth is shut, and he shall not say that is not true which he had before in a solemn manner asserted to be true. Armfield v. Moore, 44 N. C. 157.

—Collateral estoppel. The collateral determination of a question by a court having general jurisdiction of the subject. See Small v. Haskins, 26 Vt. 209.**—Equitable estoppel** (or estoppel by conduct, or *in pais*) is the species of estoppel which equity puts upon a person who has made a false representation or a concealment of material facts, with knowledge of the facts, to a party ignorant of the truth of the matter, with the intention that the other party should act upon it, and with the result that such party is actually induced to act upon it, to his damage. Bigelow, Estop. 484. And see Louisville Banking Co. v. Asher, 65 S. W. 831, 23 Ky. Law Rep. 1661; Bank v. Marston, 85 Me. 488, 27 Atl. 529; Richman v. Baldwin, 21 N. J. Law, 403; Railroad Co. v. Perdue, 40 W. Va. 442, 21 S. E. 755.**—Estoppel by deed** is where a party has executed a deed, that is, a writing under seal (as a bond) reciting a certain fact, and is thereby precluded from afterwards denying, in any action brought upon that instrument, the fact so recited. Steph. Pl. 197. A man shall always be *estopped* by his own deed, or not permitted to aver or prove anything in contradiction to what he has once so solemnly and deliberately avowed. 2 Bl. Comm. 295; Plowd. 434; Hudson v. Winslow Tp., 35 N. J. Law, 441; Taggart v. Risley, 4 Or. 242; Appeal of Waters, 35 Pa. 526, 78 Am. Dec. 354. **—Estoppel by election.** An estoppel predicated on a voluntary and intelligent action or choice of one of several things which is inconsistent with another, the effect of the estoppel being to prevent the party so choosing from afterwards reversing his election or disputing the state of affairs or rights of others resulting from his original choice. Yates v. Hurd, 8 Colo. 343, 8 Pac. 575.**—Estoppel by judgment.** The estoppel raised by the rendition of a valid judgment by a court having jurisdiction, which prevents the parties to the action, and all who are in privity with them, from afterwards disputing or drawing into controversy the particular facts or issues on which the judgment was based or which were or might have been litigated in the action. 2 Bl. Judgm. § 504; State v. Torinus, 28 Minn. 175, 9 N. W. 725.**—Estoppel by matter in pais.** An estoppel by the conduct or admissions of the party; an estoppel not arising from deed or matter of record. Thus, where one man has accepted rent of another, he will be estopped from afterwards denying, in any action with that person, that he was, at the time of such acceptance, his tenant. Steph. Pl. 197. The doctrine of *estoppels in pais* is one which, so far at least as that term is concerned, has grown up chiefly within the last few years. But it is, and always was, a familiar principle in the law of contracts. It lies at the foundation of morals, and is a cardinal point in the exposition of promises, that one shall be bound by the state of facts which he has induced another to act upon. Redfield, C. J., Strong v. Ellsworth, 26 Vt. 366, 373. And see West Winstead Sav. Bank v. Ford, 27 Conn. 290, 71 Am. Dec. 66; Davis v. Davis, 26 Cal. 38, 85 Am. Dec. 157; Bank v. Dean, 60 N. Y. Super. Ct. 299, 17 N. Y. Supp. 375; Coogler v. Rogers. 25 Fla. 853, 7 South. 391; Merchants' Nat. Bank v. State Nat. Bank, 10 Wall. 645, 19 L. Ed. 1008; Hanly v. Watterson, 39 W. Va. 214, 19 S. E. 536; Barnard v. Seminary, 49 Mich. 444, 13 N. W. 811.**—Estoppel by matter of record.** An estoppel founded upon matter of record; as a confession or admission made in pleading in a court of record, which precludes the party from afterwards contesting the same fact in the same suit. Steph. Pl. 197.**—Estoppel by verdict.** This term is sometimes applied to the estoppel arising from a former adjudication of the same fact or issue between the same parties or their privies. Chicago Theological Seminary v. People, 189 Ill. 439, 59 N. E. 977; Swank v. Railway Co., 61 Minn. 423, 63 N. W. 1088. But this use is not correct, as it is not the verdict which creates an estoppel, but the judgment, and it is immaterial whether a jury participated in the trial or not.

In pleading. A plea, replication, or other pleading, which, without confessing or denying the matter of fact adversely alleged, relies merely on some matter of estoppel as a ground for excluding the opposite party from the allegation of the fact. Steph. Pl. 219; 3 Bl. Comm. 308.

A plea which neither admits nor denies the facts alleged by the plaintiff, but denies his right to allege them. Gould, Pl. c. 2, § 39.

A special plea in bar, which happens where a man has done some act or executed some deed which precludes him from averring anything to the contrary. 3 Bl. Comm. 308.

Estoveria sunt ardendi, arandi, construendi et claudendi. 13 Coke, 68. Estovers are of fire-bote, plow-bote, house-bote, and hedge-bote.

ESTOVERIIS HABENDIS. A writ for a wife judicially separated to recover her alimony or estovers. Obsolete.

ESTOVERS. An allowance made to a person out of an estate or other thing for his or her support, as for food and raiment.

An allowance (more commonly called "alimony") granted to a woman divorced *a mensa et thoro*, for her support out of her husband's estate. 1 Bl. Comm. 441.

The right or privilege which a tenant has to furnish himself with so much wood from the demised premises as may be sufficient or necessary for his fuel, fences, and other agricultural operations. 2 Bl. Comm. 35; Woodf. Landl. & Ten. 232; Zimmerman v. Shreeve, 59 Md. 363; Lawrence v. Hunter, 9 Watts (Pa.) 78; Livingston v. Reynolds, 2 Hill (N. Y.) 159.

—Common of estovers. A liberty of taking necessary wood for the use or furniture of a house or farm from off another's estate, in common with the owner or with others. 2 Bl. Comm. 35.

ESTRAY. Cattle whose owner is unknown. 2 Kent, Comm. 359; Spelman; 29 Iowa, 437. Any beast, not wild, found within any lordship, and not owned by any man. Cowell; 1 Bl. Comm. 297.

Estray must be understood as denoting a wandering beast whose owner is unknown to the person who takes it up. An estray is an animal that has escaped from its owner, and wanders or strays about; usually defined, at common law, as a wandering animal whose owner is unknown. An animal cannot be an estray when on the range where it was raised, and permitted

by its owner to run, and especially when the owner is known to the party who takes it up. The fact of its being breachy or vicious does not make it an estray. Walters v. Glatz, 29 Iowa, 439; Roberts v. Barnes, 27 Wis. 425; Kinney v. Roe, 70 Iowa, 509, 30 N. W. 776; Shepherd v. Hawley, 4 Or. 208.

ESTREAT, *v.* To take out a forfeited recognizance from the records of a court, and return it to the court of exchequer, to be prosecuted. See ESTREAT, *n.*

ESTREAT, *n.* (From Lat. *extractum.*) In English law. A copy or extract from the book of estreats, that is, the rolls of any court, in which the amercements or fines, recognizances, etc., imposed or taken by that court upon or from the accused, are set down, and which are to be levied by the bailiff or other officer of the court. Cowell; Brown.

A forfeited recognizance taken out from among the other records for the purpose of being sent up to the exchequer, that the parties might be sued thereon, was said to be estreated. 4 Bl. Comm. 253. And see Louisiana Society v. Cage, 45 La. Ann. 1394, 14 South. 422.

ESTRECIATUS. Straightened, as applied to roads. Cowell.

ESTREPE. To strip; to despoil; to lay waste; to commit waste upon an estate, as by cutting down trees, removing buildings, etc. To injure the value of a reversionary interest by stripping or spoiling the estate.

ESTREPEMENT. A species of aggravated waste, by stripping or devastating the land, to the injury of the reversioner, and especially pending a suit for possession.

—Estrepement, writ of. This was a common-law writ of waste, which lay in particular for the reversioner against the tenant for life, in respect of damage or injury to the land committed by the latter. As it was only auxiliary to a real action for recovery of the land, and as equity afforded the same relief by injunction, the writ fell into disuse.

ET. And. The introductory word of several Latin and law French phrases formerly in common use.

ET ADJOURNATUR. And it is adjourned. A phrase used in the old reports, where the argument of a cause was adjourned to another day, or where a second argument was had. 1 Keb. 692, 754, 773.

ET AL. An abbreviation for *et alii*, "and others."

ET ALII È CONTRA. And others on the other side. A phrase constantly used in the Year Books, in describing a joinder in issue. P. 1 Edw. II. *Prist; et alii è contra, et sic ad patriam:* ready; and others, *è contra*, and so to the country. T. 3 Edw. III. 4.

ET ALIUS. And another. The abbreviation et al. (sometimes in the plural written *et als.*) is affixed to the name of the person first mentioned, where there are several plaintiffs, grantors, persons addressed, etc.

ET ALLOCATUR. And it is allowed.

ET CÆTERA. And others; and other things; and so on. In its abbreviated form (*etc.*) this phrase is frequently affixed to one of a series of articles or names to show that others are intended to follow or understood to be included. So, after reciting the initiatory words of a set formula, or a clause already given in full, *etc.* is added, as an abbreviation, for the sake of convenience. See Lathers v. Keogh, 39 Hun (N. Y.) 579; Com. v. Ross, 6 Serg. & R. (Pa.) 428; In re Schouler, 134 Mass. 426; High Court v. Schweitzer, 70 Ill. App. 143.

ET DE CEO SE METTENT EN LE PAYS. L. Fr. And of this they put themselves upon the country.

ET DE HOC PONIT SE SUPER PATRIAM. And of this he puts himself upon the country. The formal conclusion of a common-law plea in bar by way of traverse. The literal translation is retained in the modern form.

ET EI LEGITUR IN HÆC VERBA. L. Lat. And it is read to him in these words. Words formerly used in entering the prayer of oyer on record.

ET HABEAS IBI TUNC HOC BREVE. And have you then there this writ. The formal words directing the return of a writ. The literal translation is retained in the modern form of a considerable number of writs.

ET HABUIT. And he had it. A common phrase in the Year Books, expressive of the allowance of an application or demand by a party. Parn. *demanda la view. Et habuit*, etc. M. 6 Edw. III. 49.

ET HOC PARATUS EST VERIFICARE. And this he is prepared to verify. The Latin form of concluding a plea in confession and avoidance.

These words were used, when the pleadings were in Latin, at the conclusion of any pleading which contained new affirmative matter. They expressed the willingness or readiness of the party so pleading to establish by proof the matter alleged in his pleading. A pleading which concluded in that manner was technically said to "conclude with a verification," in contradistinction to a pleading which simply denied matter alleged by the opposite party, and which for that reason was said to "conclude to the country," because the party merely put himself upon the country, or left the matter to the jury. Brown.

ET HOC PETIT QUOD INQUIRATUR PER PATRIAM. And this he prays may be inquired of by the country. The conclusion of a plaintiff's pleading, tendering an issue to the country. 1 Salk. 6. Literally translated in the modern forms.

ET INDE PETIT JUDICIUM. And thereupon [or thereof] he prays judgment. A clause at the end of pleadings, praying the judgment of the court in favor of the party pleading. It occurs as early as the time of Bracton, and is literally translated in the modern forms. Bract. fol. 57*b*; Crabb, Eng. Law, 217.

ET INDE PRODUCIT SECTAM. And thereupon he brings suit. The Latin conclusion of a declaration, except against attorneys and other officers of the court. 3 Bl. Comm. 295.

ET MODO AD HUNC DIEM. Lat. And now at this day. This phrase was the formal beginning of an entry of appearance or of a continuance. The equivalent English words are still used in this connection.

ET NON. Lat. And not. A technical phrase in pleading, which introduces the negative averments of a special traverse. It has the same force and effect as the words "*absque hoc*," and is occasionally used instead of the latter.

ET SEQ. An abbreviation for *et sequentia*, "and the following." Thus a reference to "p. 1, et seq." means "page first and the following pages."

ET SIC. And so. In the Latin forms of pleading these were the introductory words of a special conclusion to a plea in bar, the object being to render it positive and not argumentative; as *et sic nil debet.*

ET SIC AD JUDICIUM. And so to judgment. Yearb. T. 1 Edw. II. 10.

ET SIC AD PATRIAM. And so to the country. A phrase used in the Year Books, to record an issue to the country.

ET SIC FECIT. And he did so. Yearb. P. 9 Hen. VI. 17.

ET SIC PENDET. And so it hangs. A term used in the old reports to signify that a point was left undetermined. T. Raym. 168.

ET SIC ULTERIUS. And so on; and so further; and so forth. Fleta, lib. 2, c. 50, § 27.

ET UX. An abbreviation for *et uxor*,—"and wife." Where a grantor's wife joins him in the conveyance, it is sometimes expressed (in abstracts, etc.) to be by "A. B. *et ux.*"

ETIQUETTE OF THE PROFESSION. The code of honor agreed on by mutual understanding and tacitly accepted by members of the legal profession, especially by the bar. Wharton.

Eum qui nocentem infamat, non est æquum et bonum ob eam rem condemnari; delicta enim nocentium nota esse oportet et expedit. It is not just and proper that he who speaks ill of a bad man should be condemned on that account; for it is fitting and expedient that the crimes of bad men should be known. Dig. 47, 10, 17; 1 Bl. Comm. 125.

EUNDO ET REDEUNDO. Lat. In going and returning. Applied to vessels. 3 C. Rob. Adm. 141.

EUNDO, MORANDO, ET REDEUNDO. Lat. Going, remaining, and returning. A person who is privileged from arrest (as a witness, legislator, etc.) is generally so privileged *eundo, morando, et redeundo;* that is, on his way to the place where his duties are to be performed, while he remains there, and on his return journey.

EUNOMY. Equal laws and a well-adjusted constitution of government.

EUNUCH. A male of the human species who has been castrated. See Domat, liv. prél. tit. 2, § 1, n. 10. Eckert v. Van Pelt, 69 Kan. 357, 76 Pac. 909, 66 L. R. A. 266.

EVASIO. Lat. In old practice. An escape from prison or custody. Reg. Orig. 312.

EVASION. A subtle endeavoring to set aside truth or to escape the punishment of the law. This will not be allowed. If one person says to another that he will not strike him, but will give him a pot of ale to strike first, and, accordingly, the latter strikes, the returning the blow is punishable; and, if the person first striking is killed, it is murder, for no man shall evade the justice of the law by such a pretense. 1 Hawk. P. C. 81. So no one may plead ignorance of the law to evade it. Jacob.

EVASIVE. Tending or seeking to evade; elusive; shifting; as an *evasive* argument or plea.

EVENINGS. In old English law. The delivery at even or night of a certain portion of grass, or corn, etc., to a customary tenant, who performs the service of cutting, mowing, or reaping for his lord, given him

as a gratuity or encouragement. Kennett, Gloss.

EVENT. In reference to judicial and quasi judicial proceedings, the "event" means the conclusion, end, or final outcome or result of a litigation; as, in the phrase "abide the event," speaking of costs or of an agreement that one suit shall be governed by the determination in another. Reeves v. McGregor, 9 Adol. & El. 576; Benjamin v. Ver Nooy, 168 N. Y. 578, 61 N. E. 971; Commercial Union Assur. Co. v. Scammon, 35 Ill. App. 660.

Eventus est qui ex causâ sequitur; et dicitur eventus quia ex causis evenit. 9 Coke, 81. An event is that which follows from the cause, and is called an "event" because it eventuates from causes.

Eventus varios res nova semper habet. Co. Litt. 379. A new matter always produces various events.

EVERY. Each one of all; the term includes all the separate individuals who constitute the whole, regarded one by one. Geary v. Parker, 65 Ark. 521, 47 S. W. 238; Purdy v. People, 4 Hill (N. Y.) 413.

Every man must be taken to contemplate the probable consequences of the act he does. Lord Ellenborough, 9 East, 277. A fundamental maxim in the law of evidence. Best, Pres. § 16; 1 Phil. Ev. 444.

EVES-DROPPERS. See EAVES-DROPPERS.

EVICT. In the civil law. To recover anything from a person by virtue of the judgment of a court or judicial sentence.

At common law. To dispossess, or turn out of the possession of lands by process of law. Also to recover land by judgment at law. "If the land is *evicted*, no rent shall be paid." 10 Coke, 128*a*.

EVICTION. Dispossession by process of law; the act of depriving a person of the possession of lands which he has held, in pursuance of the judgment of a court. Reasoner v. Edmundson, 5 Ind. 395; Cowdrey v. Coit, 44 N. Y. 392, 4 Am. Rep. 690; Home Life Ins. Co. v. Sherman, 46 N. Y. 372.

Technically, the dispossession must be by judgment of law; if otherwise, it is an *ouster*.

Eviction implies an entry under paramount title, so as to interfere with the rights of the grantee. The object of the party making the entry is immaterial, whether it be to take all or a part of the land itself or merely an incorporeal right. Phrases equivalent in meaning are "ouster by paramount title," "entry and disturbance," "possession under an elder title," and the like. Mitchell v. Warner, 5 Conn. 497.

Eviction is an actual expulsion of the lessee out of all or some part of the demised premises. Pendleton v. Dyett, 4 Cow. (N. Y.) 581, 585.

In a more popular sense, the term denotes turning a tenant of land out of possession, either by re-entry or by legal proceedings, such as an action of ejectment. Sweet.

By a loose extension, the term is sometimes applied to the ousting of a person from the possession of chattels; but, properly, it applies only to realty.

In the civil law. The abandonment which one is obliged to make of a thing, in pursuance of a sentence by which he is condemned to do so. Poth. Contr. Sale, pt. 2, c. 1, § 2, art. 1, no. 83. The abandonment which a buyer is compelled to make of a thing purchased, in pursuance of a judicial sentence.

Eviction is the loss suffered by the buyer of the totality of the thing sold, or of a part thereof, occasioned by the right or claims of a third person. Civil Code La. art. 2500.

—Actual eviction is an actual expulsion of the tenant out of all or some part of the demised premises; a physical ouster or dispossession from the very thing granted or some substantial part thereof. Knotts v. McGregor, 47 W. Va. 566, 35 S. E. 899; Talbott v. English, 156 Ind. 299, 59 N. E. 857; Seigel v. Neary, 38 Misc. Rep. 297, 77 N. Y. Supp. 854.**—Constructive eviction,** as the term is used with reference to breach of the covenants of warranty and of quiet enjoyment, means the inability of the purchaser to obtain possession by reason of a paramount outstanding title. Fritz v. Pusey, 31 Minn. 368, 18 N. W. 94. With reference to the relation of landlord and tenant, there is a "constructive eviction" when the former, without intent to oust the latter, does some act which deprives the tenant of the beneficial enjoyment of the demised premises or materially impairs such enjoyment. Realty Co. v. Fuller, 33 Misc. Rep. 109, 67 N. Y. Supp. 146; Talbott v. English, 156 Ind. 299, 59 N. E. 857.

EVIDENCE. Any species of proof, or probative matter, legally presented at the trial of an issue, by the act of the parties and through the medium of witnesses, records, documents, concrete objects, etc., for the purpose of inducing belief in the minds of the court or jury as to their contention. Hotchkiss v. Newton, 10 Ga. 567; State v. Thomas, 50 La. Ann. 148, 23 South. 250; Cook v. New Durham, 64 N. H. 419, 13 Atl. 650; Kring v. Missouri, 107 U. S. 221, 2 Sup. Ct. 443, 27 L. Ed. 506; O'Brien v. State, 69 Neb. 691, 96 N. W. 650; Hubbell v. U. S., 15 Ct. Cl. 606; McWilliams v. Rodgers, 56 Ala. 93.

The word "evidence," in legal acceptation, includes all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved. 1 Greenl. Ev. c. 1, § 1.

That which is legally submitted to a jury, to enable them to decide upon the questions in dispute or issue, as pointed out by the pleadings, and distinguished from all comment and argument, is termed "evidence." 1 Starkie, Ev. pt. 1, § 3.

Synonyms distinguished. The term "evidence" is to be carefully distinguished from its synonyms "proof" and "testimony." "Proof" is the logically sufficient reason for assenting to the truth of a proposition advanced. In its juridical sense it is a term of wide import, and

comprehends everything that may be adduced at a trial, within the legal rules, for the purpose of producing conviction in the mind of judge or jury, aside from mere argument; that is, everything that has a probative force intrinsically, and not merely as a deduction from, or combination of, original probative facts. But "evidence" is a narrower term, and includes only such kinds of proof as may be legally presented at a trial, by the act of the parties, and through the aid of such concrete facts as witnesses, records, or other documents. Thus, to urge a presumption of law in support of one's case is adducing proof, but it is not offering evidence. "Testimony," again, is a still more restricted term. It properly means only such evidence as is delivered by a witness on the trial of a cause, either orally or in the form of affidavits or depositions. Thus, an ancient deed, when offered under proper circumstances, is evidence, but it could not strictly be called "testimony." "Belief" is a subjective condition resulting from proof. It is a conviction of the truth of a proposition, existing in the mind, and induced by persuasion, proof, or argument addressed to the judgment.

The bill of exceptions states that all the "testimony" is in the record; but this is not equivalent to a statement that all the "evidence" is in the record. Testimony is one species of evidence. But the word "evidence" is a generic term which includes every species of it. And, in a bill of exceptions, the general term covering all species should be used in the statement as to its embracing the evidence, not the term "testimony," which is satisfied if the bill only contains all of that species of evidence. The statement that all the testimony is in the record may, with reference to judicial records, properly be termed an "affirmative pregnant." Gazette Printing Co. v. Morss, 60 Ind. 157.

The word "proof" seems properly to mean anything which serves, either immediately or mediately, to convince the mind of the truth or falsehood of a fact or proposition. It is also applied to the conviction generated in the mind by proof properly so called. The word "evidence" signifies, in its original sense, the state of being evident, *i. e.*, plain, apparent, or notorious. But by an almost peculiar inflection of our language, it is applied to that which tends to render evident or to generate proof. Best, Ev. §§ 10, 11.

Classification. There are many species of evidence, and it is susceptible of being classified on several different principles. The more usual divisions are here subjoined.

Evidence is either *judicial* or *extrajudicial.* Judicial evidence is the means, sanctioned by law, of ascertaining in a judicial proceeding the truth respecting a question of fact, (Code Civ. Proc. Cal. § 1823;) while extrajudicial evidence is that which is used to satisfy private persons as to facts requiring proof.

Evidence is either *primary* or *secondary.* Primary evidence is that kind of evidence which, under every possible circumstance, affords the greatest certainty of the fact in question. Thus, a written instrument is itself the best possible evidence of its existence and contents. Secondary evidence is that which is inferior to primary. Thus, a copy of an instrument, or oral evidence of its contents, is secondary evidence of the instrument and contents. Code Civ. Proc. Cal. §§ 1829, 1830.

In other words, primary evidence means original or first-hand evidence; the best evidence that the nature of the case admits of; the evidence which is required in the first instance, and which must fail before secondary evidence can be admitted. Thus, an original document is primary evidence; a copy of it would be secondary. That evidence which the nature of the case or question suggests as the proper means of ascertaining the truth. See Cross v. Baskett, 17 Or. 84, 21 Pac. 47; Civ. Code Ga. 1895, § 5164. *Secondary* evidence is that species of evidence which becomes admissible, as being the next best, when the primary or best evidence of the fact in question is lost or inaccessible; as when a witness details orally the contents of an instrument which is lost or destroyed. Williams v. Davis, 56 Tex. 253; Baucum v. George, 65 Ala. 259; Roberts v. Dixon, 50 Kan. 436, 31 Pac. 1083.

Evidence is either *direct* or *indirect.* Direct evidence is evidence directly proving any matter, as opposed to circumstantial evidence, which is often called "indirect." It is usually conclusive, but, like other evidence, it is fallible, and that on various accounts. It is not to be confounded with primary evidence, as opposed to secondary, although in point of fact it usually is primary. Brown; Com. v. Webster, 5 Cush. (Mass.) 310, 52 Am. Dec. 711; Pease v. Smith, 61 N. Y. 477; State v. Calder, 23 Mont. 504, 59 Pac. 903; People v. Palmer, 11 N. Y. St. Rep. 820; Lake County v. Neilon, 44 Or. 14, 74 Pac. 212. Indirect evidence is evidence which does not tend directly to prove the controverted fact, but to establish a state of facts, or the existence of other facts, from which it will follow as a logical inference. Inferential evidence as to the truth of a disputed fact, not by testimony of any witness to the fact, but by collateral circumstances ascertained by competent means. 1 Starkie, Ev. 15. See Code Civ. Proc. Cal. 1903, § 1832; Civ. Code Ga. 1895, § 5143.

Evidence is either *intrinsic* or *extrinsic.* Intrinsic evidence is that which is derived from a document wthout anything to explain it. Extrinsic evidence is external evidence, or that which is not contained in the body of an agreement, contract, and the like.

Compound and descriptive terms.—Adminicular evidence. Auxiliary or supplementary evidence, such as is presented for the purpose of explaining and completing other evidence. (Chiefly used in ecclesiastical law.)—**Circumstantial evidence.** This is proof of various facts or circumstances which usually attend the main fact in dispute, and therefore tend to prove its existence, or to sustain, by their consistency, the hypothesis claimed. Or as otherwise defined, it consists in reasoning from facts which are known or proved to establish such as are conjectured to exist. See, more fully, CIRCUMSTANTIAL EVIDENCE.—**Competent evidence.** That which the very nature of the thing to be proven requires, as, the production of a writing where its contents are the subject of inquiry. 1 Greenl. Ev. § 2; Chapman v. McAdams, 1 Lea (Tenn.) 504; Horbach v. State, 43 Tex. 249. Also, generally, admissible or relevant, as the opposite of "incompetent," (see *infra.*) State v. Johnson, 12 Minn. 476 (Gil. 378), 93 Am. Dec. 241.—**Conclusive evidence** is that which is incontrovertible, either because the law does not permit it to be contradicted, or because it is so strong and convincing as to overbear all proof to the contrary and establish the proposition in question beyond any reasonable doubt. Wood v. Chapin, 13 N. Y. 509, 67 Am. Dec. 62; Haupt v. Pohlmann, 24 N. Y. Super. Ct. 121; Moore v. Hopkins, 83 Cal. 270, 23 Pac. 318, 17 Am. St. Rep. 248; West v. West, 90 Iowa, 41, 57 N. W. 639; Freese v. Loan Soc., 139 Cal. 392, 73 Pac. 172; People v. Stephenson, 11 Misc. Rep. 141, 32 N. Y. Supp. 1112.—**Corroborative evidence.** Strengthening or confirming evidence; additional evidence of a different character adduced in support of the same fact or proposition. Code Civ. Proc. Cal. § 1839.—**Cumulative evidence.** Additional or corroborative evidence to the same point. That which goes to prove what has already been established by other evidence. Glidden v. Dunlap, 28 Me. 383; Parker v. Hardy, 24 Pick. (Mass.) 248; Waller v. Graves,

20 Conn. 310; Roe v. Kalb, 37 Ga. 459. All evidence material to the issue, after any such evidence has been given, is in a certain sense cumulative; that is, is added to what has been given before. It tends to sustain the issue. But cumulative evidence, in legal phrase, means evidence from the same or a new witness, simply repeating, in substance and effect, or adding to, what has been before testified to. Parshall v. Klinck, 43 Barb. (N. Y.) 212. Evidence is not cumulative merely because it tends to establish the same ultimate or *principally controverted* fact. Cumulative evidence is additional evidence of the same kind to the same point. Able v. Frazier, 43 Iowa, 177.—**Documentary evidence.** Evidence supplied by writings and documents of every kind in the widest sense of the term; evidence derived from conventional symbols (such as letters) by which ideas are represented on material substances.—**Evidence aliunde.** Evidence from outside, from another source. In certain cases a written instrument may be explained by evidence *aliunde*, that is, by evidence drawn from sources exterior to the instrument itself, *e. g.*, the testimony of a witness to conversations, admissions, or preliminary negotiations.—**Expert evidence.** Testimony given in relation to some scientific, technical, or professional matter by experts, *i. e.*, persons qualified to speak authoritatively by reason of their special training, skill, or familiarity with the subject.—**Extraneous evidence.** With reference to a contract, deed, will, or any writing, extraneous evidence is such as is not furnished by the document itself, but is derived from outside sources; the same as evidence *aliunde*. (See *supra*.)—**Hearsay evidence.** Evidence not proceeding from the personal knowledge of the witness, but from the mere repetition of what he has heard others say. See, more fully, HEARSAY.—**Incompetent evidence.** Evidence which is not admissible under the established rules of evidence; evidence which the law does not permit to be presented at all, or in relation to the particular matter, on account of lack of originality or of some defect in the witness, the document, or the nature of the evidence itself. Texas Brewing Co. v. Dickey (Tex. Civ. App.) 43 S. W. 578; Bell v. Bumstead, 60 Hun, 580, 14 N. Y. Supp. 697; Atkins v. Elwell, 45 N. Y. 757; People v. Mullings, 83 Cal. 138, 23 Pac. 229, 17 Am. St. Rep. 223.—**Inculpatory evidence.** Criminative evidence; that which tends, or is intended, to establish the guilt of the accused. —**Indispensable evidence.** That without which a particular fact cannot be proved. Code Civ. Proc. Cal. 1903, § 1836; Ballinger's Ann. Codes & St. Or. 1901, § 689.—**Legal evidence.** A broad general term meaning all admissible evidence, including both oral and documentary, but with a further implication that it must be of such a character as tends reasonably and substantially to prove the point, not to raise a mere suspicion or conjecture. Lewis v. Clyde S. S. Co., 132 N. C. 904, 44 S. E. 666; Curtis v. Bradley, 65 Conn. 99, 31 Atl. 591, 28 L. R. A. 143, 48 Am. St. Rep. 177; West v. Hayes, 51 Conn. 533.—**Material evidence.** Such as is relevant and goes to the substantial matters in dispute, or has a legitimate and effective influence or bearing on the decision of the case. Porter v. Valentine, 18 Misc. Rep. 213, 41 N. Y. Supp. 507.—**Mathematical evidence.** Demonstrative evidence; such as establishes its conclusions with absolute necessity and certainty. It is used in contradistinction to *moral* evidence.—**Moral evidence.** As opposed to "mathematical" or "demonstrative" evidence, this term denotes that kind of evidence which, without developing an absolute and necessary certainty, generates a high degree of probability or persuasive force. It is founded upon analogy or induction, experience of the ordinary course of nature or the sequence of events, and the testimony of men.—**Newly-discovered evidence.** Evidence of a new and material fact, or new evidence in relation to a fact in issue, discovered by a party to a cause after the rendition of a verdict or judgment therein. In re McManus, 35 Misc. Rep. 678, 72 N. Y. Supp. 409; Wynne v. Newman, 75 Va. 816; People v. Priori, 164 N. Y. 459, 58 N. E. 668.—**Opinion evidence.** Evidence of what the witness thinks, believes, or infers in regard to facts in dispute, as distinguished from his personal knowledge of the facts themselves; not admissible except (under certain limitations) in the case of experts. See Lipscomb v. State, 75 Miss. 559, 23 South. 210.—**Oral evidence.** Evidence given by word of mouth; the oral testimony of a witness.—**Original evidence.** An original document, writing, or other material object introduced in evidence (Ballinger's Ann. Codes & St. Or. 1901, § 682) as distinguished from a copy of it or from extraneous evidence of its contents or purport.—**Parol evidence.** Oral or verbal evidence; that which is given by word of mouth; the ordinary kind of evidence, given by witnesses in court. 3 Bl. Comm. 369. In a particular sense, and with reference to contracts, deeds, wills, and other writings, parol evidence is the same as extraneous evidence or evidence *aliunde*. (See *supra*.)—**Partial evidence** is that which goes to establish a detached fact, in a series tending to the fact in dispute. It may be received, subject to be rejected as incompetent, unless connected with the fact in dispute by proof of other facts; for example, on an issue of title to real property, evidence of the continued possession of a remote occupant is partial, for it is of a detached fact, which may or may not be afterwards connected with the fact in dispute. Code Civ. Proc. Cal. § 1834.—**Positive evidence.** Direct proof of the fact or point in issue; evidence which, if believed, establishes the truth or falsehood of a fact in issue, and does not arise from any presumption. It is distinguished from circumstantial evidence. 3 Bouv. Inst. no. 3057; Cooper v. Holmes, 71 Md. 20, 17 Atl. 711; Davis v. Curry, 2 Bibb (Ky.) 239; Com. v. Webster, 5 Cush. (Mass.) 310, 52 Am. Dec. 711.—**Presumptive evidence.** This term has several meanings in law. (1) Any evidence which is not direct and positive; the proof of minor or other facts incidental to or usually connected with the fact sought to be proved, which, when taken together, inferentially establish or prove the fact in question to a reasonable degree of certainty; evidence drawn by human experience from the connection of cause and effect and observation of human conduct; the proof of facts from which, with more or less certainty, according to the experience of mankind of their more or less universal connection, the existence of other facts can be deduced. In this sense the term is nearly equivalent to "circumstantial" evidence. See 1 Starkie, Ev. 558; 2 Saund. Pl. & Ev. 673; Civ. Code Ga. 1895, § 5143; Davis v. Curry, 2 Bibb (Ky.) 239; Horbach v. Miller, 4 Neb. 44; State v. Miller, 9 Houst. (Del.) 564, 32 Atl. 137. (2) Evidence which must be received and treated as true and sufficient until rebutted by other testimony; as, where a statute provides that certain facts shall be presumptive evidence of guilt, of title, etc. State v. Mitchell, 119 N. C. 784, 25 S. E. 783; State v. Intoxicating Liquors, 80 Me. 57, 12 Atl. 794. (3) Evidence which admits of explanation or contradiction by other evidence, as distinguished from conclusive evidence. Burrill, Circ. Ev. 89.—**Prima facie evidence.** Evidence good and sufficient on its face; such evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense, and which if not rebutted or contradicted, will remain sufficient. Crane v. Morris, 6 Pet. 611, 8 L. Ed. 514; State v. Bur-

lingame, 146 Mo. 207, 48 S. W. 72; State v. Roten, 86 N. C. 701; Blough v. Parry, 144 Ind. 463, 43 N. E. 560. Evidence which suffices for the proof of a particular fact until contradicted and overcome by other evidence. Code Civ. Proc. Cal. 1903, § 1833. Evidence which, standing alone and unexplained, would maintain the proposition and warrant the conclusion to support which it is introduced. Emmons v. Bank, 97 Mass. 230. An inference or presumption of law, affirmative or negative of a fact, in the absence of proof, or until proof can be obtained or produced to overcome the inference. People v. Thacher, 1 Thomp. & C. (N. Y.) 167.—**Probable evidence.** Presumptive evidence is so called, from its foundation in probability.—**Real evidence.** Evidence furnished by things themselves, on view or inspection, as distinguished from a description of them by the mouth of a witness; *e. g.*, the physical appearance of a person when exhibited to the jury, marks, scars, wounds, finger-prints, etc., also the weapons or implements used in the commission of a crime, and other inanimate objects, and evidence of the physical appearance of a place (the scene of an accident or of the commission of a crime or of property to be taken under condemnation proceedings) as obtained by a jury when they are taken to view it.—**Rebutting evidence.** Evidence given to explain, repel, counteract, or disprove facts given in evidence by the adverse party. Davis v. Hamblin, 51 Md. 539; Railway Co. v. Wales, 5 O. C. D. 170; People v. Page, 1 Idaho, 195; State v. Fourchy, 51 La. Ann. 228, 25 South. 109. Also evidence given in opposition to a presumption of fact or a *prima facie* case; in this sense, it may be not only counteracting evidence, but evidence sufficient to counteract, that is, conclusive. Fain v. Cornett, 25 Ga. 186.—**Relevant evidence.** Such evidence as relates to, or bears directly upon, the point or fact in issue, and proves or has a tendency to prove the proposition alleged; evidence which conduces to prove a pertinent theory in a case. Platner v. Platner, 78 N. Y. 95; Seller v. Jenkins, 97 Ind. 438; Levy v. Campbell (Tex.) 20 S. W. 196; State v O'Neil, 13 Or. 183, 9 Pac. 286; 1 Whart. Ev. § 20.—**Satisfactory evidence.** Such evidence as is sufficient to produce a belief that the thing is true; credible evidence; that amount of proof which ordinarily produces a moral certainty or conviction in an unprejudiced mind; such evidence as, in respect to its amount or weight, is adequate or sufficient to justify the court or jury in adopting the conclusion in support of which it is adduced. Thayer v. Boyle, 30 Me. 481; Walker v. Collins, 59 Fed. 74, 8 C. C. A. 1; U. S. v. Lee Huen (D. C.) 118 Fed. 457; People v. Stewart, 80 Cal. 129, 22 Pac. 124; Pittman v. Pittman, 72 Ill. App. 503.—**Second-hand evidence.** Evidence which has passed through one or more media before reaching the witness; hearsay evidence.—**State's evidence.** A popular term for testimony given by an accomplice or joint participant in the commission of a crime tending to criminate or convict the others, and given under an actual or implied promise of immunity for himself.—**Substantive evidence** is that adduced for the purpose of proving a fact in issue, as opposed to evidence given for the purpose of discrediting a witness, (*i. e.*, showing that he is unworthy of belief,) or of corroborating his testimony. Best, Ev. 246, 773, 803.—**Substitutionary evidence.** Such as is admitted as a substitute for what would be the original or primary instrument of evidence; as where a witness is permitted to testify to the contents of a lost document.—**Sufficient evidence.** Adequate evidence; such evidence, in character, weight, or amount, as will legally justify the judicial or official action demanded; according to circumstances, it may be "prima facie" or "satisfactory" evidence, according to the definitions of those terms given above. Moore v. Stone (Tex. Civ. App.) 36 S. W. 910; People v. Stern, 33 Misc. Rep. 455, 68 N. Y. Supp. 732; Mallery v. Young, 94 Ga. 804, 22 S. E. 142; Parker v. Overman, 18 How. 141, 15 L. Ed. 318; State v. Newton, 33 Ark. 284.—**Traditionary evidence.** Evidence derived from tradition or reputation or the statements formerly made by persons since deceased, in regard to questions of pedigree, ancient boundaries, and the like, where no living witnesses can be produced having knowledge of the facts. Lay v. Neville, 25 Cal. 554.

EVIDENCE OF DEBT. A term applied to written instruments or securities for the payment of money, importing on their face the existence of a debt. 1 Rev. St. N. Y. p. 599, § 55.

EVIDENCE OF TITLE. A deed or other document establishing the title to property, especially real estate.

EVIDENTIARY. Having the quality of evidence; constituting evidence; evidencing. A term introduced by Bentham, and, from its convenience, adopted by other writers.

EVOCATION. In French law. The withdrawal of a cause from the cognizance of an inferior court, and bringing it before another court or judge. In some respects this process resembles the proceedings upon *certiorari*.

EWAGE. (L. Fr. *Ewe*, water.) In old English law. Toll paid for water passage. The same as *aquage*. Tomlins.

EWBRICE. Adultery; spouse breach; marriage breach. Cowell; Tomlins.

EWRY. An office in the royal household where the table linen, etc., is taken care of. Wharton.

EX. **1.** A Latin preposition meaning from, out of, by, on, on account of, or according to.

2. A prefix, denoting removal or cessation. Prefixed to the name of an office, relation, *status*, etc., it denotes that the person spoken of once occupied that office or relation, but does so no longer, or that he is now *out* of it. Thus, *ex*-mayor, *ex*-partner, *ex*-judge.

3. A prefix which is equivalent to "without," "reserving," or "excepting." In this use, probably an abbreviation of "except." Thus, *ex*-interest, *ex*-coupons.

"A sale of bonds 'ex. July coupons' means a sale reserving the coupons; that is, a sale in which the seller receives, in addition to the purchase price, the benefit of the coupons, which benefit he may realize either by detaching them or receiving from the buyer an equivalent consideration." Porter v. Wormser, 94 N. Y. 445.

4. Also used as an abbreviation for "exhibit." See Dugan v. Trisler, 69 Ind. 555.

EX ABUNDANTI. Out of abundance; abundantly; superfluously; more than sufficient. Calvin.

EX ABUNDANTI CAUTELA. Lat. Out of abundant caution. "The practice has arisen *abundanti cautela*." 8 East, 326; Lord Ellenborough, 4 Maule & S. 544.

EX ADVERSO. On the other side. 2 Show. 461. Applied to counsel.

EX ÆQUITATE. According to equity; in equity. Fleta, lib. 3, c. 10, § 3.

EX ÆQUO ET BONO. A phrase derived from the civil law, meaning, in justice and fairness; according to what is just and good; according to equity and conscience. 3 Bl. Comm. 163.

EX ALTERA PARTE. Of the other part.

Ex antecedentibus et consequentibus fit optima interpretatio. The best interpretation [of a part of an instrument] is made from the antecedents and the consequents, [from the preceding and following parts.] 2 Inst. 317. The law will judge of a deed or other instrument, consisting of divers parts or clauses, by looking at the whole; and will give to each part its proper office, so as to ascertain and carry out the intention of the parties. Broom, Max. *577. The whole instrument is to be viewed and compared in all its parts, so that every part of it may be made consistent and effectual. 2 Kent, Comm. 555.

EX ARBITRIO JUDICIS. At, in, or upon the discretion of the judge. 4 Bl. Comm. 394. A term of the civil law. Inst. 4, 6, 31.

EX ASSENSU CURIÆ. By or with the consent of the court.

EX ASSENSU PATRIS. By or with the consent of the father. A species of dower *ad ostium ecclesiæ*, during the life of the father of the husband; the son, by the father's consent expressly given, endowing his wife with parcel of his father's lands. Abolished by 3 & 4 Wm. IV. c. 105, § 13.

EX ASSENSU SUO. With his assent. Formal words in judgments for damages by default. Comb. 220.

EX BONIS. Of the goods or property. A term of the civil law; distinguished from *in bonis*, as being descriptive of or applicable to property not in actual possession. Calvin.

EX CATHEDRA. From the chair. Originally applied to the decisions of the popes from their *cathedra*, or chair. Hence, authoritative; having the weight of authority.

EX CAUSA. L. Lat. By title.

EX CERTA SCIENTIA. Of certain or sure knowledge. These words were anciently used in patents, and imported full knowledge of the subject-matter on the part of the king. See 1 Coke, 40*b*.

EX COLORE. By color; under color of; under pretense, show, or protection of. Thus, *ex colore officii*, under color of office.

EX COMITATE. Out of comity or courtesy.

EX COMMODATO. From or out of loan. A term applied in the old law of England to a right of action arising out of a loan, (*commodatum.*) Glanv. lib. 10, c. 13; 1 Reeve, Eng. Law, 166.

EX COMPARATIONE SCRIPTORUM. By a comparison of writings or handwritings. A term in the law of evidence. Best, Pres. 218.

EX CONCESSIS. From the premises granted. According to what has been already allowed.

EX CONSULTO. With consultation or deliberation.

EX CONTINENTI. Immediately; without any interval or delay; incontinently. A term of the civil law. Calvin.

EX CONTRACTU. From or out of a contract. In both the civil and the common law, rights and causes of action are divided into two classes,—those arising *ex contractu*, (from a contract,) and those arising *ex delicto*, (from a delict or tort.) See 3 Bl. Comm. 117; Mackeld. Rom. Law, § 384. See Scharf v. People, 134 Ill. 240, 24 N. E. 761.

EX CURIA. Out of court; away from the court.

EX DEBITO JUSTITIÆ. From or as a debt of justice; in accordance with the requirement of justice; of right; as a matter of right. The opposite of *ex gratia*, (*q. v.*) 3 Bl. Comm. 48, 67.

EX DEFECTU SANGUINIS. From failure of blood; for want of issue.

EX DELICTO. From a delict, tort, fault, crime, or malfeasance. In both the civil and the common law, obligations and causes of action are divided into two great classes,—those arising *ex contractu*, (out of a contract,) and those *ex delicto*. The latter are such as grow out of or are founded

upon a wrong or tort, *e. g.*, trespass, trover, replevin. These terms were known in English law at a very early period. See Inst. 4, 1, pr.; Mackeld. Rom. Law, § 384; 3 Bl. Comm. 117; Bract. fol. 101*b*.

Ex delicto non ex supplicio emergit infamia. Infamy arises from the crime, not from the punishment.

EX DEMISSIONE, (commonly abbreviated *ex dem.*) Upon the demise. A phrase forming part of the title of the old action of ejectment.

EX DIRECTO. Directly; immediately. Story, Bills, § 199.

Ex diuturnitate temporis, omnia præsumuntur solemniter esse acta. From length of time [after lapse of time] all things are presumed to have been done in due form. Co. Litt. 6*b*; Best, Ev. Introd. § 43; 1 Greenl. Ev. § 20.

EX DOLO MALO. Out of fraud; out of deceitful or tortious conduct. A phrase applied to obligations and causes of action vitiated by fraud or deceit.

Ex dolo malo non oritur actio. Out of fraud no action arises; fraud never gives a right of action. No court will lend its aid to a man who founds his cause of action upon an immoral or illegal act. Cowp. 343; Broom, Max. 729.

Ex donationibus autem feoda militaria vel magnum serjeantium non continentibus oritur nobis quoddam nomen generale, quod est socagium. Co. Litt. 86. From grants not containing military fees or grand serjeanty, a kind of general name is used by us, which is "socage."

EX EMPTO. Out of purchase; founded on purchase. A term of the civil law, adopted by Bracton. Inst. 4, 6, 28; Bract. fol. 102. See ACTIO EX EMPTO.

EX FACIE. From the face; apparently; evidently. A term applied to what appears on the face of a writing.

EX FACTO. From or in consequence of a fact or action; actually. Usually applied to an unlawful or tortious act as the foundation of a title, etc. Sometimes used as equivalent to "*de facto*." Bract. fol. 172.

Ex facto jus oritur. The law arises out of the fact. Broom, Max. 102. A rule of law continues in abstraction and theory, until an act is done on which it can attach and assume as it were a body and shape. Best, Ev. Introd. § 1.

EX FICTIONE JURIS. By a fiction of law.

Ex frequenti delicto augetur pœna. 2 Inst. 479. Punishment increases with increasing crime.

EX GRATIA. Out of grace; as a matter of grace, favor, or indulgence; gratuitous. A term applied to anything accorded as a favor; as distinguished from that which may be demanded *ex debito*, as a matter of right.

EX GRAVI QUERELA. (From or on the grievous complaint.) In old English practice. The name of a writ (so called from its initial words) which lay for a person to whom any lands or tenements in fee were devised by will, (within any city, town, or borough wherein lands were devisable by custom,) and the heir of the devisor entered and detained them from him. Fitzh. Nat. Brev. 198, L, et seq.; 3 Reeve, Eng. Law, 49. Abolished by St. 3 & 4 Wm. IV. c. 27, § 36.

EX HYPOTHESI. By the hypothesis; upon the supposition; upon the theory or facts assumed.

EX INDUSTRIA. With contrivance or deliberation; designedly; on purpose. See 1 Kent, Comm. 318; Martin v. Hunter, 1 Wheat. 334, 4 L. Ed. 97.

EX INTEGRO. Anew; afresh.

EX JUSTA CAUSA. From a just or lawful cause; by a just or legal title.

EX LEGE. By the law; by force of law; as a matter of law.

EX LEGIBUS. According to the laws. A phrase of the civil law, which means according to the intent or spirit of the law, as well as according to the words or letter. Dig. 50, 16, 6. See Calvin.

EX LICENTIA REGIS. By the king's license. 1 Bl. Comm. 168, note.

EX LOCATO. From or out of lease or letting. A term of the civil law, applied to actions or rights of action arising out of the contract of *locatum*, (*q. v.*) Inst. 4, 6, 28. Adopted at an early period in the law of England. Bract. fol. 102; 1 Reeve, Eng. Law, 168.

EX MALEFICIO. Growing out of, or founded upon, misdoing or tort. This term is frequently used in the civil law as the synonym of "*ex delicto*," (*q. v.*,) and is thus contrasted with "*ex contractu*." In this sense it is of more rare occurrence in the common law, though found in Bracton, (fols. 99, 101, 102.)

Ex maleficio non oritur contractus. A contract cannot arise out of an act radically vicious and illegal. 1 Term, 734; 3 Term, 422; Broom, Max. 734.

Ex malis moribus bonæ leges natæ sunt. 2 Inst. 161. Good laws arise from evil morals, *i. e.*, are necessitated by the evil behavior of men.

EX MALITIA. From malice; maliciously. In the law of libel and slander, this term imports a publication that is false and without legal excuse. Dixon v. Allen, 69 Cal. 527, 11 Pac. 179.

EX MERO MOTU. Of his own mere motion; of his own accord; voluntarily and without prompting or request. Royal letters patent which are granted at the crown's own instance, and without request made, are said to be granted *ex mero motu.* When a court interferes, of its own motion, to object to an irregularity, or to do something which the parties are not strictly entitled to, but which will prevent injustice, it is said to act *ex mero motu,* or *ex proprio motu,* or *sua sponte,* all these terms being here equivalent.

EX MORA. From or in consequence of delay. Interest is allowed *ex mora;* that is, where there has been delay in returning a sum borrowed. A term of the civil law. Story, Bailm. § 84.

EX MORE. According to custom. Calvin.

Ex multitudine signorum, colligitur identitas vera. From a great number of signs or marks, true identity is gathered or made up. Bac. Max. 103, in *regula* 25. A thing described by a great number of marks is easily identified, though, as to some, the description may not be strictly correct. Id.

EX MUTUO. From or out of loan. In the old law of England, a debt was said to arise *ex mutuo* when one lent another anything which consisted in number, weight, or measure. 1 Reeve, Eng. Law, 159; Bract. fol. 99.

EX NECESSITATE. Of necessity. 8 Rep. Ch. 123.

—Ex necessitate legis. From or by necessity of law. 4 Bl. Comm. 394.—**Ex necessitate rei.** From the necessity or urgency of the thing or case. 2 Pow. Dev. (by Jarman,) 308.

Ex nihilo nihil fit. From nothing nothing comes. Jackson v. Waldron, 13 Wend. (N. Y.) 178, 221; Root v. Stuyvesant, 18 Wend. (N. Y.) 257, 301.

Ex nudo pacto non oritur [nascitur] actio. Out of a nude or naked pact [that is, a bare parol agreement without consideration] no action arises. Bract. fol. 99; Fleta, lib. 2, c. 56, § 3; Plowd. 305. Out of a promise neither attended with particular solemnity (such as belongs to a specialty) nor with any consideration no legal liability can arise. 2 Steph. Comm. 113. A parol agreement, without a valid consideration, cannot be made the foundation of an action. A leading maxim both of the civil and common law. Cod. 2, 3, 10; Id. 5, 14, 1; 2 Bl. Comm. 445; Smith, Cont. 85, 86.

EX OFFICIO. From office; by virtue of the office; without any other warrant or appointment than that resulting from the holding of a particular office. Powers may be exercised by an officer which are not specifically conferred upon him, but are necessarily implied in his office; these are *ex officio.* Thus, a judge has *ex officio* the powers of a conservator of the peace. Courts are bound to notice public statutes judicially and *ex officio.*

—Ex officio information. In English law. A criminal information filed by the attorney general *ex officio* on behalf of the crown, in the court of king's bench, for offenses more immediately affecting the government, and to be distinguished from informations in which the crown is the nominal prosecutor. Mozley & Whitley; 4 Steph. Comm. 372–378.—**Ex officio oath.** An oath taken by offending priests; abolished by 13 Car. II. St. 1, c. 12.

Ex pacto illicito non oritur actio. From an illegal contract an action does not arise. Broom, Max. 742. See 7 Clark & F. 729.

EX PARTE. On one side only; by or for one party; done for, in behalf of, or on the application of, one party only. A judicial proceeding, order, injunction, etc., is said to be *ex parte* when it is taken or granted at the instance and for the benefit of one party only, and without notice to, or contestation by, any person adversely interested.

"*Ex parte,*" in the heading of a reported case, signifies that the name following is that of the party upon whose application the case is heard.

In its primary sense, *ex parte,* as applied to an application in a judicial proceeding, means that it is made by a person who is not a party to the proceeding, but who has an interest in the matter which entitles him to make the application. Thus, in a bankruptcy proceeding or an administration action, an application by A. B., a creditor, or the like, would be described as made "*ex parte* A. B.," *i. e.*, on the part of A. B.

In its more usual sense, *ex parte* means that an application is made by one party to a proceeding in the absence of the other. Thus, an *ex parte* injunction is one granted without the opposite party having had notice of the application. It would not be called "*ex parte*" if he had proper notice of it, and chose not to appear to oppose it. Sweet.

EX PARTE MATERNA. On the mother's side; of the maternal line.

EX PARTE PATERNA. On the father's side; of the paternal line.

The phrases "*ex parte materna*" and "*ex parte paterna*" denote the line or blood of the mother or father, and have no such restricted or limited sense as from the mother or father exclusively. Banta v. Demarest, 24 N. J. Law, 431.

EX PARTE TALIS. A writ that lay for a bailiff or receiver, who, having auditors appointed to take his accounts, cannot obtain of them reasonable allowance, but is cast into prison. Fitzh. Nat. Brev. 129.

Ex paucis dictis intendere plurima possis. Litt. § 384. You can imply many things from few expressions.

Ex paucis plurima concipit ingenium. Litt. § 550. From a few words or hints the understanding conceives many things.

EX POST FACTO. After the fact; by an act or fact occurring after some previous act or fact, and relating thereto; by subsequent matter; the opposite of *ab initio*. Thus, a deed may be good *ab initio*, or, if invalid at its inception, may be confirmed by matter *ex post facto*.

EX POST FACTO LAW. A law passed after the occurrence of a fact or commission of an act, which retrospectively changes the legal consequences or relations of such fact or deed. By Const. U. S. art. 1, § 10, the states are forbidden to pass "any *ex post facto* law." In this connection the phrase has a much narrower meaning than its literal translation would justify, as will appear from the extracts given below.

The phrase "*ex post facto*," in the constitution, extends to criminal and not to civil cases. And under this head is included: (1) Every law that makes an action, done before the passing of the law, and which was innocent when done, criminal, and punishes such action. (2) Every law that aggravates a crime, or makes it greater than it was when committed. (3) Every law that changes the punishment, and inflicts a greater punishment than the law annexed to the crime when committed. (4) Every law that alters the legal rules of evidence, and receives less or different testimony than the law required at the time of the commission of the offense, in order to convict the offender. All these, and similar laws, are prohibited by the constitution. But a law may be *ex post facto*, and still not amenable to this constitutional inhibition; that is, provided it mollifies, instead of aggravating, the rigor of the criminal law. Boston v. Cummins, 16 Ga. 102, 60 Am. Dec. 717; Cummings v. Missouri, 4 Wall. 277, 18 L. Ed. 356; U. S. v. Hall, 2 Wash. C. C. 366, Fed. Cas. No. 15,285; Woart v. Winnick, 3 N. H. 473, 14 Am. Dec. 384; Calder v. Bull, 3 Dall. 390, 1 L. Ed. 648; 3 Story, Const. 212.

An *ex post facto* law is one which renders an act punishable, in a manner in which it was not punishable when committed. Such a law may inflict penalties on the person, or pecuniary penalties which swell the public treasury. The legislature is therefore prohibited from passing a law by which a man's estate, or any part of it, shall be seized for a crime, which was not declared, by some previous law, to render him liable to such punishment. Fletcher v. Peck, 6 Cranch, 87, 138, 3 L. Ed. 162.

The plain and obvious meaning of this prohibition is that the legislature shall not pass any law, after a fact done by any citizen, which shall have relation to that fact, so as to punish that which was innocent when done; or to add to the punishment of that which was criminal; or to increase the malignity of a crime; or to retrench the rules of evidence, so as to make conviction more easy. This definition of an *ex post facto* law is sanctioned by long usage. Strong v. State, 1 Blackf. (Ind.) 196.

The term "*ex post facto* law," in the United States constitution, cannot be construed to include and to prohibit the enacting any law after a fact, nor even to prohibit the depriving a citizen of a vested right to property. Calder v. Bull, 3 Dall. 386, 1 L. Ed. 648.

"*Ex post facto*" and "retrospective" are not convertible terms. The latter is a term of wider signification than the former and includes it. All *ex post facto* laws are necessarily retrospective, but not *e converso*. A curative or confirmatory statute is retrospective, but not *ex post facto*. Constitutions of nearly all the states contain prohibitions against *ex post facto* laws, but only a few forbid retrospective legislation in specific terms. Black, Const. Prohib. §§ 170, 172, 222.

Retrospective laws divesting vested rights are impolitic and unjust; but they are not "*ex post facto* laws," within the meaning of the constitution of the United States, nor repugnant to any other of its provisions; and, if not repugnant to the state constitution, a court cannot pronounce them to be void, merely because in their judgment they are contrary to the principles of natural justice. Albee v. May, 2 Paine, 74, Fed. Cas. No. 134.

Every retrospective act is not necessarily an *ex post facto* law. That phrase embraces only such laws as impose or affect penalties or forfeitures. Locke v. New Orleans, 4 Wall. 172, 18 L. Ed. 334.

Retrospective laws which do not impair the obligation of contracts, or affect vested rights, or partake of the character of *ex post facto* laws, are not prohibited by the constitution. Bay v. Gage, 36 Barb. (N. Y.) 447.

Ex præcedentibus et consequentibus optima fit interpretatio. 1 Roll. 374. The best interpretation is made from the context.

EX PRÆCOGITATA MALICIA. Of malice aforethought. Reg. Orig. 102.

EX PROPRIO MOTU. Of his own accord.

EX PROPRIO VIGORE. By their or its own force. 2 Kent, Comm. 457.

EX PROVISIONE HOMINIS. By the provision of man. By the limitation of the party, as distinguished from the disposition of the law. 11 Coke, 80*b*.

EX PROVISIONE MARITI. From the provision of the husband.

EX QUASI CONTRACTU. From *quasi* contract. Fleta, lib. 2, c. 60.

EX RELATIONE. Upon relation or information. Legal proceedings which are instituted by the attorney general (or other proper person) in the name and behalf of the state, but on the information and at the instigation of an individual who has a private interest in the matter, are said to be taken "on the relation" (*ex relatione*) of such person, who is called the "relator." Such a cause is usually entitled thus: "State *ex rel.* Doe *v.* Roe."

In the books of reports, when a case is said

to be reported *ex relatione*, it is meant that the reporter derives his account of it, not from personal knowledge, but from the relation or narrative of some person who was present at the argument.

EX RIGORE JURIS. According to the rigor or strictness of law; in strictness of law. Fleta, lib. 3, c. 10, § 3.

EX SCRIPTIS OLIM VISIS. From writings formerly seen. A term used as descriptive of that kind of proof of handwriting where the knowledge has been acquired by the witness having seen letters or other documents professing to be the handwriting of the party, and having afterwards communicated personally with the party upon the contents of those letters or documents, or having otherwise acted upon them by written answers, producing further correspondence or acquiescence by the party in some matter to which they relate, or by the witness transacting with the party some business to which they relate, or by any other mode of communication between the party and the witness which, in the ordinary course of the transactions of life, induces a reasonable presumption that the letters or documents were the handwriting of the party. 5 Adol. & E. 730.

EX STATUTO. According to the statute. Fleta, lib. 5, c. 11, § 1.

EX STIPULATU ACTIO. In the civil law. An action of stipulation. An action given to recover marriage portions. Inst. 4, 6, 29.

EX TEMPORE. From or in consequence of time; by lapse of time. Bract. fols. 51, 52. *Ex diuturno tempore*, from length of time. Id. fol. 51*b*.

Without preparation or premeditation.

EX TESTAMENTO. From, by, or under a will. The opposite of *ab intestato*, (*q. v.*)

Ex tota materia emergat resolutio. The explanation should arise out of the whole subject-matter; the exposition of a statute should be made from all its parts together. Wing. Max. 238.

Ex turpi causa non oritur actio. Out of a base [illegal, or immoral] consideration, an action does [can] not arise. 1 Selw. N. P. 63; Broom, Max. 730, 732; Story, Ag. § 195.

Ex turpi contractu actio non oritur. From an immoral or iniquitous contract an action does not arise. A contract founded upon an illegal or immoral consideration cannot be enforced by action. 2 Kent, Comm. 466; Dig. 2, 14, 27, 4.

EX UNA PARTE. Of one part or side; on one side.

Ex uno disces omnes. From one thing you can discern all.

EX UTRAQUE PARTE. On both sides. Dyer, 126*b*.

EX UTRISQUE PARENTIBUS CONJUNCTI. Related on the side of both parents; of the whole blood. Hale, Com. Law, c. 11.

EX VI TERMINI. From or by the force of the term. From the very meaning of the expression used. 2 Bl. Comm. 109, 115.

EX VISCERIBUS. From the bowels. From the vital part, the very essence of the thing. 10 Coke, 24*b*; Homer v. Shelton, 2 Metc. (Mass.) 213. *Ex visceribus verborum*, from the mere words and nothing else. 1 Story, Eq. Jur. § 980; Fisher v. Fields, 10 Johns. (N. Y.) 495.

EX VISITATIONE DEI. By the dispensation of God; by reason of physical incapacity. Anciently, when a prisoner, being arraigned, stood silent instead of pleading, a jury was impaneled to inquire whether he obstinately stood mute or was dumb *ex visitatione Dei*. 4 Steph. Comm. 394.

Also by natural, as distinguished from violent, causes. When a coroner's inquest finds that the death was due to disease or other natural cause, it is frequently phrased "*ex visitatione Dei*."

EX VISU SCRIPTIONIS. From sight of the writing; from having seen a person write. A term employed to describe one of the modes of proof of handwriting. Best, Pres. 218.

EX VOLUNTATE. Voluntarily; from free-will or choice.

EXACTION. The wrongful act of an officer or other person in compelling payment of a fee or reward for his services, under color of his official authority, where no payment is due.

Between "extortion" and "exaction" there is this difference: that in the former case the officer extorts more than his due, when something is due to him; in the latter, he exacts what is not his due, when there is nothing due to him. Co. Litt. 368.

EXACTOR. In the civil law. A gatherer or receiver of money; a collector of taxes. Cod. 10, 19.

In old English law. A collector of the public moneys; a tax gatherer. Thus, *exactor regis* was the name of the king's tax collector, who took up the taxes and other debts due the treasury.

EXALTARE. In old English law. To raise; to elevate. Frequently spoken of water, *i. e.*, to raise the surface of a pond or pool.

EXAMEN. L. Lat. A trial. *Examen computi*, the balance of an account. Townsh. Pl. 223.

EXAMINATION. An investigation; search; interrogating.

In trial practice. The examination of a witness consists of the series of questions put to him by a party to the action, or his counsel, for the purpose of bringing before the court and jury in legal form the knowledge which the witness has of the facts and matters in dispute, or of probing and sifting his evidence previously given.

In criminal practice. An investigation by a magistrate of a person who has been charged with crime and arrested, or of the facts and circumstances which are alleged to have attended the crime and to fasten suspicion upon the party so charged, in order to ascertain whether there is sufficient ground to hold him to bail for his trial by the proper court. U. S. v. Stanton, 70 Fed. 890, 17 C. C. A. 475; State v. Conrad, 95 N. C. 669.

—Cross-examination. In practice. The examination of a witness upon a trial or hearing, or upon taking a deposition, by the party opposed to the one who produced him, upon his evidence given in chief, to test its truth, to further develop it, or for other purposes.—**Direct examination.** In practice. The first interrogation or examination of a witness, on the merits, by the party on whose behalf he is called. This is to be distinguished from an examination *in pais*, or on the *voir dire*, which is merely preliminary, and is had when the competency of the witness is challenged; from the cross-examination, which is conducted by the adverse party; and from the redirect examination which follows the cross-examination, and is had by the party who first examined the witness.—**Examination de bene esse.** A provisional examination of a witness; an examination of a witness whose testimony is important and might otherwise be lost, held out of court and before the trial, with the proviso that the deposition so taken may be used on the trial in case the witness is unable to attend in person at that time or cannot be produced.—**Examination of a long account.** This phrase does not mean the examination of the account to ascertain the result or effect of it, but the proof by testimony of the correctness of the items composing it. Magown v. Sinclair, 5 Daly (N. Y.) 63.—**Examination of bankrupt.** This is the interrogation of a bankrupt, in the course of proceedings in bankruptcy, touching the state of his property. This is authorized in the United States by Rev. St. § 5086; and section 5087 authorizes the examination of a bankrupt's wife.—**Examination of invention.** An inquiry made at the patent-office, upon application for a patent, into the novelty and utility of the alleged invention, and as to its interfering with any other patented invention. Rev. St. U. S. § 4893 (U. S. Comp. St. 1901, p. 3384).—**Examination of title.** An investigation made by or for a person who intends to purchase real estate, in the offices where the public records are kept, to ascertain the history and present condition of the title to such land, and its *status* with reference to liens, incumbrances, clouds, etc.—**Examination of wife.** See PRIVATE EXAMINATION, *infra*.—**Examination pro interesse suo.** When a person claims to be entitled to an estate or other property sequestered, whether by mortgage, judgment, lease, or otherwise, or has a title paramount to the sequestration, he should apply to the court to direct an inquiry whether the applicant has any, and what, interest in the property; and this inquiry is called an "examination pro interesse suo." Krippendorf v. Hyde, 110 U. S. 276, 4 Sup. Ct. 27, 28 L. Ed. 145; Hitz v. Jenks, 185 U. S. 155, 22 Sup. Ct. 598, 46 L. Ed. 851.—**Preliminary examination.** The examination of a person charged with crime, before a magistrate, as above explained. See In re Dolph, 17 Colo. 35, 28 Pac. 470; Van Buren v. State, 65 Neb. 223, 91 N. W. 201.—**Private examination.** An examination or interrogation, by a magistrate, of a married woman who is grantor in a deed or other conveyance, held out of the presence of her husband, for the purpose of ascertaining whether her will in the matter is free and unconstrained. Muir v. Galloway, 61 Cal. 506; Hadley v. Geiger, 9 N. J. Law, 233.—**Re-examination.** An examination of a witness after a cross-examination, upon matters arising out of such cross-examination.—**Separate examination.** The interrogation of a married woman, who appears before an officer for the purpose of acknowledging a deed or other instrument, conducted by such officer in private or out of the hearing of her husband, in order to ascertain if she acts of her own will and without compulsion or constraint of the husband. Also the examination of a witness in private or apart from, and out of the hearing of, the other witnesses in the same cause.

EXAMINED COPY. A copy of a record, public book, or register, and which has been compared with the original. 1 Campb. 469.

EXAMINER. In English law. A person appointed by a court to take the examination of witnesses in an action, *i. e.*, to take down the result of their interrogation by the parties or their counsel, either by written interrogatories or *vivâ voce*. An examiner is generally appointed where a witness is in a foreign country, or is too ill or infirm to attend before the court, and is either an officer of the court, or a person specially appointed for the purpose. Sweet.

In New Jersey. An examiner is an officer appointed by the court of chancery to take testimony in causes depending in that court. His powers are similar to those of the English examiner in chancery.

In the patent-office. An officer in the patent-office charged with the duty of examining the patentability of inventions for which patents are asked.

—Examiner in chancery. An officer of the court of chancery, before whom witnesses are examined, and their testimony reduced to writing, for the purpose of being read on the hearing of the cause. Cowell.—**Examiners.** Persons appointed to question students of law in order to ascertain their qualifications before they are admitted to practice.—**Special examiner.** In English law. Some person, not one of the examiners of the court of chancery, appointed to take evidence in a particular suit. This may be done when the state of business in the examiner's office is such that it is impossible to obtain an appointment at a conveniently early day, or when the witnesses may be unable to come to London. Hunt. Eq. pt. I. c. 5, § 2.

EXANNUAL ROLL. In old English practice. A roll into which (in the old way

of exhibiting sheriffs' accounts) the illeviable fines and desperate debts were transcribed, and which was *annually* read to the sheriff upon his accounting, to see what might be gotten. Cowell.

EXCAMB. In Scotch law. To exchange. 6 Bell, App. Cas. 19, 22.

EXCAMBIATOR. An exchanger of lands; a broker. Obsolete.

EXCAMBION. In Scotch law. Exchange. 1 Forb. Inst. pt. 2, p. 173.

EXCAMBIUM. An exchange; a place where merchants meet to transact their business; also an equivalent in recompense; a recompense in lieu of dower *ad ostium ecclesiæ.*

EXCELLENCY. In English law. The title of a viceroy, governor general, ambassador, or commander in chief.

In America. The title is sometimes given to the chief executive of a state or of the nation.

EXCEPTANT. One who excepts; one who makes or files exceptions; one who objects to a ruling, instruction, or anything proposed or ordered.

EXCEPTIO. In Roman law. An exception. In a general sense, a judicial allegation opposed by a defendant to the plaintiff's action. Calvin.

A stop or stay to an action opposed by the defendant. Cowell.

Answering to the "defense" or "plea" of the common law. An allegation and defense of a defendant by which the plaintiff's claim or complaint is defeated, either according to strict law or upon grounds of equity.

In a stricter sense, the exclusion of an action that lay in strict law, on grounds of equity, (*actionis jure stricto competentis ob æquitatem exclusio.*) Heinecc. A kind of limitation of an action, by which it was shown that the action, though otherwise just, did not lie in the particular case. Calvin. A species of defense allowed in cases where, though the action as brought by the plaintiff was in itself just, yet it was unjust as against the particular party sued. Inst. 4, 13, pr.

In modern civil law. A plea by which the defendant admits the cause of action, but alleges new facts which, provided they be true, totally or partially answer the allegations put forward on the other side; thus distinguished from a mere traverse of the plaintiff's averments. Tomkins & J. Mod. Rom. Law, 90. In this use, the term corresponds to the common-law plea in confession and avoidance.

—Exceptio dilatoria. A dilatory exception; called also "*temporalis,*" (temporary;) one which defeated the action for a time, (*quæ ad tempus nocet,*) and created delay, (*et temporis dilationem tribuit;*) such as an agreement not to sue within a certain time, as five years. Inst. 4, 13, 10. See Dig. 44, 1, 3.—**Exceptio doli mali.** An exception or plea of fraud. Inst. 4, 13, 1, 9; Bract. fol. 100*b*.—**Exceptio dominii.** A claim of ownership set up in an action for the recovery of property not in the possession of the plaintiff. Mackeld. Rom. Law, § 299.—**Exceptio dotis cautæ non numeratæ.** A defense to an action for the restitution of a dowry that it was never paid, though promised, available upon the dissolution of the marriage within a limited time. Mackeld. Rom. Law, § 458.—**Exceptio in factum.** An exception on the fact. An exception or plea founded on the peculiar circumstances of the case. Inst. 4, 13, 1.—**Exceptio in personam.** A plea or defense of a personal nature, which may be alleged only by the person himself to whom it is granted by the law. Mackeld. Rom. Law, § 217.—**Exceptio in rem.** A plea or defense not of a personal nature, but connected with the legal circumstances on which the suit is founded, and which may therefore be alleged by any party in interest, including the heirs and sureties of the proper or original debtor. Mackeld. Rom. Law, § 217.—**Exceptio jurisjurandi.** An exception of oath; an exception or plea that the matter had been sworn to. Inst. 4, 13, 4. This kind of exception was allowed where a debtor, at the instance of his creditor, (*creditore deferente,*) had sworn that nothing was due the latter, and had notwithstanding been sued by him.—**Exceptio metus.** An exception or plea of fear or compulsion. Inst. 4, 13, 1, 9; Bract. fol. 100*b*. Answering to the modern plea of duress.—**Exceptio non adimpleti contractus.** An exception in an action founded on a contract involving mutual duties or obligations, to the effect that the plaintiff is not entitled to sue because he has not performed his own part of the agreement. Mackeld. Rom. Law, § 394.—**Exceptio non solutæ pecuniæ.** A plea that the debt in suit was not discharged by payment (as alleged by the adverse party) notwithstanding an acquittance or receipt given by the person to whom the payment is stated to have been made. Mackeld. Rom. Law, § 534.—**Exceptio pacti conventi.** An exception of compact; an exception or plea that the plaintiff had agreed not to sue. Inst. 4, 13, 3.—**Exceptio pecuniæ non numeratæ.** An exception or plea of money not paid; a defense which might be set up by a party who was sued on a promise to repay money which he had never received. Inst. 4, 13, 2.—**Exceptio peremptoria.** A peremptory exception; called also "*perpetua,*" (perpetual;) one which forever destroyed the subject-matter or ground of the action, (*quæ semper rem de qua agitur perimit;*) such as the *exceptio doli mali*, the *exceptio metus*, etc. Inst. 4, 13, 9. See Dig. 44, 1, 3.—**Exceptio rei judicatæ.** An exception or plea of matter adjudged; a plea that the subject-matter of the action had been determined in a previous action. Inst. 4, 13, 5. This term is adopted by Bracton, and is constantly used in modern law to denote a defense founded upon a previous adjudication of the same matter. Bract. fols. 100*b*, 177; 2 Kent, Comm. 120. A plea of a former recovery or judgment.—**Exceptio rei venditæ et traditæ.** An exception or plea of the sale and delivery of the thing. This exception presumes that there was a valid sale and a proper tradition; but though, in consequence of the rule that no one can transfer to another a greater right than he himself has, no property was transferred, yet because of some particular circumstance the real owner is estopped from contesting it. Mackeld. Rom. Law, § 299.—**Exceptio senatusconsulti Macedoniani.** A defense to an action for the recovery of money loaned, on the ground that the loan was made to a minor or person under the

paternal power of another; so named from the decree of the senate which forbade the recovery of such loans. Mackeld. Rom. Law, § 432.—**Exceptio senatusconsulti Velleiani.** A defense to an action on a contract of suretyship, on the ground that the surety was a woman and therefore incapable of becoming bound for another; so named from the decree of the senate forbidding it. Mackeld. Rom. Law, § 455.—**Exceptio temporis.** An exception or plea analogous to that of the statute of limitations in our law; viz., that the time prescribed by law for bringing such actions has expired. Mackeld. Rom. Law, § 213.

Exceptio ejus rei cujus petitur dissolutio nulla est. A plea of that matter the dissolution of which is sought [by the action] is null, [or of no effect.] Jenk. Cent. 37, case 71.

Exceptio falsi omnium ultima. A plea denying a fact is the last of all.

Exceptio nulla est versus actionem quæ exceptionem perimit. There is [can be] no plea against an action which destroys [the matter of] the plea. Jenk. Cent. 106, case 2.

Exceptio probat regulam. The exception proves the rule. 11 Coke, 41; 3 Term, 722. Sometimes quoted with the addition "*de rebus non exceptis,*" ("so far as concerns the matters not excepted.")

Exceptio quæ firmat legem, exponit legem. An exception which confirms the law explains the law. 2 Bulst. 189.

Exceptio semper ultimo ponenda est. An exception should always be put last. 9 Coke, 53.

EXCEPTION. In practice. A formal objection to the action of the court, during the trial of a cause, in refusing a request or overruling an objection; implying that the party excepting does not acquiesce in the decision of the court, but will seek to procure its reversal, and that he means to save the benefit of his request or objection in some future proceeding. Snelling v. Yetter, 25 App. Div. 590, 49 N. Y. Supp. 917; People v. Torres, 38 Cal. 142; Norton v. Livingston, 14 S. C. 178; Kline v. Wynne, 10 Ohio St. 228.

It is also somewhat used to signify other objections in the course of a suit; for example, exception to bail is a formal objection that special bail offered by defendant are insufficient. 1 Tidd, Pr. 255.

An exception is an objection upon a matter of law to a decision made, either before or after judgment, by a court, tribunal, judge, or other judicial officer, in an action or proceeding. The exception must be taken at the time the decision is made. Code Civ. Proc. Cal. § 646.

In admiralty and equity practice. An exception is a formal allegation tendered by a party that some previous pleading or proceeding taken by the adverse party is insufficient. Peck v. Osteen, 37 Fla. 427, 20 South. 549; Arnold v. Slaughter, 36 W. Va. 589, 15 S. E. 250.

In statutory law. An exception in a statute is a clause designed to reserve or exempt some individuals from the general class of persons or things to which the language of the act in general attaches.

An exception differs from an explanation, which, by the use of a *videlicet, proviso*, etc., is allowed only to explain doubtful clauses precedent, or to separate and distribute generals into particulars. Cutler v. Tufts, 3 Pick. (Mass.) 272.

In contracts. A clause in a deed or other conveyance by which the grantor excepts something out of that which he granted before by the deed. Morrison v. Bank, 88 Me. 155, 33 Atl. 782; Gould v. Glass, 19 Barb. (N. Y.) 192; Coal Creek Min. Co. v. Heck, 83 Tenn. 497; Winston v. Johnson, 42 Minn. 398, 45 N. W. 958; Bryan v. Bradley, 16 Conn. 482; Rich v. Zeilsdorff, 22 Wis. 547, 99 Am. Dec. 81.

The distinction between an exception and a reservation is that an *exception* is always of part of the thing granted, and of a thing *in esse;* a *reservation* is always of a thing not *in esse*, but newly created or reserved out of the land or tenement demised. Co. Litt. 47*a;* 4 Kent, Comm. 468. It has been also said that there is a diversity between an exception and a saving, for an exception exempts clearly, but a saving goes to the matters touched, and does not exempt. Plowd. 361.

In the civil law. An *exceptio* or plea. Used in this sense in Louisiana.

Declinatory exceptions are such dilatory exceptions as merely decline the jurisdiction of the judge before whom the action is brought. Code Proc. La. 334.

Dilatory exceptions are such as do not tend to defeat the action, but only to retard its progress.

Peremptory exceptions are those which tend to the dismissal of the action.

—**Exception to bail.** An objection to the special bail put in by the defendant to an action at law made by the plaintiff on grounds of the insufficiency of the bail. 1 Tidd, Pr. 255.

EXCEPTIS EXCIPIENDIS. Lat. With all necessary exceptions.

EXCEPTOR. In old English law. A party who entered an exception or plea.

EXCERPTA, or EXCERPTS. Extracts.

EXCESS. When a defendant pleaded to an action of assault that the plaintiff trespassed on his land, and he would not depart when ordered, whereupon he, *molliter manus imposuit*, gently laid hands on him, the replication of *excess* was to the effect that the defendant used more force than necessary. Wharton.

EXCESSIVE. Tending to or marked by excess, which is the quality or state of ex-

ceeding the proper or reasonable limit or measure. Railway Co. v. Johnston, 106 Ga. 130, 32 S. E. 78.

—Excessive bail. Bail in a sum more than will be reasonably sufficient to prevent evasion of the law by flight or concealment; bail which is per se unreasonably great and clearly disproportionate to the offense involved, or shown to be so by the special circumstances of the particular case. In re Losasso, 15 Colo. 163, 24 Pac. 1080, 10 L. R. A. 847; Ex parte Ryan, 44 Cal. 558; Ex parte Duncan, 53 Cal. 410; Blydenburgh v. Miles, 39 Conn. 490.**—Excessive damages.** See DAMAGES.

Excessivum in jure reprobatur. Excessus in re qualibet jure reprobatur communi. Co. Litt. 44. Excess in law is reprehended. Excess in anything is reprehended at common law.

EXCHANGE. In conveyancing. A mutual grant of equal interests, (in lands or tenements,) the one in consideration of the other. 2 Bl. Comm. 323; Windsor v. Collinson, 32 Or. 297, 52 Pac. 26; Gamble v. McClure, 69 Pa. 282; Hartwell v. De Vault, 159 Ill. 325, 42 N. E. 789; Long v. Fuller, 21 Wis. 121. In the United States, it appears, exchange does not differ from bargain and sale. See 2 Bouv. Inst. 2055.

In commercial law. A negotiation by which one person transfers to another funds which he has in a certain place, either at a price agreed upon or which is fixed by commercial usage. Nicely v. Bank, 15 Ind. App. 563, 44 N. E. 572, 57 Am. St. Rep. 245; Smith v. Kendall, 9 Mich. 241, 80 Am. Dec. 83.

The profit which arises from a maritime loan, when such profit is a percentage on the money lent, considering it in the light of money lent in one place to be returned in another, with a difference in amount in the sum borrowed and that paid, arising from the difference of time and place. The term is commonly used in this sense by French writers. Hall, Emerig. Mar. Loans, 56*n*.

A public place where merchants, brokers, factors, etc., meet to transact their business.

In law of personal property. Exchange of goods is a commutation, transmutation, or transfer of goods for other goods, as distinguished from *sale*, which is a transfer of goods for money. 2 Bl. Comm. 446; 2 Steph. Comm. 120; Elwell v. Chamberlin, 31 N. Y. 624; Cooper v. State, 37 Ark. 418; Preston v. Keene, 14 Pet. 137, 10 L. Ed. 387.

Exchange is a contract by which the parties mutually give, or agree to give, one thing for another, neither thing, or both things, being money only. Civ. Code Cal. § 1804; Civ. Code Dak. § 1029; Civ. Code La. art. 2660.

The distinction between a sale and exchange of property is rather one of shadow than of substance. In both cases the title to property is absolutely transferred; and the same rules of law are applicable to the transaction, whether the consideration of the contract is money or by way of barter. It can make no essential difference in the rights and obligations of parties that goods and merchandise are transferred and paid for by other goods and merchandise instead of by money, which is but the representative of value or property. Com. v. Clark, 14 Gray (Mass.) 367.

—Arbitration of exchange. The business of buying and selling exchange (bills of exchange) between two or more countries or markets, and particularly where the profits of such business are to be derived from a calculation of the relative value of exchange in the two countries or markets, and by taking advantage of the fact that the rate of exchange may be higher in the one place than in the other at the same time.**—Dry exchange.** In English law. A term formerly in use, said to have been invented for the purpose of disguising and covering usury; something being pretended to pass on both sides, whereas, in truth, nothing passed but on one side, in which respect it was called "dry." Cowell; Blount.**—Exchange, bill of.** See BILL OF EXCHANGE.**—Exchange broker.** One who negotiates bills of exchange drawn on foreign countries or on other places in the same country; one who makes and concludes bargains for others in matters of money or merchandise. Little Rock v. Barton, 33 Ark. 444; Portland v. O'Neill, 1 Or. 219.**—Exchange of livings.** In ecclesiastical law. This is effected by resigning them into the bishop's hands, and each party being inducted into the other's benefice. If either die before both are inducted, the exchange is void.**—First of exchange, Second of exchange.** See FIRST.**—Owelty of exchange.** See OWELTY.

EXCHEQUER. That department of the English government which has charge of the collection of the national revenue; the treasury department.

It is said to have been so named from the chequered cloth, resembling a chess-board, which anciently covered the table there, and on which, when certain of the king's accounts were made up, the sums were marked and scored with counters. 3 Bl. Comm. 44.

—Exchequer bills. Bills of credit issued in England by authority of parliament. Brande. Instruments issued at the exchequer, under the authority, for the most part, of acts of parliament passed for the purpose, and containing an engagement on the part of the government for repayment of the principal sums advanced with interest. 2 Steph. Comm. 586. See Briscoe v. Bank of Kentucky, 11 Pet. 328, 9 L. Ed. 709. **—Court of exchequer, Court of exchequer chamber.** See those titles.**—Exchequer division.** A division of the English high court of justice, to which the special business of the court of exchequer was specially assigned by section 34 of the judicature act of 1873. Merged in the queen's bench division from and after 1881, by order in council under section 31 of that act. Wharton.

EXCISE. An inland imposition, paid sometimes upon the consumption of the commodity, and frequently upon the retail sale. 1 Bl. Comm. 318; Story, Const. § 950; Scholey v. Rew, 23 Wall. 346, 23 L. Ed. 99; Patton v. Brady, 184 U. S. 608, 22 Sup. Ct. 493, 46 L. Ed. 713; Portland Bank v. Apthorp, 12 Mass. 256; Union Bank v. Hill, 3 Cold. (Tenn.) 328.

The words "tax" and "excise," although often used as synonymous, are to be considered as having entirely distinct and separate significations, under Const. Mass. c. 1, § 1, art. 4. The former is a charge apportioned either among

the whole people of the state or those residing within certain districts, municipalities, or sections. It is required to be imposed, so that, if levied for the public charges of government, it shall be shared according to the estate, real and personal, which each person may possess; or, if raised to defray the cost of some local improvement of a public nature, it shall be borne by those who will receive some special and peculiar benefit or advantage which an expenditure of money for a public object may cause to those on whom the tax is assessed. An excise, on the other hand, is of a different character. It is based on no rule of apportionment or equality whatever. It is a fixed, absolute, and direct charge laid on merchandise, products, or commodities, without any regard to the amount of property belonging to those on whom it may fall, or to any supposed relation between money expended for a public object and a special benefit occasioned to those by whom the charge is to be paid. Oliver v. Washington Mills, 11 Allen (Mass.) 268.

The term is also extended to the imposition of public charges, in the nature of taxes, upon other subjects than the manufacture and sale of commodities, such as licenses to pursue particular callings, the franchises of corporations and particularly the franchise of corporate existence, and the inheritance or succession of estates. Pollock v. Farmers' L. & T. Co., 158 U. S. 601, 15 Sup. Ct. 912, 39 L. Ed. 1108; Scholey v. Rew, 23 Wall. 346, 23 L. Ed. 99; Hancock v. Singer Mfg. Co., 62 N. J. Law, 289, 41 Atl. 846, 42 L. R. A. 852.

In English law. The name given to the duties or taxes laid on certain articles produced and consumed at home, among which spirits have always been the most important; but, exclusive of these, the duties on the licenses of auctioneers, brewers, etc., and on the licenses to keep dogs, kill game, etc., are included in the excise duties. Wharton.

—Excise law. A law imposing excise duties on specified commodities, and providing for the collection of revenue therefrom. In a more restricted and more popular sense, a law regulating, restricting, or taxing the manufacture or sale of intoxicating liquors.

EXCLUSA. In old English law. A sluice to carry off water; the payment to the lord for the benefit of such a sluice. Cowell.

EXCLUSIVE. Shutting out; debarring from interference or participation; vested in one person alone. An exclusive right is one which only the grantee thereof can exercise, and from which all others are prohibited or shut out. A statute does not grant an "exclusive" privilege or franchise, unless it shuts out or excludes others from enjoying a similar privilege or franchise. In re Union Ferry Co., 98 N. Y. 151.

EXCOMMENGEMENT. Excommunication, (*q. v.*) Co. Litt. 134*a*.

EXCOMMUNICATION. A sentence of censure pronounced by one of the spiritual courts for offenses falling under ecclesiastical cognizance. It is described in the books as twofold: (1) The lesser excommunication, which is an ecclesiastical censure, excluding the party from the sacraments; (2) the greater, which excludes him from the company of all Christians. Formerly, too, an excommunicated man was under various civil disabilities. He could not serve upon juries, or be a witness in any court; neither could he bring an action to recover lands or money due to him. These penalties are abolished by St. 53 Geo. III. c. 127. 3 Steph. Comm. 721.

EXCOMMUNICATO CAPIENDO. In ecclesiastical law. A writ issuing out of chancery, founded on a bishop's certificate that the defendant had been excommunicated, and requiring the sheriff to arrest and imprison him, returnable to the king's bench. 4 Bl. Comm. 415; Bac. Abr. "Excommunication," E.

EXCOMMUNICATO DELIBERANDO. A writ to the sheriff for delivery of an excommunicated person out of prison, upon certificate from the ordinary of his conformity to the ecclesiastical jurisdiction. Fitzh. Nat. Brev. 63.

Excommunicato interdicitur omnis actus legitimus, ita quod agere non potest, nec aliquem convenire, licet ipse ab aliis possit conveniri. Co. Litt. 133. Every legal act is forbidden an excommunicated person, so that he cannot act, nor sue any person, but he may be sued by others.

EXCOMMUNICATO RECAPIENDO. A writ commanding that persons excommunicated, who for their obstinacy had been committed to prison, but were unlawfully set free before they had given caution to obey the authority of the church, should be sought after, retaken, and imprisoned again. Reg. Orig. 67.

EXCULPATION, LETTERS OF. In Scotch law. A warrant granted at the suit of a prisoner for citing witnesses in his own defense.

EXCUSABLE. Admitting of excuse or palliation. As used in the law, this word implies that the act or omission spoken of is on its face unlawful, wrong, or liable to entail loss or disadvantage on the person chargeable, but that the circumstances attending it were such as to constitute a legal "excuse" for it, that is, a legal reason for withholding or foregoing the punishment, liability, or disadvantage which otherwise would follow.

—Excusable assault. One committed by accident or misfortune in doing any lawful act by lawful means, with ordinary caution and without any unlawful intent. People v. O'Connor, 82 App. Div. 55, 81 N. Y. Supp. 555.—**Excusable homicide.** See HOMICIDE.—**Excusable neglect.** In practice, and particularly with reference to the setting aside of a judgment taken against a party through his "excusable neglect," this means a failure to take the

proper steps at the proper time, not in consequence of the party's own carelessness, inattention, or willful disregard of the process of the court, but in consequence of some unexpected or unavoidable hindrance or accident, or reliance on the care and vigilance of his counsel or on promises made by the adverse party. See 1 Bl. Judgm. § 340.

Excusat aut extenuat delictum in capitalibus quod non operatur idem in civilibus. Bac. Max. r. 15. That may excuse or palliate a wrongful act in capital cases which would not have the same effect in civil injuries. See Broom, Max. 324.

EXCUSATIO. In the civil law. An excuse or reason which exempts from some duty or obligation.

EXCUSATOR. In English law. An excuser.

In old German law. A defendant; he who utterly denies the plaintiff's claim. Du Cange.

Excusatur quis quod clameum non opposuerit, ut si toto tempore litigii fuit ultra mare quacunque occasione. Co. Litt. 260. He is excused who does not bring his claim, if, during the whole period in which it ought to have been brought, he has been beyond sea for any reason.

EXCUSE. A reason alleged for doing or not doing a thing. Worcester.

A matter alleged as a reason for relief or exemption from some duty or obligation.

EXCUSS. To seize and detain by law.

EXCUSSIO. In the civil law. A diligent prosecution of a remedy against a debtor; the exhausting of a remedy against a principal debtor, before resorting to his sureties. Translated "discussion," (*q. v.*)

In old English law. Rescue or rescous. Spelman.

EXEAT. A permission which a bishop grants to a priest to go out of his diocese; also leave to go out generally.

—Ne exeat. A writ which forbids the person to whom it is addressed to leave the country, the state, or the jurisdiction of the court; available in some cases to keep a defendant within the reach of the court's process, where the ends of justice would be frustrated if he should escape from the jurisdiction.

EXECUTE. To finish, accomplish, make complete, fulfill. To perform; obey the injunctions of.

To make; as to execute a deed, which includes signing, sealing, and delivery.

To perform; carry out according to its terms; as to execute a contract.

To fulfill the purpose of; to obey; to perform the commands of; as to execute a writ.

A statute is said to *execute* a use where it transmutes the equitable interest of the *cestui que use* into a legal estate of the same nature, and makes him tenant of the land accordingly, in lieu of the feoffee to uses or trustee, whose estate, on the other hand, is at the same moment annihilated. 1 Steph. Comm. 339.

EXECUTED. Completed; carried into full effect; already done or performed; taking effect immediately; now in existence or in possession; conveying an immediate right or possession. The opposite of *executory*.

—Executed consideration. A consideration which is wholly past. 1 Pars. Cont. 391. An act done or value given before the making of the agreement.—**Executed contract.** See CONTRACT.—**Executed estate.** See ESTATE.—**Executed fine.** The fine *sur cognizance de droit, come ceo que il ad de son done;* or a fine upon acknowledgment of the right of the cognizee, as that which he has of the gift of the cognizor. Abolished by 3 & 4 Wm. IV. c. 74. —**Executed remainder.** See REMAINDER.—**Executed sale.** One completed by delivery of the property; one where nothing remains to be done by either party to effect a complete transfer of the subject-matter of the sale. Fogel v. Brubaker, 122 Pa. 7, 15 Atl. 692; Smith v. Barron County, 44 Wis. 691; Foley v. Felrath, 98 Ala. 176, 13 South. 485, 39 Am. St. Rep. 39. —**Executed trust.** See TRUST.—**Executed use.** See USE.—**Executed writ.** In practice. A writ carried into effect by the officer to whom it is directed. The term "executed," applied to a writ, has been held to mean "used." Amb. 61.

EXECUTIO. Lat. The doing or following up of a thing; the doing a thing completely or thoroughly; management or administration.

In old practice. Execution; the final process in an action.

—Executio bonorum. In old English law. Management or administration of goods. *Ad ecclesiam et ad amicos pertinebit executio bonorum,* the execution of the goods shall belong to the church and to the friends of the deceased. Bract. fol. 60*b*.

Executio est executio juris secundum judicium. 3 Inst. 212. Execution is the execution of the law according to the judgment.

Executio est finis et fructus legis. Co. Litt. 289. Execution is the end and fruit of the law.

Executio juris non habet injuriam. 2 Roll. 301. The execution of law does no injury.

EXECUTION. The completion, fulfillment, or perfecting of anything, or carrying it into operation and effect. The signing, sealing, and delivery of a deed. The signing and publication of a will. The performance of a contract according to its terms.

In practice. The last stage of a suit, whereby possession is obtained of anything recovered. It is styled "final process," and

consists in putting the sentence of the law in force. 3 Bl. Comm. 412. The carrying into effect of the sentence or judgment of a court. U. S. v. Nourse, 9 Pet. 28, 9 L. Ed. 31; Griffith v. Fowler, 18 Vt. 394; Pierson v. Hammond, 22 Tex. 587; Brown v. U. S., 6 Ct. Cl. 178; Hurlbutt v. Currier, 68 N. H. 94, 38 Atl. 502; Darby v. Carson, 9 Ohio, 149.

Also the name of a writ issued to a sheriff, constable, or marshal, authorizing and requiring him to execute the judgment of the court.

At common law, executions are said to be either *final* or *quousque;* the former, where complete satisfaction of the debt is intended to be procured by this process; the latter, where the execution is only a means to an end, as where the defendant is arrested on *ca. sa.*

In criminal law. The carrying into effect the sentence of the law by the infliction of capital punishment. 4 Bl. Comm. 403; 4 Steph. Comm. 470.

It is a vulgar error to speak of the "execution" of a convicted criminal. It is the sentence of the court which is "executed;" the criminal is put to death.

In French law. A method of obtaining satisfaction of a debt or claim by sale of the debtor's property privately, *i. e.,* without judicial process, authorized by the deed or agreement of the parties or by custom; as, in the case of a stockbroker, who may sell securities of his customer, bought under his instructions or deposited by him, to indemnify himself or make good a debt. Arg. Fr. Merc. Law, 557.

—Execution paree. In French law. A right founded on an act passed before a notary, by which the creditor may immediately, without citation or summons, seize and cause to be sold the property of his debtor, out of the proceeds of which to receive his payment. It imports a confession of judgment, and is not unlike a warrant of attorney. Code Proc. La. art. 732; 6 Toullier, no. 208; 7 Toullier, no. 99.—**Attachment execution.** See ATTACHMENT.—**Dormant execution.** See DORMANT.—**Equitable execution.** This term is sometimes applied to the appointment of a receiver with power of sale. Hatch v. Van Dervoort, 54 N. J. Eq. 511, 34 Atl. 938.—**Execution creditor.** See CREDITOR.—**Execution of decree.** Sometimes from the neglect of parties, or some other cause, it became impossible to carry a decree into execution without the further decree of the court upon a bill filed for that purpose. This happened generally in cases where, parties having neglected to proceed upon the decree, their rights under it became so embarrassed by a variety of subsequent events that it was necessary to have the decree of the court to settle and ascertain them. Such a bill might also be brought to carry into execution the judgment of an inferior court of equity, if the jurisdiction of that court was not equal to the purpose; as in the case of a decree in Wales, which the defendant avoided by fleeing into England. This species of bill was generally partly an original bill, and partly a bill in the nature of an original bill, though not strictly original. Story, Eq. Pl. 342; Daniell, Ch. Pr. 1429.—**Execution of deeds.** The signing, sealing, and delivery of them by the parties, as their own acts and deeds, in the presence of witnesses.—**Execution sale.** A sale by a sheriff or other ministerial officer under the authority of a writ of execution which he has levied on property of the debtor. Noland v. Barrett, 122 Mo. 181, 26 S. W. 692, 43 Am. St. Rep. 572; Norton v. Reardon, 67 Kan. 302, 72 Pac. 861, 100 Am. St. Rep. 459.—**Testatum execution.** See TESTATUM.—**General execution.** A writ commanding an officer to satisfy a judgment out of any personal property of the defendant. If authorizing him to levy only on certain specified property, the writ is sometimes called a "special" execution. Pracht v. Pister, 30 Kan. 568, 1 Pac. 638.—**Junior execution.** One which was issued after the issuance of another execution, on a different judgment, against the same defendant.

EXECUTIONE FACIENDÂ. A writ commanding execution of a judgment. Obsolete. Cowell.

EXECUTIONE FACIENDÂ IN WITHERNAMIUM. A writ that lay for taking cattle of one who has conveyed the cattle of another out of the county, so that the sheriff cannot replevy them. Reg. Orig. 82.

EXECUTIONE JUDICII. A writ directed to the judge of an inferior court to do execution upon a judgment therein, or to return some reasonable cause wherefore he delays the execution. Fitzh. Nat. Brev. 20.

EXECUTIONER. The name given to him who puts criminals to death, according to their sentence; a hangman.

EXECUTIVE. As distinguished from the legislative and judicial departments of government, the executive department is that which is charged with the detail of carrying the laws into effect and securing their due observance. The word "executive" is also used as an impersonal designation of the chief executive officer of a state or nation. Comm. v. Hall, 9 Gray (Mass.) 267, 69 Am. Dec. 285; In re Railroad Com'rs, 15 Neb. 679, 50 N. W. 276; In re Davies, 168 N. Y. 89, 61 N. E. 118, 56 L. R. A. 855; State v. Denny, 118 Ind. 382, 21 N. E. 252, 4 L. R. A. 79.

—Executive administration, or ministry. A political term in England, applicable to the higher and responsible class of public officials by whom the chief departments of the government of the kingdom are administered. The number of these amounts to fifty or sixty persons. Their tenure of office depends on the confidence of a majority of the house of commons, and they are supposed to be agreed on all matters of general policy except such as are specifically left open questions. Cab. Lawy.—**Executive officer.** An officer of the executive department of government; one in whom resides the power to execute the laws; one whose duties are to cause the laws to be executed and obeyed. Thorne v. San Francisco, 4 Cal. 146; People v. Salsbury, 134 Mich. 537, 96 N. W. 939; Petterson v. State (Tex. Cr. App.) 58 S. W. 100.

EXECUTOR. A person appointed by a testator to carry out the directions and requests in his will, and to dispose of the property according to his testamentary provisions after his decease. Scott v. Guernsey, 60

Barb. (N. Y.) 175; In re Lamb's Estate, 122 Mich. 239, 80 N. W. 1081; Compton v. McMahan, 19 Mo. App. 505.

One to whom another man commits by his last will the execution of that will and testament. 2 Bl. Comm. 503.

A person to whom a testator by his will commits the *execution*, or putting in force, of that instrument and its codicils. Fonbl. 307.

Executors are classified according to the following several methods:

They are either *general* or *special*. The former term denotes an executor who is to have charge of the whole estate, wherever found, and administer it to a final settlement; while a special executor is only empowered by the will to take charge of a limited portion of the estate, or such part as may lie in one place, or to carry on the administration only to a prescribed point.

They are either *instituted* or *substituted*. An instituted executor is one who is appointed by the testator without any condition; while a substituted executor is one named to fill the office in case the person first nominated should refuse to act.

In the phraseology of ecclesiastical law, they are of the following kinds:

Executor à lege constitutus, an executor appointed by law; the ordinary of the diocese.

Executor ab episcopo constitutus, or *executor dativus*, an executor appointed by the bishop; an administrator to an intestate.

Executor à testatore constitutus, an executor appointed by a testator. Otherwise termed "*executor testamentarius*;" a testamentary executor.

An *executor to the tenor* is one who, though not directly constituted executor by the will, is therein charged with duties in relation to the estate which can only be performed by the executor.

—Executor creditor. In Scotch law. A creditor of a decedent who obtains a grant of administration on the estate, at least to the extent of so much of it as will be sufficient to discharge his debt, when the executor named in the will has declined to serve, as also those other persons who would be preferentially entitled to administer.**—Executor dative.** In Scotch law. One appointed by the court; equivalent to the English "administrator with the will annexed."**—Executor de son tort.** Executor of his own wrong. A person who assumes to act as executor of an estate without any lawful warrant or authority, but who, by his intermeddling, makes himself liable as an executor to a certain extent. If a stranger takes upon him to act as executor without any just authority, (as by intermeddling with the goods of the deceased, and many other transactions,) he is called in law an "executor of his own wrong," *de son tort*. 2 Bl. Comm. 507. Allen v. Hurst, 120 Ga. 763, 48 S. E. 341; Noon v. Finnegan, 29 Minn. 418, 13 N. W. 197; Brown v. Leavitt, 26 N. H. 495; Hinds v. Jones, 48 Me. 349.**—Executor lucratus.** An executor who has assets of his testator who in his lifetime made himself liable by a wrongful interference with the property of another. 6 Jur. (N. S.) 543.**—General executor.** One whose power is not limited either territorially or as to the duration or subject of his trust.**—Joint executors.** Co-executors; two or more who are joined in the execution of a will.**—Limited executor.** An executor whose appointment is qualified by limitations as to the time or place wherein, or the subject-matter whereon, the office is to be exercised; as distinguished from one whose appointment is absolute, *i. e.*, certain and immediate, without any restriction in regard to the testator's effects or limitation in point of time. 1 Williams, Ex'rs, 249, *et seq.* **—Special executor.** One whose power and office are limited, either in respect to the time or place of their exercise, or restricted to a particular portion of the decedent's estate.

In the civil law. A ministerial officer who executed or carried into effect the judgment or sentence in a cause.

EXECUTORY. That which is yet to be executed or performed; that which remains to be carried into operation or effect; incomplete; depending upon a future performance or event. The opposite of *executed*.

—Executory consideration. A consideration which is to be performed after the contract for which it is a consideration is made.**—Executory fines.** These are the fines *sur cognizance de droit tantum; sur concessit;* and *sur done, grant et render*. Abolished by 3 & 4 Wm. IV. c. 74.**—Executory interests.** A general term, comprising all future estates and interests in land or personalty, other than reversions and remainders.**—Executory limitation.** A limitation of a future interest by deed or will; if by will, it is also called an "executory devise." **—Executory process.** A process which can be resorted to in the following cases, namely: (1) When the right of the creditor arises from an act importing confession of judgment, and which contains a privilege or mortgage in his favor; (2) when the creditor demands the execution of a judgment which has been rendered by a tribunal different from that within whose jurisdiction the execution is sought. Code Prac. La. art. 732; Marin v. Lalley, 17 Wall. 14, 21 L. Ed. 596.

As to executory "Bequests," "Contracts," "Devises," "Estates," "Remainders," "Trusts," and "Uses," see those titles.

EXECUTRESS. A female executor. Hardr. 165, 473. See EXECUTRIX.

EXECUTRIX. A woman who has been appointed by will to execute such will or testament.

EXECUTRY. In Scotch law. The movable estate of a person dying, which goes to his nearest of kin. So called as falling under the distribution of an executor. Bell.

Exempla illustrant non restringunt legem. Co. Litt. 240. Examples illustrate, but do not restrain, the law.

EXEMPLARY DAMAGES. See DAMAGES.

EXEMPLI GRATIÂ. For the purpose of example, or for instance. Often abbreviated "*ex. gr.*" or "*e. g.*"

EXEMPLIFICATION. An official transcript of a document from public records.

made in form to be used as evidence, and authenticated as a true copy.

EXEMPLIFICATIONE. A writ granted for the exemplification or transcript of an original record. Reg. Orig. 290.

EXEMPLUM. In the civil law. Copy; a written authorized copy. This word is also used in the modern sense of "example,"—*ad exemplum constituti singulares non trahi*, exceptional things must not be taken for examples. Calvin.

EXEMPT, *v.* To relieve, excuse, or set free from a duty or service imposed upon the general class to which the individual exempted belongs; as to exempt from militia service. See 1 St. at Large, 272.

To relieve certain classes of property from liability to sale on execution.

EXEMPT, *n.* One who is free from liability to military service; as distinguished from a *detail*, who is one belonging to the army, but detached or set apart for the time to some particular duty or service, and liable, at any time, to be recalled to his place in the ranks. In re Strawbridge, 39 Ala. 379.

EXEMPTION. Freedom from a general duty or service; immunity from a general burden, tax, or charge. Green v. State, 59 Md. 128, 43 Am. Rep. 542; Koenig v. Railroad Co., 3 Neb. 380; Long v. Converse, 91 U. S. 113, 23 L. Ed. 233.

A privilege allowed by law to a judgment debtor, by which he may hold property to a certain amount, or certain classes of property, free from all liability to levy and sale on execution or attachment. Turrill v. McCarthy, 114 Iowa, 681, 87 N. W. 667; Williams v. Smith, 117 Wis. 142, 93 N. W. 464.

—Exemption laws. Laws which provide that a certain amount or proportion of a debtor's property shall be exempt from execution.—**Exemption, words of.** It is a maxim of law that words of exemption are not to be construed to import any liability; the maxim *expressio unius exclusio alterius*, or its converse, *exclusio unius inclusio alterius*, not applying to such a case. For example, an exemption of the crown from the bankruptcy act 1869, in one specified particular, would not inferentially subject the crown to that act in any other particular. Brown.

EXEMPTS. Persons who are not bound by law, but excused from the performance of duties imposed upon others.

EXENNIUM. In old English law. A gift; a new year's gift. Cowell.

EXEQUATUR. Lat. Let it be executed. In French practice, this term is subscribed by judicial authority upon a transcript of a judgment from a foreign country, or from another part of France, and authorizes the execution of the judgment within the jurisdiction where it is so indorsed.

In international law. A certificate issued by the foreign department of a state to a consul or commercial agent of another state, recognizing his official character, and authorizing him to fulfill his duties.

EXERCISE. To make use of. Thus, to exercise a right or power is to do something which it enables the holder to do. U. S. v. Souders, 27 Fed. Cas. 1267; Cleaver v. Comm., 34 Pa. 284; Branch v. Glass Works, 95 Ga. 573, 23 S. E. 128.

EXERCITALIS. A soldier; a vassal. Spelman.

EXERCITOR NAVIS. Lat. The temporary owner or charterer of a ship. Mackeld. Rom. Law, § 512; The Phebe, 19 Fed. Cas. 418.

EXERCITORIA ACTIO. In the civil law. An action which lay against the employer of a vessel (*exercitor navis*) for the contracts made by the master. Inst. 4, 7, 2; 3 Kent, Comm. 161. Mackeld. Rom. Law, § 512.

EXERCITORIAL POWER. The trust given to a ship-master.

EXERCITUAL. In old English law. A heriot paid only in arms, horses, or military accouterments.

EXERCITUS. In old European law. An army; an armed force. The term was absolutely indefinite as to number. It was applied, on various occasions, to a gathering of forty-two armed men, of thirty-five, or even of four. Spelman.

EXETER DOMESDAY. The name given to a record preserved among the muniments and charters belonging to the dean and chapter of Exeter Cathedral, which contains a description of the western parts of the kingdom, comprising the counties of Wilts, Dorset, Somerset, Devon, and Cornwall. The Exeter Domesday was published with several other surveys nearly contemporary, by order of the commissioners of the public records, under the direction of Sir Henry Ellis, in a volume supplementary to the Great Domesday, folio, London, 1816. Wharton.

EXFESTUCARE. To abdicate or resign; to resign or surrender an estate, office, or dignity, by the symbolical delivery of a staff or rod to the alienee.

EXFREDIARE. To break the peace; to commit open violence. Jacob.

EXHÆREDATIO. In the civil law. Disinheriting; disherison. The formal method of excluding an indefeasible (or forced) heir

from the entire inheritance, by the testator's express declaration in the will that such person shall be *exhæres*. Mackeld. Rom. Law, § 711.

EXHÆRES. In the civil law. One disinherited. Vicat; Du Cange.

EXHEREDATE. In Scotch law. To disinherit; to exclude from an inheritance.

EXHIBERE. To present a thing corporeally, so that it may be handled. Vicat. To appear personally to conduct the defense of an action at law.

EXHIBIT, *v.* To show or display; to offer or present for inspection. To produce anything in public, so that it may be taken into possession. Dig. 10, 4, 2.

To present; to offer publicly or officially; to file of record. Thus we speak of *exhibiting* a charge of treason, *exhibiting* a bill against an officer of the king's bench by way of proceeding against him in that court. In re Wiltse, 5 Misc. Rep. 105, 25 N. Y. Supp. 737; Newell v. State, 2 Conn. 40; Comm. v. Alsop, 1 Brewst. (Pa.) 345.

To administer; to cause to be taken; as medicines.

EXHIBIT, *n.* A paper or document produced and exhibited to a court during a trial or hearing, or to a commissioner taking depositions, or to auditors, arbitrators, etc., as a voucher, or in proof of facts, or as otherwise connected with the subject-matter, and which, on being accepted, is marked for identification and annexed to the deposition, report, or other principal document, or filed of record, or otherwise made a part of the case.

A paper referred to in and filed with the bill, answer, or petition in a suit in equity, or with a deposition. Brown v. Redwyne, 16 Ga. 68.

EXHIBITANT. A complainant in articles of the peace. 12 Adol. & E. 599.

EXHIBITIO BILLÆ. Lat. Exhibition of a bill. In old English practice, actions were instituted by presenting or exhibiting a bill to the court, in cases where the proceedings were by bill; hence this phrase is equivalent to "commencement of the suit."

EXHIBITION. In Scotch law. An action for compelling the production of writings.

In ecclesiastical law. An allowance for meat and drink, usually made by religious appropriators of churches to the vicar. Also the benefaction settled for the maintaining of scholars in the universities, not depending on the foundation. Paroch. Antiq. 304.

EXHUMATION. Disinterment; the removal from the earth of anything previously buried therein, particularly a human corpse.

EXIGENCE, or EXIGENCY. Demand, want, need, imperativeness.

—Exigency of a bond. That which the bond demands or exacts, *i. e.*, the act, performance, or event upon which it is conditioned.—**Exigency of a writ.** The command or imperativeness of a writ; the directing part of a writ; the act or performance which it commands.

EXIGENDARY. In English law. An officer who makes out exigents.

EXIGENT, or EXIGI FACIAS. L. Lat. In English practice. A judicial writ made use of in the process of outlawry, commanding the sheriff to *demand* the defendant, (or *cause him to be demanded, exigi faciat,*) from county court to county court, until he be outlawed; or, if he appear, then to take and have him before the court on a day certain in term, to answer to the plaintiff's action. 1 Tidd, Pr. 132; 3 Bl. Comm. 283, 284; Archb. N. Pr. 485. Now regulated by St. 2 Wm. IV. c. 39.

EXIGENTER. An officer of the English court of common pleas, whose duty it was to make out the *exigents* and proclamations in the process of outlawry. Cowell. Abolished by St. 7 Wm. IV. and 1 Vict. c. 30. Holthouse.

EXIGI FACIAS. That you cause to be demanded. The emphatic words of the Latin form of the writ of *exigent*. They are sometimes used as the name of that writ.

EXIGIBLE. Demandable; requirable.

EXILE. Banishment; the person banished.

EXILIUM. Lat. In old English law. (1) Exile; banishment from one's country. (2) Driving away; despoiling. The name of a species of waste, which consisted in driving away tenants or vassals from the estate; as by demolishing buildings, and so compelling the tenants to leave, or by enfranchising the bond-servants, and unlawfully turning them out of their tenements. Fleta, l. 1, c. 9.

Exilium est patriæ privatio, natalis soli mutatio, legum nativarum amissio. 7 Coke, 20. Exile is a privation of country, a change of natal soil, a loss of native laws.

EXIST. To live; to have life or animation; to be in present force, activity, or effect at a given time; as in speaking of "existing" contracts, creditors, debts, laws, rights, or liens. Merritt v. Grover, 57 Iowa, 493, 10 N. W. 879; Whitaker v. Rice, 9 Minn. 13 (Gil. 1), 86 Am. Dec. 78; Wing v. Slater, 19

R. I. 597, 35 Atl. 302, 33 L. R. A. 566; Lawrie v. State, 5 Ind. 526; Godwin v. Banks, 87 Md. 425, 40 Atl. 268. A child conceived, but not born, is to be deemed an "existing person" so far as may be necessary for its interests in the event of its subsequent birth. Rev. Codes N. D. 1899, § 2700; 1 Bl. Comm. 130.

EXISTIMATIO. In the civil law. The civil reputation which belonged to the Roman citizen, as such. Mackeld. Rom. Law, § 135. Called a state or condition of unimpeached dignity or character, (*dignitatis inlæsæ status;*) the highest standing of a Roman citizen. Dig. 50, 13, 5, 1.

Also the decision or award of an arbiter.

EXIT. Lat. It goes forth. This word is used in docket entries as a brief mention of the issue of process. Thus, "*exit fi. fa.*" denotes that a writ of *fieri facias* has been issued in the particular case. The "*exit* of a writ" is the fact of its issuance.

EXIT WOUND. A term used in medical jurisprudence to denote the wound made by a weapon on the side where it emerges, after it has passed completely through the body, or through any part of it.

EXITUS. Children; offspring. The rents, issues, and profits of lands and tenements. An export duty. The conclusion of the pleadings.

EXLEGALITAS. In old English law. Outlawry. Spelman.

EXLEGALITUS. He who is prosecuted as an outlaw. Jacob.

EXLEGARE. In old English law. To outlaw; to deprive one of the benefit and protection of the law, (*exuere aliquem beneficio legis.*) Spelman.

EXLEX. In old English law. An outlaw; *qui est extra legem,* one who is *out* of the *law's* protection. Bract. fol. 125. *Qui beneficio legis privatur.* Spelman.

EXOINE. In French law. An act or instrument in writing which contains the reasons why a party in a civil suit, or a person accused, who has been summoned, agreeably to the requisitions of a decree, does not appear. Poth. Proc. Crim. § 3, art. 3. The same as "Essoin," (*q. v.*)

EXONERATION. The removal of a burden, charge, or duty. Particularly, the act of relieving a person or estate from a charge or liability by casting the same upon another person or estate. Louisville & N. R. Co. v. Comm., 114 Ky. 787, 71 S. W. 916; Bannon v. Burnes (C. C.) 39 Fed. 898.

A right or equity which exists between those who are successively liable for the same debt. "A surety who discharges an obligation is entitled to look to the principal for reimbursement, and to invoke the aid of a court of equity for this purpose, and a subsequent surety who, by the terms of the contract, is responsible only in case of the default of the principal and a prior surety, may claim *exoneration* at the hands of either." Bisp. Eq. § 331.

In Scotch law. A discharge; or the act of being legally disburdened of, or liberated from, the performance of a duty or obligation. Bell.

EXONERATIONE SECTÆ. A writ that lay for the crown's ward, to be free from all suit to the county court, hundred court, leet, etc., during wardship. Fitzh. Nat. Brev. 158.

EXONERATIONE SECTÆ AD CURIAM BARON. A writ of the same nature as that last above described, issued by the guardian of the crown's ward, and addressed to the sheriffs or stewards of the court, forbidding them to distrain him, etc., for not doing suit of court, etc. New Nat. Brev. 352.

EXONERETUR. Lat. Let him be relieved or discharged. An entry made on a bail-piece, whereby the surety is relieved or discharged from further obligation, when the condition is fulfilled by the surrender of the principal or otherwise.

EXORDIUM. The beginning or introductory part of a speech.

EXPATRIATION. The voluntary act of abandoning one's country, and becoming the citizen or subject of another. Ludlam v. Ludlam, 31 Barb. (N. Y.) 489. See EMIGRATION.

EXPECT. To await; to look forward to something intended, promised, or likely to happen. Atchison, etc., R. Co. v. Hamlin, 67 Kan. 476, 73 Pac. 58.

—Expectancy. The condition of being deferred to a future time, or of dependence upon an expected event; contingency as to possession or enjoyment. With respect to the time of their enjoyment, estates may either be in possession or in expectancy; and of expectancies there are two sorts,—one created by the act of the parties, called a "remainder;" the other by act of law, called a "reversion." 2 Bl. Comm. 163. **—Expectant.** Having relation to, or dependent upon, a contingency.—**Expectant estates.** See ESTATE IN EXPECTANCY.—**Expectant heir.** A person who has the expectation of inheriting property or an estate, but small present means. The term is chiefly used in equity, where relief is afforded to such persons against the enforcement of "catching bargains," (*q. v.*) Jeffers v. Lampson, 10 Ohio St. 106; Whelen v. Phillips, 151 Pa. 312, 25 Atl. 44; In re Robbins' Estate, 199 Pa. 500, 49 Atl. 233.—**Expectant right.** A contingent right, not vested; one which depends on the continued

existence of the present condition of things until the happening of some future event. Pearsall v. Great Northern R. Co., 161 U. S. 646, 16 Sup. Ct. 705, 40 L. Ed. 838.—**Expectation of life,** in the doctrine of life annuities, is the share or number of years of life which a person of a given age may, upon an equality of chance, expect to enjoy. Wharton.

EXPEDIENTE. In Mexican law, a term including all the papers or documents constituting a grant or title to land from government. Vanderslice v. Hanks, 3 Cal. 27, 38.

EXPEDIMENT. The whole of a person's goods and chattels, bag and baggage. Wharton.

Expedit reipublicæ ne sua re quis male utatur. It is for the interest of the state that a man should not enjoy his own property improperly, (to the injury of others.) Inst. 1, 8, 2.

Expedit reipublicæ ut sit finis litium. It is for the advantage of the state that there be an end of suits; it is for the public good that actions be brought to a close. Co. Litt. 303*b*.

EXPEDITATÆ ARBORES. Trees rooted up or cut down to the roots. Fleta, l. 2, c. 41.

EXPEDITATION. In old forest law. A cutting off the claws or ball of the forefeet of mastiffs or other dogs, to prevent their running after deer. Spelman; Cowell.

EXPEDITIO. An expedition; an irregular kind of army. Spelman.

EXPEDITIO BREVIS. In old practice. The service of a writ. Townsh. Pl. 43.

EXPEL. In regard to trespass and other torts, this term means to eject, to put out, to drive out, and generally with an implication of the use of force. Perry v. Fitzhowe, 8 Q. B. 779; Smith v. Leo, 92 Hun, 242, 36 N. Y. Supp. 949.

EXPENDITORS. Paymasters. Those who expend or disburse certain taxes. Especially the sworn officer who supervised the repairs of the banks of the canals in Romney Marsh. Cowell.

EXPENSÆ LITIS. Costs or expenses of the suit, which are generally allowed to the successful party.

EXPENSIS MILITUM NON LEVANDIS. An ancient writ to prohibit the sheriff from levying any allowance for knights of the shire upon those who held lands in ancient demesne. Reg. Orig. 261.

Experientia per varios actus legem facit. Magistra rerum experientia. Co. Litt. 60. Experience by various acts makes law. Experience is the mistress of things.

EXPERIMENT. In patent law, either a trial of an uncompleted mechanical structure to ascertain what changes or additions may be necessary to make it accomplish the design of the projector, or a trial of a completed machine to test or illustrate its practical efficiency. In the former case, the inventor's efforts, being incomplete, if they are then abandoned, will have no effect upon the right of a subsequent inventor; but if the experiment proves the capacity of the machine to effect what its inventor proposed, the law assigns to him the merit of having produced a complete invention. Northwestern Fire Extinguisher Co. v. Philadelphia Fire Extinguisher Co., 10 Phila. 227, 18 Fed. Cas. 394.

EXPERTS. Persons examined as witnesses in a cause, who testify in regard to some professional or technical matter arising in the case, and who are permitted to give their opinions as to such matter on account of their special training, skill, or familiarity with it.

An expert is a person who possesses peculiar skill and knowledge upon the subject-matter that he is required to give an opinion upon. State v. Phair, 48 Vt. 366.

An expert is a skillful or experienced person; a person having skill or experience, or peculiar knowledge on certain subjects, or in certain professions; a scientific witness. See Congress & E. Spring Co. v. Edgar, 99 U. S. 657, 25 L. Ed. 487; Heald v. Thing, 45 Me. 394; Nelson v. Sun Mut. Ins. Co., 71 N. Y. 460; Koccis v. State, 56 N. J. Law, 44, 27 Atl. 800; Dole v. Johnson, 50 N. H. 453; Ellingwood v. Bragg, 52 N. H. 489.

EXPILARE. In the civil law. To spoil; to rob or plunder. Applied to inheritances. Dig. 47, 19; Cod. 9, 32.

EXPILATIO. In the civil law. The offense of unlawfully appropriating goods belonging to a succession. It is not technically theft (*furtum*) because such property no longer belongs to the decedent, nor to the heir, since the latter has not yet taken possession.

EXPILATOR. In the civil law. A robber; a spoiler or plunderer. *Expilatores sunt atrociores fures.* Dig. 47, 18, 1, 1.

EXPIRATION. Cessation; termination from mere lapse of time; as the expiration of a lease, or statute, and the like. Marshall v. Rugg, 6 Wyo. 270, 45 Pac. 486, 33 L. R. A. 679; Bowman v. Foot, 29 Conn. 338; Stuart v. Hamilton, 66 Ill. 255; Farnum v. Platt, 8 Pick. (Mass.) 341, 19 Am. Dec. 330.

EXPIRY OF THE LEGAL. In Scotch law and practice. Expiration of the period within which an adjudication may be redeemed, by paying the debt in the decree of adjudication. Bell.

EXPLEES. See ESPLEES.

EXPLETA, EXPLETIA, or EXPLECIA. In old records. The rents and profits of an estate.

EXPLICATIO. In the civil law. The fourth pleading; equivalent to the surrejoinder of the common law. Calvin.

EXPLORATION. In mining law. The examination and investigation of land supposed to contain valuable minerals, by drilling, boring, sinking shafts, driving tunnels, and other means, for the purpose of discovering the presence of ore and its extent. Colvin v. Weimer, 64 Minn. 37, 65 N. W. 1079.

EXPLORATOR. A scout, huntsman, or chaser.

EXPLOSION. A sudden and rapid combustion, causing violent expansion of the air, and accompanied by a report.

The word "explosion" is variously used in ordinary speech, and is not one that admits of exact definition. Every combustion of an explosive substance, whereby other property is ignited and consumed, would not be an "explosion," within the ordinary meaning of the term. It is not used as a synonym of "combustion." An explosion may be described generally as a sudden and rapid combustion, causing violent expansion of the air, and accompanied by a report. But the rapidity of the combustion, the violence of the expansion, and the vehemence of the report vary in intensity as often as the occurrences multiply. Hence an explosion is an idea of degrees; and the true meaning of the word, in each particular case, must be settled, not by any fixed standard or accurate measurement, but by the common experience and notions of men in matters of that sort. Insurance Co. v. Foote, 22 Ohio St. 348, 10 Am. Rep. 735. And see Insurance Co. v. Dorsey, 56 Md. 81, 40 Am. Rep. 403; Mitchell v. Insurance Co., 16 App. D. C. 270; Louisville Underwriters v. Durland, 123 Ind. 544, 24 N. E. 221, 7 L. R. A. 399.

EXPORT, *v.* To send, take, or carry an article of trade or commerce out of the country. To transport merchandise from one country to another in the course of trade. To carry out or convey goods by sea. State v. Turner, 5 Har. (Del.) 501.

EXPORT, *n.* A thing or commodity exported. More commonly used in the plural. In American law, this term is only used of goods carried to foreign countries, not of goods transported from one state to another. Brown v. Houston, 114 U. S. 622, 5 Sup. Ct. 1091, 29 L. Ed. 257; Patapsco Guano Co. v. Board of Agriculture, 171 U. S. 345, 18 Sup. Ct. 862, 43 L. Ed. 191; Swan v. U. S., 190 U. S. 143, 23 Sup. Ct. 702, 47 L. Ed. 984; Rothermel v. Meyerle, 136 Pa. 250, 20 Atl. 583, 9 L. R. A. 366.

EXPORTATION. The act of sending or carrying goods and merchandise from one country to another.

EXPOSE, *v.* To show publicly; to display; to offer to the public view; as, to "expose" goods to sale, to "expose" a tariff or schedule of rates, to "expose" the person. Boynton v. Page, 13 Wend. (N. Y.) 432; Comm. v. Byrnes, 158 Mass. 172, 33 N. E. 343; Adams Exp. Co. v. Schlessinger, 75 Pa. 246; Centre Turnpike Co. v. Smith, 12 Vt. 216.

To place in a position where the object spoken of is open to danger, or where it is near or accessible to anything which may affect it detrimentally; as, to "expose" a child, or to expose oneself or another to a contagious disease or to danger or hazard of any kind. In re Smith, 146 N. Y. 68, 40 N. E. 497, 28 L. R. A. 820, 48 Am. St. Rep. 769; Davis v. Insurance Co., 81 Iowa, 496, 46 N. W. 1073, 10 L. R. A. 359, 25 Am. St. Rep. 509; Miller v. Insurance Co., 39 Minn. 548, 40 N. W. 839.

EXPOSÉ, *n.* Fr. A statement; account; recital; explanation. The term is used in diplomatic language as descriptive of a written explanation of the reasons for a certain act or course of conduct.

EXPOSITIO. Lat. Explanation; exposition; interpretation.

Expositio quæ ex visceribus causæ nascitur, est aptissima et fortissima in lege. That kind of interpretation which is born [or drawn] from the bowels of a cause is the aptest and most forcible in the law. 10 Coke, 24*b*.

EXPOSITION. Explanation; interpretation.

EXPOSITION DE PART. In French law. The abandonment of a child, unable to take care of itself, either in a public or private place.

EXPOSITORY STATUTE. One the office of which is to declare what shall be taken to be the true meaning and intent of a statute previously enacted. Black, Const. Law, (3d ed.) 89. And see Lindsay v. United States Sav. & Loan Co., 120 Ala. 156, 24 South. 171, 42 L. R. A. 783.

EXPOSURE. The act or state of exposing or being exposed. See EXPOSE.

—Exposure of child. Placing it (with the intention of wholly abandoning it) in such a place or position as to leave it unprotected against danger and jeopard its health or life or subject it to the peril of severe suffering or serious bodily harm. Shannon v. People, 5 Mich. 90.—**Exposure of person.** In criminal law. Such an intentional exposure, in a public place, of the naked body or the private parts as is calculated to shock the feelings of chastity or to corrupt the morals of the community. Gilmore v. State, 118 Ga. 299, 45 S. E. 226.—**Indecent exposure.** The same as exposure of the person, in the sense above defined. State v. Bauguess, 106 Iowa, 107, 76 N. W. 508.

EXPRESS. Made known distinctly and explicitly, and not left to inference or implication. Declared in terms; set forth in words. Manifested by direct and appropriate language, as distinguished from that which is inferred from conduct. The word is usually contrasted with "implied." State v. Denny, 118 Ind. 449, 21 N. E. 274, 4 L. R. A. 65.

—**Express abrogation.** Abrogation by express provision or enactment; the repeal of a law or provision by a subsequent one, referring directly to it.—**Express assumpsit.** An undertaking to do some act, or to pay a sum of money to another, manifested by express terms. —**Express color.** An evasive form of special pleading in a case where the defendant ought to plead the general issue. Abolished by the common-law procedure act, 1852, (15 & 16 Vict. c. 76, § 64.)—**Express company.** A firm or corporation engaged in the business of transporting parcels or other movable property, in the capacity of common carriers, and especially undertaking the safe carriage and speedy delivery of small but valuable packages of goods and money. Alsop v. Southern Exp. Co., 104 N. C. 278, 10 S. E. 297, 6 L. R. A. 271; Pfister v. Central Pac. Ry. Co., 70 Cal. 169, 11 Pac. 686, 59 Am. Rep. 404.—**Express consideration.** A consideration which is distinctly and specifically named in the written contract or in the oral agreement of the parties.

As to express "Conditions," "Contracts," "Covenants," "Dedication," "Malice," "Notice," "Trust," and "Warranty," see those titles.

Expressa nocent, non expressa non nocent. Things expressed are [may be] prejudicial; things not expressed are not. Express words are sometimes prejudicial, which, if omitted, had done no harm. Dig. 35, 1, 52; Id. 50, 17, 195. See Calvin.

Expressa non prosunt quæ non expressa proderunt. 4 Coke, 73. The expression of things of which, if unexpressed, one would have the benefit, is useless.

Expressio eorum quæ tacite insunt nihil operatur. The expression or express mention of those things which are tacitly implied avails nothing. 2 Inst. 365. A man's own words are void, when the law speaketh as much. Finch, Law, b. 1, c. 3, no. 26. Words used to express what the law will imply without them are mere words of abundance. 5 Coke, 11.

Expressio unius est exclusio alterius. The expression of one thing is the exclusion of another. Co. Litt. 210*a*. The express mention of one thing [person or place] implies the exclusion of another.

Expressio unius personæ est exclusio alterius. Co. Litt. 210. The mention of one person is the exclusion of another. See Broom, Max. 651.

Expressum facit cessare tacitum. That which is expressed makes that which is implied to cease, [that is, supersedes it, or controls its effect.] Thus, an implied covenant in a deed is in all cases controlled by an express covenant. 4 Coke, 80; Broom, Max. 651.

Expressum servitium regat vel declaret tacitum. Let service expressed rule or declare what is silent.

EXPROMISSIO. In the civil law. The species of novation by which a creditor accepts a new debtor, who becomes bound instead of the old, the latter being released. 1 Bouv. Inst. no. 802.

EXPROMISSOR. In the civil law. A person who assumes the debt of another, and becomes solely liable for it, by a stipulation with the creditor. He differs from a surety, inasmuch as this contract is one of novation, while a surety is jointly liable with his principal. Mackeld. Rom. Law, § 538.

EXPROMITTERE. In the civil law. To undertake for another, with the view of becoming liable in his place. Calvin.

EXPROPRIATION. This word properly denotes a voluntary surrender of rights or claims; the act of divesting oneself of that which was previously claimed as one's own, or renouncing it. In this sense it is the opposite of "appropriation." But a meaning has been attached to the term, imported from its use in foreign jurisprudence, which makes it synonymous with the exercise of the power of eminent domain, *i. e.*, the compulsory taking from a person, on compensation made, of his private property for the use of a railroad, canal, or other public work.

In French law. Expropriation is the compulsory realization of a debt by the creditor out of the lands of his debtor, or the usufruct thereof. When the debtor is cotenant with others, it is necessary that a partition should first be made. It is confined, in the first place, to the lands (if any) that are in *hypothèque*, but afterwards extends to the lands not in *hypothèque*. Moreover, the debt must be of a liquidated amount. Brown.

EXPULSION. A putting or driving out. The act of depriving a member of a corporation, legislative body, assembly, society, commercial organization, etc., of his membership in the same, by a legal vote of the body itself, for breach of duty, improper conduct, or other sufficient cause. New York Protective Ass'n v. McGrath (Super. Ct.) 5 N. Y. Supp. 10; Palmetto Lodge v. Hubbell, 2 Strob. (S. C.) 462, 49 Am. Dec. 604. Also, in the law of torts and of landlord and tenant, an eviction or forcible putting out. See EJECTMENT.

EXPUNGE. To blot out; to efface designedly; to obliterate; to strike out wholly. Webster. See CANCEL.

EXPURGATION. The act of purging or cleansing, as where a book is published without its obscene passages.

EXPURGATOR. One who corrects by expurging.

EXQUÆSTOR. In Roman law. One who had filled the office of *quæstor*. A title given to Tribonian. Inst. procem. § 3. Used only in the ablative case, (*exquæstore.*)

EXROGARE. (From *ex*, from, and *rogare*, to pass a law.) In Roman law. To take something from an old law by a new law. Tayl. Civil Law, 155.

EXTEND. To expand, enlarge, prolong, widen, carry out, further than the original limit; as, to extend the time for filing an answer, to extend a lease, term of office, charter, railroad track, etc. Flagler v. Hearst, 62 App. Div. 18, 70 N. Y. Supp. 956; Goulding v. Hammond, 54 Fed. 642, 4 C. C. A. 533; State v. Scott, 113 Mo. 559, 20 S. W. 1076; James v. McMillan, 55 Mich. 136, 20 N. W. 826; Wilson v. Rousseau, 4 How. 697, 11 L. Ed. 1141; Orton v. Noonan, 27 Wis. 272; Moers v. Reading, 21 Pa. 201; People v. New York & H. R. Co., 45 Barb. (N Y.) 73. To extend a street means to prolong and continue it in the direction in which it already points, but does not include deflecting it from the course of the existing portion. Monroe v. Ouachita Parish, 47 La. Ann. 1061, 17 South. 498; In re Charlotte St., 23 Pa. 288; Seattle & M. Ry. Co. v. State, 7 Wash. 150, 34 Pac. 551, 22 L. R. A. 217, 38 Am. St. Rep. 866.

In English practice. To value the lands or tenements of a person bound by a statute or recognizance which has become forfeited, to their full *extended* value. 3 Bl. Comm. 420; Fitzh. Nat. Brev. 131. To execute the writ of *extent* or *extendi facias*, (*q. v.*) 2 Tidd, Pr. 1043, 1044.

In taxation. Extending a tax consists in adding to the assessment roll the precise amount due from each person whose name appears thereon. "The subjects for taxation having been properly listed, and a basis for apportionment established, nothing will remain to fix a definite liability but to *extend* upon the list or roll the several proportionate amounts, as a charge against the several taxables." Cooley, Tax'n, (2d Ed.) 423.

EXTENDI FACIAS. Lat. You cause to be extended. In English practice. The name of a writ of execution, (derived from its two emphatic words;) more commonly called an "extent." 2 Tidd, Pr. 1043; 4 Steph. Comm. 43.

EXTENSION. In mercantile law. An allowance of additional time for the payment of debts. An agreement between a debtor and his creditors, by which they allow him further time for the payment of his liabilities.

In patent law. An extension of the life of a patent for an additional period of seven years, formerly allowed by law in the United States, upon proof being made that the inventor had not succeeded in obtaining a reasonable remuneration from his patent-right. This is no longer allowed, except as to designs. See Rev. St. U. S. § 4924 (U. S. Comp. St. 1901, p. 3396).

EXTENSORES. In old English law. Extenders or appraisers. The name of certain officers appointed to appraise and divide or apportion lands. It was their duty to make a survey, schedule, or inventory of the lands, to lay them out under certain heads, and then to ascertain the value of each, as preparatory to the division or partition. Bract. fols. 72*b*, 75; Britt. c. 71.

EXTENT. In English practice. A writ of execution issuing from the exchequer upon a debt due the crown, or upon a debt due a private person, if upon recognizance or statute merchant or staple, by which the sheriff is directed to appraise the debtor's lands, and, instead of selling them, to set them off to the creditor for a term during which the rental will satisfy the judgment. Hackett v. Amsden, 56 Vt. 201; Nason v. Fowler, 70 N. H. 291, 47 Atl. 263.

In Scotch practice. The value or valuation of lands. Bell.

The rents, profits, and issues of lands. Skene.

—Extent in aid. That kind of extent which issues at the instance and for the benefit of a debtor to the crown, for the recovery of a debt due to himself. 2 Tidd, Pr. 1045; 4 Steph. Comm. 47.**—Extent in chief.** The principal kind of extent, issuing at the suit of the crown, for the recovery of the crown's debt. 4 Steph. Comm. 47. An adverse proceeding by the king, for the recovery of his own debt. 2 Tidd, Pr. 1045.

EXTENTA MANERII. (The extent or survey of a manor.) The title of a statute passed 4 Edw. I. St. 1; being a sort of direction for making a *survey* or terrier of a *manor*, and all its appendages. 2 Reeve, Eng. Law, 140.

EXTENUATE. To lessen; to palliate; to mitigate. Connell v. State, 46 Tex. Cr. R. 259, 81 S. W. 748.

EXTENUATING CIRCUMSTANCES. Such as render a delict or crime less aggravated, heinous, or reprehensible than it would otherwise be, or tend to palliate or lessen its guilt. Such circumstances may or-

dinarily be shown in order to reduce the punishment or damages.

EXTERRITORIALITY. The privilege of those persons (such as foreign ministers) who, though temporarily resident within a state, are not subject to the operation of its laws.

EXTERUS. Lat. A foreigner or alien; one born abroad. The opposite of *civis*.

Exterus non habet terras. An alien holds no lands. Tray. Lat. Max. 203.

EXTINCT. Extinguished. A rent is said to be extinguished when it is destroyed and put out. Co. Litt. 147*b*. See EXTINGUISHMENT.

Extincto subjecto, tollitur adjunctum. When the subject is extinguished, the incident ceases. Thus, when the business for which a partnership has been formed is completed, or brought to an end, the partnership itself ceases. Inst. 3, 26, 6; 3 Kent, Comm. 52, note.

EXTINGUISHMENT. The destruction or cancellation of a right, power, contract, or estate. The annihilation of a collateral thing or subject in the subject itself out of which it is derived. Prest. Merg. 9. For the distinction between an extinguishment and passing a right, see 2 Shars. Bl. Comm. 325, note.

"Extinguishment" is sometimes confounded with "merger," though there is a clear distinction between them. "Merger" is only a mode of extinguishment, and applies to estates only under particular circumstances; but "extinguishment" is a term of general application to rights, as well as estates. 2 Crabb, Real Prop. p. 367, § 1487.

—Extinguishment of common. Loss of the right to have common. This may happen from various causes.—**Extinguishment of copyhold.** In English law. A copyhold is said to be extinguished when the freehold and copyhold interests unite in the same person and in the same right, which may be either by the copyhold interest coming to the freehold or by the freehold interest coming to the copyhold. 1 Crabb, Real Prop. p. 670, § 864.—**Extinguishment of debts.** This takes place by payment; by accord and satisfaction; by novation, or the substitution of a new debtor; by merger, when the creditor recovers a judgment or accepts a security of a higher nature than the original obligation; by a release; by the marriage of a *feme sole* creditor with the debtor, or of an obligee with one of two joint obligors; and where one of the parties, debtor or creditor, makes the other his executor.—**Extinguishment of rent.** If a person have a yearly rent of lands, and afterwards purchase those lands, so that he has as good an estate in the land as in the rent, the rent is extinguished. Termes de la Ley; Cowell; Co. Litt. 147. Rent may also be extinguished by conjunction of estates, by confirmation, by grant, by release, and by surrender. 1 Crabb, Real Prop. pp. 210–213, § 209.—**Extinguishment of ways.** This is usually effected by unity of possession. As if a man have a way over the close of another, and he purchase that close, the way is extinguished. 1 Crabb, Real Prop. p. 341, § 384.

EXTIRPATION. In English law. A species of destruction or waste, analogous to estrepement. See ESTREPEMENT.

EXTIRPATIONE. A judicial writ, either before or after judgment, that lay against a person who, when a verdict was found against him for land, etc., maliciously overthrew any house or extirpated any trees upon it. Reg. Jud. 13, 56.

EXTOCARE. In old records. To grub woodland, and reduce it to arable or meadow; "to stock up." Cowell.

EXTORSIVELY. A technical word used in indictments for extortion.

It is a sufficient averment of a corrupt intent, in an indictment for extortion, to allege that the defendant "extorsively" took the unlawful fee. Leeman v. State, 35 Ark. 438, 37 Am. Rep. 44.

EXTORT. The natural meaning of the word "extort" is to obtain money or other valuable thing either by compulsion, by actual force, or by the force of motives applied to the will, and often more overpowering and irresistible than physical force. Com. v. O'Brien, 12 Cush. (Mass.) 90. See EXTORTION.

Extortio est crimen quando quis colore officii extorquet quod non est debitum, vel supra debitum, vel ante tempus quod est debitum. 10 Coke, 102. Extortion is a crime when, by color of office, any person extorts that which is not due, or more than is due, or before the time when it is due.

EXTORTION. Any oppression by color or pretense of right, and particularly the exaction by an officer of money, by color of his office, either when none at all is due, or not so much is due, or when it is not yet due. Preston v. Bacon, 4 Conn. 480.

Extortion consists in any public officer unlawfully taking, by color of his office, from any person any money or thing of value that is not due to him, or more than his due. Code Ga. 1882, § 4507.

Extortion is the obtaining of property from another, with his consent, induced by wrongful use of force or fear, or under color of official right. Pen. Code Cal. § 518; Pen. Code Dak. § 608. And see Cohen v. State, 37 Tex. Cr. R. 118, 38 S. W. 1005; U. S. v Deaver (D. C.) 14 Fed. 597; People v. Hoffman, 126 Cal. 366, 58 Pac. 856; State v. Logan, 104 La. 760, 29 South. 336; People v. Barondess, 61 Hun, 571, 16 N. Y. Supp. 436.

Extortion is an abuse of public justice, which consists in any officer unlawfuly taking, by

color of his office, from any man any money or thing of value that is not due to him, or before it is due. 4 Bl. Comm. 141.

Extortion is any oppression under color of right. In a stricter sense, the taking of money by any officer, by color of his office, when none, or not so much, is due, or it is not yet due. 1 Hawk. P. C. (Curw. Ed.) 418.

It is the corrupt demanding or receiving by a person in office of a fee for services which should be performed gratuitously; or, where compensation is permissible, of a larger fee than the law justifies, or a fee not due. 2 Bish. Crim. Law, § 390.

The distinction between "bribery" and "extortion" seems to be this: the former offense consists in the offering a present, or receiving one, if offered; the latter, in demanding a fee or present, by color of office. Jacob.

For the distinction between "extortion" and "exaction," see EXACTION.

EXTRA. A Latin preposition, occurring in many legal phrases; it means beyond, except, without, out of, outside.

—Extra allowance. In New York practice. A sum in addition to costs, which may, in the discretion of the court, be allowed to the successful party in cases of unusual difficulty. See Hascall v. King, 54 App. Div. 441, 66 N. Y. Supp. 1112.**—Extra costs.** In English practice. Those charges which do not appear upon the face of the proceedings, such as witnesses' expenses, fees to counsel, attendances, court fees, etc., an affidavit of which must be made, to warrant the master in allowing them upon taxation of costs. Wharton.**—Extra feodum.** Out of his fee; out of the seigniory, or not holden of him that claims it. Co. Litt. 1*b*; Reg. Orig. 97*b*.**—Extra judicium.** Extrajudicial; out of the proper cause; out of court; beyond the jurisdiction. See EXTRAJUDICIAL. **—Extra jus.** Beyond the law; more than the law requires. *In jure, vel extra jus.* Bract. fol. 169*b*.**—Extra legem.** Out of the law; out of the protection of the law.**—Extra præsentiam mariti.** Out of her husband's presence.**—Extra quatuor maria.** Beyond the four seas; out of the kingdom of England. 1 Bl. Comm. 457.**—Extra regnum.** Out of the realm. 7 Coke, 16*a*; 2 Kent, Comm. 42, note. **—Extra services,** when used with reference to officers, means services incident to the office in question, but for which compensation has not been provided by law. Miami County v. Blake, 21 Ind. 32.**—Extra territorium.** Beyond or without the territory. 6 Bin. 353; 2 Kent, Comm. 407.**—Extra viam.** Outside the way. Where the defendant in trespass pleaded a right of way in justification, and the replication alleged that the trespass was committed outside the limits of the way claimed, these were the technical words to be used.**—Extra vires.** Beyond powers. See ULTRA VIRES.

Extra legem positus est civiliter mortuus. Co. Litt. 130. He who is placed out of the law is civilly dead.

Extra territorium jus dicenti impune non paretur. One who exercises jurisdiction out of his territory is not obeyed with impunity. Dig. 2, 1, 20; Branch, Princ.; 10 Coke, 77. He who exercises judicial authority beyond his proper limits cannot be obeyed with safety.

EXTRACT. A portion or fragment of a writing. In Scotch law, the certified copy, by a clerk of a court, of the proceedings in an action carried on before the court, and of the judgment pronounced; containing also an order for execution or proceedings thereupon. Jacob; Whishaw.

EXTRACTA CURIÆ. In old English law. The issues or profits of holding a court, arising from the customary fees, etc.

EXTRADITION. The surrender of a criminal by a foreign state to which he has fled for refuge from prosecution to the state within whose jurisdiction the crime was committed, upon the demand of the latter state, in order that he may be dealt with according to its laws. Extradition may be accorded as a mere matter of comity, or may take place under treaty stipulations between the two nations. It also obtains as between the different states of the American Union. Terlinden v. Ames, 184 U. S. 270, 22 Sup. Ct. 484, 46 L. Ed. 534; Fong Yue Ting v. U. S., 149 U. S. 698, 13 Sup. Ct. 1016, 37 L. Ed. 905.

Extradition between the states must be considered and defined to be a political duty of imperfect obligation, founded upon compact, and requiring each state to surrender one who, having violated the criminal laws of another state, has fled from its justice, and is found in the state from which he is demanded, on demand of the executive authority of the state from which he fled. Abbott.

EXTRA-DOTAL PROPERTY. In Louisiana this term is used to designate that property which forms no part of the dowry of a woman, and which is also called "paraphernal property." Civ. Code La. art. 2315. Fleitas v. Richardson, 147 U. S. 550, 13 Sup. Ct. 495, 37 L. Ed. 276.

EXTRAHAZARDOUS. In the law of insurance. Characterized or attended by circumstances or conditions of special and unusual danger. Reynolds v. Insurance Co., 47 N. Y. 597; Russell v. Insurance Co., 71 Iowa, 69, 32 N. W. 95.

EXTRAHURA. In old English law. An animal wandering or straying about, without an owner; an estray. Spelman.

EXTRAJUDICIAL. That which is done, given, or effected outside the course of regular judicial proceedings; not founded upon, or unconnected with, the action of a court of law; as extrajudicial evidence, an extrajudicial oath.

That which, though done in the course of regular judicial proceedings, is unnecessary to such proceedings, or interpolated, or beyond their scope; as an extrajudicial opinion, (*dictum.*)

That which does not belong to the judge or his jurisdiction, notwithstanding which he takes cognizance of it.

—Extrajudicial confession. One made by the party out of court, or to any person, official or otherwise, when made not in the course of a judicial examination or investigation. State

v. Alexander, 109 La. 557, 33 South. 600; U. S. v. Williams, 28 Fed. Cas. 643.—**Extrajudicial oath.** One taken not in the course of judicial proceedings, or taken without any authority of law, though taken formally before a proper person. State v. Scatena, 84 Minn. 281, 87 N. W. 764.

EXTRALATERAL RIGHT. In mining law. The right of the owner of a mining claim duly located on the public domain to follow, and mine, any vein or lode the apex of which lies within the boundaries of his location on the surface, notwithstanding the course of the vein on its dip or downward direction may so far depart from the perpendicular as to extend beyond the planes which would be formed by the vertical extension downwards of the side lines of his location. See Rev. Stat. U. S. § 2322 (U. S. Comp. St. 1901, p. 1425).

EXTRANEUS. In old English law. One foreign born; a foreigner. 7 Coke, 16.

In Roman law. An heir not born in the family of the testator. Those of a foreign state. The same as *alienus*. Vicat; Du Cange.

Extraneus est subditus qui extra terram, i. e., potestatem regis natus est. 7 Coke, 16. A foreigner is a subject who is born out of the territory, *i. e.*, government of the king.

EXTRAORDINARY. Out of the ordinary; exceeding the usual, average, or normal measure or degree.

—**Extraordinary average.** A contribution by all the parties concerned in a mercantile voyage, either as to the vessel or cargo, toward a loss sustained by some of the parties in interest for the benefit of all. Wilson v. Cross, 33 Cal. 69.—**Extraordinary care** is synonymous with greatest care, utmost care, highest degree of care. Railroad Co. v. Baddeley, 54 Ill. 24, 5 Am. Rep. 71; Railway Co. v. Causler, 97 Ala. 235, 12 South. 439. See CARE; DILIGENCE; NEGLIGENCE.—**Extraordinary remedies.** The writs of *mandamus, quo warranto, habeas corpus*, and some others are sometimes called "extraordinary remedies," in contradistinction to the ordinary remedy by action.

EXTRAPAROCHIAL. Out of a parish; not within the bounds or limits of any parish. 1 Bl. Comm. 113, 284.

EXTRA-TERRITORIALITY. The extra-territorial operation of laws; that is, their operation upon persons, rights, or jural relations, existing beyond the limits of the enacting state, but still amenable to its laws.

EXTRAVAGANTES. In canon law. Those decretal epistles which were published after the Clementines. They were so called because at first they were not digested or arranged with the other papal constitutions, but seemed to be, as it were, detached from the canon law. They continued to be called by the same name when they were afterwards inserted in the body of the canon law. The first extravagantes are those of Pope John XXII., successor of Clement V. The last collection was brought down to the year 1483, and was called the "Common Extravagantes," notwithstanding that they were likewise incorporated with the rest of the canon law. Enc. Lond.

EXTREME CRUELTY. In the law of divorce. The infliction of grievous bodily harm or grievous mental suffering. Civ. Code Cal. 1903, § 94. Either personal violence or the reasonable apprehension thereof, or a systematic course of ill treatment affecting health and endangering life. Morris v. Morris, 14 Cal. 79, 73 Am. Dec. 615; Harratt v. Harratt, 7 N. H. 198, 26 Am. Dec. 730; Carpenter v. Carpenter, 30 Kan. 712, 2 Pac. 122, 46 Am. Rep. 108. Any conduct constituting aggravated or inhuman ill-treatment, having regard to the physical and temperamental constitution of the parties and all the surrounding circumstances. Donald v. Donald, 21 Fla. 573; Blain v. Blain, 45 Vt. 544; Poor v. Poor, 8 N. H. 315, 29 Am. Dec. 664.

EXTREME HAZARD. To constitute extreme hazard, the situation of a vessel must be such that there is imminent danger of her being lost, notwithstanding all the means that can be applied to get her off. King v. Hartford Ins. Co., 1 Conn. 421.

EXTREMIS. When a person is sick beyond the hope of recovery, and near death, he is said to be *in extremis*.

Extremis probatis, præsumuntur media. Extremes being proved, intermediate things are presumed. Tray. Lat. Max. 207.

EXTRINSIC. Foreign; from outside sources; *dehors*. As to extrinsic evidence, see EVIDENCE.

EXTUMÆ. In old records. Relics. Cowell.

EXUERE PATRIAM. To throw off or renounce one's country or native allegiance; to expatriate one's self. Phillim. Dom. 18.

EXULARE. In old English law. To exile or banish. *Nullus liber homo, exuletur, nisi*, etc., no freeman shall be exiled, unless, etc. Magna Charta, c. 29; 2 Inst. 47.

EXUPERARE. To overcome; to apprehend or take. Leg. Edm. c. 2.

EY. A watery place; water. Co. Litt. 6.

EYDE. Aid; assistance; relief. A subsidy.

EYE-WITNESS. One who saw the act, fact, or transaction to which he testifies. Distinguished from an ear-witness, (*auritus.*)

EYOTT. A small island arising in a river. Fleta, l. 3, c. 2, § b; Bract. l. 2, c. 2.

EYRE. Justices in eyre were judges commissioned in Anglo-Norman times in England to travel systematically through the kingdom, once in seven years, holding courts in specified places for the trial of certain descriptions of causes.

EYRER. L. Fr. To travel or journey; to go about or itinerate. Britt. c. 2.

EZARDAR. In Hindu law. A farmer or renter of land in the districts of Hindoostan.

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