

## F

**F.** The sixth letter of the alphabet. Under the old English criminal law, this letter was branded upon felons upon their being admitted to clergy; as also upon those convicted of fights or frays, or falsity. Jacob; Cowell; 2 Reeve, Eng. Law, 392; 4 Reeve, Eng. Law, 485.

**F. A. S.** Free alongside ship. Larkin v. Geisenheimer, 201 App. Div. 741, 195 N. Y. S. 577, 578; Bardach Iron & Steel Co. v. Tenenbaum, 136 Va. 163, 118 S. E. 502, 506; Iwai & Co. v. Hercules Powder Co., 162 Ga. 795, 134 S. E. 763. The term implies delivery at dock for ship named. Christenson v. Gorton-Pew Fisheries Co. (C. C. A.) 8 F.(2d) 639, 691.

A lumber contract providing that prices were f. o. b., f. a. s. is too indefinite for enforcement; the expression "f. o. b." designating that the seller should bear the expense of loading onto the vessel, while the expression "f. a. s." denotes that the lumber should merely be placed within reach of the vessel's tackle. McGowin Lumber & Export Co. v. R. J. & B. F. Lumber Co., 192 Ala. 35, 68 So. 263, 264.

**F. O. B.** In mercantile contracts, this abbreviation means "free on board," and imports that the seller or consignor of goods will deliver them on the car, vessel, or other conveyance by which they are to be transported without expense to the buyer or consignee, that is, without charge for packing, crating, drayage, etc., until delivered to the carrier. Vogt v. Shienbeck, 122 Wis. 491, 100 N. W. 820, 67 L. R. A. 756, 106 Am. St. Rep. 989; Silberman v. Clark, 96 N. Y. 523; Sheffield Furnace Co. v. Hull Coal & Coke Co., 101 Ala. 446, 14 So. 672; County Board of Education of Jefferson County v. Cement Products Co., 209 Ala. 310, 96 So. 236, 237; Hatcher v. Ferguson, 33 Idaho, 639, 198 P. 680, 681, 16 A. L. R. 590; Fulton v. W. R. Grace & Co., 143 Va. 12, 129 S. E. 374, 378; Hettrick Mfg. Co. v. Srere, 235 Mich. 306, 209 N. W. 97, 98; Schirmer v. Union Brewing & Malting Co., 26 Cal. App. 169, 146 P. 194, 196; Skinner v. James Griffiths & Sons, 80 Wash. 291, 141 P. 693; Cuero Cotton Oil & Mfg. Co. v. Feeders' Supply Co. (Tex. Civ. App.) 203 S. W. 79, 81; In re Charles T. Stork & Co. (C. C. A.) 271 F. 279, 281. When used in connection with the price of goods, the term is commonly construed as fixing only the price, and not as relating to the time, place, or mode of delivery. Lee v. Northway Motor Sales Co. (R. I.) 121 A. 425; Early-Foster Co. v. A. P. Moore's Sons (Tex. Civ. App.) 233 S. W. 299, 303; Burton & Beard v. Nacogdoches Crate & Lumber Co. (Tex. Civ. App.) 161 S. W. 25, 26; Pond Creek Mill & Elevator Co. v. Clark (C. C. A.) 270 F. 482, 486.

**FABRIC.** With reference to the reinforcement of concrete, a union of drawn wires

made up in rows. Soule v. Northern Construction Co., 33 Cal. App. 300, 165 P. 21, 22.

**FABRIC LANDS.** In English law. Lands given towards the maintenance, rebuilding, or repairing of cathedral and other churches. Cowell; Blount. Called by the Saxons *timber-lands*. Spelman.

It was the custom, says Cowell, for almost every one to give by will more or less to the *fabric* of the cathedral or parish church where he lived. These lands so given were called fabric lands, because given *ad fabricam ecclesie reparandam* (for repairing the fabric of the church).

**FABRICA.** In old English law. The making or coining of money.

**FABRICARE.** Lat. To make. Used in old English law of a lawful coining, and also of an unlawful making or counterfeiting of coin. Used in an indictment for forging a bill of lading; 1 Salk. 341.

**FABRICATE.** To invent; to devise falsely. Invent is sometimes used in a bad sense, but fabricate never in any other. To fabricate a story implies that it is so contrary to probability as to require the skill of a workman to induce belief in it. Crabbe, Syn. The word implies fraud or falsehood; a false or fraudulent concoction, knowing it to be wrong. L. R. 10 Q. B. 162.

To fabricate evidence is to arrange or manufacture circumstances or *indicia*, after the fact committed, with the purpose of using them as evidence, and of deceitfully making them appear as if accidental or undesigned; to devise falsely or contrive by artifice with the intention to deceive. Such evidence may be wholly forged and artificial, or it may consist in so warping and distorting real facts as to create an erroneous impression in the minds of those who observe them and then presenting such impression as true and genuine.

**FABRICATED EVIDENCE.** Evidence manufactured or arranged after the fact, and either wholly false or else warped and discolored by artifice and contrivance with a deceitful intent. See *supra*.

**FABRICATED FACT.** In the law of evidence. A fact existing only in statement, without any foundation in truth. An actual or genuine fact to which a false appearance has been designedly given; a physical object placed in a false connection with another, or with a person on whom it is designed to cast suspicion.

**FABULA.** In old European law. A contract or formal agreement; particularly used in the Lombardic and Visigothic laws to denote a marriage contract or a will. Burrill.

**FACE.** The outward appearance or aspect of a thing.

—**Face amount.** The “face amount” of an instrument is that shown by the mere language employed, and excludes any accrued interest. *Burns v. Corn Exch. Nat. Bank of Omaha, Neb.*, 33 Wyo. 474, 240 P. 683, 687. See *Face of instrument*.

—**Face of book.** Under an act providing that a public or private statute or the proceedings of any legislative body purporting on the face of the book to be printed by authority of the government of the state are evidence without further proof, the “face of the book” and the “title page” need not coincide, as “face” is used in contradistinction to “cover.” *Penacola, St. A. & G. S. S. Co. v. Brooks*, 14 Ala. App. 364, 70 So. 968, 970.

—**Face of instrument.** That which is shown by the mere language employed, without any explanation, modification, or addition from extrinsic facts or evidence. Adopted in *Re Stoneman (Sur.)* 146 N. Y. S. 172, 175. Thus, if the express terms of the paper disclose a fatal legal defect, it is said to be “void on its face.” Regarded as an evidence of debt, the face of an instrument is the principal sum which it expresses to be due or payable, without any additions in the way of interest or costs. *Osgood v. Bringolf*, 32 Iowa, 265. See, also, *State v. Newby*, 169 Wis. 208, 141 N. W. 953, 954.

—**Face of judgment.** The sum for which it was rendered, exclusive of interest. *Osgood v. Bringolf*, 32 Iowa, 265. See, also, *Face of instrument*.

—**Face of policy.** A phrase which, as used in a statute forbidding life insurance policies to contain provision for any mode of settlement at maturity of less value than the amount insured on the “face of the policy,” does not mean merely the first page, but denotes the entire insurance contract contained in the policy, including a rider attached and referred to on the first page. *Julius v. Metropolitan Life Ins. Co.*, 299 Ill. 343, 132 N. E. 435, 437, 17 A. L. R. 956.

—**Face of record.** The entire record in a case, not merely what the judgment recites. *Carson v. Taylor (Tex. Civ. App.)* 261 S. W. 824; *San Bernardo Townsite Co. v. Hocker (Tex. Civ. App.)* 176 S. W. 644, 646.

—**Face value.** This term, in a statute taxing transfers of corporate stock, means par value. *Goodyear Tire & Rubber Co. v. U. S.*, 273 U. S. 100, 47 S. Ct. 263, 71 L. Ed. 558. See, also *In re Stoneman (Sur.)* 146 N. Y. S. 172, 174.

—**Regular on its face.** Process is “regular on its face” when it proceeds from a court, officer, or body having authority of law to issue process of that nature, and is legal in form and contains nothing to notify or fairly ap-

prise any one that it is issued without authority. *Pankewicz v. Jess*, 27 Cal. App. 340, 149 P. 997, 998. See, also, *Allen v. Cooling*, 161 Minn. 10, 200 N. W. 849, 851 (promissory note).

**FACERE.** Lat. To do; to make. Thus, *facere defaultam*, to make default; *facere duellum*, to make the duel, or make or do battle; *facere finem*, to make or pay a fine; *facere legem*, to make one's law; *facere sacramentum*, to make oath.

**FACIAS.** That you cause. Occurring in the phrases “*scire facias*,” (that you cause to know,) “*feri facias*,” (that you cause to be made,) etc. Used also in the phrases *Do ut facias* (I give that you may do), *Facio ut facias* (I do that you may do), two of the four divisions of considerations made by Blackstone, 2 Comm. 444. See *Facio ut des*; *Facio ut facias*.

**FACIENDO.** In doing or paying; in some activity.

**FACIES.** Lat. The face or countenance; the exterior appearance or view; hence, contemplation or study of a thing on its external or apparent side. Thus, *prima facie* means at the first inspection, on a preliminary or exterior scrutiny. When we speak of a “*prima facie* case,” we mean one which, on its own showing, on a first examination, or without investigating any alleged defenses, is apparently good and maintainable.

**FACILE.** In Scotch law. Easily persuaded; easily imposed upon. Bell.

**FACILITIES.** That which promotes the ease of any action, operation, transaction, or course of conduct. Webster. In a statute giving the Public Service Commission control over the service and facilities of public service companies, “facilities” means something owned by or under the control of a public utility. *Borough of Swarthmore v. Public Service Commission*, 277 Pa. 472, 121 A. 488, 489. The term denotes inanimate means rather than human agencies. *Sloss-Sheffield Steel & Iron Co. v. Smith*, 185 Ala. 607, 64 So. 337, 338.

Also, a name formerly given to certain notes of some of the banks in the state of Connecticut, which were made payable in two years after the close of the war of 1812. *Springfield Bank v. Merrick*, 14 Mass. 322.

**FACILITY.** In Scotch law. Pliancy of disposition. Bell.

**Facinus quos inquinat aequat.** Guilt makes equal those whom it stains.

**FACIO UT DES.** (Lat. I do that you may give.) A species of contract in the civil law (being one of the *innominate* contracts) which occurs when a man agrees to perform anything for a price either specifically mentioned or left to the determination of the law to

set a value on it; as when a servant hires himself to his master for certain wages or an agreed sum of money. 2 Bl. Comm. 445. Also, the consideration of that species of contract.

**FACIO UT FACIAS.** (Lat. I do that you may do.) The consideration of that species of contract in the civil law, or the contract itself (being one of the *innominate* contracts), which occurs when I agree with a man to do his work for him if he will do mine for me; or if two persons agree to marry together, or to do any other positive acts on both sides; or it may be to forbear on one side in consideration of something done on the other. 2 Bl. Comm. 444.

**FACSIMILE.** An exact copy, preserving all the marks of the original.

**FACSIMILE PROBATE.** In England, where the construction of a will may be affected by the appearance of the original paper, the court will order the probate to pass in *facsimile*, as it may possibly help to show the meaning of the testator. 1 Williams, Ex'rs (7th Ed.) 331, 386, 566.

**FACT.** A thing done; an action performed or an incident transpiring; an event or circumstance; an actual occurrence. An actual happening in time or space or an event mental or physical. Fowler-Curtis Co. v. Dean, 203 App. Div. 317, 196 N. Y. S. 750, 754; German-American Ins. Co. v. Huntley, 62 Okl. 39, 161 P. 815, 817. That which has taken place, not what might or might not have taken place. Churchill v. Meade, 92 Or. 626, 182 P. 368, 371.

A fact is either a state of things, that is, an existence, or a motion, that is, an event. 1 Benth. Jud. Ev. 48.

Fact (*factum, fait*) stands in lawbooks for: 1. An act; 2. For a completed and operative transaction brought about by sealing and executing a certain sort of writing, and so for the instrument itself, a deed (*factum*); 3. As designating what exists, in contradistinction to what should exist (*de facto* as contrasted with *de jure*); 4. As indicating things, events, actions, conditions, as happening, existing, really taking place. Thayer, Evid. 190.

"Fact" was formerly used almost exclusively in the sense of "action" or "deed." This usage survives in phrases such as "accessory before the fact."

**In the Law of Evidence**

A circumstance, event or occurrence as it actually takes or took place; a physical object or appearance, as it actually exists or existed. An actual and absolute reality, as distinguished from mere supposition or opinion; a truth, as distinguished from fiction or error. Burrill, Circ. Ev. 218. "Facts" and "evidence" are sometimes used interchangeably. Mackey v. First Nat. Bank (Mo. App.) 293 S. W. 66, 71.

"Fact" is very frequently used in opposition or contrast to "law." Thus, questions

of *fact* are for the jury; questions of *law* for the court. So an attorney *at law* is an officer of the courts of justice; an attorney *in fact* is appointed by the written authorization of a principal to manage business affairs usually not professional. Fraud *in fact* consists in an actual intention to defraud, carried into effect; while fraud imputed by *law* arises from the man's conduct in its necessary relations and consequences.

The word is much used in phrases which contrast it with law. Law is a principle; fact is an event. Law is conceived; fact is actual. Law is a rule of duty; fact is that which has been according to or in contravention of the rule. The distinction is well illustrated in the rule that the existence of foreign laws is matter of fact. Within the territory of its jurisdiction, law operates as an obligatory rule which judges must recognize and enforce; but, in a tribunal outside that jurisdiction, it loses its obligatory force and its claim to judicial notice. The fact that it exists, if important to the rights of parties, must be alleged and proved the same as the actual existence of any other institution. Abbott.

The terms "fact" and "truth" are often used in common parlance as synonymous, but, as employed in reference to pleading, they are widely different. A fact in pleading is a circumstance, act, event, or incident; a truth is the legal principle which declares or governs the facts and their operative effect. Admitting the facts stated in a complaint, the truth may be that the plaintiff is not entitled, upon the face of his complaint, to what he claims. The mode, in which a defendant sets up that truth for his protection is a demurrer. Drake v. Cockroft, 4 E. D. Smith (N. Y.) 37.

**In General**

—**Collateral facts.** Such as are outside the controversy or are not directly connected with the principal matter or issue in dispute. Summerour v. Felker, 102 Ga. 254, 29 S. E. 448; Garner v. State, 76 Miss. 515, 25 South. 363.

—**Dispositive facts.** See that title.

—**Evidentiary facts.** Those which have a legitimate bearing on the matter or question in issue and which are directly (not inferentially) established by the evidence in the case. Woodfill v. Patton, 76 Ind. 579, 40 Am. Rep. 269. Those furnishing evidence of some other fact. Maeder Steel Products Co. v. Zanello, 109 Or. 562, 220 P. 155, 158; Oregon Home Builders v. Montgomery Inv. Co., 94 Or. 349, 184 P. 487, 489. Facts which can be directly established by testimony or evidence;—distinguished from "ultimate facts." Real Estate Title, Ins. & Trust Co. v. Lederer (D. C.) 229 F. 799, 804.

—**Facts in issue.** Those matters of fact on which the plaintiff proceeds by his action, and which the defendant controverts in his pleadings. Oregon Home Builders v. Montgomery Inv. Co., 94 Or. 349, 184 P. 487, 490; Maeder Steel Products Co. v. Zanello, 109 Or. 562, 220 P. 155, 158; Glenn v. Savage, 14 Or. 567, 13 Pac. 442; King v. Chase, 15 N. H. 9, 41 Am. Dec. 675; Caperton v. Schmidt, 26 Cal. 494, 85 Am. Dec. 187.

—**Fact material to risk.** See *Material fact, infra*.

—**Finding of fact.** In this phrase, the term “fact” denotes the inferences drawn by the trier from ascertained facts. *Porter v. Industrial Commission of Wisconsin*, 173 Wis. 267, 181 N. W. 317, 318.

—**Immaterial facts.** Those which are not essential to the right of action or defense.

—**Inferential facts.** Such as are established not directly by testimony or other evidence, but by inferences or conclusions drawn from the evidence. *Railway Co. v. Miller*, 141 Ind. 533, 37 N. E. 343.

—**Jurisdictional facts.** Those matters of fact which must exist before the court can properly take jurisdiction of the particular case, as, that the defendant has been properly served with process, that the amount in controversy exceeds a certain sum, that the parties are citizens of different states, etc. *Noble v. Railroad Co.*, 147 U. S. 165, 13 S. Ct. 271, 37 L. Ed. 123.

—**Material fact.** (In contracts.) One which constitutes substantially the consideration of the contract, or without which it would not have been made. *Lyons v. Stephens*, 45 Ga. 143. (In pleading and practice.) One which is essential to the case, defense, application, etc., and without which it could not be supported. *Adams v. Way*, 32 Conn. 168; *Sandheger v. Hosey*, 26 W. Va. 223; *Davidson v. Hackett*, 49 Wis. 186, 5 N. W. 459; *Hansen v. Sandvik*, 128 Wash. 60, 222 P. 205, 207. One which tends to establish any of issues raised. *Sherwood Bros. v. Yellow Cab Co. of Philadelphia*, 283 Pa. 488, 129 A. 563, 564. The “material facts” of an issue of fact are such as are necessary to determine the issue. *Woolman Const. Co. v. Sampson*, 219 Mich. 125, 188 N. W. 420, 422. (In insurance.) A fact which, if communicated to the agent or insurer, would induce him either to decline the insurance altogether, or not accept it unless a higher premium is paid. *Farber v. American Automobile Ins. Co.*, 191 Mo. App. 307, 177 S. W. 675, 681; *Berry v. Equitable Fire & Marine Ins. Co. (Mo. App.)* 263 S. W. 884, 886; *Missouri State Life Ins. Co. v. Dossett (Tex. Civ. App.)* 265 S. W. 254, 257; *Franklin Life Ins. Co. v. Dossett (Tex. Civ. App.)* 265 S. W. 259, 262. One which necessarily has some bearing on the subject-matter. *Wittels Loan & Mercantile Co. v. American Cent. Ins. Co. (Mo. App.)* 273 S. W. 1084, 1086. A fact which increases the risk, or which, if disclosed, would have been a fair reason for demanding a higher premium; any fact the knowledge or ignorance of which would naturally influence the insurer in making or refusing the contract, or in estimating the degree and character of the risk, or in fixing the rate. *Boggs v. Insurance Co.*, 30 Mo. 68; *Clark v. Insurance Co.*, 40 N. H. 338, 77 Am.

Dec. 721; *Murphy v. Insurance Co.*, 205 Pa. 444, 55 A. 19; *Penn Mut. L. Ins. Co. v. Mechanics' Sav. Bank*, 72 F. 413, 19 C. C. A. 286, 38 L. R. A. 33.

—**Principal fact.** In the law of evidence. A fact sought and proposed to be proved by evidence of other facts (termed “evidentiary facts”) from which it is to be deduced by inference. A fact which is the principal and ultimate object of an inquiry, and respecting the existence of which a definite belief is required to be formed. 3 Benth. Jud. Ev. 3; *Burrill, Circ. Ev.* 3, 119.

—**Ultimate fact.** The final or resulting fact reached by processes of logical reasoning from the detached or successive facts in evidence, and which is fundamental and determinative of the whole case. *Levins v. Rovegno*, 71 Cal. 273, 12 P. 161; *Kahn v. Central Smelting Co.*, 2 Utah, 371; *Caywood v. Farrell*, 175 Ill. 480, 51 N. E. 775; *Maeder Steel Products Co. v. Zanello*, 109 Or. 562, 220 P. 155, 159. The final resulting effect reached by processes of legal reasoning from the evidentiary facts. *Oregon Home Builders v. Montgomery Inv. Co.*, 94 Or. 349, 184 P. 487, 489. See, also, *Ultimate facts*.

**FACTA.** In old English law. Deeds. *Facta armorum*, deeds or feats of arms; that is, jousts or tournaments. Cowell.

Facts. *Facta et casus*, facts and cases. Bract. fol. 1b.

**Facta sunt potentiora verbis.** Deeds [or facts] are more powerful than words.

**Facta tenent multa quæ fieri prohibentur.** 12 Coke, 124. Deeds contain many things which are prohibited to be done.

**FACTIO TESTAMENTI.** In the civil law. The right, power, or capacity of making a will; called “*factio activa*.” Inst. 2, 10, 6.

The right or capacity of taking by will; called “*factio passiva*.” Inst. 2, 10, 6; Vicat, Voc. Jur.

**FACTO.** In fact; by an act; by the act or fact. *Ipsa facto*, by the act itself; by the mere effect of a fact, without anything superadded, or any proceeding upon it to give it effect. 3 Kent, Comm. 55, 58.

**FACTOR.** A commercial agent, employed by a principal to sell merchandise consigned to him for that purpose, for and in behalf of the principal, but usually in his own name, being intrusted with the possession and control of the goods, and being remunerated by a commission, commonly called “*factorage*.” *Howland v. Woodruff*, 60 N. Y. 80; *In re Rabenau (D. C.)* 118 F. 474; *Lawrence v. Stonington Bank*, 6 Conn. 527; *Graham v. Duckwall*, 8 Bush (Ky.) 17; Pal. Ag. 13; Sto. Ag. § 33; Com. Dig. *Merchant, B*; *Malynes, Lex Merc.* 81; *Beawes, Lex Merc.* 44; 3 Chit.



Com. L. 193; 2 Kent 622; 1 Bell, Comm. 385, § 408; 2 B. & Ald. 143.

One whose business is to receive and sell goods for a commission, being intrusted with the possession of the goods to be sold, and usually selling in his own name. *City of Atlanta v. York Mfg. Co.*, 155 Ga. 33, 116 S. E. 195, 199; *I. J. Cooper Rubber Co. v. Johnson*, 133 Tenn. 562, 182 S. W. 593, L. R. A. 1917A, 282; *Tyson v. Jennings Produce Co.*, 16 Ala. App. 374, 77 So. 986, 987; *G. H. Hammond Co. v. Joseph Mercantile Co.*, 144 Ark. 108, 222 S. W. 27, 28.

An agent, who, in pursuance of his usual trade or business, and for compensation, sells goods or merchandise consigned or intrusted to his possession for that purpose by or for the owner. *Sams v. Arthur*, 135 S. C. 123, 133 S. E. 205, 207; *M. H. Thomas & Co. v. Hawthorne* (Tex. Civ. App.) 245 S. W. 966, 971; *Lemnos Broad Silk Works v. Spiegelberg*, 217 N. Y. S. 595, 597, 127 Misc. Rep. 855.

An agent who, in the pursuit of, an independent calling, is employed by another to sell property for him, and is vested by the latter with the possession or control of the property, or authorized to receive payment therefor from the purchaser. Civ. Code Cal. § 2026; Comp. Laws N. D. 1913, § 6145; Comp. Laws S. D. 1929, § 1288; *Leland v. Oliver*, 82 Cal. App. 474, 255 P. 775, 777.

In the old law, one to whom goods are consigned to sell by a merchant at a distance from the place of sale. *Eames v. H. B. Claffin Co.* (C. C. A.) 239 F. 631, 635.

#### Classification

Factors are called "domestic" or "foreign" according as they reside and do business in the same state or country with the principal or in a different state or country. A domestic factor is sometimes called a "home" factor. *Ruffner v. Hewitt*, 7 W. Va. 585; 1 Term 112; 4 Maule & S. 576.

A "foreign factor," as understood in marine matters, was a person who had charge of the cargo to handle it, dispose of it, convert it into money, or exchange it for other property, but who had nothing to do with the management of the boat when he sailed thereon, at which time he was called a "supercargo." *Gilchrist Transp. Co. v. Worthington & Sill*, 193 App. Div. 250, 184 N. Y. S. 81, 83; *Beawes, Lex Merc. 44*; *Liverm. Ag. 69*; 1 Domat, b. 1, t. 16, § 3, art. 2.

#### Synonyms

A factor differs from a "broker" in that he is intrusted with the possession, management, and control of the goods, (which gives him a special property in them,) while a broker acts as a mere intermediary without control or possession of the property; and further, a factor is authorized to buy and sell in his own name, as well as in that of the principal, which a broker is not. *Commercial Inv. Trust v. Stewart*, 235 Mich. 502, 209 N. W. 660, 661; *Sutton & Cummins v. Kiel Cheese & Butter Co.*, 155 Ky. 465, 159 S. W. 950, 951; *Lawrence Gas Co. v. Hawkeye Oil Co.*, 182 Iowa, 179, 165 N. W. 445, 446, 8 A. L. R. 192; *Edwards v. Hoeffinghoff* (C. C.) 38 F. 641; *Delafield v. Smith*, 101 Wis. 664, 78 N. W. 170, 70 Am. St. Rep. 938; *Graham v. Duck-*

*wall*, 8 Bush (Ky.) 12; *Slack v. Tucker*, 23 Wall. 330, 23 L. Ed. 143. Factors are also frequently called "commission merchants;" and it is said that there is no difference in the meaning of these terms, the latter being perhaps more commonly used in America. *Thompson v. Woodruff*, 7 Cold. 410; *Duguid v. Edwards*, 50 Barb. (N. Y.) 288; *Lyon v. Alvord*, 18 Conn. 80. Where an owner of goods to be shipped by sea consigns them to the care of an agent, who sails on the same vessel, has charge of the cargo on board, sells it abroad, and buys a return cargo out of the proceeds, such agent is strictly and properly a "factor," though in maritime law and usage he is commonly called a "supercargo." *Beawes, Lex Merc. 44, 47*; *Liverm. Ag. 69, 70*.

A factor or commission merchant is one who has the actual or technical possession of goods or wares of another for sale. A "merchandise broker" is one who negotiates the sale of merchandise without having it in his possession or control. He is simply an agent with very limited powers; *J. M. Robinson, Norton & Co. v. Cotton Factory*, 124 Ky. 435, 99 S. W. 305, 102 S. W. 869, 8 L. R. A. (N. S.) 474, 14 Ann. Cas. 802.

Although a "factor" is in the last analysis an agent, the agency is a limited one. *Falls Rubber Co. v. La Fon* (Tex. Civ. App.) 256 S. W. 577, 579.

#### In General

—**Factors' acts.** The name given to several English statutes (6 Geo. IV. c. 94; 5 & 6 Vict. c. 39; 40 & 41 Vict. c. 39) by which a factor is enabled to make a valid pledge of the goods, or of any part thereof, to one who believes him to be the *bona fide* owner of the goods. Similar legislation is not uncommon in the United States.

In some of the states, the person who is elsewhere called "garnishee" or "trustee." See Factorizing Process.

In Scotch law, a person appointed to transact business or manage affairs for another, but more particularly an estate-agent or one intrusted with the management of a landed estate, who finds tenants, makes leases, collects the rents, etc.

—**Judicial factor.** In Scotch law. A factor appointed by the courts in certain cases where it becomes necessary to intrust the management of property to another than the owner, as, where the latter is insane or imbecile or the infant heir of a decedent.

**FACTORAGE.** The wages, allowance, or commission paid to a factor for his services. *Winne v. Hammond*, 37 Ill. 103; *State v. Thompson*, 25 S. W. 346, 120 Mo. 12.

**FACTORIZING PROCESS.** In American law. A process by which the effects of a debtor are attached in the hands of a third person. A term peculiar to the practice in Vermont and Connecticut. Otherwise termed "trustee process," "garnishment," and proc-

ess by "foreign attachment." *Cross v. Brown*, 19 R. I. 220, 33 A. 147; *Drake*, Attach. § 451.

## FACTORY.

### In English Law and Statutes

The term includes all buildings and premises wherein, or within the close or curtilage of which, steam, water, or any mechanical power is used to move or work any machinery employed in preparing, manufacturing, or finishing cotton, wool, hair, silk, flax, hemp, jute, or tow. So defined by the statute 7 Vict. c. 15, § 73. By later acts this definition has been extended to various other manufacturing places. *Mozley & Whitley*.

Also a place where a considerable number of factors reside, in order to negotiate for their masters or employers. *Enc. Brit.*

### In American Law

A building or group of buildings appropriated to the manufacture of goods, including the machinery necessary to produce the goods, and the engine or other power by which the machinery is propelled; the place where workers are employed in fabricating goods, wares, or utensils. *Cent. Dict.*; *Mayhew v. Hardesty*, 8 Md. 479. A structure where something is made or manufactured. *People v. R. F. Stevens Co.*, 178 App. Div. 306, 165 N. Y. S. 39.

Any mill, workshop, or any manufacturing or business establishment, and all buildings, sheds, structures, or other places used for or in connection therewith where one or more persons are employed at labor. *Labor Law N. Y. (Consol. Laws, c. 31) § 2*, as amended by *Laws 1915, c. 650*.

Under such statute, the term includes a machine shop; *People v. Transit Development Co.*, 165 N. Y. S. 114, 115, 178 App. Div. 288; and a theatrical company; *Ursprung v. Winter Garden Co.*, 169 N. Y. S. 738, 745, 183 App. Div. 718; but not a butcher shop; *O'Connor v. Webber*, 219 N. Y. 439, 114 N. E. 799.

Any premises where steam, water, or other mechanical power is used in the aid of any manufacturing process without reference to whether it is inclosed in a building. *Casey v. Barber Asphalt Paving Co. (C. C. A.)* 202 F. 1, 5.

An undertaking in which the business of working at commodities is carried on with power-driven machinery. *Workmen's Compensation Act (Rem. Code Wash. 1915, §§ 6604-2, 6604-3)*; *Gowey v. Seattle Lighting Co.*, 108 Wash. 479, 184 P. 339.

Any premises wherein power is used in manufacturing, making, altering, or adapting articles for the purpose of trade or gain. *Workmen's Compensation Law, Laws Kan. 1911, c. 248, § 9*, as amended by *Laws Kan. 1913, c. 216*; *Menke v. Hauber*, 99 Kan. 171, 160 P. 1017, 1018. See, also (under the *Kansas Factory Act [Gen. St. 1915, § 5892 (St. 1931, § 44-107)]*), *Jefferies v. Farmers' Union Co-op. Mercantile & Elevator Co.*, 102 Kan. 811, 176 P. 631 (grain elevator).

The word does not necessarily mean a single building or edifice, but may apply to several, where

they are used in connection with each other, for a common purpose, and stand together in the same inclosure. *Liebenstein v. Insurance Co.*, 45 Ill. 303. And see *Insurance Co. v. Brock*, 57 Pa. 82; *Hernischel v. Texas Drug Co.*, 26 Tex. Civ. App. 1, 61 S. W. 419; *Schott v. Harvey*, 105 Pa. 227, 51 Am. Rep. 201; *Amberg v. Kinley*, 214 N. Y. 531, 108 N. E. 830, 833, L. R. A. 1915E, 519.

### In Scotch Law

A species of contract or employment which falls under the general designation of "agency," but which partakes both of the nature of a mandate and of a bailment of the kind called "*locatio ad operandum*." 1 Bell, *Comm.* 259.

**FACTORY ACTS.** Laws enacted for the purpose of regulating the hours of work, and the sanitary condition, and preserving the health and morals, of the employés, and promoting the education of young persons employed at such labor.

**FACTORY PRICES.** The prices at which goods may be bought at the factories, as distinguished from the prices of goods bought in the market after they have passed into the hands of third persons or shop-keepers. *Whipple v. Levett*, 2 Mason, 90, *Fed. Cas. No.* 17,518.

**Facts cannot lie.** 18 How. State Tr. 1187; 17 How. State Tr. 1430; but see *Best*, *Ev.* 587.

**FACTUM.** *Lat.*

### In Old English Law

A deed; a person's act and deed. A culpable or criminal act; an act not founded in law. Anything stated or made certain; a deed of conveyance; a written instrument under seal: called, also, *charta*. *Spelman*; 2 *Bla. Comm.* 295.

A fact; a circumstance; particularly a fact in evidence. *Bract. fol. 1b. Factum probandum* (the fact to be proved). 1 *Greenl. Ev.* § 13.

### In Testamentary Law

The execution or due execution of a will. The *factum* of an instrument means not barely the signing of it, and the formal publication or delivery, but proof that the party well knew and understood the contents thereof, and did give, will, dispose, and do, in all things, as in the said will is contained. *Weatherhead v. Baskerville*, 11 How. 354, 13 L. Ed. 717.

### In the Civil Law

Fact; a fact; a matter of fact, as distinguished from a matter of law. *Dig.* 41, 2, 1, 3.

### In French Law

A memoir which contains concisely set down the fact on which a contest has happened, the means on which a party founds his pretensions, with the refutation of the means of the adverse party. *Vicat*.

**In Old European Law**

A portion or allotment of land; otherwise called a hide, *bovata*, etc. Spelman.

**Factum a iudice quod ad ejus officium non spectat non ratum est.** An action of a judge which relates not to his office is of no force. Dig. 50, 17, 170; 10 Coke, 76; Broom, Max. 93, n.

**Factum cuique suum non adversario, nocere debet.** Dig. 50, 17, 155. A party's own act should prejudice himself, not his adversary.

**Factum infectum fieri nequit.** A thing done cannot be undone. 1 Kames, Eq. 96, 259.

**FACTUM JURIDICUM.** A juridical fact. Denotes one of the factors or elements constituting an obligation.

**Factum negantis nulla probatio sit.** Cod. 4, 19, 23. There is no proof incumbent upon him who denies a fact.

**"Factum" non dicitur quod non perseverat.** That is not called a "deed" which does not continue operative. That is not said to be done which does not last. 5 Coke, 96; Shep. Touch., Preston ed. 391.

**FACTUM PROBANDUM.** Lat. In the law of evidence. The fact to be proved; a fact which is in issue, and to which evidence is to be directed. 1 Greenl. Ev. § 13.

**FACTUM PROBANS.** A probative or evidentiary fact; a subsidiary or connected fact tending to prove the principal fact in issue; a piece of circumstantial evidence.

**Factum unius alteri noceri non debet.** Co. Litt. 152. The deed of one should not hurt another.

**Facultas probationum non est angustanda.** The power of proofs [right of offering or giving testimony] is not to be narrowed. 4 Inst. 279.

**FACULTIES.** In the law of divorce. The capability of the husband to render a support to the wife in the form of alimony, whether temporary or permanent, including not only his tangible property, but also his income and his ability to earn money. 2 Bish. Mar. & Div. § 446; Lovett v. Lovett, 11 Ala. 763; Wright v. Wright, 3 Tex. 168; Fowler v. Fowler, 61 Okl. 280, 161 P. 227, 230, L. R. A. 1917C, 89. See Allegation of Faculties.

**FACULTIES, COURT OF.** In English ecclesiastical law. A jurisdiction or tribunal belonging to the archbishop. It does not hold pleas in any suits, but creates rights to pews, monuments, and particular places, and modes of burial. It has also various powers under 25 Hen. VIII. c. 21, in granting licenses of different descriptions, as a license to marry, a faculty to erect an organ in a parish church, to level a church-yard, to remove bodies previously buried. 4 Inst. 337.

**FACULTIES, MASTER OF THE.** An official in the archdiocese of Canterbury who granted dispensations. 4 Inst. 337. See Arches Court.

**FACULTY.****In Ecclesiastical Law**

A license or authority; a privilege granted by the ordinary to a man by favor and indulgence to do that which by law he may not do; e. g., to marry without banns, to erect a monument in a church, etc. Termes de la Ley.

Faculties are of two kinds: first, when the grant is to a man and his heirs in gross; second, when it is to a person and his heirs as appurtenant to a house which he holds in the parish; 1 Term 429, 432; 12 Co. 106.

**In Scotch Law**

A power founded on consent, as distinguished from a power founded on property. 2 Kames, Eq. 265.

**FACULTY OF A COLLEGE.** The corps of professors, instructors, tutors, and lecturers. To be distinguished from the board of trustees, who constitute the corporation.

**FACULTY OF ADVOCATES.** The college or society of advocates in Scotland.

**FADERFIUM.** In old English law. A marriage gift coming from the father or brother of the bride. Spelman.

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

**FÆSTING-MEN.** Approved men who were strong-armed; *habentes homines* or rich men, men of substance; pledges or bondsmen, who, by Saxon custom, were bound to answer for each other's good behavior. Cowell; Du Cange.

**FAGGOT.** A badge worn in popish times by persons who had recanted and abjured what was then adjudged to be heresy, as an emblem of what they had merited. Cowell.

**FAGGOT VOTE.** A term applied to votes manufactured by nominally transferring land to persons otherwise disqualified from voting for members of parliament. A faggot vote occurs where a man is formally possessed of a right to vote for members of parliament, without possessing the substance which the vote should represent; as if he is enabled to buy a property, and at the same moment mortgage it to its full value for the mere sake of the vote. See 7 & 8 Wm. III. c. 25, § 7. Wharton.

**FAIDA.** In Saxon law. Malice; open and deadly hostility; deadly feud. The word des-

ignated the enmity between the family of a murdered man and that of his murderer, which was recognized, among the Teutonic peoples, as justification for vengeance taken by any one of the former upon any one of the latter. *Du Cange*; *Spelman*.

**FAIL.** To leave unperformed; to omit; to neglect; to be wanting in action. *Howell v. Lamberson*, 149 Ark. 183, 231 S. W. 872, 873; *A. Widemann Co. v. Digges*, 21 Cal. App. 342, 131 P. 882, 883; *Ginnocchio v. Hydraulic Press Brick Co.* (D. C.) 266 F. 564, 569. The term may imply an opportunity to act. *Worthington Pump & Machinery Corporation v. City of Cudahy*, 182 Wis. 8, 195 N. W. 717.

The difference between "fail" and "refuse" is that the latter involves an act of the will, while the former may be an act of inevitable necessity. *Taylor v. Mason*, 9 Wheat. 344, 6 L. Ed. 101. See *Stallings v. Thomas*, 55 Ark. 326, 18 S. W. 184; *Telegraph Co. v. Irvin*, 27 Ind. App. 62, 59 N. E. 327; *Persons v. Hight*, 4 Ga. 497.

The words "fail to comply," however, have in general the same operation in law as the words "refuse to comply." *Ginnocchio v. Hydraulic Press Brick Co.* (D. C.) 266 F. 564, 569. And an allegation in an indictment that defendant "failed and refused" to comply with a statute should not be expanded to carry the implication that there was a deliberate, intentional, and inexcusable refusal, especially where the indictment is not good without such expansion. *Mackey v. U. S.* (C. C. A.) 290 F. 18, 21.

Involuntarily to fall short of success or the attainment of one's purpose. See *Cobb v. Morrison*, 197 Ala. 550, 73 So. 42; *Pennsylvania Co. v. Good*, 56 Ind. App. 562, 103 N. E. 672, 673.

To lapse, as a legacy which has never vested or taken effect. *Sherman v. Richmond Hose Co.*, No. 2, 230 N. Y. 462, 130 N. E. 613, 615.

To become insolvent and unable to meet one's obligations as they mature. *Davis v. Campbell*, 3 Stew. (Ala.) 321; *Mayer v. Hermann*, 16 Fed. Cas. 1,242.

**FAILING CIRCUMSTANCES.** Insolvency, that is, the lack of sufficient assets to pay one's debts. *Brown v. State*, 71 Tex. Cr. R. 353, 162 S. W. 339, 346. A person (or a corporation or institution) is said to be in failing circumstances when he is about to fail, that is, when he is actually insolvent and is acting in contemplation of giving up his business because he is unable to carry it on. *Appeal of Millard*, 62 Conn. 184, 25 A. 658; *Utley v. Smith*, 24 Conn. 310, 63 Am. Dec. 163; *Dodge v. Mastin* (C. C.) 17 F. 663.

**FAILING OF RECORD.** When an action is brought against a person who alleges in his plea matter of record in bar of the action, and avers to prove it by the record, but the plaintiff saith *nul tiel record*, viz., denies there is any such record, upon which the defendant has a day given him by the court to bring it in, if he fail to do it, then he is said to fail

of his record, and the plaintiff is entitled to sign judgment. *Termes de la Ley*.

**FAILLITE.** In French law. Bankruptcy; failure; the situation of a debtor who finds himself unable to fulfill his engagements. *Code de Com. arts. 442, 580*; *Civil Code La. art. 3556, No. 11*; 3 *Massé, Droit Comm. 171*; *Guyot, Répert.*

**FAILURE.** In a general sense, deficiency, want, or lack; ineffectualness; inefficiency as measured by some legal standard; an unsuccessful attempt. *White v. Pettijohn*, 23 N. C. 55; *State v. Butler*, 81 Minn. 103, 83 N. W. 483; *Andrews v. Keep*, 38 Ala. 317; *In re Moore*, 79 Ind. App. 470, 138 N. E. 783.

In legal parlance, the neglect of any duty may be a "failure." See *Christhilf v. City of Baltimore*, 152 Md. 204, 136 A. 527, 528; *Washington v. State*, 22 Okl. Cr. 69, 209 P. 967, 968. Compare, however, *In re Green*, 192 Cal. 714, 221 P. 903, 905. But to constitute a statutory offense, such as the failure to work on public roads, the term may imply willfulness and the absence of sufficient excuse. *Jones v. State*, 7 Ala. App. 180, 62 So. 306, 307.

In commercial law, the suspension or abandonment of business by a merchant, manufacturer, bank, etc., in consequence of insolvency. *American Credit Indemnity Co. v. Carrolton Furniture Mfg. Co.*, 95 F. 115, 36 C. C. A. 671; *Terry v. Calman*, 13 S. C. 220; *Boyce v. Ewart*, 1 Rice (S. C.) 126; *State v. Lewis*, 42 La. Ann. 847, 8 So. 602.

See *Fail*.

**FAILURE OF CONSIDERATION.** As applied to notes, contracts, conveyances, etc., this term does not mean a want of consideration, but implies that a consideration, originally existing and good, has since become worthless or has ceased to exist or been extinguished, partially or entirely. *Shirk v. Neible*, 156 Ind. 66, 59 N. E. 281, 83 Am. St. Rep. 150; *Crouch v. Davis*, 23 Grat. (Va.) 75; *Williamson v. Cline*, 40 W. Va. 194, 20 S. E. 920.

**FAILURE OF EVIDENCE.** Judicially speaking, a total "failure of evidence" means not only the utter absence of all evidence, but it also means a failure to offer proof, either positive or inferential, to establish one or more of the many facts, the establishment of all of which is indispensable to the finding of the issue for the plaintiff. *Cole v. Hebb*, 7 Gill & J. (Md.) 28.

**FAILURE OF ISSUE.** The failure at a fixed time, or the total extinction, of issue to take an estate limited over by an executory devise. A definite failure of issue is when a precise time is fixed by the will for the failure of issue, as in the case where there is a devise to one, but if he dies without issue or lawful issue living at the time of his death, etc. An indefinite failure of issue is the period when the issue or descendants of the first taker shall become extinct, and when there is no

longer any issue of the issue of the grantee, without reference to any particular time or any particular event. 4 Kent, Comm. 275; Huxford v. Milligan, 50 Ind. 546; Vaughan v. Dickes, 20 Pa. 514; Parkhurst v. Harrower, 142 Pa. 432, 21 A. 826, 24 Am. St. Rep. 507; Hackney v. Tracy, 137 Pa. 53, 20 A. 560; Woodlief v. Dickwall, 19 Ohio Cir. Ct. R. 564.

**FAILURE OF JUSTICE.** The defeat of a particular right, or the failure of reparation for a particular wrong, from the lack or inadequacy of a legal remedy for the enforcement of the one or the redress of the other. The term is also colloquially applied to the miscarriage of justice which occurs when the result of a trial is so palpably wrong as to shock the moral sense.

**FAILURE OF PROOF.** In this phrase, the word "failure" is of broader significance than either "want" or "lack." State v. Davis, 154 La. 295, 97 So. 449, 456. As used in a statute authorizing dismissal of suit without prejudice on account of failure of proof, the term does not mean failure to convince the court by preponderance of evidence, but failure to make prima facie case. Crim v. Thompson, 112 Or. 399, 229 P. 916, 920; Wolke v. Schmidt, 112 Or. 99, 228 P. 921, 923. Under a statute pertaining to variance, a "failure of proof" results when the evidence offered so far departs from the cause of action pleaded that it may be said fairly that the allegations of the pleading in their general scope and meaning are unproved. E. B. Ryan Co. v. Russell, 52 Mont. 596, 161 P. 307, 308; Chealey v. Purdy, 54 Mont. 489, 171 P. 926, 927; Nelson v. Dowgiallo, 73 Or. 342, 143 P. 924, 925.

**FAILURE OF RECORD.** Failure of the defendant to produce a record which he has alleged and relied on in his plea.

See Failing of Record.

**FAILURE OF TITLE.** The inability or failure of a vendor to make good title to the whole or a part of the property which he has contracted to sell. See Alger-Sullivan Lumber Co. v. Union Trust Co., 207 Ala. 138, 92 So. 254, 257.

**FAILURE OF TRUST.** The lapsing or non-efficiency of a proposed trust, by reason of the defect or insufficiency of the deed or instrument creating it, or on account of illegality, indefiniteness, or other legal impediment.

**FAILURE TO MAKE DELIVERY.** In the law of carriers, and as used in the Carmack amendment of June 29, 1906 (34 Stat. at L. 593, chap. 3591), to the act of February 4, 1887 (24 Stat. at L. 379, chap. 104, 49 USCA § 20), § 20, this phrase is fully adequate to cover all cases where the delivery has not been made as required. Kahn v. American Railway Express Co., 88 W. Va. 17, 106 S. E. 126, 128; Watts v. Southern Ry. Co., 139 S.

C. 516, 138 S. E. 290, 293; Chicago, R. I. & P. Ry. Co. v. McElreath, 69 Okl. 9, 169 P. 628, 630, L. R. A. 1918C, 425; Georgia, F. & A. Ry. Co. v. Blish Milling Co., 36 S. Ct. 541, 543, 241 U. S. 190, 60 L. Ed. 948.

**FAINT (or FEIGNED) ACTION.** In old English practice. An action was so called where the party bringing it had no title to recover, although the words of the writ were true; a *false* action was properly where the words of the writ were false. Litt. § 689; Co. Litt. 361.

**FAINT PLEADER.** A fraudulent, false, or collusive manner of pleading to the deception of a third person.

**FAIR, n.** In English law. A greater species of market; a privileged market. Cowell; Cunningham, Law Dict. It is an incorporeal hereditament, granted by royal patent, or established by prescription presupposing a grant from the crown.

A public mart or place of buying or selling. 1 Bla. Comm. 274.

Though etymologically signifying a market for buying and selling exhibited articles, it includes a place for the exhibition of agricultural and mechanical products. State v. Long, 48 Ohio St. 509, 28 N. E. 1038.

A fair is usually attended by a greater concourse of people than a market, for the amusement of whom various exhibitions are gotten up. McCulloch, Comm. Dict.; Wharton, Dict.

A fair is a franchise which is obtained by a grant from the crown. 2d Inst. 220; 3 Mod. 123; 1 Ld. Raym. 341; 2 Saund. 172; 1 Rolle, Abr. 106; Tomlin; Cunningham, Law Dict.

In the earlier English law, the franchise to hold a fair conferred certain important privileges; and fairs, as legally recognized institutions, possessed distinctive legal characteristics. Most of these privileges and characteristics, however, are now obsolete. In America, fairs, in the ancient technical sense, are unknown, and, in the modern and popular sense, they are entirely voluntary and non-legal, and transactions arising in or in connection with them are subject to the ordinary rules governing sales, etc.

**FAIR, adj.** Just; equitable; even-handed; equal, as between conflicting interests.

**FAIR ABRIDGMENT.** In copyright law. An abridgment consisting not merely in the arrangement of excerpts, but one involving real and substantial condensation of the materials by the exercise of intellectual labor and judgment. Folsom v. Marsh, 9 Fed. Cas. 345.

**FAIR AND FULL EQUIVALENT FOR LOSS.** The same as a full and perfect equivalent. Fonticello Mineral Springs Co. v. City of Richmond, 147 Va. 355, 137 S. E. 458, 460.

**FAIR AND PROPER LEGAL ASSESSMENT.** Such as places the value of property on a fair, equal, and uniform basis with other property of like character and value throughout the county and state. Edward Hines Yel-

low Pine Trustees v. Knox, 144 Miss. 560, 108 So. 907, 911.

**FAIR AND REASONABLE CONTRACT.**

One which, when made with an infant, must not be one wasting the infant's estate, but must be a provident one, advantageous to the minor. Berglund v. American Multigraph Sales Co., 135 Minn. 67, 160 N. W. 191, 193.

**FAIR AND REASONABLE VALUE.** This phrase in a statute imposing a tax on property means the best price obtainable at a voluntary sale, to be paid at once in money, and excluding any additional amount that might be had were credit or terms allowed. State v. Woodward, 208 Ala. 31, 93 So. 826.

**FAIR CASH VALUE.** Ordinarily the "fair cash value," of property, as the basis for an assessment for taxation, is the fair market value of the property at the time of the assessment, expressed in the price which some one will pay for it in open market. Donovan v. City of Haverhill, 247 Mass. 69, 141 N. E. 564, 565, 30 A. L. R. 358. It is ascertained by a consideration of all elements making it attractive for valuable use to one under no compulsion to purchase, but yet willing to buy for a fair price, attributing to each element of value the amount it adds to the price likely to be offered by such a buyer. Massachusetts General Hospital v. Inhabitants of Belmont, 233 Mass. 190, 124 N. E. 21, 26. The phrase is practically synonymous with "reasonable value," and "actual cash value," meaning the fair or reasonable cash price for which the property can be sold on the market. Montesano Lumber & Mfg. Co. v. Portland Iron Works, 94 Or. 677, 186 P. 428, 432; State v. Woodward, 208 Ala. 31, 93 So. 826, 827.

**FAIR COMMENT.** A term used in the law of libel, applying to statements made by a writer in an honest belief of their truth, relating to official acts, even though the statements are not true in fact. People v. Hebbard, 96 Misc. 617, 162 N. Y. S. 80, 92. In a privileged communication the words used, if defamatory and libelous, are excused, while in "fair comment" the words are not a defamation and not libelous. Van Lonkhuyzen v. Daily News Co., 203 Mich. 570, 170 N. W. 93, 99.

**FAIR CONSIDERATION.** In bankruptcy law. One which is honest or free from suspicion, or one actually valuable, but not necessarily adequate or a full equivalent. Myers v. Fultz, 124 Iowa, 437, 100 N. W. 351.

**FAIR DAMAGES** are something more than nominal damages; and are even more than such damages as would compensate for injury suffered. Gurfein v. Howell, 142 Va. 197, 128 S. E. 644, 646.

**FAIR HEARING.** Fair hearing of an alien's right to enter the United States means a

hearing before the immigration officers in accordance with the fundamental principles that inhere in due process of law, and implies that the alien shall not only have a fair opportunity to present evidence in his favor, but shall be apprised of the evidence against him, so that at the conclusion of the hearing he may be in a position to know all of the evidence on which the matter is to be decided; it being not enough that the immigration officials meant to be fair. Ex parte Petkos (D. C.) 212 F. 275, 277. See, also, Ex parte Keisuki Sata (D. C.) 215 F. 173, 176.

**FAIR KNOWLEDGE OR SKILL.** A reasonable degree of knowledge or measure of skill. Jones v. Angell, 95 Ind. 382.

**FAIR ON ITS FACE.** A process fair on its face does not mean that it must appear to be perfectly regular or in all respects in accord with proper practice and after the most approved form, but that it shall apparently be process lawfully issued and such as the officer may lawfully serve, and a process is fair on its face which proceeds from a court, magistrate, or body having authority of law to issue process of that nature and which is legal in form and on its face contains nothing to notify or fairly apprise the officer that it is issued without authority. Brown v. Hadwin, 182 Mich. 491, 148 N. W. 693, L. R. A. 1915B, 505.

**FAIR-PLAY MEN.** A local irregular tribunal which existed in Pennsylvania about the year 1769, as to which see Serg. Land Laws Pa. 77; 2 Smith, Laws Pa. 195.

**FAIR PLEADER.** See Beau-pleader.

**FAIR PREPONDERANCE.** In the law of evidence. Such a superiority of the evidence on one side that the fact of its outweighing the evidence on the other side can be perceived if the whole evidence is fairly considered. Bryan v. Railroad Co., 63 Iowa, 464, 19 N. W. 295; State v. Grear, 29 Minn. 225, 13 N. W. 140; City Bank's Appeal, 54 Conn. 274, 7 A. 548. A "clear" preponderance. M. E. Smith & Co. v. Kimble, 38 S. D. 511, 162 N. W. 162, 163. The probability of truth; In re Oliver's Will, 126 Misc. 511, 214 N. Y. S. 154, 166; not necessarily the largest number of witnesses; Schargel v. United Electric Light & Power Co., 127 Misc. 24, 215 N. Y. S. 217, 218; Verdi v. Donahue, 91 Conn. 448, 99 A. 1041, 1043.

**FAIR RENT.** A reasonable rent. Shapiro v. Goldstein, 113 Misc. 258, 185 N. Y. S. 234.

**FAIR SALE.** In foreclosure and other judicial proceedings, this means a sale conducted with fairness and impartiality as respects the rights and interests of the parties affected. Lalor v. McCarthy, 24 Minn. 419. A sale at a price sufficient to warrant confirmation or approval when it is required.

**FAIR TRIAL.** One conducted according to due course of law; a trial before a competent and impartial jury. *Railroad Co. v. Cook*, 37 Neb. 435, 55 N. W. 943; *Railroad Co. v. Gardner*, 19 Minn. 136 (Gil. 99), 18 Am. Rep. 334. Defendant has a "fair and impartial trial" where opportunity is given him to object and except to what is done to his prejudice upon the trial. *State v. Burns*, 181 Iowa, 1098, 165 N. W. 346, 347. A fair and impartial trial by a jury of one's peers contemplates counsel to look after one's defense, compulsory attendance of witnesses, if need be, and a reasonable time in the light of all prevailing circumstances to investigate, properly prepare, and present the defense. *Christie v. State*, 94 Fla. 469, 114 So. 450, 451. A full and fair trial, required in order that a foreign judgment against a citizen be accorded credit in the courts of the United States, means not a summary proceeding, though sanctioned by the law of the forum, but an opportunity to be heard on the proof, where it is apparent that the cause involves questions of fact, and to have it considered by an unprejudiced court. *Banco Minero v. Ross*, 172 S. W. 711, 714, 106 Tex. 522.

**FAIR VALUATION.** The term "fair valuation" as used in *Bankr. Act July 1, 1898, c. 541, 30 Stat. 544 (11 USCA § 1 et seq.)*, means the present market value of property and the value that the debtor might realize thereon if permitted to continue in business. *Arnold v. Knapp*, 75 W. Va. 804, 84 S. E. 895, 899. The fair market value, or the value that can be made promptly effective by the owner of the property for payment of debts; In re *Sedalia Farmers' Co-op. Packing & Produce Co. (D. C.)* 268 F. 898, 900; or the fair cash value of the property as between one who wants to sell and one who wants to buy. *Grandison v. National Bank of Commerce of Rochester (C. C. A.)* 231 F. 800, 804. Where no definite market value can be established and expert testimony must be relied on, fair valuation is the amount which the property ought to give to a going concern as a fair return, if sold to some one who is willing to purchase under ordinary selling conditions. In re *Kobre (D. C.)* 224 F. 106, 117. The term is not synonymous with "salable value." In re *Crystal Ice & Fuel Co. (D. C.)*, 283 F. 1007, 1009.

**FAIR VALUE.** The "fair value" of a public utility's physical property, for rate purposes, is the cost of reproduction, less depreciation at time in question, whether more or less than original cost. *Citizens' Gas Co. of Hannibal v. Public Service Commission of Missouri (D. C.)* 8 F.(2d) 632, 633. In determining depreciation, "fair value" implies consideration of all factors material in negotiating sale and purchase of property, such as wear, decay, deterioration, obsolescence, inadequacy, and redundancy. *Idaho Power Co. v. Thompson (D. C.)* 19 F.(2d) 547, 566. A "fair value" for rate

making is not the value for exchange, but such a value found after considering all relevant facts as will give the public utility a reasonable return and the public a reasonable rate. It is one which will enable the public utility to realize the expense of operating and keeping up its road and meeting its financial obligations for investments with a reasonable excess for dividends and ordinary contingencies. *City of Rochester v. New York State Rys.*, 127 Misc. 766, 217 N. Y. S. 452, 458. Within a Revenue Act levying an excise tax on corporations measured by the fair value of their capital stock, "fair value" is the exact equivalent of "actual value." *Central Union Trust Co. of New York v. Edwards (C. C. A.)* 287 F. 324, 327. In a contract by a city to purchase a waterworks plant at "fair and equitable value," the amount is to be determined not by capitalization of the earnings nor limited to the cost of reproducing the plant, but allowance should be made for the additional value created by connection with and supply of buildings, although the company did not own the connections. *National Waterworks Co. v. Kansas City*, 10 C. C. A. 653, 62 F. 863.

**FAIRLY.** Justly; rightly. With substantial correctness. Reasonably. *Conway v. Robinson*, 216 Ala. 495, 113 So. 531, 533. Equitably. *Satcher v. Satcher's Adm'r*, 41 Ala. 40, 91 Am. Dec. 498. "Fairly merchantable" conveys the idea of mediocrity in quality, or something just above it. *Warner v. Ice Co.*, 74 Me. 479.

"Fairly" is not synonymous with "truly," and "truly" should not be substituted for it in a commissioner's oath to take testimony fairly. Language may be truly, yet unfairly, reported; that is, an answer may be truly written down, yet in a manner conveying a different meaning from that intended and conveyed. And language may be fairly reported, yet not in accordance with strict truth. *Lawrence v. Finch*, 17 N. J. Eq. 234.

**FAIRWAY.** The middle and deepest or most navigable channel. Water on which vessels of commerce habitually move; *Horst v. Columbia Contract Co.*, 89 Or. 344, 174 P. 161, 163; the word "thalweg," from which it is apparently derived, having reference more particularly to navigable channels as boundaries; *Johnsson v. American Tugboat Co.*, 85 Wash. 212, 147 P. 1147. See *Thalweg*.

**FAIT.** L. Fr. Anything done. A deed; act; fact.

A deed lawfully executed. *Com. Dig.*

*Feme (or Femme) de fait.* A wife *de facto*.

**FAIT ENROLLE.** A deed enrolled, as a bargain and sale of freeholds. 1 Keb. 568.

**FAIT JURIDIQUE.** In French law. A juridical fact. One of the factors or elements constitutive of an obligation.

**FAITH.** Confidence; credit; reliance. Thus, an act may be said to be done "on the faith" of certain representations.

Belief; credence; trust. Thus, the constitution provides that "full faith and credit" shall be given to the judgments of each state in the courts of the others.

Purpose; intent; sincerity; state of knowledge or design. This is the meaning of the word in the phrases "good faith" and "bad faith."

#### In Scotch Law

A solemn pledge; an oath. "To make faith" is to swear, with the right hand uplifted, that one will declare the truth. 1 Forb. Inst. pt. 4, p. 235.

**FAITHFULLY.** Truthfully, sincerely, accurately. *Kansas City, M. & O. R. Co., of Texas, v. Whittington & Sweeney* (Tex. Civ. App.) 153 S. W. 689, 690. As used in bonds of public and private officers, this term imports not only honesty, but also a punctilious discharge of all the duties of the office, requiring competence, diligence, and attention, without any malfeasance or nonfeasance, aside from mere mistakes. *State v. Chadwick*, 10 Or. 468; *Hoboken v. Evans*, 31 N. J. Law, 343; *Harris v. Hanson*, 11 Me. 245; *American Bank v. Adams*, 12 Pick. (Mass.) 306; *Union Bank v. Clossy*, 10 Johns. (N. Y.) 273. Diligently, and without unnecessary delay;—not synonymous with "fairly" or "impartially." *Den v. Thompson*, 16 N. J. Law, 72, 73.

**FAITOURS.** Idle persons; idle livers; vagabonds. *Termes de la Ley*; Cowell; Blount; Cunningham, Law Dict.

**FAKE.** To make or construct. A "faked alibi" is a made, manufactured, or false alibi. *U. S. v. Heitler* (D. C.) 274 F. 401, 409.

**FAKIR.** A term applied among the Mohamedans to a kind of religious ascetic or beggar, whose claim is that he "is in need of mercy, and poor in the sight of God, rather than in need of worldly assistance." Hughes, Dict. of Islam. Sometimes spelled *Faqeer* or *Fakeer*. It is commonly used in English to designate a person engaged in some useless or dishonest business. Fake is also so used and also to designate the quality of such business.

A street peddler who disposes of worthless wares, or of any goods above their value, by means of any false representation, trick, device, lottery, or game of chance. *Mills' Ann. St. Colo.* § 1400 (Comp. Laws 1921, § 6861).

**FALANG.** In old English law. A jacket or close coat. Blount.

**FALCARE.** In old English law. To mow. *Falcare prata*, to mow or cut grass in meadows laid in for hay. A customary service to the lord by his inferior tenants. Kennett, Gloss.

*Falcata*, grass fresh mown, and laid in swaths. That which was mowed. Kennett, Gloss; Cowell; Jacobs.

*Falcatio*, a mowing. Bract. fols. 35b, 230.

*Falcator*, a mower; a servile tenant who performed the labor of mowing.

*Falcatura*, a day's mowing. *Falcatura una*. Once mowing the grass.

*Jus falcandi*, the right of cutting wood. Bract. fol. 231.

**FALCIDIA.** In Spanish law. The Falcidian portion; the portion of an inheritance which could not be legally bequeathed away from the heir, viz., one-fourth.

**FALCIDIAN LAW.** In Roman law. A law on the subject of testamentary disposition, enacted by the people during the reign of Augustus, in the year of Rome 714, on the proposition of the tribune Falcidius. By this law, the testator's right to burden his estate with legacies was subjected to an important restriction. It prescribed that no one could bequeath more than three-fourths of his property in legacies, and that the heir should have at least one-fourth of the estate, and that, should the testator violate this prescript, the heir may have the right to make a proportional deduction from each legatee, so far as necessary. Mackeld. Rom. Law, § 771; Inst. 2, 22.

A similar principle exists in Louisiana. See Legitime. In some of the states the statutes authorizing bequests and devises to charitable corporations limit the amount which a testator may give, to a certain fraction of his estate.

**FALCIDIAN PORTION.** That portion of a testator's estate which, by the Falcidian law, was required to be left to the heir, amounting to at least one-fourth.

**FALD, or FALDA.** A sheep-fold. Cowell.

**FALDA.** Span. In Spanish law. The slope or skirt of a hill. *Fossat v. United States*, 2 Wall. 673, 17 L. Ed. 739.

**FALDÆ CURSUS.** In old English law. A fold-course; the course (going or taking about) of a fold. Spelman.

A sheep walk, or feed for sheep. 2 Vent. 139.

**FALDAGE.** The privilege which anciently several lords reserved to themselves of setting up folds for sheep in any fields within their manors, the better to manure them, and this not only with their own but their tenants' sheep. Called, variously, "*secta faldare*," "fold-course," "free-fold," "*faldagii*." Cowell; Spelman; Cunningham, Law Dict.

**FALDATA.** In old English law. A flock or fold of sheep. Cowell.

**FALDFEY.** Sax. A fee or rent paid by a tenant to his lord for leave to fold his sheep on his own ground. Blount; Cunningham, Law Dict.

**FALDISDORY.** In ecclesiastical law. The bishop's seat or throne within the chancel.



**FALDSOCA.** Sax. The liberty or privilege of foldage.

**FALDSTOOL.** A place at the south side of the altar at which the sovereign kneels at his coronation. Wharton. A folding seat similar to a camp stool, made either of wood or metal, sometimes covered with silk or other material. It was used by a bishop when officiating in other than his own cathedral church. Encyc. Dic.

**FALDWORTH.** In Saxon law. A person reckoned old enough to become a member of the decennary, and so subject to the law of frank-pledge. Spelman; Du Fresne.

**FALERÆ.** In old English law. The tackle and furniture of a cart or wain. Blount.

**FALESIA.** In old English law. A hill or down by the sea-side. Co. Litt. 5b; Domesday.

**FALK-LAND.** See Folc-Land.

**FALL, n.** One of the four seasons of the year, embracing the three months commencing with the 1st of September and terminating with the last day of November. Rosenau v. Lansing, 113 Or. 638, 232 P. 648; Horn v. State, 19 Ala. App. 572, 99 So. 58; Arrington v. Blackwell, 207 Ala. 314, 92 So. 902, 903. But a finding that certain persons occupied a house until the fall of each year has been held ambiguous, since "fall" covers a period of time of upward of three months. Clegg v. Bishop, 105 Conn. 564, 136 A. 102, 104.

**FALL, v.** In Scotch law. To lose or loose. To fall from a right is to lose or forfeit it. 1 Kames, Eq. 228.

**FALL OF LAND.** In English law. A quantity of land six ells square superficial measure.

**FALLO.** In Spanish law. The final decree or judgment given in a controversy at law.

**FALLOPIAN TUBE.** An essential part of the female reproductive system, consisting of a narrow conduit, some four inches in length, that extends on each side of a woman's body from the base of the womb to the ovary upon that side. Smith v. Board of Examiners of Feeble-Minded, 85 N. J. Law, 46, 88 A. 936, 965.

**FALLOW-LAND.** Land plowed, but not sown, and left uncultivated for a time after successive crops; land left untilled for a year or more.

**FALLUM.** In old English law. An unexplained term for some particular kind of land. Cowell; Jacob, L. Dic.

**FALSA DEMONSTRATIO.** In the civil law. False designation; erroneous description of a person or thing in a written instrument. Inst. 2, 20, 30.

**Falsa demonstratio non nocet, cum de corpore (persona) constat.** False description does not injure or vitiate, provided the thing or person intended has once been sufficiently described. Mere false description does not make an instrument inoperative. Broom, Max. 629; 6 Term, 676; 11 Mees. & W. 189; Cleaveland v. Smith, 2 Story, 291, Fed. Cas. No. 2,874. See 1 Greenleaf, Evidence, § 301; 2 Pars. Contr. 62, n.; 4 C. B. 328; 14 C. B. 122; Sargent v. Adams, 3 Gray (Mass.) 78, 63 Am. Dec. 718; American Bible Soc. v. Pratt, 9 Allen (Mass.) 113; Milliken v. Starling's Lessee, 16 Ohio, 64.

**Falsa demonstratione legatum non perimi.** A bequest is not rendered void by an erroneous description. Inst. 2, 20, 30; Broom, Max. 645; Roman Catholic Orphan Asylum v. Emmons, 3 Bradf. Sur. (N. Y.) 144, 149.

**Falsa grammatica non vitiat concessionem.** False or bad grammar does not vitiate a grant. Shep. Touch. 55; 9 Coke, 48a. Neither false Latin nor false English will make a deed void when the intent of the parties doth plainly appear. Shep. Touch. 87.

**FALSA MONETA.** In the civil law. False or counterfeit money. Cod. 9, 24.

**Falsa orthographia non vitiat chartam, concessionem.** False spelling does not vitiate a deed. Shep. Touch. 55, 87; 9 Coke, 48a; Wing. Max. 19; Bart. Max. 164.

**FALSARE.** In old English law. To counterfeit. *Quia falsavit sigillum*, because he counterfeited the seal. Bract. fol. 276b.

**FALSARIUS (or FALCARIOUS).** A counterfeiter. Townsh. Pl. 260.

**FALSE.** Untrue; erroneous. Eliot Nat. Bank v. Gill (C. C. A.) 218 F. 600, 602; National Bank of Commerce in St. Louis v. Allen (C. C. A.) 223 F. 472, 477; Seaman v. Bowers (C. C. A.) 297 F. 371, 373; Woods v. Lewellyn (C. C. A.) 252 F. 106, 109; United States v. Nashville, C. & St. L. Ry. (C. C. A.) 249 F. 678, 681. Deceitful; contrived or calculated to deceive and injure; unlawful. In law, this word usually means something more than untrue; it means something designedly untrue and deceitful, and implies an intention to perpetrate some treachery or fraud. Hatcher v. Dunn, 102 Iowa, 411, 71 N. W. 343, 36 L. R. A. 689; Mason v. Association, 18 U. C. C. P. 19; Ratterman v. Ingalls, 48 Ohio St. 468, 28 N. E. 168; State v. Leonard, 73 Or. 451, 144 P. 113, 118; State v. Smith, 63 Vt. 201, 22 Atl. 604. It implies either conscious wrong or culpable negligence, and signifies knowingly or negligently untrue. United States v. Ninety-Nine Diamonds, 139 Fed. 961, 72 C. C. A. 9, 2 L. R. A. (N. S.) 185.

The word "false" has two distinct and well-recognized meanings: (1) intentionally or knowingly or negligently untrue; (2) untrue by mistake or

accident, or honestly after the exercise of reasonable care. In jurisprudence, "false" and "falsely" are oftenest used to characterize a wrongful or criminal act, such as involves an error or untruth, intentionally or knowingly put forward. A thing is called "false" when it is done, or made, with knowledge, actual or constructive, that it is untrue or illegal, or is said to be done falsely when the meaning is that the party is in fault for its error. *Fouts v. State*, 113 Ohio St. 450, 149 N. E. 551, 554; *Monahan v. Mutual Life Ins. Co. of New York*, 192 Wis. 102, 212 N. W. 269, 271.

**FALSE ACTION.** See Feigned Action.

**FALSE ANSWER.** In pleading. A sham answer; one which is false in the sense of being a mere pretense set up in bad faith and without color of fact. *Howe v. Elwell*, 57 App. Div. 357, 67 N. Y. Supp. 1108; *Farnsworth v. Halstead (Sup.)* 10 N. Y. Supp. 763.

**FALSE ARREST.** Any unlawful physical restraint by one of another's liberty, whether in prison or elsewhere. *Gariety v. Fleming*, 121 Kan. 42, 245 P. 1054, 1055; *Russell v. Levinsohn*, 5 N. J. Misc. 765, 138 A. 205.

**FALSE CHARACTER.** Personating the master or mistress of a servant, or any representative of such master or mistress, and giving a false character to the servant is an offense punishable in England with a fine of £20. St. 32 Geo. III. c. 56.

**FALSE CLAIM**, in the forest law, was where a man claimed more than his due, and was amerced and punished for the same. Manw. c. 25; Tomlins. As used in a statute making it a felony to present to any state, county, or city board or officer a false or fraudulent claim, a "false claim" is something more than a merely excessive claim. *Burke v. Knox*, 59 Utah, 596, 206 P. 711, 714. The act of knowingly making untruthful statements of material facts in "reasons for refund" of excise taxes, supported by fictitious copies of letters and cards attached thereto, constitutes "false claim" against government, within Criminal Code, § 35 (18 USCA §§ 80, 82-86). *Evans v. U. S. (C. C. A.)* 11 F.(2d) 37, 39.

**FALSE DECRETALS.** A collection of canon law, dated about the middle of the 9th century, probably by a Frankish ecclesiastic who called himself Isadon. It continued to be the chief repertory of the canon law till the 15th century when its untrustworthy nature was demonstrated.

**FALSE ENTRY.** In banking law. An entry in the books of a bank which is intentionally made to represent what is not true or does not exist, with intent either to deceive its officers or a bank examiner or to defraud the bank. *Agnew v. U. S.*, 165 U. S. 36, 17 Sup. Ct. 235, 41 L. Ed. 624; *U. S. v. Peters (C. C.)* 87 Fed. 984. See, also, *Fricke v. State*, 112 Neb. 767, 201 N. W. 667, 670. An untrue statement of items of account by written

words, figures, or marks. *United States v. Herrig (D. C.)* 204 F. 124, 125. One making an original false entry makes a false entry in every book which is made up in regular course from the entry or entries from the original book of entry. *State v. Davidson*, 46 N. D. 564, 180 N. W. 31, 32.

**FALSE FACT.** In the law of evidence. A feigned, simulated, or fabricated fact; a fact not founded in truth, but existing only in assertion; the deceitful semblance of a fact.

**FALSE IMPRISONMENT.** See Imprisonment.

**FALSE INSTRUMENT.** A counterfeit; one made in the similitude of a genuine instrument and purporting on its face to be such. *U. S. v. Howell*, 11 Wall. 435, 20 L. Ed. 195; *U. S. v. Owens (C. C.)* 37 Fed. 115; *State v. Willson*, 28 Minn. 52, 9 N. W. 28.

**FALSE JUDGMENT.** In old English law. A writ which lay when a false judgment had been pronounced in a court not of record, as a county court, court baron, etc. *Fitzh. Nat. Brev.* 17, 18. In old French law. The defeated party in a suit had the privilege of accusing the judges of pronouncing a false or corrupt judgment, whereupon the issue was determined by his challenging them to the combat or *duellum*. This was called the "appeal of false judgment." *Montesq. Esprit des Lois*, liv. 28, c. 27.

**FALSE LATIN.** When law proceedings were written in Latin, if a word were significant though not good Latin, yet an indictment, declaration, or fine should not be made void by it; but if the word were not Latin, nor allowed by the law, and it were in a material point, it made the whole vicious. (5 Coke, 121; 2 Nels. 830.) Wharton.

**FALSE LIGHTS AND SIGNALS.** Lights and signals falsely and maliciously displayed for the purpose of bringing a vessel into danger. See stat. 24 & 25 Vict. c. 97, § 47; 18 USCA § 488.

**FALSE NEWS.** Spreading false news, whereby discord may grow between the queen of England and her people, or the great men of the realm, or which may produce other mischiefs, still seems to be a misdemeanor, under St. 3 Edw. I. c. 34. *Steph. Cr. Dig.* § 95.

**FALSE OATH.** See Perjury.

**FALSE PAPER.** In a statute defining an offense of willfully and knowingly subscribing to "false papers" to deceive bank examiners, the term refers not to one which is forged or spurious, but to a paper duly subscribed by the person purporting to sign it, and containing an untrue statement in the body of the instrument. *State v. Pierson*, 101 Wash. 318, 172 P. 236, 238.

**FALSE PERSONATION.** The criminal offense of falsely representing some other person and acting in the character thus unlawfully assumed, in order to deceive others, and thereby gain some profit or advantage, or enjoy some right or privilege belonging to the one so personated, or subject him to some expense, charge, or liability. See 4 Steph. Comm. 181, 290.

**FALSE PLEA.** See Sham Plea.

**FALSE PRETENSES.** In criminal law. False representations and statements, made with a fraudulent design to obtain money, goods, wares, or merchandise, with intent to cheat. 2 Bouv. Inst. no. 2308. Such a fraudulent representation of fact by one who knows it not to be true as is adapted to induce the person to whom it is made to part with something of value. *Jackson v. People*, 126 Ill. 139, 18 N. E. 286; *Fisher v. State*, 161 Ark. 586, 256 S. W. 858, 860; *People v. Kahler*, 26 Cal. App. 449, 147 P. 228, 229; *State v. Tanner*, 22 N. M. 493, 164 P. 821, 822, L. R. A. 1917E, 849; *State v. Luff*, 74 A. 1079, 1080, 1 Boyce (Del.) 152. Any misrepresentation of past fact by a party, knowingly made to induce another to part with his property. *People v. Schneider*, 327 Ill. 270, 158 N. E. 448, 450. A representation of a material fact, calculated to deceive, which is not true. *Commonwealth v. Jacobson*, 260 Mass. 311, 157 N. E. 583, 585; *Com. v. Drew*, 19 Pick. (Mass.) 184; *State v. Grant*, 86 Iowa, 216, 53 N. W. 120. False statements or representations made with intent to defraud, for the purpose of obtaining money or property. A pretense is the holding out or offering to others something false and feigned. This may be done either by words or actions, which amount to false representations. In fact, false representations are inseparable from the idea of a pretense. Without a representation which is false there can be no pretense. *State v. Joaquin*, 43 Iowa, 132. False pretenses consist in making a representation of an existing fact, which the party making it knows to be false at the time, with the intent that the party to whom it is made should act upon it, and the party must act upon it to his detriment. *Griffith v. State*, 93 Ohio St. 294, 112 N. E. 1017, 1018. See, further, *Motsinger v. Sink*, 168 N. C. 543, 84 S. E. 847, 850; *State v. Hathaway*, 168 Wis. 518, 170 N. W. 654, 656; *State v. Whitney*, 43 Idaho, 745, 254 P. 525, 526; *People v. Neetens*, 42 Cal. App. 596, 184 P. 27, 28; *Smith v. State*, 74 Fla. 594, 77 So. 274, 276.

The distinction between "larceny" and "false pretenses" is that in larceny the owner of a thing has no intention to part with his property, although he may intend to part with possession, while in false pretenses the owner does intend to part with the property but it is obtained from him by fraud. *People v. Shwartz*, 43 Cal. App. 696, 185 P. 686, 687. See, also, *Roberts v. State*, 181 Ind. 520, 104 N. E. 970, 971; *Crosby v. Paine*, 170 Minn. 43, 211 N. W.

947, 948; *State v. Paul*, 41 S. D. 40, 168 N. W. 739, 740; *State v. Ewing* (Mo. App.) 270 S. W. 116, 117; *State v. Martin*, 103 W. Va. 446, 137 S. E. 885, 886.

The distinction between "obtaining money by false pretenses" and forgery is that in the former, the acquisition of the money is the principal thing, while in forgery the making, altering, uttering, or publishing of the written instrument is the principal part, and money need not necessarily be obtained. *State v. Hobl*, 108 Kan. 261, 194 P. 921, 924.

**FALSE REPRESENTATION.** A representation which is untrue, wilfully made to deceive another to his injury. Also, a representation of what is true, which nevertheless creates an impression which is false. *Newark Trust Co. v. Lackawanna Inv. Co.*, 88 N. J. Eq. 541, 103 A. 168, 169; See, further, *Way v. Bronston*, 91 Kan. 446, 138 P. 601, 602; *International Milling Co. v. Priem*, 179 Wis. 622, 192 N. W. 68. See Fraud; Deceit.

A "false representation" may be made scienter, so as to afford a right of action in damages, in any of the following ways: (1) With actual knowledge of its falsity; (2) without knowledge either of its truth or falsity; or (3) under circumstances in which the person making it ought to have known if he did not know of its falsity. *Horton v. Tyree*, 104 W. Va. 238, 139 S. E. 737, 738. But see *Sebastian County Bank v. Gann*, 121 Ark. 145, 180 S. W. 754, 755.

**FALSE RETURN.** See Return.

**FALSE SWEARING.** The misdemeanor committed in English law by a person who swears falsely before any person authorized to administer an oath upon a matter of public concern, under such circumstances that the false swearing would have amounted to perjury if committed in a judicial proceeding; as where a person makes a false affidavit under the bills of sale acts. Steph. Cr. Dig. p. 84. And see *O'Bryan v. State*, 27 Tex. App. 339, 11 S. W. 443. In Texas, it is not necessary, to complete the offense, that the affidavit be used for the purpose for which it was intended. *Welch v. State*, 71 Tex. Cr. R. 17, 157 S. W. 946. Under the Texas and Kentucky statutes, however, "false swearing" is distinct from the common-law crime of perjury; *Commonwealth v. Hinkle*, 177 Ky. 22, 197 S. W. 455, 456; *Shipp v. State*, 81 Tex. Cr. R. 328, 196 S. W. 840, 842; inasmuch as "false swearing" consists in making a false oath on a subject about which the party could legally be sworn, and before a person legally authorized to administer the oath; *Commonwealth v. Bradshaw*, 210 Ky. 405, 276 S. W. 124, 125; it not being necessary, as in perjury, that the testimony be material; *Sullivan v. Commonwealth*, 158 Ky. 536, 165 S. W. 696, 697.

**FALSE TOKEN.** In criminal law. A false document or sign of the existence of a fact,—in general used for the purpose of fraud. See 3 Term 98; 2 Starkie, Ev. 563; 1 Bish. Cr. L. 585; *People v. Gates*, 13 Wend. (N. Y.) 311; *People v. Haynes*, 14 Wend. (N. Y.) 570, 28 Am. Dec. 530; *People v. Stone*, 9 Wend. (N.

Y.) 182; *Smith v. State*, 74 Fla. 594, 77 So. 274, 276; *State v. Leonard*, 73 Or. 451, 144 P. 113, 118; *State v. Renick*, 33 Or. 584, 56 P. 275, 44 L. R. A. 266, 72 Am. St. Rep. 758.

**FALSE VERDICT.** See Verdict.

**FALSE WEIGHTS.** False weights and measures are such as do not comply with the standard prescribed by the state or government, or with the custom prevailing in the place and business in which they are used. Pen. Code Cal. § 552; Pen. Code Idaho, 1901, § 5003 (Code 1932, § 17—3920).

**FALSE WITNESS.** One who is intentionally rather than merely mistakenly false. *State v. Weston*, 109 Or. 19, 219 P. 180, 189.

**FALSE WORDS,** which may be eliminated from descriptions in wills, deeds, etc., are mis-descriptions of property that are not applicable to any property owned or intended to be devised or conveyed. *Brown v. Ray*, 314 Ill. 570, 145 N. E. 676, 679; *Armstrong v. Armstrong*, 327 Ill. 85, 158 N. E. 356, 358.

**FALSEDAD.** In Spanish law. Falsity; an alteration of the truth. *Las Partidas*, pt. 3, tit. 26, l. 1.

Deception; fraud. *Id.* pt. 3, tit. 32, l. 21.

**FALSEHOOD.** A statement or assertion known to be untrue, and intended to deceive. A willful act or declaration contrary to the truth. *Putnam v. Osgood*, 51 N. H. 207.

The term is perhaps generally used in the second sense here given. It is committed either by the willful act of the party, or by dissimulation, or by words.

Crabbe thus distinguishes between falsehood and untruth: "The latter is an untrue saying, and may be unintentional, in which case it reflects no disgrace on the agent. A falsehood and a lie are intentional false sayings, differing only in degree of the guilt of the offender; falsehood being not always for the express purpose of deceiving, but a lie always for the worst of purposes." See *Rosc. Cr. Ev.* 362; Deceit; Fraud; Misrepresentation.

#### In Scotch Law

A fraudulent imitation or suppression of truth, to the prejudice of another. Bell. "Something used and published falsely." An old Scottish *nomen juris*. "Falsehood is undoubtedly a nominate crime, so much so that Sir George Mackenzie and our older lawyers used no other term for the falsification of writs, and the name 'forgery' has been of modern introduction." "If there is any distinction to be made between 'forgery' and 'falsehood,' I would consider the latter to be more comprehensive than the former." 2 *Broun*, 77, 78.

**FALSELY.** Usually used in the sense of designedly untrue and deceitful, and as implying an intention to perpetrate some treachery or fraud. *Fouts v. State*, 113 Ohio St. 450, 149 N. E. 551, 554; *State v. Merlo*, 92 Or.

678, 173 P. 317, 319; *McDonald v. McNeil*, 92 Vt. 356, 104 A. 337, 339; *Cro. Eliz.* 201; 7 D. & R. 665. But see 1 Den. C. C. 157. The use of the word falsely in a statute (against counterfeiting) implies that there must be a fraudulent or criminal intent in the act; *U. S. v. King*, 5 McLean 208, Fed. Cas. No. 15,535. See, also, 4 B. & C. 329; 6 Com. Dig. 58; *Stark*, Cr. Pl. 86.

See False.

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

**FALSIFICATION.** In equity practice. The showing an item in the debit of an account to be either wholly false or in some part erroneous. 1 *Story*, Eq. Jur. § 525. And see *Phillips v. Belden*, 2 Edw. Ch. 23; *Pit v. Cholmondeley*, 2 Ves. Sr. 565; *Kennedy v. Adickes*, 37 S. C. 174, 15 S. E. 922; *Tate v. Gairdner*, 119 Ga. 133, 46 S. E. 73; *Armstrong v. Toler*, 11 Wheat. (U. S.) 237, 6 L. Ed. 468.

**FALSIFY.** To disprove; to prove to be false or erroneous; to avoid or defeat; spoken of verdicts, appeals, etc. *Co. Litt.* 104b.

To counterfeit or forge; to make something false; to give a false appearance to anything. To make false by mutilation or addition; to tamper with; as, to falsify a record or document. *Pou v. Ellis*, 66 Fla. 358, 63 So. 721, 722.

To show, as in an accounting before a master in chancery, that a charge has been inserted which is wrong; that is, either wholly false or in some part erroneous. *Pull. Accts.* 162; 1 *Story*, Eq. Jur. § 525. See *Shores-Mueller Co. v. Bell*, 21 Ga. App. 194, 94 S. E. 83, 84; *Falsification*.

**FALSIFYING A JUDGMENT.** A term sometimes used for reversing a judgment. See 4 *Steph. Com.* 553.

**FALSIFYING A RECORD.** A high offense against public justice, punishable in England by 24 & 25 Vict. c. 93, §§ 27, 28, and in the United States, generally, by statute. See U. S. Rev. Stat. § 5394 (18 USCA § 233).

**FALSING.** In Scotch law. False making; forgery. "Falsing of *evidentis*." 1 *Pitc. Crim. Tr.* pt. 1, p. 85.

Making or proving false.

**FALSING OF DOOMS.** In Scotch law. The proving the injustice, *falsity*, or error of the doom or sentence of a court. *Tomlins*; *Jacob*. The reversal of a sentence or judgment; an action to set aside a decree. *Skene*. Protesting against a sentence and taking an appeal to a higher tribunal. *Bell, Dict.*

**FALSO RETORNO BREVIUM.** In old English law. A writ which formerly lay against the sheriff who had execution of process for false returning of writs. Reg. Jud. 43b; Cunningham, Law Dict.

**FALSONARIUS.** A forger; a counterfeiter. Hov. 424.

**FALSUM.** Lat. In the civil law. A false or forged thing; a fraudulent simulation; a fraudulent counterfeit or imitation, such as a forged signature or instrument. Also falsification, which may be either by falsehood, concealment of the truth, or fraudulent alteration, as by cutting out or erasing part of a writing.

**FALSUS.** Lat. False; fraudulent; erroneous. Deceitful; mistaken.

In the sense of "deceiving" or "fraudulent," it is applied to persons in respect to their acts and conduct, as well as to things; and in the sense of "erroneous," it is applied to persons on the question of personal identity.

**Falsus in uno, falsus in omnibus.** False in one thing, false in everything. Commonwealth v. Billings, 97 Mass. 406; Mercer v. Wright, 3 Wis. 645; State v. Williams, 47 N. C. 257. Where a party is clearly shown to have embezzled one article of property, it is a ground of presumption that he may have embezzled others also. The Boston, 1 Sumn. 328, 356, Fed. Cas. No. 1,673; The Santissima Trinidad, 7 Wheat. 339, 5 L. Ed. 454. This maxim is particularly applied to the testimony of a witness who, if he is shown to have sworn falsely in one detail, may be considered unworthy of belief as to all the rest of his evidence. Grimes v. State, 63 Ala. 168; Wilson v. Coulter, 29 App. Div. 85, 51 N. Y. S. 804; White v. Disher, 67 Cal. 402, 7 P. 826.

The maxim, "Falsus in uno, falsus in omnibus," is a mere rule of evidence affirming a rebuttable presumption of fact, under which the jury must consider all the evidence of the witness, other than that which is found to be false, and it is their duty to give effect to so much of it, if any, as is relieved from the presumption against it and found to be true. Levine Bros. v. Mantell, 90 W. Va. 166, 111 S. E. 501, 504; Shecil v. United States (C. C. A.) 226 F. 184, 187.

**FAMA.** Lat. Fame; character, reputation; report of common opinion.

**Fama, fides et oculus non patiuntur ludum.** 3 Bulst. 226. Fame, faith, and eyesight do not suffer a cheat.

**Fama quæ suspicionem inducit, oriri debet apud bonos et graves, non quidem malevolos et maleficos, sed providas et fide dignas personas, non semel sed sæpius, quia clamor minuit et defamatio manifestat.** 2 Inst. 52. Report, which induces suspicion, ought to arise from good and grave men; not, indeed, from malevolent and malicious men, but from cautious and credible persons; not only once, but

frequently; for clamor diminishes, and defamation manifests.

**FAMACIDE.** A killer of reputation; a slanderer.

**FAMILIA.**

**In Roman Law**

A household; a family. On the composition of the Roman family, see Agnati; Cognati; and see Mackeld. Rom. Law, § 144.

Family right; the right or *status* of being the head of a family, or of exercising the *patria potestas* over others. This could belong only to a Roman citizen who was a "man in his own right," (*homo sui juris*.) Mackeld. Rom. Law, §§ 133, 144.

**In Old English Law**

A household; the body of household servants; a quantity of land, otherwise called "*mansa*," sufficient to maintain one family. Du Cange; Cowell; Cunningham, Law Dict.; Creasy, Church Hist.

**In Spanish Law**

A family, which might consist of domestics or servants. It seems that a single person owning negroes was the "head of a family," within the meaning of the colonization laws of Coahuila and Texas. State v. Sullivan, 9 Tex. 156.

**FAMILIÆ EMPTOR.** In Roman law. An intermediate person who purchased the aggregate inheritance when sold *per aes et libram*, in the process of making a will under the Twelve Tables. This purchaser was merely a man of straw, transmitting the inheritance to the *hæres* proper. Brown.

**FAMILIÆ ERCISCUNDÆ.** In Roman law. An action for the partition of the aggregate succession of a *familia*, where that devolved upon *co-hæredes*. It was also applicable to enforce a contribution towards the necessary expenses incurred on the *familia*. See Mackeld. Rom. Law, § 499; Stair, Inst. I. 1, tit. 7, § 15.

**FAMILIARES REGIS.** Persons of the king's household. The ancient title of the "six clerks" of chancery in England. Crabb, Com. Law, 184; 2 Reeve, Eng. Law, 249, 251.

**FAMILY.** A collective body of persons who live in one house or within the same curtilage and under one head or management (thereby including domestic servants, lodgers, boarders, guests, etc.). Jarboe v. Jarboe, 106 Mo. App. 459, 79 S. W. 1162; Dodge v. Boston & P. R. Corp., 154 Mass. 299, 28 N. E. 243, 13 L. R. A. 318; Tyson v. Reynolds, 52 Iowa, 431, 3 N. W. 469; Wilson v. Else, 204 Iowa, 857, 216 N. W. 33, 37; Kleinberg v. Kinealy (Mo. App.) 193 S. W. 981, 983; City of Mexico v. Gray, 203 Mo. App. 547, 219 S. W. 707, 709; Mullins v. Nordlow, 170 Ky. 169, 185 S. W. 825, 828; May v. Vermont, 114 Misc. 106, 186

N. Y. S. 113, 115; *Wilson v. Cochran*, 31 Tex. 680, 98 Am. Dec. 553. The immediate members of one's household, as wife, children, brothers, and sisters or father and mother. *Niemes v. Niemes*, 97 Ohio St. 145, 119 N. E. 503, 506. Those members of the household who are dependent on the householder to whom he owes some duty. *Brokaw v. Ogle*, 170 Ill. 115, 48 N. E. 394; *Cheshire v. Burlington*, 31 Conn. 326. See, also, *Gamble v. Leva*, 212 Ala. 155, 102 So. 120, 121; *Hall v. Meriden Trust & Safe Deposit Co.*, 103 Conn. 226, 130 A. 157, 161; *Scott's Case*, 117 Me. 436, 104 A. 794, 796. Those whom it is the natural or moral duty of one to support, or who are dependent on him for support. *Finn v. Eminent Household of Columbia Woodmen*, 163 Ky. 187, 173 S. W. 349, 350.

In a narrower sense, a father, mother, and children, whether living together or not. *Higgins v. Safe Deposit & Trust Co. of Baltimore*, 127 Md. 171, 96 A. 322, 323.

In a broader sense, a group of blood-relatives; all the relations who descend from a common ancestor, or who spring from a common root. See Civil Code La. art. 3556, no. 12; 9 Ves. 323. The genealogical stock from which a man and those related to him by blood have sprung. *Albright v. Albright*, 116 Ohio St. 668, 157 N. E. 760, 764.

The word "family" has no uniform, definite meaning. It is used to indicate, first, the whole body of persons who form one household, thus including also servants; second, the parents with their children, whether they dwell together or not; and third, the whole group of persons closely related by blood. *First Catholic Slovak Ladies' Union of United States of America v. Florek*, 210 Ill. App. 469, 472; *Spencer v. Spencer*, 11 Paige (N. Y.) 159.

In ordinary conversation "family" is descriptive of a person's wife and children. *Adams v. Carrie F. Wright Hospital*, 82 N. H. 260, 132 A. 525, 526.

A husband and wife living together may constitute a "family," within the meaning of homestead and exemption laws. *Miller v. Finegan*, 26 Fla. 29, 7 So. 140, 6 L. R. A. 813; *Williams v. Young*, 17 Cal. 403; *Oppenheim v. Myers*, 99 Va. 532, 39 S. E. 218; *Chafee v. Rainey*, 21 S. C. 11; *Dye v. Cooke*, 88 Tenn. 275, 12 S. W. 631, 17 Am. St. Rep. 882; *Trotter v. Dobbs*, 33 Miss. 198; *Cox v. Stafford*, 14 How. Pr. (N. Y.) 519; *Kitchell v. Burgwin*, 21 Ill. 45. See, also, *In re Mansfield's Estate*, 185 Iowa, 339, 170 N. W. 415, 416. With particular reference to homestead laws, one parent and his or her children; *Carle v. Bamberger*, 53 Okl. 777, 158 P. 599, 600; *Solnar v. Solnar*, 205 Iowa, 701, 216 N. W. 288, 290; and even a widow or widower, though without children; *Somers v. Somers*, 33 S. D. 551, 146 N. W. 716, 717; *Coleman v. Bosworth*, 180 Iowa, 975, 164 N. W. 238, 240; may constitute a "family." See, also, *In re Hooper's Estate*, 117 Wash. 463, 201 P. 740, 742.

**FAMILY ARRANGEMENT.** A term denoting an agreement between a father and his children, or between the heirs of a deceased father, to dispose of property, or to partition it in a different manner than that which would result if the law alone directed it, or to divide up property without administration. In these cases, frequently, the mere relation of the par-

ties will give effect to bargains otherwise without adequate consideration. 1 Chit. Pr. 67; 1 Turn. & R. 13; *Boyd v. Robinson*, 93 Tenn. 1, 23 S. W. 72; *De Hatre v. De Hatre*, 50 Mo. App. 1.

**FAMILY BIBLE.** A Bible containing a record of the births, marriages, and deaths of the members of a family. As to its admissibility in evidence, see *Whart. Ev. § 219*; *Tayl. Ev. 572*; 1 *Greenl. Ev. § 104*; *L. R. 1 Ex. 255*; *Greenleaf v. R. Co.*, 30 Iowa, 301; *Southern Life Ins. Co. v. Wilkinson*, 53 Ga. 535; *Weaver v. Leiman*, 52 Md. 709.

**FAMILY COUNCIL.** See *Family Arrangement*; *Family Meeting*; *Conseil de famille*.

**FAMILY EXPENSES.** Obligations incurred for something intended for the use or comfort of the collection spoken of as the family, as distinguished from individual or personal expenses. *Vose v. Myott*, 141 Iowa, 506, 120 N. W. 58, 21 L. R. A. (N. S.) 277.

**FAMILY GROUP,** within the purview of the family car doctrine, is not confined to persons related to the owner of the car, but includes members of the collective body of persons living in his household for whose convenience the car is actually maintained and who have general authority to use it. *Smart v. Bissonette*, 106 Conn. 447, 138 A. 365, 366. See *Family Purpose Doctrine, infra*.

**FAMILY MEETING.** An institution of the laws of Louisiana, being a council of the relatives (or, if there are no relatives, of the friends) of a minor, for the purpose of advising as to his affairs and the administration of his property. The family meeting is called by order of a judge, and presided over by a justice or notary, and must consist of at least five persons, who are put under oath. *In re Bothick*, 44 La. Ann. 1037, 11 So. 712; *Civ. Code La. art. 305*. It corresponds to the "conseil de famille" of French law, *q. v.* See *Lemoine v. Ducote*, 45 La. Ann. 857, 12 So. 939; *Commaux v. Barbin*, 6 Mart. La. (N. S.) 455.

**FAMILY PHYSICIAN.** A physician who regularly attends and is consulted by the members of the family as their medical adviser; but he need not attend in all cases or be consulted by all the members of the family. *Price v. Ins. Co.*, 17 Minn. 519 (Gil. 473), 10 Am. Rep. 166; *Reid v. Ins. Co.*, 58 Mo. 424; *Cromeens v. Sovereign Camp, W. O. W.* (Mo. App.) 247 S. W. 1033, 1034.

**FAMILY PURPOSE DOCTRINE.** A doctrine under which the owner of an automobile is held liable for damages resulting from its negligent operation by members of his family, whom he permits to use it. *Schwartz v. Johnson*, 152 Tenn. 586, 280 S. W. 32, 33, 47 A. L. R. 323. The doctrine, that the owner of an automobile purchased or maintained for the pleasure of his family is liable for in-

juries inflicted by the machine while being used by the members of the family for their own pleasure. *Doss v. Monticello Electric Light & Power Co.*, 193 Ky. 499, 236 S. W. 1046, 1047; *Thompson v. Kansas City Rys. Co.*, 113 Kan. 74, 213 P. 633. See Family Group.

**FAMILY RELATION.** A relationship which may exist between one taken into the family by the head of the family, notwithstanding the absence of blood relationship or of legal adoption. *Nelson v. Poorman's Estate* (Mo. App.) 215 S. W. 753, 754.

**FAMILY SETTLEMENT.** An agreement made between a father and his son or children or between brothers to dispose of property in a different manner from that which would otherwise take place. *Peterson v. Hegna*, 158 Minn. 289, 197 N. W. 484, 487. A term of practically the same signification as "family arrangement," *q. v. supra*. See *Willey v. Hodge*, 104 Wis. 81, 80 N. W. 75, 76 Am. St. Rep. 852.

**FAMILY USE.** That use ordinarily made by and suitable for the members of a household whether as individuals or collectively. *Spring Valley Water Works v. San Francisco*, 52 Cal. 120. The supply of water in a municipal corporation for family use includes the supply of jails, hospitals, almshouses, schools, and other municipal institutions; *id.*

**FAMOSUS.** In the civil and old English law. Relating to or affecting injuriously the character or reputation; defamatory; slanderous; scandalous.

**FAMOSUS LIBELLUS.** A libelous writing. A term of the civil law denoting that species of *injuria* which corresponds nearly to libel or slander.

**FANAL.** Fr. In French marine law. A large lantern, fixed upon the highest part of a vessel's stern.

**FANATIC.** A religious enthusiast; a bigot; a person entertaining wild and extravagant notions, or affected by zeal or enthusiasm, especially upon religious subjects.

Also, a person pretending to be inspired;—formerly applied to Quakers, Anabaptists, and all other sectaries, and factious dissenters from the Church of England. (St. 13 Car. II. c. 6.) Jacob.

**FANEGA.** In Spanish law. A measure of land varying in different provinces, but in the Spanish settlements in America consisting of 6,400 square varas or yards. *Diccionario de la Acad.*; 2 White Recop. 49; 138.

**FAQUEER.** See Fakir.

**FARANDMAN.** In Scotch law. A traveler or merchant stranger. Skene.

**FARDEL OF LAND.** In old English law. The fourth part of a yard-land. Spelman. Noy says an eighth only, because, according to him, two fardels make a nook, and four nooks a yard-land. Wharton. See Noy, Complete Lawyer 57; Cowell; Cunningham, Law Dict.

**FARDELLA.** In old English law. A bundle or pack; a fardel. Fleta, lib. 1, c. 22, § 10.

**FARDING-DEAL.** The fourth part of an acre of land. Spelman.

**FARE.** A voyage or passage by water; also the money paid for a passage either by land or by water. Cowell.

The sum paid or to be paid for carrying a passenger. *Chase v. New York Cent. R. Co.*, 26 N. Y. 526; *Clark v. Southern Ry. Co.*, 69 Ind. App. 697, 119 N. E. 539, 543.

In case of a water company it means the tax or compensation which the company may charge for furnishing a supply of water. *McNeal Pipe & Foundry Co. v. Howland*, 111 N. C. 615, 16 S. E. 857, 20 L. R. A. 743.

**FARINAGIUM.** A mill; a toll of meal or flour. Jacob; Spelman.

**FARLEU (or FARLEY).** Money paid by tenants in lieu of a heriot. It was often applied to the best chattel, as distinguished from *heriot*, the best beast. Cowell.

**FARLINGARII.** Whoremongers; adulterers.

**FARM, n.** A certain amount of provision reserved as the rent of a messuage. Spelman.

Rent generally which is reserved on a lease; when it was to be paid in money, it was called "*blanche ferme*." Spelman; 2 Bl. Comm. 42.

A term, a lease of lands; a leasehold interest. 2 Bl. Comm. 17; 1 Reeve, Eng. Law, 301, note. The land itself, let to farm or rent. 2 Bl. Comm. 368.

Usually the chief messuage in a village or town whereto belongs a great demesne of all sorts. Cowell; Cunningham, Law Dict.; *Termes de la Ley*.

A large tract or portion of land taken by a lease under a yearly rent payable by the tenant. Tomlin, Law Dict.

▲ portion of land used for agricultural purposes, either wholly or in part.

The original meaning of the word was "rent," and by a natural transition it came to mean the land out of which the rent issued.

#### In Old English Law

A lease of other things than land, as of imposts. There were several of these, such as "the sugar farm," "the silk farm," and farms of wines and currants, called "petty farms." See 2 How. State Tr. 1197-1206.

#### In American Law

"Farm" denotes a tract of land devoted in part, at least, to cultivation, for agricultural

purposes, without reference to its extent, or to the tenure by which it is held. In re Drake (D. C.) 114 F. 231; People ex rel. Rogers v. Caldwell, 142 Ill. 434, 32 N. E. 691; Kendall v. Miller, 47 How. Prac. (N. Y.) 448; Com. v. Carmalt, 2 Bin. (Pa.) 238; Winn v. Cabot, 18 Pick. (Mass.) 553; Fleckles v. Hille, 83 Ind. App. 715, 149 N. E. 915.

The term does not necessarily include only the land under cultivation and within a fence. It may include all the land which forms part of the tract, and may also include several connected parcels under one control. Succession of Williams, 132 La. 865, 61 So. 852, 853.

Any tract of land used for raising crops or rearing animals. Gordon v. Buster, 113 Tex. 382, 257 S. W. 220.

A body of land under one ownership, devoted to agriculture, either to raising crops, or pasture, or both. Dorsett v. Watkins, 59 Okl. 198, 158 P. 608, 9 A. L. R. 278.

With the development particularly of the western states, a large part of whose wealth consists of cattle, the word "farm" has acquired a somewhat broader meaning, and in its generic sense is as applicable to a stock farm as to one where grain is raised. Porter v. Yakima County, 77 Wash. 299, 137 P. 466, 467.

#### In General

—**Farm crossing.** A roadway over a railroad track at grade for the purpose of reaching tillage land cut off by the track. True v. Maine Cent. R. Co., 113 Me. 375, 94 A. 183, 184. See, also, In re Colvin Street in City of Buffalo, 155 App. Div. 808, 140 N. Y. S. 882, 883.

—**Farm laborer.** Generally, a man hired to go on a farm. Klein v. McCleary, 154 Minn. 498, 192 N. W. 106, 107. One employed as a laborer on a farm, especially one who does all kinds of farm work. In re Keaney, 217 Mass. 5, 104 N. E. 438. The term is broad enough to include a ranch laborer. Gordon v. Buster, 113 Tex. 382, 257 S. W. 220. See, also, C. C. Slaughter Cattle Co. v. Pastrana (Tex. Civ. App.) 217 S. W. 749, 752; Hanna v. Warren, 77 Ind. App. 1, 133 N. E. 9, 10; Brockett v. Mietz, 184 App. Div. 342, 171 N. Y. S. 412; Heddan v. Walden Farmers' Elevator Co., 31 N. D. 392, 153 N. W. 1015; Bates v. Shaffer, 216 Mich. 689, 185 N. W. 779, 780; Shafer v. Parke, Davis & Co., 192 Mich. 577, 159 N. W. 304, 305.

A sheep herder is an "agricultural laborer" not entitled to compensation for injuries under the Industrial Act (Comp. Laws 1917, § 3110, as amended by Laws 1919, c. 63). Davis v. Industrial Commission, 59 Utah, 607, 206 P. 267, 268.

On the question whether the term as used in Workmen's Compensation Acts includes an employee on a corn husking or a grain threshing outfit, or the like, which goes from one farm to another for compensation, the decisions are conflicting. See State v. District Court of Watonwan County, 140 Minn. 398, 168 N. W. 130, L. R. A. 1918F, 198; Slycord

v. Horn, 179 Iowa, 936, 162 N. W. 249, 252, 7 A. L. R. 1285. For cases *contra*, holding that such an employee is not a farm laborer, see Roush v. Heffelbower, 225 Mich. 664, 196 N. W. 185, 35 A. L. R. 196; In re Boyer, 65 Ind. App. 408, 117 N. E. 507, 508; Industrial Commission of State of Colorado v. Shadowen, 68 Colo. 69, 187 P. 926, 927, 13 A. L. R. 952; Vincent v. Taylor Bros., 180 App. Div. 818, 168 N. Y. S. 287, 288.

—**Farm land.** A term applicable to all the land contained in a farm, and not necessarily merely to land which has been plowed. De Woffe v. Kupers, 106 Or. 176, 211 P. 927, 930.

—**Farm utensils.** A term which, in an insurance policy, is broader than the term garden tools, and includes any instrumentalities within the meaning of the word utensils made use of on a farm, including a stock scale or a new windmill not erected. Murphy v. Continental Ins. Co., 178 Iowa, 375, 157 N. W. 855, L. R. A. 1917B, 934.

—**Farm wagon.** This term in an exemption statute includes a farm wagon moved by mechanical as well as by animal power. People v. Corder, 82 Colo. 318, 259 P. 613.

**FARM, v.** To lease or let; to demise or grant for a limited term and at a stated rental.

—**Farm let.** Technical words in a lease creating a term for years. Co. Litt. 45 b; 1 Washb. R. Pr. Index, *Lease*. Operative words in a lease, which strictly mean to let upon payment of a certain rent in farm; *i. e.*, in agricultural produce.

—**Farm out.** To let for a term at a stated rental. Among the Romans the collection of revenue was farmed out, and the same system existed in France before the revolution of 1789; in England the excise taxes were farmed out, and thereby their evils were greatly aggravated. The farming of the excise was abolished in Scotland by the union, having been before that time abandoned in England. In all these cases the custom gave rise to great abuse and oppression of the people, and in France most of the farmers-general, as they were called, perished on the scaffold.

**FARMER.** The lessee of a farm. It is said that every lessee for life or years, although it be but of a small house and land, is called "farmer." This word implies no mystery, except it be that of husbandman. Cunningham; Cowell; 3 Sharsw. Bla. Comm. 318.

A husbandman or agriculturist; one who cultivates a farm, whether the land be his own or another's. One who resides on and cultivates a farm, mainly deriving his support therefrom. State v. Hines, 94 Or. 607, 186 P. 420, 422.

One who assumes the collection of the public revenues, taxes, excise, etc., for a certain



commission or percentage; as a *farmer* of the revenues.

There may also be a farmer of other personal property as well as of revenue and of lands. Plowd. 195; Cunn. Law Dict.

**FARMER GENERAL.** See Farm out.

**FARMING.** Tillage of the soil. In re Brown (D. C.) 284 F. 899, 900; Hart-Parr Co. v. Barkley (C. C. A.) 231 F. 913, 914. Stock raising and dairying, if in connection with and incidental to tillage of the soil. In re Brown (D. C.) 251 F. 365, 370.

**FARO.** An unlawful game of cards, in which all the other players play against the banker or dealer, staking their money upon the order in which the cards will lie and be dealt from the pack. Webster; Ward v. State, 22 Ala. 19; U. S. v. Smith, 27 Fed. Cas. 1149; Patterson v. State, 12 Tex. App. 224.

**FARO LAY-OUT.** A board commonly covered and covered with green cloth to which the entire spade suit is affixed in a certain order. State v. Williams, 52 Mont. 369, 157 P. 957.

**FARRAGO LIBELLI.** Lat. An ill-composed book containing a collection of miscellaneous subjects not properly associated nor scientifically arranged. Wharton.

**FARRIER.** One who takes upon himself the public employment of shoeing horses. See 1 Bl. Comm. 431; 2 Salk. 440; Hanover, Horses 215.

**FARTHING.** The fourth part of an English penny.

**FARTHING OF GOLD.** An ancient English coin, containing in value the fourth part of a noble. 9 Hen. V. c. 7.

**FARTHING OF LAND.** A great quantity of land, differing much from farding-deal, *q. v.*

**FARVAND.** Standing by itself, this word signifies "passage by sea or water." In charter-parties, it means voyage or passage by water. 18 C. B. 880.

**FARYNDON INN.** The ancient designation of Serjeants' Inn, Chancery Lane, London.

**FAS.** Lat. Right; justice; the divine law. 3 Bl. Comm. 2; Calvin.

In primitive times it was the will of the gods, embodied in rules regulating not only ceremonials but the conduct of all men. Taylor, Science of Jurispr. 65.

**FASIUS.** In old English law. A faggot of wood.

**FAST BILL OF EXCEPTIONS.** One which may be taken in Georgia in injunction suits and similar cases, at such time and in such manner as to bring the case up for review with great expedition. It must be certified

within twenty days from the rendering of the decision. Sewell v. Edmonston, 66 Ga. 353.

**FAST-DAY.** A day of fasting and penitence, or of mortification by religious abstinence. As to counting it in legal proceedings, see 1 Chit. Archb. Pr. (12th Ed.) 160, et seq.

**FAST ESTATE.** See Estate.

**FASTERMANS, FASTERMANNES, or FAST-ING-MEN.** Men in repute and substance; pledges, sureties, or bondsmen, who, according to the Saxon polity, were *fast* bound to answer for each other's peaceable behavior. Spelman; Enc. Lond.

**FASTI.** In Roman law. Lawful. *Dies fasti*, lawful days; days on which justice could lawfully be administered by the prætor. See *Dies Fasti*.

**FATAL INJURY.** A term embracing injuries resulting in death, which, as used in accident and disability insurance policies is distinguished from "disability," which embraces injuries preventing the insured from performing the work in which he is usually employed, but not resulting in death. Provident Life & Accident Ins. Co. v. Johnson (Tex. Civ. App.) 235 S. W. 650, 652.

**Fatetur facinus qui iudicium fugit.** He who flees judgment confesses his guilt. 3 Inst. 14; 5 Co. 109b. But see Best, Pres. § 248.

**FATHER.** The male parent. He by whom a child is begotten. As used in law, this term may (according to the context and the nature of the instrument) include a putative as well as a legal father, also a stepfather, an adoptive father, or a grandfather, but is not as wide as the word "parent," and cannot be so construed as to include a female. Lind v. Burke, 56 Neb. 785, 77 N. W. 444; Crook v. Webb, 125 Ala. 457, 28 So. 384; Cotheal v. Cotheal, 40 N. Y. 410; Lantznes-ter v. State, 19 Tex. App. 321; Thornburg v. American Strawboard Co., 141 Ind. 443, 40 N. E. 1062, 50 Am. St. Rep. 334; In re Butler's Estate, 129 Misc. 396, 222 N. Y. S. 265, 266; McGaughey v. Grand Lodge, A. O. U. W. of State of Minnesota, 148 Minn. 136, 180 N. W. 1001. The term may, however, be so limited as to mean only the father of a legitimate child. People v. Wolf, 216 App. Div. 771, 215 N. Y. S. 95, 96; Howard v. U. S. (D. C.) 2 F.(2d) 170, 173.

—**Father-in-law.** The father of one's wife or husband.

—**Putative father.** The alleged or reputed father of an illegitimate child. State v. Nestaval, 72 Minn. 415, 75 N. W. 725.

**FATHOM.** A nautical measure of six feet in length. Occasionally used as a superficial measure of land and in mining, and in that case it means a square fathom or thirty-six

square feet. *Nahaolelua v. Kaaahu*, 9 Hawaii, 601.

**FATUA MULIER.** A whore. Du Fresné.

**FATUITAS.** In old English law. Fatuity; idiocy. Reg. Orig. 266.

**FATUM.** Lat. Fate; a superhuman power; an event or cause of loss, beyond human foresight or means of prevention.

**FATUOUS PERSON.** In Scotch law. One entirely destitute of reason; *is qui omnino desipit*. Ersk. Inst. 1, 7, 48. An idiot. Jacob. One who is incapable of managing his affairs, by reason of a total defect of reason. He is described as having uniform stupidity and inattention of manner and childishness of speech. Bell's Law Dict.

**FATUUM JUDICIUM.** A foolish judgment or verdict. As applied to the latter it is one rather false by reason of folly than criminally so, or as amounting to perjury. Bract. f. 289.

**FATUUS.** An idiot or fool. Bract. fol. 420b. Foolish; silly; absurd; indiscreet; or ill considered. See *Fatum judicium*.

**Fatuus, apud jurisconsultos nostros, accipitur pro non compos mentis; et fatuus dicitur, qui omnino desipit.** 4 Coke, 128. Fatuous, among our jurisconsults, is understood for a man not of right mind; and he is called "*fatuus*" who is altogether foolish.

**Fatuus præsimitur qui in proprio nomine errat.** A man is presumed to be simple who makes a mistake in his own name. Code, 6, 24, 14; Van Alst v. Hunter, 5 Johns. Ch. (N. Y.) 148, 161.

**FAUBOURG.** In French law, and in Louisiana. A district or part of a town adjoining the principal city; a suburb. See *City Council of Lafayette v. Holland*, 18 La. 286.

**FAUCES TERRÆ.** (Jaws of the land.) Narrow headlands and promontories, inclosing a portion or arm of the sea within them. 1 Kent, Comm. 367, and note; Hale, De Jure Mar. 10; The Harriet, 1 Story, 251, 259, Fed. Cas. No. 6,099; 16 Yale L. J. 471.

## FAULT.

### In the Civil Law

Negligence; want of care. An improper act or omission, injurious to another, and transpiring through negligence, rashness, or ignorance.

There are in law three degrees of faults,—the gross, the slight, and the very slight fault. The *gross* fault is that which proceeds from inexcusable negligence or ignorance; it is considered as nearly equal to fraud. The *slight* fault is that want of care which a prudent man usually takes of his business. The *very slight* fault is that which is excusable, and for which no responsibility is incurred. Civil Code La. art. 3556, par. 13.

### In American Law

Negligence; an error or defect of judgment or of conduct; any deviation from prudence, duty, or rectitude; any shortcoming, or neglect of care or performance resulting from inattention, incapacity, or perversity; a wrong tendency, course, or act. *Railroad Co. v. Berry*, 2 Ind. App. 427, 28 N. E. 714; *Railway Co. v. Austin*, 104 Ga. 614, 30 S. E. 770; *School Dist. v. Boston*, H. & E. R. Co., 102 Mass. 553, 3 Am. Rep. 502; *Dorr v. Harkness*, 49 N. J. Law, 571, 10 A. 400, 60 Am. Rep. 656; *Cochrane v. Forbes*, 257 Mass. 135, 153 N. E. 566, 570.

The word "fault," the primary lexical meaning of which is defect or failing, in the language of the law and in the interpretation of statutes signifies a failure of duty, and is the equivalent of negligence. *Milliken v. Fenderson*, 110 Me. 306, 86 A. 174, 175; *Marston v. Pickwick Stages*, 78 Cal. App. 526, 248 P. 930, 933; *Scott v. Sciaroni*, 66 Cal. App. 577, 226 P. 827, 829. But see *Liberty Highway Co. v. Callahan*, 24 Ohio App. 374, 157 N. E. 708, 714.

### In Commercial Law

Defect; imperfection; blemish. See *With All Faults*.

### In Mining Law

A dislocation of strata; particularly, a severance of the continuity of a vein or lode by the dislocation of a portion of it.

## FAUTOR.

### In Old English Law

A favorer or supporter of others; an abettor. Cowell; Jacob. A partisan. One who encouraged resistance to the execution of process.

### In Spanish Law

Accomplice; the person who aids or assists another in the commission of a crime.

## FAUX.

### In Old English Law

False; counterfeit. *Faux action*, a false action. Litt. § 688. *Faux money*, counterfeit money. St. Westm. 1, c. 15. *Faux peys*, false weights. Britt. c. 20. *Faux serement*, a false oath. St. Westm. 1, c. 38.

### In French Law

A falsification or fraudulent alteration or suppression of a thing by words, by writings, or by acts without either. Biret.

"*Faux* may be understood in three ways. In its most extended sense it is the alteration of truth, with or without intention; it is nearly synonymous with 'lying.' In a less extended sense, it is the alteration of truth, accompanied with fraud, *mutatio veritatis cum dolo facta*. And lastly, in a narrow, or rather the legal, sense of the word, when it is a question to know if the *faux* be a crime, it is the fraudulent alteration of the truth in those cases ascertained and punished by the law." Toullier, t. 9, n. 183.

### In the Civil Law

The fraudulent alteration of the truth. The same with the Latin *falsum* or *crimen falsi*.

**FAVOR, n.** Bias; partiality; lenity; prejudice. See Challenge.

**FAVOR, v.** To regard with favor; to aid or to have the disposition to aid; to show partiality or unfair bias towards;—practically synonymous with "support." *United States v. Schulze* (D. C.) 253 F. 377, 379. The word implies a mental attitude or intent. *Schulze v. United States* (C. C. A.) 259 F. 189, 190.

**Favorabilia in lege sunt fiscus, dos, vita, libertas.** Jenk. Cent. 94. Things favorably considered in law are the treasury, dower, life, liberty.

**Favorabiliores rei, potius quam actores, habentur.** The condition of the defendant must be favored, rather than that of the plaintiff. In other words, *melior est conditio defendentis*. Dig. 50, 17, 125; Broom, Max. 715. See *Hunt v. Rousmanier's Adm'r*, 8 Wheat. (U. S.) 195, 196, 5 L. Ed. 589.

**Favorabiliores sunt executiones aliis processibus quibuscunque.** Co. Litt. 289. Executions are preferred to all other processes whatever.

**Favores ampliandi sunt; odia restringenda.** Jenk. Cent. 186. Favors are to be enlarged; things hateful restrained.

**FEAL.** Faithful; truthful; true. Tenants by knight service swore to their lords to be *feal* and *leal*; i. e., faithful and loyal. *Feal homager*, faithful subject.

**FEAL AND DIVOT.** A right in Scotland, similar to the right of turbary in England, for fuel, etc. Wharton; Ersk. ii. tit. ix. s. 17.

**FEALTY.** In feudal law. Fidelity; allegiance to the feudal lord of the manor; the feudal obligation resting upon the tenant or vassal by which he was bound to be faithful and true to his lord, and render him obedience and service. See *De Peyster v. Michael*, 6 N. Y. 497, 57 Am. Dec. 470; Littleton §§ 117, 131; Wright, Ten. 35; *Termes de la Ley*; 1 Washb. R. P. 19; 1 Poll. & Maitl. 277-287; Stubbs, Const. Hist. § 462 n; Co. Lit. 67b; 3 Kent 510.

This fealty was of two sorts: that which is general, and is due from every subject to his prince; the other special, and required of such only as in respect of their fee are tied by this oath to their landlords; 1 Bla. Comm. 367; Cowell.

Fealty signifies fidelity, the phrase "feal and leal" meaning simply "faithful and loyal." Tenants by knights' service and also tenants in socage were required to take an oath of fealty to the king or others, their immediate lords; and fealty was one of the conditions of their tenure, the breach of which operated a forfeiture of their estates. Brown.

Although foreign jurists consider fealty and homage as convertible terms, because in some continental countries they are blended so as to form

one engagement, yet they are not to be confounded in our country, for they do not imply the same thing, *homage* being the acknowledgment of tenure, and *fealty*, the vassal oath of fidelity, being the essential feudal bond, and the animating principle of a feud, without which it could not subsist. Wharton.

**FEAR.** Apprehension of harm; dread; consciousness of approaching danger.

Apprehension of harm or punishment, as exhibited by outward and visible marks of emotion. An evidence of guilt in certain cases. See *Burrill*, Circ. Ev. 476.

**FEASANCE.** A doing; the doing of an act; a performing or performance. See *Malfeasance*; *Misfeasance*; *Nonfeasance*.

A making; the making of an indenture, release, or obligation. Litt. § 371; *Dyer*, (Fr. Ed.) 56b. The making of a statute. *Kellw. 1b*.

**FEASANT.** Doing, or making, as, in the term "damage feasant," (doing damage or injury.) spoken of cattle straying upon another's land.

**FEASOR.** Doer; maker. *Feasors del estatute*, makers of the statute. *Dyer*, 3b. Also used in the compound term, "tort-feasor," one who commits or is guilty of a tort.

**FEASTS.** Certain established festivals or holidays in the ecclesiastical calendar. These days were anciently used as the dates of legal instruments, and in England the quarter-days, for paying rent, are four feast-days. The terms of the courts, in England, before 1875, were fixed to begin on certain days determined with reference to the occurrence of four of the chief feasts.

**FEACIAL LAW.** The nearest approach to a system of international law known to the ancient world. It was a branch of Roman jurisprudence, concerned with embassies, declarations of war, and treaties of peace. It received this name from the *feciales*, (*q. v.*) who were charged with its administration.

**FECIALES.** Among the ancient Romans, that order of priests who discharged the duties of ambassadors. Subsequently their duties appear to have related more particularly to the declaring war and peace. *Calvin.*; 1 Kent, Comm. 6.

## FEDERAL.

### In Constitutional Law

A term commonly used to express a league or compact between two or more states, to become united under one central government. *Montana Auto Finance Corporation v. British & Federal Underwriters of Norwich Union Fire Ins. Soc.*, 72 Mont. 69, 232 P. 198, 199, 36 A. L. R. 1495.

### In American Law

Belonging to the general government or union of the states. Founded on or organized

under the constitution or laws of the United States.

The United States has been generally styled, in American political and judicial writings, a "federal government." The term has not been imposed by any specific constitutional authority, but only expresses the general sense and opinion upon the nature of the form of government. In recent years, there is observable a disposition to employ the term "national" in speaking of the government of the Union. Neither word settles anything as to the nature or powers of the government. "Federal" is somewhat more appropriate if the government is considered a union of the states; "national" is preferable if the view is adopted that the state governments and the Union are two distinct systems, each established by the people directly, one for local and the other for national purposes. See *United States v. Cruikshank*, 92 U. S. 542, 23 L. Ed. 588; *Abbott*; *Mills*, Representative Government 301; *Freeman*, Fed. Gov't.

**FEDERAL CENSUS.** A census of each state or territory or of a certain state or of any subdivision or portion of any state, provided it is taken by and under the direction and supervision of the Census Bureau of the United States, and approved and certified by it as the census of that state or subdivision. In re *Cleveland's Claim*, 72 Okl. 279, 180 P. 852, 885.

**FEDERAL COURTS.** The courts of the United States. See *Courts of the United States*.

**FEDERAL GOVERNMENT.** The system of government administered in a state formed by the union or confederation of several independent or *quasi* independent states; also the composite state so formed. In strict usage, there is a distinction between a *confederation* and a *federal government*. The former term denotes a league or permanent alliance between several states, each of which is fully sovereign and independent, and each of which retains its full dignity, organization, and sovereignty, though yielding to the central authority a controlling power for a few limited purposes, such as external and diplomatic relations. In this case, the component states are the units, with respect to the confederation, and the central government acts upon them, not upon the individual citizens. In a *federal government*, on the other hand, the allied states form a union,—not, indeed, to such an extent as to destroy their separate organization or deprive them of *quasi* sovereignty with respect to the administration of their purely local concerns, but so that the central power is erected into a true state or nation, possessing sovereignty both external and internal,—while the administration of national affairs is directed, and its effects felt, not by the separate states deliberating as units, but by the people of all, in their collective capacity, as citizens of the nation. The distinction is expressed, by the German writers, by the use of the two words "*Staatenbund*" and "*Bundesstaat*;" the former denoting a league or confederation of states, and the latter a

federal government, or state formed by means of a league or confederation.

**FEDERAL PROHIBITION OFFICER.** An officer of the federal government charged with the enforcement of the national prohibition statute. *De Marco v. U. S.* (C. C. A.) 296 F. 667, 668.

**FEDERAL QUESTION.** Cases arising under the constitution of the United States, acts of congress, or treaties, and involving their interpretation or application, and of which jurisdiction is given to the federal courts, are commonly described by the legal profession as cases involving a "federal question." In re *Sievers* (D. C.) 91 F. 372; *U. S. v. Douglas*, 113 N. C. 190, 18 S. E. 202; *Williams v. Bruffy*, 102 U. S. 248, 26 L. Ed. 135; *Bryan v. Kennett*, 113 U. S. 190, 5 S. Ct. 407, 28 L. Ed. 908; In re *Vadner* (D. C.) 259 F. 614, 632; *Masters v. Traders' Nat. Bank*, 129 Misc. 133, 220 N. Y. S. 499, 500.

**FEDERAL TRADE COMMISSION.** An administrative body created by statute, with only the duties and powers granted expressly or by fair implication. Chamber of Commerce of Minneapolis v. Federal Trade Commission (C. C. A.) 13 F.(2d) 673, 683. See 15 USCA §§ 41-51.

**FEDERATED STATE.** An independent central organism, having its own machinery absorbing, in view of international law, all the individual states associated together. *Molina v. Comision Reguladora Del Mercado De Henequen*, 91 N. J. Law, 382, 103 A. 397, 400.

**FEDERATION.** Ordinarily, an unincorporated association of persons for a common purpose. *Hughes v. State*, 109 Ark. 403, 160 S. W. 209.

**FEE.** A freehold estate in lands, held of a superior lord, as a reward for services, and on condition of rendering some service in return for it. The true meaning of the word "fee" is the same as that of "feud" or "fief," and in its original sense it is taken in contradistinction to "allodium," which latter is defined as a man's own land, which he possesses merely in his own right, without owing any rent or service to any superior. 2 Bl. Comm. 105. See *Wendell v. Crandall*, 1 N. Y. 491.

In modern English tenures, "fee" signifies an estate of inheritance, being the highest and most extensive interest which a man can have in a feud; and when the term is used simply, without any adjunct, or in the form "fee-simple," it imports an absolute inheritance clear of any condition, limitation, or restriction to particular heirs, but descendible to the heirs general, male or female, lineal or collateral. 2 Bl. Comm. 106; *Cowell*; *Termes de la Ley*; 1 Washb. R. P. 51; *Co. Litt.* 1 b; 1 Prest. Est. 420; 3 Kent 514.

### In General

—**Base fee.** A determinable or qualified fee; an estate having the nature of a fee, but not a fee simple absolute. In re Douglass Estate, 94 Neb. 280, 143 N. W. 299, 302, Ann. Cas. 1914D, 447; *Stubbs v. Abel*, 114 Or. 610, 233 P. 852, 859.

—**Conditional fee.** An estate restrained to some particular heirs, exclusive of others, as to the heirs of a man's body, by which only his lineal descendants were admitted, in exclusion of collateral; or to the heirs male of his body, in exclusion of heirs female, whether lineal or collateral. It was called a "conditional fee," by reason of the condition expressed or implied in the donation of it that, if the donee died without such particular heirs, the land should revert to the donor. 2 Bl. Comm. 110; *Willis v. Mutual Loan & Trust Co.*, 183 N. C. 267, 111 S. E. 163, 165; *Yates v. Yates*, 104 Neb. 678, 178 N. W. 262, 265; *Shope v. Unknown Claimants, etc.*, 174 Iowa, 662, 156 N. W. 850, 851; *Adams v. Verner*, 102 S. C. 7, 86 S. E. 211, 214; *Kirk v. Furgerson*, 6 Cold. (Tenn.) 483; *Simmons v. Augustin*, 3 Port. (Ala.) 69; *Paterson v. Ellis*, 11 Wend. (N. Y.) 277; *Moody v. Walker*, 3 Ark. 190; *Halbert v. Halbert*, 21 Mo. 281. The term includes a fee that is either to commence or determine on some condition; 10 Co. 95 *b*; *Prest. Est.* 476; *Fearne, Cont. Rem.* 9; and is sometimes used interchangeably with "base fee," that is, one to determine or be defeated on the happening of some contingent event or act. *Citizens' Electric Co. v. Susquehanna Boom Co.*, 270 Pa. 517, 113 A. 559, 561; *Glass v. Johnson*, 297 Ill. 149, 130 N. E. 473, 474.

—**Determinable fee.** Also called a "base" or "qualified" fee. *Stubbs v. Abel*, 114 Or. 610, 233 P. 852, 859. One which has a qualification subjoined to it, and which must be determined whenever the qualification annexed to it is at an end. *Littleton* § 254; *Co. Litt.* 27 *a*, 220; 1 *Prest. Est.* 449; 2 *Bla. Comm.* 109; *Cruise, Dig. tit. 1, § 82.* An estate in fee which is liable to be determined by some act or event expressed on its limitation to circumscribe its continuance, or inferred by law as bounding its extent. 1 *Washb. Real Prop.* 62; *McLane v. Bovee*, 35 Wis. 36. "Determinable fees" are interests which may continue forever, but which are liable to be determined by some act or event and are deemed fees because of the possibility of their enduring forever. *Aldred v. Sylvester*, 184 Ind. 542, 111 N. E. 914, 920.

—**Fee damages.** See *Damages*.

—**Fee expectant.** A name sometimes applied to an estate created where lands are given to a man and his wife and the heirs of their bodies. See also *Frank-Marriage*.

—**Fee simple.** See that title.

—**Fee tail.** See that title.

—**Great fee.** In feudal law, this was the designation of a fee held directly from the crown.

—**Knight's fee.** The determinate quantity of land, (held by an estate of inheritance,) or of annual income therefrom, which was sufficient to maintain a knight. Every man holding such a fee was obliged to be knighted, and attend the king in his wars for the space of forty days in the year, or pay a fine (called "escuage") for his non-compliance. The estate was estimated at £20 a year, or, according to Coke, 680 acres. See 1 *Bl. Comm.* 404, 410; 2 *Bl. Comm.* 62; *Co. Litt.* 69*a*.

—**Limited fee.** An estate of inheritance in lands, which is clogged or confined with some sort of condition or qualification. Such estates are base or qualified fees, conditional fees, and fees-tail. The term is opposed to "fee-simple." 2 *Bl. Comm.* 109; *Lott v. Wyckoff*, 1 *Barb.* (N. Y.) 575; *Paterson v. Ellis*, 11 *Wend.* (N. Y.) 259.

—**Plowman's fee.** In old English law, this was a species of tenure peculiar to peasants or small farmers, somewhat like gavelkind, by which the lands descended in equal shares to all the sons of the tenant.

—**Qualified fee.** In English law. A fee having a qualification subjoined thereto, and which must be determined whenever the qualification annexed to it is at an end; otherwise termed a "base fee." 2 *Bl. Comm.* 109; 1 *Steph. Comm.* 225. An interest which may continue forever, but is liable to be determined, without the aid of a conveyance, by some act or event, circumscribing its continuance or extent. 4 *Kent, Comm.* 9; *Moody v. Walker*, 3 *Ark.* 190; *U. S. v. Reese*, 27 *Fed. Cas.* 744; *Bryan v. Spires*, 3 *Brewst.* (Pa.) 583. An interest given to a man and certain of his heirs at the time of its limitation. See *Kelso v. Stigar*, 75 *Md.* 397, 24 *A.* 18.

—**Quasi fee.** An estate gained by wrong; for wrong is unlimited and uncontained within rules. *Wharton*.

Also, the land which is held in fee.

The compass or circuit of a manor or lordship. *Cowell*.

### In American Law

An estate of inheritance without condition, belonging to the owner, and alienable by him, or transmissible to his heirs absolutely and simply. It is an absolute estate in perpetuity, and the largest possible estate a man can have, being, in fact, allodial in its nature. *Earnest v. Little River Land, etc., Co.*, 109 *Tenn.* 427, 75 *S. W.* 1122; *Phoenix v. Emigration Com'rs*, 12 *How. Prac.* (N. Y.) 10; *United States Pipe-Line Co. v. Delaware, L. & W. R. Co.*, 62 *N. J. Law*, 254, 41 *A.* 759, 42 *L. R. A.* 572; *Glass v. Johnson*, 297 *Ill.* 149, 130 *N. E.* 473, 474; *Des Moines City R. Co. v. City of Des Moines*, 183 *Iowa*, 1261, 159 *N. W.* 450, 452, *L. R. A.* 1918D, 839; *Chance v. Weston*, 96 *Or.* 390, 190 *P.* 155, 158.

An "estate in fee" is every estate which is not for life, for years or at will. *Chance v. Weston*, 96 Or. 390, 190 P. 155, 157.

The terms "fee," "fee-simple," and "fee simple absolute" are interchangeable. *Walpole v. State Board of Land Com'rs*, 62 Colo. 554, 163 P. 848, 850.

A reward, compensation, or wage given to one for the performance of official duties (clerk of court, sheriff, etc.) or for professional services, as in the case of an attorney at law or a physician;—frequently used in the plural form. See *Alexander v. Walton*, 151 Ga. 645, 107 S. E. 862; *McRoberts v. Hoar*, 28 Idaho, 163, 152 P. 1046, 1048. A recompense for an official or professional service or a charge or emolument or compensation for a particular act or service. *Craig v. Shelton*, 201 Ky. 790, 258 S. W. 694.

Fees differ from costs in this, that the former are a recompense to the officer for his services; and the latter, an indemnification to the party for money laid out and expended in his suit; *Musser v. Good*, 11 S. & R. (Pa.) 248; *McClain v. Continental Supply Co.*, 66 Okl. 225, 168 P. 815, 817; *Parks v. Sutton*, 60 Utah, 356, 208 P. 511, 514. See *Lyon v. McManus*, 4 Binn. (Pa.) 167. Fees are synonymous with charges; *McPheters v. Morrill*, 66 Me. 124; *Hudson v. Bertsch*, 38 Idaho, 52, 220 P. 109; and also with "percentage" or "commission"; *City of Pittsburgh v. Grenet*, 238 Pa. 567, 86 A. 462, 465; *Brown v. City of Amarillo* (Tex. Civ. App.) 180 S. W. 654, 658.

"Salary," as relating to the compensation of public officers, is generally regarded as a periodical payment dependent upon time, while "fees" depend on services rendered, the amount of which is fixed by law and payable when the judgment allowing them is entered. *State v. Bland*, 91 Kan. 160, 136 P. 947, 950.

—**Contingent fee.** A fee stipulated to be paid to an attorney for his services in conducting a suit or other forensic proceeding only in case he wins it; it may be a percentage of the amount recovered. Adopted in *Gray v. Stern*, 85 Wash. 645, 149 P. 26, 28. See, also, *Miles v. Cheyenne County*, 96 Neb. 703, 148 N. W. 959, 962, L. R. A. 1917D, 258; *Modlin v. Smith*, 13 Ga. App. 259, 79 S. E. 82.

—**Docket fee.** See Docket.

—**Fee-bill.** A schedule of the fees to be charged by clerks of courts, sheriffs, or other officers, for each particular service in the line of their duties. Also, the proper process to collect fees due to officers and witnesses against a party for whom services are rendered. *Farris v. Smithpeter*, 180 Mo. App. 466, 166 S. W. 655, 656.

**FEE AND LIFE-RENT.** In Scotch law. Two estates in land—the first of which is the full right of proprietorship, the second the limited right of usufruct during life—may be held together, or may co-exist in different persons at the same time. See *Bell*, Prin. § 1712; *Ersk. Prin.* 420; *Fiar.*

**FEE-FARM.** A species of tenure, where land is held of another in perpetuity at a yearly

rent, without fealty, homage, or other services than such as are specially comprised in the feoffment. It corresponds very nearly to the "*emphyteusis*" of the Roman law. *Cowell.* Fealty, however, was incident to a holding in fee-farm, according to some authors. *Spelman*; *Termes de la Ley.*

Fee-farm is where an estate in fee is granted subject to a rent in fee of at least one-fourth of the value of the lands at the time of its reservation. Such rent appears to be called "fee-farm" because a grant of lands reserving so considerable a rent is indeed only letting lands to farm in fee-simple, instead of the usual method of life or years. 2 Bl. Comm. 43; 1 Steph. Comm. 676.

Fee-farms are lands held in fee to render for them annually the true value, or more or less; so called because a farm rent is reserved upon a grant in fee. Such estates are estates of inheritance. They are classed among estates in fee-simple. No reversionary interest remains in the lessor, and they are therefore subject to the operation of the legal principles which forbid restraints upon alienation in all cases where no feudal relation exists between grantor and grantee. *De Peyster v. Michael*, 6 N. Y. 497, 57 Am. Dec. 470.

**FEE-FARM RENT.** The rent reserved on granting a fee-farm. It might be one-fourth the value of the land, according to *Cowell*; one-third, according to other authors. *Spelman*; *Termes de la Ley*; 2 Bl. Comm. 43. Fee-farm rent is a rent-charge issuing out of an estate in fee; a perpetual rent reserved on a conveyance in fee-simple. *De Peyster v. Michael*, 6 N. Y. 467, 495, 57 Am. Dec. 470.

**FEE-SIMPLE.**

#### In English Law

A freehold estate of inheritance, absolute and unqualified. It stands at the head of estates as the highest in dignity and the most ample in extent; since every other kind of estate is derivable thereout, and mergeable therein. It may be enjoyed not only in land, but also in advowsons, commons, estovers, and other hereditaments, as well as in personalty, as an annuity or dignity, and also in an upper chamber, though the lower buildings and soil belong to another. *Wharton*; *Co. Litt.* 1 b; 2 Bla. Comm. 106.

#### In American Law

An absolute or fee-simple estate is one in which the owner is entitled to the entire property, with unconditional power of disposition during his life, and descending to his heirs and legal representatives upon his death intestate. *Code Ga.* 1882, § 2246 (*Civ. Code* 1910, § 3657). And see *Friedman v. Steiner*, 107 Ill. 131; *Woodberry v. Matherson*, 19 Fla. 785; *Lyle v. Richards*, 9 Serg. & R. (Pa.) 374; *Loventhal v. Home Ins. Co.*, 112 Ala. 108, 20 So. 419, 33 L. R. A. 258, 57 Am. St. Rep. 17; *Dumont v. Dufore*, 27 Ind. 267; *Alsmann v. Walters*, 184 Ind. 565, 106 N. E. 879, 880; *Veselka v. Forres* (Tex. Civ. App.) 283 S. W. 303, 305; *New Cathedral Cemetery v. Browning*, 153 Md. 408, 138 A. 258, 260.

Fee-simple signifies a pure fee; an absolute estate of inheritance; that which a person holds inheritable to him and his heirs general forever. It is called "fee-simple," that is, "pure," because clear of any condition or restriction to particular heirs, being descendible to the heirs general, whether male or female, lineal or collateral. It is the largest estate and most extensive interest that can be enjoyed in land, being the entire property therein, and it confers an unlimited power of alienation. *Haynes v. Bourn*, 42 Vt. 636; *Powers v. Trustees of Caledonia County Grammar School*, 93 Vt. 220, 106 A. 836, 841; *Smith v. Smith's Ex'r*, 122 Va. 341, 94 S. E. 777, 779; *Hays v. Walnut Creek Oil Co.*, 75 W. Va. 263, 83 S. E. 900, 903, Ann. Cas. 1918A, 802; *Security Trust Co. v. Moberley*, 199 Ky. 703, 251 S. W. 964, 965. But see *Chase v. United States (C. C. A.)* 222 F. 593, 598.

A fee-simple is the largest estate known to the law, and where no words of qualification or limitation are added, it means an estate in possession, and owned in severalty. It is undoubtedly true that a person may own a remainder or reversion in fee. But such an estate is not a fee-simple; it is a fee qualified or limited. So, when a person owns in common with another, he does not own the entire fee,—a fee-simple; it is a fee divided or shared with another. *Brackett v. Ridlon*, 54 Me. 426.

The terms "fee," "fee simple," and "fee simple absolute" are interchangeable. *Walpole v. State Board of Land Com'rs*, 62 Colo. 554, 163 P. 848, 850; *Jecko v. Taussig*, 45 Mo. 170. And the term "absolute estate" is synonymous with "fee-simple estate." *Bradford v. Martin*, 199 Iowa, 250, 201 N. W. 574, 576; *Middleton v. Dudding (Mo. Sup.)* 183 S. W. 443, 444.

#### Absolute and Conditional

A fee simple absolute is an estate which is limited absolutely to a man and his heirs and assigns forever, without any limitation or condition. *Frisby v. Ballance*, 7 Ill. 144. At the common law, an estate in fee simple conditional was a fee limited or restrained to some particular heirs, exclusive of others. But the statute "De Donis" converted all such estates into estates tail. 2 Bl. Comm. 110.

**FEE-TAIL.** An estate tail; an estate of inheritance given to a man and the heirs of his body, or limited to certain classes of particular heirs. It corresponds to the *feudum talliatum* of the feudal law, and the idea is believed to have been borrowed from the Roman law, where, by way of *fidei commissa*, lands might be entailed upon children and freedmen and their descendants, with restrictions as to alienation. 1 Washb. Real Prop. \*66. For the varieties and special characteristics of this kind of estate, see Tail, Estate in.

**FEED.** To lend additional support; to strengthen *ex post facto*. "The interest when it accrues feeds the estoppel." *Christmas v. Oliver*, 5 Mood. & R. 202. Similarly, a subsequent title acquired by the mortgagor is said "to feed the mortgage."

The word is used in its ordinary sense with reference to cattle and hogs which are said to be made marketable by feeding. *Brockway v. Rowley*, 66 Ill. 102.

It is also used in the phrase *feeding of a cow by and on the land* to signify from the land while there is food on it, and with hay by the owner of the land at other times; 2 Q. B. Div. 49.

**FEGANGI.** In old English law. A thief caught while escaping with the stolen goods in his possession. *Spelman*.

**FEHMGERICHTE.** The name given to certain secret tribunals which flourished in Germany from the end of the twelfth century to the middle of the sixteenth, usurping many of the functions of the governments which were too weak to maintain law and order, and inspiring dread in all who came within their jurisdiction. *Enc. Brit.* Such a court existed in Westphalia (though with greatly diminished powers) until finally suppressed by Jerome Bonaparte in 181f. See Bork, *Geschichte der Westphalichen Vehmgerichte*; Paul Wigand, *Das Fehmgericht Westphaleus*.

**FEIGNED.** Fictitious; pretended; supposititious; simulated.

**FEIGNED ACCOMPLICE.** One who pretends to consult and act with others in the planning or commission of a crime, but only for the purpose of discovering their plans and confederates and securing evidence against them. *State v. Verganadis*, 50 Nev. 1, 248 P. 900, 903; *People v. Bolanger*, 71 Cal. 17, 11 Pac. 800.

**FEIGNED ACTION.** In practice. An action brought on a pretended right, when the plaintiff has no true cause of action, for some illegal purpose. In a feigned action the words of the writ are true. It differs from *false action*, in which case the words of the writ are false. *Co. Litt.* 361.

**FEIGNED DISEASES.** Simulated maladies. Diseases are generally feigned from one of three causes,—fear, shame, or the hope of gain.

**FEIGNED ISSUE.** An issue made up by the direction of a court of equity, (or by consent of parties,) and sent to a common-law court, for the purpose of obtaining the verdict of a jury on some disputed matter of fact which the court has not jurisdiction, or is unwilling, to decide. It rests upon a supposititious wager between the parties. See 3 Bl. Comm. 452. Under the reformed codes of some states issues may be framed in certain exceptional cases. In England, the practice has been disused since the passing of the stat. 8 and 9 Vict. c. 109, s. 19, permitting any court to refer any question of fact to a jury in a direct form. The act 21 and 22 Vict. c. 27, provided for trial by jury in the court of chancery.

**FELAGUS.** In Saxon law. One bound for another by oath; a sworn brother. A friend bound in the decennary for the good behavior of another. One who took the place of the

deceased. Thus, if a person was murdered, the recompense due from the murderer went to the *felagus* of the slain, in default of parents or lord. Cunningham; Cowell; Du Cange.

**FELD.** A field; in composition, wild. Blount.

**FÈLE, FEAL.** L. Fr. Faithful. See Feal.

**FELLATIO, or FELLATION.** The offense committed with the male sexual organ and the mouth. *State v. Murry*, 136 La. 253, 66 So. 963. See Sodomy.

**FELLOW.** A co-worker; a partaker or sharer of; a companion; one with whom we consort; one joined with another in some legal *status* or relation; a member of a college or corporate body.

**FELLOW-HEIR.** A co-heir; partner of the same inheritance.

**FELLOW-SERVANTS.** Those engaged in the same common pursuit, under the same general control. *Cooley*, Torts 541. "The decided weight of authority is to the effect that all who serve the same master, work under the same control, derive authority and compensation from the same common source, and are engaged in the same general business, though it may be in different grades or departments of it, are fellow-servants, who take the risk of each other's negligence." 2 Thomp. Neg. p. 1026, § 31; *Southern Ry. Co. v. Taylor*, 57 App. D. C. 21, 16 F.(2d) 517, 519; *Brush Electric Light Co. v. Wells*, 110 Ga. 192, 35 S. E. 365; *Falla v. Pine Mountain Granite Co.*, 22 Ga. App. 651, 97 S. E. 114. And see *McAndrews v. Burns*, 39 N. J. Law, 119; *Justice v. Pennsylvania Co.*, 130 Ind. 321, 30 N. E. 303; *Wright v. New York Cent. R. Co.*, 25 N. Y. 565; *Glover v. Kansas City Bolt Co.*, 153 Mo. 327, 55 S. W. 88; *Brunell v. Southern Pac. Co.*, 34 Or. 256, 56 Pac. 129; *Doughty v. Penobscot Log Driving Co.*, 76 Me. 146; *McMaster v. Illinois Cent. R. Co.*, 65 Miss. 264, 4 South. 59, 7 Am. St. Rep. 653; *Daniels v. Union Pac. Ry. Co.*, 6 Utah, 357, 23 Pac. 762; *Weeks v. Scharer*, 129 Fed. 335, 64 C. C. A. 11; *Wirth v. Alex Dussel Iron Works*, 140 La. 1056, 74 So. 551, 552; *Kangas v. Cleveland-Cliffs Iron Co.*, 188 Mich. 255, 154 N. W. 41; *Hammond Lumber Co. v. Sandin (C. C. A.)* 17 F.(2d) 760, 761. But see *Lanis v. Illinois Cent. R. Co.*, 140 La. 1, 72 So. 788, 791; *Irwin v. F. P. Gould & Son*, 99 Neb. 283, 156 N. W. 503, 504; *Johnson v. American Car & Foundry Co. (Mo. Sup.)* 259 S. W. 442, 444; *Allen v. Quercus Lumber Co. (Mo. App.)* 190 S. W. 86, 88; *Kaminsky v. Chicago Rys. Co.*, 286 Ill. 271, 121 N. E. 596, 599.

When servants are employed and paid by the same master, and their duties are such as to bring them into such relation that negligence of one in doing his work may injure other in performance of his, then they are engaged in the same common

business, and are "fellow servants." *Hercules Powder Co. v. Hammack*, 145 Miss. 304, 110 So. 676, 677.

Convicts in involuntary servitude, having no power to refuse to enter upon the service to which they have been hired out by the state, or to quit it, are not "fellow servants." *Sloss-Sheffield Steel & Iron Co. v. Weir*, 179 Ala. 227, 60 So. 851, 853.

**FELLOW-SERVANT RULE.** The rule that the master is not liable for injuries to a servant, caused by the negligence of a fellow servant engaged in the same general business, where the master has exercised due care in selection of servants. *Setzkorn v. City of Buffalo*, 219 App. Div. 416, 219 N. Y. S. 351, 352.

**FELO DE SE.** A felon of himself; a suicide or murderer of himself. One who deliberately and intentionally puts an end to his own life, or who commits some unlawful or malicious act which results in his own death. *Hale*, P. C. 411; 4 Bl. Comm. 189; *Life Ass'n v. Waller*, 57 Ga. 536.

**FELON.** One who has committed felony; one convicted of felony.

But a person who has committed a felony, been convicted, served his sentence, and been discharged, may be deemed, at least for some purposes, to be no longer a felon; 3 Exch. Div. 352.

**FELONIA.** Felony. The act or offense by which a vassal forfeited his fee. *Spelman: Calvin. Per feloniam*, with a criminal intention. Co. Litt. 391.

**Feloniam, ex vi termini significat quodlibet capitale crimen felieo animo perpetratum.** Co. Litt. 391. Felony, by force of the term, signifies any capital crime perpetrated with a malignant mind.

**Feloniam implicatur in qualibet prodicione.** 3 Inst. 15. Felony is implied in every treason.

**FELONICE.** Feloniously. *Cunningham, Law Dict.* Anciently an indispensable word in indictments for felony, and classed by Lord Coke among those *voces artis* (words of art) which cannot be expressed by any periphrasis or circumlocution. 4 Coke, 39; Co. Litt. 391a; 4 Bl. Comm. 307.

**FELONIOUS.** Malignant; malicious; done with intent to commit a crime; having the grade or quality of a felony. *People v. Moore*, 37 Hun (N. Y.) 93; *Aikman v. Com.*, 13 Ky. Law Rep. 894, 18 S. W. 938; *Com. v. Barlow*, 4 Mass. 440; *State v. Bush*, 47 Kan. 201, 27 Pac. 834, 13 L. R. A. 607; *Guffey v. Continental Casualty Co.*, 109 Kan. 61, 197 P. 1098, 1099; *Grooms v. State*, 85 Fla. 413, 96 So. 296; *State v. Dickerson*, 139 La. 147, 71 So. 347, 348. Wrongful. *State v. Uhler*, 32 N. D. 483, 156 N. W. 220, 226. Proceeding



from an evil heart or purpose. *Gatewood v. Commonwealth*, 215 Ky. 360, 285 S. W. 193, 194. Wickedly and against the admonition of the law; unlawfully. *State v. Allister*, 317 Mo. 348, 295 S. W. 754, 757. In the law of larceny, "felonious" is synonymous with fraudulent; *State v. Albert*, 117 Or. 179, 272 P. 1116, 1117; and means done "animo furandi," that is, with intent to steal. *Fountain v. State*, 92 Fla. 262, 109 So. 463, 464.

**FELONIOUS ASSAULT.** Such an assault upon the person as, if consummated, would subject the party making it, upon conviction, to the punishment of a felony, that is, to imprisonment in the penitentiary. *Hinkle v. State*, 94 Ga. 595, 21 S. E. 595.

**FELONIOUS HOMICIDE.** In criminal law. The offense of killing a human creature, of any age or sex, without justification or excuse. There are two degrees of this offense, manslaughter and murder. It may include killing oneself as well as any other person. 4 Bl. Comm. 188, 190; 4 Steph. Comm. 108, 111; *State v. Symmes*, 40 S. C. 383, 19 S. E. 16; *Connor v. Com.*, 76 Ky. 718; *State v. Miller*, 9 Houst. (Del.) 564, 32 Atl. 137.

**FELONIOUSLY.** Of, pertaining to, or having, the quality of felony. *People v. Thomas*, 58 Cal. App. 308, 208 P. 343, 344. Without color of right or excuse. *State v. Enanno*, 96 Conn. 420, 114 A. 386, 387. Malignantly; maliciously. *State v. Horne*, 62 Utah, 376, 220 P. 378, 381; *State v. Killion*, 95 Kan. 371, 148 P. 643, 645. Wickedly and against the admonition of the law. *State v. Mathes* (Mo.) 281 S. W. 437, 439; *State v. Young*, 314 Mo. 612, 286 S. W. 29, 34; *Winston v. State*, 127 Miss. 477, 90 So. 177, 178; *Bridge v. People*, 63 Colo. 319, 165 P. 778, 779. With a felonious intent; with the intention of committing a crime. An indispensable word at common law in indictments for felony, as *felonice* was in the Latin forms. 4 Bl. Comm. 307; *State v. Jesse*, 19 N. C. 300; *State v. Smith*, 31 Wash. 245, 71 Pac. 767; *State v. Halpin*, 16 S. D. 170, 91 N. W. 605; *People v. Willett*, 102 N. Y. 251, 6 N. E. 301; *State v. Watson*, 41 La. Ann. 598, 7 South. 125; *State v. Bryan*, 112 N. C. 848, 16 S. E. 909; *Garrett v. Commonwealth*, 215 Ky. 484, 285 S. W. 208, 204; *Butts v. Commonwealth*, 145 Va. 800, 133 S. E. 764, 768; *State v. Castner*, 122 Me. 106, 119 A. 112; *People v. Connors*, 301 Ill. 112, 133 N. E. 639, 640; *Com. Dig. Indictment* (G 6); *Bac. Abr. Indictment* (G 1); 2 Hale, Pl. Cr. 172, 184; 1 Ben. & H. Lead. Cr. Cas. 154. It is still necessary in describing a common-law felony, or where its use is prescribed by statute; *Whart. Cr. Pl.* § 260; *Bowler v. State*, 41 Miss. 570; *Cain v. State*, 18 Tex. 387; *State v. Feaster*, 25 Mo. 324; *State v. Rucker*, 68 N. C. 211; *Carder v. State*, 17 Ind. 307; *State v. Gove*, 34 N. H. 510.

## FELONY.

### In English Law

This term meant originally the state of having forfeited lands and goods to the crown upon conviction for certain offenses, and then, by transition, any offense upon conviction for which such forfeiture followed, in addition to capital or any other punishment prescribed by law; as distinguished from a "misdemeanor," upon conviction for which no forfeiture followed. All indictable offenses are either felonies or misdemeanors, but a material part of the distinction is taken away by St. 33 & 34 Vict. c. 23, which abolishes forfeiture for felony. *Wharton*; 4 Bla. Comm. 94; 1 Russ. Cr. 78; *Co. Litt.* 391; 1 Hawk. Pl. Cr. c. 37; *U. S. v. Smith*, 5 Wheat. (U. S.) 153, 5 L. Ed. 57; 1 Bish. New Cr. L. § 616.

### In American Law

The term has no very definite or precise meaning, except in some cases where it is defined by statute. For the most part, the state laws, in describing any particular offense, declare whether or not it shall be considered a felony. Apart from this, the word seems merely to imply a crime of a graver or more atrocious nature than those designated as "misdemeanors." *U. S. v. Copper-smith* (C. C.) 4 Fed. 205; *Bannon v. U. S.*, 156 U. S. 464, 15 Sup. Ct. 467, 39 L. Ed. 494; *Mitchell v. State*, 42 Ohio St. 386; *State v. Lincoln*, 49 N. H. 469; *People v. Van Steenburgh*, 1 Park. Cr. Rep. (N. Y.) 39; *Matthews v. State*, 4 Ohio St. 542. In general, what is felony under the English common law is such under ours; 1 Bish. Cr. L. § 617; *Clark, Cr. L.* 33. A crime is not a felony unless so declared by statute, or it was such at the common law; *State v. Murphy*, 17 R. I. 698, 24 Atl. 473, 16 L. R. A. 550.

The word "felony" is a generic term, going to distinguish certain crimes, as murder, robbery, and larceny, from other minor offenses known as misdemeanors. *State v. Celestin*, 138 La. 407, 70 So. 342, 343.

At common law "felony" was any crime which occasioned the forfeiture of lands and goods, but the statutory division of crimes into felonies and misdemeanors is in no sense known to the common law, and is not based upon the same distinction. *People v. Connors*, 301 Ill. 112, 133 N. E. 639, 640.

The statutes or constitutions of many states define felony as any public offense on conviction of which the offender is liable to be sentenced to death or to imprisonment in a penitentiary or state prison. *Code Ala.* 1907, § 6756 (*Code* 1923, § 3874); *Const. Colo.* art. 18, § 4; *Code Ga.* 1882, § 3404 (*Pen. Code* 1910, § 2); *Code Iowa*, §§ 5093, 5094 (*Code* 1931, §§ 12890, 12891); *Ky. St.* § 1127; *Rev. St. Me.* 1916, c. 137, § 11 (*Rev. St.* 1930, c. 143, § 11); *Rev. Laws Mass.* c. 215, § 1 (*G. L.* [Ter. Ed.] c. 274, § 1); *Rev. St. Mo.* 1909, § 4923 (*Mo. St. Ann.* § 4471); *Penal Law N. Y.* (*Consol. Laws*, c. 40) § 2; *C. S. N. C.* § 4171; *Gen.*

Code Ohio; § 12372; St. Wis. § 353.31. But see *Dutton v. State*, 123 Md. 373, 91 A. 417, 419, Ann. Cas. 1915D, 616. Under U. S. Cr. Code, § 335 (18 USCA § 541), offenses punishable by death or imprisonment for a term exceeding one year are felonies. *Joplin Mercantile Co. v. United States (C. C. A.)* 213 F. 926, 935, Ann. Cas. 1916C, 470; *Hass v. United States (C. C. A.)* 232 F. 328, 334; *Waldeck v. U. S. (C. C. A.)* 2 F.(2d) 243, 244.

Generally, an offense is a felony, if it may be punished by imprisonment in the penitentiary, regardless of what penalty actually is imposed. *Seitz v. Ohio State Medical Board*, 24 Ohio App. 154, 157 N. E. 304, 305; *Ferguson v. State*, 101 Tex. Cr. R. 670, 276 S. W. 919, 920; *People v. War*, 20 Cal. 117; *State v. Melton*, 117 Mo. 618, 23 S. W. 889. See *Benton v. Com.*, 89 Va. 570, 16 S. E. 725; *State v. Harr*, 38 W. Va. 58, 17 S. E. 794; *contra: Lamkin v. People*, 94 Ill. 501.

#### In Feudal Law

An act or offense on the part of the vassal, which cost him his fee, or in consequence of which his fee fell into the hands of his lord; that is, became forfeited. (See *Felonia*.) Perfidy, ingratitude, or disloyalty to a lord.

#### In General

—**Felony act.** The statute 33 & 34 Vict. c. 23, abolishing forfeitures for felony, and sanctioning the appointment of *interim* curators and administrators of the property of felons. *Mozley & Whitley*; 4 Steph. Comm. 10, 459.

—**Felony, compounding of.** See *Compounding Felony*.

—**Misprision of felony.** See *Misprision*.

—**Reducible felony.** A felony upon conviction of which the offender may be punished as for a misdemeanor, upon recommendation of the jury. *Atkins v. State*, 154 Ga. 540, 114 S. E. 878.

**FELTING.** In the process of "felting," as applied to the manufacture of fur felt hats, the fur fibers become interlocked with the wool fibers, or with other fibers of fur, for their whole length. *Matteawan Mfg. Co. v. Emmons Bros. Co. (C. C. A.)* 253 F. 372, 375. See, also, *Werk v. Parker (C. C. A.)* 231 F. 121, 123.

**FEMALE.** The sex which conceives and gives birth to young. Also a member of such sex. The term is generic, but may have the specific meaning of "woman," if so indicated by the context. *State v. Hemm*, 82 Iowa, 609, 48 N. W. 971; *State v. Phillips*, 26 N. D. 206, 144 N. W. 94, 95, 49 L. R. A. (N. S.) 470, Ann. Cas. 1916A, 320.

#### Unmarried Female

A term descriptive not only of those who have never married, but also of widows and divorced women. *People v. Weinstock*, 140 N. Y. S. 453, 458, 27 N. Y. Cr. R. 53.

**FEME, FEMME. L. Fr. A woman.** Also, a wife, as in the phrase "*baron et feme*" (*q. v.*).

**FEME COVERT.** A married woman. Generally used in reference to the legal disabilities of a married woman, as compared with the condition of a *feme sole*. *Hoker v. Boggs*, 63 Ill. 161.

**FEME SOLE.** A single woman, including those who have been married, but whose marriage has been dissolved by death or divorce, and, for most purposes, those women who are judicially separated from their husbands. *Mozley & Whitley*; 2 Steph. Comm. 250. *Kirkley v. Lacey*, 7 Houst. (Del.) 213, 30 Atl. 994.

**FEME SOLE TRADER.** In English law. A married woman, who, by the custom of London, trades on her own account, independently of her husband; so called because, with respect to her trading, she is the same as a *feme sole*. *Jacob*; Cro. Car. 68. The term is applied also to women deserted by their husbands, who do business as *femes sole*. *Rhea v. Rhenner*, 1 Pet. 105, 7 L. Ed. 72. The custom was recognized as common law in South Carolina, but did not extend beyond trading in merchandise; *McDaniel v. Cornwall*, 1 Hill (S. C.) 429; *Newbiggin v. Pillans*, 2 Bay (S. C.) 164. By statute in several states a similar custom is recognized, as in Pennsylvania, by act of Feb. 22, 1718 (48 PS § 41). *Black v. Tricker*, 59 Pa. 13; *People's Sav. Bank v. Denig*, 131 Pa. 241, 18 A. 1083.

**FEMICIDE.** The killing of a woman. *Wharton*. One who kills a woman.

**FEMININE.** Of or belonging to females.

**FENATIO (or Feonatic).** In forest law, the fawning of deer; the fawning season. *Spelman*.

**FENCE, v.** In old Scotch law. To defend or protect by formalities. To "fence a court" was to open it in due form, and interdict all manner of persons from disturbing their proceedings. This was called "fencing," *q. d.*, defending or protecting the court. *Pitcairn, Cr. Law*, pt. 1, p. 75.

**FENCE, n.** A hedge, structure, or partition, erected for the purpose of inclosing a piece of land, or to divide a piece of land into distinct portions, or to separate two contiguous estates. See *Kimball v. Carter*, 95 Va. 77, 27 S. E. 823, 38 L. R. A. 570; *Estes v. Railroad Co.*, 63 Me. 309; *Allen v. Tobias*, 77 Ill. 171; *Wolf v. Schwill*, 289 Ill. 190, 124 N. E. 389; *Cook v. Texas & P. Ry. Co. (Tex. Civ. App.)* 297 S. W. 913, 914.

An inclosure about a field or other place, or about any object; especially, an inclosing structure of wood, iron or other material, intended to prevent intrusion from without or straying from within. *Midland Valley R. Co. v. Bryant*, 37 Okl. Cr. 206, 131 P. 678.

By statute in Oregon, all precipices, embankments, streams, lakes, and other natural obstruction, if equally secured against the trespass of domestic animals, shall be treated as lawful fences. *Seavey v. Williams*, 97 Or. 310, 191 P. 779, 781.

Colloquially, a person who receives stolen goods from persons who steal them. *People v. Boneau*, 327 Ill. 194, 158 N. E. 431, 436.

**FENCE-MONTH, or DEFENSE-MONTH.** In old English law. A period of time, occurring in the middle of summer, during which it was unlawful to hunt deer in the forest, that being their fawning season. Probably so called because the deer were then *defended* from pursuit or hunting. *Manwood*; *Cowell*; *Spelman*.

**FENDER.** A guard or protection against danger. *Cape May, D. B. & S. P. R. Co. v. Cape May*, 59 N. J. Law, 396, 36 A. 696, 36 L. R. A. 653. A safety device sometimes called life guard, on street cars. *Tampa Electric Co. v. Bazemore*, 85 Fla. 164, 96 So. 297, 298; *Galveston Electric Co. v. Swank* (Tex. Civ. App.) 188 S. W. 704, 706.

**FENERATION.** Usury; the gain of interest; the practice of increasing money by lending. Sometimes applied to interest on money lent. See *Colebrook*, Dig. Hindu Law, I. 7.

**FENGELD.** In Saxon law. A tax or imposition, exacted for the repelling of enemies. *Spelman*.

**FENIAN.** A champion, hero, giant. This word, in the plural, is generally used to signify invaders or foreign spoilers. The modern meaning of "Fenian" is a member of an organization of persons of Irish birth, resident in the United States, Canada, and elsewhere, having for its aim the overthrow of English rule in Ireland. *Webster*.

**FEOD.** The same as *feud* or *fief*. 2 Bla. Comm. 45; *Spelman*.

**FEODAL.** Belonging to a fee or feud; feudal. More commonly used by the old writers than *feudal*.

**FEODAL ACTIONS.** Real actions. 3 Bla. Comm. 117.

**FEODAL SYSTEM.** See Feudal System.

**FEODAL SYSTEM.** See Feudal System.

**FEODALITY.** Fidelity or fealty. *Cowell*. See Fealty.

**FEODARUM (or FEUDARAM) CONSUETUDINES.** The customs of feuds. The name of a compilation of feudal laws and customs made at Milan in the twelfth century. It is the most ancient work on the subject, and was always regarded, on the continent of Europe, as possessing the highest authority.

**FEODARY.** An officer of the court of wards, appointed by the master of that court, under

32 Hen. VIII. c. 26, whose business it was to be present with the escheator in every county at the finding of offices of lands, and to give evidence for the king, as well concerning the value as the tenure; and his office was also to survey the land of the ward, after the office found, and to rate it. He also assigned the king's widows their dower; and received all the rents, etc. Abolished by 12 Car. II. c. 24. *Wharton*; *Kennett*, Gloss.; *Cowell*.

**FEODATORY, or FEUDATORY.** In feudal law. The grantee of a *feod*, *feud*, or fee; the vassal or tenant who held his estate by feudal service. *Termes de la Ley*. Blackstone uses "*feudatory*." 2 Bl. Comm. 46.

**FEODI FIRMA.** In old English law. Fee-farm (*q. v.*).

**FEODI FIRMARIUS.** The lessee of a fee-farm.

**FEODUM.** This word (meaning a feud or fee) is the one most commonly used by the older English law-writers, though its equivalent, "*feudum*" (*q. v.*), is used generally by the more modern writers and by the *feudal* law-writers. Litt. § 1; *Spelman*. There were various classes of *feoda*, among which may be enumerated the following: *Feodum laicum*, a lay fee. *Feodum militare*, a knight's fee. *Feodum improprium*, an improper or derivative fee. *Feodum proprium*, a proper and original fee, regulated by the strict rules of feudal succession and tenure. *Feodum simplex*, a simple or pure fee; fee-simple. *Feodum talliatum*, a fee-tail. See 2 Bl. Comm. 58, 62; Litt. §§ 1, 13; *Bract. fol. 175*; *Glan. 13, 23*.

#### In Old English Law

A seigniority or jurisdiction. *Flet*, lib. 2, c. 63, § 4.

A fee, a perquisite or compensation for a service. *Fleta*, lib. 2, c. 7.

#### In General

—**Feodum antiquum.** A feud which devolved upon a vassal from his intestate ancestor.

—**Feodum nobile.** A fief for which the tenant did guard and owed homage. *Spelman*.

—**Feodum novum.** A feud acquired by a vassal himself.

**Feodum est quod quis tenet ex quacunque causa sive sit tenementum sive redditus.** Co. Litt. 1. A fee is that which any one holds from whatever cause, whether tenement or rent.

**Feodum simplex quia feodum idem est quod hæreditas, et simplex idem est quod legitimum vel purum; et sic feodum simplex idem est quod hæreditas legitima vel hæreditas pura.** Litt. § 1. A fee-simple, so called because fee is the same as inheritance, and simple is the same as lawful or pure; and thus fee-simple is the

same as a lawful inheritance, or pure inheritance.

**Feodum talliatum, i. e., hæreditas in quam certitudinem limitata.** Litt. § 13. Fee-tail, *i. e.*, an inheritance limited in a definite descent.

**FEOFFAMENTUM.** A feoffment. 2 Bl. Comm. 310.

**FEOFFARE.** To enfeoff; to bestow a fee. The bestower was called "*feoffator*," and the grantee or feoffee, "*feoffatus*." 1 Reeve, Hist. Eng. Law, 91.

**FEOFFATOR.** In old English law. A feoffer or feoffor; one who gives or bestows a fee; one who makes a feoffment. Bract. fols. 12b, 81.

**FEOFFATUS.** In old English law. A feoffee; one to whom a fee is given, or a feoffment made. Bract. fols. 17b, 44b.

**FEOFFEE.** He to whom a fee is conveyed. Litt. § 1; 2 Bl. Comm. 20.

**FEOFFEE TO USES.** A person to whom land was conveyed for the use of a third party. (The latter was called "*cestui que use*.") One holding the same position with reference to a use that a trustee does to a trust. 1 Greenl. Cruise, Dig. 333. He answers to the *heres fiduciarius* of the Roman law.

**FEOFFMENT.** The gift of any corporeal hereditament to another (2 Bl. Comm. 310), operating by transmutation of possession, and requiring, as essential to its completion, that the seisin be passed (Watk. Conv. 183), which might be accomplished either by investiture or by livery of seisin. 1 Washb. Real Prop. 33. See *Thatcher v. Omans*, 3 Pick. (Mass.) 532; *French v. French*, 3 N. H. 260; *Perry v. Price*, 1 Mo. 554; *Orndoff v. Turman*, 2 Leigh (Va.) 233, 21 Am. Dec. 608. A gift of a freehold interest in land accompanied by livery of seisin. The essential part is the livery of seisin. 3 Holdsw. Hist. E. L. 187.

Also the deed or conveyance by which such corporeal hereditament is passed.

A feoffment originally meant the grant of a *feud* or *fee*; that is, a barony or knight's fee, for which certain services were due from the feoffee to the feoffor. This was the proper sense of the word; but by custom it came afterwards to signify also a grant (with livery of seisin) of a free inheritance to a man and his heirs, referring rather to the perpetuity of the estate than to the feudal tenure. 1 Reeve, Eng. Law, 90, 91. It was for ages the only method (in ordinary use) for conveying the freehold of land in possession, but has now fallen in great measure into disuse, even in England, having been almost entirely supplanted by some of that class of conveyances founded on the statute law of the realm. 1 Steph. Comm. 467, 468; Dane, Abr. c. 104; Stearn, Real Act. 2; *Green v. Liler*, 8 Cranch (U. S.) 229, 3 L. Ed. 545.

**FEOFFMENT TO USES.** A feoffment of lands to one person to the use of another. In

such case the feoffee was bound in conscience to hold the lands according to the use, and could himself derive no benefit. Sometimes such feoffments were made to the use of the feoffer. The effect of such conveyance was entirely changed by the statute of uses. See *Wms. R. P.* (6th Ed.) 155; 2 Sand. Us. 13; *Watk. Conv.* 288.

**FEOFFOR.** The person making a feoffment, or enfeoffing another in fee. 2 Bl. Comm. 310; Litt. §§ 1, 57.

**FEOH.** This Saxon word meant originally cattle, and thence property or money, and, by a second transition, wages, reward, or fee. It was probably the original form from which the words "feod," "feudum," "fief," "feu," and "fee" (all meaning a feudal grant of land) have been derived. Spelman, Feuds.

**FEO NATIO.** In forest law. The fawning season of deer.

**FEO RME.** A certain portion of the produce of the land due by the grantee to the lord according to the terms of the charter. Spel. Feuds, c. 7.

**FERÆ BESTIÆ.** Wild beasts.

**FERÆ NATURÆ.** Lat. Of a wild nature or disposition. Animals which are by nature wild are so designated, by way of distinction from such as are naturally tame, the latter being called "*domite nature*." *Fleet v. Hege-man*, 14 Wend. (N. Y.) 43; *State v. Taylor*, 27 N. J. Law, 119, 72 Am. Dec. 347; *Gillet v. Mason*, 7 Johns. (N. Y.) 17.

**FERCOSTA.** Ital. A kind of small vessel or boat. Mentioned in old Scotch law, and called "*fercost*." Skene.

**FERDELLA TERRÆ.** A fardel-land; ten acres; or perhaps a yard-land. Cowell.

**FERDFARE.** Sax. A summons to serve in the army. An acquittance from going into the army. *Fleta*, lib. 1, c. 47, § 23.

**FERDINGUS.** A term denoting, apparently, a freeman of the lowest class, being named after the *cotseti*. Anc. Inst. Eng.

**FERDWITE.** In Saxon law. An acquittance of manslaughter committed in the army; also a fine imposed on persons for not going forth on a military expedition. Cowell.

**FERIA.** In old English law. A weekday; a holiday; a day on which process could not be served; a fair; a ferry. Cowell; *Du Cange*; Spelman; 4 Reeve, Hist. Eng. Law 17.

**FERIÆ.** In Roman-law. Holidays; generally speaking, days or seasons during which free-born Romans suspended their political transactions and their lawsuits, and during which slaves enjoyed a cessation from labor. All *feriæ* were thus *dies nefasti*. All *feriæ*

were divided into two classes,—“*feriæ publicæ*” and “*feriæ privatae*.” The latter were only observed by single families or individuals, in commemoration of some particular event which had been of importance to them or their ancestors. Smith, Dict. Antiq.

Numerous festivals were called by this name in the early Roman empire. In the later Roman empire the single days occurring at intervals of a week apart, commencing with the seventh day of the ecclesiastical year, were so called. Du Cange.

**FERIAL DAYS.** Originally and properly, days free from labor and pleading; holidays. In statute 27 Hen. VI. c. 5, working-days; weekdays, as distinguished from Sunday. Cowell.

**FERITA.** In old European law. A wound; a stroke. Spelman.

**FERLING.** In old records. The fourth part of a penny; also the quarter of a ward in a borough.

**FERLINGATA.** A fourth part of a yard-land.

**FERLINGUS, or FERLINGUM.** A furlong. Co. Litt. 5 b.

**FERM, or FEARM.** A house or land, or both, let by lease. Cowell.

**FERME.** A farm; a rent; a lease; a house or land, or both, taken by indenture or lease. Plowd. 195; Vicat; Cowell. See Farm.

**FERMENTATION.** A decomposition produced in an organic substance by the physiological action of a living organism, or by certain unorganized agents. U. S. v. Dodson (D. C.) 268 F. 397, 403.

**FERMENTED LIQUORS.** Beverages produced by, or which have undergone, a process of alcoholic fermentation, to which they owe their intoxicating properties, including beer, wine, hard cider, and the like, but not spirituous or distilled liquors. State v. Lemp, 16 Mo. 391; State v. Biddle, 54 N. H. 383; People v. Foster, 64 Mich. 715, 31 N. W. 596; State v. Gill, 89 Minn. 502, 95 N. W. 449; State v. Adams, 51 N. H. 568; People v. Emmons, 178 Mich. 126, 144 N. W. 479, 481, Ann. Cas. 1915D, 425.

**FERMER, FERMOR.** A lessee; a farmer. One who holds a term, whether of lands or an incorporeal right, such as customs or revenue.

**FERMIER.** In French law. One who farms any public revenue.

**FERMISONA.** In old English law. The winter season for killing deer.

**FERMORY.** In old records. A place in monasteries, where they received the poor, (*hospicio excipiebant*.) and gave them provisions, (*ferm, firma*.) Spelman. Hence the

modern *infirmery*, used in the sense of a hospital.

**FERNIGO.** In old English law. A waste ground, or place where fern grows. Cowell.

**FERRATOR.** A farrier (*q. v.*).

**FERRI.** In the civil law. To be borne; that is on or about the person. This was distinguished from *portari*, (to be carried,) which signified to be carried on an animal. Dig. 50, 16, 235.

**FERRIAGE.** The toll or fare paid for the transportation of persons and property across a ferry.

Literally speaking, it is the price or fare fixed by law for the transportation of the traveling public, with such goods and chattels as they may have with them, across a river, bay, or lake. People v. San Francisco & A. R. Co., 35 Cal. 606.

**FERRIFODINA.** In old pleading. An iron mine. Townsh. Pl. 273.

**FERRUERE, or FERRURA.** The shoeing of horses. Kelham. See Ferrum.

**FERRUM.** Iron. In old English law. A horse-shoe. *Ferrura*, shoeing of horses.

**FERRY.** A liberty to have a boat upon a river for the transportation of men, horses, and carriages with their contents, for a reasonable toll. The term is also used to designate the place where such liberty is exercised. See New York v. Starin, 8 N. Y. St. Rep. 655; Broadnax v. Baker, 94 N. C. 681, 55 Am. Rep. 633; Einstman v. Black, 14 Ill. App. 381; State v. Wilson, 42 Me. 9; State v. Freeholders of Hudson County, 23 N. J. L. 206; Woolr. Ways 217. The term is also used to designate the place where such liberty is exercised; Chapelle v. Wells, 4 Mart. La. (N. S.) 426.

“Ferry” properly means a place of transit across a river or arm of the sea; but in law it is treated as a franchise, and defined as the exclusive right to carry passengers across a river, or arm of the sea, from one vill to another, or to connect a continuous line of road leading from one township or vill to another. It is not a servitude or easement. It is wholly unconnected with the ownership or occupation of land, so much so that the owner of the ferry need not have any property in the soil adjacent on either side. (12 C. B., N. S., 32.) Brown.

In a strict sense a ferry is a continuation of a highway from one side of the water to the other and is for the transportation of passengers, vehicles and other property; Mayor, etc., of New York v. Starin, 106 N. Y. 11, 12 N. E. 631; Broadnax v. Baker, 94 N. C. 675, 55 Am. Rep. 633; Chesapeake Ferry Co. v. Hampton Roads Transp. Co., 145 Va. 28, 133 S. E. 561, 563.

A ferry is an incorporeal hereditament acquired from the public, and, in this country, granted by a special act of the Legislature, or by some other competent authority under the provisions of a general law. It comprises not merely the exclusive

privilege of transportation, for tolls, across a stream or other body of water, but also the use for that purpose of the respective landings, with the outlets therefrom; without which the grant would be wholly nugatory. It is usually established upon some public road, of which it is a connecting link; but the landings may be altogether private property, in which case the grant supposes that they belong to the grantee, or that he is entitled to the use thereof for the purposes of the ferry. In either case, the use of the landings and outlets is a part of the franchise, so far as the public is concerned. If they constitute portions of the highway, as they do where the ferry is on a duly established road, then the grant is a delegation of the use of the public easement, so far as is necessary for the purposes of the ferry. *Hale v. Record*, 74 Okl. 77, 176 P. 756, 757.

#### Public and Private

A public ferry is one to which all the public have the right to resort, for which a regular fare is established, and the ferryman is a common carrier, bound to take over all who apply, and bound to keep his ferry in operation and good repair. *Hudspeth v. Hall*, 111 Ga. 510, 36 S. E. 770; *Broadnax v. Baker*, 94 N. C. 681, 55 Am. Rep. 633. By statute in Arkansas, all ferries upon or over any public navigable stream shall be deemed public ferries. *Kirby's Dig.* § 3555; *St. Paul Fire & Marine Ins. Co. v. Harrison*, 140 Ark. 158, 215 S. W. 698. A private ferry is one mainly for the use of the owner, and though he may take pay for ferrage, he does not follow it as a business. His ferry is not open to the public at its demand, and he may or may not keep it in operation. *Hudspeth v. Hall*, *supra*; *St. Paul Fire & Marine Ins. Co. v. Harrison*, 140 Ark. 158, 215 S. W. 698.

**FERRY FRANCHISE.** The public grant of a right to maintain a ferry at a particular place; a right conferred to land at a particular point and secure toll for the transportation of persons and property from that point across the stream. *Mills v. St. Clair County*, 7 Ill. 208. A grant by the state or its authorized subdivisions to a named person, empowering him to continue an interrupted land highway over interrupting waters. *Ferry Co. v. Solano Aquatic Club, Vallejo*, 165 Cal. 255, 131 P. 864, 871, Ann. Cas. 1914C, 1197.

**FERRYBOAT.** A vessel traversing any of the waters of the state between two constant points regularly employed for the transfer of passengers and freight, authorized by law so to do, and also any boat employed as a part of the system of a railroad for the transfer of passengers and freight plying at regular and stated periods between two points. *Pol. Code Cal.* § 3643; *Lake Tahoe Ry. & Transp. Co. v. Roberts*, 168 Cal. 551, 143 P. 736, 739, Ann. Cas. 1916E, 1196.

**FERRYMAN.** One employed in taking persons across a river or other stream, in boats or other contrivances, at a ferry. *Covington Ferry Co. v. Moore*, 8 Dana (Ky.) 158; *State*

*v. Clarke*, 2 McCord (S. C.) 48, 13 Am. Dec. 701.

**FESTA IN CAPPIS.** In old English law. Grand holidays, on which choirs wore caps. *Jacob*.

**Festinatio justitiæ est noverca infortunii.** *Hob.* 97. Hasty justice is the stepmother of misfortune.

**FESTING-MAN.** In old English law. A bondsman; a surety; a frank-pledge, or one who was surety for the good behavior of another. Monasteries enjoyed the privilege of being "free from festing-men," which means that they were "not bound for any man's forthcoming who should transgress the law." *Cowell*. See *Frank-Pledge*.

**FESTING-PENNY.** Earnest given to servants when hired or retained. The same as *arles-penny*. *Cowell*.

**FESTINUM REMEDIUM.** Lat. A speedy remedy. A term applied to those cases where the remedy for the redress of an injury is given without any unnecessary delay. *Bacon*, *Abr. Assise*, A. The action of dower is *festinum remedium*. The writ of assise was also thus characterized (in comparison with the less expeditious remedies previously available) by the statute of Westminster 2 (13 Edw. I. c. 24.)

**FESTUCA.** In Frankish law. A rod or staff or (as described by other writers) a stick, on which imprecatory runs were cut, which was used as a gage or pledge of good faith by a party to a contract, or for symbolic delivery in the conveyance or quit-claim of land, before a court of law, anterior to the introduction of written documents by the Romans. 2 *Poll. & Maitl.* 86, 184, 190; *Maitl. Domesday Book and Beyond* 323.\*

**FESTUM.** A feast, holiday, or festival. *Festum stultorum*, the feast of fools.

**FETICIDE.** In medical jurisprudence. Destruction of the *fetus*; the act by which criminal abortion is produced. 1 *Beck, Med. Jur.* 288; *Guy, Med. Jur.* 133. See, also, *Prolicide*.

**FETTERS.** Chains or shackles for the feet; irons used to secure the legs of convicts, unruly prisoners, etc. Similar chains securing the wrists are called "handcuffs."

**FEU.** In Scotch law. A holding or tenure where the vassal, in place of military service, makes his return in grain or money. Distinguished from "wardholding," which is the military tenure of the country. *Bell; Erskine, Inst. lib. ii. tit. 3, § 7*.

**FEU ANNUALS.** In Scotch law. The *red-dendo*, or annual return from the vassal to a superior in a feu holding. *Wharton, Dict.*, 2d Lond. Ed.

**FEU ET LIEU.** Fr. In old French and Canadian law. Hearth and home. A term importing actual settlement upon land by a tenant.

**FEU HOLDING.** A holding by tenure of rendering grain or money in place of military service. Bell.

**FEUAR.** In Scotch law. The tenant or vassal of a feu; a feu-vassal. Bell.

## FEUD.

### In Feudal Law

An estate in land held of a superior on condition of rendering him services. 2 Bl. Comm. 105.

An inheritable right to the use and occupation of lands, held on condition of rendering services to the lord or proprietor, who himself retains the property in the lands. See Spel. Feuds, c. 1.

In this sense the word is the same as "feod," "feodum," "feudum," "fief," or "fee." 1 Sullivan, Lect. 128; 1 Spence, Eq. Jur. 34; Dalrymple, Feud. Pr. 99; 1 Washb. R. P. 18; Mitch. R. P. 80.

### In Saxon and Old German Law

An enmity, or species of private war, existing between the family of a murdered man and the family of his slayer. In Scotland and the north of England, a combination of all the kin to revenge the death of any of the blood upon the slayer and all his race. *Termes de la Ley*; Whishaw. See Deadly Feud; Faïda.

### Military Feuds

The genuine or original feuds which were in the hands of military men, who performed military duty for their tenures.

**FEUDA.** Feuds or feës.

**FEUDAL.** Pertaining to feuds or fees; relating to or growing out of the feudal system or feudal law; having the quality of a feud, as distinguished from "allodial."

**FEUDAL ACTIONS.** An ancient name for real actions, or such as concern real property only. 3 Bl. Comm. 117.

**FEUDAL COURTS.** In the 12th century a lord *qua* lord, had the right to hold a court for his tenants; in the 13th century, they became of less importance and for three reasons: The feudal principle would have led to a series of courts one above the other, and the dominions of the large landowners were usually scattered, so that great feudal courts became impossible. The growth of the jurisdiction of the king's court removed the necessity for feudal courts. All the incidents of the feudal system came to be regarded in a commercial spirit—as property. Its jurisdiction became merely appendant to landowning. 1 Holdsw. Hist. El. L. 64.

**FEUDAL LAW.** The body of jurisprudence relating to feuds; the real-property law of the feudal system; the law anciently regulating the property relations of lord and vassal, and the creation, incidents, and transmission of feudal estates. The body of laws and usages constituting the "feudal law" was originally customary and unwritten, but a compilation was made in the twelfth century, called "Feodarum Consuetudines," which has formed the basis of later digests. The feudal law prevailed over Europe from the twelfth to the fourteenth century, and was introduced into England at the Norman Conquest, where it formed the entire basis of the law of real property until comparatively modern times. Survivals of the feudal law, to the present day, so affect and color that branch of jurisprudence as to require a certain knowledge of the feudal law in order to the perfect comprehension of modern tenures and rules of real-property law.

**FEUDAL POSSESSION.** The equivalent of "seisin" under the feudal system.

**FEUDAL SYSTEM.** The system of feuds. A political and social system which prevailed throughout Europe during the eleventh, twelfth, and thirteenth centuries, and is supposed to have grown out of the peculiar usages and policy of the Teutonic nations who overran the continent after the fall of the Western Roman Empire, as developed by the exigencies of their military domination, and possibly furthered by notions taken from the Roman jurisprudence. It was introduced into England, in its completeness, by William I., A. D. 1085, though it may have existed in a rudimentary form among the Saxons before the Conquest. It formed the entire basis of the real-property law of England in medieval times; and survivals of the system, in modern days, so modify and color that branch of jurisprudence, both in England and America, that many of its principles require for their complete understanding a knowledge of the feudal system. The feudal system originated in the relations of a military chieftain and his followers, or king and nobles, or lord and vassals, and especially their relations as determined by the bond established by a grant of *land* from the former to the latter. From this it grew into a complete and intricate complex of rules for the tenure and transmission of real estate, and of correlated duties and services; while, by tying men to the land and to those holding above and below them, it created a close-knit hierarchy of persons, and developed an aggregate of social and political institutions. For an account of the feudal system in its juristic relations, see 2 Bl. Comm. 44; 1 Steph. Comm. 160; 3 Kent, Comm. 487; Spel. Feuds; Litt. Ten.; Sull. Lect.; Spence, Eq. Jur.; 1 Washb. Real Prop. 15; Dalr. Feu. Prop. For its political and social relations, see Hall. Middle Ages; Maine, Anc. Law; Rob. Car. V.; Montesq.

Esprit des Lois, bk. 30; Guizot, Hist. Civilization.

**FEUDAL TENURES.** The tenures of real estate under the feudal system, such as knight-service, socage, villenage, etc.

**FEUDALISM.** The feudal system; the aggregate of feudal principles and usages.

**FEUDALIZE.** To reduce to a feudal tenure; to conform to feudalism. Webster.

**FEUDARY.** A tenant who holds by feudal tenure, (also spelled "feodatory" and "feudatory.") Held by feudal service. Relating to feuds or feudal tenures.

**FEUDBOTE.** A recompense for engaging in a feud, and the damages consequent, it having been the custom in ancient times for all the kindred to engage in their kinsman's quarrel. Jacob.

**FEUDE.** An occasional early form of "feud" in the sense of private war or vengeance. Termes de la Ley. See Feud.

**FEUDIST.** A writer on feuds, as Cujacius, Spelman, etc.

**FEUDO.** In Spanish law. Feud or fee. White, New Recop. b. 2, tit. 2, c. 2.

**FEUDORUM LIBRI.** The Books of Feuds published during the reign of Henry III., about the year 1152. The particular customs of Lombardy as to feuds began about that time to be the standard of authority to other nations, by reason of the greater refinement with which that branch of learning had been there cultivated. This compilation was probably known in England, but does not appear to have had any other effect than to influence English lawyers to the more critical study of their own tenures, and to induce them to extend the learning of real property so as to embrace more curious matter of similar kind. 2 Reeves, Hist. Eng. Law, 55.

**FEUDUM.** L. Lat. A feud, fief, or fee. A right of using and enjoying forever the lands of another, which the lord grants on condition that the tenant shall render fealty, military duty, and other services. Spelman. It is not properly the land, but a right in the land. This form of the word is used by the feudal writers. The earlier English writers generally prefer the form *feodum*. There was an older word *feum*.

Its use by the Normans is exceedingly obscure. "Feudal" was not in their vocabulary. Usually it denoted a stretch of land, rarely a tenure or mass of rights. It came to be applied to every person who had heritable rights in land. Maitl. Domesday Book and Beyond 152.

**FEUDUM ANTIQUUM.** An ancient feud or fief; a fief descended to the vassal from his ancestors. 2 Bl. Comm. 212, 221. A fief which ancestors had possessed for more than

four generations. Spelman; Priest v. Cummings, 20 Wend. (N. Y.) 349.

**FEUDUM APERTUM.** An open feud or fief; a fief resulting back to the lord, where the blood of the person last seised was utterly extinct and gone or where the tenant committed a crime, or gave other legal cause. Spelman; 2 Bl. Comm. 245.

**FEUDUM FRANCIUM.** A free feud. One which was noble and free from talliage and other subsidies to which the *plebeia feuda* (vulgar feuds) were subject. Spelman.

**FEUDUM HAUBERTICUM.** A fee held on the military service of appearing fully armed at the *ban* and *arriere ban*. Spelman.

**FEUDUM IMPROPRIUM.** An improper or derivative feud or fief. 2 Bl. Comm. 58.

**FEUDUM INDIVIDUUM.** An indivisible or impartible feud or fief; descendible to the eldest son alone. 2 Bl. Comm. 215.

**FEUDUM LAICUM.** A lay fee.

**FEUDUM LIGIUM.** A liege feud or fief; a fief held immediately of the sovereign; one for which the vassal owed fealty to his lord against all persons. 1 Bl. Comm. 367; Spelman.

**FEUDUM MATERNUM.** A maternal fief; a fief descended to the feudatory from his mother. 2 Bl. Comm. 212.

**FEUDUM MILITARE.** A knight's fee, held by knight service and esteemed the most honorable species of tenure. 2 Bla. Comm. 62.

**FEUDUM NOBILE.** A fee for which the tenant did guard and owed fealty and homage. Spelman.

**FEUDUM NOVUM.** A new feud or fief; a fief which began in the person of the feudatory, and did not come to him by succession. Spelman; 2 Bl. Comm. 212; Priest v. Cummings, 20 Wend. (N. Y.) 349.

**FEUDUM NOVUM UT ANTIQUUM.** A new fee held with the qualities and incidents of an ancient one. 2 Bl. Comm. 212.

**FEUDUM PATERNUM.** A fee which the paternal ancestors had held for four generations. Calvin.; Spelman. One descendible to heirs on the paternal side only. 2 Bl. Comm. 223. One which might be held by males only. Du Cange.

**FEUDUM PROPRIUM.** A proper, genuine, and original feud or fief; being of a purely military character, and held by military service. 2 Bl. Comm. 57, 58.

**FEUDUM TALLIATUM.** A restricted fee. One limited to descend to certain classes of heirs. 2 Bl. Comm. 112, note; 1 Washb. Real Prop. 66; Spelman.



**FEUM.** An older form of *feudum*. Maitl. Domesday Book and Beyond 152.

**FEW.** A relative term of great elasticity of meaning. *Klann v. Minn.* 161 Wis. 517, 154 N. W. 996. An indefinite expression for a small or limited number. *Pittsburgh, C. C. & St. L. Ry. Co. v. Broderick*, 56 Ind. App. 58, 102 N. E. 887, 893. Not many, of small number, indicating a small number of units or individuals which constitute a whole. *Provident Loan Bank v. Parham*, 137 Tenn. 483, 194 S. W. 570. In cases where exact description is required, the use of this word will not answer. *Butts v. Stowe*, 53 Vt. 603; *Allen v. Kirwan*, 159 Pa. 612, 28 A. 495; *Wheelock v. Noonan*, 108 N. Y. 179, 15 N. E. 67, 2 Am. St. Rep. 405.

**FF.** A Latin abbreviation for "Fragmenta," designating the Digest or Pandects in the *Corpus Juris Civilis* of Justinian; so called because that work is made up of fragments or extracts from the writings of numerous jurists. *Mackeld. Rom. Law*, § 74.

**FI. FA.** An abbreviation for *feri facias*, (which see.)

**FIANCER.** L. Fr. To pledge one's faith. *Kelham*.

**FIANZA.** Sp. In Spanish law, trust, confidence, and correlatively a legal duty or obligation arising therefrom. The term is sufficiently broad in meaning to include both a general obligation and a restricted liability under a single instrument. *Martinez v. Runkle*, 57 N. J. Law, 111, 30 A. 593. But in a special sense, it designates a surety or guarantor, or the contract or engagement of suretyship; the contract by which one person engages to pay the debt or fulfil the obligations of another if the latter should fail to do so.

**FIAR.** In Scotch law. He that has the fee or *feu*. The proprietor is termed "fiar," in contradistinction to the life renter. 1 *Kames, Eq. Pref.* One whose property is charged with a life-rent. Where a right is taken to a husband and wife in conjunct fee and life-rent, the husband, as the *persona dignior*, is the only fiar. *Ersk. Prin.* 421.

**FIARS PRICES.** The value of grain in the different counties of Scotland, fixed yearly by the respective sheriffs, in the month of February, with the assistance of juries. These regulate the prices of grain stipulated to be sold at the far prices, or when no price has been stipulated. *Ersk. 1, 4, 6.*

**FIAT.** (Lat. "Let it be done.") In English practice. A short order or warrant of a judge or magistrate directing some act to be done; an authority issuing from some competent source for the doing of some legal act. See 1 *Tidd. Pr.* 100.

One of the proceedings in the English bankrupt practice, being a power, signed by the

lord chancellor, addressed to the court of bankruptcy, authorizing the petitioning creditor to prosecute his complaint before it. 2 *Steph. Comm.* 199. By the statute 12 & 13 *Vict. c. 116*, fiats were abolished.

—**Fiat justitia.** Let justice be done. On a petition to the king for his warrant to bring a writ of error in parliament, he writes on the top of the petition, "*Fiat justitia*," and then the writ of error is made out, etc. *Jacob*.

—**Fiat ut petitur.** Let it be done as it is asked. A form of granting a petition.

—**Joint fiat.** In English law. A fiat in bankruptcy, issued against two or more trading partners.

**Fiat justitia, ruat cælum.** Let right be done, though the heavens should fall. *Branch, Princ.* 161.

**Fiat prout fieri consuevit, (nil temere novandum.)** Let it be done as it hath used to be done, (nothing must be rashly innovated.) *Jenk. Cent.* 116, case 39; *Branch, Princ.*

**FIAUNT.** An order; command. See *Fiat*.

**FICTIO.** In Roman law. A fiction; an assumption or supposition of the law.

"*Fictio*" in the old Roman law was properly a term of pleading, and signified a false averment on the part of the plaintiff which the defendant was not allowed to traverse; as that the plaintiff was a Roman citizen, when in truth he was a foreigner. The object of the fiction was to give the court jurisdiction. *Maine, Anc. Law*, 25.

**Fictio cedit veritati. Fictio juris non est ubi veritas.** Fiction yields to truth. Where there is truth, fiction of law exists not. 11 *Co.* 51.

**Fictio est contra veritatem, sed pro veritate habetur.** Fiction is against the truth, but it is to be esteemed truth.

**Fictio juris non est ubi veritas.** Where truth is, fiction of law does not exist.

**Fictio legis inique operatur alicui damnum vel injuriam.** A legal fiction does not properly work loss or injury. 2 *Coke*, 35; 3 *Coke*, 36; *Broom, Max.* 129; *Gilb.* 223. Fiction of law is wrongful if it works loss or injury to anyone.

**Fictio legis neminem lædit.** A fiction of law injures no one. 2 *Rolle*, 502; 3 *Bl. Comm.* 43; *Low v. Little*, 17 *Johns. (N. Y.)* 348.

**FICTION.** An assumption or supposition of law that something which is or may be false is true, or that a state of facts exists which has never really taken place. *New Hampshire Strafford Bank v. Cornell*, 2 *N. H.* 324; *Hibberd v. Smith*, 67 *Cal.* 547, 4 *P.* 473, 56 *Am. Rep.* 726; *Murphy v. Murphy*, 190 *Iowa*, 874, 179 *N. W.* 530, 533. An assumption, for purposes of justice, of a fact that does not or

may not exist. *Dodo v. Stocker*, 74 Colo. 95, 219 P. 222, 223.

A rule of law which assumes as true, and will not allow to be disproved, something which is false, but not impossible. Best, Ev. 419.

These assumptions are of an innocent or even beneficial character, and are made for the advancement of the ends of justice. They secure this end chiefly by the extension of procedure from cases to which it is applicable to other cases to which it is not strictly applicable, the ground of inapplicability being some difference of an immaterial character. Brown.

Fictions are to be distinguished from presumptions of law. By the former, something known to be false or unreal is assumed as true; by the latter, an inference is set up, which may be and probably is true, but which, at any rate, the law will not permit to be controverted. It may also be said that a presumption is a rule of law prescribed for the purpose of getting at a certain conclusion, though arbitrary, where the subject is intrinsically liable to doubt from the remoteness, discrepancy, or actual defect of proofs.

Fictions are also to be distinguished from estoppels; an estoppel being the rule by which a person is precluded from asserting a fact by previous conduct inconsistent therewith on his own part or the part of those under whom he claims, or by an adjudication upon his rights which he cannot be allowed to question.

Best distinguishes legal fictions from presumptions *juris et de jure*, and divides them into three kinds,—affirmative or positive fictions, negative fictions, and fictions by relation. Best, Pres. p. 27, § 24.

**FICTITIOUS.** Founded on a fiction; having the character of a fiction; false, feigned, or pretended. Imaginary; not real; counterfeit. *People v. Carmona*, 79 Cal. App. 159, 251 P. 315, 317; *State v. Tinnin*, 64 Utah, 587, 232 P. 543, 545, 43 A. L. R. 46. Arbitrarily invented and set up, to accomplish an ulterior object. *West Virginia Mortgage & Discount Corporation v. Newcomer*, 101 W. Va. 292, 132 S. E. 748, 749.

**FICTITIOUS ACTION.** An action brought for the sole purpose of obtaining the opinion of the court on a point of law, not for the settlement of any actual controversy between the parties. *Smith v. Junction Ry. Co.*, 29 Ind. 551.

**FICTITIOUS NAME.** A counterfeit, feigned, or pretended name taken by a person, differing in some essential particular from his true name, (consisting of Christian name and patronymic,) with the implication that it is meant to deceive or mislead. But a fictitious name may be used so long or under such circumstances as to become an "assumed" name, in which case it may become a proper designation of the individual for ordinary business and legal purposes. See *Pollard v. Fidelity F. Ins. Co.*, 1 S. D. 570, 47 N. W. 1060; *Carlock v. Cagnacci*, 88 Cal. 600, 26 P. 597; *Ray v. American Photo Player Co.*, 46 Cal. App.

311, 189 P. 130, 131; *Mangan v. Schuykill County*, 273 Pa. 310, 116 A. 920, 921.

**FICTITIOUS PAYEE.** A fictitious person who, though named in a note, has no right to it or to its proceeds, because it was not so intended when the note was executed. *Soekland v. Storch*, 123 Ark. 253, 185 S. W. 262, Ann. Cas. 1918A, 668. The term may include one who, although named as payee in a negotiable instrument, and although a real or existing person, has no right to it, the maker not intending that such payee shall take anything by it; "fictitiousness" depending on the intention to pay, rather than on the payee's existence. *Norton v. City Bank & Trust Co. (C. C. A.)* 294 F. 839, 844; *Mueller & Martin v. Liberty Ins. Bank*, 187 Ky. 44, 218 S. W. 465, 466.

**FICTITIOUS PLAINTIFF.** A person appearing in the writ or record as the plaintiff in a suit, but who in reality does not exist, or who is ignorant of the suit and of the use of his name in it. It is a contempt of court to sue in the name of a fictitious party. See 4 Bl. Comm. 134.

**FICTITIOUS PROMISE.** See Promise.

**FIDE-COMMISSARY.** A term derived from the Latin "*fidei-commissarius*," and occasionally used by writers on equity jurisprudence as a substitute for the law French term "*cestui que trust*," as being more elegant and euphonious. See *Brown v. Brown*, 83 Hun, 160, 31 N. Y. S. 650.

**FIDEI-COMMISSARIUS.** In the civil law this term corresponds nearly to our "*cestui que trust*." It designates a person who has the real or beneficial interest in an estate or fund, the title or administration of which is temporarily confided to another. See *Story*, Eq. Jur. § 966; 1 Greenl. Cruise, Dig. 295.

According to Du Cange, the term was sometimes used to denote the executor of a will.

**FIDEI-COMMISSUM.** In the civil law. A species of trust; being a gift of property (usually by will) to a person, accompanied by a request or direction of the donor that the recipient will transfer the property to another, the latter being a person not capable of taking directly under the will or gift. In *re Courtin*, 144 La. 971, 81 So. 457, 459; *Succession of Reilly*, 136 La. 347, 67 So. 27, 33; *Succession of Manthey*, 159 La. 743, 106 So. 289, 290; *Succession of Hall*, 141 La. 860, 75 So. 802, 803. See, further, *Succession of Maginnis*, 158 La. 815, 104 So. 726, 727; *Succession of Meunier*, 52 La. Ann. 79, 26 So. 776, 48 L. R. A. 77; *Gortario v. Cantu*, 7 Tex. 44.

**FIDE-JUBERE.** In the civil law. To order a thing upon one's faith; to pledge one's self; to become surety for another. *Fide-jubes? Fide-jubeo*: Do you pledge yourself? I do pledge myself. Inst. 3, 16, 1. One of the forms of stipulation.

**FIDE-JUSSIO.** An act by which any one binds himself as an additional security for another. This giving security does not destroy the liability of the principal, but adds to the security of the surety. Vicat, Voc. Jur.; Halifax, Annals, b. 2, c. 16, n. 10.

**FIDE-JUSSOR.** In Roman law. A guarantor; one who becomes responsible for the payment of another's debt, by a stipulation which binds him to discharge it if the principal debtor fails to do so. Mackeld. Rom. Law, § 452; 3 Bl. Comm. 108. He differs from a co-obligor in this, that the latter is equally bound to a debtor, with his principal, while the former is not liable till the principal has failed to fulfil his engagement; Dig. 12, 4, 4; 16, 1, 13; 24, 3, 64; 38, 1, 37; 50, 17, 110; 6, 14, 20; Hall, Pr. 33; Dunl. Adm. Pr. 300; Clerke, Prax. tit. 63.

The obligation of the fide-jussor was an accessory contract; for, if the principal obligation was not previously contracted, his engagement then took the name of mandate. *Lec. Elem.* § 872; *Code Nap.* 2012.

The sureties taken on the arrest of a defendant, in the court of admiralty, were formerly denominated "*fide jussors*." 3 Bl. Comm. 108.

**FIDE-PROMISSOR.** See Fide-Jussor.

**FIDELITAS.** Fealty; fidelity. See Fealty.

**Fidelitas.** *De nullo tenemento, quod tenetur ad terminum, fit homagii; fit tamen inde fidelitatis sacramentum.* Co. Litt. 676. Fealty. For no tenement which is held for a term is there the oath of homage, but there is the oath of fealty.

**FIDELITY INSURANCE.** See Insurance.

**FIDEM MENTIRI.** Lat. To betray faith or fealty. A term used in feudal and old English law of a feudatory or feudal tenant who does not keep that fealty which he has sworn to the lord. Leg. Hen. I. c. 53.

**FIDES.** Lat. Faith; honesty; confidence; trust; veracity; honor. Occurring in the phrases "*bona fides*," (good faith,) "*mala fides*," (bad faith,) and "*uberrima fides*," (the utmost or most abundant good faith.)

**FIDES FACTA.** Among the Franks and Lombards undertakings were guaranteed by "making one's faith"—*fides facta*. This was symbolized by such formal acts as the giving of a rod; in suretyship giving the "*festuca*" or "*vadium*." 2 Holdsw. Hist. E. L. 73.

**Fides est obligatio conscientie alicujus ad intentionem alterius.** Bacon. A trust is an obligation of conscience of one to the will of another.

**Fides servanda est.** Faith must be observed. An agent must not violate the confidence reposed in him. Story, Ag. § 192; Coolidge v.

Brigham, 1 Metc. (Mass.) 551; McCoy v. Artcher, 3 Barb. (N. Y.) 323; Paul v. Hadley, 23 Barb. (N. Y.) 521.

**Fides servanda est; simplicitas juris gentium prævaleat.** Faith must be kept; the simplicity of the law of nations must prevail. A rule applied to bills of exchange as a sort of sacred instruments. 3 Burrows, 1672; Story, Bills, § 15.

**FIDUCIA.** In Roman law. An early form of mortgage or pledge, in which both the title and possession of the property were passed to the creditor by a formal act of sale, (properly with the solemnities of the transaction known as *mancipatio*,) there being at the same time an express or implied agreement on the part of the creditor to reconvey the property by a similar act of sale provided the debt was duly paid; but on default of payment, the property became absolutely vested in the creditor without foreclosure and without any right of redemption. In course of time, this form of security gave place to that known as *hypotheca*, while the contemporary contract of *pignus* or pawn underwent a corresponding development. See Mackeld. Rom. Law, § 334; Tomk. & J. Mod. Rom. Law, 182; Hadley, Rom. Law, 201-203; Pothier, Pand. tit. "*Fiducia*."

**FIDUCIAL.** An adjective having the same meaning as "fiduciary;" as, in the phrase "public or fiducial office." Ky. St. § 3752; Moss v. Rowlett, 112 Ky. 121, 65 S. W. 153.

**FIDUCIARIUS HÆRES.** See Fiduciary Heir.

**FIDUCIARIUS TUTOR.** In Roman law. The elder brother of an emancipated *pupillus*, whose father had died leaving him still under fourteen years of age.

**FIDUCIARY.** The term is derived from the Roman law, and means (as a noun) a person holding the character of a trustee, or a character analogous to that of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires. Thus, a person is a fiduciary who is invested with rights and powers to be exercised for the benefit of another person. *Svanoe v. Jurgens*, 144 Ill. 507, 33 N. E. 955; *Stoll v. King*, 8 How. Prac. (N. Y.) 299.

As an adjective it means of the nature of a trust; having the characteristics of a trust; analogous to a trust; relating to or founded upon a trust or confidence.

**FIDUCIARY CAPACITY.** One is said to act in a "fiduciary capacity" or to receive money or contract a debt in a "fiduciary capacity," when the business which he transacts, or the money or property which he handles, is not his own or for his own benefit, but for the benefit of another person, as to whom he stands in a relation implying and necessitating great confidence and trust on the one part

and a high degree of good faith on the other part. The term is not restricted to technical or express trusts, but includes also such offices or relations as those of an attorney at law, a guardian, executor, or broker, a director of a corporation, and a public officer. Quoted with approval in *Templeton v. Bockler*, 73 Or. 494, 144 P. 405, 409. See, also, *In re Bloemecke* (D. C.) 265 F. 343, 344; *Glover v. National Bank of Commerce of New York*, 141 N. Y. S. 409, 414, 156 App. Div. 247; *Schudder v. Shiells*, 17 How. Prac. (N. Y.) 420; *Roberts v. Prosser*, 53 N. Y. 260; *Hefren v. Jayne*, 39 Ind. 465, 13 Am. Rep. 281; *Flanagan v. Pearson*, 42 Tex. 1, 19 Am. Rep. 40; *Forker v. Brown*, 30 N. Y. S. 827, 10 Misc. Rep. 161; *Madison Tp. v. Dunkle*, 114 Ind. 262, 16 N. E. 593. As used in the Bankruptcy Act, § 17, subd. 4 (11 USCA § 35), however, the term imports a technical trust, actually and expressly constituted, and not such merely as the law implies, and has no application to debts or obligations merely because they were created under circumstances in which trust or confidence in the popular sense of those terms was reposed in debtor. *Culp v. Robey* (Tex. Civ. App.) 294 S. W. 647, 651; *American Surety Co. of New York v. Spice*, 119 Md. 1, 85 A. 1031, 1035; *First Nat. Bank v. Bamforth*, 90 Vt. 75, 96 A. 600, 602; *American Agricultural Chemical Co. v. Berry*, 110 Me. 528, 87 A. 218, 45 L. R. A. (N. S.) 1106, Ann. Cas. 1915A, 1293.

**FIDUCIARY CONTRACT.** An agreement by which a person delivers a thing to another on the condition that he will restore it to him. *Cicero, de Offic.* lib. 3, cap. 17; *Leg. du Dr. Civ. Rom.* § 237. See *Chapman v. Forsyth*, 2 How. (U. S.) 202, 11 L. Ed. 236; *Fisk v. Sarber*, 6 W. & S. (Pa.) 18; *McGinn v. Shaeffer*, 7 Watts (Pa.) 415.

**FIDUCIARY DEBT.** A debt founded on or arising from some confidence or trust, as distinguished from a debt founded simply on contract. In *re Steele-Smith Dry Goods Co.* (D. C.) 298 F. 812, 815.

**FIDUCIARY DEBTORS.** Only public officers and trustees, not agents, factors, commission men, and the like, within the meaning of Bankruptcy Act, § 14, subd. 4 (11 USCA § 32). *Keefauver v. Hevenor*, 148 N. Y. S. 434, 435, 163 App. Div. 531.

**FIDUCIARY HEIR.** The Roman laws called a fiduciary heir the person who was instituted heir, and who was charged to deliver the succession to a person designated by the testament. *Merlin, Répert.* But *Pothier, Pand.* vol. 22, says that *fiduciarus hæres* properly signifies the person to whom a testator has sold his inheritance under the condition that he should sell it to another.

**FIDUCIARY OR CONFIDENTIAL RELATION.** One founded on trust or confidence reposed by one person in the integrity and

fideliy of another. *Kerrigan v. O'Meara*, 71 Mont. 1, 227 P. 819, 821. The term is a very broad one. It is said that the relation exists, and that relief is granted in all cases in which influence has been acquired and abused, in which confidence has been reposed and betrayed. The origin of the confidence and the source of the influence are immaterial. The rule embraces both technical fiduciary relations, and those informal relations which exist whenever one man trusts in and relies upon another. *Dale v. Jennings*, 90 Fla. 234, 107 So. 175, 178; *Quinn v. Phipps*, 93 Fla. 805, 113 So. 419, 420, 54 A. L. R. 1173; *McDaniel v. Schroeder*, 128 Okl. 91, 261 P. 224, 226. See, also, *Fiduciary Relation, infra.*

**FIDUCIARY RELATION.** A relation subsisting between two persons in regard to a business, contract, or piece of property, or in regard to the general business or estate of one of them, of such a character that each must repose trust and confidence in the other and must exercise a corresponding degree of fairness and good faith. Out of such a relation, the law raises the rule that neither party may exert influence or pressure upon the other, take selfish advantage of his trust, or deal with the subject-matter of the trust in such a way as to benefit himself or prejudice the other except in the exercise of the utmost good faith and with the full knowledge and consent of that other, business, shrewdness, hard bargaining, and astuteness to take advantage of the forgetfulness or negligence of another being totally prohibited as between persons standing in such a relation to each other. Examples of fiduciary relations are those existing between attorney and client, guardian and ward, principal and agent, executor and heir, trustee and *cestui que trust*, landlord and tenant, etc. See *Robins v. Hope*, 57 Cal. 497; *Thomas v. Whitney*, 186 Ill. 225, 57 N. E. 808; *Central Nat. Bank v. Connecticut Mut. L. Ins. Co.*, 104 U. S. 68, 26 L. Ed. 693; *Meyer v. Reimer*, 65 Kan. 822; 70 P. 869; *Studybaker v. Cofield*, 159 Mo. 596, 61 S. W. 246; *Reeves v. Crum*, 97 Okl. 293, 225 P. 177, 179; *Koehler v. Haller*, 62 Ind. App. 8, 112 N. E. 527; *Anderson v. Watson*, 141 Md. 217, 118 A. 569, 575. A "fiduciary relation" exists when confidence is reposed on one side and there is resulting superiority and influence on the other, which relation need not be legal, but may be moral, social, domestic, or merely personal. *Miranovitz v. Gee*, 163 Wis. 246, 157 N. W. 790, 792; *Higgins v. Chicago Title & Trust Co.*, 312 Ill. 11, 143 N. E. 482, 484; *Dawson v. National Life Ins. Co. of United States*, 176 Iowa, 362, 157 N. W. 929, 933, L. R. A. 1916E, 878, Ann. Cas. 1918B, 230; *Dean v. Cole*, 103 Or. 570, 204 P. 952, 955. It is one in which, if a wrong arise, the same remedy exists against the wrongdoer on behalf of the principal as would exist against a trustee on behalf of a *cestui que trust*. *Smith v. Smith*, 222 Mass. 102, 109 N. E. 830, 832; *Niland v. Kennedy*, 316 Ill.

253, 147 N. E. 117, 119. Sometimes confidential and fiduciary relations are regarded as synonymous; In re Cover's Estate, 188 Cal. 133, 204 P. 583, 588; but on the other hand, a technical distinction may be taken between a "fiducial relation" which is more correctly applicable to legal relationships between parties, such as guardian and ward, administrator and heirs, and other similar relationships, and a "confidential relation" which includes the legal relationships, and also every other relationship wherein confidence is rightfully reposed and is exercised. Roberts v. Parsons, 195 Ky. 274, 242 S. W. 594, 596.

**FIEF.** A fee, feod, or feud.

**FIEF D'HAUBERT (or D'HAUBERK).** Fr. In Norman feudal law. A fief or fee held by the tenure of knight-service; a knight's fee. 2 Bl. Comm. 62. A fee held on the military tenure of appearing fully armed on the *ban* and *arrière-ban*. *Feudum hauberticum*. Spelman; Calvinus, Lex.; Du Cange.

**FIEF-TENANT.** In old English law. The holder of a fief or fee; a feeholder or freeholder.

**FIEL.** In Spanish law. A sequestrator; a person in whose hands a thing in dispute is judicially deposited; a receiver. Las Partidas, pt. 3, tit. 9, l. 1.

**FIELD.** A cultivated tract of land; State v. Mack, 92 Vt. 103, 102 A. 58, 59; State v. McMinn, 81 N. C. 585; Com. v. Josselyn, 97 Mass. 412; but not a one-acre lot used for cultivating vegetables; Simons v. Lovell, 7 Heisk. (Tenn.) 510. This term might well be considered as definite and certain a description as "close," and might be used in law; but it is not a usual description in legal proceedings. 1 Chit. Gen. Pr. 160.

**FIELD-ALE, or FILKDALE.** An ancient custom in England, by which officers of the forest and bailiffs of hundreds had the right to compel the hundred to furnish them with ale. Tomlins.

**FIELD REEVE.** An officer elected, in England, by the owners of a regulated pasture to keep in order the fences, ditches, etc., on the land, to regulate the times during which animals are to be admitted to the pasture, and generally to maintain and manage the pasture subject to the instructions of the owners. (General Inclosure Act, 1845, § 118.) Sweet.

**FIELD VISION.** The general vision used in catching in sight, following and locating objects;—distinguished from "binocular vision" (*q. v.*) Turpin v. St. Regis Paper Co., 199 App. Div. 64, 192 N. Y. S. 85, 87.

**FIELDAD.** In Spanish law. Sequestration. This is allowed in six cases by the Spanish

law where the title to property is in dispute. Las Partidas, pt. 3, tit. 3, l. 1.

**FIERDING COURTS.** Ancient Gothic courts of an inferior jurisdiction, so called because four were instituted within every inferior district or hundred. 3 Bl. Comm. 34; 3 Steph. Com. 393; Stiernhook, *De Jure Goth.* l. 1, c. 2.

**FIERI.** Lat. To be made; to be done. See In Fieri.

**FIERI FACIAS.** (That you cause to be made.) In practice. A writ of execution commanding the sheriff to levy and make the amount of a judgment from the goods and chattels of the judgment debtor.

**FIERI FACIAS DE BONIS ECCLESIASTICIS.** When a sheriff to a common *fi. fa.* returns *nulla bona*, and that the defendant is a beneficed clerk, not having any lay fee, a plaintiff may issue a *fi. fa. de bonis ecclesiasticis*, addressed to the bishop of the diocese or to the archbishop, (during the vacancy of the bishop's see,) commanding him to make of the ecclesiastical goods and chattels belonging to the defendant within his diocese the sum therein mentioned. 2 Chit. Archb. Pr. (12th Ed.) 1062.

**FIERI FACIAS DE BONIS TESTATORIS.** The writ issued on an ordinary judgment against an executor when sued for a debt due by his testator. If the sheriff returns to this writ *nulla bona*, and a *devastavit*, (*q. v.*) the plaintiff may sue out a *feri facias de bonis propriis*, under which the goods of the executor himself are seized. Sweet.

**FIERI FECI.** (I have caused to be made.) In practice. The return made by a sheriff or other officer to a writ of *feri facias*, where he has collected the whole, or a part, of the sum directed to be levied. 2 Tidd, Pr. 1018. The return, as actually made, is expressed by the word "Satisfied" indorsed on the writ.

*Fieri non debet, (debut,) sed factum valet.* It ought not to be done, but [if] done, it is valid. Shep. Touch. 6; 5 Coke, 39; T. Raym. 58; 1 Strange, 526. A maxim frequently applied in practice. Nichols v. Ketcham, 19 Johns. (N. Y.) 84, 92.

**FIFTEENTHS.** In English law. This was originally a tax or tribute, levied at intervals by act of parliament, consisting of one-fifteenth of all the movable property of the subject or personalty in every city, township, and borough. Under Edward III., the taxable property was assessed, and the value of its fifteenth part (then about £29,000) was recorded in the exchequer, whence the tax, levied on that valuation, continued to be called a "fifteenth," although, as the wealth of the kingdom increased, the name ceased to be an accurate designation of the proportion of the tax to the value taxed. See 1 Bl.

Comm. 309; Co. 2d Inst. 77; 1 Poll. & Maitl. 604; Cowell.

**FIFTY DECISIONS.** Ordinances of Justinian (529-532) upon the authority of which all moot points were settled in the preparation of the second edition of the Code. Taylor, Science of Jurispr. 144.

**FIGHT.** An encounter, with blows or other personal violence, between two persons. See Carpenter v. People, 31 Colo. 284, 72 P. 1072; Coles v. New York Casualty Co., 87 App. Div. 41, 83 N. Y. S. 1063. The term does not necessarily imply that both parties should give and take blows. It is sufficient that they voluntarily put their bodies in position with that intent; State v. Gladden, 73 N. C. 155; Tate v. State, 46 Ga. 148.

**FIGHTWITE.** Sax. A mulct or fine for making a quarrel to the disturbance of the peace. Called also by Cowell "*forisfactura pugnae*." The amount was one hundred and twenty shillings. Cowell.

A payment to a lord possessing soc over a place where a wrong was done. 2 Holdsw. Hist. E. L. 35.

**FIGURES.** Artificial representations of a form, as in sculpture, drawing, or painting, especially the human body represented by art of any kind. People v. Eastman, 89 Misc. 596, 152 N. Y. S. 314, 317.

Numerals. They are either Roman, made with letters of the alphabet: for example, MDCCLXXVI; or they are Arabic, as follows: 1776.

**FILACER.** An officer of the superior courts at Westminster, whose duty it was to file the writs on which he made process. There were fourteen filacers, and it was their duty to make out all original process. Cowell; Blount; Jacob L. Dict. It is used in 8 Mod. 284. The office was abolished in 1837.

**FILARE.** In old English practice. To file. Townsh. Pl. 67.

**FILE, n.** A thread, string, or wire upon which writs and other exhibits in courts and offices are fastened or filed for the more safe-keeping and ready turning to the same. Spelman; Cowell; Tomlins. Papers put together and tied in bundles. A paper is said also to be filed when it is delivered to the proper officer, and by him received to be kept on file. 13 Vin. Abr. 211; 1 Litt. 113; 1 Hawk. P. C. 7, 207; Phillips v. Beene, 38 Ala. 251; Holman v. Chevallier, 14 Tex. 338; Beebe v. Morrell, 76 Mich. 114, 42 N. W. 1119, 15 Am. St. Rep. 288. But, in general, "file," or "the files," is used loosely to denote the official custody of the court or the place in the offices of a court where the records and papers are kept. The "file" in a cause includes original subpoenas and all papers belonging thereto. Jackson v. Mobley, 157 Ala. 408, 47 So. 590.

**FILE, v.** In practice. To put upon the files, or deposit in the custody or among the records of a court. To deliver an instrument or other paper to the proper officer for the purpose of being kept on file by him in the proper place. Gallagher v. Linwood, 30 N. M. 211, 231 P. 627, 629, 37 A. L. R. 664; Dillon v. Superior Court of Nevada County, 24 Cal. App. 760, 142 P. 503, 505; People v. Madigan, 223 Mich. 86, 193 N. W. 806, 807; Thompson v. State, 190 Ind. 363, 130 N. E. 412, 413; Stubbs v. Mendel, 148 Ga. 802, 98 S. E. 476; Pendrey v. Brennan, 31 Idaho, 54, 169 P. 174, 175. It carries the idea of permanent preservation as a public record. In re Gubelman (C. C. A.) 10 F.(2d) 926, 929.

It is commonly held that the filing is complete when the paper is lodged with the proper officer, whose indorsement, though required of him as a duty, is unnecessary to complete the filing or to give validity to the paper filed. Mahnken v. Meltz, 97 N. J. Law, 159, 116 A. 794, 795; Palmer v. Simons, 107 S. C. 93, 92 S. E. 23, 24; Daniel v. Blankenship, 177 Ky. 726, 198 S. W. 48, 51; Reeder v. Mitchell, 117 Okl. 21, 244 P. 773, 774; Hogue v. Hogue, 137 Ark. 485, 208 S. W. 579, 582; Carolina-Tennessee Power Co. v. Hiawassee River Power Co., 175 N. C. 668, 96 S. E. 99, 101; Gove v. Armstrong, 87 Vt. 468, 89 A. 868, 869. But see Godchaux Sugars, Inc. v. Leon Boudreaux & Bros., 153 La. 685, 96 So. 532, 533; Stone v. Crow, 2 S. D. 525, 51 N. W. 335.

"To file" a paper, on the part of a party, is to place it in the official custody of the clerk. "To file," on the part of the clerk, is to indorse upon the paper the date of its reception, and retain it in his office, subject to inspection by whomsoever it may concern. Holman v. Chevallier, 14 Tex. 339.

The word "filed" is not synonymous with deposited. People v. Peck, 67 Hun, 560, 22 N. Y. Supp. 576. While filing involves depositing, the converse is not true. U. S. v. Davidson (D. C.) 285 F. 661. See, however, People v. Glassberg, 326 Ill. 379, 158 N. E. 103, 110.

The expressions "filing" and "entering of record" are not synonymous. They are nowhere so used, but always convey distinct ideas. "Filing" originally signified placing papers in order on a thread or wire for safe-keeping. In this country and at this day it means, agreeably to our practice, depositing them in due order in the proper office. Entering of record uniformly implies writing. Naylor v. Moody, 2 Blackf. (Ind.) 247.

"Filing a bill" in equity is an equivalent expression to "commencing a suit."

"File" may be equivalent to "give notice" or "serve notice." Powers Regulator Co. v. L. W. Taylor & Co., 225 Mass. 292, 114 N. E. 356, 357. But it is not synonymous with "to serve." Albany Builders' Supply Co. v. Eastern Bridge & Structural Steel Co., 235 N. Y. 432, 139 N. E. 565, 566.

An order that a cause should be "filed away" for want of prosecution meant that it should be "discontinued" or "stricken from the docket." Phillips v. Arnett, 164 Ky. 426, 175 S. W. 660, 662.

**FILEINJAID.** Brit. A name given to villains in the laws of Hoel Dda. Barring. Obs. St. 302.

**FILIATE.** To fix a bastard child on some one, as its father. To declare whose child it is. 2 W. Bl. 1017.

**Filiatio non potest probari.** Co. Litt. 126. Filiation cannot be proved; that is, the husband is presumed to be the father of a child born during coverture. But see 7 & 8 Vict. c. 101.

**FILIATION.** The relation of a child to its parent; correlative to "paternity."

The judicial assignment of an illegitimate child to a designated man as its father.

#### In the Civil Law

The descent of son or daughter, with regard to his or her father, mother, and their ancestors.

**FILICETUM.** In old English law. A ferny or bracky ground; a place where fern grows. Co. Litt. 4b; Shep. Touch. 95.

**FILIOLUS (or FILIOUS).** In old records. A godson. Spelman.

**FILIUS.** Lat. A son; a child.

As distinguished from heir *filius* is a term of nature, *hæres* a term of law. 1 Powell, Dev. 311. In the civil law the term was used to denote a child generally. Calvinus, Lex.; Vicat, Voc. Jur.

A distinction was sometimes made, in the civil law, between "*filii*" and "*liberi*;" the latter word including grandchildren, (*nepotes*), the former not. Inst. 1, 14, 5. But, according to Paulus and Julianus, they were of equally extensive import. Dig. 50, 16, 84; Id. 50, 16, 201.

**Filius est nomen naturæ, sed hæres nomen juris.** 1 Sid. 193. 1 Pow. Dev. 311. Son is a name of nature, but heir is a name of law.

**FILIUS FAMILIAS.** In the civil law. The son of a family; an unemancipated son. Inst. 2, 12, pr.; Id. 4, 5, 2; Story, Conf. Laws, § 61.

**Filius in utero matris est pars viscerum matris.** 7 Coke, 8. A son in the mother's womb is part of the mother's vitals.

**FILIUS MULIERATUS.** In old English law. The eldest legitimate son of a woman, who previously had an illegitimate son by his father. Glanv. lib. 7, c. 1. Otherwise called "*mulier*." 2 Bl. Comm. 248.

**FILIUS NULLIUS.** The son of nobody; *i. e.*, a bastard.

**FILIUS POPULI.** A son of the people; a natural child.

**FILL.** To make full; to complete; to satisfy or fulfill; to possess and perform the duties of; to occupy the whole capacity or extent of, so as to leave no space vacant.

The election of a person to an office constitutes the essence of his appointment; but the office cannot be considered as actually filled until his ac-

ceptance, either express or implied. Johnston v. Wilson, 2 N. H. 202, 9 Am. Dec. 50.

Where one subscribes for shares in a corporation, agreeing to "take and fill" a certain number of shares, *assumpsit* will lie against him to recover an assessment on his shares; the word "fill," in this connection, amounting to a promise to pay assessments. Bangor Bridge Co. v. McMahon, 10 Me. 478.

To fill a prescription is to furnish, prepare, and combine the requisite materials in due proportion as prescribed. Ray v. Burbank, 61 Ga. 505, 34 Am. Rep. 103.

To "fill" embroidery is to stuff out the figure, which is the ornamentation, by covering the stuffing with the silk cotton, or other threads used by the embroiderer. G. Reis & Bro. v. Reform Initial Co. (C. C. A.) 266 F. 219.

The term "fill," used in relation to shipments of live stock, means feeding and watering stock just prior to sale so as to increase their weight and thus enhance their value. Texas & P. Ry. Co. v. West Bros. (Tex. Com. App.) 207 S. W. 918, 922.

**FILLED MILK.** As used in a statute, milk from which milk fats have been largely or entirely taken and vegetable fats or oils, usually cocoanut oil, substituted. Carolene Products Co. v. Mahoney (D. C.) 294 F. 902, 903.

**FILLING CHAMBER.** A place in which a bottle mouth is held so as to cut off communication with open air while the bottle is being filled with gaseous liquids to be sealed in it under pressure. Crown Cork & Seal Co. of Baltimore City v. Carper Automatic Bottling Mach. Co. of Baltimore City (D. C.) 229 F. 748, 750.

**FILLING STATION.** A building or structure where motor vehicle fuel is stored for sale to the public. It is not a nuisance per se. Hanes v. Carolina Cadillac Co., 176 N. C. 350, 97 S. E. 162; Sherman v. Levingston (Sup.) 128 N. Y. S. 581. The proprietor is under obligation to exercise reasonable care in delivering gasoline. Sanders v. Austin, 180 Cal. 664, 182 P. 449.

**FILLY.** A young mare; a female colt. An indictment charging the theft of a "filly" is not sustained by proof of the larceny of a "mare." Lunsford v. State, 1 Tex. App. 448, 28 Am. Rep. 414.

**FILTHY.** Under Cr. Code, § 211 (18 USCA § 334), declaring every obscene, lewd, or lascivious, and every filthy letter of an indecent character unmailable, "filthy" means morally foul, polluted, nasty. United States v. Davidson (D. C.) 244 F. 523, 526. Dirty, vulgar, indecent, offensive to the moral sense, morally depraving, debasing. Tyomies Pub. Co. v. United States (C. C. A.) 211 F. 385, 390.

**FILUM.** Lat. In old practice. A file; *i. e.*, a thread or wire on which papers were strung, that being the ancient method of filing.

An imaginary thread or line passing through the middle of a stream or road, as in the titles following.

**FILUM AQUÆ.** A thread of water; a line of water; the middle line of a stream of water, supposed to divide it into two equal parts, and constituting in many cases the boundary between the riparian proprietors on each side. *Ingraham v. Wilkinson*, 4 Pick. (Mass.) 273, 16 Am. Dec. 342. *Medium flum* is sometimes used with no additional meaning.

**FILUM FORESTÆ.** The border of the forest. 2 Bla. Comm. 419; 4 Inst. 303; Manw. *Purlieu*.

**FILUM VIÆ.** The thread or middle line of a road. An imaginary line drawn through the middle of a road, and constituting the boundary between the owners of the land on each side. 2 Smith, Lead. Cas. (Am. Ed.) 98, note. See *Peck v. Denniston*, 121 Mass. 18; *Motley v. Sargent*, 119 Mass. 231; *Spackman v. Steidel*, 88 Pa. 453; *Hannibal Bridge Co. v. Schaubacher*, 57 Mo. 582; *City of Chicago v. Rumsey*, 87 Ill. 348; *Cox v. Freedley*, 33 Pa. 124, 75 Am. Dec. 584.

**FIN.** Fr. An end, or limit; a limitation, or period of limitation.

**FIN DE NON RECEVOIR.** In French law. An exception or plea founded on law, which, without entering into the merits of the action, shows that the plaintiff has no right to bring it, either because the time during which it ought to have been brought has elapsed, which is called "prescription," or that there has been a compromise, accord and satisfaction, or any other cause which has destroyed the right of action which once subsisted. *Poth. Proc. Civile*, pt. 1, c. 2, § 2, art. 2; *Story, Conf. Laws*, § 580.

**FINAL.** Definitive; terminating; completed; conclusive; last. In its use in jurisprudence, this word is generally contrasted with "interlocutory." *Johnson v. New York*, 48 Hun, 620, 1 N. Y. S. 254; *Garrison v. Dougherty*, 18 S. C. 488; *Rondeau v. Beaumette*, 4 Minn. 224 (Gil. 163); *Blanding v. Sayles*, 23 R. I. 226, 49 A. 992; *U. S. v. Broude* (D. C.) 299 F. 332, 333.

As to final "Costs," "Decree," "Judgment," "Injunction," "Order," "Process," "Recovery," "Sentence," and "Settlement," see those titles.

**FINAL ARCHITECT'S CERTIFICATE.** One which is issued after a job is done and which finally determines the rights of the parties as to money and disputes. *Johnson v. Hogg*, 202 Ill. App. 253, 255; *Hunt v. Owen Bldg. & Inv. Co.* (Mo. App.) 219 S. W. 138, 140.

**FINAL DECISION.** One which settles rights of parties respecting the subject-matter of the suit and which concludes them until it is reversed or set aside. *Orwig v. Conley*, 322 Ill. 291, 153 N. E. 371, 372; *Pawtucket Cabinet & Builders' Finish Co. v. People's Excursion Line*, 45 R. I. 426, 123 A. 354. See, however, *Wyman v. Hageman*, 318 Ill. 64,

148 N. E. 852, 855. The filing of signed findings and conclusions and order for judgment. *Crane v. First Nat. Bank*, 26 N. D. 268, 144 N. W. 96, 97. Synonymous with final judgment or decree. In *re Tiffany*, 40 S. Ct. 239, 240, 252 U. S. 32, 64 L. Ed. 443. Also, a decision from which no appeal or writ of error can be taken. *Moore v. Mayfield*, 47 Ill. 167; 6 El. & Bl. 408; *U. S. v. Tod* (C. C. A.) 1 F. (2d) 246, 251; *School Dist. No. 14, Clinton County, v. Sims*, 193 Mo. App. 480, 186 S. W. 4, 6; *Railway Co. v. Gillespie*, 158 Ind. 454, 63 N. E. 845; *Blanding v. Sayles*, 23 R. I. 226, 49 A. 992.

**FINAL DETERMINATION.** A determination of the rights of the parties to an action beyond appeal. *Hanby v. First Nat. Bank* (Tex. Civ. App.) 163 S. W. 415, 419. Synonymous with "final judgment." *Pape v. Red Cab Mut. Casualty Co.*, 128 Misc. 456, 219 N. Y. S. 135, 136. See Judgment.

**FINAL DISPOSITION.** When it is said to be essential to the validity of an award that it should make a "final disposition" of the matters embraced in the submission, this term means such a disposition that nothing further remains to fix the rights and obligations of the parties, and no further controversy or litigation is required or can arise on the matter. It is such an award that the party against whom it is made can perform or pay it without any further ascertainment of rights or duties. *Colcord v. Fletcher*, 50 Me. 401.

**FINAL HEARING.** This term designates the trial of an equity case upon the merits, as distinguished from the hearing of any preliminary questions arising in the cause, which are termed "interlocutory." *Smith v. W. U. Tel. Co.* (C. C.) 81 F. 243; *Akerly v. Vilas*, 24 Wis. 171, 1 Am. Rep. 166; *Galpin v. Critchlow*, 112 Mass. 343, 17 Am. Rep. 176. This is the usual meaning of the term, but it may also be used with reference to a dismissal on the motion of plaintiff. *Christensen v. General Electric Co.* (D. C.) 248 F. 284, 286.

**FINAL PASSAGE.** The vote on a passage of a bill or resolution in either house of the legislature after it has received the prescribed number of readings and has been subjected to such action as is required by the fundamental law governing the body or its own rule. *State v. Buckley*, 54 Ala. 613. The actual final vote necessary to a bill becoming a law, regardless of parliamentary fictions. *Roane Iron Co. v. Francis*, 130 Tenn. 694, 172 S. W. 816.

**FINAL RECEIVER'S RECEIPT.** An acknowledgment by the government that it has received full payment for public land, that it holds the legal title in trust for the entryman, and will in due course issue to him a patent. *Bovey-Shute Lumber Co. v. Erickson*, 41 N. D. 365, 170 N. W. 628, 630.



**FINAL SUBMISSION:** One which is the equivalent of the return of the verdict. The term refers to a state of a case when judgment may be demanded as matter of right. *Samuell v. Montana-Holland Colonization Co.*, 69 Mont. 111, 220 P. 1093. See, specifically, *Doss v. Illinois Cent. R. Co.*, 198 Ky. 222, 249 S. W. 346, 347; *McKinley v. Shull*, 112 Kan. 837, 212 P. 898; *Avery v. Jayhawker Gasoline Co.*, 101 Okl. 286, 225 P. 544, 547.

**FINAL TRIAL.** Under a statute such trial in the court having original trial jurisdiction as is the basis of entry of judgment finally disposing of action in that court; the term does not apply to proceedings in the appellate court. *Wynne v. Smith*, 23 Ga. App. 330, 98 S. E. 271, 272.

**FINALIS CONCORDIA.** A final or conclusive agreement. In the process of "levying a fine," this was a final agreement entered by the litigating parties upon the record, by permission of court, settling the title to the land, and which was binding upon them like any judgment of the court. 1 Washb. Real Prop. \*70.

**FINANCES.** The public wealth of a state or government, considered either statically (as the property or money which a state now owns) or dynamically, (as its income, revenue, or public resources.) Monetary affairs, funds in a treasury or accruing to it, etc. *City of Newburgh v. Dickey*, 150 N. Y. S. 175, 177, 164 App. Div. 791.

Money resources generally. The state of the finances of an individual or corporation, being his condition in a monetary point of view. The cash he has on hand, and that which he expects to receive, as compared with the engagements he has made to pay.

**FINANCIAL.** Fiscal. *Armstrong v. State Bank of Mayville*, 165 N. Y. S. 5, 8, 177 App. Div. 265.

**FINANCIALLY ABLE:** To entitle a broker to his commission, the requirement that the purchaser be financially able to purchase, does not necessarily mean that such purchaser shall have all money in cash, but merely that he must be able to command the money to close the deal on reasonable notice. *Hays v. Goodman-Leonard Realty Co.*, 146 Miss. 766, 111 So. 869, 870. See *Able to Purchase*.

**FINANCIER.** A person employed in the economical management and application of public money; one skilled in matters appertaining to the judicious management of money affairs.

**FIND.** To discover; to determine; to ascertain and declare. To announce a conclusion, as the result of judicial investigation, upon a disputed fact or state of facts; as a jury are said to "find a will." To determine a controversy in favor of one of the parties;

as a jury "find for the plaintiff." *State v. Bulkeley*, 61 Conn. 287, 23 A. 186, 14 E. R. A. 657; *Weeks v. Trask*, 81 Me. 127, 16 A. 413, 2 L. R. A. 532; *Southern Bell Tel., etc., Co. v. Watts*, 66 F. 460, 13 C. C. A. 579. The term usually means to ascertain by judicial inquiry, *State ex inf. of Barker v. Crandall*, 269 Mo. 44, 190 S. W. 889, 893; *Potterton v. Condit*, 218 Mass. 216, 105 N. E. 443, 444; in contradistinction to acts by a clerk of court, *State v. Halaby*, 148 La. 1, 86 So. 561, 563; or by administrative boards, *Union Pac. R. Co. v. Board of Com'rs of Weld County, Colo.* (C. C. A.) 217 F. 540, 541. But the term does not always require a judicial or official finding. See *City of Chicago v. Atwood*, 269 Ill. 624, 110 N. E. 127, 128.

To "find" oil in paying quantities within the meaning of an oil and gas lease was held to mean the same as to "produce." *Tedrow v. Shaffer*, 23 Ohio App. 343, 155 N. E. 510, 511.

In the making of brokerage contracts, to "find" a purchaser is generally synonymous with "procure" or "introduce." *Low v. Paddock* (Mo. App.) 220 S. W. 969, 972.

**FINDER.** One who discovers and takes possession of another's personal property, which was then lost. *Kincaid v. Eaton*, 98 Mass. 139, 93 Am. Dec. 142.

A searcher employed to discover goods imported or exported without paying custom. *Jacob*.

**FINDING.** The result of the deliberations of a jury or a court. *Todd v. Potter*, 1 Day (Conn.) 238; *Denslow v. Moore*, 2 Day (Conn.) 12; *U. S. v. Moller*, 16 Blatchf. 65, Fed. Cas. No. 15,794. A decision upon a question of fact reached as the result of a judicial examination or investigation by a court, jury, referee, coroner, etc. *Williams v. Gifflin*, 86 Wis. 648, 57 N. W. 1111; *Rhodes v. United States Bank*, 66 F. 514, 13 C. C. A. 612, 34 L. R. A. 742; *Tebbetts v. Tebbetts*, 124 Me. 262, 127 A. 720, 722; *Allen v. U. S.* (D. C.) 10 F. (2d) 807, 809. A recital of the facts as found, and hot of the evidence, or mere evidential facts. *Crichton v. Jacobs*, 100 Conn. 281, 123 A. 437, 438. The word commonly applies to the result reached by a judge, *Maeder Steel Products Co. v. Zanillo*, 109 Or. 562, 220 P. 155, 158; it being sometimes, however, as a matter of interpretation, treated as a ruling of law, *Garden Cemetery Corporation v. Baker*, 218 Mass. 339, 105 N. E. 1070, 1072, Ann. Cas. 1916B, 75.

**Finding of fact.** A determination of a fact by the court, such fact being averred by one party and denied by the other, and the determination being based on the evidence in the case; also the answer of the jury to a specific interrogatory propounded to them as to the existence or non-existence of a fact in issue. *Miles v. McCallan*, 1 Ariz. 491, 3 P. 610; *Murphy v. Bennett*, 68 Cal. 528, 9 P. 738; *Morbey v. Railway Co.*, 116 Iowa, 84, 89 N. W. 105;

**Maeder Steel Products Co. v. Zanello**, 109 Or. 562, 220 P. 155, 158. The term is not applicable, with special reference to review on appeal, to a mere conclusion that the evidence is insufficient to authorize relief, *Monetaire Mining Co. v. Columbus Rexall Consol. Mines Co.*, 53 Utah, 413, 174 P. 172, 174; nor to the opinion of the trial court, delivered in announcing judgment, *Rogers v. Harris*, 76 Okl. 215, 184 P. 459, 462; nor to a memorandum of the decision of the trial judge, *Preston v. Preston*, 102 Conn. 96, 128 A. 292, 296; nor to a transcript of the evidence, *State v. Chin Lung*, 106 Conn. 701, 139 A. 91, 97.

—**General and special findings.** Where issues of fact in a case are submitted to the court by consent of parties to be tried without a jury, the "finding" is the decision of the court as to the disputed facts, and it may be either general or special, the former being a general statement that the facts are in favor of such a party or entitle him to judgment, the latter being a specific setting forth of the ultimate facts established by the evidence and which are determinative of the judgment which must be given. See *Rhodes v. United States Nat. Bank*, 66 F. 514, 13 C. C. A. 612, 34 L. R. A. 742; *Searcy County v. Thompson*, 66 F. 94, 13 C. C. A. 349; *Humphreys v. Third Nat. Bank*, 75 F. 856, 21 C. C. A. 538. In a trial to the court, a general finding is a complete determination of all matters, and is a finding of every special thing necessary to be found to sustain the general finding, *Miller v. Thompson*, 80 Okl. 70, 194 P. 103, 105; whereas a special finding is only a determination of the ultimate facts on which the law must be determined, *Societe Nouvelle d'Armement v. Barnaby* (C. C. A.) 246 F. 68, 70. A special finding may also be said to be one limited to the fact issue submitted. *Ex parte Woodward Iron Co.*, 212 Ala. 220, 102 So. 103, 106.

**FINE, v.** To impose a pecuniary punishment or mulct.

To sentence a person convicted of an offense to pay a penalty in money. *Goodman v. Durant B. & L. Ass'n*, 71 Miss. 310, 14 So. 146; *State v. Belle*, 92 Iowa, 258, 60 N. W. 525.

**FINE, n.**

#### In Conveyancing

An amicable composition or agreement of a suit, either actual or fictitious, by leave of the court, by which the lands in question become, or are acknowledged to be, the right of one of the parties. 2 Bl. Comm. 349; *Christy v. Burch*, 25 Fla. 942, 2 So. 258; *First Nat. Bank v. Roberts*, 9 Mont. 323, 23 P. 718; *Hitz v. Jenks*, 123 U. S. 297, 8 S. Ct. 143, 31 L. Ed. 156; *McGregor v. Comstock*, 17 N. Y. 166. Fines were abolished in England by St. 3 & 4 Wm. IV. c. 74, substituting a disentailing deed (*q. v.*).

A fine is so called because it puts an end not only to the suit thus commenced, but also to all other suits and controversies concerning the same matter. The party who parted with the land, by acknowledging the right of the other, was said to *levy* the fine, and was called the "cognizor" or "conusor," while the party who recovered or received the estate was termed the "cognizee" or "conusee," and the fine was said to be levied to him.

#### In the Law of Tenure

A money payment made by a feudal tenant to his lord. The most usual fine is that payable on the admittance of a new tenant, but there are also due in some manors fines upon alienation, on a license to demise the lands, or on the death of the lord, or other events. *Elton*, Copyh. 159; *De Peyster v. Michael*, 6 N. Y. 495, 57 Am. Dec. 470.

#### In General

—**Executed fine.** See Executed.

—**Fine and recovery act.** The English statutes 3 & 4 Wm. IV. c. 74, for abolishing fines and recoveries. 1 Steph. Comm. 514, et seq.

—**Fine for alienation.** A fine anciently payable upon the alienation of a feudal estate and substitution of a new tenant. It was payable to the lord by all tenants holding by knight's service or tenants *in capite* by socage tenure. Abolished by 12 Car. II. c. 24. See 2 Bl. Comm. 71, 89; *De Peyster v. Michael*, 6 N. Y. 467, 495, 57 Am. Dec. 470.

—**Fine for endowment.** A fine anciently payable to the lord by the widow of a tenant, without which she could not be endowed of her husband's lands. Abolished under Henry I., and by *Magna Charta*. 2 Bl. Comm. 135; *Mozley & Whitley*.

—**Fine rolls.** See Oblate Rolls.

—**Fine sur cognizance de droit come ceo que il ad de son done.** A fine upon acknowledgment of the right of the cognizee as that which he hath of the gift of the cognizor. By this the deforciant acknowledged in court a former feoffment or gift in possession to have been made by him to the plaintiff. 2 Bl. Comm. 352.

—**Fine sur cognizance de droit tantum.** A fine upon acknowledgment of the right merely, and not with the circumstance of a *preceding gift* from the cognizor. This was commonly used to pass a *reversionary* interest which was in the cognizor, of which there could be no feoffment supposed. 2 Bl. Comm. 353; 1 Steph. Comm. 519; *Jacob*, Law Dict.; *Com.*, Dig.

—**Fine sur concessit.** A fine upon *concessit* (he hath granted). A species of fine, where the cognizor, in order to make an end of disputes, though he acknowledged no precedent right, yet *granted* to the cognizee an estate *de novo*, usually for life or years, by way of

supposed composition. 2 Bl. Comm. 353; 1 Steph. Comm. 519.

—**Fine sur done grant et render.** A double fine, comprehending the *fine sur cognizance de droit come ceo* and the *fine sur concessit*. It might be used to convey particular limitations of estates, whereas the *fine sur cognizance de droit come ceo*, etc., conveyed nothing but an absolute estate, either of inheritance, or at least freehold. In this last species of fines, the cognizee, after the right was acknowledged to be in him, granted back again or rendered to the cognizor, or perhaps to a stranger, some other estate in the premises. 2 Bl. Comm. 353; Viner, Abr. *Fine*; Comyns, Dig. *Fine*.

—**Joint fine.** In old English law. "If a whole vill is to be fined, a joint fine may be laid, and it will be good for the necessity of it; but, in other cases, fines for offenses are to be severally imposed on each particular offender, and not jointly upon all of them." Jacob.

#### In Criminal Law

Pecuniary punishment imposed by a lawful tribunal upon a person convicted of crime or misdemeanor. *Lancaster v. Richardson*, 4 Lans. (N. Y.) 140; *State v. Belle*, 92 Iowa, 258, 60 N. W. 525; *State v. Ostwalt*, 118 N. C. 1208, 24 S. E. 660, 32 L. R. A. 396; *Murphy v. State*, 119 Or. 658, 250 P. 834, 835, 49 A. L. R. 384; *City of Buffalo v. Neubeck*, 204 N. Y. S. 737, 738, 209 App. Div. 386; *State v. Franklin*, 63 Utah, 442, 226 P. 674, 676. A penalty exacted for some criminal offense. *Daily v. Marshall*, 47 Mont. 377, 133 P. 681, 686.

A sum of money paid at the *end*, to make an end of a transaction, suit, or prosecution; mulct; penalty. *Railroad Co. v. State*, 22 Kan. 15; *Sunderland Bros. Co. v. Chicago, B. & I. R. Co.*, 104 Neb. 319, 177 N. W. 156, 157. A forfeit or forfeiture. *Keinath, Schuster & Hudson v. Reed*, 18 N. M. 358, 137 P. 841, 844; *Bryant v. Rich's Grill*, 216 Mass. 344, 103 N. E. 925, 927, Ann. Cas. 1915B, 869.

It may include a forfeiture or penalty recoverable in a civil action. *Hanscomb v. Russell*, 11 Gray (Mass.) 373; *Atchison & N. R. Co. v. Baty*, 6 Neb. 37, 29 Am. Rep. 356; *United States v. Atlantic Fruit Co. (C. C. A.)* 206 F. 440, 441; *Toledo, C. & O. R. R. Co. v. Miller*, 108 Ohio St. 388, 140 N. E. 617, 619.

A "fine" is always a penalty, though a penalty need not be always a fine; *Bankers' Trust Co. v. State*, 96 Conn. 361, 114 A. 104, 107; "penalty" being a generic term which includes both fines and forfeitures; *State ex rel. Jones v. Howe Scale Co. of Illinois*, 182 Mo. App. 658, 166 S. W. 328, 330. As distinguished from "penalty," a "penalty" when recovered ordinarily goes to the statutory beneficiaries, while a "fine" goes to the state. *Poindexter v. State*, 137 Tenn. 336, 193 S. W. 126, 127.

**FINE ANULLANDO LEVATO DE TENEMENTO QUOD FUIT DE ANTIQUO DOMINICO.** An abolished writ for disannulling a

fine levied of lands in ancient demesne to the prejudice of the lord. Reg. Orig. 15.

**FINE CAPIENDO PRO TERRIS.** An obsolete writ which lay for a person who, upon conviction by jury, had his lands and goods taken, and his body imprisoned, to be remitted his imprisonment, and have his lands and goods redelivered to him, on obtaining favor of a sum of money, etc. Reg. Orig. 142.

**FINE NON CAPIENDO PRO PULCHRE PLACITANDO.** An obsolete writ to inhibit officers of courts to take fines for fair pleading.

**FINE PRO REDISSEISINÂ CAPIENDO.** An old writ that lay for the release of one imprisoned for a *redisseisin*, on payment of a reasonable fine. Reg. Orig. 222.

**FINE-FORCE.** An absolute necessity or inevitable constraint. Plowd. 94; 6 Coke, 11; Cowell; Old N. B. 78.

**FINEM FACERE.** To make or pay a fine. Bract. 106; Skene.

**FINES LE ROY.** In old English law. The king's fines. Fines formerly payable to the king for any contempt or offense, as where one committed any trespass, or falsely denied his own deed, or did anything in contempt of law. *Termes de la Ley*.

**FINGER.** The loss of the use of a thumb cannot be considered the loss of a finger within Workmen's Compensation Law. *Doris v. James Butler, Inc.*, 192 N. Y. S. 515, 199 App. Div. 116.

**FINGER PRINTS.** See Anthropometry.

**FINIRE.** In old English law. To fine, or pay a fine. Cowell. To end or finish a matter.

**FINIS.** Lat. An end; a fine; a boundary or terminus; a limit. Also in L. Lat., a fine (*q. v.*).

**Finis est amicabile compositio et finalis concordia ex concensu et concordia domini regis vel iusticiarum.** Glan. lib. 8, c. 1. A fine is an amicable settlement and decisive agreement by consent and agreement of our lord, the king, or his justices.

**Finis finem litibus imponit.** A fine puts an end to litigation. 3 Inst. 78.

**Finis rei attendendus est.** 3 Inst. 51. The end of a thing is to be attended to.

**Finis unius diei est principium alterius.** 2 Bulst. 305. The end of one day is the beginning of another.

**FINITIO.** An ending; death, as the end of life. Blount; Cowell.

**FINIUM REGUNDORUM ACTIO.** In the civil law. Action for regulating boundaries. The name of an action which lay between

those who had lands bordering on each other, to settle disputed boundaries. Mackeld. Rom. Law, § 499.

**FINORS.** Those that purify gold and silver, and part them by fire and water from coarser metals; and therefore, in the statute of 4 Hen. VII. c. 2, they are also called "parters." Termes de la Ley.

**FIRDFARE.** Sax. In old English law. A summoning forth to a military expedition, (*indictio ad projectionem militarem.*) Spelman.

**FIRDIRINGA.** Sax. A preparation to go into the army. Leg. Hen. I.

**FIRDSOCNE.** Sax. In old English law. Exemption from military service. Spelman.

**FIRDWITE.** In old English law. A fine for refusing military service, (*multa detrectantis militiam.*) Spelman. A mulct or penalty imposed on military tenants for their default in not appearing in arms or coming to an expedition. Cowell.

A fine imposed for murder committed in the army; an acquittance of such fine. Fleta, lib. 1, c. 47.

**FIRE.** The effect of combustion. The juridical meaning of the word does not differ from the vernacular. 1 Pars. Mar. Law, 231, et seq.

The word "fire," as used in insurance policies, does not have the technical meaning developed from analysis of its nature, but more nearly the popular meaning, being an effect rather than an elementary principle, and is the effect of combustion, being equivalent to ignition or burning, but heat is not fire, though fire may proximately cause loss from heat. Lavitt v. Hartford County Mut. Fire Ins. Co., 105 Conn. 729, 136 A. 572.

The ordinary meaning of the word as used in an insurance policy includes the idea of visible heat or light. Damage to wool by spontaneous combustion with smoke and great heat, but without any visible flame or glow, is held not to be fire. The "fire is always caused by combustion, but combustion does not always cause fire." Western Woolen Mill Co. v. Assurance Co., 139 F. 637, 72 C. C. A. 1.

As used in policies of fire insurance, the word means a hostile fire as distinguished from a friendly fire. Lavitt v. Hartford County Mut. Fire Ins. Co., 105 Conn. 729, 136 A. 572, 574.

**FIRE AND SWORD, LETTERS OF.** In old Scotch law. Letters issued from the privy council in Scotland, addressed to the sheriff of the county, authorizing him to call for the assistance of the county to dispossess a tenant retaining possession, contrary to the order of a judge or the sentence of a court. Wharton; Bell, Diet.

**FIRE-ARM.** An instrument used in the propulsion of shot, shell, or bullets by the action of gunpowder exploded within it. A weapon which acts by force of gunpowder. People v. Simons, 124 Misc. 28, 207 N. Y. S. 56, 57. This word comprises all sorts of guns,

fowling-pieces, blunderbusses, pistols, etc.; Harris v. Cameron, 81 Wis. 239, 51 N. W. 437, 29 Am. St. Rep. 891; Atwood v. State, 53 Ala. 509; Whitney Arms Co. v. Barlow, 38 N. Y. Super. Ct. 563; but not an air pistol. People v. Schmidt, 221 App. Div. 77, 222 N. Y. S. 647, 650. As to whether a pistol in such a condition of disrepair that it cannot be discharged, at least in the normal way, constitutes a fire-arm, the decisions have been somewhat conflicting. See Atwood v. State, 53 Ala. 508; Williams v. State, 61 Ga. 417, 34 Am. Rep. 102; Evins v. State, 46 Ala. 88; Hutchinson v. State, 62 Ala. 3, 34 Am. Rep. 1; State v. Morris, 263 Mo. 339, 172 S. W. 603, 604.

**FIREBARE.** A beacon or high tower by the seaside, wherein are continual lights, either to direct sailors in the night, or to give warning of the approach of an enemy. Cowell.

**FIRE BOTE.** Allowance of wood or *estovers* to maintain competent firing for the tenant. A sufficient allowance of wood to burn in a house. 1 Washb. Real Prop. 99.

**FIREBUG.** A popular phrase referring to persons guilty of the crime of arson; commonly understood to mean an incendiary or pyromaniac. Blechner v. Kraser (Co. Ct.) 157 N. Y. S. 256.

**FIRE DAMP.** "Fire damp" consists of light carburated hydrogen, and is so called from its tendency to explode when mixed with atmospheric air and brought into contact with flame. Wells' Adm'r v. Sutherland Coal & Coke Co., 116 Va. 1003, 83 S. E. 384, 385.

**FIRE DISTRICT.** One of the districts into which a city may be (and commonly is) divided for the purpose of more efficient service by the fire department in the extinction of fires. Des Moines v. Gilchrist, 67 Iowa, 210, 25 N. W. 136. Under a statute, a territorial subdivision of the state, established to provide protection against fire within its limits, maintain street lights, etc., and, although composed of one or more towns, it is in substance a quasi municipal corporation of definitely restricted powers, and as such it may raise money by taxation for its legitimate uses. President, etc., of Williams College v. Inhabitants of Town of Williamstown, 106 N. E. 687, 688, 219 Mass. 46.

**FIRE DOOR.** A fireproof barrier for closing openings to prevent the spread of fire. People v. One Hundred and Thirty-One Boerum St. Co., 233 N. Y. 268, 135 N. E. 327, 328.

**FIRE ESCAPE.** An apparatus constructed to afford a safe and convenient method of escape from a burning building. The term includes fire ladders of such sort and location as to permit safe descent of persons caught in a building on fire, but not a balcony or an interior staircase in a hotel. West v. Spratling, 204 Ala. 478, 86 So. 32, 36.

**FIRE EXIT.** A reasonable, practicable, safe exit. *Keefe v. Annpaul Realty Co.*, 215 App. Div. 301, 213 N. Y. S. 637, 642.

**FIRE FIGHTING MACHINE.** An instrument of public utility designed and used exclusively for putting out fires; the average or normal fire-fighting machine is in all its parts essentially designed for that purpose. *American-La France Fire Engine Co. v. Rior-dan (C. C. A.)* 6 F.(2d) 964, 966.

**FIRE INSURANCE.** See Insurance.

**FIREMEN.** Those whose duty is to extinguish fires and to protect property and life therefrom. *Behr v. Soth*, 170 Minn. 278, 212 N. W. 461, 462.

**FIRE ORDEAL.** See Ordeal.

**FIRE POLICY.** A policy of fire insurance. See Insurance.

**FIRE-PROOF.** Incombustible; not in danger from the action of fire. To say of any article that it is "fire-proof" conveys no other idea than that the material out of which it is formed is incombustible. To say of a building that it is fire-proof excludes the idea that it is of wood, and necessarily implies that it is of some substance fitted for the erection of fire-proof buildings. To say of a certain portion of a building that it is fire-proof suggests a comparison between that portion and other parts of the building not so characterized, and warrants the conclusion that it is of a different material. *Hickey v. Morrell*, 102 N. Y. 459, 7 N. E. 321, 55 Am. Rep. 824. A "fire-proof safe" within an insurance policy is one which, in the judgment of prudent men in locality of property insured, is sufficient; *National Liberty Ins. Co. of America v. Sphar-ler*, 172 Ark. 715, 290 S. W. 594, 596; or one which is of the kind commonly regarded as fire-proof; *Knoxville Fire Ins. Co. v. Hird*, 4 Tex. Civ. App. 82, 23 S. W. 393.

**FIRE RAISING.** In Scotch law. The wilfully setting on fire buildings, growing or stored cereals, growing wood, or coalheughs. *Ersk. Pr.* 577. See Arson.

**FIRE WALL.** This term, as used in a municipal building code, has been held to refer to a wall that is noncombustible, and to require that such quality adhere to the openings in the wall as well as the solid wall itself. *Robenson v. Turner*, 199 Ky. 642, 251 S. W. 857, 860.

**FIRE-WOOD.** Wood suitable for fuel, not including standing or felled timber which is suitable and valuable for other purposes. *Hogan v. Hogan*, 102 Mich. 641, 61 N. W. 73.

**FIRE-WORKS.** A contrivance of inflammable and explosive materials combined of various proportions for the purpose of producing in combustion beautiful or amazing scenic effects, or to be used as a night signal on

land or sea, or for various purposes in war. Cent. Dict.

**FIRKIN.** A measure of capacity, equal to nine gallons. The word is also used to designate a weight, used for butter and cheese, of fifty-six pounds avoirdupois.

**FIRLOT.** A Scotch measure of capacity, containing two gallons and a pint. Spelman.

**FIRM.** A partnership; the group of persons constituting a partnership. The name or title under which the members of a partnership transact business. *People v. Strauss*, 97 Ill. App. 55; *Boyd v. Thompson*, 153 Pa. 82, 25 A. 769, 34 Am. St. Rep. 685; *McCosker v. Banks*, 84 Md. 292, 35 A. 935; *Dodson v. Warren Hardware Co. (Tex. Civ. App.)* 162 S. W. 952, 953; *State v. Phelps*, 171 Wis. 13, 176 N. W. 217, 219; *Lankford v. Menefee*, 45 Okl. 228, 145 P. 375, 377; *State v. Case*, 132 Md. 269, 103 A. 569, 570; *Thomas-Bonner Co. v. Hoo-ven, Owens & Rentschler Co. (D. C.)* 284 F. 377, 380.

The word is used as synonymous with partnership. The words "house," "concern," and "company" are also used in the same sense. This name is in point of law conventional, and applicable only to the persons who, on each particular occasion when the name is used, are members of the firm. A firm is usually described, in legal proceedings, as certain persons trading or carrying on business under and using the name, style, and firm of, etc. See 9 Q. B. 361; 9 M. & W. 347; 1 Chitty, Bailm. 49.

**FIRM NAME.** The name or title of a firm in business.

**FIRMA.** In old English law. The contract of lease or letting; also the rent (or farm) reserved upon a lease of lands, which was frequently payable in provisions, but sometimes in money, in which latter case it was called "*alba firma*," white rent. Spelman, Gloss.; *Cunningham, Law Dict.*

A message with the house, garden, or lands, etc., connected therewith. *Co. Litt.* 5 a; *Shepp. Touchst.* 93.

A banquet; supper; provisions for the table. *Du Cange.*

A tribute or custom paid towards entertaining the king for one night. *Domesday; Cowell.*

**FIRMA BURGII.** The right, in medieval days, to take the profits of a borough, paying for them a fixed sum to the crown or other lord of the borough. 2 *Holdsw. Hist. E. L.* 276.

**FIRMA FEODI.** In old English law. A farm or lease of a fee; a fee-farm.

**FIRMAN.** A Turkish word denoting a decree or grant of privileges, or passport to a traveler. A passport granted by the Great Mogul to captains of foreign vessels to trade within the territories over which he has jurisdiction; a permit.

**FIRMARATIO.** The right of a tenant to his lands and tenements. *Cowell.*

**FIRMARIUM.** In old records. A place in monasteries, and elsewhere, where the poor were received and supplied with food. Spelman. Hence the word "infirmiry."

**FIRMARIUS.** L. Lat. A fermor. A lessee of a term. *Firmarii* comprehend all such as hold by lease for life or lives or for year, by deed or without deed. 2 Inst. 144, 145; 1 Washb. Real Prop. 107; Sackett v. Sackett, 8 Pick. (Mass.) 312; 7 Ad. & E. 637.

**FIRMATIO.** The doe season. Also a supplying with food. Cowell.

**FIRME.** In old records. A farm.

**Firmior et potentior est operatio legis quam dispositio hominis.** The operation of the law is firmer and more powerful [or efficacious] than the disposition [or will] of man. Co. Litt. 102a.

**FIRMITAS.** In old English law. An assurance of some privilege, by deed or charter.

**FIRMLY.** A statement that an affiant "firmly believes" the contents of the affidavit imports a strong or high degree of belief, and is equivalent to saying that he "verily" believes it. Bradley v. Eccles, 1 Browne (Pa.) 258; Thompson v. White, 4 Serg. & R. (Pa.) 137. The operative words in a bond or recognizance, that the obligor is held and "firmly bound," are equivalent to an acknowledgment of indebtedness and promise to pay. Shattuck v. People, 5 Ill. 477.

**FIRMURA.** In old English law. Liberty to scour and repair a mill-dam, and carry away the soil, etc. Blount.

**FIRST.** Initial; leading; chief; preceding all others of the same kind or class in sequence, (numerical or chronological); entitled to priority or preference above others. Redman v. Railroad Co., 33 N. J. Eq. 165; Thompson v. Grand Gulf R. & B. Co., 3 How. (Miss.) 247, 34 Am. Dec. 81; Hapgood v. Brown, 102 Mass. 452.

The word commonly, but not necessarily, connotes precedence. Hill v. Prior, 79 N. H. 188, 106 A. 641; Beckley v. Alling, 91 Conn. 362, 99 A. 1034, 1035. Thus, under a contract that, if the purchaser should "first" make payment, the vendor would convey, payment was to precede the execution of the conveyance. Walker v. Hewitt, 109 Or. 366, 220 P. 147, 151, 35 A. L. R. 100. But in a will the word "first" may not import precedence of one bequest over another. Everett v. Carr, 59 Me. 330; Swasey v. American Bible Society, 57 Me. 523.

—**First blush.** By the phrase "first blush," within the rule that damages, to justify reversal, must be so great as to strike the mind at first blush as having been superinduced by passion or prejudice on the part of the jury, is meant that immediately the judicial mind is shocked and surprised at the great disproportion of the size of the verdict to what the

facts of the case would authorize. Cole & Crane v. May, 185 Ky. 135, 214 S. W. 885, 887.

—**First degree burn.** One which varies from redness to a blister, as distinguished from a "second degree burn," which occurs where the skin is charred or killed. Murphy v. Ludowici Gas & Oil Co., 96 Kan. 321, 150 P. 581, 582.

—**First devisee.** The person to whom the estate is first given by the will, the term "next devisee" referring to the person to whom the remainder is given. Young v. Robinson, 5 N. J. Law, 639; Wilcox v. Heywood, 12 R. I. 198.

—**First fruits.** In English ecclesiastical law, The first year's whole profits of every benefice or spiritual living, anciently paid by the incumbent to the pope, but afterwards transferred to the fund called "Queen Anne's Bounty," for increasing the revenue from poor livings. In feudal law. One year's profits of land which belonged to the king on the death of a tenant *in capite*; otherwise called "*primer seisin*." One of the incidents to the old feudal tenures. 2 Bl. Comm. 66, 67.

—**First heir.** The person who will be first entitled to succeed to the title to an estate after the termination of a life estate or estate for years. Winter v. Perratt, 5 Barn. & C. 48.

—**First impression.** First examination. First presentation to a court for examination or decision. A case is said to be "of the first impression" when it presents an entirely novel question of law for the decision of the court, and cannot be governed by any existing precedent.

—**First inventor.** Within the meaning of that phrase as used in the fourth paragraph of Rev. St. § 4920 (35 USCA § 69), providing that it shall be a defense to a suit for infringement that the patentee was not the original or first inventor, a person who perfects his invention, the only evidence of such perfected invention ordinarily derivable from any patent being a union of disclosure and claim. Davis-Bournonville Co. v. Alexander Milburn Co. (C. C. A.) 1 F.(2d) 227, 232.

—**First meeting.** As used in a statute providing that, for insulting words or conduct to reduce homicide to manslaughter, killing must occur immediately or at "first meeting" after slayer is informed thereof, quoted words mean first time parties are in proximity under such circumstances as would enable slayer to act in the premises. Smith v. State, 105 Tex. Cr. R. 327, 288 S. W. 458, 462.

—**First of exchange.** Where a set of bills of exchange is drawn in duplicate or triplicate, for greater safety in their transmission, all being of the same tenor, and the intention being that the acceptance and payment of any one of them (the first to arrive safely) shall cancel the others of the set, they are called

individually the "first of exchange," "second of exchange," etc. See *Bank of Pittsburgh v. Neal*, 22 How. 96, 110, 16 L. Ed. 323.

—**First policy year.** This phrase in a statute eliminating suicide of insured after such year as defense, means year for which policy, annually renewed, was first issued. *Carter v. Standard Acc. Ins. Co.*, 65 Utah, 465, 238 P. 259, 267, 41 A. L. R. 1495. The year beginning with the issuance of the policy. *American Nat. Ins. Co. v. Thompson* (Tex. Civ. App.) 186 S. W. 254, 255.

—**First purchaser.** In the law of descent, this term signifies the ancestor who first acquired (in any other manner than by inheritance) the estate which still remains in his family or descendants. *Blair v. Adams* (C. C.) 59 Fed. 247.

—**First trial.** Under a statute providing when a case at law is tried by a jury, and the successful party excepts to the granting of a new trial for insufficiency of the evidence, and the evidence is certified, the appellate court, if there have been two trials below, shall first look to the evidence and proceedings on the first trial, and, if the setting aside of the first verdict was error, all proceedings subsequent thereto shall be annulled, and judgment rendered thereon, the "first trial" means the first at which exceptions to the granting of a new trial were taken. *Chesapeake & O. Ry. Co. v. Parker's Adm'r*, 116 Va. 368, 82 S. E. 183, 187.

As to first "Cousin," "Distress," "Lien," and "Mortgage," see those titles.

**FIRST-CLASS.** Of the most superior or excellent grade or kind; belonging to the head or chief or numerically precedent of several classes into which the general subject is divided. See *Pacific Feed Co. v. Kennel*, 63 Cal. App. 108, 218 P. 274, 275.

**FIRST-CLASS MAIL-MATTER.** In the postal laws. All mailable matter containing writing and all else that is sealed against inspection.

**FIRST-CLASS MISDEMEANANT.** In English law. Under the prisons act (28 & 29 Vict. c. 126, § 67) prisoners in the county, city, and borough prisons convicted of misdemeanor, and not sentenced to hard labor, are divided into two classes, one of which is called the "first division;" and it is in the discretion of the court to order that such a prisoner be treated as a misdemeanant of the first division, usually called "first-class misdemeanant," and as such not to be deemed a criminal prisoner, *i. e.*, a prisoner convicted of a crime.

**FIRST-CLASS TITLE.** A marketable title, shown by a clean record, or at least not depending on presumptions that must be overcome or facts that are uncertain. *Vought v. Williams*, 120 N. Y. 253, 24 N. E. 195, 8 L. R. A. 591, 17 Am. St. Rep. 634.

**FISC.** A treasury of a kingdom or state; a money chest. *Daly v. Beery*, 45 N. D. 287, 178 N. W. 104, 109. An Anglicized form of the Latin "*fuscus*," (which see.)

**FISCAL.** Belonging to the fisc, or public treasury. Relating to accounts or the management of revenue. Of or pertaining to the public finances of a government. *Daly v. Beery*, 45 N. D. 287, 178 N. W. 104, 109. *Financial. Armstrong v. State Bank of Mayville*, 177 App. Div. 265, 165 N. Y. S. 5, 8.

**FISCAL AGENT.** This term does not necessarily imply a depository of the public funds, so as, by the simple use of it in a statute, without any directions in this respect, to make it the duty of the state treasurer to deposit with him any moneys in the treasury. *State v. Dubuclet*, 27 La. Ann. 29.

**FISCAL COURT.** A ministerial and executive body in some states. *Stone v. Winn*, 165 Ky. 9, 176 S. W. 933, 941.

**FISCAL JUDGE.** A public officer named in the laws of the Ripuarians and some other Germanic peoples, apparently the same as the "*Graf*," "*reeve*," "*comes*," or "*count*," and so called because charged with the collection of public revenues, either directly or by the imposition of fines. See *Spelman*, voc. "*Grafo*."

**FISCAL OFFICERS.** Those charged with the collection and distribution of public money, as, the money of a state, county, or municipal corporation. *Rev. St. Mo. 1899*, § 5333 (*Ann. St. 1906*, p. 2776).

**FISCAL YEAR.** In the administration of a state or government or of a corporation, the fiscal year is a period of twelve months (not necessarily concurrent with the calendar year) with reference to which its appropriations are made and expenditures authorized, and at the end of which its accounts are made up and the books balanced. *Shaffner v. Lipinsky*, 194 N. C. 1, 138 S. E. 418, 419. The financial year, at the end of which accounts are balanced. *Union Trust & Savings Bank v. City of Sedalia*, 300 Mo. 399, 254 S. W. 28, 30; *Leavenworth Nat. Bank v. Reilly*, 97 Kan. 817, 156 P. 747, 748. An accounting period of 12 months. *U. S. v. Mabel Elevator Co.* (D. C.) 17 F.(2d) 109, 110; *U. S. v. Carroll Chain Co.* (D. C.) 8 F.(2d) 529, 530. See, also, *Moose v. State*, 49 Ark. 499, 5 S. W. 885.

## FISCUS.

### In Roman Law

The treasury of the prince or emperor, as distinguished from "*erarium*," which was the treasury of the state. *Spelman*; *Paillet*, *Droit Public*, 21, n. This distinction was not observed in France. In course of time the *fiscus* absorbed the *erarium* and became the treasury of the state. *Gray*, *Nature and*

Sources of Law 58. See Law 10; *ff. De jure Fisci*.

The treasury or property of the state, as distinguished from the private property of the sovereign.

From this term is derived the word "confiscate," *i. e.*, to appropriate to the *fiscus* or *fisc*.

#### In English Law

The king's treasury, as the repository of forfeited property.

The treasury of a noble, or of any private person. Spelman.

**FISH.** An animal which inhabits the water, breathes by means of gills, swims by the aid of fins, and is oviparous. The term includes crabs, *State v. Savage*, 96 Or. 53, 184 P. 567, 570; scallops, *State v. Dudley*, 182 N. C. 822, 109 S. E. 63, 65; and mussels and other shellfish, *Gratz v. McKee* (C. C. A.) 258 F. 335, 336.

**FISH COMMISSIONER.** A public officer of the United States, created by act of congress of February 9, 1871, whose duties principally concern the preservation and increase throughout the country of fish suitable for food. Rev. St. § 4395 (16 USCA § 741).

**FISH POTS.** Contrivances in the nature of screens and traps, placed at the junction of low dams or walls extending out from each shore and somewhat down stream, in such a way as to collect the water and send it through the pot, so that fish may be screened out there. *Middlekauff v. Le Compte*, 149 Md. 621, 132 A. 48.

**FISH ROYAL.** These were the whale and the sturgeon, which, when thrown ashore or caught near the coast of England, became the property of the king by virtue of his prerogative and in recompense for his protecting the shore from pirates and robbers. Brown; 1 Bl. Comm. 290. *Arnold v. Mundy*, 6 N. J. Law, 86, 10 Am. Dec. 356. Some authorities include the porpoise. Hale, *De Jure Mar.* pt. 1, c. 7; Plowd. 305; Bracton, 1. 3, c. 3.

**FISHERY.** A place prepared for catching fish with nets or hooks. This is commonly applied to the place of drawing a seine or net. *Hart v. Hill*, 1 Whart. (Pa.) 131, 132.

A right or liberty of taking fish; a species of incorporeal hereditament, anciently termed "piscary," of which there are several kinds. 2 Bl. Comm. 34, 39; 3 Kent, Comm. 409-418; *Arnold v. Mundy*, 6 N. J. Law, 22, 10 Am. Dec. 356; *Gould v. James*, 6 Cow. (N. Y.) 376; *Hart v. Hill*, 1 Whart. (Pa.) 124.

#### Common Fishery

A fishing ground where all persons have a right to take fish. *Bennett v. Costar*, 8 Taunt. 183; *Albright v. Park Com'n*, 68 N. J. Law, 523, 53 A. 612. Not to be confounded with

"common of fishery," as to which see *Common, n.*

#### Fishery Laws

A series of statutes passed in England for the regulation of fishing, especially to prevent the destruction of fish during the breeding season, and of small fish, spawn, etc., and the employment of improper modes of taking fish. 3 Steph. Comm. 165.

#### Free Fishery

A franchise in the hands of a subject, existing by grant or prescription, distinct from an ownership in the soil. It is an exclusive right, and applies to a public navigable river, without any right in the soil. 3 Kent, Comm. 410. *Arnold v. Mundy*, 6 N. J. Law, 87, 10 Am. Dec. 356. See *Albright v. Sussex County Lake & Park Com'n*, 68 N. J. Law, 523, 53 A. 612; *Brookhaven v. Strong*, 60 N. Y. 64.

#### Right of Fishery

The general and common right of the citizens to take fish from public waters, such as the sea, great lakes, etc. *Shively v. Bowlby*, 152 U. S. 1, 14 S. Ct. 548, 38 L. Ed. 331.

#### Several Fishery

A fishery of which the owner is also the owner of the soil, or derives his right from the owner of the soil. 2 Bl. Comm. 39, 40; 1 Steph. Comm. 671, note. And see *Freary v. Cooke*, 14 Mass. 489; *Brookhaven v. Strong*, 60 N. Y. 64; *Holford v. Bailey*, 8 Q. B. 1018. One by which the party claiming it has the right of fishing, independently of all other, so that no person can have a coextensive right with him in the object claimed; but a partial and independent right in another, or a limited liberty, does not derogate from the right of the owner. 5 Burr. 2814.

**FISHGARTH.** A dam or weir in a river for taking fish. Cowell.

**FISHING BANKS.** A fishing ground of comparative shoal water in the sea. *Parker v. Thomson*, 21 Or. 523, 28 P. 502.

**FISHING BILL.** A term descriptive of a bill in equity which seeks a discovery upon general, loose, and vague allegations. Story, Eq. Pl. § 325; *In re Pacific Ry. Com'n* (C. C.) 32 F. 263; *Hurricane Tel. Co. v. Mohler*, 51 W. Va. 1, 41 S. E. 421; *Carroll v. Carroll*, 11 Barb. (N. Y.) 298; *Childs v. Missouri, K. & T. R. Co.* (C. C. A.) 221 F. 219, 223. A discovery, sought upon suspicion, surmise, or vague guesses. *General Film Co. v. Sampliner* (C. C. A.) 232 F. 95, 98.

Ordering one party to a suit to produce all of its books and papers for examination by the other party for evidential material to its cause is commonly known as "fishing" which is not permitted either in law or in equity. *Mobile Gas Co. v. Patterson* (D. C.) 238 F. 884, 885.

**FISK.** In Scotch law. The *fiscus* or *fisc*. The revenue of the crown. Generally used of



the personal estate of a rebel which has been forfeited to the crown. Bell.

**FISSURE VEIN.** In mining law. A vein or lode of mineralized matter filling a pre-existing fissure or crack in the earth's crust extending across the *strata* and generally extending indefinitely downward. See Crocker v. Manley, 164 Ill. 282, 45 N. E. 577, 56 Am. St. Rep. 196.

**FISTUCA, or FESTUCA.** In old English law. The rod or wand, by the delivery of which the property in land was formerly transferred in making a feoffment. Called, also, "*baculum*," "*virga*," and "*fustis*." Spelman. See Festuca.

**FISTULA.** In the civil law. A pipe for conveying water. Dig. 8, 2, 18.

**FIT.** Suitable; appropriate; conformable to a duty. Adapted to, designed, prepared. Thomas v. State, 34 Okl. Cr. 49, 244 P. 816. Proper. Hanes v. Southern Public Utilities Co., 191 N. C. 13, 131 S. E. 402, 406.

Fit for cultivation refers to that condition of soil which will enable a farmer with a reasonable amount of skill to raise regularly and annually, by tillage, grain or other staple crops. Keeran v. Griffith, 34 Cal. 581; State v. Allen, 35 N. C. 37; Barrett v. Nelson, 29 Kan. 596.

Under an Arkansas statute forbidding the making of mash, wort, or wash fit for the distillation of intoxicating liquors, "fit for" means "intended for." Neal v. State, 154 Ark. 324, 242 S. W. 578, 579; Dickerson v. State, 161 Ark. 60, 255 S. W. 873, 874; Logan v. State, 150 Ark. 486, 234 S. W. 493, 494.

**FIT, n.** In medical jurisprudence. An attack or spasm of muscular convulsions, generally attended with loss of self-control and of consciousness; particularly, such attacks occurring in epilepsy. In a more general sense, the period of an acute attack of any disease, physical or mental, as, a fit of insanity. See Gunter v. State, 83 Ala. 96, 3 So. 600. Also used in the plural, in which sense it is a layman's term for epilepsy. Westphall v. Metropolitan Life Ins. Co., 27 Cal. App. 734, 151 P. 159, 162.

**FITZ.** A Norman word, meaning "son." It is used in law and genealogy; as *Fitzherbert*, the son of Herbert; *Fitzjames*, the son of James; *Fitzroy*, the son of the king. It was originally applied to illegitimate children.

**FIVE-MILE ACT.** An act of parliament, passed in 1665, against non-conformists, whereby ministers of that body who refused to take the oath of non-resistance were prohibited from coming within five miles of any corporate town, or place where they had preached or lectured since the passing of the act of oblivion in 1660, nullified by act of 1689. Brown.

**FIX.** To liquidate or render certain. To fasten a liability upon one. To transform a possible or contingent liability into a present and definite liability. Zimmerman v. Can-

field, 42 Ohio St. 468; Polk v. Minnehaha County, 5 Dak. 129, 37 N. W. 93; Logansport & W. V. Gas Co. v. Peru (C. C.) 89 F. 187. To determine; to settle. Bunn v. Kingsbury County, 3 S. D. 87, 52 N. W. 673; In re McLure's Estate, 68 Mont. 556, 220 P. 527, 530. Ordinarily, to make permanent something that is unsettled. Kendall v. Stafford, 178 N. C. 461, 101 S. E. 15, 17. The term imports finality and stability. Culberson v. Watkins, 156 Ga. 185, 119 S. E. 319, 321; State v. Boyd Transfer & Storage Co., 168 Minn. 190, 209 N. W. 872, 874; Youngblood v. State, 19 Ala. App. 561, 100 So. 87, 88.

A constitutional provision to the effect that the general assembly shall fix the compensation of officers, means that it shall prescribe the rule by which such compensation is to be determined. Goodin v. State, 18 Ohio, 9.

**FIX UP.** A promise by a debtor to visit his creditor and "fix it up" with him was not a sufficient promise to pay to toll the statute of limitations, as the expression "fix it" would ordinarily be understood as meaning "make some kind of agreement or adjustment that may dispose of it." Shaw v. Bubier, 119 Me. 83, 109 A. 373, 374.

**FIXED.** In a charter entered into by the captain of a ship, containing the condition, "Provided ship not fixed previously," "fixed" was equivalent to "tied up," "closed," "not free." Richichi v. James B. Drake & Sons (D. C.) 280 F. 421, 424.

**FIXED BELIEF OR OPINION.** As ground for rejecting a juror, this phrase means a settled belief or opinion which would so strongly influence the mind of the juror and his decision in the case that he could not exclude it from his mind and render a verdict solely in accordance with the law and the evidence. Bales v. State, 63 Ala. 30; Curley v. Com., 84 Pa. 156; Staup v. Com., 74 Pa. 461.

**FIXED SALARY.** One which is definitely ascertained and prescribed as to amount and time of payment, and does not depend upon the receipt of fees or other contingent emoluments; not necessarily a salary which cannot be changed by competent authority. Sharpe v. Robertson, 5 Grat. (Va.) 518; Hedrick v. U. S., 16 Ct. Cl. 101. In a constitutional provision that certain officers shall be paid fixed and definite salaries, "fixed" means established or settled, to remain for a time, and "definite" relates to a salary defined or determined in amount. Board of Sup'rs of Yavapai County v. Stephens, 20 Ariz. 115, 177 P. 261, 262.

**FIXING BAIL.** In practice. Rendering absolute the liability of special bail.

**FIXTURE.** A personal chattel substantially affixed to the land, but which may afterwards be lawfully removed therefrom by the party affixing it, or his representative, without the

consent of the owner of the freehold. *Cook v. Whiting*, 16 Ill. 480; *Teaff v. Hewitt*, 1 Ohio St. 511, 59 Am. Dec. 634; *Baker v. Davis*, 19 N. H. 333; *Capen v. Peckham*, 35 Conn. 88; *Wolford v. Baxter*, 33 Minn. 12, 21 N. W. 744, 53 Am. Rep. 1; *Merritt v. Judd*, 14 Cal. 64; *Adams v. Lee*, 31 Mich. 440; *Prescott v. Wells, Fargo & Co.*, 3 Nev. 82; *Hallen v. Runder*, 1 Cromp., M. & R. 266.

A fixture is an article of personal or chattel nature affixed to the freehold by a tenant and removable by him if it can be taken away without material injury to the realty. *Boise Ass'n of Credit Men v. Ellis*, 26 Idaho, 438, 144 P. 6, 9, L. R. A. 1915E, 917.

A "fixture" formerly meant any chattel which on becoming affixed to the soil became a part of the realty. It now means those things which formed an exception to that rule and can be removed by the person who affixed them to the soil. L. R. A. 4 Ex. 328.

"Fixtures" does not necessarily import things affixed to the freehold. The word is a modern one, and is generally understood to comprehend any article which a tenant has the power to remove. *Sheen v. Rickle*, 5 Mees. & W. 174; *Rogers v. Glinger*, 30 Pa. 185, 189, 72 Am. Dec. 694.

Chattels which, by being physically annexed or affixed to real estate, become a part of and accessory to the freehold, and ordinarily the property of the owner of the land. *Hill*; *Atlantic Refining Co. v. Feinberg*, 1 W. W. Harr. (Del.) 183, 112 A. 685, 687; *Red Diamond Clothing Co. v. Steidemann*, 169 Mo. App. 306, 152 S. W. 609, 617.

Things fixed or affixed to other things. The rule of law regarding them is that which is expressed in the maxim, "*accessio cedit principali*," "the accessory goes with, and as part of, the principal subject-matter." Brown.

"Fixtures" are chattels annexed to realty so as to become part thereof. *Holy Ghost Catholic Church of Two Harbors v. Clinton*, 169 Minn. 253, 211 N. W. 13, 15; *Earle v. Kelly*, 21 Cal. App. 480, 132 P. 262, 263; *Inhabitants of Whiting v. Inhabitants of Lubec*, 121 Me. 121, 115 A. 896, 899; *Ochs v. Tilton*, 181 Ind. 81, 103 N. E. 837, 838; *Hurst v. J. D. Craig Furniture Co.*, 95 S. C. 221, 78 S. E. 960, 962; *Kent Storage Co. v. Grand Rapids Lumber Co.*, 239 Mich. 161, 214 N. W. 111, 112.

Personal property is not so attached to realty as to become a fixture if it can be removed without material injury to the property or to the freehold. *Maxson v. Ashland Iron Works*, 85 Or. 345, 166 P. 37, 39.

A thing is deemed to be affixed to land when it is attached to it by roots, as in the case of trees, vines, or shrubs; or imbedded in it, as in the case of walls; or permanently resting upon it, as in the case of buildings; or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts, or screws. *Civ. Code Cal.* § 660; *Big Sespe Oil Co. v. Cochran* (C. C. A.) 276 F. 216, 225.

Personal property, in order to lose its character as a chattel and become a fixture, must be annexed to the realty, either actually or constructively, must be appropriated to the use of that part of the realty with which it is connected, and must be intended as a permanent accession to the freehold. *Boise-Payette Lumber Co. v. McCornick*, 32 Idaho, 462,

186 P. 262; *Hutton v. Kansas City, C. & S. R. Co.*, 253 Mo. 660, 162 S. W. 227, 233; *De Charette's Guardian v. Bank of Shelbyville*, 218 Ky. 691, 291 S. W. 1054, 1057; *Patterson v. Chaney*, 24 N. M. 156, 173 P. 859, 860, 6 A. L. R. 90; *Snuffer v. Spangler*, 79 W. Va. 628, 92 S. E. 106, 109, L. R. A. 1918E, 149; *Binkley v. Forkner*, 117 Ind. 176, 19 N. E. 753, 3 L. R. A. 33; *Atchison, T. & S. F. R. Co. v. Morgan*, 42 Kan. 23, 21 P. 899, 4 L. R. A. 284, 16 Am. St. Rep. 471.

That which is fixed or attached to something permanently as an appendage, and not removable. Webster. Something fixed or immovable. Worcester.

The general result seems to be that three views have been taken. One is that "fixture" means something which has been affixed to the realty, so as to become a part of it; it is fixed, irremovable. An opposite view is that "fixture" means something which appears to be a part of the realty, but is not fully so; it is only a chattel fixed to it, but removable. An intermediate view is that "fixture" means a chattel annexed, affixed, to the realty, but imports nothing as to whether it is removable; that is to be determined by considering its circumstances and the relation of the parties. *Abbott*; *New Castle Theater Co. v. Ward*, 57 Ind. App. 473, 104 N. E. 526, 527. See, also, *Review Printing Co. v. Hartford Fire Ins. Co.*, 133 Minn. 213, 158 N. W. 39, 40.

#### Agricultural Fixtures

Those annexed for the purpose of farming. *In re Shelar* (U. S. D. C.) 21 F.(2d) 136, 138.

#### Domestic Fixtures

All such articles as a tenant attaches to a dwelling house in order to render his occupation more comfortable or convenient, and which may be separated from it without doing substantial injury, such as furnaces, stoves, cupboards, shelves, bells, gas fixtures, or things merely ornamental, as painted wainscots, pier and chimney glasses, although attached to the walls with screws, marble chimney pieces, grates, beds nailed to the walls, window blinds and curtains. *Wright v. Du Bignon*, 114 Ga. 765, 40 S. E. 747, 57 L. R. A. 669.

#### Trade Fixtures

Articles placed in or attached to rented buildings by the tenant, to prosecute the trade or business for which he occupies the premises, or to be used in connection with such business, or promote convenience and efficiency in conducting it. *Herkimer County L. & P. Co. v. Johnson*, 37 App. Div. 257, 55 N. Y. Supp. 924; *Brown v. Reno Electric L. & P. Co.* (C. C.) 55 Fed. 231; *Security L. & T. Co. v. Willamette, etc., Mfg. Co.*, 99 Cal. 636, 34 Pac. 321; *In re West* (D. C.) 253 F. 963, 966; *Winnike v. Heyman*, 185 Iowa, 114, 169 N. W. 631, 632; *Northwestern Lumber & Wrecking Co. v. Parker*, 125 Minn. 107, 145 N. W. 964, 965. Such chattels as merchants usually possess and annex to the premises occupied by them to enable them to store, handle, and display their goods, which are generally removable without material injury to the premises. *Lovett v. Birmingham-*

Seaman-Patrick Co., 192 Mich. 372, 158 N. W. 881, 883.

**FLACO.** A place covered with standing water.

**FLAG.** A national standard on which are certain emblems; an ensign; a banner. It is carried by soldiers, ships, etc., and commonly displayed at forts and many other suitable places.

In common parlance, the word "flag," when used as denoting a signal, does not necessarily mean the actual use of a flag, but by figure of speech the word is used in the secondary sense and signifies a signal given as with a flag, that is to say, as by a waving of the hand for the purpose of communicating information. *Bergfeld v. Kansas City Rys. Co.*, 285 Mo. 654, 227 S. W. 106, 110.

—**Flag, duty of the.** This was an ancient ceremony in acknowledgment of British sovereignty over the British seas, by which a foreign vessel struck her flag and lowered her top-sail on meeting the British flag.

—**Flag of the United States.** By the act entitled "An act to establish the flag of the United States," (Rev. St. §§ 1791, 1792 [4 USCA §§ 1, 2]), it is provided "that, from and after the fourth day of July next, the flag of the United States be thirteen horizontal stripes, alternate red and white; that the union be twenty stars, white in a blue field; that, on the admission of every new state into the Union, one star be added to the union of the flag; and that such addition shall take effect on the fourth day of July then next succeeding such admission."

—**Flag of truce.** A white flag displayed by one of two belligerent parties to notify the other party that communication and a cessation of hostilities are desired.

—**Law of the flag.** See Law.

**FLAGELLAT.** Whipped; scourged. An entry on old Scotch records. 1 Pitc. Crim. Tr. pt. 1, p. 7.

**FLAGRANS.** Lat. Burning; raging; in actual perpetration.

—**Flagrans bellum.** A war actually going on.

—**Flagrans crimen.** In Roman law. A fresh or recent crime. This term designated a crime in the very act of its commission, or while it was of recent occurrence.

—**Flagrante bello.** During an actual state of war.

—**Flagrante delicto.** In the very act of committing the crime. 4 Bl. Comm. 307.

**FLAGRANT DÉLIT.** In French law. A crime which is in actual process of perpetration or which has just been committed. Code d'Instr. Crim. art. 41.

**FLAGRANT NECESSITY.** A case of urgency rendering lawful an otherwise illegal act, as an assault to remove a man from impending danger.

**FLAGRANTLY AGAINST EVIDENCE.** So much against weight of evidence as to shock conscience and clearly indicate passion and prejudice of jury. *Smith v. Commonwealth*, 216 Ky. 813, 288 S. W. 752, 754.

**FLASH CHECK.** A check drawn upon a banker by a person who has no funds at the banker's and knows that such is the case.

**FLAT.** A place covered with water too shallow for navigation with vessels ordinarily used for commercial purposes. The space between high and low water mark along the edge of an arm of the sea, bay, tidal river, etc. *Thomas v. Hatch*, 23 Fed. Cas. 946; *Church v. Meeker*, 34 Conn. 424; *Jones v. Janney*, 8 Watts & S. (Pa.) 443, 42 Am. Dec. 309.

A floor or separate division of a floor, fitted for housekeeping and designed to be occupied by a single family. Cent. Dict. A building, the various floors of which are fitted up as flats, either residential or business.

**FLATTERY.** False or excessive praise, insincere complimentary language or conduct. *Smith v. State*, 13 Ala. App. 399, 69 So. 402, 404.

**FLAVIANUM JUS.** In Roman law. The title of a book containing the forms of actions, published by Cneius Flavius, A. U. C. 449. *Mackeld. Rom. Law*, § 39. Calvin.

**FLECTA.** A feathered or fleet arrow. Cowell.

**FLEDWITE.** A discharge or freedom from amercements where one, having been an outlawed fugitive, cometh to the place of our lord of his own accord. *Termes de la Ley*.

The liberty to hold court and take up the amercements for beating and striking. Cowell.

The fine set on a fugitive as the price of obtaining the king's freedom. *Spelman*.

**FLEE FROM JUSTICE.** To leave one's home, residence, or known place of abode, or to conceal one's self therein, with intent, in either case, to avoid detection or punishment for some public offense. *Streep v. U. S.*, 160 U. S. 128, 16 Sup. Ct. 244, 40 L. Ed. 365; *Lay v. State*, 42 Ark. 110; *U. S. v. O'Brian*, 3 Dill. 381, Fed. Cas. No. 15,908; *United States v. Smith*, 4 Day (Conn.) 125, Fed. Cas. No. 16,332; *State v. Washburn*, 48 Mo. 241; *Ex parte Austin*, 129 Miss. 869, 93 So. 369; *Ferebee v. U. S. (C. C. A.)* 295 F. 850, 851.

**FLEE TO THE WALL.** A metaphorical expression, used in connection with homicide done in self-defense, signifying the exhaustion of every possible means of escape, or of averting the assault, before killing the assailant.

**FLEET.** A place where the tide flows; a creek, or inlet of water; a company of ships or navy; a prison in London (so called from a river or ditch formerly in its vicinity,) now abolished by 5 & 6 Vict. c. 22.

**FLEM.** In Saxon and old English law. A fugitive bondman or villein. Spelman.

The privilege of having the goods and fines of fugitives.

**FLEMENE FRIT, FLEMENES FRINTHE, or FLYMENA FRYNTHE.** (A corrupt pseudo-archaic form is *flemens-firth*, representing the old law Latin form, *flemenafirth*, of the Anglo-Saxon *flyman fyrmth* or *flymena fyrmth*. Cent. Dict.) The reception or relief of a fugitive or outlaw. Jacob.

**FLEMESWITE.** The possession of the goods of fugitives. Fleta, lib. 1, c. 147.

**FLET.** In Saxon law. Land; a house; home.

**FLETA.** The name given to an ancient treatise on the laws of England, founded mainly upon the writings of Bracton and Glanville, and supposed to have been written in the time of Edw. I. The author is unknown, but it is surmised that he was a judge or learned lawyer who was at that time confined in the Fleet prison, whence the name of the book.

**Flichwite.** In Saxon law. A fine on account of brawls and quarrels. Spelman.

**FLIGHT.** In criminal law. The act of one under accusation, who evades the law by voluntarily withdrawing himself. It is presumptive evidence of guilt. U. S. v. Candler (D. C.) 65 Fed. 312; State v. Pettit, 74 Wash. 510, 133 P. 1014, 1019; Wettengel v. State, 30 Okl. Cr. 388, 236 P. 626, 627; Goforth v. State, 183 Ala. 66, 63 So. 8; People v. Rischo, 262 Ill. 596, 105 N. E. 8, 11; State v. Turnage, 107 S. C. 478, 93 S. E. 182; Gilbert v. State, 20 Ala. App. 28, 100 So. 566, 568; State v. Silvey (Mo. Sup.) 296 S. W. 128, 131.

**FLOAT.** In American land law, especially in the western states. A certificate authorizing the entry, by the holder, of a certain quantity of land not yet specifically selected or located. U. S. v. Central Pac. R. Co. (C. C.) 26 Fed. 480; Hays v. Steiger, 76 Cal. 555, 18 Pac. 670; Wisconsin Cent. R. Co. v. Price County, 133 U. S. 496, 10 Sup. Ct. 341, 33 L. Ed. 687.

**FLOATABLE.** Used for floating. A floatable stream is a stream used for floating logs, rafts, etc. Gerrish v. Brown, 51 Me. 260, 81 Am. Dec. 569; Gaston v. Mace, 33 W. Va. 14, 10 S. E. 60, 5 L. R. A. 392, 25 Am. St. Rep. 848; Parker v. Hastings, 123 N. C. 671, 31 S. E. 833; Burner v. Nutter, 77 W. Va. 256, 87 S. E. 359, 361; Fortson Shingle Co. v. Skagland, 77 Wash. 8, 137 P. 304, 305.

**FLOATING BOG.** A mass of grass reeds or other aquatic vegetation growing and floating on the water which may become frozen into the ice in winter, and in high water is carried on the surface and broken off and may be moved by winds and currents to deep waters, where it disappears as sediment, and its formation in the summer season indicates a substantial amount of water between it and the soil forming the bed of the water, which may be navigable. Attorney General v. Bay Boom Wild Rice & Fur Farm, 172 Wis. 363, 178 N. W. 569, 572.

**FLOATING CAPITAL** (or circulating capital). The capital which is consumed at each operation of production and reappears transformed into new products. At each sale of these products the capital is represented in cash, and it is from its transformations that profit is derived. Floating capital includes raw materials destined for fabrication, such as wool and flax, products in the warehouses of manufacturers or merchants, such as cloth and linen, and money for wages, and stores. De Laveleye, Pol. Ec.

Capital retained for the purpose of meeting current expenditure.

**FLOATING DEBT.** By this term is meant that mass of lawful and valid claims against the corporation for the payment of which there is no money in the corporate treasury specifically designed, nor any taxation nor other means of providing money to pay particularly provided. People v. Wood, 71 N. Y. 374; City of Huron v. Second Ward Sav. Bank, 30 C. C. A. 38, 86 F. 276, 49 L. R. A. 534.

Debt not in the form of bonds or stocks bearing regular interest. Pub. St. Mass. 1882, p. 1290. State v. Faran, 24 Ohio St. 541; People v. Carpenter, 31 App. Div. 603, 52 N. Y. S. 781.

**FLOATING POLICY.** A floating policy is one intended to supplement specific insurance, and attaches only when the latter ceases to cover the risk, the reason for the creation and the purpose of such policy being to provide indemnity for property which cannot, because of its frequent change in location and quantity, be covered by specific insurance, and by its terms it cannot become operative until the prior insurance has been exhausted. Wilson Co. v. Hartford Fire Ins. Co., 300 Mo. 1, 254 S. W. 266, 282.

**FLODE-MARK.** Flood-mark, high-water mark. The mark which the sea, at flowing water and highest tide, makes on the shore. Blount.

**FLOGGING.** Thrashing or beating with a whip or lash. In America, the act of June 4, 1920, c. 227, subchapter II, § 1, 41 Stat. 795 (10 USCA § 1512) prohibits, as to the army, "cruel and unusual punishments of every kind, including flogging." Flogging is like-

wise prohibited in the navy. See 34-USCA § 1200, art. 49.

**FLOOD.** An inundation of water over land not usually covered by it. Such an accident is an Act of God. *McHenry v. R. Co.*, 4 Harr. (Del.) 449. See Act of God. Of variable meaning. *City of Tulsa v. Grier*, 114 Okl. 93, 243 P. 753, 757.

#### Ordinary and Extraordinary Floods

Extraordinary or unprecedented floods are floods which are of such unusual occurrence that they could not have been foreseen by men of ordinary experience and prudence. Ordinary floods are those, the occurrence of which may be reasonably anticipated from the general experience of men residing in the region, where such floods happen. *Soules v. Northern Pac. Ry. Co.*, 34 N. D. 7, 157 N. W. 823, 830, L. R. A. 1917A, 501; *Eikland v. Casey* (C. C. A.) 12 A. L. R. 179, 266 F. 821, 823; *Clements v. Phenix Utility Co.*, 119 Kan. 190, 237 P. 1062, 1065.

**FLOOD WATERS.** Waters escaping from a natural water course in time of flood or overflow. Where a stream coming out of the mouth of a canyon has left a cone of detritus and flows down one side thereof, but in a time of high water it breaks out of its channel to flow down the other slope of the cone, such waters are "flood waters" running wild, and any property owner threatened thereby has the right to protect himself against them as best he can, the waters not being "surface waters" in the technical sense, it being immaterial that the escaping waters have made for themselves a channel or follow some natural channel, gully, or depression to come to defendant property owner, who has protected himself against them, as a stream, instead of spreading out over the ground. *Horton v. Goodenough*, 184 Cal. 451, 194 P. 34, 35; *Mott v. Boyd*, 116 Tex. 82, 236 S. W. 458, 468; *Seufert v. Cook*, 74 Cal. App. 528, 241 P. 418, 420; *Texas Co. v. Burkett*, 117 Tex. 16, 296 S. W. 273, 276; *Thomson v. La Fetra*, 180 Cal. 771, 183 P. 152; *Herminghaus v. Southern California Edison Co.*, 200 Cal. 81, 252 P. 607, 610.

**FLOOR.** A section of a building between horizontal planes. *Lowell v. Strahan*, 145 Mass. 1, 12 N. E. 401, 1 Am. St. Rep. 422. A story, including outer walls. *Leominster Fuel Co. v. Scanlon*, 243 Mass. 126, 137 N. E. 271, 24 A. L. R. 1459. The word "floor" may mean the mere bottom plane of an inclosure or artificial structure, the surface on which we walk, ride, or travel, or it may mean such surface or plane, together with the timbers, framework, and materials which enter into and form part of its construction. So of the word "flooring." If used without reference to a structure in its completed form, it would ordinarily convey the idea of materials suitable for use in constructing a floor, or in a nar-

rower sense the boards or planks for covering the framework of a floor. When used with reference to a completed structure, it may mean either the materials of which the floor is composed, or the completed floor structure. When not attempting to speak with technical exactness, the words "floor" and "flooring" may be, and often are, used as synonymous or interchangeable terms. *Cedar Rapids & M. C. R. Co. v. City of Cedar Rapids*, 173 Iowa, 386, 155 N. W. 842; *Missouri Pac. R. Co. v. Holt* (C. C. A.) 293 F. 153, 157.

A term used metaphorically, in parliamentary practice, to denote the exclusive right to address the body in session. A member who has been recognized by the chairman, and who is in order, is said to "have the floor," until his remarks are concluded. Similarly, the "floor of the house" means the main part of the hall where the members sit, as distinguished from the galleries, or from the corridors or lobbies.

In England, the floor of a court is that part between the judge's bench and the front row of counsel. Litigants appearing in person, in the high court or court of appeal, are supposed to address the court from the floor.

**FLORENTINE PANDECTS.** A copy of the Pandects discovered accidentally about the year 1137, at Amalphi, a town in Italy, near Salerno. From Amalphi, the copy found its way to Pisa, and, Pisa having submitted to the Florentines in 1406, the copy was removed in great triumph to Florence. By direction of the magistrates of the town, it was immediately bound in a superb manner, and deposited in a costly chest. Formerly, these Pandects were shown only by torch-light, in the presence of two magistrates, and two Cistercian monks, with their heads uncovered. They have been successively collated by Politian, Bolognini, and Antonius Augustinus. An exact copy of them was published in 1553 by Franciscus Taurellus. For its accuracy and beauty, this edition ranks high among the ornaments of the press. Brenchman, who collated the manuscript about 1710, refers it to the sixth century. *Butl. Hor. Jur.* 90, 91.

**FLORIN.** A coin originally made at Florence, now of the value of about two English shillings.

**FLOTAGES.** Such things as by accident float on the top of great rivers or the sea. *Blount.*

A commission paid to water bailiffs. *Cun. Dict.*

**FLOTSAM, FLOTSAN.** A name for the goods which float upon the sea when cast overboard for the safety of the ship, or when a ship is sunk. Distinguished from "jetsam" and "ligan." *Bract. lib. 2, c. 5; 5 Coke, 106; 1 Bl. Comm. 292.*

**FLOOD-MARKE.** In old English law, High-water mark; flood-mark. *1 And. 88, 89.*

**FLOURISH.** The act of brandishing or waving; a swinging or whirling movement as flourish of a whip or sword; to fling or whirl about while holding in the hand, brandish, flaunt, as, he flourished his whip. *State v. Boyles*, 24 N. M. 464, 174 P. 423.

**FLOWAGE.** The natural flow or movement of water from an upper estate to a lower one is a servitude which the owner of the latter must bear, though the flowage be not in a natural water course with well defined banks; *Leidlein v. Meyer*, 95 Mich. 586, 55 N. W. 367; *Ogburn v. Connor*, 46 Cal. 346, 13 Am. Rep. 213; *Gray v. McWilliams*, 98 Cal. 157, 32 P. 976, 21 L. R. A. 593, 35 Am. St. Rep. 163.

**FLOWING.** Movement, as if in a current or stream. *Homer Brooke Glass Co. v. Hartford-Fairmont Co.* (C. C. A.) 262 F. 427, 431.

**FLOWING LANDS.** This term has acquired a definite and specific meaning in law. It commonly imports raising and setting back water on another's land, by a dam placed across a stream or water course which is the natural drain and outlet for surplus water on such land. *Call v. Middlesex County Com'rs*, 2 Gray (Mass.) 235.

**FLUCTUS.** Flood; flood-tide. *Bract. fol.* 255.

**FLUME.** Primarily, a stream or river, but usually used to designate an artificial channel applied to some definite use, and may mean either an open or a covered aqueduct. *Talbot v. Joseph*, 79 Or. 308, 155 P. 184, 186.

#### FLUMEN.

##### In Roman Law

A servitude which consists in the right to conduct the rain-water, collected from the roof and carried off by the gutters, onto the house or ground of one's neighbor. *Mackeld. Rom. Law*, § 317; *Ersk. Inst.* 2, 9, 9. Also a river or stream.

##### In Old English Law

Flood; flood-tide.

*Flumina et portus publica sunt, ideoque jus piscandi omnibus commune est.* Rivers and ports are public. Therefore the right of fishing there is common to all. *Day. Ir. K. B.* 55; *Branch, Princ.*

**FLUMINÆ VOLUCRES.** Wild fowl; water-fowl. 11 East, 571, note.

**FLUVIUS.** Lat. A river; a public river; flood; flood-tide.

**FLUXUS.** In old English law. Flow. *Per fluxum et refluxum maris*, by the flow and reflow of the sea. *Dal. pl.* 10.

**FLY FOR IT.** Anciently, it was the custom in a criminal trial to inquire after a verdict, "Did he fly for it?" After the verdict, even if not guilty, forfeiture of goods followed con-

viction upon such inquiry. Abolished by 7 & 8 Geo. IV. c. 28. *Wharton.*

**FLYING SWITCH.** In railroading, a flying switch is made by uncoupling the cars from the engine while in motion, and throwing the cars onto the side track, by turning the switch, after the engine has passed it upon the main track. *Greenleaf v. Illinois Cent. R. Co.*, 29 Iowa, 39, 4 Am. Rep. 181; *Baker v. Railroad Co.*, 122 Mo. 533, 26 S. W. 20; *Hanson v. Chicago, M. & St. P. R. Co.*, 157 Wis. 455, 146 N. W. 524, 525.

**FLYMA.** In old English law. A runaway; fugitive; one escaped from justice, or who has no "hlaford."

**FLYMAN-FRYMTH.** See *Flemene Frit.*

**FLY-POWER.** A "fly-power" is a written assignment in blank, whereby, on being attached to a stock certificate, the stock may be transferred. *Carlisle v. Norris*, 215 N. Y. 400, 109 N. E. 564, 565, *Ann. Cas.* 1917A, 429; *Carlisle v. Norris*, 157 App. Div. 313, 142 N. Y. S. 393, 396.

**FOAL, v.** To bring forth young; said of animals of the horse family. *O'Rear v. Richardson*, 17 Ala. App. 87, 81 So. 865, 866.

**FOCAGE.** House-bote; fire-bote. *Cowell.*

**FOCALE.** In old English law. Firewood. The right of taking wood for the fire. *Fire-bote. Cunningham.*

**FODDER.** Food for horses or cattle. In feudal law, the term also denoted a prerogative of the prince to be provided with corn, etc., for his horses by his subjects in his wars.

**FODERTORIUM.** Provisions to be paid by custom to the royal purveyors. *Cowell.*

**FODERUM.** See *Fodder.*

**FODINA.** A mine. *Co. Litt.* 6a.

**FÆDUS.** In international law. A treaty; a league; a compact.

**FÆMINA VIRO CO-OPERTA.** A married woman; a *feme covert.*

*Fœminæ ab omnibus officiis civilibus vel publicis remotæ sunt.* Women are excluded from all civil and public charges or offices. *Dig.* 50, 17, 2; 1 *Exch.* 645; 6 *Mees. & W.* 216.

*Fœminæ non sunt capaces de publicis officiis.* *Jenk. Cent.* 237. Women are not admissible to public offices.

**FÆNERATION.** Lending money at interest; the act of putting out money to usury.

**FÆNUS.** Lat. In the civil law. Interest on money; the lending of money on interest.

**FÆNUS NAUTICUM.** Nautical or maritime interest. An extraordinary rate of interest

agreed to be paid for the loan of money on the hazard of a voyage; sometimes called "*usura maritima*." Dig. 22, 2; Code, 4, 33; 2 Bl. Comm. 458. The extraordinary rate of interest, proportioned to the risk, demanded by a person, lending money on a ship, or on "bot-tomry," as it is termed. The agreement for such a rate of interest is also called "*fœnus nauticum*." (2 Bl. Comm. 458; 2 Steph. Comm. 93.) Mozley & Whitley.

**FÆNUS UNCIARIUM.** Interest of one-twelfth, that is, interest amounting annually to one-twelfth of the principal, hence at the rate of eight and one-third per cent. per annum. This was the highest legal rate of interest in the early times of the Roman republic. See Mackeld. Rom. Law, § 382.

**FÆSA.** In old records. Grass; herbage. 2 Mon. Angl. 906b; Cowell.

**FÆTICIDE.** See Feticide.

**FÆTURA.** In the civil law. The produce of animals, and the fruit of other property, which are acquired to the owner of such animals and property by virtue of his right. Bowyer, Mod. Civil Law, c. 14, p. 81.

**FÆTUS.** In medical jurisprudence. An unborn child. An infant *in ventre sa mère*.

**FOG.** In maritime law. Any atmospheric condition (including not only fog properly so called, but also mist or falling snow) which thickens the air, obstructs the view, and so increases the perils of navigation. Flint & P. M. R. Co. v. Marine Ins. Co. (C. C.) 71 F. 210; Dolner v. The Monticello, 7 Fed. Cas. 859.

**FOGAGIUM.** In old English law. Foggage or fog; a kind of rank grass of late growth, and not eaten in summer. Spelman; Cowell.

**FOI.** In French feudal law. Faith; fealty. Guyot, Inst. Feod. c. 2.

**FOINESUN.** In old English law. The fawn-ing of deer. Spelman.

**FOIRFAULT.** In old Scotch law. To forfeit. 1 How. State Tr. 927.

**FOIRTHOCHT.** In old Scotch law. Forethought; premeditated. 1 Pitt. Crim. Tr. pt. 1, p. 90.

**FOITERERS.** Vagabonds. Blount.

**FOLC-GEMOTE** (spelled, also, *folkmote*, *fol-mote*, *folkgemote*; from *folc*, people, and *gemote*, an assembly). In Saxon law. A general assembly of the people in a town or shire. It appears to have had judicial functions of a limited nature, and also to have discharged political offices, such as deliberating upon the affairs of the commonwealth or complaining of misgovernment, and probably possessed considerable powers of local self-

government. The name was also given to any sort of a popular assembly. See Spelman; Manwood; Cunningham.

**FOLC-LAND.** In Saxon law. Land of the folk or people. Land belonging to the people or the public.

Folc-land was the property of the community. It might be occupied in common, or possessed in severalty; and, in the latter case, it was probably parceled out to individuals in the folc-gemote or court of the district, and the grant sanctioned by the free-men who were there present. But, while it continued to be folc-land, it could not be alienated in perpetuity; and therefore, on the expiration of the term for which it had been granted, it reverted to the community, and was again distributed by the same authority. It was subject to many burdens and exactions from which boc-land was exempt. Wharton.

**FOLC-MOTE.** A general assembly of the people, under the Saxons. See Folc-Gemote.

**FOLC-RIGHT.** The common right of all the people. 1 Bl. Comm. 65, 67.

The *jus commune*, or common law, mentioned in the laws of King Edward the Elder, declaring the same equal right, law, or justice to be due to persons of all degrees. Wharton.

**FOLD-COURSE.** In English law. Land to which the sole right of folding the cattle of others is appurtenant. Sometimes it means merely such right of folding. The right of folding on another's land, which is called "common foldage." Co. Litt. 6a, note 1.

**FOLD-SOKE.** A feudal service which consisted in the obligation of the tenant not to have a fold of his own but to have his sheep lie in the lord's fold. He was said to be *consuetus ad foldam*, tied to his lord's fold. The basis of this service is thus expressed by a recent writer: "It is manure that the lord wants; the demand for manure has played a large part in the history of the human race." Maitland, Domesday Book 76. In East Anglia the peasants had sheep enough to make this an important social institution; *id.* 442.

**FOLDAGE.** A privilege possessed in some places by the lord of a manor, which consists in the right of having his tenant's sheep to feed on his fields, so as to manure the land. The name of foldage is also given in parts of Norfolk to the customary fee paid to the lord for exemption at certain times from this duty. Elton, Com. 45, 46.

**FOLGARIII.** Menial servants; followers. Bract.

**FOLGERE.** In old English law. A freeman, who has no house or dwelling of his own, but is the follower or retainer of another, (*heorthfæst*), for whom he performs certain predial services.

**FOLGERS.** Menial servants or followers. Cowell.

**FOLGOTH.** Official dignity.

**FOLIE BRIGHTIQUE.** See *Insanity*.

**FOLIE CIRCULAIRE.** See *Insanity*.

**FOLIO.** A leaf. In the ancient lawbooks it was the custom to number the leaves, instead of the pages; hence a folio would include both sides of the leaf, or two pages. The references to these books are made by the number of the folio, the letters "a" and "b" being added to show which of the two pages is intended; thus "Bracton, fol. 100a."

A large size of book, the page being obtained by folding the sheet of paper once only in the binding. Many of the ancient lawbooks are folios.

In computing the length of written legal documents, the term "folio" denotes a certain number of words, fixed by statute in some states at one hundred.

The term "folio," when used as a measure for computing fees or compensation, or in any legal proceedings, means one hundred words, counting every figure necessarily used as a word; and any portion of a folio, when in the whole draft or figure there is not a complete folio, and when there is any excess over the last folio, shall be computed as a folio. Gen. St. Minn. 1873, c. 4, § 1, par. 4 (Minn. St. 1927, § 10933).

**FOLK-LAND; FOLK-MOTE.** See *Folk-Land*; *Folk-Gemote*.

**FOLLOW.** To conform to, comply with, or be fixed or determined by; as in the expressions "costs follow the event of the suit," "the *situs* of personal property follows that of the owner," "the offspring follows the mother," (*partus sequitur ventrem*).

To walk in, to attend upon closely, as a profession or calling. *Spears v. Ford*, 197 Ky. 575, 247 S. W. 713.

**FONDS ET BIENS.** Fr. In French law. Goods and effects. *Adams v. Akerlund*, 168 Ill. 632, 48 N. E. 454.

The French words "fonds et biens," translated as "goods and effects," include realty, as they appear in the following terms of a treaty between the United States and Sweden: "The subjects of the contracting parties in the respective states may freely dispose of their goods and effects, either by testament, donation, or otherwise, in favor of such persons as they think proper; and their heirs, in whatever place they shall reside, shall receive the succession even ab intestato, either in person or by their attorney." 8 U. S. St. at Large, p. 64, art. 6. *Erickson v. Carlson*, 95 Neb. 182, 145 N. W. 352.

**FONDS PERDUS.** In French law. A capital is said to be invested *à fonds perdus* when it is stipulated that in consideration of the payment of an amount as interest, higher than the normal rate, the lender shall be repaid his capital in this manner. The borrower, after paying the interest during the period determined, is free as regards the capital itself. Arg. Fr. Merc. Law, 560.

**FONSADERA.** In Spanish law. Any tribute or loan granted to the king for the purpose of enabling him to defray the expenses of a war.

**FONTANA.** A fountain or spring. Bract. fol. 233.

**FOOT.** A measure of length containing twelve inches or one-third of a yard.

The base, bottom, or foundation of anything; and, by metonymy, the end or termination; as the foot of a fine.

The terminal part of the leg. *Reno v. Holmes*, 238 Mich. 572, 214 N. W. 174, 175. That part of leg at or below ankle joint. *Mills v. Mills & Connelly*, 214 Ky. 675, 283 S. W. 1010, 1011.

**FOOT OF THE FINE.** The fifth part of the conclusion of a fine. It includes the whole matter, reciting the names of the parties, day, year, and place, and before whom it was acknowledged or levied. 2 Bl. Comm. 351.

**FOOT POUND.** A unit of energy, or work, equal to work done in raising one pound avoirdupois against the force of gravity to the height of one foot. Webster, Dict. *Healey v. Moran Towing & Transportation Co.* (C. C. A.) 253 F. 334, 337.

**FOOTGELD.** In the forest law. An amercement for not cutting out the ball or cutting off the claws of a dog's feet, (expediting him.) To be quit of *footgeld* is to have the privilege of keeping dogs in the forest *unlawed* without punishment or control. *Manwood*.

**FOOT-PRINTS.** In the law of evidence. Impressions made upon earth, snow, or other surface by the feet of persons, or by the shoes, boots, or other covering of the feet. *Burrill*, Circ. Ev. 264.

**FOR.** Fr. In French law. A tribunal. *Le for interieur*, the interior forum; the tribunal of conscience. Poth. Obl. pt. 1, c. 1, § 1, art. 3, § 4.

**FOR.** Instead of; on behalf of; in place of; as, where one signs a note or legal instrument "for" another, this formula importing agency or authority. *Emerson v. Hat Mfg. Co.*, 12 Mass. 240, 7 Am. Dec. 66; *Donovan v. Welch*, 11 N. D. 113, 90 N. W. 262; *Wilks v. Black*, 2 East, 142.

During; throughout; for the period of; as, where a notice is required to be published "for" a certain number of weeks or months. *Wilson v. Northwestern Mut. L. Ins. Co.*, 65 F. 39, 12 C. C. A. 505; *Northrop v. Cooper*, 23 Kan. 432; *Burdine v. Sewell*, 92 Fla. 375, 109 So. 648, 653; *Chicago, St. P., M. & O. Ry. Co. v. Bancroft Drainage Dist.* (C. C. A.) 219 F. 103, 106; *Hanson v. Goldsmith*, 170 Cal. 512, 150 P. 364; *Watson v. City of Salem*, 84 Or. 666, 164 P. 567, 568; *State v. Kuhner*, 107 Ohio St. 406, 140 N. E. 344, 346; *Liverpool & London & Globe Ins. Co. v. Biggers*,



71 Okl. 47, 175 P. 242, 243; *Myakka Co. v. Edwards*, 68 Fla. 382, 67 So. 217, 224.

In consideration for; as an equivalent for; in exchange for; in place of; as where property is agreed to be given "for" other property or "for" services. *Norton v. Woodruff*, 2 N. Y. 153; *Duncan v. Franklin Tp.*, 43 N. J. Eq. 143, 10 A. 546; *Mudge v. Black, Sheridan & Wilson (C. C. A.)* 224 F. 919, 921.

Belonging to, exercising authority or functions within; as, where one describes himself as "a notary public in and for the said county."

By reason of; because of; on account of; with respect to; for benefit of; for use of; in consideration of. *Basler v. Sacramento Electric, Gas & Ry. Co.*, 166 Cal. 33, 134 P. 993, 994; *Elmore-Schultz Grain Co. v. Stonebraker*, 202 Mo. App. 81, 214 S. W. 216, 221; *Work v. U. S. ex rel. Rives*, 54 App. D. C. 84, 295 F. 225, 226.

**FOR ACCOUNT OF.** This formula, used in an indorsement of a note or draft, introduces the name of the person entitled to receive the proceeds. *Freiberg v. Stoddard*, 161 Pa. 259, 28 A. 1111; *White v. Miners' Nat. Bank*, 102 U. S. 658, 26 L. Ed. 250; *Equitable Trust Co. of New York v. Rochling*, 275 U. S. 248, 48 S. Ct. 58, 59, 72 L. Ed. 264.

**FOR AND DURING SUCH TIME, FOR SO LONG AS.** Temporarily. *Burdine v. Sewell*, 92 Fla. 375, 109 So. 648, 653.

**FOR AT LEAST.** As applied to a number of days required for notice this phrase includes either the first or last day, but not both. *Stroud v. Water Co.*, 56 N. J. Law, 422, 28 A. 578.

**FOR CAUSE.** With reference to the power of removal from office, this term means some cause other than the will or pleasure of the removing authority, that is, some cause relating to the conduct, ability, fitness, or competence of the officer. *Hagerstown Street Com'rs v. Williams*, 96 Md. 232, 53 A. 923; *In re Nichols*, 57 How. Prac. (N. Y.) 404.

**FOR COLLECTION.** A form of indorsement on a note or check where it is not intended to transfer title to it or to give it credit or currency, but merely to authorize the transferee to collect the amount of it. *Central R. Co. v. Bank*, 73 Ga. 383; *Sweeny v. Easter*, 1 Wall. 166, 17 L. Ed. 681; *Freiberg v. Stoddard*, 161 Pa. 259, 28 A. 1111; *National Shawmut Bank of Boston v. Barnwell*, 140 Miss. 816, 105 So. 462, 463; *First Nat. Bank v. Federal Reserve Bank of Kansas City, Mo.* (C. C. A.) 6 F.(2d) 339, 343. But see *In re Ziegenhein (Mo. App.)* 187 S. W. 893, 895.

**FOR PURPOSE OF.** With the intention of. *State v. Derrickson*, 1 W. W. Harr. (Del.) 342, 114 A. 286, 288.

**FOR THAT.** In pleading. Words used to introduce the allegations of a declaration. "For

that" is a positive allegation; "For that whereas" is a recital. *Ham. N. P. 9.*

**FOR THAT WHEREAS.** In pleading. Formal words introducing the statement of the plaintiff's case, by way of recital, in his declaration, in all actions except trespass. 1 Instr. Cler. 170; 1 Burrill, Pr. 127. In trespass, where there was no recital, the expression used was, "For that." *Id.*; 1 Inst. Cler. 202.

**FOR USE.** (1) For the benefit or advantage of another. Thus, where an assignee is obliged to sue in the name of his assignor, the suit is entitled "A. for use of B. v. C." (2) For enjoyment or employment without destruction. A loan "for use" is one in which the bailee has the right to use and enjoy the article, but without consuming or destroying it, in which respect it differs from a loan "for consumption." *In re Houk's Estate*, 136 Cal. 643, 200 P. 417, 418.

**FOR VALUE.** See Holder.

**FOR VALUE RECEIVED.** See Value Received.

**FOR WHOM IT MAY CONCERN.** In a policy of marine or fire insurance, this phrase indicates that the insurance is taken for the benefit of all persons (besides those named) who may have an insurable interest in the subject.

**FORAGE.** Hay and straw for horses, particularly in the army. *Jacob.*

**FORAGIUM.** Straw when the corn is threshed out. *Cowell.*

**FORAKER ACT.** A name usually given to the act of congress of April 12, 1900, 31 Stat. L. 77, c. 191 (48 USCA § 731 et seq.), which provided civil government for Porto Rico. See a synopsis of it by Harlan, J., in *Downes v. Bidwell*, 182 U. S. 244, 390, 21 S. Ct. 770, 45 L. Ed. 1088.

**FORANEUS.** One from without; a foreigner; a stranger. *Calvin.*

**FORATHE.** In forest law. One who could make oath, *i. e.*, bear witness for another. *Cowell; Spelman.*

**FORBALCA.** In old records. A forebalk; a balk (that is, an unplowed piece of land) lying forward or next the highway. *Cowell.*

**FORBANNITUS.** A pirate; an outlaw; one banished.

**FORBARRER.** L. Fr. To bar out; to preclude; hence, to estop.

**FORBATUDUS.** In old English law. The aggressor slain in combat. *Jacob.*

**FORBEARANCE.** The act of abstaining from proceeding against a delinquent debtor; delay in exacting the enforcement of a right;

indulgence granted to a debtor. *Reynolds v. Ward*, 5 Wend. (N. Y.) 504; *Diercks v. Kennedy*, 16 N. J. Eq. 211; *Dry Dock Bank v. American Life Ins., etc., Co.*, 3 N. Y. 354.

Refraining from action. The term is used in this sense in general jurisprudence, in contradistinction to "act."

**FORCE.** Power dynamically considered, that is, in motion or in action; constraining power, compulsion; strength directed to an end. Usually the word occurs in such connections as to show that unlawful or wrongful action is meant. *Watson v. Railway Co.*, 28 N. Y. S. 84, 7 Misc. Rep. 562; *Plank Road Co. v. Robbins*, 22 Barb. (N. Y.) 667; *Temple Lumber Co. v. Living* (Tex. Civ. App.) 289 S. W. 746, 749; *Agee v. Employers' Liability Assur. Corporation, Limited*, of London, Eng., 213 Mo. App. 693, 253 S. W. 46, 48; *Colyer v. Skeffington* (D. C.) 265 F. 17, 61; *Wilson v. State*, 103 Tex. Cr. R. 403, 281 S. W. 844, 846; *Yarbrough v. Brookins* (Tex. Civ. App.) 294 S. W. 900, 902; *State v. Massey*, 274 Mo. 578, 204 S. W. 541, 543; *Hafner Mfg. Co. v. City of St. Louis*, 262 Mo. 621, 172 S. W. 28, 34.

Unlawful violence. It is either *simple*, as entering upon another's possession, without doing any other unlawful act; *compound*, when some other violence is committed, which of itself alone is criminal; or *implied*, as in every trespass, rescous, or disseisin. *Lambert v. Helena Adjustment Co.*, 69 Mont. 510, 222 P. 1057, 1058.

Power statically considered; that is at rest, or latent, but capable of being called into activity upon occasion for its exercise. Efficacy; legal validity. This is the meaning when we say that a statute or a contract is "in force."

#### In Old English Law

A technical term applied to a species of accessory before the fact.

#### In Scotch Law

Coercion; duress. Bell.

#### In General

—**Force and arms.** A phrase used in declarations of trespass and in indictments, but now unnecessary in declarations, to denote that the act complained of was done with violence. 2 Chit. Pl. 846, 850.

—**Force and fear**, called also "*vi metuque*," means that any contract or act extorted under the pressure of force (*vis*) or under the influence of fear (*metus*) is voidable on that ground, provided, of course, that the force or the fear was such as influenced the party. Brown.

—**Forces.** The military and naval power of the country.

—**Of force.** See that title.

**FORCE MAJEURE.** Fr. In the law of insurance. Superior or irresistible force. Emmerig. Tr. des Ass. c. 12.

**FORCED HEIRS.** In Louisiana. Those persons whom the testator or donor cannot deprive of the portion of his estate reserved for them by law, except in cases where he has a just cause to disinherit them. Civil Code La. art. 1495. And see *Crain v. Crain*, 17 Tex. 90; *Hagerty v. Hagerty*, 12 Tex. 456; *Miller v. Miller*, 105 La. 257, 29 So. 802; *Succession of Hawkins*, 139 La. 228, 71 So. 492, 494.

**FORCED SALE.** In practice. A sale made at the time and in the manner prescribed by law, in virtue of execution issued on a judgment already rendered by a court of competent jurisdiction; a sale made under the process of the court, and in the mode prescribed by law. *Sampson v. Williamson*, 6 Tex. 110, 55 Am. Dec. 762.

A forced sale is a sale against the consent of the owner. The term should not be deemed to embrace a sale under a power in a mortgage. *Patterson v. Taylor*, 15 Fla. 336.

**FORCHEAPUM.** Pre-emption; forestalling the market. Jacob.

**FORCIBLE DETAINER.** The offense of violently keeping possession of lands and tenements, with menaces, force, and arms, and without the authority of law. 4 Bl. Comm. 148; 4 Steph. Comm. 280.

Forcible detainer may ensue upon a peaceable entry, as well as upon a forcible entry; but it is most commonly spoken of in the phrase "forcible entry and detainer." See *infra*.

**FORCIBLE ENTRY.** An offense against the public peace, or private wrong, committed by violently taking possession of lands and tenements with menaces, force, and arms, against the will of those entitled to the possession, and without the authority of law. 4 Bl. Comm. 148; 4 Steph. Comm. 280; Code Ga. 1882, § 4524 (Pen. Code, 1910, § 344).

Every person is guilty of forcible entry who either (1) by breaking open doors, windows, or other parts of a house, or by any kind of violence or circumstance of terror, enters upon or into any real property; or (2) who, after entering peaceably upon real property, turns out by force, threats, or menacing conduct the party in possession. Code Civil Proc. Cal. § 1159.

At common law, a forcible entry was necessarily one effected by means of force, violence, menaces, display of weapons, or otherwise with the strong hand; but this rule has been relaxed, either by statute or the course of judicial decisions, in many of the states, so that an entry effected without the consent of the rightful owner, or against his remonstrance, or under circumstances which amount to no more than a mere trespass, is now technically considered "forcible," while a detainer of the prop-

erty consisting merely in the refusal to surrender possession after a lawful demand, is treated as a "forcible" detainer; the reason in both cases being that the action of "forcible entry and detainer" (see next title) has been found an extremely convenient method of proceeding to regain possession of property as against a trespasser or against a tenant refusing to quit, the "force" required at common law being now supplied by a mere fiction. See Vernon's Ann. Civ. St. art. 3975; *Goldsberry v. Bishop*, 2 Duv. (Ky.) 144; *Wells v. Darby*, 13 Mont. 504, 34 P. 1092; *Willard v. Warren*, 17 Wend. (N. Y.) 261; *Franklin v. Geho*, 30 W. Va. 27, 3 S. E. 168; *Phelps v. Randolph*, 147 Ill. 335, 35 N. E. 243; *Brawley v. Risdon Iron Works*, 38 Cal. 678; *Cuyler v. Estis*, 23 Ky. Law Rep. 1063, 64 S. W. 673; *Herkimer v. Keeler*, 109 Iowa, 680, 81 N. W. 178; *Young v. Young*, 109 Ky. 123, 58 S. W. 592; *Quinn v. McCochrane*, 206 N. Y. S. 550, 552, 210 App. Div. 569; *Crossen v. Campbell*, 102 Or. 666, 202 P. 745, 748; *Willows Cattle Co. v. Connell*, 25 Ariz. 592, 220 P. 1082, 1083; *Hammond Savings & Trust Co. v. Boney*, 61 Ind. App. 295, 107 N. E. 480, 484; *Gallant v. Miles*, 200 Mich. 532, 166 N. W. 1009, 1010; *Goffin v. McCall*, 91 Fla. 514, 108 So. 558, 558, 559; *Brooks v. Brooks*, 84 N. J. Law, 210, 86 A. 537; *California Products v. Mitchell*, 52 Cal. App. 312, 198 P. 646.

**FORCIBLE ENTRY AND DETAINER.** The action of forcible entry and detainer is a summary proceeding to recover possession of premises forcibly or unlawfully detained. The inquiry in such cases does not involve title, but is confined to the actual and peaceable possession of the plaintiff and the unlawful or forcible ouster or detention by defendant; the object of the law being to prevent the disturbance of the public peace by the forcible assertion of a private right. *Gore v. Altice*, 33 Wash. 335, 74 P. 556; *Evel-eth v. Gill*, 97 Me. 315, 54 A. 757; *Harris v. Harris*, 190 Ala. 619, 67 So. 465, 466; *Bugner v. Chicago Title & Trust Co.*, 280 Ill. 620, 117 N. E. 711, 717; *Bail v. Dancer*, 44 Okl. 114, 143 P. 855; *Rose v. Skiles* (Tex. Civ. App.) 245 S. W. 127; *Yukon Inv. Co. v. Crescent Meat Co.*, 140 Wash. 136, 248 P. 377, 378; *Allen v. Houn*, 30 Wyo. 186, 219 P. 573, 580; *Purcell v. Merrick*, 172 Mo. App. 412, 158 S. W. 478, 480; *Long v. Bagwell*, 38 Okl. 312, 133 P. 50, 51.

**FORCIBLE TRESPASS.** In North Carolina, this is an invasion of the rights of another with respect to his personal property, of the same character, or under the same circumstances, which would constitute a "forcible entry and detainer" of real property at common law. It consists in taking or seizing the personal property of another by force, violence, or intimidation or in forcibly injuring it. *State v. Lawson*, 123 N. C. 740, 31 S. E. 667, 68 Am. St. Rep. 844; *State v. Barefoot*, 89 N. C. 567; *State v. Ray*, 32 N. C. 40; *State v. Sowls*, 61 N. C. 151; *State v. Laney*, 87 N. C. 535; *State v. Oxendine*, 187 N. C. 658, 122 S. E. 568, 571; *State v. Holder*, 188 N. C. 561, 125 S. E. 113, 114.

**FORDA.** In old records. A ford or shallow, made by damming or penning up the water. Cowell.

**FORDAL.** A butt or headland, jutting out upon other land. Cowell.

**FORDANNO.** In old European law. He who first assaulted another. Spelman.

**FORDIKA.** In old records. Grass or herbage growing on the edge or bank of dykes or ditches. Cowell.

**FORE.** Sax. Before. Fr. Out. Kelham.

**FORE-MATRON.** In a jury of women this word corresponds to the foreman of a jury. She was sworn in separately; 8 Carr. & P. 264.

**FORE-OATH.** Before the Norman Conquest, an oath required of the complainant in the first instance (in the absence of manifest facts) as a security against frivolous suits. Pollock, 1 Sel. Essays Anglo-Amer. Leg. Hist. 93.

**FORECLOSE.** To shut out; to bar; to terminate. Used of the process of destroying an equity of redemption existing in a mortgagor. *McEachern v. New York Life Ins. Co.*, 15 Ga. App. 222, 82 S. E. 820, 824; *Milmos v. Zimmerman*, 95 N. J. Eq. 85, 127 A. 157, 158; *Matthews v. Deason* (Tex. Civ. App.) 200 S. W. 855, 856; *State v. Darling*, 39 S. D. 558, 165 N. W. 536, 537..

**FORECLOSURE.** A process in chancery by which all further right existing in a mortgagor to redeem the estate is defeated and lost to him, and the estate becomes the absolute property of the mortgagee; being applicable when the mortgagor has forfeited his estate by non-payment of the money due on the mortgage at the time appointed, but still retains the equity of redemption. 2 Washb. Real Prop. 237. *Goodman v. White*, 26 Conn. 322; *Arrington v. Liscom*, 34 Cal. 376, 94 Am. Dec. 722; *Appeal of Ansonia Nat. Bank*, 58 Conn. 257, 18 A. 1030; *Williams v. Wilson*, 42 Or. 299, 70 P. 1031, 95 Am. St. Rep. 745; *Froelich v. Swafford*, 33 S. D. 142, 144 N. W. 925, 928; *Trustees of Schools v. St. Paul Fire & Marine Ins. Co.*, 296 Ill. 99, 129 N. E. 567, 568.

The term is also loosely applied to any of the various methods, statutory or otherwise, known in different jurisdictions, of enforcing payment of the debt secured by a mortgage, by taking and selling the mortgaged estate. *Dikeman v. Jewel Gold Mining Co.* (C. C. A.) 13 F.(2d) 118; *Realty Mortgage Co. v. Moore*, 80 Fla. 2, 85 So. 155, 156.

Foreclosure is also applied to proceedings founded upon some other liens; thus there are proceedings to foreclose a mechanic's lien. *Insurance Co. of North America v. Cheatham*, 221 Ky. 668, 299 S. W. 545, 547.

**—Foreclosure decree.** Properly speaking, a decree ordering the strict foreclosure (see *infra*) of a mortgage; but the term is also loosely and conventionally applied to a decree ordering the sale of the mortgaged premises and the satisfaction of the mortgage out of

the proceeds. *Hanover F. Ins. Co. v. Brown*, 77 Md. 64, 25 A. 989, 39 Am. St. Rep. 386.

—**Foreclosure sale.** A sale of mortgaged property to obtain satisfaction of the mortgage out of the proceeds, whether authorized by a decree of the court or by a power of sale contained in the mortgage. See *Johnson v. Cook*, 96 Mo. App. 442, 70 S. W. 526.

—**Statutory foreclosure.** The term is sometimes applied to foreclosure by execution of a power of sale contained in the mortgage, without recourse to the courts, as it must conform to the provisions of the statute regulating such sales. See *Mowry v. Sanborn*, 11 Hun (N. Y.) 548.

—**Strict foreclosure.** A decree of strict foreclosure of a mortgage finds the amount due under the mortgage, orders its payment within a certain limited time, and provides that, in default of such payment, the debtor's right and equity of redemption shall be forever barred and foreclosed; its effect is to vest the title of the property absolutely in the mortgagee, on default in payment, without any sale of the property. *Champion v. Hinkle*, 45 N. J. Eq. 162, 16 A. 701; *Lightcap v. Bradley*, 186 Ill. 510, 58 N. E. 221; *Warner Bros. Co. v. Freud*, 138 Cal. 651, 72 P. 345.

**FOREFAULT.** In Scotch law. To forfeit; to lose.

**FOREGIFT.** A premium for a lease.

**FOREGOERS.** Royal purveyors. 26 Edw. III. c. 5.

**FOREHAND RENT.** In English law. Rent payable in advance; or, more properly, a species of premium or bonus paid by the tenant on the making of the lease, and particularly on the renewal of leases by ecclesiastical corporations.

**FOREIGN.** Belonging to another nation or country; belonging or attached to another jurisdiction; made, done, or rendered in another state or jurisdiction; subject to another jurisdiction; operating or solvable in another territory; extrinsic; outside; extraordinary.

**FOREIGN ANSWER.** In old English practice. An answer which was not triable in the county where it was made. (St. 15 Hen. VI. c. 5.) Blount.

**FOREIGN APOPOSER.** An officer in the exchequer who examines the sheriff's *estreats*, comparing them with the records, and appoeth (interrogates) the sheriff what he says to each particular sum therein. 4 Inst. 107; Blount; Cowell.

**FOREIGN BOUGHT AND SOLD.** A custom in London which, being found prejudicial to sellers of cattle in Smithfield, was abolished. Wharton.

**FOREIGN COINS.** Coins issued as money under the authority of a foreign government. As to their valuation in the United States, see Rev. St. U. S. §§ 3564, 3565.

**FOREIGN COURTS.** The courts of a foreign state or nation. In the United States, this term is frequently applied to the courts of one of the states when their judgments or records are introduced in the courts of another.

**FOREIGN DOMINION.** In English law this means a country which at one time formed part of the dominions of a foreign state or potentate, but which by conquest or cession has become a part of the dominions of the British crown. 5 Best & S. 290.

**FOREIGN ENLISTMENT ACT.** The statute 59 Geo. III. c. 69, prohibiting the enlistment, as a soldier or sailor, in any foreign service. 4 Steph. Comm. 226. A later and more stringent act is that of 33 & 34 Vict. c. 90.

**FOREIGN EXCHANGE.** Drafts drawn on a foreign state or country.

**FOREIGN-GOING SHIP.** By the English merchant shipping act, 1854, (17 & 18 Vict. c. 104,) § 2, any ship employed in trading, going between some place or places in the United Kingdom and some place or places situate beyond the following limits, that is to say: The coasts of the United Kingdom, the islands of Guernsey, Jersey, Sark, Alderney, and Man, and the continent of Europe, between the river Elbe and Brest, inclusive. Home-trade ship includes every ship employed in trading and going between places within the last-mentioned limits.

**FOREIGN MATTER.** In old practice. Matter triable or done in another county. Cowell.

**FOREIGN OFFICE.** The department of state through which the English sovereign communicates with foreign powers. A secretary of state is at its head. Till the middle of the last century, the functions of a secretary of state as to foreign and home questions were not disunited.

**FOREIGN SERVICE,** in feudal law, was that whereby a mesne lord held of another, without the compass of his own fee, or that which the tenant performed either to his own lord or to the lord paramount out of the fee. (Kitch. 299.) Foreign service seems also to be used for knight's service, or escuage uncertain. (Perk. 650.) Jacob.

**FOREIGN TRADE.** The exportation and importation of commodities to or from foreign countries, as distinguished in the United States from interstate or coastwise trade. See *U. S. v. Patten*, 1 Holmes 421, Fed. Cas. No. 16,007.

As to foreign "Administrator," "Assignment," "Attachment," "Bill of Exchange," "Charity," "Commerce," "Corporation,"

"County," "Creditor," "Divorce," "Document," "Domicile," "Factor," "Judgment," "Jurisdiction," "Jury," "Minister," "Plea," "Port," "State," "Vessel," and "Voyage," see those titles.

**FOREIGNER.** In old English law, this term, when used with reference to a particular city, designated any person who was not an inhabitant of that city. According to later usage, it denotes a person who is not a citizen or subject of the state or country of which mention is made, or any one owing allegiance to a foreign state or sovereign.

For the distinctions, in Spanish law, between "domiciliated" and "transient" foreigners, see *Yates v. Iams*, 10 Tex. 168.

**FOREIN.** An old form of *foreign* (*q. v.*) Blount.

**FOREJUDGE.** In old English law and practice. To expel from court for some offense or misconduct. When an officer or attorney of a court was expelled for any offense, or for not appearing to an action by bill filed against him, he was said to be *forejudged the court*. Cowell.

To deprive or put out of a thing by the judgment of a court. To condemn to lose a thing.

To expel or banish.

**FOREJUDGER.** In English practice. A judgment by which a man is deprived or *put out* of a thing; a judgment of expulsion or banishment.

**FOREMAN.** The presiding member of a grand or petit jury, who speaks or answers for the jury.

Person designated by master to direct work of employees; superintendent, overseer. *White v. Kansas City Stockyards Co.*, 104 Kan. 90, 177 P. 522; *Browning v. Smiley-Lampert Lumber Co.*, 68 Or. 502, 137 P. 777, 780; *Postal Telegraph-Cable Co. v. Puckett*, 24 Ga. App. 458, 101 S. E. 397, 399; *Brokaw v. Cottrell*, 114 Neb. 858, 211 N. W. 184, 187.

**FORENSIC.** Belonging to courts of justice.

**FORENSIC MEDICINE**, or medical jurisprudence, as it is also called, is "that science which teaches the application of every branch of medical knowledge to the purposes of the law; hence its limits are, on the one hand, the requirements of the law, and, on the other, the whole range of medicine. Anatomy, physiology, medicine, surgery, chemistry, physics, and botany lend their aid as necessity arises; and in some cases all these branches of science are required to enable a court of law to arrive at a proper conclusion on a contested question affecting life or property." *Tayl. Med. Jur.* 1.

**FORENSIS.**

In the Civil Law

Belonging to or connected with a court; *forensic*. *Forensis homo*, an advocate; a

pleader of causes; one who practices in court. Calvin.

#### In Old Scotch Law

A strange man or stranger; an out-dwelling man; an "unfreeman," who dwells not within burgh.

**FORESAID** is used in Scotch law as *afore-said* is in English, and sometimes, in a plural form, *foresaid*s. 2 How. State Tr. 715. *Forsaidis* occurs in old Scotch records. "The Loidis assesouris forsaidis." 1 Pitc. Crim. Tr. pt. 1, p. 107.

**FORESCHOKE.** Foresaken; disavowed. 10 Edw. II. c. 1.

**FORESHORE.** That part of the land adjacent to the sea which is alternately covered and left dry by the ordinary flow of the tides; *i. e.*, by the medium line between the greatest and least range of tide (spring tides and neap tides). Sweet. See, also, Shore.

**FOREST.** In old English law. A certain territory of wooded ground and fruitful pastures, privileged for wild beasts and fowls of forest, chase, and warren, to rest and abide in the safe protection of the prince for his princely delight and pleasure, having a peculiar court and officers. *Manw. For. Laws*, c. 1, no. 1; *Termes de la Ley*; 1 Bl. Comm. 289.

A royal hunting-ground which lost its peculiar character with the extinction of its courts, or when the franchise passed into the hands of a subject. *Spelman*; *Cowell*.

The word is also used to signify a franchise or right, being the right of keeping, for the purpose of hunting, the wild beasts and fowls of forest, chase, park, and warren, in a territory or precinct of woody ground or pasture set apart for the purpose. 1 *Steph. Comm.* 665.

—**Forest courts.** In English law. Courts instituted for the government of the king's forest in different parts of the kingdom, and for the punishment of all injuries done to the king's deer or *venison*, to the *vert* or greensward, and to the *covert* in which such deer were lodged. They consisted of the courts of attachments, of regard, of sweinmote, and of justice-seat; but in later times these courts are no longer held. 3 Bl. Comm. 71.

—**Forest law.** The system or body of old law relating to the royal forests.

—**Forestage.** A duty or tribute payable to the king's foresters. *Cowell*.

—**Forester.** A sworn officer of the *forest*, appointed by the king's letters patent to walk the forest, watching both the *vert* and the *venison*, attaching and presenting all trespassers against them within their own *baillwick* or walk. These letters patent were generally granted during good behavior; but sometimes they held the office in fee. *Blount*.

**FORESTAGIUM.** A duty or tribute payable to the king's foresters. Cowell.

**FORESTALL.** To intercept or obstruct a passenger on the king's highway. Cowell. To beset the way of a tenant so as to prevent his coming on the premises. 3 Bl. Comm. 170. To intercept a deer on his way to the forest before he can regain it. Cowell.

**FORESTALLER.** In old English law. Obstruction; hindrance; the offense of stopping the highway; the hindering a tenant from coming to his land; intercepting a deer before it can regain the forest. Also one who forestalls; one who commits the offense of forestalling. 3 Bl. Comm. 170; Cowell.

**FORESTALLING.** Obstructing the highway. Intercepting a person on the highway.

**FORESTALLING THE MARKET.** The act of the buying or contracting for any merchandise or provision on its way to the market, with the intention of selling it again at a higher price; or the dissuading persons from bringing their goods or provisions there; or persuading them to enhance the price when there. 4 Bl. Comm. 158. *Barton v. Morris*, 10 Phila. (Pa.) 361. This was formerly an indictable offense in England, but is now abolished by St. 7 & 8 Vict. c. 24. 4 Steph. Comm. 291, note.

Forestalling differs from "engrossing," in that the latter consists in buying up large quantities of merchandise already on the market, with a view to effecting a monopoly or acquiring so large a quantity as to be able to dictate prices. Both forestalling and engrossing may enter into the manipulation of what is now called a "corner."

#### FORESTARIUS.

##### In English Law

A forester. An officer who takes care of the woods and forests. *De forestario apponendo*, a writ which lay to appoint a forester to prevent further commission of waste when a tenant in dower had committed waste. Bract. 316; Du Cange.

##### In Scotch Law

A forester or keeper of woods, to whom, by reason of his office, pertains the bark and the hewn branches. And, when he rides through the forest, he may take a tree as high as his own head. Skene de Verb. Sign.

**FORETHOUGHT FELONY.** In Scotch law. Murder committed in consequence of a previous design. Ersk. Inst. 4, 4, 50; Bell.

**FORFANG.** In old English law. The taking of provisions from any person in fairs or markets before the royal purveyors were served with necessaries for the sovereign. Cowell. Also the seizing and rescuing of stolen or strayed cattle from the hands of a thief, or of those having illegal possession of them; also the reward fixed for such rescue.

**FORFEIT.** To lose an estate, a franchise, or other property belonging to one, by the act of the law, and as a consequence of some misfeasance, negligence, or omission. *Cassell v. Crothers*, 193 Pa. 359, 44 A. 446; *State v. De Gress*, 72 Tex. 242, 11 S. W. 1029; *State v. Walbridge*, 119 Mo. 383, 24 S. W. 457, 41 Am. St. Rep. 663; *State v. Baltimore & O. R. Co.*, 12 Gill & J. (Md.) 432, 38 Am. Dec. 319. The further ideas connoted by this term are that it is a deprivation, (that is, against the will of the losing party,) and that the property is either transferred to another or resumed by the original grantor.

To incur a penalty; to become liable to the payment of a sum of money, as the consequence of a certain act. To incur loss through some fault, omission, error, or offense; loss. *Sands v. Holbert*, 93 W. Va. 574, 117 S. E. 896, 899; *Ford v. Ellison*, 287 Mo. 683, 230 S. W. 637, 640.

**FORFEITABLE.** Liable to be forfeited; subject to forfeiture for non-user, neglect, crime, etc.

**FORFEITURE. 1.** A punishment annexed by law to some illegal act or negligence in the owner of lands, tenements, or hereditaments, whereby he loses all his interest therein, and they go to the party injured as a recompense for the wrong which he alone, or the public together with himself, hath sustained. 2 Bl. Comm. 267. *Wiseman v. McNulty*, 25 Cal. 237; *Stephenson v. Callham* (Tex. Civ. App.) 289 S. W. 158, 159; *Fratt v. Daniels-Jones Co.*, 47 Mont. 487, 133 P. 700, 701.

2. The loss of land by a tenant to his lord, as the consequence of some breach of fidelity. 1 Steph. Comm. 166.

3. The loss of lands and goods to the state, as the consequence of crime. 4 Bl. Comm. 381, 387; 4 Steph. Comm. 447; 452; 2 Kent, Comm. 385; 4 Kent, Comm. 426; *Avery v. Everett*, 110 N. Y. 317, 18 N. E. 148, 1 L. R. A. 264, 6 Am. St. Rep. 368.

4. The loss of goods or chattels, as a punishment for some crime or misdemeanor in the party forfeiting, and as a compensation for the offense and injury committed against him to whom they are forfeited. 2 Bl. Comm. 420.

It should be noted that "forfeiture" is not an identical or convertible term with "confiscation." The latter is the consequence of the former. Forfeiture is the result which the law attaches as an immediate and necessary consequence to the illegal acts of the individual; but confiscation implies the action of the state; and property, although it may be forfeited, cannot be said to be confiscated until the government has formally claimed or taken possession of it.

5. The loss of office by abuser, non-user, or refusal to exercise it. *City of Williamsburg v. Weesner*, 164 Ky. 769, 176 S. W. 224, 225.

6. The loss of a corporate franchise or charter in consequence of some illegal act, or

of malfeasance or non-feasance. *Murphy v. Missouri & Kansas Land & Loan Co.*, 28 N. D. 519, 149 N. W. 957, 959; *Village of Fredonia v. Fredonia Natural Gas Light Co.*, 87 Misc. 592, 149 N. Y. S. 964, 965.

7. The loss of the right to life, as the consequence of the commission of some crime to which the law has affixed a capital penalty. *In re New Jersey Court of Pardons*, 97 N. J. Eq. 555, 129 A. 624, 630.

8. The incurring a liability to pay a definite sum of money as the consequence of violating the provisions of some statute, or refusal to comply with some requirement of law. *State v. Marion County Com'rs*, 85 Ind. 493.

9. A thing or sum of money forfeited. Something imposed as a punishment for an offense or delinquency. The word in this sense is frequently associated with the word "penalty." *Van Buren v. Digges*, 11 How. 477, 13 L. Ed. 771; *Bryant v. Rich's Grill*, 216 Mass. 344, 103 N. E. 925, 927, Ann. Cas. 1915B, 869; *Miller v. Bopp*, 136 La. 788, 67 So. 831; *Jones v. State*, 10 Okl. Cr. 216, 136 P. 182, 183; *Missouri, K. & T. Ry. Co. v. Dewey Portland Cement Co.*, 113 Okl. 142, 242 P. 257, 259.

10. In mining law, the loss of a mining claim held by location on the public domain (unpatented) in consequence of the failure of the holder to make the required annual expenditure upon it within the time allowed. *McKay v. McDougall*, 25 Mont. 258, 64 P. 669, 87 Am. St. Rep. 395; *St. John v. Kidd*, 26 Cal. 271.

**FORFEITURE OF A BOND.** A failure to perform the condition on which the obligor was to be excused from the penalty in the bond.

**FORFEITURE OF MARRIAGE.** A penalty incurred by a ward in chivalry who married without the consent or against the will of the guardian. See *Duplex Valor Maritagii*.

**FORFEITURE OF SILK,** supposed to lie in the docks, used, in times when its importation was prohibited, to be proclaimed each term in the exchequer.

**FORFEITURES ABOLITION ACT.** Another name for the felony act of 1870, abolishing forfeitures for felony in England.

**FORGABULUM, or FORGAVEL.** A quit-rent; a small reserved rent in money. *Jacob*.

**FORGE.** To fabricate, construct, or prepare one thing in imitation of another thing, with the intention of substituting the false for the genuine, or otherwise deceiving and defrauding by the use of the spurious article. To counterfeit or make falsely. Especially, to make a spurious written instrument with the intention of fraudulently substituting it for

another, or of passing it off as genuine; or to fraudulently alter a genuine instrument to another's prejudice; or to sign another person's name to a document, with a deceitful and fraudulent intent. See *In re Cross* (D. C.) 43 F. 520; *U. S. v. Watkins*, 28 Fed. Cas. 445; *Johnson v. State*, 9 Tex. App. 251; *Longwell v. Day*, 1 Mich. N. P. 290; *People v. Compton*, 123 Cal. 403, 56 P. 44; *People v. Graham*, 1 Sheld. (N. Y.) 155; *Rohr v. State*, 60 N. J. Law, 576, 38 A. 673; *Haynes v. State*, 15 Ohio St. 455; *Garner v. State*, 5 Lea, 213; *State v. Greenwood*, 76 Minn. 211, 78 N. W. 1042, 77 Am. St. Rep. 632; *State v. Young*, 46 N. H. 266, 88 Am. Dec. 212; *Everage v. State*, 14 Ala. App. 100, 71 So. 983, 984; *De Rose v. People*, 64 Colo. 332, 171 P. 359, 360, L. R. A. 1918C, 1193; *State v. Sotak*, 100 W. Va. 652, 131 S. E. 706, 708, 46 A. L. R. 1523; *Davis v. State*, 25 Ga. 532, 103 S. E. 819, 822; *American Expr. Co. v. People's Sav. Bank*, 192 Iowa, 366, 181 N. W. 701, 703.

To forge (a metaphorical expression, borrowed from the occupation of the smith) means, properly speaking, no more than to make or form, but in our law it is always taken in an evil sense. 2 East, P. C. p. 852, c. 19, § 1.

To forge is to make in the likeness of something else; to counterfeit is to make in imitation of something else, with a view to defraud by passing the false copy for genuine or original. Both words, "forged" and "counterfeited," convey the idea of similitude. *State v. McKenzie*, 42 Me. 392.

In common usage, however, *forgery* is almost always predicated of some private instrument or writing, as a deed, note, will, or a signature; and *counterfeiting* denotes the fraudulent imitation of coined or paper money or some substitute therefor.

## FORGERY.

### In Criminal Law

The falsely making or materially altering, with intent to defraud, any writing which, if genuine, might apparently be of legal efficacy or the foundation of a legal liability. 2 Bish. Crim. Law, § 523; *McCornack v. Central State Bank*, 203 Iowa, 833, 211 N. W. 542, 545, 52 A. L. R. 1297; *Harris v. State*, 19 Ala. App. 484, 98 So. 316; *State v. Walton*, 107 S. C. 353, 93 S. E. 5, 6; *State v. Thomas*, 6 Boyce (Del.) 195, 97 A. 869, 871; *State v. Sotak*, 100 W. Va. 652, 131 S. E. 706, 708, 46 A. L. R. 1523; *State v. Morris*, 124 Kan. 505, 260 P. 629, 630; *Davis v. Commonwealth*, 217 Ky. 801, 290 S. W. 702, 704; *Robinson v. Commonwealth*, 217 Ky. 129, 288 S. W. 1044; *Ex parte Offutt*, 29 Okl. Cr. 401, 234 P. 222, 223; *State v. Andrews*, 297 Mo. 281, 248 S. W. 967, 969; *International Union Bank v. National Surety Co.*, 209 N. Y. S. 583, 585, 124 Misc. Rep. 842; *State v. Talip*, 90 W. Va. 632, 111 S. E. 601, 602; *Goucher v. State*, 113 Neb. 352, 204 N. W. 967, 968, 41 A. L. R. 227. See *Forge*.

The thing itself, so falsely made, imitated or forged; especially a forged writing. A forged signature is frequently said to be "*a forgery*."

### In the Law of Evidence

The fabrication or counterfeiting of evidence. The artful and fraudulent manipulation of physical objects, or the deceitful arrangement of genuine facts or things, in such a manner as to create an erroneous impression or a false inference in the minds of those who may observe them. See Burrill, Circ. Ev. 131, 420.

**FORGERY ACT, 1870.** The statute 33 & 34 Vict. c. 58, was passed for the punishment of forgers of stock certificates, and for extending to Scotland certain provisions of the forgery act of 1861. Mozley & Whitley.

**FORHERDA.** In old records. A herdland, headland, or foreland. Cowell.

**FORI DISPUTATIONES.** In the civil law. Discussions or arguments before a court. 1 Kent, Comm. 530.

**FORINSECUS.** Lat. Foreign; exterior; outside; extraordinary. *Servitium forinsecum*, the payment of aid, scutage, and other extraordinary military services. *Forinsecum manerium*, the manor, or that part of it which lies outside the bars or town, and is not included within the liberties of it. Cowell; Blount; Jacob; 1 Reeve, Eng. Law, 273.

**FORINSIC.** In old English law. Exterior; foreign; extraordinary. In feudal law, the term "forinsic services" comprehended the payment of extraordinary aids or the rendition of extraordinary military services, and in this sense was opposed to "intrinsic services." 1 Reeve, Eng. Law, 273.

**FORIS.** Lat. Abroad; out of doors; on the outside of a place; without; extrinsic.

**FORISBANITUS.** In old English law. Banished.

**FORISFACERE.** Lat. To forfeit; to lose an estate or other property on account of some criminal or illegal act. To confiscate.

To act beyond the law, *i. e.*, to transgress or infringe the law; to commit an offense or wrong; to do any act against or beyond the law. See Co. Litt. 59a; Du Cange; Spelman.

**Forisfacere, i. e., extra legem seu consuetudinem facere.** Co. Litt. 59. *Forisfacere, i. e.*, to do something beyond law or custom.

**FORISFACTUM.** Forfeited. *Bona forisfacta*, forfeited goods. 1 Bl. Comm. 299. A crime. Du Cange; Spelman.

**FORISFACTURA.** A crime or offense through which property is forfeited.

A fine or punishment in money.

Forfeiture. The loss of property or life in consequence of crime.

**FORISFACTURA PLENA.** A forfeiture of all a man's property. Things which were forfeited. Du Cange. Spelman.

**FORISFACTUS.** A criminal. One who has forfeited his life by commission of a capital offense. Spelman.

**FORISFACTUS SERVUS.** A slave who has been a free man, but has forfeited his freedom by crime. Du Cange.

**FORISFAMILIARE.** In old English and Scotch law. Literally, to put out of a family (*foris familiam ponere*). To portion off a son, so that he could have no further claim upon his father. Glanv. lib. 7, c. 3.

To emancipate, or free from paternal authority.

**FORISFAMILIATED.** In old English law. Portioned off. A son was said to be forisfamiated (*forisfamiliari*) if his father assigned him part of his land, and gave him seisin thereof, and did this at the request or with the free consent of the son himself, who expressed himself satisfied with such portion. 1 Reeve, Eng. Law, 42, 110.

**FORISFAMILIATUS.** In old English law. Put out of a family; portioned off; emancipated; forisfamiated. Bract. fol. 64.

**FORISJUDICATIO.** In old English law. Forejudger. A forejudgment. A judgment of court whereby a man is put out of possession of a thing. Co. Litt. 100b.

**FORISJUDICATUS.** Forejudged; sent from court; banished. Deprived of a thing by judgment of court. Bract. fol. 250b; Co. Litt. 100b; Du Cange.

**FORISJURARE.** To forswear; to abjure; to abandon.

—**Forisjurare parentilam.** To remove oneself from parental authority. The person who did this lost his rights as heir. Du Cange.

—**Provinciam forisjurare.** To forswear the country. Spelman.

**FORJUDGE.** See Forejudge.

**FORJURER.** L. Fr. In old English law. To forswear; to abjure.

**FORJURER ROYALME.** To abjure the realm. Britt. cc. 1, 16.

**FORLER-LAND.** Land in the diocese of Hereford, which had a peculiar custom attached to it, but which has been long since disused, although the name is retained. But. Surv. 56.

**FORM.** A model or skeleton of an instrument to be used in a judicial proceeding, containing the principal necessary matters, the proper technical terms or phrases, and whatever else is necessary to make it formally correct, arranged in proper and methodical order, and capable of being adapted to the circumstances of the specific case.



In contradistinction to "substance," "form" means the legal or technical manner or order to be observed in legal instruments or juridical proceedings, or in the construction of legal documents or processes.

The distinction between "form" and "substance" is often important in reference to the validity or amendment of pleadings. If the matter of the plea is bad or insufficient, irrespective of the manner of setting it forth, the defect is one of substance. If the matter of the plea is good and sufficient, but is inartificially or defectively pleaded, the defect is one of form. *Pierson v. Insurance Co.*, 7 *Houst. (Del.)* 307, 31 *Atl.* 966.

#### Common Form, Solemn Form

See Probate.

#### Forms of Action

This term is the general designation of the various species or kinds of personal actions known to the common law, such as trover, trespass, debt, *assumpsit*, etc. These differ in their pleadings and evidence, as well as in the circumstances to which they are respectively applicable. *Truax v. Parvis*, 7 *Houst. (Del.)* 330, 32 *A.* 227.

#### Matter of Form

In pleadings, in indictments, in affidavits, conveyances, etc., matter of form (as distinguished from matter of substance) is all that relates to the mode, form, or style of expressing the facts involved, the choice or arrangement of words, and other such particulars, without affecting the substantial validity or sufficiency of the instrument, or without going to the merits. *Railway Co. v. Kurtz*, 10 *Ind. App.* 60, 37 *N. E.* 303; *Meath v. Mississippi Levee Com'rs*, 109 *U. S.* 268, 3 *S. Ct.* 284, 27 *L. Ed.* 930; *State v. Amidon*, 58 *Vt.* 524, 2 *A.* 154.

#### Form of the Statute

This expression means the words, language, or frame of a statute, and hence the inhibition or command which it may contain; used in the phrase (in criminal pleading) "against the form of the statute in that case made and provided."

**FORMA.** Lat. Form; the prescribed form of judicial proceedings.

**Forma dat esse.** Form gives being. Called "the old physical maxim." Lord Henley, *Ch.*, 2 *Eden*, 99.

**FORMA ET FIGURA JUDICII.** The form and shape of judgment or judicial action. 3 *Bl. Comm.* 271.

**Forma legalis forma essentialis.** Legal form is essential form. 10 *Coke*, 100.

**Forma non observata, inferitur annullatio actus.** Where form is not observed, a nullity of the act is inferred. 12 *Coke*, 7. Where the law prescribes a form, the nonobservance of it is

fatal to the proceeding, and the whole becomes a nullity. *Best, Ev. Introd.* § 59.

**FORMA PAUPERIS.** See *In Forma Pauperis*.

**FORMAL.** Relating to matters of form; as, "formal defects"; inserted, added, or joined *pro forma*. See *Parties*.

**FORMALITIES.** In England, robes worn by the magistrates of a city or corporation, etc., on solemn occasions. *Enc. Lond.*

**FORMALITY.** The conditions, in regard to method, order, arrangement, use of technical expressions, performance of specific acts, etc., which are required by the law in the making of contracts or conveyances, or in the taking of legal proceedings, to insure their validity and regularity. *Succession of Seymour*, 48 *La. Ann.* 993, 20 *So.* 217.

**FORMATA.** In canon law. Canonical letters. *Spelman*.

**FORMATA BREVIA.** Formed writs; writs of form. See *Brevia Formata*.

**FORMED ACTION.** An action for which a set form of words is prescribed, which must be strictly adhered to. 10 *Mod.* 140, 141.

**FORMED DESIGN.** In criminal law, and particularly with reference to homicide, this term means a deliberate and fixed intention to kill, whether directed against a particular person or not. *Mitchell v. State*, 60 *Ala.* 33; *Wilson v. State*, 128 *Ala.* 17, 29 *So.* 569; *Ake v. State*, 30 *Tex.* 473.

**FORMEDON.** An ancient writ in English law which was available for one who had a right to lands or tenements by virtue of a gift in tail. It was in the nature of a writ of right, and was the highest action that a tenant in tail could have; for he could not have an absolute writ of right, that being confined to such as claimed in fee-simple, and for that reason this writ of formedon was granted to him by the statute *de donis*, (*Westm.* 2, 13 *Edw. I. c. 1.*) and was emphatically called "his" writ of right. The writ was distinguished into three species, viz.: *Formedon in the descender*, in the remainder, and in the reverter. It was abolished in England by *St. 3 & 4 Wm. IV. c. 27.* See 3 *Bl. Comm.* 191; *Co. Litt.* 316; *Fitzh. Nat. Brev.* 255.

**FORMEDON IN THE DESCENDER.** A writ of formedon which lay where a gift was made in tail, and the tenant in tail alienated the lands or was disseised of them and died, for the heir in tail to recover them, against the actual tenant of the freehold. 3 *Bl. Comm.* 192.

**FORMEDON IN THE REMAINDER.** A writ of formedon which lay where a man gave lands to another for life or in tail, with remainder to a third person in tail or in fee, and he who had the particular estate died

without issue inheritable, and a stranger intruded upon him in remainder, and kept him out of possession. In this case he in remainder, or his heir, was entitled to this writ. 3 Bl. Comm. 192.

**FORMEDON IN THE REVERTER.** A writ of formedon which lay where there was a gift in tail, and afterwards, by the death of the donee or his heirs without issue of his body, the reversion fell in upon the donor, his heirs or assigns. In such case, the *reversioner* had this writ to recover the lands. 3 Bl. Comm. 192.

**FORMELLA.** A certain weight of above 70 lbs., mentioned in 51 Hen. III. Cowell.

**FORMER ACQUITTAL.** See Autrefois.

**FORMER ADJUDICATION, or FORMER RECOVERY.** An adjudication or recovery in a former action. See Res Judicata.

**FORMIDO PERICULI.** Lat. Fear of danger. 1 Kent, Comm. 23.

**FORMS OF ACTION.** This term comprehends the various classes of personal action at common law, viz.: trespass, case, trover, detinue, replevin, covenant, debt, assumpsit, *scire facias*, and revivor, as well as the nearly obsolete actions of account and annuity, and the modern action of mandamus. They are now abolished in England by the Judicature Acts of 1873 and 1875, and in many of the states of the United States, where a uniform course of proceeding under codes of procedure has taken their place. But the principles regulating the distinctions between the common-law actions are still found applicable even where the technical forms are abolished.

**FORMULA.** In common-law practice, a set form of words used in judicial proceedings. In the civil law, an action. Calvin.

**FORMULÆ.** In Roman law. When the *legis actiones* were proved to be inconvenient, a mode of procedure called "*per formulas*," (*i. e.*, by means of *formulae*), was gradually introduced, and eventually the *legis actiones* were abolished by the *Lex Æbutia*, B. C. 164, excepting in a very few exceptional matters. The *formulae* were four in number, namely: (1) The *Demonstratio*, wherein the plaintiff stated, *i. e.*, showed, the facts out of which his claim arose; (2) the *Intentio*, where he made his claim against the defendant; (3) the *Adjudicatio*, wherein the *judex* was directed to assign or adjudicate the property or any portion or portions thereof according to the rights of the parties; and (4) the *Condemnatio*, in which the *judex* was authorized and directed to condemn or to acquit according as the facts were or were not proved. These *formulae* were obtained from the magistrate, (*in jure*), and were thereafter proceeded with

before the *judex*, (*in judicio*). Brown, See Mackeld. Rom. Law, § 204.

**FORMULARIES.** Collections of *formulae*, or forms of forensic proceedings and instruments used among the Franks, and other early continental nations of Europe. Among these the formulary of Marculphus may be mentioned as of considerable interest. Butl. Co. Litt. note 77, lib. 3.

**FORNAGIUM.** The fee taken by a lord of his tenant, who was bound to bake in the lord's common oven, (*in furno domini*), or for a commission to use his own.

**FORNICATION.** Unlawful sexual intercourse between two unmarried persons. Further, if one of the persons be married and the other not, it is fornication on the part of the latter, though adultery for the former. In some jurisdictions, however, by statute, it is adultery on the part of both persons if the woman is married, whether the man is married or not. Banks v. State, 96 Ala. 78, 11 So. 404; Hood v. State, 56 Ind. 263, 26 Am. Rep. 21; Com. v. Lafferty, 6 Grat. (Va.) 673; People v. Rouse, 2 Mich. N. P. 209; State v. Shear, 51 Wis. 460, 8 N. W. 287; Buchanan v. State, 55 Ala. 154; Stubblefield v. State, 83 Tex. Cr. R. 48, 200 S. W. 1090; State v. Gieseke, 125 Minn. 497, 147 N. W. 663, 666; State v. Phillips, 26 N. D. 206, 144 N. W. 94, 95, 49 L. R. A. (N. S.) 470, Ann. Cas. 1916A, 320; State v. Ling, 91 Kan. 647, 138 P. 582, Ann. Cas. 1915D, 374.

**FORNIX.** Lat. A brothel; fornication.

**FORNO.** In Spanish law. An oven. Las Partidas, pt. 3, tit. 32, l. 18.

**FORO.** In Spanish law. The place where tribunals hear and determine causes,—*evercendarum litium locus*.

**FOROS.** In Spanish law. Emphyteutic rents. Schm. Civil Law, 309.

**FORPRISE.** An exception; reservation; excepted; reserved. Anciently, a term of frequent use in leases and conveyances. Cowell; Blount.

In another sense, the word is taken for any exaction.

**FORSCHEL.** A strip of land lying next to the highway.

**FORSES.** Waterfalls. Camden, Brit.

**FORSPEAKER.** An attorney or advocate in a cause. Blount; Whishaw.

**FORSPECA.** In old English law. Prolocutor; paranympus.

**FORSTAL.** See Forestall.

**Forstellarius est pauperum depressor et totius communitatis et patriæ publicus inimicus.** 3. Inst. 196. A forestaller is an oppressor of the

poor, and a public enemy of the whole community and country.

**FORSWEAR.** In criminal law. To make oath to that which the deponent knows to be untrue.

This term is wider in its scope than "perjury," for the latter, as a technical term, includes the idea of the oath being taken before a competent court or officer, and relating to a material issue, which is not implied by the word "forswear." *Fowle v. Robbins*, 12 Mass. 501; *Tomlinson v. Brittlebank*, 4 Barn. & A. 632; *Railway Co. v. McCurdy*, 114 Pa. 554, 8 A. 230, 60 Am. Rep. 363.

**FORT.** This term means "something more than a mere military camp, post, or station. The term implies a fortification, or a place protected from attack by some such means as a moat, wall, or parapet." *U. S. v. Tichenor* (C. C.) 12 F. 424.

**FORTALICE, or FORTELACE.** A fortress or place of strength, which anciently did not pass without a special grant. 11 Hen. VII. c. 18.

**FORTALITIUM.** In old Scotch law. A fortalice; a castle. Properly a house or tower which has a battlement or a ditch or moat about it.

**FORTAXED.** Wrongly or extortionately taxed.

**FORTHCOMING.** In Scotch law. The action by which an arrestment (garnishment) is made effectual. It is a decree or process by which the creditor is given the right to demand that the sum arrested be applied for payment of his claim. 2 Kames, Eq. 288, 289; Bell.

**FORTHCOMING BOND.** A bond given to a sheriff who has levied on property, conditioned that the property shall be forthcoming, *i. e.*, produced, when required. On the giving of such bond, the goods are allowed to remain in the possession of the debtor. *Hill v. Manser*, 11 Grat. (Va.) 522; *Nichols v. Chittenden*, 14 Colo. App. 49, 59 P. 954; *Burnham-Munger-Root Dry Goods Co. v. Strahl*, 102 Neb. 142, 166 N. W. 266.

The sheriff or other officer levying a writ of *ferri facias*, or distress warrant, may take from the debtor a bond, with sufficient surety, payable to the creditor, reciting the service of such writ or warrant, and the amount due thereon, (including his fee for taking the bond, commissions, and other lawful charges, if any,) with condition that the property shall be forthcoming at the day and place of sale; whereupon such property may be permitted to remain in the possession and at the risk of the debtor. Code Va. 1919, § 6518.

**FORTHWITH.** As soon as, by reasonable exertion, confined to the object, a thing may be done. Thus, when a defendant is ordered to plead forthwith, he must plead within

twenty-four hours. When a statute enacts that an act is to be done "forthwith," it means that the act is to be done within a reasonable time. 1 Chit. Archb. Pr. (12th Ed.) 164; *Dickerman v. Northern Trust Co.*, 176 U. S. 181, 20 S. Ct. 311, 44 L. Ed. 423; *Faivre v. Manderscheid*, 117 Iowa, 724, 90 N. W. 76; *Martin v. Pifer*, 96 Ind. 248; *Hiddleston v. City of Grand Island*, 115 Neb. 287, 212 N. W. 619, 621; *State v. French*, 102 Wash. 273, 172 P. 1156, 1157; *Gedratis v. Verdier*, 236 Mich. 383, 210 N. W. 338, 340; *Dallas Opera House Ass'n v. Dallas Enterprises* (Tex. Civ. App.) 288 S. W. 656, 660; *National Live Stock Ins. Co. v. Simmons*, 62 Ind. App. 15, 111 N. E. 18, 19; *Gamwell v. Bigley*, 253 Mass. 378, 149 N. E. 155, 156; *Macchia v. Scottish Union & National Ins. Co.*, 101 N. J. Law, 258, 128 A. 244, 245.

**FORTIA.** Force. In old English law. Force used by an accessory, to enable the principal to commit a crime, as by binding or holding a person while another killed him, or by aiding or counseling in any way, or commanding the act to be done. Bract. fols. 138, 138b. According to Lord Coke, *fortia* was a word of art, and properly signified the furnishing of a weapon of force to do the fact, and by force whereof the fact was committed, and he that furnished it was not present when the fact was done. 2 Inst. 182.

**FORTIA FRISCA.** Fresh force (*q. v.*).

**FORTILITY.** In old English law. A fortified place; a castle; a bulwark. Cowell; 11 Hen. VII. c. 18.

**FORTIOR.** Lat. Stronger. A term applied, in the law of evidence, to that species of presumption, arising from facts shown in evidence, which is strong enough to shift the burden of proof to the opposite party. *Burrill, Circ. Ev.* 64, 66.

**Fortior est custodia legis quam hominis.** 2 Rolle, 325. The custody of the law is stronger than that of man.

**Fortior et potentior est dispositio legis quam hominis.** The disposition of the law is of greater force and effect than that of man. *Co. Litt.* 234a; *Shep. Touch.* 302; 15 East, 178. The law in some cases overrides the will of the individual, and renders ineffective or futile his expressed intention or contract. *Broom, Max.* 697.

**FORTIORI.** See A Fortiori.

**FORTIS.** Lat. Strong. *Fortis et sana*, strong and sound; staunch and strong; as a vessel. *Towash. Pl.* 227.

**FORTLETT.** A place or port of some strength; a little fort. *Old Nat. Brev.* 45.

**FORTUIT.** In French law. Accidental; fortuitous. *Cas fortuit*, a fortuitous event. *Fortuitement*, accidentally; by chance; casually.

**FORTUITOUS.** Accidental; undesigned; adventitious. Resulting from unavoidable physical causes. *Zappala v. Industrial Ins. Commission*, 82 Wash. 314, 144 P. 54, L. R. A. 1916A, 295.

**FORTUITOUS COLLISION.** In maritime law. The accidental running foul of vessels. *Peters v. Warren Ins. Co.*, 14 Pet. 112, 10 L. Ed. 371.

**FORTUITOUS EVENT.** In the civil law. That which happens by a cause which cannot be resisted. An unforeseen occurrence, not caused by either of the parties, nor such as they could prevent. In French it is called "*cas fortuit*." Civ. Code La. art. 3556, no. 15. There is a difference between a fortuitous event, or inevitable accident, and irresistible force. By the former, commonly called the "act of God," is meant any accident produced by physical causes which are irresistible; such as a loss by lightning or storms, by the perils of the seas, by inundations and earthquakes, or by sudden death or illness. By the latter is meant such an interposition of human agency as is, from its nature and power, absolutely uncontrollable. Of this nature are losses occasioned by the inroads of a hostile army, or by public enemies. Story, Bailm. § 25. In Workmen's Compensation Acts fortuitous event is accidental happening, or accident that takes place without design or expectation, or thing that happens from irresistible cause. The term is expressly defined in several acts. *Stoll v. Department of Labor and Industries*, 138 Wash. 685, 245 P. 20, 21; *Frandila v. Department of Labor and Industries*, 137 Wash. 530, 243 P. 5; *Stertz v. Industrial Insurance Commission of Washington*, 91 Wash. 588, 158 P. 256, 259, Ann. Cas. 1918B, 354; *Cole v. Department of Labor and Industries*, 137 Wash. 538, 243 P. 7, 9; *Zappala v. Industrial Ins. Commission*, 82 Wash. 314, 144 P. 54, L. R. A. 1916A, 295; *Thompson v. Commercial Nat. Bank*, 156 La. 479, 100 So. 688, 690; *Depre v. Pacific Coast Forge Co.*, 154 Wash. 263, 259 P. 720, 721.

**FORTUNA.** Lat. Fortune; also treasure-trove. Jacob.

**Fortunam faciunt judicem.** They make fortune the judge. Co. Litt. 167. Spoken of the process of making partition among coparceners by drawing lots for the several purparts.

**FORTUNE-TELLERS.** In English law. Persons pretending or professing to tell fortunes, and punishable as rogues and vagabonds or disorderly persons. 4 Bl. Comm. 62.

**FORTUNIUM.** In old English law. A tournament or fighting with spears, and an appeal to fortune therein.

**FORTY.** In land laws and conveyancing, in those regions where grants, transfers, and deeds are made with reference to the subdivisions of the government survey, this term

means forty acres of land in the form of a square, being the tract obtained by quartering a section of land (640 acres) and again quartering one of the quarters. *Lente v. Clarke*, 22 Fla. 515, 1 So. 149.

**FORTY-DAYS COURT.** In old English forest law. The court of attachment in forests, or wood-mote court.

**FORUM.** Lat. A court of justice, or judicial tribunal; a place of jurisdiction; a place where a remedy is sought; a place of litigation. 3 Story, 347.

#### In Roman Law

The market place, or public paved court, in the city of Rome, where such public business was transacted as the assemblies of the people and the judicial trial of causes, and where also elections, markets, and the public exchange were held.

**FORUM ACTUS.** The forum of the act. The forum of the place where the act was done which is now called in question.

**FORUM CONSCIENTIÆ.** The forum or tribunal of conscience.

**FORUM CONTENTIOSUM.** A contentious forum or court; a place of litigation; the ordinary court of justice, as distinguished from the tribunal of conscience. 3 Bl. Comm. 211.

**FORUM CONTRACTUS.** The forum of the contract; the court of the place where a contract is made; the place where a contract is made, considered as a place of jurisdiction. 2 Kent Comm. 463.

**FORUM DOMESTICUM.** A domestic forum or tribunal. The visitatorial power is called a "*forum domesticum*," calculated to determine, *sine strepitu*, all disputes that arise within themselves. 1 W. Bl. 82.

**FORUM DOMICILII.** The forum or court of the domicile; the domicile of a defendant, considered as a place of jurisdiction. 2 Kent, Comm. 463.

**FORUM ECCLESIASTICUM.** An ecclesiastical court. The spiritual jurisdiction, as distinguished from the secular.

**FORUM LIGANTIÆ REI.** The forum of defendant's allegiance. The court or jurisdiction of the country to which he owes allegiance.

**FORUM ORIGINIS.** The court of one's nativity. The place of a person's birth, considered as a place of jurisdiction.

**FORUM REGIUM.** The king's court. St. Westm. 2, c. 43.

**FORUM REI.** This term may mean either (1) the forum of the defendant, that is, of his residence or domicile; or (2) the forum of the *res* or thing in controversy, that is, of the

place where the property is situated. The ambiguity springs from the fact that *rei* may be the genitive of either *reus* or *res*.

**FORUM REI GESTÆ.** The forum or court of a *res gesta*, (thing done;) the place where an act is done, considered as a place of jurisdiction and remedy. 2 Kent, Comm. 463.

**FORUM REI SITÆ.** The court where the thing in controversy is situated. The place where the subject-matter in controversy is situated, considered as a place of jurisdiction. 2 Kent, Comm. 463.

**FORUM SECULARE.** A secular, as distinguished from an ecclesiastical or spiritual, court.

**FORURTH.** In old records. A long slip of ground. Cowell.

**FORWARD.** To send forward; to send toward the place of destination; to transmit. *Nicoletti v. Bank of Los Banos*, 190 Cal. 637, 214 P. 51, 52, 27 A. L. R. 1479; *Copeland v. Union Nursery Co.*, 187 Ala. 148, 65 So. 834, 835; *Katcher v. American Express Co.*, 94 N. J. Law, 165, 109 A. 741, 742.

**FORWARDING MERCHANT, or FORWARDER.** One who receives and forwards goods, taking upon himself the expenses of transportation, for which he receives a compensation from the owners, having no concern in the vessels or wagons by which they are transported, and no interest in the freight, and not being deemed a common carrier, but a mere warehouseman and agent. *Story, Bailm.* §§ 502, 509. *Schloss v. Wood*, 11 Colo. 287, 17 P. 910; *Ackley v. Kellogg*, 8 Cow. (N. Y.) 224; *Place v. Union Exp. Co.*, 2 Hilt. (N. Y.) 19; *Bush v. Miller*, 13 Barb. (N. Y.) 488.

#### FOSSA.

##### In the Civil Law

A ditch; a receptacle of water, made by hand. *Dig.* 43, 14, 1, 5.

##### In Old English Law

A ditch. A pit full of water, in which women committing felony were drowned. A grave or sepulcher. *Spelman*.

**FOSSAGIUM.** In old English law. The duty levied on the inhabitants for repairing the moat or ditch round a fortified town.

**FOSSATORUM OPERATIO.** In old English law. Fosse-work; or the service of laboring, done by inhabitants and adjoining tenants, for the repair and maintenance of the ditches round a city or town, for which some paid a contribution, called "*fossagium*." *Cowell*.

**FOSSATUM.** A dyke, ditch, or trench; a place inclosed by a ditch; a moat; a canal.

**FOSSE-WAY, or FOSSE.** One of the four ancient Roman ways through England. *Spelman*.

**FOSSELLUM.** A small ditch. *Cowell*.

**FOSTERING.** An ancient custom in Ireland, in which persons put away their children to fosterers. Fostering was held to be a stronger alliance than blood, and the foster children participated in the fortunes of their foster fathers. *Mozley & Whitley*.

**FOSTERLAND.** Land given, assigned, or allotted to the finding of food or victuals for any person or persons; as in monasteries for the monks, etc. *Cowell; Blount*.

**FOSTERLEAN.** The remuneration fixed for the rearing of a foster child; also the jointure of a wife. *Jacob*.

**FOUJDAR.** In Hindu law. Under the Mogul government a magistrate of the police over a large district, who took cognizance of all criminal matters within his jurisdiction, and sometimes was employed as receiver general of the revenues. *Wharton*.

**FOUJDARRY COURT.** In Hindu law. A tribunal for administering criminal law.

**FOUND.** A person is said to be found within a state when actually present therein, but as applied to a corporation it is necessary that it be doing business in such state through an officer or agent or by statutory authority in such manner as to render it liable then to suit and to constructive or substituted service of process. See *Romaine v. Ins. Co.*, 55 F. 751; *Venner v. Pennsylvania Steel Co. of New Jersey* (D. C.) 250 F. 292, 295; *Haskell v. Aluminum Co. of America* (D. C.) 14 F.(2d) 864, 867; *Shipman Coal Co. v. Delaware & Hudson Co.*, 219 App. Div. 312, 219 N. Y. S. 628, 631; *Tiedemann v. Tiedemann*, 36 Nev. 494, 137 P. 824, 826; *Buckley v. Advance-Rumely Thresher Co.*, 106 Neb. 214, 183 N. W. 105, 107; *Eastman Kodak Co. of New York v. Southern Photo Materials Co.*, 273 U. S. 359, 47 S. Ct. 400, 402, 71 L. Ed. 684; *Teti v. Consolidated Coal Co. of Maryland* (D. C.) 217 F. 443, 447; *Iles v. Heidenreich*, 201 Ill. App. 619, 624; *Council Bluffs Canning Co. v. Omaha Tinware Co.*, 49 Neb. 537, 68 N. W. 929; *Juckett v. Brennaman*, 99 Neb. 755, 157 N. W. 925, 926; *Dean v. Brannon*, 139 Miss. 312, 104 So. 173, 174; *Bank of Bristol v. Ashworth*, 122 Va. 170, 94 S. E. 469, 470; *United States v. Townsend* (D. C.) 219 F. 761, 762. *Contra*, where person was enticed into district. *Blandin v. Ostrander* (C. C. A.) 239 F. 700, 702.

**FOUNDATION.** The founding or building of a college or hospital. The incorporation or endowment of a college or hospital is the foundation; and he who endows it with land or other property is the founder. *Dartmouth College v. Woodward*, 4 Wheat. 667, 4 L. Ed. 629; *Seagrave's Appeal*, 125 Pa. 362, 17 A. 412; *Union Baptist Ass'n v. Hunn*, 7 Tex. Civ. App. 249, 26 S. W. 755.

**FOUNDED.** Based upon; arising from, growing out of, or resting upon; as in the expressions "founded in fraud," "founded on a consideration," "founded on contract," and the

like. See *In re Grant Shoe Co.*, 130 Fed. 881, 66 C. C. A. 78; *State v. Morgan*, 40 Conn. 46; *Palmer v. Preston*, 45 Vt. 158, 12 Am. Rep. 191; *Steele v. Hoe*, 14 Adol. & El. 431; *In re Morales* (D. C.) 105 F. 761.

**FOUNDER.** The person who endows an eleemosynary corporation or institution, or supplies the funds for its establishment. See *Foundation*.

**FOUNDERS' SHARES.** In English Company Law. Shares issued to the founders of (or vendors to) a public company as a part of the consideration for the business, or concession, etc., taken over, and not forming a part of the ordinary capital. As a rule, such shares only participate in profits after the payment of a fixed minimum dividend on paid-up capital. *Encyc. Dict.*

**FOUNDEROSA.** Founderos; out of repair, as a road. *Cro. Car.* 366.

**FOUNDLING.** A deserted or exposed infant; a child found without a parent or guardian, its relatives being unknown. It has a settlement in the district where found. *State ex rel. Wilson v. Pierre*, 155 La. 510, 99 So. 421.

**FOUNDLING HOSPITALS.** Charitable institutions which exist in most countries for taking care of infants forsaken by their parents, such being generally the offspring of illegal connections. The foundling hospital act in England is the 13 Geo. II. c. 29.

**FOUR.** Fr. In old French law. An oven or bake-house. *Four banal*, an oven, owned by the seignior of the estate, to which the tenants were obliged to bring their bread for baking. Also the proprietary right to maintain such an oven.

**FOUR CORNERS.** The face of a written instrument. That which is contained on the face of a deed (without any aid from the knowledge of the circumstances under which it is made) is said to be within its four corners, because every deed is still supposed to be written on one entire skin, and so to have but four corners.

To look at the *four corners* of an instrument is to examine the whole of it, so as to construe it as a whole, without reference to any one part more than another. 2 *Smith, Lead. Cas.* 295.

**FOUR SEAS.** The seas surrounding England. These were divided into the Western, including the Scotch and Irish; the Northern, or North sea; the Eastern, being the German ocean; the Southern, being the British channel.

**FOURCHER.** Fr. To fork. This was a method of delaying an action anciently resorted to by defendants when two of them were joined in the suit. Instead of appearing together, each would appear in turn and cast

an essoin for the other, thus postponing the trial.

**FOURIERISM.** A form of socialism. See 1 *Mill, Pol. Ec.* 260.

**FOURTEENTH AMENDMENT.** The Fourteenth Amendment of the constitution of the United States became a part of the organic law July 28, 1868, and its importance entitles it to special mention. It creates or at least recognizes for the first time a citizenship of the United States, as distinct from that of the states; forbids the making or enforcement by any state of any law abridging the privileges and immunities of citizens of the United States; and secures all "persons" against any state action which is either deprivation of life, liberty, or property without due process of law or denial of the equal protection of the laws.

**FWLS OF WARREN.** Such fowls as are preserved under the game laws in warrens. According to Manwood, these are partridges and pheasants. According to Coke, they are partridges, rails, quails, woodcocks, pheasants, mallards, and herons. *Co. Litt.* 233.

**FOX'S LIBEL ACT.** In English law. This was the statute 52 Geo. III. c. 60, which secured to juries, upon the trial of indictments for libel, the right of pronouncing a general verdict of guilty or not guilty upon the whole matter in issue, and no longer bound them to find a verdict of guilty on proof of the publication of the paper charged to be a libel, and of the sense ascribed to it in the indictment. *Wharton*.

**FOY.** L. Fr. Faith; allegiance; fidelity.

**FR.** A Latin abbreviation for "fragmentum," a fragment, used in citations to the Digest or Pandects in the *Corpus Juris Civilis* of Justinian, the several extracts from juristic writings of which it is composed being so called.

**FRACTIO.** Lat. A breaking; division; fraction; a portion of a thing less than the whole.

**FRACTION.** A breaking, or breaking up; a fragment or broken part; a portion of a thing, less than the whole. *Jory v. Palace Dry Goods Co.*, 30 Or. 196, 46 P. 786.

**FRACTION OF A DAY.** A portion of a day. The dividing a day. Generally, the law does not allow the fraction of a day. 2 *Bl. Comm.* 141.

**FRACTIONAL.** As applied to tracts of land, particularly townships, sections, quarter sections, and other divisions according to the government survey, and also mining claims, this term means that the exterior boundary lines are laid down to include the whole of such a division or such a claim, but that the tract in question does not measure up to the

full extent or include the whole acreage, because a portion of it is cut off by an overlapping survey, a river or lake, or some other external interference. See *Tolleston Club v. State*, 141 Ind. 197, 38 N. E. 214; *Parke v. Meyer*, 28 Ark. 287; *Goltermann v. Schiermeyer*, 111 Mo. 404, 19 S. W. 487. Any irregular division whether containing more or less than conventional amount of acreage. *Graysonia-Nashville Lumber Co. v. Wright*, 117 Ark. 151, 175 S. W. 405; *South Florida Farms Co. v. Goodno*, 84 Fla. 532, 94 So. 672, 675.

**Fractionem diei non recipit lex.** Lofft, 572. The law does not take notice of a portion of a day.

**FRACTITIUM.** Arable land. Mon. Angl.

**FRACTURA NAVIUM.** Lat. The breaking or wreck of ships; the same as *naufragium*, (*q. v.*)

**FRAGMENTA.** Lat. Fragments. A name sometimes applied (especially in citations) to the Digest or Pandects in the *Corpus Juris Civilis* of Justinian, as being made up of numerous extracts or "fragments" from the writings of various jurists. Mackeld. Rom. Law, § 74.

**FRAIS.** Fr. Expense; charges; costs. *Frais d'un procès*, costs of a suit.

**FRAIS DE JUSTICE.** In French and Canadian law. Costs incurred incidentally to the action.

**FRAIS JUSQU'À BORD.** Fr. In French commercial law. Expenses to the board; expenses incurred on a shipment of goods, in packing, cartage, commissions, etc., up to the point where they are actually put on board the vessel. *Bartels v. Redfield* (C. C.) 16 F. 336.

**FRANC.** A French coin of the value of a little over eighteen cents. *Levy v. Cleveland, C. & St. L. Ry. Co.*, 206 N. Y. S. 261, 262, 210 App. Div. 422; *Levy v. Cleveland, C. & St. L. R. Co.*, 202 N. Y. S. 396, 397, 121 Misc. Rep. 681; *Chemical Nat. Bank v. Butt*, 206 N. Y. S. 36, 37, 123 Misc. Rep. 575.

**FRANC ALEU.** In French feudal law. An allod; a free inheritance; or an estate held free of any services except such as were due to the sovereign.

**FRANC TENANCIER.** In French law. A freeholder.

**FRANCHILANUS.** A freeman. Chart. Hen. IV. A free tenant. Spelman.

**FRANCHISE.** A special privilege conferred by government upon an individual or corporation, and which does not belong to the citizens of the country generally, of common right. It is essential to the character of a

franchise that it should be a grant from the sovereign authority, and in this country no franchise can be held which is not derived from a law of the state. In England, a franchise is defined to be a royal privilege in the hands of a subject. In this country, it is a privilege of a public nature, which cannot be exercised without a legislative grant. See *Bank of Augusta v. Earle*, 13 Pet. 595, 10 L. Ed. 274; *Dike v. State*, 38 Minn. 366, 38 N. W. 95; *Chicago Board of Trade v. People*, 91 Ill. 82; *Lasher v. People*, 183 Ill. 226, 55 N. E. 663, 47 L. R. A. 802, 75 Am. St. Rep. 103; *Southampton v. Jessup*, 162 N. Y. 122, 56 N. E. 538; *Thompson v. People*, 23 Wend. (N. Y.) 578; *Black River Imp. Co. v. Holway*, 87 Wis. 584, 59 N. W. 126; *Central Pac. R. Co. v. California*, 162 U. S. 91, 16 S. Ct. 766, 40 L. Ed. 903; *Chicago & W. I. R. Co. v. Dunbar*, 95 Ill. 575; *State v. Weatherby*, 45 Mo. 20; *Morgan v. Louisiana*, 93 U. S. 223, 23 L. Ed. 860; *State ex rel. Coco v. Riverside Irr. Co.*, 142 La. 10, 76 So. 216, 218; *Public Service Commission, Second Dist., v. New York Cent. R. Co.*, 185 N. Y. S. 267, 273, 193 App. Div. 615.

A franchise is a privilege or immunity of a public nature, which cannot be legally exercised without legislative grant. To be a corporation is a franchise. The various powers conferred on corporations are franchises. The execution of a policy of insurance by an insurance company, and the issuing a bank-note by an incorporated bank, are franchises. *People v. Utica Ins. Co.*, 15 Johns. (N. Y.) 387, 8 Am. Dec. 243.

The word "franchise" has various significations, both in a legal and popular sense. A corporation is itself a franchise belonging to the members of the corporation, and the corporation, itself a franchise, may hold other franchises. So, also, the different powers of a corporation, such as the right to hold and dispose of property, are its franchises. In a popular sense, the political rights of subjects and citizens are franchises, such as the right of suffrage, etc. *Pierce v. Emery*, 32 N. H. 484; *Turner v. Turner Mfg. Co.*, 184 Wis. 508, 199 N. W. 155, 156; *State v. Black Diamond Co.*, 97 Ohio St. 24, 119 N. E. 195, 199, L. R. A. 1918E, 352.

The term "franchise" has several significations, and there is some confusion in its use. When used with reference to corporations, the better opinion, deduced from the authorities, seems to be that it consists of the entire privileges embraced in and constituting the grant. It does not embrace the property acquired by the exercise of the franchise. *Bridgeport v. New York & N. H. R. Co.*, 36 Conn. 255, 4 Am. Rep. 63.

#### General and Special

The charter of a corporation is its "general" franchise, while a "special" franchise consists in any rights granted by the public to use property for a public use but with private profit. *Lord v. Equitable Life Assur. Soc.*, 194 N. Y. 212, 87 N. E. 443, 22 L. R. A. (N. S.) 420.

#### Elective Franchise

The right of suffrage; the right or privilege of voting in public elections.

**Franchise Tax**

A tax on the franchise of a corporation, that is, on the right and privilege of carrying on business in the character of a corporation, for the purposes for which it was created, and in the conditions which surround it. Though the value of the franchise, for purposes of taxation, may be measured by the amount of business done, or the amount of earnings or dividends, or by the total value of the capital or stock of the corporation in excess of its tangible assets, a franchise tax is not a tax on either property, capital, stock, earnings, or dividends. See *Home Ins. Co. v. New York*, 134 U. S. 594, 10 S. Ct. 593, 33 L. Ed. 1025; *Worth v. Petersburg R. Co.*, 89 N. C. 305; *Tremont & Suffolk Mills v. Lowell*, 178 Mass. 469, 59 N. E. 1007; *Chicago & E. I. R. Co. v. State*, 153 Ind. 134, 51 N. E. 924; *Marsden Co. v. State Board of Assessors*, 61 N. J. Law, 461, 39 A. 638; *People v. Knight*, 174 N. Y. 475, 67 N. E. 65, 63 L. R. A. 87; *State ex rel. Marquette Hotel Inv. Co. v. State Tax Commission*, 282 Mo. 213, 221 S. W. 721, 726; *Chesapeake & O. Ry. Co. v. Commonwealth*, 190 Ky. 552, 228 S. W. 15, 16; *Greene v. Louisville & I. R. Co.*, 244 U. S. 499, 37 S. Ct. 673, 678, 61 L. Ed. 1280, Ann. Cas. 1917E, 88; *Arkansas & Memphis Ry. Bridge & Terminal Co. v. State*, 174 Ark. 420, 295 S. W. 378, 379; *American Refining Co. v. Staples* (Tex. Com. App.) 269 S. W. 420, 421.

**Personal Franchise**

A franchise of corporate existence, or one which authorizes the formation and existence of a corporation, is sometimes called a "personal" franchise, as distinguished from a "property" franchise, which authorizes a corporation so formed to apply its property to some particular enterprise or exercise some special privilege in its employment, as, for example, to construct and operate a railroad. See *Sandham v. Nye*, 30 N. Y. S. 552, 9 Misc. Rep. 541.

**Secondary Franchises**

The franchise of corporate existence being sometimes called the "primary" franchise of a corporation, its "secondary" franchises are the special and peculiar rights, privileges, or grants which it may receive under its charter or from a municipal corporation, such as the right to use the public streets, exact tolls, collect fares, etc. See *State v. Topeka Water Co.*, 61 Kan. 547, 60 P. 337; *Virginia Canon Toll Road Co. v. People*, 22 Colo. 429, 45 P. 398, 37 L. R. A. 711. The franchises of a corporation are divisible into (1) corporate or general franchises; and (2) "special or secondary franchises." The former is the franchise to exist as a corporation, while the latter are certain rights and privileges conferred upon existing corporations. *Gulf Refining Co. v. Cleveland Trust Co.* (Miss.) 108 So. 158, 160.

**Special Franchises**

See Secondary Franchises, *supra*.

**FRANCIA.** France. Bract. fol. 427b.

**FRANCIGENA.** A man born in France. A designation formerly given to aliens in England.

**FRANCUS.** L. Lat. Free; a freeman; a Frank. Spelman.

**FRANCUS BANCUS.** Free bench (*q. v.*).

**FRANCUS HOMO.** In old European law. A free man. Domesday.

**FRANCUS PLEGIUS.** In old English law. A frank pledge, or free pledge. See Frank-Pledge.

**FRANCUS TENENS.** A freeholder. See Frank-Tenement.

**FRANK, v.** To send matter through the public mails free of postage, by a personal or official privilege.

**FRANK, adj.** In old English law. Free. Occurring in several compounds.

—**Frank-almoigne.** In English law. Free alms. A spiritual tenure whereby religious corporations, aggregate or sole, held lands of the donor to them and their successors forever. They were discharged of all other except religious services, and the *trinoda necessitas*. It differs from tenure by divine service, in that the latter required the performance of certain divine services, whereas the former, as its name imports, is free. This tenure is expressly excepted in the 12 Car. II. c. 24, § 7, and therefore still subsists in some few instances. 2 Broom & H. Comm. 203.

—**Frank bank.** In old English law. Free bench. Litt. § 166; Co. Litt. 110b. See Free-Bench.

—**Frank-chase.** A liberty of free chase enjoyed by any one, whereby all other persons having ground within that compass are forbidden to cut down wood, etc., even in their own demesnes, to the prejudice of the owner of the liberty. Cowell. See Chase.

—**Frank-fee.** Freehold lands exempted from all services, but not from homage; lands held otherwise than in ancient demesne. That which a man holds to himself and his heirs, and not by such service as is required in ancient demesne, according to the custom of the manor. Cowell.

—**Frank ferm.** In English law. A species of estate held in socage, said by Britton to be "lands and tenements whereof the nature of the fee is changed by feoffment out of chivalry for certain yearly services, and in respect whereof neither homage, ward, marriage, nor relief can be demanded." Britt. c. 66; 2 Bl. Comm. 80.



—**Frank-fold.** In old English law. Free-fold; a privilege for the lord to have all the sheep of his tenants and the inhabitants within his seignior, in his fold, in his demesnes, to manure his land. Keilw. 198.

—**Frank-law.** An obsolete expression signifying the rights and privileges of a citizen, or the liberties and civic rights of a freeman.

—**Frank-marriage.** A species of entailed estates, in English law, now grown out of use, but still capable of subsisting. When tenements are given by one to another, together with a wife, who is a daughter or cousin of the donor, to hold in frank-marriage, the donees shall have the tenements to them and the heirs of their two bodies begotten, *i. e.*, in special tail. For the word "frank-marriage," *ex vi termini*, both creates and limits an inheritance, not only supplying words of descent, but also terms of procreation. The donees are liable to no service except fealty, and a reserved rent would be void, until the fourth degree of consanguinity be passed between the issues of the donor and donee, when they were capable by the law of the church of intermarrying. Litt. § 19; 2 Bl. Comm. 115.

—**Frank-pledge.** In old English law. A pledge or surety for freemen; that is, the pledge, or corporate responsibility, of all the inhabitants of a tithing for the general good behavior of each free-born citizen above the age of fourteen, and for his being forthcoming to answer any infraction of the law. Termes de la Ley; Cowell.

—**Frank-tenant.** A freeholder. Litt. § 91.

—**Frank-tenement.** In English law. A free tenement, freeholding, or freehold. 2 Bl. Comm. 61, 62, 104; 1 Steph. Comm. 217; Bract. fol. 207. Used to denote both the tenure and the estate.

**FRANKING PRIVILEGE.** The privilege of sending certain matter through the public mails without payment of postage, in pursuance of a personal or official privilege.

**FRANKLEYN** (spelled, also, "Francling" and "Franklin"). A freeman; a freeholder; a gentleman. Blount; Cowell.

**FRASSETUM.** In old English law. A wood or wood-ground where ash-trees grow. Co. Litt. 4b.

**FRATER.** In the civil law. A brother. *Frater consanguineus*, a brother having the same father, but born of a different mother. *Frater uterinus*, a brother born of the same mother, but by a different father. *Frater nutricius*, a bastard brother.

*Frater fratri uterino non succedet in hæreditate paterna.* A brother shall not succeed a uterine brother in the paternal inheritance. 2 Bl.

Comm. 223; Fortes. de Laud. c. 5. A maxim of the common law of England, now superseded by the statute 3 & 4 Wm. IV. c. 106, § 9. See Broom, Max. 530.

**FRATERIA.** In old records. A fraternity, brotherhood, or society of religious persons, who were mutually bound to pray for the good health and life, etc., of their living brethren, and the souls of those that were dead. Cowell.

**FRATERNAL.** Brotherly; relating or belonging to a fraternity or an association of persons formed for mutual aid and benefit, but not for profit. In re Mason Tire & Rubber Co., 11 F.(2d) 556, 557, 56 App. D. C. 170.

**FRATERNAL BENEFIT ASSOCIATION.** A society or voluntary association organized and carried on for the mutual aid and benefit of its members, not for profit; which ordinarily has a lodge system, a ritualistic form of work, and a representative government, makes provision for the payment of death benefits, and (sometimes) for benefits in case of accident, sickness, or old age, the funds therefor being derived from dues paid or assessments levied on the members. National Union v. Marlow, 74 F. 778, 21 C. C. A. 89; Walker v. Giddings, 103 Mich. 344, 61 N. W. 512.

**FRATERNAL INSURANCE.** The form of life (or accident) insurance furnished by a fraternal beneficial association, consisting in the payment to a member, or his heirs in case of death, of a stipulated sum of money, out of funds raised for that purpose by the payment of dues or assessments by all the members of the association.

**FRATERNIA.** A fraternity or brotherhood.

**FRATERNITY.** In old English law. "A corporation is an investing of the people of a place with the local government thereof, and therefore their laws shall bind strangers; but a fraternity is some people of a place united together in respect to a mystery or business into a company, and their laws and ordinances cannot bind strangers." Cuddon v. Eastwick, 1 Salk. 192.

Organizations composed of either or both sexes. State v. Allen, 189 Ind. 369, 127 N. E. 145, 146. Brotherly regard and sympathy for others. Donnelly v. Sovereign Camp W. O. W., 111 Neb. 499, 197 N. W. 125, 127.

**FRATRES CONJURATI.** Sworn brothers or companions for the defense of their sovereign, or for other purposes. Hoved. 445.

**FRATRES PYES.** In old English law. Certain friars who wore white and black garments. Walsingham, 124.

**FRATRIAGE.** A younger brother's inheritance.

**FRATRICIDE.** One who has killed a brother or sister; also the killing of a brother or sister.

**FRAUD.** Fraud consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury. As distinguished from negligence, it is always positive, intentional. *Maher v. Hibernia Ins. Co.*, 67 N. Y. 292; *Alexander v. Church*, 53 Conn. 561, 4 Atl. 103; *Studer v. Bleistein*, 115 N. Y. 316, 22 N. E. 243, 7 L. R. A. 702; *Moore v. Crawford*, 130 U. S. 122, 9 Sup. Ct. 447, 32 L. Ed. 878; *Fechheimer v. Baum* (C. C.) 37 Fed. 167; *U. S. v. Beach* (D. C.) 71 Fed. 160; *Gardner v. Heartt*, 3 Denio (N. Y.) 232; *Monroe Mercantile Co. v. Arnold*, 108 Ga. 449, 34 S. E. 176; *Missouri, K. & T. Ry. Co. of Texas v. Maples* (Tex. Civ. App.) 162 S. W. 426, 429; *State v. Meeks*, 30 Ariz. 436, 247 P. 1099, 1100; *Joplin v. Nunnally*, 67 Or. 566, 134 P. 1177, 1179; *McNair v. Southern States Finance Co.*, 191 N. C. 710, 133 S. E. 85, 88.

Fraud, as applied to contracts, is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other. *Civil Code La. art. 1847*. *Strauss v. Insurance Co. of North America*, 157 La. 661, 102 So. 861, 865; *Jesse French Piano & Organ Co. v. Gibbon* (Tex. Civ. App.) 180 S. W. 1185, 1187.

Fraud, in the sense of a court of equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another. 1 *Story, Eq. Jur.* § 187; *Morgan v. Gaiter*, 202 Ala. 492, 80 So. 876, 878; *Jones v. Snyder*, 121 Okl. 254, 249 P. 313, 316.

#### Synonyms

The term "fraud" is sometimes used as synonymous with "covenant," "collusion," or "deceit." But distinctions are properly taken in the meanings of these words, for which reference may be had to the titles *Covenant*; *Collusion*; *Deceit*.

#### Classification

Fraud is either *actual* or *constructive*. Actual fraud consists in deceit, artifice, trick, design, some direct and active operation of the mind; it includes cases of the intentional and successful employment of any cunning, deception, or artifice used to circumvent or cheat another; it is something said, done, or omitted by a person with the design of perpetrating what he knows to be a cheat or deception. Constructive fraud consists in any act of commission or omission contrary to legal or equitable duty, trust, or confidence justly reposed, which is contrary to good conscience and operates to the injury of another. Or, as otherwise defined, it is an act, statement or omission which operates as a virtual fraud on an individual, or which, if generally permitted, would be prejudicial to the public welfare, and yet may have been unconnected with any selfish or evil design. Or, according to *Story*,

constructive frauds are such acts or contracts as, though not originating in any actual evil design or contrivance to perpetrate a positive fraud or injury upon other persons, are yet, by their tendency to deceive or mislead other persons, or to violate private or public confidence, or to impair or injure the public interests, deemed equally reprehensible with actual fraud. 1 *Story, Eq. Jur.* § 258. And see, generally, *Code Ga.* 1882, § 3173 (*Civ. Code* 1910, § 4622); *People v. Kelly*, 35 Barb. (N. Y.) 457; *Jackson v. Jackson*, 47 Ga. 99; *Hatch v. Barrett*, 34 Kan. 223, 8 P. 129; *Forker v. Brown*, 10 Misc. Rep. 161, 30 N. Y. Supp. 827; *Massachusetts Ben. L. Ass'n v. Robinson*, 104 Ga. 256, 30 S. E. 918, 42 L. R. A. 261; *Haas v. Sternbach*, 156 Ill. 44, 41 N. E. 51; *Newell v. Wagness*, 1 N. D. 62, 44 N. W. 1014; *Carty v. Connolly*, 91 Cal. 15, 27 P. 599; *Stuck v. Delta Land & Water Co.*, 63 Utah, 495, 227 P. 791, 795; *Fontenot v. White*, 115 Okl. 248, 242 P. 854, 858; *National Bank of Savannah v. All* (C. C. A.) 260 F. 370, 384; *Moore v. Gregory*, 146 Va. 504, 131 S. E. 692, 697; *Douglas v. Ogle*, 80 Fla. 42, 85 So. 243, 244; *Windle v. City of Valparaiso*, 62 Ind. App. 342, 113 N. E. 429, 433; *Murray v. Speed*, 54 Okl. 31, 153 P. 181, 183; *State Trust & Savings Bank v. Hermosa Land & Cattle Co.*, 30 N. M. 566, 240 P. 469, 476; *Harrison v. Roark*, 31 Ariz. 73, 250 P. 367, 368; *Lytle v. Fulotka*, 106 Okl. 86, 233 P. 456, 459, 460; *Leader Pub. Co. v. Grant Trust & Savings Co.*, 132 Ind. 651, 108 N. E. 121, 124; *Stewart v. Baldwin*, 86 Wash. 63, 64, 149 P. 662; *Keller v. Cox*, 67 Ind. App. 381, 113 N. E. 543, 546; *Blake v. Thwing*, 185 Ill. App. 187, 194; *Parker v. Solis* (Tex. Civ. App.) 277 S. W. 714, 717; *U. S. v. Whyel* (D. C.) 19 F.(2d) 260, 263; *Allen v. United States Fidelity & Guaranty Co.*, 269 Ill. 234, 109 N. E. 1035, 1038.

Fraud is also classified as *fraud in fact* and *fraud in law*. The former is actual, positive, intentional fraud. Fraud disclosed by matters of fact, as distinguished from constructive fraud or fraud in law. *McKibbin v. Martin*, 64 Pa. 356, 3 Am. Rep. 588; *Cook v. Burnham*, 3 Kan. App. 27, 44 P. 447. Fraud in law is fraud in contemplation of law; fraud implied or inferred by law; fraud made out by construction of law, as distinguished from fraud found by a jury from matter of fact; constructive fraud (*q. v.*) See 2 *Kent, Comm.* 512-532; *Delaney v. Valentine*, 154 N. Y. 692, 49 N. E. 65; *Burr v. Clement*, 9 Colo. 1, 9 P. 633; *Lovato v. Catron*, 20 N. M. 168, 148 P. 490, 492, L. R. A. 1915E, 451; *Furst & Thomas v. Merritt*, 190 N. C. 397, 130 S. E. 40, 43.

Fraud is also said to be *legal* or *positive*. The former is fraud made out by legal construction or inference, or the same thing as constructive fraud. *Newell v. Wagness*, 1 N. D. 62, 44 N. W. 1014. Positive fraud is the same thing as actual fraud. See *Douthitt v. Applegate*, 33 Kan. 395, 6 P. 575, 52 Am. Rep. 533; *Nocatee Fruit Co. v. Fosgate* (C. C. A.) 12 F.(2d) 250, 252.

#### In General

—**Actionable fraud.** See *Actionable*.

—**Frauds, statute of.** This is the common designation of a very celebrated English statute, (29 Car. II. c. 3), passed in 1677, and which has been adopted, in a more or less modified form, in nearly all of the United States. Its chief characteristic is the provision that no suit or action shall be maintained on certain classes of contracts or engagements unless there shall be a note or memorandum thereof in writing signed by the party to be charged or by his authorized agent. Its object was to close the door to the numerous frauds

which were believed to be perpetrated, and the perjuries which were believed to be committed, when such obligations could be enforced upon no other evidence than the mere recollection of witnesses. It is more fully named as the "statute of frauds and perjuries." *Smith v. Morton*, 70 Okl. 157, 173 P. 520, 521; *Housley v. Strawn Merchandise Co.* (Tex. Com. App.) 291 S. W. 864, 867; *Clay Lumber Co. v. Hart's Branch Coal Co.*, 174 Mich. 613, 140 N. W. 912, 914; *McAndrew v. Sowell*, 100 Kan. 47, 163 P. 653, 654; *George Lawley & Son Corp. v. Buff*, 230 Mass. 31, 119 N. E. 186, 187; *Turnbow Lumber Co. v. Eastham* (Tex. Civ. App.) 221 S. W. 667, 669; *In re Jones' Ex'r*, 121 Misc. Rep. 356, 201 N. Y. S. 270, 271; *Bryant v. Jones*, 183 Ky. 298, 209 S. W. 30, 33; *Taylor v. Harrington*, 243 Mass. 210, 137 N. E. 350, 352; *Machinist v. Green*, 79 N. H. 366, 109 A. 45, 46; *Umpqua Valley Bank of Roseburg v. Wilson*, 120 Or. 391, 252 P. 563, 565; *Brewer v. Home Supply Co.*, 17 Ala. App. 273, 84 So. 560, 561; *Mullin v. Nash-El Paso Motor Co.* (Tex. Civ. App.) 250 S. W. 472, 474; *Hines v. Roberts Bros.*, 117 Kan. 589, 232 P. 1050, 1052; *Norman v. Bullock County Bank*, 187 Ala. 33, 65 So. 371, 372; *Garber v. Goldstein*, 92 Conn. 226, 102 A. 605, 606.

—**Pious fraud.** A subterfuge or evasion considered morally justifiable on account of the ends sought to be promoted; particularly applied to an evasion or disregard of the laws in the interests of religion or religious institutions, such as circumventing the statutes of mortmain.

**FRAUD ORDER.** A name given to orders issued by the postmaster general, under Rev. St. §§ 3929, 4041 (39 USCA §§ 259, 732), for preventing the use of the mails as an agency for conducting schemes for obtaining money or property by means of false or fraudulent pretences, etc. They are not restricted to schemes which lack all the elements of legitimate business, but the statute applies "when a business, even if otherwise legitimate, is systematically and designedly conducted upon the plan of inducing its patrons by means of false representations to part with their money in the belief that they are purchasing something different from, superior to, and worth more than, what is actually sold;" *Harris v. Rosenberger*, 145 Fed. 449, 16 C. C. A. 225, 13 L. R. A. (N. S.) 762.

The fraud order is issued to the postmaster of the office through which the person affected by it receives his mail. It forbids the postmaster to pay any postal money order to the specified person, and instructs the postmaster to return all letters to the senders if practicable, or if not, to the dead letter office, stamped in either case with the word "fraudulent." The method of testing the validity of the fraud order is to apply to the federal court for an injunction to restrain

the postmaster from executing it. The decision of the postmaster-general is not the exercise of a judicial function; if he exceeds his jurisdiction, the party injured may have relief in equity; *Degge v. Hitchcock*, 229 U. S. 162, 33 Sup. Ct. 639, 57 L. Ed. 1135.

**FRAUDARE.** Lat. In the civil law. To deceive, cheat, or impose upon; to defraud.

**FRAUDULENT.** Based on fraud; proceeding from or characterized by fraud; tainted by fraud; done, made, or effected with a purpose or design to carry out a fraud.

**FRAUDULENT ALIENATION.** In a general sense, the transfer of property with an intent to defraud creditors, lienors, or others. In a particular sense, the act of an administrator who wastes the assets of the estate by giving them away or selling at a gross undervalue. *Rhame v. Lewis*, 13 Rich. Eq. (S. C.) 269.

**FRAUDULENT ALIENEE.** One who knowingly receives from an administrator assets of the estate under circumstances which make it a fraudulent alienation on the part of the administrator. *Rhame v. Lewis*, 13 Rich. Eq. (S. C.) 269.

**FRAUDULENT CONCEALMENT.** The hiding or suppression of a material fact or circumstance which the party is legally or morally bound to disclose. *Magee v. Insurance Co.*, 92 U. S. 93, 23 L. Ed. 699; *Page v. Parker*, 43 N. H. 367, 80 Am. Dec. 172; *Jordan v. Pickett*, 78 Ala. 339; *Small v. Graves*, 7 Barb. (N. Y.) 578.

Fraudulent concealment justifying a rescission of a contract is the intentional concealment of some fact known to the party charged, which is material for the party injured to know to prevent being defrauded; the concealment of a fact which one is bound to disclose being the equivalent of an indirect representation that such fact does not exist. *Long v. Martin* (Tex. Civ. App.) 234 S. W. 91, 94.

The test of whether failure to disclose material facts constitutes fraud is the existence of a duty, legal or equitable, arising from the relation of the parties; failure to disclose a material fact with intent to mislead or defraud under such circumstances being equivalent to an actual "fraudulent concealment." *Newell Bros. v. Hanson*, 97 Vt. 297, 123 A. 208, 210.

Where the vendor stated that there were defects in the title, but that, except for squatters and prior conveyances, there were no objections to his title, and that so far as he knew he had as good title as any one, his concealment of the fact that he then had options for the true owners was fraudulent, for while a party may remain silent, and not be bound to tell the defects in his title, yet if he assumes to tell them, and omits a material one, of which he knows, that may be "fraudulent concealment." *Continental Coal, Land*

& Timber Co. v. Kilpatrick, 172 App. Div. 541, 158 N. Y. S. 1056, 1058.

To constitute concealment of a cause of action so as to prevent the running of limitations, some trick or artifice must be employed to prevent inquiry or elude investigation, or to mislead and hinder the party who has the cause of action from obtaining information, and the acts relied on must be of an affirmative character and fraudulent. Refusal to allow insurer to inspect the books of insured to ascertain the compensation paid by insured to his employees within the period of the policy was not a "fraudulent concealment" within the meaning of the law, but a breach of contract, and could not affect the running of the statute of limitations. Fidelity & Casualty Co. of New York v. Jasper Furniture Co., 186 Ind. 566, 117 N. E. 258, 259.

**FRAUDULENT CONVEYANCE.** A conveyance or transfer of property, the object of which is to defraud a creditor, or hinder or delay him, or to put such property beyond his reach. *Seymour v. Wilson*, 14 N. Y. 569; *Lockyer v. De Hart*, 6 N. J. Law, 458; *Land v. Jeffries*, 5 Rand. (Va.) 601; *Blodgett v. Webster*, 24 N. H. 103; *Creel v. Cloyd*, 151 Ky. 627, 152 S. W. 776, 777; *In re Grocers' Baking Co.* (D. C.) 266 F. 900, 909; *Johnson v. Union Inv. Co.*, 149 Minn. 106, 182 N. W. 955, 956; *Levy v. Weidhorn* (D. C.) 287 F. 754, 756; *Gustlin v. Whitham* (D. C.) 292 F. 782, 791; *Surratt v. Eskridge*, 131 Va. 325, 108 S. E. 677, 679; *Dean v. Davis*, 242 U. S. 438, 37 S. Ct. 130, 61 L. Ed. 419. Every transfer of property or charge thereon made, every obligation incurred, and every judicial proceeding taken with intent to delay or defraud any creditor or other person of his demands, is void against all creditors of the debtor, and their successors in interest, and against any person upon whom the estate of the debtor devolves in trust for the benefit of others than the debtor. Civ. Code Cal. § 3439.

**FRAUDULENT CONVEYANCES, STATUTES OF, OR AGAINST.** The name given to two celebrated English statutes,—the statute 13 Eliz. c. 5, made perpetual by 29 Eliz. c. 5; and the statute 27 Eliz. c. 4, made perpetual by 29 Eliz. c. 18.

**FRAUDULENT PREFERENCES.** In English law. Every conveyance or transfer of property or charge thereon made, every judgment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own moneys, in favor of any creditor, with a view of giving such creditor a preference over other creditors, shall be deemed fraudulent and void if the debtor become bankrupt within three months. 32 & 33 Vict. c. 71, § 92.

**FRAUDULENT REPRESENTATION.** A false statement, made with knowledge of its

falsity, with the intention to persuade another or influence his action, and on which that other relies and by which he is deceived to his prejudice. See *Wakefield Rattan Co. v. Tappan*, 70 Hun, 405, 24 N. Y. Supp. 430; *Montgomery St. Ry. Co. v. Matthews*, 77 Ala. 364, 54 Am. Rep. 60; *Righter v. Roller*, 31 Ark. 174; *Page v. Parker*, 43 N. H. 363, 80 Am. Dec. 172; *Kurt v. Cox*, 101 Kan. 54, 165 P. 827, 829; *Green v. Brown*, 100 Conn. 274, 123 A. 435, 437; *Joyce v. McCord*, 123 Ark. 492, 185 S. W. 775, 776; *Cotner v. Bangs*, 137 Ark. 394, 209 S. W. 80, 81; *Chicago, R. I. & P. Ry. Co. v. Cotton*, 62 Okl. 168, 162 P. 763, 764; *J. B. Colt Co. v. Freitas*, 76 Cal. App. 278, 244 P. 916, 918; *Barthelemy v. Foley Elevator Co.*, 141 Minn. 423, 170 N. W. 513, 515; *Electric Hammer Corporation v. Deddens*, 206 Ky. 232, 267 S. W. 207, 208; *Highfill v. Ermence*, 73 Colo. 478, 216 P. 533.

**FRAUNC, FRAUNCHE, FRAUNKE.** See Frank.

**FRAUNCHISE.** L. Fr. A franchise.

**FRAUS.** Lat. Fraud. More commonly called, in the civil law, "*dolus*," and "*dolus malus*," (*q. v.*) A distinction, however, was sometimes made between "*fraus*" and "*dolus*;" the former being held to be of the most extensive import. Calvin.

**FRAUS DANS LOCUM CONTRACTUI.** A misrepresentation or concealment of some fact that is material to the contract, and had the truth regarding which been known the contract would not have been made as made, is called a "*fraus dans locum contractui*," *i. e.*, a fraud occasioning the contract, or giving place or occasion for the contract.

**FRAUS LEGIS.** Lat. In the civil law. Fraud of law; fraud upon law. See *In Fraudem Legis*.

**Fraus est celare fraudem.** It is a fraud to conceal a fraud. 1 Vern. 240; 1 Story, Eq. Jur. §§ 389, 390.

**Fraus est odiosa et non præsumenda.** Fraud is odious, and not to be presumed. Cro. Car. 550.

**Fraus et dolus nemini patrocinari debent.** Fraud and deceit should defend or excuse no man. 3 Coke, 78; *Fleta*, lib. 1, c. 13, § 15; *Id.* lib. 6, c. 6, § 5.

**Fraus et jus nunquam cohabitant.** Wing. 680. Fraud and justice never dwell together.

**Fraus latet in generalibus.** Fraud lies hid in general expressions.

**Fraus meretur fraudem.** Plowd. 100. Fraud merits fraud.

**FRAXINETUM.** In old English law. A wood of ashes; a place where ashes grow. Co. Litt. 4b; *Shep. Touch.* 95.

**FRAY.** See *Affray*.

**FRECTUM.** In old English law. Freight. *Quoad frectum navium suarum*, as to the freight of his vessels. Blount.

**FREDNITE.** In old English law. A liberty to hold courts and take up the fines for beating and wounding. To be free from fines. Cowell.

**FREDSTOLE.** Sanctuaries; seats of peace.

**FREDUM.** A fine paid for obtaining pardon when the peace had been broken. Spelman; Blount. A sum paid the magistrate for protection against the right of revenge.

**FREDWIT, or FREDWITE.** A liberty to hold courts and take up the fines for beating and wounding. Jacob, *Law Dict.*

**FREE.** Not subject to legal constraint of another.

Unconstrained; having power to follow the dictates of his own will. Not subject to the dominion of another. Not compelled to involuntary servitude. Used in this sense as opposed to "slave."

Not bound to service for a fixed term of years; in distinction to being bound as an apprentice.

Enjoying full civic rights.

Available to all citizens alike without charge; as a free school.

Available for public use without charge or toll; as a free bridge.

Not despotic; assuring liberty; defending individual rights against encroachment by any person or class; instituted by a free people; said of governments, institutions, etc. Webster.

Certain, and also consistent with an honorable degree in life; as free services, in the feudal law.

Confined to the person possessing, instead of being shared with others; as a free fishery.

Not engaged in a war as belligerent or ally; neutral; as in the maxim, "Free ships make free goods."

—**Free alms.** The name of a species of tenure. See *Frank-almoigne*.

—**Free and clear** (and like phrases). The title to property is said to be "free and clear" when it is not incumbered by any liens; but it is said that an agreement to convey land "free and clear" is satisfied by a conveyance passing a good title. *Meyer v. Madreperla*, 68 N. J. Law, 258, 53 A. 477, 96 Am. St. Rep. 536; *Smith v. Toth*, 61 Ind. App. 42, 111 N. E. 442, 444; *Doonan v. Killilea*, 87 Misc. 427, 149 N. Y. S. 832, 833; *Grisso v. Milsey*, 104 Okl. 173, 230 P. 883, 889.

—**Free and equal.** As used in a constitutional provision that election shall be free and equal, the word "free" means that every one

entitled to vote should have a reasonable opportunity to do so, a reasonable manner of doing so, etc., and the word "equal" means that every vote cast should have its decisive effect in the selection or choice to be made at the election. *McKinney v. Barker*, 180 Ky. 526, 203 S. W. 303, 304, L. R. A. 1918E, 581. The term means that the voter shall not be physically restrained in the exercise of his right of franchise, by either civil or military authority, and that every voter shall have the same right as every other voter. *Winston v. Moore*, 244 Pa. 447, 91 A. 520, 521, L. R. A. 1915A, 1190, Ann. Cas. 1915C, 498. A "free and equal" election is one at which every person entitled to vote may do so if he desires, although it can hardly be said that, if only a few are prevented from voting, the election is not free and equal in the constitutional sense. *Wallbrecht v. Ingram*, 164 Ky. 463, 175 S. W. 1022, 1026. It is the essence of free elections that the right of suffrage be untrammelled and unfettered, and that the ballot represent and express the electors' own intelligent judgment and conscience, and there can be no "free election" unless there is freedom of opinion. An election to be free must be without coercion of any description or any deterrent from the elector's exercise of his free will by means of any intimidation or influence whatever, although there is no violence or physical coercion. *Neelley v. Farr*, 61 Colo. 485, 158 P. 458, 467, Ann. Cas. 1918A, 23.

—**Free-bench.** A widow's dower out of copyholds to which she is entitled by the custom of some manors. It is regarded as an encroachment growing out of the husband's interest, and is indeed a continuance of his estate. Wharton.

—**Free-hord.** In old records. An allowance of land over and above a certain limit or boundary, as so much beyond or without a fence. Cowell; Blount. The right of claiming that quantity. *Termes de la Ley*.

—**Free borough men.** Such great men as did not engage, like the frank-pledge men, for their decennier. Jacob.

—**Free chapel.** In English ecclesiastical law. A place of worship, so called because not liable to the visitation of the ordinary. It is always of royal foundation, or founded at least by private persons to whom the crown has granted the privilege. 1 Burn, *Ecc. Law*, 298.

—**Free course.** In admiralty law. A vessel having the wind from a favorable quarter is said to sail on a "free course," or said to be "going free" when she has a fair (following) wind and her yards braced in. *The Queen Elizabeth* (D. C.) 100 F. 876.

—**Free entry, egress, and regress.** An expression used to denote that a person has the

right to go on land again and again as often as may be reasonably necessary. Thus, in the case of a tenant entitled to emblements.

—**Free fishery.** See Fishery.

—**Free ice.** All ice in navigable streams not included within that authorized to be appropriated is sometimes called “free” ice, and does not belong to the adjacent riparian owners, but to the person who first appropriates it. *Hudson River Ice Co. v. Brady*, 158 App. Div. 142, 142 N. Y. S. 819, 821.

—**Free law.** A term formerly used in England to designate the freedom of civil rights enjoyed by freemen. It was liable to forfeiture on conviction of treason or an infamous crime. *McCafferty v. Guyer*, 59 Pa. 116.

—**Free love.** Consorting with opposite sex at pleasure without marriage. *Robinson v. Casey* (Tex. Civ. App.) 272 S. W. 536, 538.

—**Free men.** Before the Norman Conquest, a free man might be a man of small estate dependent on a lord. Every man, not himself a lord, was bound to have a lord or be treated as unworthy of a free man's right. Among free men there was a difference in their estimation for *Wergild*. See *Liber Homo*.

—**Free pass.** The power of riding over a railroad without payment of the customary fare. *Coco v. Oden*, 143 La. 718, 79 So. 287, 288, 8 A. L. R. 679; *Morris v. West Jersey & S. R. Co.*, 87 N. J. Law, 579, 94 A. 593, 594; *Clark v. Southern Ry. Co.*, 69 Ind. App. 697, 119 N. E. 539, 541; *Tripp v. Michigan Cent. R. Co.* (C. C. A.) 238 F. 449, 458, L. R. A. 1918A, 758.

—**Free schools.** Schools open to all persons of school age without tuition charge. *Segar v. Board of Education of School Dist. of the City of Rockford*, 317 Ill. 418, 148 N. E. 289, 290.

—**Free services.** In feudal and old English law. Such feudal services as were not unbecoming the character of a soldier or a free-man to perform; as to serve under his lord in the wars, to pay a sum of money, and the like. 2 Bl. Comm. 60, 61.

—**Free shareholders.** The free shareholders of a building and loan association are subscribers to its capital stock who are not borrowers from the association. *Steinberger v. Independent B. & S. Ass'n*, 84 Md. 625, 36 A. 439.

—**Free ships.** In international law. Ships of a neutral nation. The phrase “free ships shall make free goods” is often inserted in treaties, meaning that goods, even though belonging to an enemy, shall not be seized or confiscated, if found in neutral ships. *Wheat*. Int. Law, 507, et seq.

—**Free sorage.** See Sorage.

—**Free tenure.** Tenure by free services; freehold tenure.

—**Free time.** Period that railroad car may remain unloaded before demurrage charges begin to accrue. *Lehigh Valley R. Co. v. Maas & Waldstein Co.*, 102 N. J. Law, 332, 131 A. 884; *Central of Georgia Ry. Co. v. Leverette*, 34 Ga. App. 304, 129 S. E. 292, 293.

—**Free warren.** See Warren.

**FREE ON BOARD.** A sale of goods “free on board” imports that they are to be delivered on board the cars, vessels, etc., without expense to the buyer for packing, cartage, or other such charges. *Batcher v. Ferguson*, 33 Idaho, 639, 193 P. 680, 681, 16 A. L. R. 590.

In a contract for sale and delivery of goods “free on board” vessel, the seller is under no obligation to act until the buyer names the ship to which the delivery is to be made. *Dwight v. Eckert*, 117 Pa. 508, 12 A. 32.

**FREE WHITE PERSONS.** “Free white persons” referred to in Naturalization Act, as amended by Act July 14, 1870, has meaning naturally given to it when first used in 1 Stat. 103, c. 3, meaning all persons belonging to the European races then commonly counted as white, and their descendants, including such descendants in other countries to which they have emigrated. It includes all European Jews, more or less intermixed with peoples of Celtic, Scandinavian, Teutonic, Iberian, Latin, Greek, and Slavic descent. It includes Magyars, Lapps, and Finns, and the Basques and Albanians. It includes the mixed Latin, Celtic-Iberian, and Moorish inhabitants of Spain and Portugal, the mixed Greek, Latin, Phoenician, and North African inhabitants of Sicily, and the mixed Slav and Tarter inhabitants of South Russia. It does not mean Caucasian race, Aryan race, or Indo-European races, nor the mixed Indo-European, Dravidian, Semitic and Mongolian peoples who inhabit Persia. A Syrian of Asiatic birth and descent will not be entitled to become a naturalized citizen of the United States as being a free white person. *Ex parte Shahid* (D. C.) 205 F. 812, 813; *United States v. Cartozian* (D. C.) 6 F.(2d) 919, 921; *Ex parte Dow* (D. C.) 211 F. 486, 487; *In re En Sk Song* (D. C.) 271 F. 23.

**FREEDMAN.** In Roman law. One who was set free from a state of bondage; an emancipated slave. The word is used in the same sense in the United States, respecting negroes who were formerly slaves. *Fairfield v. Lawson*, 50 Conn. 513, 47 Am. Rep. 669; *Davenport v. Caldwell*, 10 S. C. 333.

**FREEDOM.** The state of being free; liberty; self-determination; absence of restraint; the opposite of slavery.

The power of acting, in the character of a moral personality, according to the dictates of the will, without other check, hindrance,

or prohibition than such as may be imposed by just and necessary laws and the duties of social life.

The prevalence, in the government and constitution of a country, of such a system of laws and institutions as secure civil liberty to the individual citizen.

**FREEDOM OF SPEECH AND OF THE PRESS.** See Liberty.

**FREEDOM OF THE CITY.**

**In English Law**

Immunity from county jurisdiction, and the privilege of corporate taxation and self-government held under a charter from the crown. This freedom is enjoyed of right, subject to the provision of the charter, and is often conferred as an honor on princes and other distinguished individuals. The freedom of a city carries the parliamentary franchise. Encyc. Dict. The rights and privileges possessed by the burgesses or freemen of a municipal corporation under the old English law; now of little importance, and conferred chiefly as a mark of honor. See 11 Chic. L. J. 357.

The phrase has no place in American law, and as frequently used in addresses of welcome made to organizations visiting an American city, particularly by mayors, has no meaning whatever except as an expression of good will.

The form of the grant made by the city of New York to Andrew Hamilton of Philadelphia is quoted at large in 13 Law Notes 150.

**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.) Nevitt v. Woodburn, 175 Ill. 376, 51 N. E. 593; Railroad Co. v. Hemp-hill, 35 Miss. 22; Nellis v. Munson, 108 N. Y. 453, 15 N. E. 739; Jones v. Jones, 20 Ga. 700; Beirl v. Columbia County, 73 Or. 107, 144 P. 457, 460; Fowler v. Marion & Pittsburg Coal Co., 315 Ill. 312, 146 N. E. 318, 319; Church v. Grossi, 124 Misc. 192, 207 N. Y. S. 106, 107; Hull v. Ensinger, 257 Ill. 160, 100 N. E. 513, 515; Rogers v. McAlister, 151 Ky. 488, 152 S. W. 571, 572; Ralston Steel Car Co. v. Ralston, 112 Ohio St. 306, 147 N. E. 513, 516, 39 A. L. R. 334; Lakeside Irr. Co. v. Markham Irr. Co., 116 Tex. 65, 285 S. W. 593, 596.

Such an interest in lands of frank-tenement as may endure not only during the owner's life, but which is cast after his death upon the persons who successively represent him, according to certain rules elsewhere explained. Such persons are called "heirs," and he whom they thus represent, the "ancestor." When the interest extends beyond the ancestor's life, it is called a "freehold of inheritance,"

and, when it only endures for the ancestor's life, it is a freehold not of inheritance.

An estate to be a freehold must possess these two qualities: (1) Immobility, that is, the property must be either land or some interest issuing out of or annexed to land; and (2) indeterminate duration, for, if the utmost period of time to which an estate can endure be fixed and determined, it cannot be a freehold. Wharton.

*Determinable freeholds*

Estates for life, which may determine upon future contingencies before the life for which they are created expires. As if an estate be granted to a woman during her widowhood, or to a man until he be promoted to a benefice; in these and similar cases, whenever the contingency happens,—when the widow marries, or when the grantee obtains the benefice,—the respective estates are absolutely determined and gone. Yet, while they subsist, they are reckoned estates for life; because they may by possibility last for life, if the contingencies upon which they are to determine do not sooner happen. 2 Bl. Comm. 121.

*Freehold in law*

A freehold which has descended to a man, upon which he may enter at pleasure, but which he has not entered on. Termes de la Lay.

*Freehold land societies*

Societies in England designed for the purpose of enabling mechanics, artisans, and other workmen to purchase at the least possible price a piece of freehold land of a sufficient yearly value to entitle the owner to the elective franchise for the county in which the land is situated. Wharton.

*Freeholder*

A person who possesses a freehold estate. Shively v. Lankford, 174 Mo. 535, 74 S. W. 835; Wheldon v. Cornett, 4 Neb. (Unof.) 421, 94 N. W. 626; People v. Scott, 8 Hun (N. Y.) 567. Statutory meaning not infrequently differs from common law meaning of the term. Payne v. Fiscal Court of Carlisle County, 200 Ky. 41, 252 S. W. 127, 129; In re Consolidation of School Distrs. in Blue Earth County, 140 Minn. 475, 168 N. W. 552; Orleans-Kenner Electric Ry. Co. v. Christina, 139 La. 470, 71 So. 770, 771; Brooks v. MacLean, 95 Neb. 16, 144 N. W. 1067, 1068; Dean v. State, 74 Fla. 277, 77 So. 107, 109; In re Village of Holcomb in Ontario County, 97 Misc. Rep. 241, 162 N. Y. S. 848, 850; Beirl v. Columbia County, 73 Or. 107, 144 P. 457, 460; Jones v. City of Aurora, 97 Neb. 825, 151 N. W. 958, 959; People v. Scott, 262 Ill. 91, 104 N. E. 160, 161; Atkins v. Davis (Tex. Civ. App.) 291 S. W. 968, 970; Gordon v. White, 33 S. D. 234, 145 N. W. 439.

**FREEMAN.** This word has had various meanings at different stages of history. In the Roman law, it denoted one who was either born free or emancipated, and was the opposite of "slave." In feudal law, it designated an allodial proprietor, as distinguished from a vassal or feudal tenant. (And so in Pennsylvania colonial law. Fry's Election Case, 71 Pa. 308, 10 Am. Rep. 698.) In old English law, the word described a freeholder or tenant by free services; one who was not a villein. In modern legal phraseology, it is the appellation of a member of a city or borough having the right of suffrage, or a mem-

ber of any municipal corporation invested with full civic rights.

A person in the possession and enjoyment of all the civil and political rights accorded to the people under a free government.

**FREEMAN'S ROLL.** A list of persons admitted as burgesses or freemen for the purposes of the rights reserved by the municipal corporation act, (5 & 6 Wm. IV. c. 76.) Distinguished from the Burgess Roll. 3 Steph. Comm. 197. The term was used, in early colonial history, in some of the American colonies.

**FREIGHT.** Freight is properly the price or compensation paid for the transportation of goods by a carrier, at sea, from port to port. But the term is also used to denote the hire paid for the carriage of goods on land from place to place, (usually by a railroad company, not an express company,) or on inland streams or lakes. The name is also applied to the goods or merchandise transported by any of the above means. *Brittan v. Barnaby*, 21 How. 533, 16 L. Ed. 177; *Huth v. Insurance Co.*, 8 Bosw. (N. Y.) 552; *Christie v. Davis Coal Co.* (D. C.) 95 F. 838; *Hagar v. Donaldson*, 154 Pa. 242, 25 A. 824; *Paradise v. Sun Mut. Ins. Co.*, 6 La. Ann. 596.

Property carried is called "freight;" the reward, if any, to be paid for its carriage is called "freightage;" the person who delivers the freight to the carrier is called the "consignor;" and the person to whom it is to be delivered is called the "consignee." Civil Code Cal. § 2110; Comp. Laws N. D. 1913, § 6197; Comp. Laws S. D. 1929, § 1119.

The term "freight" has several different meanings, as the price to be paid for the carriage of goods, or for the hire of a vessel under a charter-party or otherwise; and sometimes it designates goods carried, as "a freight of lime," or the like. But, as a subject of insurance, it is used in one of the two former senses. *Lord v. Neptune Ins. Co.*, 10 Gray (Mass.) 109.

The sum agreed on for the hire of a ship, entirely or in part, for the carriage of goods from one port to another. 13 East, 300. All rewards or compensation paid for the use of ships, *Giles v. Cynthia*, 1 Pet. Adm. 206, Fed. Cas. No. 5,424.

Freight is a compensation received for the transportation of goods and merchandise from port to port; and is never claimable by the owner of the vessel until the voyage has been performed and terminated. *Patapsco Ins. Co. v. Bisco*, 7 Gill. & J. (Md.) 300, 28 Am. Dec. 319.

"Dead freight" is money payable by a person who has chartered a ship and only partly loaded her, in respect of the loss of freight caused to the ship-owner by the deficiency of cargo. L. R. 2 H. L. Sc. 128; *The Rosemary* (C. C. A.) 277 F. 674, 678.

**FREIGHT BOOKING.** The making of specific arrangements for the transportation of goods by particular vessel in advance of its sailing day. *Iwai & Co., Limited, v. Hercules Powder Co.*, 134 S. E. 763, 765, 162 Ga. 795,

affirming *Hercules Powder Co. v. Iwai & Co.*, 34 Ga. App. 14, 128 S. E. 774, 776.

**FREIGHT CAR.** A railroad car adapted to the transportation from one point to another of movable articles of every kind, character, and description, and a box car while so used is at least temporarily a car carrying freight. *State v. Jones*, 84 W. Va. 85, 99 S. E. 271, 274.

**FREIGHT TRAIN.** A train that carries freight alone, having a caboose attached for use of crew. *Arizona Eastern R. Co. v. State*, 29 Ariz. 446, 242 P. 870, 871; *Galveston, H. & S. A. Ry. Co. v. Tapley* (Tex. Civ. App.) 268 S. W. 491, 492; *Mammoth Cave R. Co. v. Commonwealth*, 176 Ky. 747, 197 S. W. 406, 407.

**Freight is the mother of wages.** 2 Show. 283; 3 Kent Comm. 196. Where a voyage is broken up by *vis major*, and no freight earned, no wages, *eo nomine*, are due.

**FREIGHTER.** In maritime law. The party by whom a vessel is engaged or chartered; otherwise called the "charterer." 2 Steph. Comm. 148. In French law, the owner of a vessel is called the "freighter" (*fréteur*); the merchant who hires it is called the "affreighter" (*affréteur*). *Emerig. Tr. des Ass.* ch. 11, § 3.

**FRENCHMAN.** In early times, in English law, this term was applied to every stranger or "outlandish" man. *Bract. lib. 3, tr. 2, c. 15.*

**FRENDELSMAN.** Sax. An outlaw. So called because on his outlawry he was denied all help of friends after certain days. *Cowell; Blount.*

**FRENDWITE.** In old English law. A mulct or fine exacted from him who harbored an outlawed friend. *Cowell; Tomlins.*

**FRENETICUS.** In old English law. A madman, or person in a frenzy. *Fleta, lib. 1, c. 36.*

**FREOBORGH.** A free-surety, or free-pledge. *Spelman.* See *Frank-Pledge.*

**FREQUENT, v.** To visit often; to resort to often or habitually. *Green v. State*, 109 Ind. 175, 9 N. E. 781; *State v. Ah Sam*, 14 Or. 347, 13 P. 303; *State v. Seba* (Mo. App.) 200 S. W. 300; *Koehler v. Dubose* (Tex. Civ. App.) 200 S. W. 238, 242; *Ex parte Werner*, 46 R. I. 1, 124 A. 195, 196.

**Frequentia actus multum operatur.** The frequency of an act effects much. 4 Coke, 78; *Wing. Max.* p. 719, max. 192. A continual usage is of great effect to establish a right.

**FRÈRE.** Fr. A brother. *Frère eyne*, elder brother. *Frère puisne*, younger brother. *Britt. c. 75.*

**FRESCA.** In old records. Fresh water, or rain and land flood.



**FRESH.** Immediate; recent; following without any material interval.

**FRESH DISSEISIN.** By the ancient common law, where a man had been disseised, he was allowed to right himself by force, by ejecting the disseisor from the premises, without resort to law, provided this was done forthwith, while the disseisin was *fresh*. (*flagrante disseisina*.) Bract. fol. 162*b*. No particular time was limited for doing this, but Bracton suggested it should be fifteen days. Id. fol. 163. See Britt. cc. 32, 43, 44, 65.

**FRESH FINE.** In old English law. A fine that had been levied within a year past. St. Westm. 2, c. 45; Cowell.

**FRESH FORCE.** Force done within forty days. Fitzh. Nat. Brev. 7; Old Nat. Brev. 4. The heir or reversioner in a case of disseisin by *fresh force* was allowed a remedy in chancery by bill before the mayor. Cowell.

**FRESH PURSUIT.** A pursuit instituted immediately and with intent to reclaim or recapture, after an animal escaped, a thief flying with stolen goods, etc. *People v. Pool*, 27 Cal. 578; *White v. State*, 70 Miss. 253, 11 So. 632.

**FRESH SUIT.** In old English law. Immediate and unremitting pursuit of an escaping thief. "Such a present and earnest following of a robber as never ceases from the time of the robbery until apprehension. The party pursuing then had back again his goods, which otherwise were forfeited to the crown." Staundef, P. C. lib. 3, cc. 10, 12; 1 Bl. Comm. 297.

**FRESHET.** A flood, or overflowing of a river, by means of rains or melted snow; an inundation. *Stover v. Insurance Co.*, 3 Phila. (Pa.) 42; *Harris v. Social Mfg. Co.*, 9 R. I. 99, 11 Am. Rep. 224.

**FRET.** Fr. In French marine law. Freight. Ord. Mar. liv. 3, tit. 3.

**FRÉTER.** Fr. In French marine law. To freight a ship; to let it. Emerig. Tr. des Ass. c. 11, § 3.

**FRÉTEUR.** Fr. In French marine law. Freighter. The owner of a ship, who lets it to the merchant. Emerig. Tr. des Ass. c. 11, § 3.

**FRETTUM, FRECTUM.** In old English law. The freight of a ship; freight money. Cowell.

**FRETUM.** Lat. A strait.

**FRETUM BRITANNICUM.** The strait between Dover and Calais.

**FRIARS.** An order of religious persons, of whom there were four principal branches, viz.: (1) Minors, Grey Friars, or Franciscans; (2) Augustines; (3) Dominicans, or Black

Friars; (4) White Friars, or Carmelites, from whom the rest descend. Wharton.

**FRIBURGH.** (Also, Frithborg, Frithborough, Friborg, Froborg, and Freoburgh.) (Sax.) A kind of frank-pledge whereby the principal men were bound for themselves and servants. Fleta, lib. 1, cap. 47. Cowell says it is the same as frank-pledge.

**FRIBUSCULUM.** In the civil law. A temporary separation between husband and wife, caused by a quarrel or estrangement, but not amounting to a divorce, because not accompanied with an intention to dissolve the marriage.

**FRIDBORG, FRITHBORG.** Frank-pledge. Cowell. Security for the peace. Spelman.

**FRIDHBURGUS.** In old English law. A kind of frank-pledge, by which the lords or principal men were made responsible for their dependents or servants. Bract. fol. 124*b*.

**FRIEND OF THE COURT.** See *Amicus Curia*.

**FRIENDLESS MAN.** In old English law. An outlaw; so called because he was denied all help of friends. Bract. lib. 3, tr. 2, c. 12.

**FRIENDLY SOCIETIES.** In English law. Associations supported by subscription, for the relief and maintenance of the members, or their wives, children, relatives, and nominees, in sickness, infancy, advanced age, widowhood, etc. The statutes regulating these societies were consolidated and amended by St. 38 & 39 Vict. c. 60. Wharton.

**FRIENDLY SUIT.** A suit brought by a creditor in chancery against an executor or administrator, being really a suit by the executor or administrator, in the name of a creditor, against himself, in order to compel the creditors to take an equal distribution of the assets. 2 Williams, Ex'rs, 1915.

Also any suit instituted by agreement between the parties to obtain the opinion of the court upon some doubtful question in which they are interested.

**FRIGIDITY.** Impotence. Johnson. The term in this sense is obsolete. Webster's New Int. Dict.

**FRILINGI.** Persons of free descent, or free-men born; the middle class of persons among the Saxons. Spelman.

**FRISCUS.** Fresh uncultivated ground. Mon. Angl. t. 2, p. 56. Fresh; not salt. Reg. Orig. 97. Recent or new. See *Fresh*, and sub-titles thereunder.

**FRISK, v.** The running of hands rapidly over another's person, as distinguished from "search," which is to strip and examine contents more particularly. *Kalwin Business*

Men's Ass'n v. McLaughlin, 214 N. Y. S. 99, 102, 126 Misc. Rep. 698.

**FRITH.** Sax. Peace, security, or protection. This word occurs in many compound terms used in Anglo-Saxon law.

**FRITHBORG.** Frank-pledge. Cowell.

**FRITHBOTE.** A satisfaction or fine, for a breach of the peace.

**FRITHBREACH.** The breaking of the peace.

**FRITHGAR.** The year of jubilee, or of meeting for peace and friendship.

**FRITHGILDA.** Guildhall; a company or fraternity for the maintenance of peace and security; also a fine for breach of the peace. Jacob.

**FRITHMAN.** A member of a company or fraternity.

**FRITHSOCNE.** Surety of defense. Jurisdiction of the peace. The franchise of preserving the peace. Also spelled "*frithsoken*."

**FRITHSPLOT.** A spot or plot of land, encircling some stone, tree, or well, considered sacred, and therefore affording sanctuary to criminals.

**FRITHSTOOL.** The stool of peace. A stool or chair placed in a church or cathedral, and which was the symbol and place of sanctuary to those who fled to it and reached it.

**FRIVOLOUS.** An answer or other pleading is called "frivolous" when it is clearly insufficient on its face, and does not controvert the material points of the opposite pleading, and is presumably interposed for mere purposes of delay or to embarrass the opponent. Erwin v. Lowery, 64 N. C. 321; Strong v. Sproul, 53 N. Y. 499; Gray v. Gidiere, 4 Strobr. (S. C.) 442; Peacock v. Williams (C. C.) 110 F. 916; Segerstrom v. Holland Piano Mfg. Co., 160 Minn. 95, 199 N. W. 897, 898; Nolen v. State, 48 Okl. 594, 150 P. 149, 150; Germain v. Harwell, 108 Miss. 396, 66 So. 396, 398; Bronzin Holding Co. v. McGee, 166 Minn. 129, 207 N. W. 199, 200; Cairns v. Lewis, 169 Minn. 156, 210 N. W. 885, 886; Guaranty Trust Co. of South Carolina v. Kibler, 105 S. C. 513, 90 S. E. 159, 160; Sculthorpe v. Commonwealth Casualty Co., 98 N. J. Law, 845, 121 A. 751, 752; In re Beam, 93 N. J. Eq. 593, 117 A. 613, 614; Milberg v. Keuthe, 98 N. J. Law, 779, 121 A. 713, 714.

A frivolous demurrer has been defined to be one which is so clearly untenable, or its insufficiency so manifest upon a bare inspection of the pleadings, that its character may be determined without argument or research. Cottrill v. Cramer, 40 Wis. 558.

#### Synonyms

The terms "frivolous" and "sham," as applied to pleadings, do not mean the same

thing. A sham plea is good on its face, but false in fact; it may, to all appearances, constitute a perfect defense, but is a pretense because false and because not pleaded in good faith. A frivolous plea may be perfectly true in its allegations, but yet is liable to be stricken out because totally insufficient in substance. *Andree v. Bandler*, 56 N. Y. S. 614; *Brown v. Jenison*, 1 Code R. N. S. (N. Y.) 157; *Sheets v. Ramer*, 125 Minn. 98, 145 N. W. 787. See, further, Answer.

**FRODMORTEL, or FREOMORTEL.** An immunity for committing manslaughter. Mon. Angl. t. 1, p. 173.

**FROM.** The legal effect of this word has been a fruitful subject of judicial discussion resulting in a great diversity of construction of the word as used with respect to both time and place. Many attempts have been made to lay down a general rule to determine whether it was to be treated as inclusive or exclusive of a *terminus a quo*, whether of time or place. Very long ago a critical writer, after reviewing the cases up to that date, undertook to formulate such a rule thus: From, as well in strict grammatical sense, as in the ordinary import thereof, when referring to a certain point as a *terminus a quo*, always excludes that point; though in vulgar acceptance it were capable of being taken indifferently, either inclusively or exclusively, yet in law it has obtained a certain fixed import and is always taken as exclusive of the *terminus a quo*. Powell, Powers 449. This conclusion states a rule applied in the majority of cases, and it was said that the prepositions "from," "until," "between," generally exclude the day to which they relate, but the general rule will yield to the intent of parties; *Kendall v. Kingsley*, 120 Mass. 94. But the rule has not been unvarying, and many courts have not hesitated to follow the views of Lord Mansfield, in *Cowp.* 714 (overruling his own decision of three years before, *id.* 189), that it is either exclusive or inclusive according to context and subject-matter, and the court will construe it to effectuate the intent of parties and not to destroy it. *Lowman v. Shotkoski*, 106 Neb. 540, 184 N. W. 107, 108; *Allen v. Effler*, 144 Tenn. 685, 235 S. W. 67, 68; *Lanham v. McKeel*, 47 Okl. 348, 148 P. 844, 845; *City of Dubuque v. Dubuque Electric Co.*, 188 Iowa, 1192, 177 N. W. 700, 705; *McWilliams v. Comeaux*, 135 La. 210, 65 So. 112; *Williams v. Chambers*, 85 Ind. App. 404, 154 N. E. 295; *Tull v. Ball*, 132 Ark. 617, 200 S. W. 988; *Zimmerman v. United States* (C. C. A.) 277 F. 965; *Mushel v. Board of Com'rs of Benton County*, 152 Minn. 266, 188 N. W. 555, 556; *Southern Surety Co. v. Penzel*, 164 Ark. 365, 261 S. W. 920, 922; *Penquite v. General Accident Fire & Life Assur. Corporation*, 121 Kan. 174, 246 P. 498, 500; *Martin v. Travelers' Ins. Co.*, 310 Mo. 411, 276 S. W. 380, 382, 41 A. L. R. 1372; *Piatt v. Flaherty*, 96 Kan. 42, 149 P. 734.

As to time, after an examination of authorities, Washington, J., laid down what he considered the settled principles to be deduced from them: (1) When time is computed *from* an act done, the day of its performance is included; (2) when the words are from the date, if a present interest is to commence, the day is included, if it is a terminus from which to impute time the day is excluded; *Pearpoint v. Graham*, 4 Wash. C. C. 240, Fed. Cas. No. 10,877; where the latter principle was applied to a lease, as it was also in *Lord Raym.* 84; and to a bond; *Lysle v. Williams*, 15 S. & R. (Pa.) 135; and the first proposition has been laid down with reference to the words "from and after the passage of this act;" *Arnold v. U. S.*, 9 Cra. (U. S.) 104, 3 L. Ed. 671; *U. S. v. Williams*, 1 Paine 261, Fed. Cas. No. 16,723; *U. S. v. Arnold*, 1 Gall. 348, Fed. Cas. No. 14,469; *contra*, *Lorent v. Ins. Co.*, 1 Nott. & McC. (S. C.) 505. See *U. S. v. Heth*, 3 Cra. (U. S.) 399, 2 L. Ed. 479. From is generally held a word of exclusion; *Wilcox v. Wood*, 9 Wend. (N. Y.) 346; *Oatman v. Walker*, 33 Me. 67; *Ordway v. Remington*, 12 R. I. 319, 34 Am. Rep. 646; *Atkins v. Sleeper*, 7 Allen (Mass.) 487. But a promise made November 1st, 1811, and sued November 1st, 1817, was held barred by statute of limitation; *Presbrey v. Williams*, 15 Mass. 193. In many cases it is held to be either exclusive or inclusive according to the intention of the parties; *Deyo v. Bleakley*, 24 Barb. (N. Y.) 9; *Houser v. Reynolds*, 2 N. C. 114, 1 Am. Dec. 551. Where an act was to be done in a given number of days *from the time of the contract*, the day on which the contract was made was included; *Brown v. Buzan*, 24 Ind. 194; but if the contract merely says in so many days it means so many days from the day of date, and that is excluded; *Blake v. Crowninshield*, 9 N. H. 304. A fire policy *from one given date to another* includes the last day; whether the first is included was not decided; *L. R.* 5 Exch. 296. In most cases when something is required to be done in a given time from the day on which an event has happened, that day is excluded, as in case of proving claims against the estate of a decedent or insolvent; *Weeks v. Hull*, 19 Conn. 376, 50 Am. Dec. 249; enrolling deeds, after execution; *Seawell v. Williams*, 5 Hayw. (Tenn.) 283; appeal from arbitrators, afterward; *Browne v. Browne*, 3 S. & R. (Pa.) 496; issuing a *scire facias* to revive a judgment, after entry; *Appeal of Green*, 6 W. & S. (Pa.) 327; the time an execution runs, after its date; *Homan v. Liswell*, 6 Cow. (N. Y.) 659; redemption from execution sale; *id.* 518; allowing appeal from a justice; *Ex parte Dean*, 2 Cow. (N. Y.) 605, 14 Am. Dec. 521. The principle is thus well expressed. When time is to be computed from a particular day or a particular event, as when an act is to be performed within a specified period from or after a day named, that day is excluded and the last day included; *Sheets v. Selden*, 2 Wall. (U. S.) 177, 17 L. Ed. 822. But it was held that in considering the question of barring a writ of error, the day of the decree is included; *Chiles v. Smith's Heirs*, 13 B. Monr. (Ky.) 460.

*From the expiration of a policy* means from the expiration of the time from which the policy was effected and not the time at which the risk is terminated by alienation; *Sullivan v. Ins. Co.*, 2 Mass. 318. Six months *from testator's death* allowed a legatee to give security not to marry, are exclusive of that day; 15 Ves. 248. Where an annuity is given, and *from and after the payment thereof* and subject thereto, the principal over, the gift over is subject to make up deficiency of income; *aliter* if the gift over were from and after the annuitant's death, merely; *L. R.* 2 Ch. App. 644, reversing *L.*

*R. 4 Eq.* 58. *From time to time*, as applied to the payment of expenses or damages caused by building a railroad; *L. R.* 5 Ex. 6; or the appointment, by a married woman, of rents and profits; 1 Ves. Jr. 189 and note; 3 Bro. C. C. 340; 12 Ves. 501; do not require periodical payments or appointments, nor restrain the party from a sweeping discharge or disposition of the whole subject-matter at once. From time to time is not sufficient in a bail bond which under the statute should stipulate for appearance from term to term; *Forbes v. State* (Tex.) 25 S. W. 1072. *From day to day*, in reference to adjournments, usually means to the next day but, under a statute authorizing the adjournment of a sale from day to day, a sale is good if made by adjournment to a day, certain, which did not immediately succeed the first; *Burns v. Lyon*, 4 Watts (Pa.) 363. *From henceforth* in a lease means from the delivery; 5 Co. 1; so also does one from March 25th last past (the execution being March 25th); 4 B. & C. 272; or one from an impossible date (as February 30th), or no date, but if it has a sensible date, the word date in other parts of it means date, not delivery; 4 B. & C. 908. Where authority is given to commissioners to build a bridge and *then and from thenceforth*, the county to be liable, means only after the bridge is built; 16 East, 305.

Whenever they are used with respect to places it is said that "from," "to," and "at" are taken inclusively according to the subject-matter; *Union Pac. R. Co. v. Hall*, 91 U. S. 343, 23 L. Ed. 428 (fixing the terminus of a railroad under an act of congress). *From an object to an object* in a deed excludes the terminus referred to; *Bonney v. Morrill*, 52 Me. 252; *State v. Bushey*, 84 Me. 459, 24 Atl. 940. *From place to place* means from one place in a town to another in the same town; *Com. v. Inhabitants of Cambridge*, 7 Mass. 158; *Com. v. Waters*, 11 Gray (Mass.) 81. *From a street* means from any part of it according to circumstances; *City of Pittsburg v. Cluley*, 74 Pa. 259. *From a town* is not always and indeed is seldom exclusive of the place named; it generally means from some indefinite place within that town; *Chesapeake & O. Canal Co. v. Key*, 3 Cra. C. C. 539, 606, Fed. Cas. No. 2,649. Authority in a railroad charter to construct a railroad *from a city* to another point gives power to construct the road from any point within the city; *Hazlehurst v. Freeman*, 52 Ga. 244; *Appeal of Western Pennsylvania R. Co.*, 99 Pa. 155; *Tennessee & A. R. Co. v. Adams*, 3 Head (Tenn.) 596; *contra* *North-Eastern R. Co. v. Payne*, 8 Rich. L. (S. C.) 177. And see *Farmers' Turnpike Road v. Coventry*, 10 Johns. (N. Y.) 389, where in a similar case "to" was construed "into;" and *Mohawk Bridge Co. v. R. Co.*, 6 Paige Ch. (N. Y.) 554, where, "at or near" was held equivalent to "within." But *from a town* to another in an indictment for transportation of liquor does not charge it as done within the town; *State v. Bush-ey*, 84 Me. 459, 24 Atl. 940. To construe reasonably the expression a road *from a village* to a creek within the same village, in a statute, requires that it be taken inclusively; *Smith v. Helmer*, 7 Barb. (N. Y.) 416. *Sailing from a port* means out of it; *U. S. v. La Coste*, 2 Mass. 129, Fed. Cas. No. 15,548.

*Descent from a parent* cannot be construed to mean through a parent, it must be immediate, from the person designated; *Gardner v. Collins*, 2 Pet. (U. S.) 58, 86, 7 L. Ed. 347; *Case v. Wildridge*, 4 Ind. 51; but the words *from the part of the father* include a descent, either immediately from the father or from any person in the line of the father; *Shippen v. Izard*, 1 S. & R. (Pa.) 222.

The words to be paid for in *from six to eight weeks* have no definite meaning and it was properly left to the jury to say if the suit was brought pre-

maturely; L. R. 9 C. P. 20. *From the loading in a marine policy* ordinarily means that the risk is covered after the goods are on board, but this meaning may be qualified by any words in the policy indicating a different intention; 16 East 240; L. R. 7 Q. B. 580, 702. A contract to deliver *from one to three thousand bushels* gives the seller an option to deliver any quantity he chooses within the limits named; Small v. Quincy, 4 Greenl. (Me.) 497. Appraisers living from one to one and a half miles away, in a fairly well settled community, are *prima facie from the neighborhood*; State v. Jungling, 116 Mo. 162, 22 S. W. 688.

**FROM ONE PLACE TO ANOTHER.** From premises owned by one person to premises owned by another person in some legal subdivision or from one legal subdivision to another. Liquor Transportation Cases, 140 Tenn. 582, 205 S. W. 423, 426; Ready v. State, 155 Tenn. 15, 290 S. W. 28, 29; Allen v. State, 159 Ark. 663, 252 S. W. 899; State v. Knight, 94 W. Va. 150, 117 S. E. 783, 784; State v. White, 111 Kan. 196, 206 P. 903, 904.

**FROM TIME TO TIME.** Occasionally, at intervals, now and then. Spade v. Hawkins, 60 Ind. App. 388, 110 N. E. 1010, 1012.

See From.

**FRONT.** Forepart, as opposed to the back or rear. State v. Read, 162 Iowa, 572, 144 N. W. 310, 311; Howland v. Andrus, 81 N. J. Eq. 175, 86 A. 391, 393.

#### Fronting and Abutting

As used in statutes relating to assessment for improvements. Property between which and the improvement there is no intervening land; where platted property lies between street proposed to be paved and unplatted property which abuts platted property, unplatted property is not subject to assessment as abutting property for any part of cost of improvement. City of Wilburton v. McConnell, 119 Okl. 242, 249 P. 708, 710; Oklahoma Ry. Co. v. Severns Paving Co., 67 Okl. 206, 170 P. 216-218, 10 A. L. R. 157; Flynn v. Chiappari, 191 Cal. 139, 215 P. 682, 686.

#### Front Foot

As used in an act providing that property shall be assessed in proportion to the "front foot" has been held synonymous with "abutting foot." Moberly v. Hogan, 131 Mo. 19, 32 S. W. 1014.

#### Front-Foot Rule

"Front-foot rule" is one by which cost of improvement is to be apportioned among several properties in proportion to their frontage on improvement and without regard to benefits conferred. Davy v. McNeill, 31 N. M. 7, 240 P. 482, 488. The front-foot rule of apportionment for assessing a local tax for street pavement means this: The total cost of the work, including the cost of grading, filling, culverts, headers, gutters, curbing, engineering, labor, material, etc., is to be divided by the total number of square feet of paving done

under the contract; and the quotient multiplied by one-half of the number of linear feet in the width of the pavement opposite the property lines, is the basis or rate of assessment of the property per front foot. City of Crowley v. Police Jury of Acadia Parish, 138 La. 488, 70 So. 487, 488.

**FRONTAGE, FRONTAGER.** In English law a frontager is a person owning or occupying land which abuts on a highway, river, seashore, or the like. The term is generally used with reference to the liability of frontagers on streets to contribute towards the expense of paving, draining, or other works on the highway carried out by a local authority, in proportion to the frontage of their respective tenements. Sweet.

The term is also in a similar sense in American law, the expense of local improvements made by municipal corporations (such as paving, curbing, and sewerage) being generally assessed on abutting property owners in proportion to the "frontage" of their lots on the street or highway, and an assessment so levied being called a "frontage assessment." Neenan v. Smith, 50 Mo. 531; Lyon v. Tona-wanda (C. C.) 98 F. 366; City of Ft. Collins v. Lee, 72 Colo. 202, 210 P. 322; Haviland v. Columbus, 50 Ohio St. 471, 34 N. E. 679, and Toledo v. Sheill, 53 Ohio St. 447, 42 N. E. 323, 30 L. R. A. 598, overruled in City of Youngstown v. Fishel, 89 Ohio St. 247, 104 N. E. 141, 143, 50 L. R. A. (N. S.) 921, Ann. Cas. 1915D, 1073; Standard Oil Co. of Indiana v. Kamradt, 319 Ill. 51, 149 N. E. 538, 539.

**FRONTIER.** In international law. That portion of the territory of any country which lies close along the border line of another country, and so "fronts" or faces it. The term means something more than the boundary line itself, and includes a tract or strip of country, of indefinite extent, contiguous to the line. Stoughton v. Mott, 15 Vt. 169.

**FROZEN SNAKE.** A term used to impute ingratitude and held libelous, the court taking judicial notice of its meaning without an innuendo. 12 Ad. & El. 624.

**FRUCTUARIUS.** Lat. In the civil law. One who had the usufruct of a thing; *i. e.*, the use of the fruits, profits, or increase, as of land or animals. Inst. 2, 1, 36, 38. Bracton applies it to a lessee, fermor, or farmer of land, or one who held lands *ad firmam*, for a farm or term. Bract. fol. 261.

**FRUCTUS.** Lat. In the civil law. Fruit, fruits; produce; profit or increase; the organic productions of a thing.

The right to the fruits of a thing belonging to another.

The compensation which a man receives from another for the use or enjoyment of a thing, such as interest or rent. See Mackeld. Rom. Law, § 167; Inst. 2, 1, 35, 37; Dig. 7, 1, 33; Id. 5, 3, 29; Id. 22, 1, 34.

**FRUCTUS CIVILES.** All revenues and recompenses which, though not *fruits*, properly speaking, are recognized as such by the law. The term includes such things as the rents and income of real property, interest on money loaned, and annuities. Civ. Code La. 1900, art. 545.

**FRUCTUS FUNDI.** The fruits (produce or yield) of land.

**FRUCTUS INDUSTRIALES.** Industrial fruits, or fruits of industry. Those fruits of a thing, as of land, which are produced by the labor and industry of the occupant, as crops of grain; as distinguished from such as are produced solely by the powers of nature. Emblements are so called in the common law. 2 Steph. Comm. 258; 1 Chit. Gen. Pr. 92. Sparrow v. Pond, 49 Minn. 412, 52 N. W. 36, 16 L. R. A. 103, 32 Am. St. Rep. 571; Purner v. Piercy, 40 Md. 223, 17 Am. Rep. 591; Smock v. Smock, 37 Mo. App. 64; Clark v. Strohbeen, 190 Iowa, 989, 181 N. W. 430, 433, 13 A. L. R. 1419; Twin Falls Bank & Trust Co. v. Weinberg, 44 Idaho, 332, 257 P. 31, 33, 54 A. L. R. 1527.

**FRUCTUS LEGIS.** The fruit of the law, *i. e.* execution.

**FRUCTUS NATURALES.** Those products which are produced by the powers of nature alone; as wool, metals, milk, the young of animals. Sparrow v. Pond, 49 Minn. 412, 52 N. W. 36, 16 L. R. A. 103, 32 Am. St. Rep. 571; Kiehl v. Holliday, 77 Mont. 451, 251 P. 527, 528; Clark v. Strohbeen, 190 Iowa, 989, 181 N. W. 430, 433, 13 A. L. R. 1419.

**FRUCTUS PECUDUM.** The produce or increase of flocks or herds.

**FRUCTUS PENDENTES.** Hanging fruits; those not severed. The fruits united with the thing which produces them. These form a part of the principal thing.

**Fructus pendentes pars fundi videntur.** Hanging fruits make part of the land. Dig. 6, 1, 44; 2 Bouv. Inst. no. 1578.

**Fructus perceptos villæ non esse constat.** Gathered fruits do not make a part of the farm. Dig. 19, 1, 17, 1; 2 Bouv. Inst. no. 1578.

**FRUCTUS REI ALIENÆ.** The fruits of another's property; fruits taken from another's estate.

**FRUCTUS SEPARATI.** Separate fruits; the fruits of a thing when they are separated from it. Dig. 7, 4, 13.

**FRUCTUS STANTES.** Standing fruits; those not yet severed from the stalk or stem.

**Fructus augent hæreditatem.** The yearly increase goes to enhance the inheritance. Dig. 5, 3, 20, 3.

**FRUGES.** In the civil law. Anything produced from vines, underwood, chalk-pits, stone-quarries. Dig. 50, 16, 77.

Grains and leguminous vegetables. In a more restricted sense, any esculent growing in pods. Vicat, Voc. Jur.; Calvin.

**FRUIT.** The produce of a tree or plant which contains the seed or is used for food. Klas v. Kuehl, 159 Wis. 561, 150 N. W. 973, 975.

This term, in legal acceptation, is not confined to the produce of those trees which in popular language are called "fruit trees," but applies also to the produce of oak, elm, and walnut trees. Bullen v. Denning, 5 Barn. & C. 847.

#### Civil Fruits

Civil fruits, in the civil law (*fructus civiles*) are such things as the rents and income of real property, the interest on money loaned, and annuities. Civ. Code La. art. 545.

#### Fruit Fallen

The produce of any possession detached therefrom, and capable of being enjoyed by itself. Thus, a next presentation, when a vacancy has occurred, is a fruit fallen from the advowson. Wharton.

#### Fruits, Fruits of the Land

In replevy bond granting obligors therein sequestered property, "with value of fruits, hire, and revenue thereof forthcoming," the term "fruits" includes the natural accession to live stock. Southern Surety Co. v. Adams (Tex. Civ. App.) 278 S. W. 943, 946. The right of a possessor in good faith to reap the benefit of the "fruits of the land" until it is claimed by its owner does not permit such possessor to extract the mineral oil and gas from the land and retain the proceeds. Elder v. Ellerbe, 135 La. 990, 66 So. 337.

#### Fruits Of Crime

In the law of evidence. Material objects acquired by means and in consequence of the commission of crime, and sometimes constituting the subject-matter of the crime. Burrill, Circ. Ev. 445. 3 Benth. Jud. Ev. 31.

#### Natural Fruits

The produce of the soil, or of fruit-trees, bushes, vines, etc., which are edible or otherwise useful or serve for the reproduction of their species. The term is used in contradistinction to "artificial fruits," *i. e.*, such as by metaphor or analogy are likened to the fruits of the earth. Of the latter, interest on money is an example. See Civ. Code La. art. 545.

**Frumenta quæ sata sunt solo cedere intelliguntur.** Grain which is sown is understood to form a part of the soil. Inst. 2, 1, 32.

**FRUMENTUM.** In the civil law. Grain. That which grows in an ear. Dig. 50, 16, 77.

**FRUMGYLD.** Sax. The first payment made to the kindred of a slain person in recompense for his murder. Blount.

**FRUMSTOLL.** Sax. In Saxon law. A chief seat, or mansion house. Cowell.

**FRUSCA TERRA.** In old records. Uncultivated and desert ground. 2 Mon. Angl. 327; Cowell.

**FRUSSURA.** A breaking; plowing. Cowell.

**Frustra agit qui iudicium prosequi nequit cum effectu.** He sues to no purpose who cannot prosecute his judgment with effect, [who cannot have the fruits of his judgment.] Fleta, lib. 6, c. 37, § 9.

**Frustra [vana] est potentia quæ nunquam venit in actum.** That power is to no purpose which never comes into act, or which is never exercised. 2 Coke, 51.

**Frustra expectatur eventus cujus effectus nullus sequitur.** An event is vainly expected from which no effect follows.

**Frustra feruntur leges nisi subditis et obedientibus.** Laws are made to no purpose, except for those that are subject and obedient. Branch, Princ.

**Frustra fit per plura, quod fieri potest per pauciora.** That is done to no purpose by many things which can be done by fewer. Jenk. Cent. p. 68, case 28. The employment of more means or instruments for effecting a thing than are necessary is to no purpose.

**Frustra legis auxilium invocat [quærit] qui in legem committit.** He vainly invokes the aid of the law who transgresses the law. Fleta, lib. 4, c. 2, § 3; 2 Hale, P. C. 386; Broom, Max. 279, 297.

**Frustra petis quod mox es restitutus.** In vain you ask that which you will have immediately to restore. 2 Kames, Eq. 104; 5 Man. & G. 757.

**Frustra petis quod statim alteri reddere cogaris.** Jenk. Cent. 256. You ask in vain that which you might immediately be compelled to restore to another.

**Frustra probatur quod probatum non relevat.** That is proved to no purpose which, when proved, does not help. Halk. Lat. Max. 50.

**FRUSTRUM TERRÆ.** A piece or parcel of land lying by itself. Co. Litt. 5b.

**FRUTECTUM.** In old records. A place overgrown with shrubs and bushes. Spelman; Blount.

**FRUTOS.** In Spanish law. Fruits; products; produce; grains; profits. White, New Recop. b. 1, tit. 7, c. 5, § 2.

**FRYMITH.** In old English law. The affording harbor and entertainment to any one.

**FRYTHE.** Sax. In old English law. A plain between woods. Co. Litt. 5b.

An arm of the sea, or a strait between two lands. Cowell.

**FUAGE, FOUAGE, or FEUAGE.** Hearth money. A tax laid upon each fire-place or hearth. An imposition of a shilling for every hearth, levied by Edward III. in the dukedom of Aquitaine. Spelman; 1 Bl. Comm. 324.

**FUER.** In old English law. Flight. It is of two kinds: (1) *Fuer in fait*, or *in facto*, where a person does apparently and corporally flee; (2) *fuer in ley*, or *in lege*, when, being called in the county court, he does not appear, which legal interpretation makes flight. Wharton.

**FUERO.** In Spanish law. A law; a code.

A general usage or custom of a province, having the force of law. *Strother v. Lucas*, 12 Pet. 446, 9 L. Ed. 1137. *Ir contra fuero*, to violate a received custom.

A grant of privileges and immunities. *Conceder fueros*, to grant exemptions.

A charter granted to a city or town. Also designated as "*cartas pueblas*."

An act of donation made to an individual, a church, or convent, on certain conditions.

A declaration of a magistrate, in relation to taxation, fines, etc.

A charter granted by the sovereign, or those having authority from him, establishing the franchises of towns, cities, etc.

A place where justice is administered.

A peculiar *forum*, before which a party is amenable.

The jurisdiction of a tribunal, which is entitled to take cognizance of a cause; as *fuero ecclesiastico*, *fuero militar*. See Schm. Civil Law, Introd. 64.

**FUERO DE CASTILLA.** The body of laws and customs which formerly governed the Castilians.

**FUERO DE CORREOS Y CAMINOS.** A special tribunal taking cognizance of all matters relating to the post-office and roads.

**FUERO DE GUERRA.** A special tribunal taking cognizance of all matters in relation to persons serving in the army.

**FUERO DE MARINA.** A special tribunal taking cognizance of all matters relating to the navy and to the persons employed therein.

**FUERO JUZGO.** The *Forum Judicium*; a code of laws established in the seventh century for the Visigothic kingdom in Spain. Some of its principles and rules are found surviving in the modern jurisprudence of that country. Schm. Civil Law, Introd. 28.

**FUERO MUNICIPAL.** The body of laws granted to a city or town for its government and the administration of justice.

**FUERO REAL.** The title of a code of Spanish law promulgated by Alphonso the Learned, (*el Sabio*.) A. D. 1255. It was the precursor of the *Partidas*. Schm. Civil Law, Introd. 67.

**FUERO VIEJO.** The title of a compilation of Spanish law, published about A. D. 992. Schm. Civil Law, Introd. 65.

**FUGA CATALLORUM.** In old English law. A drove of cattle. Blount.

**FUGACIA.** A chase. Blount.

**FUGAM FECIT.** Lat. He has made flight; he fled. A clause inserted in an inquisition, in old English law, meaning that a person indicted for treason or felony had fled. The effect of this is to make the party forfeit his goods absolutely, and the profits of his lands until he has been pardoned or acquitted.

**FUGATOR.** In old English law. A privilege to hunt. Blount.

A driver. *Fugatores carrucarum*, drivers of wagons. Fleta, lib. 2, c. 78.

**FUGITATE.** In Scotch practice. To outlaw, by the sentence of a court; to outlaw for non-appearance in a criminal case. 2 Alis. Crim. Pr. 350.

**FUGITATION.** When a criminal does not obey the citation to answer, the court pronounces sentence of fugitation against him, which induces a forfeiture of goods and chattels to the crown.

**FUGITIVE.** One who flees; always used in law with the implication of a flight, evasion, or escape from some duty or penalty or from the consequences of a misdeed.

**FUGITIVE FROM JUSTICE.** A person who, having committed a crime, flies from the state or country where it was committed, in order to evade arrest and escape justice. *Roberts v. Reilly*, 116 U. S. 80, 6 Sup. Ct. 291, 29 L. Ed. 541; *State v. Hall*, 115 N. C. 811, 20 S. E. 729, 28 L. R. A. 289, 44 Am. St. Rep. 501; *In re Voorhees*, 32 N. J. Law, 150; *State v. Clough*, 71 N. H. 594, 53 Atl. 1086, 67 L. R. A. 946; *People v. Hyatt*, 172 N. Y. 176, 64 N. E. 825, 60 L. R. A. 774, 92 Am. St. Rep. 706; *State v. Boekenoggen*, 140 Minn. 120, 167 N. W. 301, 302; *Ex parte McDaniel*, 76 Tex. Cr. R. 184, 173 S. W. 1018, 1019, Ann. Cas. 1917B, 335; *State v. Broom*, 121 Or. 202, 253 P. 1044, 1045; *In re Whittington*, 34 Cal. App. 344, 167 P. 404, 405 (one extradited to another state with consent of authorities to answer there for crime); *Ex parte Quint*, 54 N. D. 515, 209 N. W. 1006, 1007; *People ex rel. Plumley v. Higgins*, 109 Misc. Rep. 328, 178 N. Y. S. 728, 733.

To be regarded as a "fugitive from justice," it is not necessary that one shall have left the state for the very purpose of avoiding prosecution; it being sufficient that, having

committed there an act constituting a crime, he afterwards has departed from its jurisdiction, and when sought to be prosecuted is found in another state. *Hogan v. O'Neill*, 255 U. S. 52, 41 S. Ct. 222, 65 L. Ed. 497; *Ex parte Finch*, 106 Neb. 45, 182 N. W. 565; *People ex rel. Gottschalk v. Brown*, 237 N. Y. 483, 143 N. E. 653, 654, 32 A. L. R. 1164, reversing *Id.*, 207 App. Div. 695, 201 N. Y. S. 862, 864; *Ex parte Henke*, 172 Wis. 36, 177 N. W. 880, 881, 13 A. L. R. 409; *Ex parte Duddy*, 219 Mass. 548, 107 N. E. 364; *Ex parte Thurber*, 37 Cal. App. 571, 174 P. 112; *Ex parte Baker*, 33 Okl. Cr. 413, 244 P. 459, 460; *In re Gundy*, 30 Okl. Cr. 390, 236 P. 440, 442; *Kuney v. State*, 88 Fla. 354, 102 So. 547, 549; *Seely v. Beardsley*, 194 Iowa, 863, 190 N. W. 498, 500; *Cockburn v. Willman*, 301 Mo. 575, 257 S. W. 458, 460; *State v. Doepe*, 97 W. Va. 203, 124 S. E. 667, 668; *Ex parte Galbreath*, 24 N. D. 582, 139 N. W. 1050, 1051; *State v. Hayes*, 162 La. 917, 111 So. 327, 329 (one who did not flee).

**FUGITIVE OFFENDERS.** In English law. Where a person accused of any offense punishable by imprisonment, with hard labor for twelve months or more, has left that part of his majesty's dominions where the offense is alleged to have been committed, he is liable, if found in any other part of his majesty's dominions, to be apprehended and returned in manner provided by the fugitive offenders' act, 1881, to the part from which he is a fugitive. Wharton.

**FUGITIVE SLAVE.** One who, held in bondage, flees from his master's power.

**FUGITIVE SLAVE LAW.** An act of congress passed in 1793 (and also one enacted in 1850) providing for the surrender and deportation of slaves who escaped from their masters and fled into the territory of another state, generally a "free" state.

**FUGITIVE'S GOODS.** Under the old English Law, where a man fled for felony, and escaped, his own goods were not forfeited as *bona fugitivorum* until it was found by proceedings of record (*e. g.* before the coroner in the case of death) that he fled for the felony. *Foxley's Case*, 5 Co. 109 *a.*

**FUGITIVUS.** In the civil law. A fugitive; a runaway slave. Dig. 11, 4; Cod. 6, 1. See the various definitions of this word in Dig. 21, 1, 17.

**FUGUES.** Fr. In medical jurisprudence. Ambulatory automatism. See Automatism.

**FULL.** Ample; complete; perfect; mature; not wanting in any essential quality. *Mobile School Com'rs v. Putnam*, 44 Ala. 537; *Reed v. Hazleton*, 37 Kan. 321, 15 Pac. 177; *Quinn v. Donovan*, 85 Ill. 195; *Nelson v. Hall*, 73 Fla. 810, 74 So. 877, 879; *McCrary v. McCrary* (Tex. Civ. App.) 230 S. W. 187, 207.

**FULL AGE.** The age of legal majority, twenty-one years at common law, twenty-five in the civil law. 1 Bl. Comm. 463; Inst. 1, 23, pr.

**FULL ANSWER.** In pleading. A complete and meritorious answer; one not wanting in any essential requisite. Bentley v. Cleveland, 22 Ala. 817; Durham v. Moore, 48 Kan. 135, 29 Pac. 472; Wyatt v. Collins, 105 Kan. 182, 180 P. 789, 790.

**FULL BLOOD.** A term of relation, denoting descent from the same couple. Brothers and sisters of *full blood* are those who are born of the same father and mother, or, as Justinian calls them, "*ex utroque parente conjuncti*." Nov. 118, cc. 2, 3; Mackeld. Rom. Law, § 145. The more usual term in modern law is "whole blood," (*q. v.*)

**FULL COPY.** In equity practice. A complete and unabbreviated transcript of a bill or other pleading, with all indorsements, and including a copy of all exhibits. Finley v. Hunter, 2 Strob. Eq. (S. C.) 210, note.

**FULL COURT.** In practice. A court *in banc*. A court duly organized with all the judges present.

**FULL COVENANTS.** See Covenant.

**FULL DEFENSE.** In pleading. The formula of defense in a plea, stated at length and without abbreviation, thus: "And the said C. D., by E. F., his attorney, comes and defends the force (or wrong) and injury when and where it shall behoove him, and the damages, and whatsoever else he ought to defend, and says," etc. Steph. Pl. p. 481.

**FULL FAITH AND CREDIT.** In the constitutional provision that full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state, this phrase means that a judgment or record shall have the same faith, credit, conclusive effect, and obligatory force in other states as it has by law or usage in the state from whence taken. Christmas v. Russell, 5 Wall. 302, 18 L. Ed. 475; McElmoyle v. Cohen, 13 Pet. 326, 10 L. Ed. 177; Gibbons v. Livingston, 6 N. J. Law, 275; Brengle v. McClellan, 7 Gill & J. (Md.) 438; Putnam & Norman v. Conner, 144 La. 231, 80 So. 265, 267; Gundlach v. Park, 140 Minn. 78, 167 N. W. 302, 303; Foster Milburn Co. v. Chinn (C. C. A.) 202 F. 175, 177; Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Min. & Mill. Co., 243 U. S. 93, 37 S. Ct. 344, 61 L. Ed. 610; Detroit & Cleveland Nav. Co. v. Hade, 106 Ohio St. 464, 140 N. E. 180, 182.

**FULL HEARING.** One in which ample opportunity is afforded to all parties to make, by evidence and argument, a showing fairly adequate to establish the propriety or impropriety from the standpoint of justice and

law of the step asked to be taken. Akron, C. & Y. Ry. Co. v. U. S., 261 U. S. 184, 43 S. Ct. 270, 67 L. Ed. 605; State v. Howse, 132 Tenn. 452, 178 S. W. 1110, 1111; State v. Hunt, 137 Tenn. 243, 192 S. W. 931, 932.

**FULL INDORSEMENT.** See Indorsement.

**FULL JURISDICTION.** Complete jurisdiction over a given subject-matter or class of actions (as, in equity) without any exceptions or reservations. Bank of Mississippi v. Duncan, 52 Miss. 740.

**FULL LIFE.** Life in fact and in law. See In Full Life.

**FULL-PAID STOCK.** Stock on which no further payments can be demanded by the issuing company. Middleton v. Wooster, 184 App. Div. 165, 171 N. Y. S. 593, 595.

**FULL PARTICULARS.** Where contract of insurance requires giving "full particulars" of an accident as a condition precedent to liability, unnecessary details are not required, but only such as enables insurer to determine, whether a claim was likely to be made, and the insured was not required to make an exhaustive investigation of all the attendant circumstances or decide what the facts were on conflicting evidence. Silberstein v. Vellerman, 241 Mass. 80, 134 N. E. 395, 397.

**FULL POWERS.** A document issued by the government of a state empowering its diplomatic agent to conduct special business with a foreign government.

**FULL PROOF.** In the civil law. Proof by two witnesses, or a public instrument. Hallifax, Civil Law, b. 3, c. 9, nn. 25, 30; 3 Bl. Comm. 370. Evidence which satisfies the minds of the jury of the truth of the fact in dispute, to the entire exclusion of every reasonable doubt. Kane v. Hibernia Mut. F. Ins. Co., 38 N. J. Law, 450, 20 Am. Rep. 409.

**FULL RIGHT.** The union of a good title with actual possession.

**FULLUM AQUÆ.** A fleam, or stream of water. Blount.

**FULLY ADMINISTERED.** The English equivalent of the Latin phrase "*plene administravit*;" being a plea by an executor or administrator that he has completely and legally disposed of all the assets of the estate, and has nothing left out of which a new claim could be satisfied. See Ryans v. Boogher, 169 Mo. 673, 69 S. W. 1048.

**FUMAGE.** In old English law. The same as *fuage*, or smoke farthings. 1 Bl. Comm. 324. See Fuage.

**FUNCTION.** Office; duty; fulfillment of a definite end or set of ends by the correct adjustment of means. The occupation of an office. By the performance of its duties, the



officer is said to fill his function. Dig. 32, 65, 1. See *State v. Hyde*, 121 Ind. 20, 22 N. E. 644.

**FUNCTIONAL DISEASE.** In medical jurisprudence. One which prevents, obstructs, or interferes with the due performance of its special functions by any organ of the body, without anatomical defect or abnormality in the organ itself. See *Higbee v. Guardian Mut. L. Ins. Co.*, 66 Barb. (N. Y.) 472. Distinguished from "organic" disease, which is due to some injury to, or lesion or malformation in, the organ in question.

**FUNCTIONARY.** A public officer or employee. An officer of a private corporation is also sometimes so called.

**FUNCTUS OFFICIO.** Lat. Having fulfilled the function, discharged the office, or accomplished the purpose, and therefore of no further force or authority. Applied to an officer whose term has expired, and who has consequently no further official authority; and also to an instrument, power, agency, etc., which has fulfilled the purpose of its creation, and is therefore of no further virtue or effect. *Blanton Banking Co. v. Taliaferro* (Tex. Civ. App.) 262 S. W. 196.

**FUND, v.** To capitalize with a view to the production of interest. *Stephen v. Milnor*, 24 N. J. Eq. 376. Also, to put into the form of bonds, stocks, or other securities, bearing regular interest, and to provide or appropriate a fund or permanent revenue for the payment thereof. *Merrill v. Monticello* (C. C.) 22 F. 596. *City of Long Beach v. Lisenby*, 180 Cal. 52, 179 P. 198, 201.

#### *Funded debt*

To fund a debt is to pledge a specific fund to keep down the interest and reduce the principal. The term "fund" was originally applied to a portion of the national revenue set apart or pledged to the payment of a particular debt. Hence, as applied to the pecuniary obligations of states or municipal corporations, a funded debt is one for the payment of which (interest and principal) some fund is appropriated, either specifically, or by provision made for future taxation and the *quasi* pledging in advance of the public revenue. *Ketchum v. Buffalo*, 14 N. Y. 356; *People v. Carpenter*, 31 App. Div. 603, 52 N. Y. Supp. 781. As applied to the financial management of corporations (and sometimes of estates in course of administration or properties under receivership) funding means the borrowing of a sufficient sum of money to discharge a variety of floating or unsecured debts, or debts evidenced by notes or secured by bonds but maturing within a short time, and creating a new debt in lieu thereof, secured by a general mortgage, a series of bonds, or an issue of stock, generally maturing at a more remote period, and often at a lower rate of interest. The new debt thus substituted for the pre-existing debts is called the "funded debt." See *Ketchum v. Buffalo*, 14 N. Y. 356; *People v. Carpenter*, 31 App. Div. 603, 52 N. Y. S. 781; *Lawrey v. Sterling*, 41 Or. 518, 69 P. 480. This term is very seldom applied to the debts of a private individual; but when so

used it must be understood as referring to a debt embodied in securities of a permanent character and to the payment of which certain property has been applied or pledged. *Wells v. Wells* (Super. N. Y.) 24 N. Y. S. 874.

#### *Funding system*

The practice of borrowing money to defray the expenses of government, and creating a "sinking fund," designed to keep down interest, and to effect the gradual reduction of the principal debt. *Merrill v. Monticello* (C. C.) 22 F. 596.

**FUND, n.** A sum of money set apart for a specific purpose, or available for the payment of debts or claims.

In its narrower and more usual sense, "fund" signifies "capital," as opposed to "interest" or "income;" as where we speak of a corporation funding the arrears of interest due on its bonds, or the like, meaning that the interest is capitalized and made to bear interest in its turn until it is repaid. Sweet.

In the plural, this word has a variety of slightly different meanings, as follows:

1. Money in hand; assets; cash; money available for the payment of a debt, legacy, etc. *Galena Ins. Co. v. Kupfer*, 28 Ill. 335, 81 Am. Dec. 284; *United States v. Jenks* (D. C.) 264 F. 697, 698; *Wherrell v. U. S.* (C. C. A.) 18 F.(2d) 532, 533; *Federal Reserve Bank of St. Louis v. Quigley* (Mo. App.) 284 S. W. 164, 166; *National Surety Co. v. Williams*, 74 Fla. 446, 77 So. 212, 221; *Bishop v. United States* (C. C. A.) 16 F.(2d) 406, 408; *Johnson v. State*, 37 Ga. App. 129, 139 S. E. 118, 119.

2. The proceeds of sales of real and personal estate, or the proceeds of any other assets converted into money. *Doane v. Insurance Co.*, 43 N. J. Eq. 533, 11 A. 739; *Kratz v. Slaughter's Ex'rs*, 185 Ky. 256, 214 S. W. 878, 880; *In re Arnold's Estate*, 127 Misc. Rep. 579, 217 N. Y. S. 323, 327; *Illinois Christian Missionary Soc. v. American Christian Missionary Soc.*, 277 Ill. 193, 115 N. E. 118, 120.

3. Corporate stocks or government securities; in this sense usually spoken of as the "funds."

4. Assets, securities, bonds, or revenue of a state or government appropriated for the discharge of its debts. *State v. Hudson*, 93 W. Va. 435, 117 S. E. 122, 126; *Broadway Bank of St. Louis, Mo., v. McGee Creek Levee & Drainage Dist.*, 292 Ill. 560, 127 N. E. 165, 166; *State v. Board of Education of Sharples Village School Dist.*, 114 Ohio St. 602, 151 N. E. 669, 670.

#### **In General**

**—Current funds.** Current money, whatever is receivable and current by law as money. *Henderson v. Farmers' Sav. Bank of Harper*, 199 Iowa, 496, 202 N. W. 259, 261; *Feder v. Elliott*, 198 Iowa, 447, 199 N. W. 288, 289, 36 A. L. R. 1353; *Lancaster County v. State*, 97 Neb. 95, 149 N. W. 331, 332.

—**General fund.** This phrase, in New York, is a collective designation of all the assets of the state which furnish the means for the support of government and for defraying the discretionary appropriations of the legislature. *People v. Orange County Sup'rs*, 27 Barb. (N. Y.) 575, 588. It has also been used in Delaware in the messages of the governor and other state papers to distinguish such funds as are available in the hands of the state treasurer for general purposes from assets of a special character, such as the school fund.

—**General revenue fund.** As used in connection with municipal finances, the usual, ordinary, running, and incidental expenses of a municipality. *Achison, T. & S. F. Ry. Co. v. City of Topeka*, 95 Kan. 747, 149 P. 697.

—**No funds.** This term denotes a lack of assets or money for a specific use. It is the return made by a bank to a check drawn upon it by a person who has no deposit to his credit there; also by an executor, trustee, etc., who has no assets for the specific purpose.

—**Public funds.** An untechnical name for (1) the revenue or money of a government, state, or municipal corporation; (2) the bonds, stocks, or other securities of a national or state government. Money, warrants, or bonds, or other paper having a money value, and belonging to the state, or to any county, city, incorporated town or school district. *Crawford & Moses' Dig. (Ark.)* § 2835; *Bank of Blytheville v. State*, 148 Ark. 504, 230 S. W. 550, 553. The term applies to funds of every political subdivision of state wherein taxes are levied for public purposes. *Ætna Casualty & Surety Co. v. Bramwell (D. C.)* 12 F.(2d) 307, 309.

—**Revolving fund.** Usually, a renewable credit over a defined period. In simple parlance it relates usually to a situation where a banker or merchant extends credit for a certain amount which can be paid off from time to time and then credit is again given not to exceed the same amount. It may also mean a fund, which, when reduced, is replenished by new funds from specified sources. *U. S. v. Butterworth-Judson Corporation (C. C. A.)* 297 F. 971, 979.

—**Sinking fund.** The aggregate of sums of money (as those arising from particular taxes or sources of revenue) set apart and invested, usually at fixed intervals, for the extinguishment of the debt of a government or corporation, by the accumulation of interest. *Elser v. Ft. Worth (Tex. Civ. App.)* 27 S. W. 740; *Brooke v. Philadelphia*, 162 Pa. 123, 29 A. 387, 24 L. R. A. 781. A fund arising from particular taxes, imposts, or duties, which is appropriated towards the payment of the interest due on a public loan and for the gradual payment of the principal. This definition was quoted and approved in *Union Pac. R. Co.*

*v. Buffalo Co.*, 9 Neb. 453, 4 N. W. 53. See, also, *Sidney Spitzer & Co. v. Commissioners of Franklin County*, 188 N. C. 30, 123 S. E. 636, 639. A fund created for extinguishing or paying a funded debt. *Ketchum v. Buffalo*, 14 N. Y. 379, cited in *Chicago & I. R. Co. v. Pyne (C. C.)* 30 F. 89.

—**Sinking fund tax.** A tax raised to be applied to the payment of interest on, and principal of public loan. *Sidney Spitzer & Co. v. Commissioners of Franklin County*, 188 N. C. 30, 123 S. E. 636, 639; *Union Pac. R. Co. v. York County*, 10 Neb. 612, 7 N. W. 270.

**FUNDAMENTAL ERROR.** See Error.

**FUNDAMENTAL LAW.** The law which determines the constitution of government in a state, and prescribes and regulates the manner of its exercise; the organic law of a state; the constitution.

**FUNDAMUS.** We found. One of the words by which a corporation may be created in England. 1 Bl. Comm. 473; 3 Steph. Comm. 173.

**FUNDATIO.** Lat. A founding or foundation. Particularly applied to the creation and endowment of corporations. As applied to eleemosynary corporations such as colleges and hospitals, it is said that "*fundatio incipiens*" is the incorporation or grant of corporate powers, while "*fundatio perficiens*" is the endowment or grant or gift of funds or revenues. *Dartmouth College v. Woodward*, 4 Wheat. 667, 4 L. Ed. 629.

**FUNDATOR.** A founder, (*q. v.*)

**FUNDI PATRIMONIALES.** Lands of inheritance.

**FUNDI PUBLICI.** Public lands.

**FUNDITORES.** Pioneers. Jacob.

**FUNDUS.** In the civil and old English law. Land; land or ground generally; land, without considering its specific use; land, including buildings generally; a farm.

**FUNERAL EXPENSES.** Money expended in procuring the interment, cremation, or other disposition of a corpse, including suitable monument, perpetual care of burial lot and entertainment of those participating in wake. *Gooch v. Beasley*, 137 Tenn. 407, 193 S. W. 132, 133; *Nelson v. Schoonover*, 89 Kan. 388, 131 P. 147, 149; In re *Borchardt's Will*, 184 Wis. 561, 200 N. W. 461, 464; *Oster's Ex'r v. Ohlman*, 187 Ky. 341, 219 S. W. 187, 190; In re *Gilchrist's Estate (N. J. Prerog.)* 128 A. 876.

**FUNGIBLE THINGS.** Movable goods which may be estimated and replaced according to weight, measure, and number. Things belonging to a class, which do not have to be dealt with *in specie*. *Standard Bank of Can-*

ada v. Lowman (D. C.) 1 F.(2d) 935, 940; Edwards v. Cleveland Mill & Power Co., 193 N. C. 730, 138 S. E. 131, 134, 53 A. L. R. 1404.

Those things one specimen of which is as good as another, as is the case with half-crowns, or pounds of rice of the same quality. Horses, slaves, and so forth, are non-fungible things, because they differ individually in value, and cannot be exchanged indifferently one for another. Holl. Jur. 88.

Where a thing which is the subject of an obligation (which one man is bound to deliver to another) must be delivered *in specie*, the thing is not fungible; that very individual thing, and not another thing of the same or another class, in lieu of it, must be delivered. Where the subject of the obligation is a thing of a given class, the thing is said to be fungible; *i. e.*, the delivery of any object which answers to the generic description will satisfy the terms of the obligation. Aust. Jur. 483, 484.

**FUNGIBILES RES.** Lat. In the civil law. Fungible things. See that title.

**FUR.** Lat. A thief. One who stole secretly or without force or weapons, as opposed to robber.

**FUR MANIFESTUS.** In the civil law. A manifest thief. A thief who is taken in the very act of stealing.

**FURANDI ANIMUS.** Lat. An intention of stealing.

**FURCA.** In old English law. A fork. A gallows or gibbet. Bract. fol. 56.

**FURCA ET FLAGELLUM.** Gallows and whip. *Tenure ad furcam et flagellum*, tenure by gallows and whip. The meanest of servile tenures, where the bondman was at the disposal of his lord for life and limb. Cowell.

**FURCA ET FOSSA.** Gallows and pit, or pit and gallows. A term used in ancient charters to signify a jurisdiction of punishing thieves, *viz.*, men by hanging, women by drowning. Spelman; Cowell.

**FURIGELDUM.** A fine or mulct paid for theft.

**Furiosi nulla voluntas est.** A madman has no will. Dig. 50, 17, 40; Broom, Max. 314.

**FURIOSITY.** In Scotch law. Madness, as distinguished from fatuity or idiocy.

**FURIOSUS.** Lat. An insane man; a madman; a lunatic.

**Furiosus absentis loco est.** A madman is the same with an absent person, [that is, his presence is of no effect.] Dig. 50, 17, 24, 1.

**Furiosus nullum negotium contrahere potest.** A madman can contract nothing, [can make no contract]. Dig. 50, 17, 5.

**Furiosus solo furore punitur.** A madman is punished by his madness alone; that is, he

is not answerable or punishable for his actions. Co. Litt. 247*b*; 4 Bl. Comm. 24, 396; Broom, Max. 15.

**Furiosus stipulare non potest nec aliquid negotium agere, qui non intelligit quid agit.** 4 Coke, 126. A madman who knows not what he does cannot make a bargain, nor transact any business.

**FURLINGUS.** A furlong, or a furrow one-eighth part of a mile long. Co. Litt. 5*b*.

**FURLONG.** A measure of length, being forty poles, or one-eighth of a mile.

**FURLOUGH.** Leave of absence; especially, leave given to a military or naval officer, or soldier or seaman, to be absent from service for a certain time. Also the document granting leave of absence.

"Furlough," as a noun, means "(1) Leave of absence; esp., leave given to a soldier or, sometimes, a government official or employé, to be absent from the service for a certain time; also, the document granting the leave of absence. In the United States army furloughs are given only to enlisted men, officers being given leaves of absence. In the United States navy furlough is an extended leave of absence, or a suspension from duty by an executive order, on half leave-of-absence pay, given only to an officer. (2) A permit or passport." As a transitive verb, it means "to grant a furlough to; broadly, to allow leave of absence to." Ex parte Roach (D. C.) 244 F. 625, 628.

**FURNAGE.** See Fornagium; Four.

**FURNISH.** To supply; provide; provide for use; deliver, whether gratuitously or otherwise. Delp v. Brewing Co., 123 Pa. 42, 15 A. 871; Wyatt v. Larimer & W. Irr. Co., 1 Colo. App. 480, 29 P. 906. As used in the liquor laws, "furnish" means to provide in any way, and includes giving as well as selling. State v. Freeman, 27 Vt. 520; State v. Tague, 76 Vt. 118, 56 A. 535; Rhodes v. State, 30 Okl. Cr. 2, 234 P. 645, 647; State v. Whipple, 143 Minn. 403, 173 N. W. 801, 802; Wright v. Weil Bros. & Co., 75 Ind. App. 497, 130 N. E. 878, 879; Alaska Fishermen's Packing Co. v. Chin Quong (C. C. A.) 202 F. 707, 710; Georgia Lumber Co. v. Harrison Const. Co., 103 W. Va. 1, 136 S. E. 399; People v. Hill, 20 Cal. App. 407, 129 P. 475, 476; People v. Epperson, 38 Cal. App. 486, 176 P. 702, 703; Giant Portland Cement Co. v. State, 232 N. Y. 395, 134 N. E. 322, 324; Standard Sand & Gravel Co. v. McClay, 191 N. C. 313, 131 S. E. 754, 756; State v. Arnold, 190 Wis. 602, 209 N. W. 601, 602; Hubbard v. State, 196 Ind. 137, 147 N. E. 323, 325; Creel v. U. S. (C. C. A.) 21 F.(2d) 690; In re American Lime Co. (D. C.) 201 F. 433, 434.

**FURNITURE.** This term includes that which furnishes, or with which anything is furnished or supplied; whatever must be supplied to a house, a room, place of business, or public building or the like, to make it

habitable, convenient, or agreeable; goods, vessels, utensils, and other appendages necessary or convenient for housekeeping; whatever is added to the interior of a house or apartment, for use or convenience. *Bell v. Golding*, 27 Ind. 173; *C. Ludwig Baumann & Co., Brooklyn, v. Manwit Corporation*, 207 N. Y. S. 437, 439, 213 App. Div. 300; *Thornton v. Daniel* (Tex. Civ. App.) 199 S. W. 831; *Fire Ass'n of Philadelphia v. Powell* (Tex. Civ. App.) 188 S. W. 47, 49; *Smalley v. Dent County* (Mo. Sup.) 177 S. W. 620, 623.

The word "furniture" made use of in the disposition of the law, or in the conventions or acts of persons, comprehends only such furniture as is intended for use and ornament of apartments, but not libraries which happen to be there, nor plate. Civ. Code La. art. 477.

The term "furniture" embraces everything about the house that has been usually enjoyed therewith, including plate, linen, china, and pictures, rugs, draperies and furnishings. *Endicott v. Endicott*, 41 N. J. Eq. 96, 3 Atl. 157; *In re Kathan's Estate*, 153 N. Y. S. 366, 368, 90 Misc. Rep. 540; *Case v. Hasse*, 83 N. J. Eq. 170, 93 A. 723, 729; *Peckham v. Peckham*, 97 N. J. Eq. 174, 127 A. 93.

#### Furniture of a Ship

This term includes everything with which a ship requires to be furnished or equipped to make her seaworthy; it comprehends all articles furnished by ship chandlers, which are almost innumerable. *Weaver v. The S. G. Owens*, 1 Wall. Jr. 369, Fed. Cas. No. 17,310.

#### Household Furniture

This term, in a will, includes all personal chattels that may contribute to the use or convenience of the householder, or the ornament of the house; as plate, linen, china, both useful and ornamental, and pictures. But goods in trade, books, and wines will not pass by a bequest of household furniture. 1 Rop. Leg. 203.

**FURNIVAL'S INN.** Formerly an inn of chancery. See Inns of Chancery.

**Furor contrahi matrimonium non sinit, quia consensu opus est.** Insanity prevents marriage from being contracted, because consent is needed. Dig. 23, 2, 16, 2; 1 Ves. & B. 140; 1 Bl. Comm. 439; *Wightman v. Wightman*, 4 Johns. Ch. (N. Y.) 343, 345.

**FURST AND FONDUNG.** In old English law. Time to advise or take counsel. Jacob.

**FURTA.** A right derived from the king as supreme lord of a state to try, condemn, and execute *thieves* and felons within certain bounds or districts of an honour, manor, etc. Cowell seems to be doubtful whether this word should not read *furca*, which means directly a gallows. Cowell; *Holthouse, L. Dict.*

**FURTHER.** In most of its uses in law, this term means additional, though occasionally it may mean any, future, or other. See *London & S. F. Bank v. Parrott*, 125 Cal. 472, 53

P. 164, 73 Am. St. Rep. 64; *Hitchings v. Van Brunt*, 38 N. Y. 338; *Fifty Associates v. Howland*, 5 Cush. (Mass.) 218; *O'Fallon v. Nicholson*, 56 Mo. 238; *Pennsylvania Co. v. Loughlin*, 139 Pa. 612, 21 A. 163; *McKie v. Collinson*, 292 Ill. 458, 127 N. E. 92, 94; *Shaw v. Southland Life Ins. Co.* (Tex. Civ. App.) 185 S. W. 915, 916; *Galpin v. City of Chicago*, 269 Ill. 27, 109 N. E. 713, 717, L. R. A. 1917B, 176; *Roell v. Shields*, 124 Miss. 226, 86 So. 763, 764; *Smith v. Craig*, 211 N. Y. 456, 105 N. E. 798, 800, Ann. Cas. 1915B, 937.

**FURTHER ADVANCE.** A second or subsequent loan of money to a mortgagor by a mortgagee, either upon the same security as the original loan was advanced upon, or an additional security. Equity considers the arrears of interest on a mortgage security converted into principal, by agreement between the parties, as a further advance. Wharton.

**FURTHER ASSURANCE, COVENANT FOR.** See Covenant.

**FURTHER CONSIDERATION.** In English practice, upon a motion for judgment or application for a new trial, the court may, if it shall be of opinion that it has not sufficient materials before it to enable it to give judgment, direct the motion to stand over for *further consideration*, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made, as it may think fit. Rules Sup. Ct. xl, 10.

**FURTHER DIRECTIONS.** When a master ordinary in chancery made a report in pursuance of a decree or decretal order, the cause was again set down before the judge who made the decree or order, to be proceeded with. Where a master made a separate report, or one not in pursuance of a decree or decretal order, a petition for consequential directions had to be presented, since the cause could not be set down for further directions under such circumstances. See 2 Daniell, Ch. Pr. (5th Ed.) 1233, note.

**FURTHER HEARING or FURTHER PROCEEDINGS.** In practice. Hearing at another time; new trial; or other proceedings directed by appellate court. *C. W. Hunt Co. v. Boston Elevated Ry. Co.*, 217 Mass. 319, 104 N. E. 728, 729; *Wenborne-Karpen Dryer Co. v. Cutler Dry Kiln Co.* (D. C.) 21 F.(2d) 692, 693; *Morgan Engineering Co. v. Cache River Drainage Dist.*, 122 Ark. 491, 184 S. W. 57, 59.

**FURTHER INSTRUCTIONS.** Additional instructions given to jury after they have once been instructed and have retired. *White v. Sharpe*, 219 Mass. 393, 107 N. E. 56.

**FURTHER MAINTENANCE OF ACTION, PLEA TO.** A plea grounded upon some fact or facts which have arisen since the commencement of the suit, and which the defend-

ant puts forward for the purpose of showing that the plaintiff should not further maintain his action. Brown.

**FURTHERANCE.** In criminal law, furthering, helping forward, promotion, or advancement of a criminal project or conspiracy. *Powers v. Comm.*, 114 Ky. 237, 70 S. W. 652.

**FURTIVE.** In old English law. Stealthily; by stealth. *Fleta*, lib. 1, c. 38, § 3.

**FURTUM.** Lat. Theft. The fraudulent appropriation to one's self of the property of another, with an intention to commit theft without the consent of the owner. *Fleta*, l. 1, c. 36; *Bract. fol. 150*; 3 *Inst. 107*.

The thing which has been stolen. *Bract. fol. 151*.

**FURTUM CONCEPTUM.** In Roman law. The theft which was disclosed where, upon searching any one in the presence of witnesses in due form, the thing stolen was discovered in his possession.

**Furtum est contrectatio rei alienæ fraudulenta, cum animo furandi, invito illo domino cujus res illa fuerat.** 3 *Inst. 107*. Theft is the fraudulent handling of another's property, with an intention of stealing, against the will of the proprietor, whose property it was.

**FURTUM GRAVE.** In Scotch law. An aggravated degree of theft, anciently punished with death. It still remains an open point what amount of value raises the theft to this serious denomination. 1 *Broun*, 352, note. See 1 *Swint*. 467.

**FURTUM MANIFESTUM.** Open theft. Theft where a thief is caught with the property in his possession. *Bract. fol. 150b*.

**Furtum non est ubi initium habet detentionis per dominium rei.** 3 *Inst. 107*. There is no theft where the foundation of the detention is based upon ownership of the thing.

**FURTUM OBLATUM.** In the civil law. Offered theft. *Oblatum furtum dicitur cum res furtiva ab aliquo tibi oblata sit, eaque apud te concepta sit.* Theft is called "*oblatum*" when a thing stolen is offered to you by any one, and found upon you. *Inst. 4, 1, 4*.

**FUSEL OIL.** A volatile oily liquid obtained in the rectification of spirituous liquors made from the fermentation of grain, potatoes, the marc of grapes, and other material; its chief constituent being amyl alcohol, a direct nerve poison. *Calkins v. National Travelers' Ben. Ass'n of Des Moines*, 200 Iowa, 60, 204 N. W. 406, 407, 41 A. L. R. 363.

**FUSTIGATIO.** In old English law. A beating with sticks or clubs; one of the ancient kinds of punishment of malefactors. *Bract. fol. 104b*, lib. 3, tr. 1, c. 6.

**FUSTIS.** In old English law. A staff, used in making livery of seisin. *Bract. fol. 40*.

A baton, club, or cudgel.

**FUTHWITE, or FITHWITE.** A fine for fighting or breaking the peace. *Cowell*; *Cun. L. Dict.*

**FUTURE ACQUIRED PROPERTY.** Mortgages, especially of railroad companies are frequently made in terms to cover after-acquired property; such as rolling stock, etc. Such mortgages are valid; *Philadelphia, W. & B. R. Co. v. Woelpper*, 64 Pa. 366, 3 Am. Rep. 596; *Pierce v. Emery*, 32 N. H. 484; *Shaw v. Bill*, 95 U. S. 10, 24 L. Ed. 333; *L. R. 16 Eq. 383*. This may include future net earnings; *Dunham v. Isett*, 15 Iowa, 284; the proceeds to be received from the sale of surplus lands; *L. R. 2 Ch. 201*; a ditch or flume in process of construction, which was held to cover all improvements and fixtures thereafter to be put on the line thereof; *De Arguello v. Greer*, 26 Cal. 620; rolling stock, etc.; *Philadelphia, W. & B. R. Co. v. Woelpper*, 64 Pa. 366, 3 Am. Rep. 596; *Benjamin v. R. Co.*, 49 Barb. (N. Y.) 441. Future calls of assessments on stock cannot be mortgaged; *L. R. 10 Eq. 681*; but calls already made can be; *id.*

Locomotives bought under a conditional sale, reserving title in the vendor, pass under an after-acquired clause to a mortgagee of the railroad, subject to the vendor's rights; *Contracting & Building Co. of Kentucky v. Trust Co.*, 108 F. 1, 47 C. C. A. 143.

A power in a Kentucky hotel company's charter to mortgage "all its property" does not sustain a mortgage covering after-acquired personal property; *In re New Galt House Co.*, 199 F. 533, following Kentucky cases, but the authorities are *contra*; *In re Medina Quarry Co.*, 179 F. 929; *Trust Co. of America v. City of Rhinelander*, 182 F. 64; *Zartman v. Bank*, 189 N. Y. 267, 82 N. E. 127, 12 L. R. A. (N. S.) 1083.

A will speaks as of the death of the testator and ordinarily passes property acquired after its date.

**FUTURE DEBT.** In Scotch law. A debt which is created, but which will not become due till a future day. 1 *Bell*, *Comm.* 315.

**FUTURE ESTATE.** See *Estate*.

**FUTURES.** This term has grown out of those purely speculative transactions, in which there is a nominal contract of sale for future delivery, but where in fact none is ever intended or executed. The nominal seller does not have or expect to have the stock or merchandise he purports to sell, nor does the nominal buyer expect to receive it or to pay the price. Instead of that, a percentage or margin is paid, which is increased or diminished as the market rates go up or down, and accounted for to the buyer. *King v. Quidnick Co.*, 14 R. I. 138; *Lemonius v. Mayer*, 71

Miss. 514, 14 So. 33; Plank v. Jackson, 128 Ind. 424, 26 N. E. 568; S. M. Weld & Co. v. Austin, 107 Miss. 279, 65 So. 247, 248.

**FUTURI.** Lat. Those who are to be. Part of the commencement of old deeds. "*Sciunt presentes et futuri, quod ego talis, dedi et concessi,*" etc., (Let all men now living and to come know that I, A. B., have, etc.) Bract. fol. 34b.

**FUZ, or FUST.** A Celtic word, meaning a wood or forest.

**FYHTWITE.** One of the fines incurred for homicide.

**FYKE.** A bow-net for catching fish. Pub. St. Mass. 1882, p. 1291.

**FYLE.** In old Scotch law. To defile; to declare foul or defiled. Hence, to find a prisoner guilty.

**FYLIT.** In old Scotch practice. Fyled; found guilty. See Fyle.

**FYNDERINGA.** (Sax.) An offense or trespass for which the fine or compensation was

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reserved to the king's pleasure. Leges Hen. I. c. 10. Its nature is not known. Spelman reads *fynderinga*, and interprets it *treasure trove*; but Cowell reads *fynderinga*, and interprets it a joining of the king's *fyrd* or host. A neglect to do which was punished by a fine called *fyrdwite*. See Spelman, Gloss. Du Cange agrees with Cowell.

**FYRD.** Sax. In Anglo-Saxon law. The military array or land force of the whole country. Contribution to the fyrd was one of the imposts forming the *trinoda necessitas*. (Also spelled "ferd" and "fyrd.")

**FYRDFARE.** A summoning forth to join a military expedition; a summons to join the *fyrd* or army.

**FYRDSOCNE, (or fyrdsoken.)** Exemption from military duty; exemption from service in the *fyrd*.

**FYRDWITE.** A fine imposed for neglecting to join the *fyrd* when summoned. Also a fine imposed for murder committed in the army; also an acquittance of such fine.