

## H

**H.** This letter, as an abbreviation, stands for Henry (a king of that name) in the citation of English statutes. In the Year Books, it is used as an abbreviation for Hilary term. In tax assessments and other such official records, "h" may be used as an abbreviation for "house," and the courts will so understand it. Alden v. Newark, 36 N. J. Law, 288; Parker v. Elizabeth, 39 N. J. Law, 693.

**H. A.** An abbreviation for *hoc anno*, this year, in this year.

**H. B.** An abbreviation for house bill, *i. e.*, a bill in the house of representatives, as distinguished from a senate bill.

**H. C.** An abbreviation for house of commons, or for *habeas corpus*.

**H. L.** An abbreviation for house of lords.

**H. R.** An abbreviation for house of representatives.

**H. T.** An abbreviation for *hoc titulo*, this title, under this title; used in references to books.

**H. V.** An abbreviation for *hoc verbo* or *hac voce*, this word, under this word; used in references to dictionaries and other works alphabetically arranged.

**HABE, or HAVE.** Lat. A form of the salutatory expression "*Ave*" (hail) in the titles of the constitutions of the Theodosian and Justinian Codes. Calvin; Spelman.

**HABEAS CORPORA JURATORUM.** A writ commanding the sheriff to bring up the persons of jurors, and, if need were, to distrain them of their lands and goods, in order to insure or compel their attendance in court on the day of trial of a cause. It issued from the Common Pleas, and served the same purpose as a *distringas juratores* in the King's Bench. It was abolished by the C. L. P. Act, 1852, § 104. Brown.

**HABEAS CORPUS.** Lat. (You have the body.) The name given to a variety of writs, (of which these were anciently the emphatic words,) having for their object to bring a party before a court or judge. In common usage, and whenever these words are used alone, they are understood to mean the *habeas corpus ad subjiciendum*, (see *infra*.) Dancy v. Owens, 126 Okl. 37, 258 P. 879, 884; In re McDevitt, 168 N. Y. S. 433, 101 Misc. 538; State v. Jameson, 51 S. D. 540, 215 N. W. 697, 699; Click v. Click, 98 W. Va. 419, 127 S. E. 194, 195; In re Stuart, 138 Wash. 59, 244 P. 116; Moody v. State, 87 Fla. 175, 99 So. 665; U. S. v. Tod, 263 U. S. 149, 44 S. Ct. 54, 57, 68 L. Ed. 221; People v. Windes, 283 Ill. 251, 119

N. E. 297, 298; State v. Konshak, 136 Minn. 331, 162 N. W. 353; Payne v. Graham, 20 Ala. App. 439, 102 So. 729, 731.

**HABEAS CORPUS ACT.** The English statute of 31 Car. II. c. 2, is the original and prominent *habeas corpus* act. It was amended and supplemented by St. 56 Geo. III. c. 100. And similar statutes have been enacted in all the United States. This act is justly regarded as the great constitutional guaranty of personal liberty.

**HABEAS CORPUS AD DELIBERANDUM ET RECIPIENDUM.** A writ which is issued to remove, for trial, a person confined in one county to the county or place where the offense of which he is accused was committed. Bac. Abr. "*Habeas Corpus*," A; 1 Chit. Crim. Law, 132. Ex parte Bollman, 4 Cranch, 97, 2 L. Ed. 554. Thus, it has been granted to remove a person in custody for contempt to take his trial for perjury in another county. 1 Tyrw. 185.

**HABEAS CORPUS AD FACIENDUM ET RECIPIENDUM.** A writ issuing in civil cases to remove the cause, as also the body of the defendant, from an inferior court to a superior court having jurisdiction, there to be disposed of. It is also called "*habeas corpus cum causa*." Ex parte Bollman, 4 Cranch, 97, 2 L. Ed. 554.

**HABEAS CORPUS AD PROSEQUENDUM.** A writ which issues when it is necessary to remove a prisoner in order to *prosecute* in the proper jurisdiction wherein the fact was committed. 3 Bl. Comm. 130.

**HABEAS CORPUS AD RESPONDENDUM.** A writ which is usually employed in civil cases to remove a person out of the custody of one court into that of another, in order that he may be sued and answer the action in the latter. 2 Sell. Pr. 259; 2 Mod. 198; 3 Bl. Comm. 129; 1 Tidd Pr. 300.

**HABEAS CORPUS AD SATISFACIENDUM.** In English practice. A writ which issues when a prisoner has had judgment against him in an action, and the plaintiff is desirous to bring him up to some superior court, to charge him with process of execution. 3 Bl. Comm. 129, 130; 3 Steph. Comm. 693; 1 Tidd, Pr. 350.

**HABEAS CORPUS AD SUBJICIENDUM.** A writ directed to the person detaining another, and commanding him to produce the body of the prisoner, (or person detained,) with the day and cause of his caption and detention, *ad faciendum, subjiciendum et recipiendum*, to do, submit to, and receive whatsoever the judge or court awarding the writ shall consider in that behalf. 3 Bl. Comm. 131; 3

Steph. Comm. 695. This is the well-known remedy for deliverance from illegal confinement, called by Sir William Blackstone the most celebrated writ in the English law, and the great and efficacious writ in all manner of illegal confinement. 3 Bl. Comm. 129.

**HABEAS CORPUS AD TESTIFICANDUM.**

A writ to bring a witness into court, when he is in custody at the time of a trial, commanding the sheriff to have his body before the court, to testify in the cause. 3 Bl. Comm. 130; 2 Tidd, Pr. 809. Ex parte Marmaduke, 91 Mo. 250; 4 S. W. 91, 60 Am. Rep. 250.

**HABEAS CORPUS CUM CAUSA.** (You have the body, with the cause.) Another name for the writ of *habeas corpus ad faciendum et recipiendum*, (q. v.) 1 Tidd, Pr. 348, 349.

**Habemus optimum testem, confitentem reum.** 1 Phil. Ev. 397. We have the best witness,—a confessing defendant. "What is taken *pro confesso* is taken as indubitable truth. The plea of guilty by the party accused shuts out all further inquiry. *Habemus confitentem reum* is demonstration, unless indirect motives can be assigned to it." 2 Hagg. Eccl. 315.

**HABENDUM.** Lat. In conveyancing. The clause usually following the granting part of the premises of a deed, which defines the extent of the ownership in the thing granted to be held and enjoyed by the grantee. 3 Washb. Real Prop. 437; New York Indians v. U. S., 170 U. S. 1, 18 S. Ct. 531, 42 L. Ed. 927; Clapp v. Byrnes, 38 N. Y. S. 1063, 3 App. Div. 284; Miller v. Graham, 47 S. C. 288, 25 S. E. 165; Hart v. Gardner, 74 Miss. 153, 20 So. 877; Keith v. Chastain, 157 Ga. 1, 121 S. E. 233, 235; Yeager v. Farnsworth, 163 Iowa, 537, 145 N. W. 87, 88; Brooks v. West Boston Gas Co., 260 Mass. 407, 157 N. E. 362, 363; Darnell v. Smith, 238 Mich. 33, 213 N. W. 59, 60; Reid v. Barry, 93 Fla. 849, 112 So. 846, 851; Freudenberger Oil Co. v. Simmons, 75 W. Va. 337, 83 S. E. 995, 997, Ann. Cas. 1918A, 873; Glenn v. Gross, 185 Iowa, 546, 170 N. W. 783, 784; Alexander v. Morris & Co., 168 Ark. 31, 270 S. W. 88, 89; In re Tamargo, 220 N. Y. 225, 115 N. E. 462, 464.

**HABENDUM ET TENENDUM.** In old conveyancing. To have and to hold. Formal words in deeds of land from a very early period. Bract. fol. 17b.

**HABENTES HOMINES.** In old English law. Rich men; literally, having men. The same with *fæsting-men*, (q. v.) Cowell.

**HABENTIA.** Riches. Mon. Angl. t. 1, 100.

**HABERE.** Lat. In the civil law. To have. Sometimes distinguished from *tenere*, (to hold,) and *possidere*, (to possess;) *habere* referring to the right, *tenere* to the fact, and *possidere* to both. Calvin.

**HABERE FACIAS POSSESSIONEM.** Lat. That you cause to have possession. The name of the process commonly resorted to by the successful party in an action of ejectment, for the purpose of being placed by the sheriff in the actual possession of the land recovered. It is commonly termed simply "*habere facias*," or "*hab. fa.*"

**HABERE FACIAS SEISINAM.** L. Lat. That you cause to have seisin. The writ of execution in real actions, directing the sheriff to cause the demandant to have seisin of the lands recovered. It was the proper process for giving seisin of a freehold, as distinguished from a chattel interest in lands.

**HABERE FACIAS VISUM.** Lat. That you cause to have a view. A writ to cause the sheriff to take a view of lands or tenements.

**HABERE LICERE.** Lat. In Roman law. To allow [one] to have [possession.] This phrase denoted the duty of the seller of property to allow the purchaser to have the possession and enjoyment. For a breach of this duty, an *actio ex empto* might be maintained.

**HABERJECTS.** A cloth of a mixed color. Magna Charta, c. 26.

**HABETO TIBI RES TUAS.** Lat. Have or take your effects to yourself. One of the old Roman forms of divorcing a wife. Calvin.

**HABILIS.** Lat. Fit; suitable; active; useful, (of a servant.) Proved; authentic, (of Book of Saints.) Fixed; stable, (of authority of the king.) Du Cange.

**HABIT.** A disposition or condition of the body or mind acquired by custom or a usual repetition of the same act or function. Conner v. Citizens' St. R. Co., 146 Ind. 430, 45 N. E. 662; State v. Skillicorn, 104 Iowa, 97, 73 N. W. 503; State v. Robinson, 111 Ala. 482, 20 So. 30; Sikes v. Allen, 2 Mart. N. S. (La.) 622; Ludwick v. Com., 18 Pa. 172; Com. v. Whitney, 5 Gray (Mass.) 85. The customary conduct, to pursue which one has acquired a tendency, from frequent repetition of the same acts. Knickerbocker Life Ins. Co. v. Foley, 105 U. S. 350, 26 L. Ed. 1055; National Council of Knights and Ladies of Security v. Fowler, 66 Okl. 294, 168 P. 914, 915, 6 A. L. R. 591.

**HABIT AND REPUTE.** Applied in Scotch law to a general understanding and belief of something's having happened: thus, by the law of Scotland, marriage may be established by "habit and repute" where the parties cohabit and are at the same time held and reputed as man and wife. See Bell. The same rule obtains in some of the United States.

**HABITABLE REPAIR.** A covenant by a lessee to "put the premises into habitable repair" binds him to put them into such a state that

they may be occupied, not only with safety, but with reasonable comfort, for the purposes for which they are taken. *Miller v. McCardell*, 19 R. I. 304, 33 A. 445, 30 L. R. A. 632; 2 Mood. & R. 186.

**HABITANCY.** Settled dwelling in a given place; fixed and permanent residence there. This term is more comprehensive than "domicile," for one may be domiciled in a given place though he does not spend the greater portion of his time there, or though he may be absent for long periods. It is also more comprehensive than "residence," for one may reside in a given place only temporarily or for short periods on the occasion of repeated visits. But in neither case could he properly be called an "inhabitant" of that place or be said to have his "habitaney" there. See *Atkinson v. Washington & Jefferson College*, 54 W. Va. 32, 46 S. E. 253; *Hairston v. Hairston*, 27 Miss. 711, 61 Am. Dec. 530; *Abington v. North Bridgewater*, 23 Pick. (Mass.) 170. And see *Domicile*; *Residence*.

It is difficult to give an exact definition of "habitaney." In general terms, one may be designated as an "inhabitant" of that place which constitutes the principal seat of his residence, of his business, pursuits, connections, attachments, and of his political and municipal relations. The term, therefore, embraces the fact of residence at a place, together with the intent to regard it and make it a home. The act and intent must concur. *Lyman v. Fiske*, 17 Pick. (Mass.) 231, 28 Am. Dec. 293.

**HABITANT.** Fr. In French and Canadian law. A resident tenant; a settler; a tenant who kept hearth and home on the seignior. A native of Canada of French descent, particularly of the peasant or farming class.

**HABITATIO.** Lat. In the civil law. The right of dwelling; the right of free residence in another's house. Inst. 2, 5; Dig. 7, 8.

#### HABITATION.

##### In the Civil Law

The right of a person to live in the house of another without prejudice to the property. It differed from a usufruct, in this: that the usufructuary might apply the house to any purpose, as of a store or manufactory; whereas the party having the right of habitation could only use it for the residence of himself and family. 1 *Browne*, Civil Law, 184.

##### In Estates

A dwelling-house; a homestead. 2 Bl. Comm. 4; 4 Bl. Comm. 220; *Holmes v. Oregon & C. R. Co.* (D. C.) 5 Fed. 527; *Nowlin v. Scott*, 10 Grat. (Va.) 65; *Harvard College v. Gore*, 5 Pick. (Mass.) 372.

In its generic sense, the term denotes a place of abode, but as used in a restrictive building covenant it may be synonymous simply with "dwelling." *Goodhue v. Pennell*, 150 N. Y. S. 435, 436, 164 App. Div. 821.

**HABITUAL.** Ordinarily applied to things done customarily or from force of habit. *Moering v. Falk Co.*, 155 Wis. 192, 144 N. W. 207, 208. Formed or acquired by or resulting from habit; frequent use or custom. *Meggs v. State*, 101 Tex. Cr. R. 415, 276 S. W. 262, 263. The "habitual" indulgence in violent and ungovernable temper as a ground for divorce is not synonymous with "frequent." *Kellogg v. Kellogg*, 93 Fla. 261, 111 So. 637, 638.

**HABITUAL CRIMINAL.** By statute in several states, one who is convicted of a felony, having been previously convicted of any crime (or twice so convicted), or who is convicted of a misdemeanor and has previously (in New York) been five times convicted of a misdemeanor. Crim. Code N. Y. § 510; Rev. St. Utah, 1898, § 4067 (Comp. Laws 1917, § 7907). In a more general sense, one made subject to police surveillance and arrest on suspicion, on account of his previous criminal record and absence of honest employment.

**HABITUAL CRIMINALS ACT.** The statute 32 & 33 Vict. c. 99. By this act power was given to apprehend on suspicion convicted persons holding license under the penal servitude acts, 1853, 1857, and 1864. The act was repealed and replaced by the prevention of crimes act, 1871, (34 & 35 Vict. c. 112.)

**HABITUAL DRUNKARD.** A person given to inebriety or the excessive use of intoxicating drink, who has lost the power or the will, by frequent indulgence, to control his appetite for it. *Ludwick v. Com.*, 18 Pa. 174; *Gourlay v. Gourlay*, 16 R. I. 705, 19 A. 142; *Miskey's Appeal*, 107 Pa. 626; *Richards v. Richards*, 19 Ill. App. 467; *McBee v. McBee*, 22 Or. 329, 29 P. 887, 29 Am. St. Rep. 613.

Within the meaning of the divorce laws, one who has the habit of indulging in intoxicating drinks so firmly fixed that he becomes drunk whenever the temptation is presented by his being near where liquor is sold. *Magahay v. Magahay*, 35 Mich. 210. One who has a fixed habit of frequently getting drunk. *Page v. Page*, 43 Wash. 293, 86 P. 582, 6 L. R. A. (N. S.) 914, 117 Am. St. Rep. 1054; *Bill v. Bill*, 178 Iowa, 1025, 157 N. W. 158, 159.

One who customarily becomes intoxicated; it is not necessary that such person be intoxicated most of his time or that he shall have lost his will power so that he cannot resist stimulants. *Lester v. Sampson* (Mo. App.) 180 S. W. 419, 421.

A person who has acquired the habit of drinking intoxicating liquors or taking narcotic drugs to such an extent as to deprive him of reasonable self-control. *Interdiction of Gasquet*, 138 La. 957, 68 So. 89, 92.

One addicted to the habit of drinking intoxicating liquors to excess, who is commonly or frequently intoxicated and becomes so as often as opportunity permits, it being unnecessary that he be intoxicated so often as to incapacitate him from attending to his business for a considerable portion of time. *Runkle v. Southern Pac. Milling Co.*, 184 Cal. 714, 195 P. 398, 400, 16 A. L. R. 275.

In England, defined by the habitual drunkards' act, 1879, (42 & 43 Vict. c. 19,) which authorizes confinement in a retreat, upon the party's own application, as "a person who, not being amenable to any jurisdiction in lunacy, is, notwithstanding, by reason of habitual intemperate drinking of intoxicating liquor, at times dangerous to himself, or herself, or others, or incapable of managing himself or herself, or his or her affairs."

**HABITUAL DRUNKENNESS, INTOXICATION, or INTEMPERANCE.**

The custom or habit of getting drunk; the constant indulgence in such stimulants as wine, brandy, and whisky, whereby intoxication is produced; not the ordinary use, but the habitual use of them; the habit should be actual and confirmed, but need not be continuous, or even of daily occurrence. *Williams v. Goss*, 43 La. Ann. 868, 9 So. 750; *Short v. Morrison*, 159 La. 193, 105 So. 286, 288. As a cause for divorce, the fixed habit of frequently getting drunk; it does not necessarily imply continual drunkenness. *Moor v. Moor*, 211 Ala. 56, 99 So. 316, 318; *Holm v. Holm*, 44 Utah, 242, 139 P. 937, 938. That degree of intemperance from the use of intoxicating drinks which disqualifies the person a great portion of the time from properly attending to business, or which would reasonably inflict a course of great mental anguish upon the innocent party. Rev. Codes Idaho, § 2652 (Code 1932, § 31-608). It has no reference to the excessive or habitual use of drugs. *Hayes v. Hayes*, 86 Fla. 350, 98 So. 66, 67; *Smith v. Smith*, 7 Boyce (Del.) 283, 105 A. 833.

**HABITUALLY.** Customarily; by frequent practice or use. It does not mean entirely or exclusively. *Stanton v. French*, 91 Cal. 274, 27 P. 657, 25 Am. St. Rep. 174.

**HABLE.** L. Fr. In old English law. A port or harbor; a station for ships. St. 27 Hen. VI. c. 3.

**HACIENDA.** In Spanish law. The public domain; the royal estate; the aggregate wealth of the state. The science of administering the national wealth; public economy.

Also an estate or farm belonging to a private person.

A royal estate. Newman & B. Dict.

**HACK STAND.** A private hack stand is a station where taxicabs or other vehicles are kept standing to solicit trade from the public indiscriminately at all hours. *Borland v. Curto*, 121 Misc. 336, 201 N. Y. S. 236, 237.

**HACKNEY.** Let out for hire, or devoted to common use; as, "hackney coaches," "hackney carriages." *State v. Jarvis*, 89 Vt. 239, 95 A. 541, 543.

**HACKNEY CARRIAGES.** Carriages plying for hire in the street. 2 C. 13, 877; *Masteron v. Short*, 33 How. Pr. (N. Y.) 481; 17 & 18 Vict. c. 86; *Com. v. Matthews*, 122 Mass. 60.

**HAD.** As used in a statute providing that no suit, action or proceeding to foreclose a mortgage or trust deed shall be had or maintained, "had" means commenced or begun. *Friel v. Alewel*, 318 Mo. 1, 298 S. W. 762, 764.

**HADBOTE.** In Saxon law. A recompense or satisfaction for the violation of holy orders, or violence offered to persons in holy orders. Cowell; Blount.

**HADD.** In Hindu law. A boundary or limit. A statutory punishment defined by law, and not arbitrary. *Mozley & Whitley*.

**HADERUNGA.** In old English law. Hatred; ill will; prejudice, or partiality. *Spelman*; Cowell.

Respect or distinction of persons. *Jacob*.

**HADGONEL.** In old English law. A tax or mulct. *Jacob*.

**HÆC EST CONVENTIO.** Lat. This is an agreement. Words with which agreements anciently commenced. *Yearb. H. 6 Edw. II.* 191.

**HÆC EST FINALIS CONCORDIA.** L. Lat. This is the final agreement. The words with which the foot of a fine commenced. 2 Bl. Comm. 351.

**HÆREDA.** In Gothic law. A tribunal answering to the English court-leet or hundred court.

**HÆREDE ABDUCTO.** An ancient writ that lay for the lord, who, having by right the wardship of his tenant under age, could not obtain his person, the same being carried away by another person. *Old Nat. Brev.* 93.

**HÆREDE DELIBERANDO ALTERI QUI HABET CUSTODIUM TERRÆ.** An ancient writ, directed to the sheriff, to require one that had the body of an heir, being in ward, to deliver him to the person whose ward he was by reason of his land. *Reg. Orig.* 161.

**HÆREDE RAPTO.** An ancient writ that lay for the ravishment of the lord's ward. *Reg. Orig.* 163.

**Hæredem Deus facit, non homo.** God makes the heir, not man. *Co. Litt. 7b*; *Bract.* 62b.

**HÆREDES.** Lat. In the civil law. Heirs. The plural of *hæres* (*q. v.*).

**HÆREDIPETA.** Lat. In old English law. A seeker of an inheritance; hence, the next heir to lands. *Du Cange*.

**Hæredipetæ suo propinquo vel extraneo periculo sane custodi nullus committatur.** To the next heir, whether a relation or a stranger, certainly a dangerous guardian, let no one be committed. *Co. Litt.* 88b.

## HÆREDITAS.

## In Roman Law

The *hæreditas* was a universal succession by law to any deceased person, whether such person had died testate or intestate, and whether in trust (*ex fideicommisso*) for another or not. The like succession according to Prætorian law was *donorum possessio*. The *hæreditas* was called "*jacens*," until the *hæres* took it up, *i. e.*, made his *aditio hæreditatis*; and such *hæres*, if a *suus hæres*, had the right to abstain, (*potestas abstinendi*.) and, if an *extraneus hæres*, had the right to consider whether he would accept or decline, (*potestas deliberandi*.) the reason for this precaution being that (prior to Justinian's enactment to the contrary) a *hæres* after his *aditio* was liable to the full extent of the debts of the deceased person, and could have no relief therefrom, except in the case of a *damnum emergens* or *damnosa hæreditas, i. e.*, an *hæreditas* which disclosed (after the *aditio*) some enormous unsuspected liability. Brown. The theory was that, though the physical person of the deceased had perished, his legal personality survived and descended unimpaired on his heirs in whom his legal identity was continued.

## In Old English Law

An estate transmissible by descent; an inheritance. Co. Litt. 9.

## In General

—*Hæreditas damnosa*. A burdensome inheritance; one which would be a burden instead of a benefit, that is, the debts to be paid by the heir would exceed the assets.

—*Hæreditas jacens*. In civil law. A prostrate or vacant inheritance. The inheritance left to a voluntary heir was so called so long as he had not manifested, either expressly or by silence, his acceptance or refusal of the inheritance. So long as no one had acquired the inheritance, it was termed "*hæreditas jacens*;" and this, by a legal fiction, represented the person of the decedent. Mackeld. Rom. Law, § 737. The estate of a person deceased, where the owner left no heirs or legatee to take it, called also "*caduca*;" an escheated estate. Cod. 10, 10, 1; 4 Kent, Comm. 425. The term has also been used in English law to signify an estate in abeyance; that is, after the ancestor's death, and before assumption of heir. Co. Litt. 342b. An inheritance without legal owner, and therefore open to the first occupant. 2 Bl. Comm. 259.

—*Hæreditas legitima*. A succession or inheritance devolving by operation of law (intestate succession) rather than by the will of the decedent. Mackeld. Rom. Law, § 654.

—*Hæreditas luctuosa*. A sad or mournful inheritance or succession; as that of a parent to the estate of a child, which was regarded

as disturbing the natural order of mortality (*turbato ordine mortalitatis*.) Cod. 6, 25, 9; 4 Kent, Comm. 397. It was sometimes termed *tristis successio*.

—*Hæreditas testamentaria*. Testamentary inheritance, that is, succession to an estate under and according to the last will and testament of the decedent. Mackeld. Rom. Law, § 654.

*Hæreditas, alia corporalis, alia incorporalis; corporalis est, quæ tangi potest et videri; incorporalis quæ tangi non potest nec videri*. Co. Litt. 9. An inheritance is either corporeal or incorporeal. Corporeal is that which can be touched and seen; incorporeal, that which can neither be touched nor seen.

*Hæreditas est successio in universum jus quod defunctus habuerit*. Co. Litt. 237. Inheritance is the succession to every right which the deceased had.

*Hæreditas nihil aliud est, quam successio in universum jus, quod defunctus habuerit*. The right of inheritance is nothing else than the faculty of succeeding to all the rights of the deceased. Dig. 50, 17, 62.

*Hæreditas nunquam ascendit*. An inheritance never ascends. Glanv. lib. 7, c. 1; 2 Bl. Comm. 211. A maxim of feudal origin, and which invariably prevailed in the law of England down to the passage of the statute 3 & 4 Wm. IV. c. 106, § 6, by which it was abrogated. 1 Steph. Comm. 378. See Broom, Max. 527, 528.

*Hæredum appellatione veniunt hæredes hæredum in infinitum*. By the title of heirs, come the heirs of heirs to infinity. Co. Litt. 9.

## HÆRES.

## In Roman Law

The heir, or universal successor in the event of death. The heir is he who actively or passively succeeds to the entire property of the estate-leaver. He is not only the successor to the rights and claims, but also to the estate-leaver's debts, and in relation to his estate is to be regarded as the identical person of the estate-leaver, inasmuch as he represents him in all his active and passive relations to his estate. Mackeld. Rom. Law, § 651.

The institution of the *hæres* was the essential characteristic of a *testament*: if this was not done, the instrument was called a *codicillus*. Mack. C. L. §§ 632, 650.

It should be remarked that the office, powers, and duties of the *hæres*, in Roman law, were much more closely assimilated to those of a modern *executor* than to those of an heir at law. Hence "heir" is not at all an accurate translation of "*hæres*," unless it be understood in a special, technical sense.

## In Common Law

An heir; he to whom lands, tenements, or hereditaments by the act of God and right of

blood do descend, of some estate of inheritance. Co. Litt. 7b.

**In General**

—**Hæres astrarius.** In old English law. An heir in actual possession of the house of his ancestor. Bract. 85, 267 b.

—**Hæres de facto.** In old English law. Heir from fact; that is, from the disseisin or other act of his ancestor, without or against right. An heir in fact, as distinguished from an heir *de jure*, or by law.

—**Hæres ex asse.** In the civil law. An heir to the whole estate; a sole heir. Inst. 2, 23, 9.

—**Hæres extraneus.** In the civil law. A strange or foreign heir; one who was not subject to the power of the testator, or person who made him heir. *Qui testatoris juri subiecti non sunt, extranei hæredes appellantur.* Inst. 2, 19, 3.

—**Hæres factus.** In the civil law. An heir made by will; a testamentary heir; the person created universal successor by will. Story, Conf. Laws, § 507; 3 Bl. Comm. 224. Otherwise called "*hæres ex testamento*," and "*hæres institutus*." Inst. 2, 9, 7; Id. 2, 14.

—**Hæres fideicommissarius.** In the civil law. The person for whose benefit an estate was given to another (termed "*hæres fiduciarius*," *q. v.*) by will. Inst. 2, 23, 6, 7, 9. Answering nearly to the *cestui que trust* of the English law.

—**Hæres fiduciarius.** A fiduciary heir, or heir in trust; a person constituted heir by will, in trust for the benefit of another, called the "*fideicommissarius*."

—**Hæres institutus.** A testamentary heir; one appointed by the will of the decedent.

—**Hæres legitimus.** A lawful heir; one pointed out as such by the marriage of his parents.

—**Hæres natus.** In the civil law. An heir born; one born heir, as distinguished from one made heir, (*hæres factus*, *q. v.*;) an heir at law, or by intestacy, (*ab intestato*;) the next of kin by blood, in cases of intestacy. Story, Conf. Laws, § 507; 3 Bl. Comm. 224. This is the only form of heirship recognized in the English law. Wms. R. P., 6th Am. ed. 96.

—**Hæres necessarius.** In the civil law. A necessary or compulsory heir. This name was given to the heir when, being a slave, he was named "heir" in the testament, because on the death of the testator, whether he would or not, he at once became free, and was compelled to assume the heirship. Inst. 2, 19, 1.

—**Hæredes proximi.** Nearest or next heirs. The children or descendants of the deceased.

—**Hæres rectus.** In old English law. A right heir. Fleta, lib. 6, c. 1, § 11.

—**Hæredes remotiores.** More remote heirs. The kinsmen other than children or descendants.

—**Hæres suus.** In the civil law. A man's own heir; a decedent's proper or natural heir. This name was given to the lineal descendants of the deceased. Persons who were in the power of the testator but became *sui juris* at his death. Inst. 2, 13; 3, 1, 4, 5. Those descendants who were under the power of the deceased at the time of his death, and who are most nearly related to him. Calvin.

—**Hæredes sui et necessarii.** In Roman law. Own and necessary heirs; *i. e.*, the lineal descendants of the estate-leaver. They were called "necessary" heirs, because it was the law that made them heirs, and not the choice of either the decedent or themselves. But since this was also true of slaves (when named "heirs" in the will) the former class were designated "*sui et necessarii*," by way of distinction, the word "*sui*" denoting that the necessity arose from their relationship to the decedent. Mackeld. Rom. Law, § 733.

**Hæres est alter ipse, et filius est pars patris.** An heir is another self, and a son is part of the father. 3 Coke, 12b.

**Hæres est aut jure proprietatis aut jure representationis.** An heir is either by right of property, or right of representation. 3 Coke, 40b.

**Hæres est eadem persona cum antecessore.** An heir is the same person with his ancestor. Co. Litt. 22; Branch, Princ. See Nov. 48, c. 1, § 1.

**Hæres est nomen collectivum.** "Heir" is a collective name or noun. 1 Vent. 215.

**Hæres est nomen juris; filius est nomen naturæ.** "Heir" is a name or term of law; "son" is a name of nature. Bac. Max. 52, in reg. 11.

**Hæres est pars antecessoris.** An heir is a part of the ancestor. So said because the ancestor, during his life, bears in his body (in judgment of law) all his heirs. Co. Litt. 22 b; Schoonmaker v. Sheely, 3 Hill (N. Y.) 165, 167.

**Hæres hæredis nei est meus hæres.** The heir of my heir is my heir. Wharton, Law Dict.

**Hæres legitimus est quem nuptiæ demonstrant.** He is a lawful heir whom marriage points out as such; who is born in wedlock. Co. Litt. 7b; Bract. fol. 88; Fleta, lib. 6, c. 1; Broom, Max. 515; Mirror of Just. 70; Dig. 2, 4, 5. (As to the application of the principle when the marriage is subsequent to the birth of the child, see 2 Cl. & F. 571; 6 Bingh. N. C. 385; 5 Wheat. 226, 262, n., 5 L. Ed. 70.)

**Hæres minor uno et viginti annis non respon-**  
debit, nisi in casu dotis. Moore, 348. An heir  
under twenty-one years of age is not answer-  
able, except in the matter of dower.

**Hæres non tenetur in Anglia ad debita anteces-**  
soris reddenda, nisi per antecessorem ad hoc  
fuerit obligatus, præterquam debita regis tan-  
tum. Co. Litt. 386. In England, the heir is  
not bound to pay his ancestor's debts, unless  
he be bound to it by the ancestor, except debts  
due to the king. But now, by 3 & 4 Wm. IV.  
c. 104, he is liable.

**HÆRETARE.** In old English law. To give  
a right of inheritance, or make the donation  
hereditary to the grantee and his heirs.  
Cowell.

**HÆRETICO COMBURENDO.** The statute 2  
Hen. IV. c. 15, *de hæretico comburendo*, was  
the first penal law enacted against heresy,  
and imposed the penalty of death by burning  
against all heretics who relapsed or who re-  
fused to abjure their opinions. It was re-  
pealed by the statute 29 Car. II. c. 9. Brown.  
This was also the name of a writ for the pur-  
pose indicated. See, also, *De Hæretico Com-*  
*burendo*.

**HAFNE.** A haven or port. Cowell.

**HAFNE COURTS.** Haven courts; courts an-  
ciently held in certain ports in England.  
Spelman.

**HAG.** A division of a coppice or wood on  
which timber was cut annually by the pro-  
prietor. Ersk. Pr. 222.

**HAGA.** A house in a city or borough. Scott.

**HAGIA.** A hedge. Mon. Angl. tom. 2, p. 273.

**HAGNE.** A little hand-gun. St. 33 Hen.  
VIII. c. 6.

**HAGNEBUT.** A hand-gun of a larger de-  
scription than the hagne. St. 2 & 3 Edw. VI.  
c. 14; 4 & 5 P. & M. c. 2.

**HAGUE TRIBUNAL.** The Court of Arbitra-  
tion established by the Hague Peace Confer-  
ence of 1899. The object of the establishment  
was to facilitate the immediate recourse to  
arbitration for the settlement of interna-  
tional differences by providing a permanent  
court, "accessible at all times, and acting, in  
default of agreement to the contrary between  
the parties, in accordance with the rules of  
procedure inserted in the present convention."  
The court is given jurisdiction over all ar-  
bitration cases, provided the parties do not  
agree to institute a special tribunal. An in-  
ternational Bureau was likewise established  
to serve as a registry for the court and to be  
the channel of communications relative to the  
meetings of the court. The court, although  
called "permanent," is really so only in the  
fact that there is a permanent list of mem-

bers from among whom the arbitrators in a  
given case are selected. At the Second Hague  
Conference of 1907, apart from minor changes  
made in the court, it was provided that, of  
the two arbitrators appointed by each of the  
parties, only one should be a national of the  
appointing state. 1 Scott, 274-318, 423-464.

**HAIA.** In old English law. A park inclosed.  
A hedge. Cowell.

**HAIEBOTE.** In old English law. A permis-  
sion or liberty to take thorns, etc., to make  
or repair hedges. Blount.

**HAILL.** In Scotch law. Whole; the whole.  
"All and hail!" are common words in convey-  
ances. 1 Bell, App. Cas. 499.

**HAILWORKFOLK** (*i. e.*, holyworkfolk.)  
Those who formerly held lands by the serv-  
ice of defending or repairing a church or  
monument. See, also, Halywerfolk.

**HAIMHALDARE.** In old Scotch law. To  
seek restitution of one's own goods and gear,  
and bring the same *home* again. Skene de  
Verb. Sign.

**HAIMSUCKEN.** In Scotch law. The crime  
of assaulting a person in his own house. Bell.  
See Hamesecken.

**HAIR.** A capillary outgrowth from the skin.  
It has been held not to include the bristles  
of animals. Von Stade v. Arthur, 13 Blatchf.  
251, Fed. Cas. No. 16,998.

**HAKH.** Truth; the true God; a just or le-  
gal prescriptive right or claim; a perquisite  
claimable under established usage by village  
officers. Wilson, Gloss. Ind.

**HAKHDAR.** The holder of a right. Moz. &  
W. See Hakh.

**HALAKAR.** The realization of the revenue.  
Wilson, Gloss. Ind.; Moz. & W.

**HALF.** A moiety; one of two equal parts  
of anything susceptible of division. Prentiss  
v. Brewer, 17 Wis. 644, 86 Am. Dec. 730;  
Hartford Iron Min. Co. v. Cambridge Min.  
Co., 80 Mich. 491, 45 N. W. 351; Cogan v.  
Cook, 22 Minn. 142; Dart v. Barbour, 32 Mich.  
272. Used in law in various compound terms,  
in substantially the same sense, as follows:

—Half blood. See Blood.

—Half-brother, half-sister. Persons who have  
the same father, but different mothers; or the  
same mother, but different fathers. Wood v.  
Mitcham, 92 N. Y. 379; In re Weiss' Estate,  
1 Montg. Co. Law Rep'r (Pa.) 210.

—Half-cent. A copper coin of the United  
States, of the value of five mills, and of the  
weight of ninety-four grains. The coinage of  
these was discontinued in 1857.

—**Half chest.** In connection with tea, a "half chest" is a chest containing 75 to 80 pounds, but the weight varies according to the kind of tea. *Japan Tea Co. v. Franklin MacVeagh & Co.*, 142 Minn. 152, 171 N. W. 305, 307.

—**Half defense.** See Defense.

—**Half-dime.** A silver (now nickel) coin of the United States, of the value of five cents.

—**Half-dollar.** A silver coin of the United States, of the value of fifty cents, or one-half the value of a dollar.

—**Half-eagle.** A gold coin of the United States, of the value of five dollars.

—**Half endeaI or halfen deal.** A moiety or half of a thing.

—**Half-king.** In Saxon law. Half-king, (*semi-rea*.) A title given to the aldermen of all England. Crabb, Eng. Law, 28; Spelman.

—**Half-mark.** A noble, or six shillings and eight pence in English money.

—**Half pilotage.** Compensation for services which a pilot has put himself in readiness to perform, by labor, risk, and cost, and has offered to perform, at half the rate he would have received if the services had actually been performed. *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 196, 5 Sup. Ct. 826, 29 L. Ed. 158.

—**Half-proof.** In the civil law. Proof by one witness, or a private instrument. Hallifax, Civil Law, b. 3, c. 9, no. 25; 3 Bl. Comm. 370. Or *prima facie* proof, which yet was not sufficient to found a sentence or decree.

—**Half-seal.** That which was formerly used in the English chancery for sealing of commissions to delegates, upon any appeal to the court of delegates, either in ecclesiastical or marine causes. 8 Eliz. c. 3.

—**Half section.** In American land law. The half of a section of land according to the divisions of the government survey, laid off either by a north-and-south or by an east-and-west line, and containing 320 acres. See *Brown v. Hardin*, 21 Ark. 324.

—**Half-timer.** A child who, by the operation of the English factory and education acts, is employed for less than the full time in a factory or workshop, in order that he may attend some "recognized efficient school." See factory and workshop act, 1878, § 23; elementary education act, 1876, § 11.

—**Half-tongue.** A jury half of one *tongue* or nationality and half of another. See *De Medietate Linguae*.

—**Half-year.** In legal computation. The period of one hundred and eighty-two days; the odd hours being rejected. Co. Litt. 135b;

Cro. Jac. 166; Yel. 100; 1 Steph. Comm. 265; Pol. Code Cal. 1903, § 3257.

**HALI.** A man employed in ploughing. Wilson, Gloss. Ind.; Moz. & W.

**HALIFAX LAW.** A synonym for lynch law, or the summary (and unauthorized) trial of a person accused of crime and the infliction of death upon him; from the name of the parish of Halifax, in England, where anciently this form of private justice was practised by the free burghers in the case of persons accused of stealing; also called "gibbet law."

**HALIGEMOT, or HALIMOTE.** In Saxon law. The meeting of a hall, (*conventus aulæ*.) that is, a lord's court; a court of a manor, or court-baron. Spelman. So called from the *hall*, where the tenants or freemen met, and justice was administered. Crabb, Eng. Law, 26.

It was sometimes used to designate a convention of citizens in their public hall and was also called folkmote and hallmote. The word *halimote* rather signifies the lord's court or a court baron held in a manor in which the differences between the tenants were determined. Cunn. L. Dict.; Cowell.

"Furthermore, it seems to have been a common practice for a wealthy abbey to keep a court, known as a *halimote*, on each of its manors, while in addition to these manorial courts it kept a central court, a *libera curia* for all its greater freehold tenants. And we may now and again meet with courts which are distinctly called courts of honors. The rule then was not merely this, that the lord of a manor may hold a court for the manor; but rather this, that a lord may hold a court for his tenants." 1 Poll. & Maitl. 573.

**HALIMAS.** In English law. The feast of All Saints, on the 1st of November; one of the cross-quarters of the year, was computed from Halimas to Candlemas. Wharton.

**HALIWORKFOLK.** See Halywerfolk.

**HALL.** A building or room of considerable size, used as a place for the meeting of public assemblies, conventions, courts, etc.; as, the city hall, the town hall.

#### In English Law

A name given to many manor-houses because the magistrate's court was held in the hall of his mansion; a chief mansion-house. Cowell.

**HALL-MARK.** An official stamp affixed by the goldsmiths upon articles made of gold or silver as an evidence of genuineness, and hence used to signify any mark of genuineness. "The power of free alienation is the 'hall-mark' of a fee-simple absolute." Rand. Em. Dom. § 206.

**HALLAGE.** In old English law. A fee or toll due for goods or merchandise vended in a hall. Jacob; 6 Co. 62.



A toll due to the lord of a fair or market, for such commodities as were vended in the common hall of the place. Cowell; Blount.

**HALLAZCO.** In Spanish law. The finding and taking possession of something which previously had no owner, and which thus becomes the property of the first occupant. *Las Partidas*, 3, 5, 28; 5, 48, 49; 5, 20, 50.

**HALLE-GEMOTE.** In Saxon law. *Haligemot* (q. v.).

**HALLMOOT.** See Haligemot.

**HALLUCINATION.** In medical jurisprudence. A trick or deceit of the senses; a morbid error either of the sense of sight or that of hearing, or possibly of the other senses; a psychological state, such as would be produced naturally by an act of sense-perception, attributed confidently, but mistakenly, to something which has no objective existence; as, when the patient imagines that he sees an object when there is none, or hears a voice or other sound when nothing strikes his ear. See *Staples v. Wellington*, 58 Me. 459; *McNett v. Cooper* (C. C.) 13 Fed. 590; *People v. Krist*, 168 N. Y. 19, 60 N. E. 1057.

An error, a blunder, a mistake, a fallacy; and when used in describing the condition of a person, does not necessarily carry an imputation of insanity. *Foster's Ex'rs v. Dickerson*, 64 Vt. 233, 24 A. 253.

The perception by any of the senses of an object which has no existence. The conscious recognition of a sensation of sight, hearing, feeling, taste, or smell which is not due to any impulse received by the perceptive apparatus from without, but arises within the perceptive apparatus itself. A false perception in contradistinction to a *delusion* or false belief. Wood, *Am. Text-Book of Med.*

Hallucinations are tricks of the senses, differing from delusions in that hallucinations pass away while delusions remain. *Bensberg v. Washington University*, 251 Mo. 641, 158 S. W. 330, 333.

Hallucination does not by itself constitute insanity, though it may be evidence of it or a sign of its approach. It is to be distinguished from "delusion" in this, that the latter is a fixed and irrational belief in the existence of a *fact* or state of facts, not cognizable through the senses, but to be determined by the faculties of reason, memory, judgment, and the like; while hallucination is a belief in the existence of an external *object*, perceptible by the senses, but having no real existence; or, in so far as a delusion may relate to an external object, it is an irrational belief as to the character, nature, or appearance, of something which really exists and affects the senses. For example, if a man should believe that he saw his right hand in its proper place, after it had been amputated, it would be an hallucination; but if he believed that his right hand was made of glass, it would be a delusion. In other words, in the case of hallucination, the senses betray the mind, while in the case of delusion, the senses act normally, but their evidence is rejected by the mind on account of the existence of an irrational belief formed independently of them. They are further distinguished by the fact that hallucinations may be observed and studied by the subject himself and traced to their causes, or may

be corrected by reasoning or argument, while a delusion is an unconscious error, but so fixed and unchangeable that the patient cannot be reasoned out of it. Hallucination is also to be distinguished from "illusion," the latter term being appropriate to describe a perverted or distorted or wholly mistaken impression in the mind, derived from a true act of sense-perception, stimulated by a real external object, but modified by the imagination of the subject; while, in the case of hallucination, as above stated, there is no objective reality to correspond with the imagined perception.

**HALMOTE.** See Haligemot.

**HALYMOTE.** A holy or ecclesiastical court.

A court held in London before the lord mayor and sheriffs, for regulating the bakers.

It was anciently held on Sunday next before St. Thomas' day, and therefore called the "*holymote*," or holy court. Cowell.

**HALYWERC FOLK.** Sax. In old English law. Tenants who held land by the service of repairing or defending a church or monument, whereby they were exempted from feudal and military services. Especially in the county of Durham, those who held by service of defending the corpse of St. Cuthbert. Jacob, *Law Dict.*

**HAM.** A place of dwelling; a homeclose; a little narrow meadow. Blount. A house or little village. Cowell.

**HAMA.** In old English law. A hook; an engine with which a house on fire is pulled down. *Yel.* 60.

A piece of land.

**HAMBLING, or HAMELING.** In forest law. The hoxing or hock-sinewing of dogs; an old mode of laming or disabling dogs. *Termes de la Ley.* *Expeditation* (q. v.).

**HAMEL, HAMELETA, or HAMLETA.** A hamlet.

**HAMESECKEN.** In Scotch law. The violent entering into a man's house without license or against the peace, and the seeking and assaulting him there. *Skene de Verb. Sign.*; 2 *Forb. Inst.* 139.

The crime of housebreaking or burglary. 4 *Bl. Comm.* 223. Spelled, also, "hamesucken."

In Hale's Pleas of the Crown it is said, "The common genus of offences that comes under the name of *hamesucken* is that which is usually called house-breaking; which sometimes comes under the common appellation of *burglary*, whether committed in the day or night to the intent to commit felony; so that house-breaking of this kind is of two natures." 1 *Hale, Pl. Cr.* 547; *Com. v. Hope*, 22 *Pick. (Mass.)* 4.

See also, *Hamsocne*.

**HAMFARE.** (Sax. From *ham*, a house.) In Saxon law. An assault made in a house; a breach of the peace in a private house. Cowell. This word by some is said to signify the

freedom of a man's house. *Holthouse*. See, also, *Hamsocne*.

**HAMLET.** A small village; a part or member of a vill. It is the diminutive of "*ham*," a village. *Cowell*. See *Rex v. Morris*, 4 Term, 552.

A "village" or "hamlet" in a rural community may be no more than a store, a school, a church, and two or three residences. *Rantoul Rural High School Dist. No. 2, Franklin County, v. Davis*, 160 P. 1008, 1009, 99 Kan. 185.

**HAMMA.** A close joining to a house; a croft; a little meadow. *Cowell*.

**HAMMER.** Metaphorically, a forced sale or sale at public auction. "To bring to the hammer," to put up for sale at auction. "Sold under the hammer," sold by an officer of the law or by an auctioneer.

**HAMSOCNE.** In Saxon law. The word is variously spelled *hamsoca*, *hamsocna*, *haim-suken*, *hamesaken*, *hamsocn*. The right of security and privacy in a man's house. *Du Cange*. The breach of this privilege by a forcible entry of a house is breach of the peace. *Anc. Laws & Inst. of Eng. Gloss.*; *Du Cange*; *Bracton*, lib. 3, tr. 2, c. 2, § 3. The right to entertain jurisdiction of the offence. *Spelman*; *Du Cange*. Immunity from punishment for such offence. *Du Cange*; *Fleta*, lib. 1, c. 47, § 18. An insult offered in one's own house (*insultus factus in domo*). *Brompton*, p. 957; *Du Cange*.

Among the Anglo-Saxons it was breaking into a house; perhaps the time of the day was not an element. See 3 *Holdsw. Hist. E. L.* 293; 2 *Poll. & Maitl.* 492. See, also, *Hame-secken*.

**HANAPER.** A hamper or basket in which were kept the writs of the court of chancery relating to the business of a subject, and their returns; 5 & 6 *Vict. c. 113*; 10 *Ric. II. c. 1*; 3 *Bl. Comm.* 49; equivalent to the Roman *fuscus*. According to others, the fees accruing on writs, etc., were there kept. *Spelman*; *Du Cange*.

**HANAPER-OFFICE.** An office belonging to the common-law jurisdiction of the court of chancery, so called because all writs relating to the business of a subject, and their returns, were formerly kept in a hamper, in *hanaperio*. 5 & 6 *Vict. c. 103*. See *Yates v. People*, 6 *Johns. (N. Y.)* 363.

**HAND.** A measure of length equal to four inches, used in measuring the height of horses.

A person's signature. *Salazar v. Taylor*, 18 *Colo.* 538, 33 *Pac.* 369; 10 *Mod.* 103.

As a part of the body, within the purview of *Workmen's Compensation Acts*, "hand" designates the palm, fingers, and thumb, an organ primarily of prehension or grasping. *Lovalo v. Michigan Stamping Co.*, 202 *Mich.* 85, 167 *N. W.* 904, 905. But it has elsewhere

been said that for the purpose of fixing compensation, the statute treats all parts below the elbow joint as an entirety under the name "hand." *Western Const. Co. v. Early*, 81 *Ind. App.* 490, 142 *N. E.* 396.

In the plural, the term may be synonymous with "possession"; as, the "hands" of an executor, garnishee, etc. *Brownwood Gas Co. v. Belser (Tex. Civ. App.)* 257 *S. W.* 605, 607.

#### In Old English Law

An oath.

For the meaning of the terms "strong hand" and "clean hands," see those titles.

**HAND DOWN.** To announce or file an opinion in a cause. Used originally and properly of the opinions of appellate courts transmitted to the court below; but in later usage the term is employed more generally with reference to any decision by a court upon a case or point reserved for consideration.

**HAND-FASTING.** In old English law. Betrothment.

**HAND-GRITH.** Peace or protection given by the king with his own hand; used in the laws of Henry I. *Tomlin*; *Cowell*; *Moz. & W.*; *Stat. Hen. I. c. 13*.

**HAND MONEY.** Money paid in hand to bind a bargain; earnest money, when it is in cash.

**HANDBILL.** A written or printed notice displayed to inform those concerned of something to be done. *Kelly v. Board of Trustees of Evarts Common Graded School Dist.*, 162 *Ky.* 612, 172 *S. W.* 1047, 1048; *People v. McLaughlin*, 33 *Misc.* 691, 68 *N. Y. S.* 1108.

**HANDBOROW.** In Saxon law. A hand pledge; a name given to the nine pledges in a decennary or friborg; the tenth or chief, being called "*headdorow*," (*q. v.*). So called as being an inferior pledge to the chief. *Spelman*.

**HANDCUFFS.** See *Fetters*.

**HANDHABEND, or HAND-HABENDE.** In Saxon law. One having a thing in his hand; that is, a thief found having the stolen goods in his possession. Jurisdiction to try such thief. See *Laws of Hen. I. c. 59*; *Laws of Athelstane* § 6; *Fleta*, lib. 1, c. 38, § 1; *Britton* p. 72; *Du Cange*, *Handhabenda*. See, also, *Backberend*.

**HANDLE.** To deal in, to buy and sell, as merchandise. *Adams Fish Market v. Sterrett*, 106 *Tex.* 562, 172 *S. W.* 1109. To manage or operate. The term includes the act of placing a truck on a depot platform for the purpose of loading. *Wells Fargo & Co. v. Lowery (Tex. Civ. App.)* 197 *S. W.* 605, 608.

**HANDBALE.** Anciently, among all the northern nations, shaking of hands was held necessary to bind a bargain,—a custom still retained in verbal contracts. A sale thus made

was called "handsale," (*venditio per mutuum manum complectionem*.) In process of time the same word was used to signify the price or earnest which was given immediately after the shaking of hands, or instead thereof. 2 Bl. Comm. 448.

**HANSEL.** Handsale, or earnest money.

**HANDWRITING.** The chirography of a person; the cast or form of writing peculiar to a person, including the size, shape, and style of letters, tricks of penmanship, and whatever gives individuality to his writing, distinguishing it from that of other persons. In re Hyland's Will (Sur.) 27 N. Y. S. 963.

Anything written by hand; an instrument written by the hand of a person, or a specimen of his writing.

Handwriting, considered under the law of evidence, includes not only the ordinary writing of one able to write, but also writing done in a disguised hand, or in cipher, and a mark made by one able or unable to write. 9 Amer. & Eng. Enc. Law, 264. See Com. v. Webster, 5 Cush. (Mass.) 301, 52 Am. Dec. 711.

Typewriting is not "handwriting" within a statute allowing experts' opinions as to who executed a writing. Wolf v. Gall, 176 Cal. 787, 169 P. 1017, 1019.

**HANDY MAN.** A man of all work. Sovereign Camp, W. O. W., v. Craft, 208 Ala. 467, 94 So. 831, 834.

**HANG.** In old practice. To remain undetermined. "It has *hung* long enough; it is time it were made an end of." Holt, C. J., 1 Show. 77.

Thus, the present participle means pending; during the pendency. "If the tenant alien, *hanging* the *præcipe*." Co. Litt. 266a. Remaining undetermined. 1 Show. 77.

**HANGED, DRAWN AND QUARTERED.** A method of executing traitors in England, said to have been introduced in 1241. The traitor was carried on a sled, or hurdle to the gallows (formerly dragged there tied to the tail of a horse); hanged till half dead and then cut down; his entrails cut out and burnt; his head cut off and his body to be divided into quarters, which, with his head, were hung in some public place. In practice the executioner usually cut out the heart and held it up to view. See Andrews, Old Time Punishments; 1 Eng. Rep. 87.

**HANGING.** In criminal law. Suspension by the neck; the mode of capital punishment used in England from time immemorial, and generally adopted in the United States. 4 Bl. Comm. 403.

**HANGING IN CHAINS.** In atrocious cases it was at one time usual, in England, for the court to direct a murderer, after execution, to be hanged upon a gibbet in chains near the place where the murder was committed, a practice quite contrary to the Mosaic law.

(Deut. xxi. 23.) Its legality was declared by acts in 1751 and 1828. Abolished by 4 & 5 Wm. IV, c. 26. Wharton.

**HANGING PAPER.** Ordinarily, paper for hanging or hangings, or paper which hangs. Within the meaning of the Tariff Act (19 US CA § 121), paper used for covering walls, ceiling, etc., whether such paper is tinted or decorative or not;—a more inclusive term than "paper hangings," meaning tinted or decorative paper used for the purpose mentioned. Downing & Co. v. U. S., 12 Ct. Cust. App. 451, 454.

Merchandise known as grass cloth, made by pasting a fabric of weed bark sewed with cotton thread on a paper backing and dyeing the surface, imported to be used as wall hangings, is dutiable as dyed hanging paper. Downing & Co. v. U. S., 12 Ct. Cust. App. 451.

**HANGMAN.** An executioner. One who executes condemned criminals by hanging.

**HANGWITE.** In Saxon law. A fine for illegal hanging of a thief, or for allowing him to escape. Immunity from such fine. Du Cange.

**HANIG.** Some customary labor to be performed. Holthouse.

**HANSE.** An alliance or confederation among merchants or cities, for the good ordering and protection of the commerce of its members. An imposition upon merchandise. Du Cange.

—Hanse towns. The collective name of certain German cities, including Lübeck, Hamburg, and Bremen, which formed an alliance for the mutual protection and furtherance of their commercial interests, in the twelfth century. The powerful confederacy thus formed was called the "Hanseatic League." The league framed and promulgated a code of maritime law, which was known as the "Laws of the Hanse Towns," or *Jus Hanseaticum Maritimum*.

—Hanse towns, laws of the. The maritime ordinances of the Hanseatic towns, first published in German at Lübeck, in 1597, and in May, 1614, revised and enlarged.

—Hanseatic. Pertaining to a hanse or commercial alliance; but, generally, the union of the Hanse towns is the one referred to, as in the expression the "Hanseatic League." The years 1356 to 1377 marked the zenith of the league's power. The league gradually declined till, in 1669, the last general assembly was held and Lübeck, Hamburg and Bremen were left alone to preserve the name and small inheritance of the "Hansa."

**HANSGRAVE.** The chief of a company; the head man of a corporation.

**HANTELOD, or HANTELODE.** In old European law. An arrest, or attachment. Spelman; Du Cange; Toml.; Holthouse.

**HAP.** To catch. Thus, "hap the rent," "hap the deed-poll," were formerly used.

**HAPPINESS.** Comfort, consolation, contentment, ease, enjoyment, pleasure, satisfaction. National Surety Co. v. Jarrett, 95 W. Va. 420, 121 S. E. 291, 295. The constitutional right of men to pursue their "happiness" means the right to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their prosperity, or develop their faculties, so as to give to them their highest enjoyment. Butchers' Union Co. v. Crescent City Co., 4 S. Ct. 652, 111 U. S. 757, 28 L. Ed. 585; 1 Bl. Comm. 41. And see English v. English, 32 N. J. Eq. 750.

**HAQUE.** In old statutes. A hand-gun, about three-quarters of a yard long.

**HARACIUM.** In old English law. A race of horses and mares kept for breed; a stud. Spelman.

**HARBINGER.** In England, an officer of the royal household.

**HARBOR, v.** To receive clandestinely and without lawful authority a person for the purpose of so concealing him that another having a right to the lawful custody of such person shall be deprived of the same. Jones v. Van Zandt, 5 How. 215, 227, 12 L. Ed. 122. For example, the harboring of a wife or an apprentice in order to deprive the husband or the master of them; or, in a less technical sense, it is the reception of persons improperly. Poll. Torts 275; Wood v. Gale, 10 N. H. 247, 34 Am. Dec. 150; Eells v. People, 4 Scam. (Ill.) 498. It may be aptly used to describe the furnishing of shelter, lodging, or food clandestinely or with concealment, and under certain circumstances, may be equally applicable to those acts divested of any accompanying secrecy. U. S. v. Grant (C. C.) 55 F. 415.

A distinction has been taken, in some decisions, between "harbor" and "conceal." A person may be convicted of harboring a slave, although he may not have concealed her. McElhaney v. State, 24 Ala. 71.

As used in U. S. Criminal Code, § 42 (18 USCA § 94), providing for the punishment of one who shall harbor, conceal, protect, or assist any soldier who has deserted from service, "harbor" means to lodge, to care for, after secreting the deserter. Firpo v. United States (C. C. A.) 261 F. 850, 853.

Under Pen. Code Utah, § 4075, providing that persons who, after knowledge that a felony has been committed, harbor or protect the person charged therewith or convicted thereof, are accessories, the words "harbor and protect" imply more than mere withholding of knowledge as to the whereabouts of the party charged, and necessarily contemplate some affirmative act or acts of concealment or as-

sistance rendered to the principal personally. Ex parte Overfield, 39 Nev. 30, 152 P. 568.

To "harbor" a dog involves the idea of protection, and of treating it as living at one's house, and undertaking to control its actions. Hagenau v. Millard, 182 Wis. 544, 195 N. W. 718, 719. See, also, Markwood v. McBroom, 110 Wash. 208, 188 P. 521, 522.

**HARBOR, n.** A haven, or a space of deep water so sheltered by the adjacent land as to afford a safe anchorage for ships. Rowe v. Smith, 51 Conn. 271, 50 Am. Rep. 16; The Aurania (D. C.) 29 F. 103; People v. Kirsch, 67 Mich. 539, 35 N. W. 157; The Cuzco (D. C.) 225 F. 169, 176. A port or haven for ships; a sheltered place, natural or artificial, on the coast of a sea, lake, or other body of water. State v. Savidge, 95 Wash. 240, 163 P. 738, 740.

"Port" is a word of larger import than "harbor," since it implies the presence of wharves, or at any rate the means and opportunity of receiving and discharging cargo. See 7 M. & G. 870; Martin v. Hilton, 9 Metc. (Mass.) 371; 2 B. & Ald. 460. Thus, we have the "said harbor, basin, and docks of the port of Hull." 2 B. & Ald. 60. But they are generally used as synonymous. Webster, Dict.

**HARBOR AUTHORITY.** In England a harbor authority is a body of persons, corporate or unincorporate, being proprietors of, or intrusted with the duty of constructing, improving, managing, or lighting, any harbor. St. 24 & 25 Vict. c. 47.

**HARBOR LINE.** A line marking the boundary of a certain part of a public water which is reserved for a harbor. Engs v. Peckham, 11 R. I. 224. The line beyond which wharves and other structures cannot be extended. Garrison v. Greenleaf Johnson Lumber Co. (C. C. A.) 215 F. 576, 579.

**HARD.** As applied to liquors, rough; acid; sour. In re Stillier, 175 App. Div. 211, 161 N. Y. S. 594, 597.

**HARD CASES.** A phrase used to indicate decisions which, to meet a case of hardship to a party, are not entirely consonant with the true principle of the law. It is said of such: Hard cases make bad law. Hard cases must not make bad equity any more than bad law; Moore v. Pierson, 6 Iowa, 279, 71 Am. Dec. 409.

**Hard cases are the quicksands of the law.** Metropolitan Nat. Bank v. Campbell Commission Co. (C. C.) 77 F. 705.

**Hard cases make bad law.**

**HARD CIDER.** Cider which has lost its sweetness from fermentation—fermented cider possessing a stimulating and intoxicating effect, due to its acquisition of a substantial and potent alcoholic content, through fermentation. United States v. Dodson (D. C.) 268 F. 397, 403; Monroe Cider Vinegar &

**Fruit Co. v. Riordan (D. C.)** 274 F. 736, 737; s. c. (C. C. A.) 280 F. 624, 626; **People v. Emmons**, 178 Mich. 126, 144 N. W. 479, 481, Ann. Cas. 1915D, 425.

**HARD LABOR.** A punishment, additional to mere imprisonment, sometimes imposed upon convicts sentenced to a penitentiary. But the labor is not, as a rule, any harder than ordinary mechanical labor. **Brown v. State**, 74 Ala. 483; **Thompson v. State**, 19 Ala. App. 328, 97 So. 258, 260. Compulsory labor. In re **Danton**, 108 Kan. 451, 195 P. 981, 983; **Ex parte Brede (D. C.)** 279 F. 147, 150.

**HARD MONEY.** Lawful coined money. **Henry v. Bank of Salina**, 5 Hill (N. Y.) 523, 536.

**HARD OF HEARING.** A relative term, applied to one that cannot hear as well as one possessing normal faculties of hearing or does not hear as well as the average person. **Sharps v. Jones**, 100 W. Va. 662, 131 S. E. 463, 464.

**HARDHEIDIS.** In old Scotch law. Lions; coins formerly of the value of three half-pence. 1 Pitc. Crim. Tr. pt. 1, p. 64, note.

**HARDPAN.** Any earth not popularly recognized as rock through which it is hard to dig or to make excavation of any sort. It may be: (1) Semindurated clay, with or without admixture of stony matter; (2) cemented gravel; or (3) clay, with or without admixture of stony matter, which is very tough because of its strong cohesion. **Baker v. Multnomah County**, 118 Or. 143, 246 P. 352, 355. See, also, **Sweeney v. Jackson County**, 93 Or. 96, 178 P. 365, 376.

**HARDSHIP.** The severity with which a proposed construction of the law would bear upon a particular case, founding, sometimes, an argument against such construction, which is otherwise termed the "argument *ab inconvenienti*." See **Hard Cases**.

**HARIOT.** The same as heriot (*q. v.*) **Cowell; Termes de la Ley.** Sometimes spelled **Harrriott**. **Wms. Seis.** 203.

**HARMFUL or HARMLESS ERROR.** See **Error**.

**HARMONIC PLANE.** The zero adopted by the United States Coast and Geodetic Survey of the Department of Commerce upon which its tidal tables, charts, and maps are based. It is an arbitrary plane, and, in Puget Sound, is the lowest plane of the tide recognized by that department. **State v. Scott**, 89 Wash. 63, 154 P. 165, 168.

**HARMONIZE.** Though not strictly synonymous with the word "reconcile," it is not improperly used by a court in instructing the jury that it is their duty to "harmonize" conflicting evidence if possible. **Holdridge v. Lee**, 3 S. D. 134, 52 N. W. 265.

**HARMONY.** The phrase "in harmony with" is synonymous with "in agreement, conformity, or accordance with." **Brown Real Estate Co. v. Lancaster County**, 110 Neb. 665, 194 N. W. 897, 898.

**HARNASCA.** In old European law. The defensive armor of a man; harness. **Spelman**.

**HARNES.** The defensive armor of a soldier or knight. All warlike instruments. In modern poetical sense, a suit of armor. Sometimes, the trappings of a war-horse.

The tackle or furniture of a ship.

**HARO, HARRON.** Fr. In Norman and early English law. An outcry, or hue and cry after felons and malefactors. **Cowell.** The original of the *clamour de haro* comes from the Normans. **Moz. & W.**

**HARRIOTT.** The old form of "heriot," (*q. v.*) **Williams, Seis.** 203.

**HART.** A stag or male deer of the forest five years old complete.

**HARTER ACT.** A name commonly applied to the act of congress of February 13, 1893, c. 105. It provides (§ 1) that agreements in a bill of lading relieving the owner, etc., of a vessel sailing between the United States and foreign ports, from liability for negligence or fault in proper loading, storage, custody, care, or delivery of merchandise, are void (46 USCA § 190); (§ 2) that no bill of lading shall contain any agreement whereby the obligations of the owner to exercise due diligence, properly equip, man, provision and outfit a vessel and make it seaworthy, and whereby the obligations of the master, etc., carefully to handle, store, care for and deliver the cargo, are in any way lessened, weakened or avoided (46 USCA § 191); (§ 3) that if the owner shall exercise due diligence to make such vessel in all respects seaworthy and properly manned, equipped and supplied, neither the vessel nor her owners, etc., shall be liable for loss resulting from faults or errors in navigation or management, nor for losses arising from dangers of the sea, acts of God, or public enemies, or the inherent defect of the thing carried, or insufficiency of package, or seizure under legal process, or any act or omission of the shipper of the goods, or from saving or attempting to save life at sea, or deviation in rendering such service (46 USCA § 192).

**HARVESTING.** The gathering of crops of any kind. **Cook v. Massey**, 38 Idaho, 264, 220 P. 1088, 1091.

**HARVESTING EXPENSES.** As used in a note given in payment of the purchase price of an interest in a growing crop, containing a condition that the payee should look for payment solely to the proceeds of the crop after all harvesting expenses shall have been fully paid, the term "harvesting expenses" is

not limited to expenses incurred in the cutting and threshing of the crop, but includes expenses for repairs of machinery used in harvesting the crop, the rent of live stock, implements, and the cost of labor. *Betts v. Orton*, 34 Cal. App. 397, 167 P. 1147, 1148.

**HASP AND STAPLE.** In old Scotch law. The form of entering an heir in a subject situated within a royal borough. It consisted of the heir's taking hold of the hasp and stable of the door, (which was the symbol of possession,) with other formalities. *Bell*; *Burrill*. A mode of entry in Scotland by which a bailee declared a person heir on evidence brought before himself, at the same time delivering the property over to him by the hasp and staple of the door. *Bell*; *Ersk. Pr.* 433.

**HASPA.** In old English law. The hasp of a door; by which livery of seisin might anciently be made, where there was a house on the premises.

**HASTA.** Lat. A spear. In the Roman law, a spear was the sign of a public sale of goods or sale by auction. Hence the phrase "*hasta subijcere*" (to put under the spear) meant to put up at auction. *Calvin*.

**In Feudal Law**

A spear. The symbol used in making investiture of a fief. *Feud. lib.* 2, tit. 2.

**HAT MONEY.** In maritime law. *Primage*; a small duty paid to the captain and mariners of a ship.

**HATCH.** A nautical term, generally signifying an opening in the deck of a ship. *State v. Armstrong*, 97 Neb. 343, 149 N. W. 786, 788, *Ann. Cas.* 1917A, 554.

**HATCHWAY.** Specifically, an opening in the deck of a boat; hence any similar opening, as in a floor or sidewalk; a trapdoor. *Kelly v. Theo. Hamm Brewing Co.*, 140 Minn. 371, 168 N. W. 131, 132. The term is inapplicable to the head of a stairway; *Peterson v. Shapiro*, 171 Minn. 408, 214 N. W. 269, 270; or to basement ways; *State v. Armstrong*, 97 Neb. 343, 149 N. W. 786, 788, *Ann. Cas.* 1917A, 554.

**HAUBER.** O. Fr. A high lord; a great baron. *Spelman*.

**HAUGH, HOUGH, or HOWGH.** Low-lying rich lands, lands which are occasionally overflowed. *Encyc. Dict.* A green plot in a valley.

**HAUL.** The use of this word, instead of the statutory word "carry," in an indictment charging that the defendant "did feloniously steal, take, and haul away" certain personalty, will not render the indictment bad, the words being in one sense equivalent. *Spitortff v. State*, 108 Ind. 171, 8 N. E. 911.

**HAUR.** In old English law. Hatred. Used in the laws of William the Conqueror. *Toml.*; *Leg. Wm. I. c.* 16; *Blount*.

**HAUSTUS.** Lat. In the civil law. A species of servitude, consisting in the right to draw water from another's well or spring, in which the *iter*, (right of way to the well or spring,) so far as it is necessary, is tacitly included. *Dig.* 8, 3, 1; *Mackeld. Rom. Law*, § 318; *Fleta*, l. 4, c. 27, § 9.

**HAUT CHEMIN.** L. Fr. Highway. *Yearb. M.* 4 Hen. VI. 4.

**HAUT ESTRET.** L. Fr. High street; highway. *Yearb. P.* 11 Hen. VI. 2.

**HAUTHONER.** In old English law. A man armed with a coat of mail. *Jacob*.

**HAVE.** Lat. A form of the salutatory expression "*Ave*," used in the titles of some of the constitutions of the Theodosian and Justinian Codes. See *Cod.* 7, 62, 9; *Id.* 9, 2, 11.

**HAVE.** To keep. *Stewart v. Commonwealth*, 208 Ky. 174, 270 S. W. 718; *State v. Harwi*, 117 Kan. 74, 230 P. 331, 332. To bear (children). *Nickerson v. Hoover*, 70 Ind. App. 343, 115 N. E. 588, 593. To hold in possession, or own. *Smith v. State*, 169 Ark. 913, 277 S. W. 530, 532; *Chicago Home for Girls v. Carr*, 300 Ill. 478, 133 N. E. 344, 346. To possess corporally. *Walker v. Trollinger*, 192 N. C. 744, 135 S. E. 871, 873.

"No one, at common law, was said to *have* or to be in possession of land, unless it were conveyed to him by the livery of seisin, which gave him the corporal investiture and bodily occupation thereof." *Bl. Law Tracts*, 113.

**HAVE AND HOLD.** A common phrase in conveyancing, derived from the *habendum et tenendum* of the old common law. See *Habendum et Tenendum*.

**HAVEN.** A place of a large receipt and safe riding of ships, so situate and secured by the land circumjacent that the vessels thereby ride and anchor safely, and are protected by the adjacent land from dangerous or violent winds; as *Milford Haven*, *Plymouth Haven*, and the like. *Hale de Jure Mar.* par. 2, c. 2; *The Cuzco (D. C.)* 225 F. 169, 176; 15 East 304, 305. And see *Lowndes v. Board of Trustees*, 153 U. S. 1, 14 S. Ct. 758, 38 L. Ed. 615; *De Longuemere v. New York Ins. Co.*, 10 Johns. (N. Y.) 125(a); *De Lovio v. Boit*, 7 Fed. Cas. 429.

**HAW.** A small parcel of land so called in Kent; houses. *Co. Litt.* 5; *Cowell*.

**HAWBERK, or HAWBERT.** A coat or shirt of mail; hence, derivatively (in feudal law) one who held a fief on the duty or service of providing himself with such armor and standing ready, thus equipped, for military service

when called on. **Wharton.** See *Fief d'Hau-berth*.

**HAWGH, HOWGH.** In old English law. A valley. *Co. Litt.* 5b.

**HAWKER.** A trader who goes from place to place, or along the streets of a town, selling the goods which he carries with him. See *Hawking*.

It is perhaps not essential to the idea, but is generally understood from the word, that a hawker is to be one who not only carries goods for sale, but seeks for purchasers, either by outcry, which some lexicographers conceive as intimated by the derivation of the word, or by attracting notice and attention to them, as goods for sale, by an actual exhibition or exposure of them, by placards or labels, or by a conventional signal, like the sound of a horn for the sale of fish. *Com. v. Ober*, 12 *Cush. (Mass.)* 495. And see *Grafty v. Rushville*, 107 *Ind.* 502, 8 *N. E.* 609, 57 *Am. Rep.* 123; *Clements v. Casper*, 4 *Wyo.* 494, 35 *P.* 472; *Hall v. State*, 39 *Fla.* 637, 23 *South.* 119; *Pevey v. Greenberg*, 101 *N. J. Law*, 435, 128 *A.* 865, 866.

One who goes about a village carrying samples and taking orders for a non-resident firm is not a hawker or peddler. *Village of Cerro Gordo v. Rawlings*, 135 *Ill.* 36, 25 *N. E.* 1006.

**HAWKING.** The act of offering goods for sale on the streets by outcry or by attracting the attention of persons by exposing goods in a public place, or by placards, labels, or signals. *Pastorino v. City of Detroit*, 182 *Mich.* 5, 148 *N. W.* 231, 235, *Ann. Cas.* 1916D, 768.

The business of peddling is distinct from that of a manufacturer selling his own products, and those who raise or produce what they sell, such as farmers and butchers, are not peddlers. *Ex parte Hogg*, 70 *Tex. Cr. R.* 161, 156 *S. W.* 931, 932. The occupation of a dairyman, going about delivering the milk from his farm to his regular customers according to their previous orders, is not, within the ordinary meaning of the term, peddling or hawking. *State ex rel. Britain v. Hayes*, 143 *La.* 39, 78 *So.* 143, 144.

**HAY.** This term, as used in a statute, does not apply to the stalks, stems, and other residue, left after bean plants have been threshed and the bean kernel or seeds removed. *State v. Choate*, 41 *Idaho*, 251, 238 *P.* 538, 540.

**HAY IN STACK.** A stack of hay, grain, straw, or the like is a large quantity thereof collected and usually built up in layers in conical, oblong, or rectangular form to a point or ridge at the top so that it will be preserved against the inclemencies of the weather, and a policy covering "hay in stack" does not cover hay in the mow of a barn. *Murphy v. Continental Ins. Co.*, 178 *Iowa*, 375, 157 *N. W.* 855, 856, *L. R. A.* 1917B, 934.

**HAY-BOTE.** Another name for "hedge-bote," being one of the estovers allowed to a tenant for life or years, namely, material for repairing the necessary hedges or fences of his grounds, or for making necessary farming

utensils. 2 *Bl. Comm.* 35; 1 *Washb. Real Prop.* 129.

**HAYWARD.** In old English law. An officer appointed in the lord's court to keep a common herd of cattle of a town; so called because he was to see that they did not break or injure the hedges of inclosed grounds. His duty was also to impound trespassing cattle, and to guard against pound-breaches. *Kitch.* 46; *Cowell. Adams v. Nichols*, 1 *Aikens (Vt.)* 319.

**HAZAR-ZAMIN.** A bail or surety for the personal attendance of another. *Moz. & W.*

**HAZARD.**

#### In Old English Law

An unlawful game at dice, those who play at it being called "hazardors." *Jacob.*

#### In Modern Law

Any game of chance or wagering. *Cheek v. Com.*, 100 *Ky.* 1, 37 *S. W.* 152; *Graves v. Ford*, 3 *B. Mon. (Ky.)* 113; *Somers v. State*, 5 *Sneed (Tenn.)* 438.

A risk or peril, assumed or involved, whether in connection with contract relation, personal relation, or golf or gambling. *State v. Hagan*, 44 *N. D.* 306, 175 *N. W.* 372, 377.

#### In Insurance Law

The risk, danger, or probability that the event insured against may happen, varying with the circumstances of the particular case. See *State Ins. Co. v. Taylor*, 14 *Colo.* 499, 24 *P.* 333, 20 *Am. St. Rep.* 281.

#### In General

—**Moral hazard.** In fire insurance. The risk or danger of the destruction of the insured property by fire, as measured by the character and interest of the insured owner, his habits as a prudent and careful man or the reverse, his known integrity or his bad reputation, and the amount of loss he would suffer by the destruction of the property or the gain he would make by suffering it to burn and collecting the insurance. See *Syndicate Ins. Co. v. Bohn*, 65 *F.* 170, 12 *C. C. A.* 531, 27 *L. R. A.* 614; *Davenport v. Firemen's Ins. Co. of Newark, N. J.*, 47 *S. D.* 426, 199 *N. W.* 203, 205.

**HAZARDOR.** In old English law. One who played at a hazard, *i. e.*, an unlawful game of dice. *Jacob.*

**HAZARDOUS.** Exposed to or involving danger; perilous; risky.

The terms "hazardous," "extra-hazardous," "specially hazardous," and "not hazardous" are well-understood technical terms in the business of insurance, having distinct and separate meanings. Although what goods are included in each designation may not be so known as to dispense with actual proof, the terms themselves are distinct and known to be so. *Russell v. Insurance Co.*, 50 *Minn.*

409, 52 N. W. 906; *Pindar v. Insurance Co.*, 38 N. Y. 365.

**HAZARDOUS CONTRACT.** See *Contract*.

**HAZARDOUS INSURANCE.** Insurance effected on property which is in unusual or peculiar danger of destruction by fire, or on the life of a man whose occupation exposes him to special or unusual perils.

**HAZARDOUS NEGLIGENCE.** See *Negligence*.

**HE.** Properly a pronoun of the masculine gender, but commonly construed in statutes to include both sexes as well as corporations. *Dickson v. Strickland*, 114 Tex. 176, 265 S. W. 1012, 1021. The use of this pronoun in a written instrument, in referring to a person whose Christian name is designated therein by a mere initial, is not conclusive that the person referred to is a male; *Hightower v. State*, 14 Ga. App. 246, 80 S. E. 684, 685; it may be shown by parol that the person intended is a female; *Berniaud v. Beecher*, 11 P. 802, 71 Cal. 38. Its use in an indictment, referring to a named individual, was held to obviate any necessity for averring that such individual was a human being. *Woods v. Commonwealth*, 140 Va. 491, 124 S. E. 458, 459.

**He who comes into a court of equity must come with clean hands.**

**He who has committed iniquity shall not have equity.** *Francis, Max.*

**He who is silent when conscience requires him to speak shall be debarred from speaking when conscience requires him to be silent.**

**He who seeks equity must do equity.** It is in pursuance of this maxim that equity enforces the right of the wife's equity to a settlement. *Snell, Eq.* (5th Ed.) 374. See *Drake v. Sherman*, 67 Ill. App. 440.

**He who will have equity done to him must do equity to the same person.** 4 *Bouv. Inst.* 3723.

**HEAD.** Chief; leading; principal; the upper part or principal source of a stream.

The principal person or chief of any organization, corporation, or firm.

**HEAD MONEY.** A sum of money reckoned at a fixed amount for each head (person) in a designated class. Particularly (1) a capitation or poll tax. (2) A bounty offered by the laws of the United States for each person on board an enemy's ship or vessel, at the commencement of a naval engagement, which shall be sunk or destroyed by a ship or vessel of the United States of equal or inferior force, the same to be divided among the officers and crew in the same manner as prize money. In re *Farragut*, 7 D. C. 97. A similar reward is offered by the British statutes. (3) The tax or duty imposed by act of congress of Aug. 3, 1882, on owners of steam-

ships and sailing vessels for every immigrant brought into the United States. *Head Money Cases*, 112 U. S. 580, 5 Sup. Ct. 247, 28 L. Ed. 798. (4) A bounty or reward paid to one who pursues and kills a bandit or outlaw and produces his head as evidence; the offer of such a reward being popularly called "putting a price on his head."

**HEAD OF A FAMILY.** A term used in homestead and exemption laws to designate a person who maintains a family; a householder. Not necessarily a husband or father, but any person who has charge of, supervises, and manages the affairs of the household or the collective body of persons residing together and constituting the family. In re *Opava* (D. C.) 235 F. 779, 780; *Armstrong-McClenahan Co. v. Rhoads*, 180 Iowa, 710, 163 N. W. 356, 357; *Somers v. Somers*, 34 S. D. 594, 149 N. W. 558, 560; *Talamantes v. Flores* (Tex. Civ. App.) 290 S. W. 791, 792; In re *Adelberger* (D. C.) 280 F. 405, 406; *Lakas v. Archambault*, 38 Cal. App. 365, 176 P. 180, 182; *Morley v. Morley*, 131 Wash. 540, 230 P. 645, 646; *Gammon v. McDowell*, 317 Mo. 1336, 298 S. W. 34, 37; *Duncan v. Frank*, 8 Mo. App. 289; *Jarboe v. Jarboe*, 106 Mo. App. 459, 79 S. W. 1163; *Whalen v. Cadman*, 11 Iowa, 227; *Brokaw v. Ogle*, 170 Ill. 115, 48 N. E. 394; *Bennett v. Georgia Trust Co.*, 106 Ga. 578, 32 S. E. 625. The term may thus include an abandoned wife maintaining minor children; *Mennell v. Wells*, 51 Mont. 141, 149 P. 954, 955; *Jetton Lumber Co. v. Hall*, 67 Fla. 61, 64 So. 440, 442, 51 L. R. A. (N. S.) 1121; and also a widow; *Wilkey v. Wilkey*, 130 Tenn. 430, 171 S. W. 78; *American Nat. Bank of Alamosa, Colo., v. Wetherell*, 198 Iowa, 648, 200 N. W. 221, 222; *Burrell Tp. v. Pittsburg Guardians of Poor*, 62 Pa. 475, 1 Am. Rep. 441.

To constitute a "head of a family" there must be at least two persons who live together in the relation of one family, and one of them must be "the head" of that "family." *Johns v. Bowden*, 68 Fla. 32, 66 So. 155, 159.

To be the head of a family, one must either have a responsibility (i. e., at least a natural or moral obligation) to support, or have parental authority over, another member of the family. *Whyte v. Grant*, 142 La. 822, 77 So. 643.

To constitute one the "head of a family" so as to be entitled to a homestead exemption, there must be others than himself, who with him form the family and are legally dependent upon him, and whom he is legally obliged to care for. *Union Trust Co. v. Cox*, 55 Okl. 68, 155 P. 206, 209, L. R. A. 1917C, 356; In re *Stearns* (D. C.) 284 F. 578; *Peerless Pacific Co. v. Burkhard*, 90 Wash. 221, 155 P. 1037, 1038, L. R. A. 1917C, 353, Ann. Cas. 1918B, 247; *John E. Morrison & Co. v. Murff* (Tex. Civ. App.) 212 S. W. 212, 214; In re *Bordelon* (D. C.) 2 F.(2d) 184; Appeal of *Brookland Bank*, 112 S. C. 400, 100 S. E. 186 (but see In re *Taylor* (D. C.) 282 F. 315, 316).

**HEAD OF CREEK.** This term means the source of the longest branch, unless general reputation has given the appellation to another. *Davis v. Bryant*, 2 *Bibb*. (Ky.) 110.



**HEAD OF DEPARTMENT.** In the constitution and laws of the United States, the heads of departments are the officers at the head of the great executive departments of government (commonly called "the cabinet") such as the secretary of state, secretary of the interior, attorney general, postmaster general, and so on, not including heads of bureaus. *U. S. v. Mouatt*, 124 U. S. 303, 8 Sup. Ct. 505, 31 L. Ed. 463; *U. S. v. Germaine*, 99 U. S. 511, 25 L. Ed. 482; *Burnap v. U. S.*, 252 U. S. 512, 40 S. Ct. 374, 64 L. Ed. 692.

**HEAD OF STREAM.** The highest point on the stream which furnishes a continuous stream of water, not necessarily the longest fork or prong. *Uhl v. Reynolds*, 64 S. W. 498, 23 Ky. Law Rep. 759; *State v. Coleman*, 13 N. J. Law, 104.

**HEAD OF WATER.** In hydraulic engineering, mining, etc., the effective force of a body or volume of water, expressed in terms of the vertical distance from the level of the water in the pond, reservoir, dam, or other source of supply, to the point where it is to be mechanically applied, or expressed in terms of the pressure of the water per square inch at the latter point. See *Shearer v. Middleton*, 88 Mich. 621, 50 N. W. 737; *Cargill v. Thompson*, 57 Minn. 534, 59 N. W. 638.

**HEADBOROUGH.** In Saxon law. The head or chief officer of a borough; chief of the frankpledge tithing or decennary. This office was afterwards, when the petty constableness was created, united with that office.

**HEAD-COURTS.** Certain tribunals in Scotland, abolished by 20 Geo. II. c. 50. *Ersk.* 1, 4, 5.

**HEADERS.** In mining, a "cap" is a square piece of plank or block wedged between the top of posts and the roof to better hold the roof, and "headers" are longer pieces of plank supported by a prop at each end and supporting a larger area of the roof with fewer posts. *Big Branch Coal Co. v. Wrenchie*, 160 Ky. 668, 170 S. W. 14, 16.

**HEADLAND.** In old English law. A narrow piece of unplowed land left at the end of a plowed field for the turning of the plow. Called, also, "butt." 2 Leon. 70, case 93; 1 Litt. 13.

**HEAD-NOTE.** A syllabus to a reported case; a summary of the points decided in the case, which is placed at the head or beginning of the report.

**HEAD-PENCE.** An exaction of 40*d.* or more, collected by the sheriff of Northumberland from the people of that county twice in every seven years, without account to the king. Abolished by 23 Hen. VI. c. 6, in 1444. *Cowell.*

**HEADRIGHT CERTIFICATE.** In the laws of the republic of Texas, a certificate issued

under authority of an act of 1839, which provided that every person immigrating to the republic between October 1, 1837, and January 1, 1840, who was the head of a family and actually resided within the government with his or her family should be entitled to a grant of 640 acres of land, to be held under such a certificate for three years, and then conveyed by absolute deed to the settler, if in the mean time he had resided permanently within the republic and performed all the duties required of citizens. *Cannon v. Vaughan*, 12 Tex. 401; *Turner v. Hart*, 10 Tex. 441.

**HEAD-SILVER.** A name sometimes given to a Common Fine (*q. v.*). By a payment of a certain sum of money to the lord, litigants might try their suits nearer home. *Blount.*

**HEAFODWEARD.** In old English law. One of the services to be rendered by a thane, or a geneath or villein, the precise nature of which is unknown. *Anc. Eng. Inst.*

**HEALER.** One who heals or cures; specifically, one who professes to cure bodily diseases without medicine or any material means, according to the tenets and practices of so-called "Christian Science," whose beliefs and practices, being founded on their religious convictions, are not per se proof of insanity. In *re Brush's Will*, 35 Misc. 689, 72 N. Y. S. 425.

**HEALGEMOTE.** In Saxon law. A court-baron; an ecclesiastical court; Haligemot (*q. v.*).

**HEALING ACT.** Another name for a curative act or statute. See *Lockhart v. Troy*, 48 Ala. 584.

**HEALSFANG.** In Saxon law. A sort of pillory, by which the head of the culprit was caught between two boards, as feet are caught in a pair of stocks. *Cowell.* It was very early disused, no mention of it occurring in the laws of the Saxon kings. *Anc. Laws & Inst. of Eng. Gloss.; Spelman, Gloss.*

**HEALTH.** Freedom from pain or sickness; the most perfect state of animal life. The natural agreement and concordant disposition of the parts of the living body. Not synonymous with "sanitation." *Black v. Lambert* (Tex. Civ. App.) 235 S. W. 704, 706. The right to the enjoyment of health is a subdivision of the right of personal security, one of the absolute rights of persons. 1 Bl. Comm. 129, 134. As to injuries affecting health, see 3 Bl. Comm. 122.

#### Bill of Health

See Bill.

#### Board of Health

See Board.

**Health Laws**

Laws prescribing sanitary measures, and designed to promote or preserve the health of the community.

**Health Officer**

The officer charged with the execution and enforcement of health laws. The powers and duties of health officers are regulated by local laws.

**Public Health**

As one of the objects of the police power of the state, the "public health" means the prevailing healthful or sanitary condition of the general body of people or the community in mass, and the absence of any general or wide-spread disease or cause of mortality. The wholesome sanitary condition of the community at large. *State ex rel. Pollock v. Becker*, 289 Mo. 660, 233 S. W. 641, 649.

**Sound Health**

See "Sound."

**HEALTHY.** Free from disease or bodily ailment, or any state of the system peculiarly susceptible or liable to disease or bodily ailment. *Bell v. Jeffreys*, 35 N. C. 356.

**HEARING.****In Equity Practice**

The hearing of the arguments of the counsel for the parties upon the pleadings, or pleadings and proofs; corresponding to the trial of an action at law.

The word has an established meaning as applicable to equity cases. It means the same thing in those cases that the word "trial" does in cases at law. And the words "final hearing" have long been used to designate 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." *Akerly v. Vilas*, 24 Wis. 171, 1 Am. Rep. 166.

A "hearing" is technically the trial of the case, including the introduction of the evidence, the argument of the solicitors, and the decree of the chancellor. *State ex rel. Case v. Seehorn*, 283 Mo. 508, 223 S. W. 664, 670; *State v. State Road Commission*, 100 W. Va. 531, 131 S. E. 7, 8; *Chicago Ry. Equipment Co. v. Blair* (C. C. A.) 20 F.(2d) 10, 11; *McClintock v. Lankford*, 145 Ark. 254, 224 S. W. 488, 490; *American Grain Separator Co. v. Twin City Separator Co.* (C. C. A.) 202 F. 202, 205.

The word contemplates not only the privilege to be present when the matter is being considered, but the right to present one's contentions, and to support the same by proof and argument. *State v. Mithollan*, 50 N. D. 184, 195 N. W. 292, 295; *Crucia v. Behrman*, 147 La. 137, 84 So. 523, 525; *Hanson v. Chicago, B. & Q. R. Co.*, 32 Wyo. 337, 232 P. 1101, 1104.

The term is broad enough to include judicial examination of issue between the parties whether of law or of fact. *Keown v. Keown*, 231 Mass. 404, 121 N. E. 153, 154.

**In Criminal Law**

The examination of a prisoner charged with a crime or misdemeanor, and of the witnesses for the accused.

**Final Hearing**

See Final.

**Preliminary Hearing**

In criminal law. Synonymous with "preliminary examination." *State v. Rogers*, 31 N. M. 485, 247 P. 828, 833.

The hearing given to a person accused of crime, by a magistrate or judge, exercising the functions of a committing magistrate, to ascertain whether there is evidence to warrant and require the commitment and holding to bail of the person accused. See *Bish. New Cr. L. §§ 32, 225*.

A "preliminary examination" is in no sense a trial for the determination of accused's guilt or innocence, but simply a course of procedure whereby a possible abuse of power may be prevented, and accused discharged or held to answer, as the facts warrant. *State v. Langford*, 240 S. W. 167, 168, 293 Mo. 436.

**HEARSAY.** A term applied to that species of testimony given by a witness who relates, not what he knows personally, but what others have told him, or what he has heard said by others. *Hopt v. Utah*, 110 U. S. 574, 4 Sup. Ct. 202, 28 L. Ed. 262; *Morell v. Morell*, 157 Ind. 179, 60 N. E. 1092; *Stockton v. Williams*, 1 Doug. (Mich.) 570; *People v. Kraft*, 91 Hun, 474, 36 N. Y. Supp. 1034.

Hearsay evidence is that which does not derive its value solely from the credit of the witness, but rests mainly on the veracity and competency of other persons. The very nature of the evidence shows its weakness, and it is admitted only in specified cases from necessity. *Code Ga. 1882, § 3770* (Civ. Code 1910, § 5762); 1 Phil. Ev. 185.

Hearsay evidence is second-hand evidence, as distinguished from original evidence; it is the repetition at second-hand of what would be original evidence if given by the person who originally made the statement.

**HEARTH MONEY.** A tax levied in England by St. 14 Car. II. c. 10, consisting of two shillings on every hearth or stove in the kingdom. It was extremely unpopular, and was abolished by 1 W. & M. St. 1, c. 10. This tax was otherwise called "chimney money."

**HEARTH SILVER.** In English law. A species of *modus* or composition for tithes; *Anstr. 323, 326*; viz.: a prescription for cutting down and using for fuel the tithe of wood. 2 Burn, Eccl. Law 304.

**HEAT OF PASSION.** In criminal law. A state of violent and uncontrollable rage engendered by a blow or certain other provocation given, which will reduce a homicide from the grade of murder to that of manslaughter. *State v. Wieners*, 66 Mo. 25; *State v. Andrew*,

76 Mo. 101; *State v. Bulling*, 105 Mo. 204, 15 S. W. 367; *State v. Johnson*, 250 Mo. 250, 157 S. W. 348, 352; *Disney v. State*, 72 Fla. 492, 73 So. 598, 601.

It does not mean passion or anger which comes from an old grudge, or no immediate cause or provocation; but passion or anger suddenly aroused at the time by some immediate and reasonable provocation, by words or acts of one at the time. *State v. Seaton*, 106 Mo. 198, 17 S. W. 169.

The phrase indicates no more than a state of mind different from that of a cool state of the blood. *State v. Carliou*, 266 Mo. 82, 180 S. W. 852, 854.

**HEATSTROKE.** Sunstroke; a sudden prostration resulting from exposure to excessive heat, regardless of the source from which the heat emanates. *Mather v. London Guarantee & Accident Co.*, 125 Minn. 186, 145 N. W. 963. A condition of the body produced by great heat. *Texas Employers' Ins. Ass'n v. Moore* (Tex. Civ. App.) 279 S. W. 516, 518. A depression of the vital powers, due to exposure to excessive heat, and manifesting itself as prostration with syncope, etc. (heat exhaustion), as prostration with insensibility, fever, etc. (true sunstroke), or rarely as acute meningitis; sunstroke or insolation (in the wider sense). *Smith v. Standard Sanitary Mfg. Co.*, 211 Ky. 454, 277 S. W. 806, 807.

**HEAVE TO.** In maritime parlance and admiralty law. To stop a sailing vessel's headway by bringing her head "into the wind," that is, in the direction from which the wind blows. A steamer is said to be "hove to" when held in such a position that she takes the heaviest seas upon her quarter. *The Hugo* (D. C.) 57 Fed. 411.

**HEBBERMAN.** An unlawful fisher in the Thames below London bridge; so called because they generally fished at *ebbing* tide or water. 4 Hen. VII. c. 15; *Jacob*.

**HEBBERTHEF.** In Saxon law. The privilege of having the goods of a thief, and the trial of him, within a certain liberty. *Cowell*.

**HEBBING-WEARS.** A device for catching fish in ebbing water. St. 23 Hen. VIII. c. 5.

**HEBDOMAD.** A week; a space of seven days.

**HEBDOMADIUS.** A week's man; the canon or prebendary in a cathedral church, who had the peculiar care of the choir and the offices of it for his own week. *Cowell*.

**HEBOTE.** The king's edict commanding his subjects into the field.

**HEBREW.** Not the same as Yiddish, so that an alien, who claimed to be able to read Hebrew, but was examined as to his ability to read Yiddish, was not given a fair hearing, to determine whether he was within the class excluded under Act Feb. 5, 1917, § 3 (8 US CA § 136), providing for a literacy test. *U.*

*S. v. Tod* (C. C. A.) 294 F. 820, 822. See *Yiddish*.

**HECCAGIUM.** In feudal law. Rent paid to a lord of the fee for a liberty to use the engines called "hecks."

**HECK.** An engine to take fish in the river Ouse. 23 Hen. VIII. c. 18.

**HEDA.** A small haven, wharf, or landing place.

**HEDAGIUM.** Toll or customary dues at the hithe or wharf, for landing goods, etc., from which exemption was granted by the crown to some particular persons and societies. *Wharton*; *Cowell*.

**HEDGE.** See *Hedging*.

**HEDGE-BOTE.** An allowance of wood for repairing hedges or fences, which a tenant or lessee has a right to take off the land let or demised to him. 2 Bl. Comm. 35; *Livingston v. Ten Broeck*, 16 Johns. (N. Y.) 15, 8 Am. Dec. 287.

**HEDGE-PRIEST.** A vagabond priest in olden time.

A hedge-parson; specifically, in Ireland, formerly, a priest who has been admitted to orders directly from a hedge-school, without preparation in theological studies at a regular college. *Cent. Dict.*

**HEDGING.** A means by which collectors and exporters of grain or other products, and manufacturers, who make contracts in advance for the sale of their goods, secure themselves against the fluctuations of the market by counter contracts for the purchase or sale of an equal quantity of the product or of the material of manufacture. *Board of Trade of City of Chicago v. Grain & Stock Co.*, 198 U. S. 236, 25 S. Ct. 637, 49 L. Ed. 1031; *Browne v. Thorn*, 260 U. S. 137, 43 S. Ct. 36, 67 L. Ed. 171; *U. S. v. New York Coffee & Sugar Exchange*, 263 U. S. 611, 44 S. Ct. 225, 227, 68 L. Ed. 475. The action of one who buys commodities in selling an equal amount of such commodities on exchange for the purpose of insurance against fluctuations in price. *Fraser v. Farmers' Co-op. Co.*, 167 Minn. 369, 209 N. W. 33, 36; *Mackay Telegraph-Cable Co. v. Bain* (Tex. Civ. App.) 163 S. W. 98, 101; *Buckeye Cotton Oil Co. v. Sloan* (C. C. A.) 272 F. 615, 620.

The term "hedge," as used in the milling business, means when the miller enters into a contract for the delivery of flour at a future date, he buys wheat on the stock exchange for future delivery, and when he purchases wheat for actual delivery from the grain elevator to fulfill the contract which he had previously made to furnish flour, he sells the wheat which he has bought on the stock exchange. *Bluefield Milling Co. v. Western Union Telegraph Co.*, 104 W. Va. 150, 139 S. E. 638, 55 A. L. R. 636.

**HEEL BLANK.** In the nomenclature of the art of building heels, the term "heel blank" or heel base is applied to several heel lifts cemented together, forming the height of the heel minus the rand and a bottom or finishing lift. *Brockton Heel Co. v. International Shoe Co.* (D. C.) 19 F.(2d) 145.

**HEEL LOG.** In the nomenclature of the art of building heels, the term "heel log" is applied to a succession of heel lifts coated with an adhesive, piled one upon the other, to which pressure has been applied, making a log of some indeterminate length. *Brockton Heel Co. v. International Shoe Co.* (D. C.) 19 F. (2d) 145.

**HEEL LOG SECTION.** In the nomenclature of the art of building heels, a portion of a heel log of any convenient length. *Brockton Heel Co. v. International Shoe Co.* (D. C.) 19 F.(2d) 145.

**HEELER.** An opprobrious term, meaning in common, acceptation a person who is the lackey or hangeron of another, and in a political sense an unscrupulous and disreputable person. *Winnsboro Cotton Oil Co. v. Carson* (Tex. Civ. App.) 185 S. W. 1002, 1008.

**HEGEMONY.** The leadership of one among several independent confederate states.

**HEGIRA.** The epoch or account of time used by the Arabians and the Turks, who begin the Mohammedan era and computation from the day that Mohammed was compelled to escape from Mecca to Medina which happened on the night of Thursday, July 15, A. D. 622, under the reign of the Emperor Heraclius. *Townsend, Dict. Dates; Wilson, Gloss.* The era begins July 16. The word is sometimes spelled *hejira* but the former is the ordinary usage. It is derived from *hijrah*, in one form or another, an oriental term denoting flight, departure.

The flight of Mohammed from Mecca. *Webster, Dict.*

**HEGUMENOS.** The leader of the monks in the Greek Church.

**HEIFER.** A young cow which has not had a calf. *State v. Papillon*, 139 La. 791, 72 So. 249; 2 East, P. C. 616. And see *State v. McMinn*, 34 Ark. 162; *Mundell v. Hammond*, 40 Vt. 645.

**HEIR.**

#### At Common Law

A person who succeeds, by the rules of law, to an estate in lands, tenements, or hereditaments, upon the death of his ancestor, by descent and right of relationship. *Hoover v. Smith*, 96 Md. 393, 54 A. 102; *Fletcher v. Holmes*, 32 Ind. 510; *Sewall v. Roberts*, 115 Mass. 268; *Dodge's Appeal*, 106 Pa. 216, 51 Am. Rep. 519; *Howell v. Gifford*, 64 N. J. Eq. 180, 53 A. 1074; *Daniel v. Bass*, 193 N. C. 294, 136 S. E. 733, 735. He who is born or begotten

in lawful wedlock, and upon whom the law casts the inheritance immediately upon the death of his ancestor. *Moffett v. Conley*, 63 Okl. 3, 163 P. 118, 120; *Higginbotham v. Higginbotham*, 177 Ky. 271, 197 S. W. 627, 628, L. R. A. 1918A, 1105.

An heir is primarily a person related to another by blood, who would take the latter's real estate if he died intestate. *Morse v. Ballou*, 112 Me. 124, 90 A. 1091. This meaning of the word, however, is now largely affected by statute. *Newby v. Anderson*, 106 Kan. 477, 188 P. 438.

The person appointed by law to succeed to the estate in case of intestacy. 2 Bla. Comm. 201; *Rawson v. Rawson*, 52 Ill. 62; *Kellett v. Shepard*, 139 Ill. 433, 28 N. E. 751, 34 N. E. 254; *Dukes v. Faulk*, 37 S. C. 255, 16 S. E. 122, 34 Am. St. Rep. 745; *Stokes v. Van Wyck*, 83 Va. 724, 3 S. E. 387; *In re Cupples' Estate*, 272 Mo. 465, 199 S. W. 556, 557; *Nickerson v. Hoover*, 70 Ind. App. 343, 115 N. E. 588, 590; *Beardsley v. Fairchild*, 87 A. 737, 738, 87 Conn. 359; *Ladd v. Whitledge* (Tex. Civ. App.) 205 S. W. 463, 464; *Connertin v. Concannon*, 122 Or. 387, 259 P. 290, 291; *In re Wilson's Estate*, 184 Cal. 63, 193 P. 581, 582.

One who inherits property, whether real or personal. *Hartford-Connecticut Trust Co. v. Lawrence*, 106 Conn. 178, 138 A. 159, 167; *Belleville Sav. Bank v. Aueshaensel*, 298 Ill. 292, 131 N. E. 682, 686; *Edwards v. Stults*, 97 N. J. Eq. 44, 128 A. 609, 610; *In re Wootten's Estate*, 253 Pa. 136, 97 A. 1066, 1067.

A gift of personalty to "heirs" or "lawful heirs" or "heirs at law," whether to one's own heirs or to heirs of another, is to those who would be entitled to take under the statute of distribution. *In re Carter's Will*, 99 Vt. 480, 134 A. 531, 533, 61 A. L. R. 1005; *Shannon v. Shannon*, 101 N. J. Eq. 816, 139 A. 173; *Everett v. Griffin*, 174 N. C. 103, 93 S. E. 474, 475.

As applied to a gift of personal estate, the word "heirs" is not a term of art, and its office as a word of limitation is by wavering and dubious analogy only. *In re Evans' Will*, 234 N. Y. 42, 136 N. E. 233, 234.

Moreover, the term is frequently used in a popular sense to designate a successor to property either by will or by law. *Wallace v. Privett*, 198 Cal. 746, 247 P. 906, 907. See, also, *Union Trust Co. v. Shoemaker*, 172 Ill. App. 365, decree affirmed 258 Ill. 564, 101 N. E. 1050; *Nickerson v. Hoover*, 70 Ind. App. 343, 115 N. E. 588, 590.

According to many authorities, heir may be *nomen collectivum*, as well in a deed as in a will, and operate in both in the same manner as the word heirs. 1 Rolle, Abr. 253; *Ambl.* 453; *Cro. Eliz.* 313; 1 Burr. 38. But see 2 *Prest. Est.* 9, 10. See, also, *Heirs*.

#### In the Civil Law

A universal successor in the event of death. He who actively or passively succeeds to the entire property or estate, rights and obligations, of a decedent, and occupies his place.

The term "heir" has a very different signification at common law from what it has in those states and countries which have adopted the civil law. In the latter, the term is indiscriminately applied to all persons who are called to the succession, whether by the act of the party or by operation of law. The person who is created universal successor by a will is called the "testamentary heir;" and the next of kin by blood is, in cases of intestacy, called the "heir at law," or "heir by intestacy." The executor of the common law in many respects corresponds to the testamentary heir of the civil law. Again, the administrator in many respects corresponds with the heir by intestacy. By the common law, executors and administrators have no right except to the personal estate of the deceased; whereas the heir by the civil law is authorized to administer both the personal and real estate. Story, *Conf. Laws*, §§ 57, 508; 1 Brown, *Civ. Law*, 344.

The term "heir" has several significations. Sometimes it refers to one who has formally accepted a succession and taken possession thereof; sometimes to one who is called to succeed, but still retains the faculty of accepting or renouncing, and it is frequently used as applied to one who has formally renounced. *Mumford v. Bowman*, 26 La. Ann. 417.

#### In Scotch Law

The person who succeeds to the heritage or heritable rights of one deceased. 1 Forb. Inst. pt. 3, p. 75. The word has a more extended signification than in English law, comprehending not only those who succeed to lands, but successors to personal property also. Whar- ton.

#### In General

—**Bodily heirs.** In a technical sense, the same as "heirs of the body." *Hartman v. Flynn*, 189 N. C. 452, 127 S. E. 517, 519. Normally, words of limitation, not of purchase. *Stamey v. McGinnis*, 145 Ga. 226, 88 S. E. 935, 936; *Wright v. Curry*, *Tunis & Norwood*, 163 Ky. 683, 174 S. W. 1. But they may be used synonymously with "children." *Scott v. Scott*, 172 Ky. 658, 190 S. W. 143; *McWhite v. Roseman*, 114 S. C. 177, 103 S. E. 586, 587; *Starnes v. Sanders*, 151 Ga. 632, 108 S. E. 37; *Hull v. Hull*, 286 Ill. 75, 121 N. E. 239, 241; *Young v. Brown*, 136 Tenn. 184, 188 S. W. 1149, 1150; *Wallace v. Wallace*, 181 N. C. 158, 106 S. E. 501, 504.

—**Heir apparent.** An heir whose right of inheritance is indefeasible, provided he outlive the ancestor: as in England the eldest son, or his issue, who must, by the course of the common law, be heir to the father whenever he happens to die. 2 Bl. Comm. 208; 1 Steph. Comm. 358; *Jones v. Fleming*, 37 Hun (N. Y.) 230. One who, before the death of the ancestor, is next in the line of succession, provided he be heir to the ancestor whenever he happens to die. *Reese v. Stires*, 87 N. J. Eq. 32, 103 A. 679. See, also, *Apparent Heir*.

—**Heir at law.** He who, after his ancestor dies intestate, has a right to all lands, tenements, and hereditaments which belonged to

him or of which he was seised. The same as "heir general." *Forrest v. Porch*, 100 Tenn. 391, 45 S. W. 676; *In re Aspden's Estate*, 2 Fed. Cas. 42; *McKinney v. Stewart*, 5 Kan. 394; *Tevis v. Tevis*, 259 Mo. 19, 167 S. W. 1003, 1006, Ann. Cas. 1917A, 865. The heir; at common law, that person who succeeds to the real estate in case of intestacy. *Walker v. Walker*, 283 Ill. 11, 118 N. E. 1014, 1019; *Wilde v. Bell*, 86 Conn. 610, 87 A. 8, 9. In its strict sense and technical import, the person or persons appointed by law to succeed to the estate in case of intestacy. *Albright v. Albright*, 116 Ohio St. 668, 157 N. E. 760, 762; *Black v. Jones*, 264 Ill. 548, 106 N. E. 462, 465, Ann. Cas. 1915D, 1173. In a comprehensive and popular sense, one who inherits either real or personal property; *Gross v. Hartford-Connecticut Trust Co.*, 100 Conn. 332, 123 A. 907, 908; *Yelverton v. Yelverton*, 192 N. C. 614, 135 S. E. 632, 635; next of kin; *Meeker v. Forbes*, 93 A. 887, 888, 84 N. J. Eq. 271; *In re Phraner*, 109 Misc. 287, 178 N. Y. S. 768, 772.

—**Heir beneficiary.** In the civil law. One who has accepted the succession under the benefit of an inventory regularly made. Heirs are divided into two classes, according to the manner in which they accept the successions left to them, to-wit, unconditional and beneficiary heirs. Unconditional heirs are those who inherit without any reservation, or without making an inventory, whether their acceptance be express or tacit. Beneficiary heirs are those who have accepted the succession under the benefit of an inventory regularly made. *Civ. Code La. art. 883*. If the heir apprehend that the succession will be burdened with debts beyond its value, he accepts with benefit of inventory, and in that case he is responsible only for the value of the succession.

—**Heir by adoption.** An adopted child, "who is in a limited sense made an heir, not by the law, but by the contract evidenced by the deed of adoption." *In re Sessions' Estate*, 70 Mich. 297, 38 N. W. 249, 14 Am. St. Rep. 500.

—**Heir by custom.** In English law. One whose right of inheritance depends upon a particular and local custom, such as gavelkind, or borough English. *Co. Litt.* 140.

—**Heir by devise.** One to whom lands are devised by will; a devisee of lands. Answering to the *heres factus* (*q. v.*) of the civil law.

—**Heir collateral.** One who is not lineally related to the decedent, but is of collateral kin; *e. g.*, his uncle, cousin, brother, nephew.

—**Heir conventional.** In the civil law. One who takes a succession by virtue of a contract or settlement entitling him thereto.

—**Heir, forced.** One who cannot be disinherited. See *Forced Heirs*.

—**Heir general.** An heir at law. The ordinary heir by blood, succeeding to all the lands. *Forrest v. Porch*, 100 Tenn. 391, 45 S. W. 676.

—**Heir institute.** In Scotch law. One to whom the right of succession is ascertained by disposition or express deed of the deceased. 1 *Forb. Inst.* pt. 3, p. 75.

—**Heir, irregular.** In Louisiana. Irregular heirs are those who are neither testamentary nor legal, and who have been established by law to take the succession. See *Civ. Code La.* art. 878. When there are no direct or collateral relatives surviving the decedent, and the succession consequently devolves upon the surviving husband or wife, or illegitimate children, or the state, it is called an "irregular succession."

—**Heir, legal.** In the civil law. A legal heir is one who takes the succession by relationship to the decedent and by force of law. This is different from a testamentary or conventional heir, who takes the succession in virtue of the disposition of man. See *Civ. Code La.* arts. 877, 879. The term is also used in Anglo-American law in substantially the same sense, that is, the person to whom the law would give the decedent's property, real and personal, if he should die intestate. *Kaiser v. Kaiser*, 3 *How. Prac. N. S. (N. Y.)* 105; *Waller v. Martin*, 106 *Tenn.* 341, 61 *S. W.* 73, 82 *Am. St. Rep.* 882. In legal strictness, the term signifies one who would inherit real estate, but it is also used to indicate one who would take under the statute of distribution. *Morse v. Ward*, 92 *Conn.* 408, 103 *A.* 119, 120; *Thompson v. Waits* (*Tex. Civ. App.*) 159 *S. W.* 82, 83; *New York Life Insurance & Trust Co. v. Winthrop*, 237 *N. Y.* 93, 142 *N. E.* 431, 433, 31 *A. L. R.* 791.

—**Heir, male.** In Scotch law. An heir institute, who, though not next in blood to the deceased, is his nearest male relation that can succeed to him. 1 *Forb. Inst.* pt. 3, p. 76. In English law, the nearest male blood-relation of the decedent, unless further limited by the words "of his body," which restrict the inheritance to sons, grandsons, and other male descendants in the right line. See *Jordan v. Adams*, 6 *C. B. (N. S.)* 764; *Goodtitle v. Herring*, 1 *East*, 275; *Ewan v. Cox*, 9 *N. J. Law*, 14.

—**Heir of conquest.** In Scotch law. One who succeeds to the deceased in *conquest*, *i. e.*, lands or other heritable rights to which the deceased neither did nor could succeed as heir to his predecessor.

—**Heir of line.** In Scotch law. One who succeeds lineally by right of blood; one who succeeds to the deceased in his heritage; *i. e.*, lands and other heritable rights derived to him by succession as heir to his predecessor. 1 *Forb. Inst.* pt. 3, p. 77.

—**Heir of provision.** In Scotch law. One who succeeds as heir by virtue of a particular provision in a deed or instrument.

—**Heir of tailzie.** In Scotch law. He on whom an estate is settled that would not have fallen to him by legal succession. 1 *Forb. Inst.* pt. 3, p. 75.

—**Heir of the blood.** An inheritor who succeeds to the estate by virtue of consanguinity with the decedent, either in the ascending or descending line, including illegitimate children, but excluding husbands, wives, and adopted children. *Hayden v. Barrett*, 172 *Mass.* 472, 52 *N. E.* 530, 70 *Am. St. Rep.* 295; *Baltimore & O. R. Co. v. Patterson*, 68 *Md.* 606, 13 *A.* 369.

—**Heir of the body.** An heir begotten or borne by the person referred to, or a child of such heir; any lineal descendant of the decedent, excluding a surviving husband or wife, adopted children, and collateral relations; bodily heir. *Ratliffe v. Ratliffe*, 182 *Ky.* 230, 206 *S. W.* 478, 479; *Black v. Cartmell*, 10 *B. Mon. (Ky.)* 193; *Smith v. Pendell*, 19 *Conn.* 112, 48 *Am. Dec.* 146; *Balch v. Johnson*, 106 *Tenn.* 249, 61 *S. W.* 289; *Clarkson v. Hatton*, 143 *Mo.* 47, 44 *S. W.* 761, 39 *L. R. A.* 748, 65 *Am. St. Rep.* 635; *Houghton v. Kendall*, 7 *Allen (Mass.)* 72; *Roberts v. Ogbourne*, 37 *Ala.* 178. The words "heirs of the body" may be used in either of two senses: In their unrestricted sense, as meaning the persons who from generation to generation become entitled by descent under the entail; and in the sense of heirs at law, or those persons who are descendants of him whom the statute of descent appoints to take intestate estate. *Bunn v. Butler*, 300 *Ill.* 269, 133 *N. E.* 246, 247. Unless the will discloses an intention to the contrary, the term "heirs of the body" is not synonymous with children. *Clark v. Cammack*, 216 *Ala.* 346, 113 *So.* 270, 271; *Scruggs v. Mayberry*, 135 *Tenn.* 586, 188 *S. W.* 207, 211. And ordinarily, such words are words of limitation and not of purchase. *Kirby v. Hulette*, 174 *Ky.* 257, 192 *S. W.* 63, 65; *Mylin v. Hurst*, 259 *Pa.* 77, 102 *A.* 429, 430; *Allen v. South Penn Oil Co.*, 72 *W. Va.* 155, 77 *S. E.* 905, 906; *contra*: *Owen v. Trail*, 302 *Mo.* 292, 258 *S. W.* 699, 701. The words are sometimes deemed equivalent to "issue" or "descendants"; *Rhode Island Hospital Trust Co. v. Bridgham*, 42 *R. I.* 161, 106 *A.* 149, 152, 5 *A. L. R.* 185; *Hickox v. Klaholt*, 291 *Ill.* 544, 126 *N. E.* 166, 168; *Turner v. Monteiro*, 127 *Va.* 537, 103 *S. E.* 572, 575, 13 *A. L. R.* 383; *Parrish v. Hodge*, 178 *N. C.* 133, 100 *S. E.* 256; and sometimes not; In re *English's Estate*, 270 *Pa.* 1, 112 *A.* 913, 914; *Yarrington v. Freeman*, 201 *Ky.* 135, 255 *S. W.* 1034.

—**Heir presumptive.** The person who, if the ancestor should die immediately, would, in the present circumstances of things, be his heir, but whose right of inheritance may be defeated by the contingency of some nearer

heir being born; as a brother or nephew, whose presumptive succession may be destroyed by the birth of a child. 2 Bl. Comm. 208; 1 Steph. Comm. 358; Jones v. Fleming, 37 Hun (N. Y.) 230; Reese v. Stires, 87 N. J. Eq. 32, 103 A. 679, 681. In Louisiana, the presumptive heir is he who is the nearest relation of the deceased capable of inheriting. This quality is given to him before the decease of the person from whom he is to inherit, as well as after the opening of the succession, until he has accepted or renounced it. La. Civ. Code, art. 880.

—**Heir special.** In English law. The issue in tail, who claims *per formam doni*; by the form of the gift.

—**Heir substitute, in a bond.** In Scotch law. He to whom a bond is payable expressly in case of the creditor's decease, or after his death. 1 Forb. Inst. pt. 3, p. 76.

—**Heir testamentary.** In the civil law. One who is named and appointed heir in the testament of the decedent. This name distinguishes him from a *legal* heir, (one upon whom the law casts the succession,) and from a *conventional* heir, (one who takes it by virtue of a previous contract or settlement.)

—**Heir unconditional.** In the civil law and in Louisiana. One who inherits without any reservation, or without making an inventory, whether his acceptance be express or tacit. Distinguished from *heir beneficiary*. La. Civ. Code, art. 882.

—**Heirs and assigns.** Ordinarily, words of limitation and not of purchase;—the technical expression necessary at common law to express a fee-simple gift, which still has that meaning whenever used, though its use is not necessary. In re Tamargo, 220 N. Y. 225, 115 N. E. 462, 463.

—**Joint heirs.** Co-heirs. The term is also applied to those who are or will be heirs to both of two designated persons at the death of the survivor of them, the word "joint" being here applied to the ancestors rather than the heirs. See Gardiner v. Fay, 182 Mass. 492, 65 N. E. 825.

—**Lawful heirs.** The same as "heirs." In re Irish's Estate, 89 Vt. 56, 94 A. 173, 174, Ann. Cas. 1917C, 1154; Beardsley v. Johnson, 105 Conn. 98, 134 A. 530, 531. In a general sense, those whom the law recognizes as the heirs of a decedent, but in a special and technical sense, lineal descendants only. Abbott v. Essex Co., 18 How. 215, 15 L. Ed. 352; Rollins v. Keel, 115 N. C. 68, 20 S. E. 209; Conger v. Lowe, 124 Ind. 368, 24 N. E. 889, 9 L. R. A. 165; Moody v. Snell, 81 Pa. 362.

—**Legitimate heirs.** Children born in lawful wedlock and their descendants, not including collateral heirs or issue in indefinite succession. Lytle v. Beveridge, 58 N. Y. 605; Prindle v. Beveridge, 7 Lans. (N. Y.) 231. Some-

times synonymous with "lawful" heir. Corison v. Williams, 58 Cal. App. 232, 208 P. 331, 334.

—**Living heirs.** Technically words of description instead of purchase. Johnson v. Coler, 187 Iowa, 734, 174 N. W. 654, 655. Under a will giving the testator's wife an estate for life, at her death all the property to be equally divided between "our living children or to their living heirs," the words "living heirs" should be given their technical meaning as including all the legal heirs of the deceased children of testator that died after the death of testator. Potter v. Potter, 306 Ill. 37, 137 N. E. 425, 427.

—**Natural heirs.** Heirs by consanguinity as distinguished from heirs by adoption, and also as distinguished from collateral heirs, Ludlum v. Otis, 15 Hun (N. Y.) 414; Smith v. Pendell, 19 Conn. 112, 48 Am. Dec. 146; Miller v. Churchill, 78 N. C. 372; Markover v. Krauss, 132 Ind. 294, 31 N. E. 1047, 17 L. R. A. 806; children; heirs of the body, Maynard v. Henderson, 117 Ark. 24, 173 S. W. 831, 832, Ann. Cas. 1917A, 1157; Tea v. Millen, 257 Ill. 624, 101 N. E. 209, 210, 45 L. R. A. (N. S.) 1163; Naylor v. McRuer, 248 Mo. 423, 154 S. W. 772, 784; Yarrington v. Freeman, 201 Ky. 135, 255 S. W. 1034, 1035.

—**Right heir.** This term was formerly used, in the case of estates tail, to distinguish the preferred heir, to whom the estate was limited, from the heirs in general, to whom, on the failure of the preferred heir and his line, the remainder over was usually finally limited. With the abolition of estates tail, the term has fallen into desuetude, but when still used, in modern law, it has no other meaning than "heir at law." Brown v. Wadsworth, 168 N. Y. 225, 61 N. E. 250; Ballentine v. Wood, 42 N. J. Eq. 552, 9 A. 582; McCrea's Estate, 5 Pa. Dist. R. 449.

**HEIRDOM.** Succession by inheritance.

**HEIRESS.** A female heir to a person having an estate of inheritance. When there are more than one, they are called "co-heiresses," or "co-heirs."

**HEIRLOOMS.** Such goods and chattels as, contrary to the nature of chattels, shall go by special custom to the heir along with the inheritance, and not to the executor. The termination "*loom*" (Sax.) signifies a limb or member; so that an heirloom is nothing else but a limb or member of the inheritance. They are generally such things as cannot be taken away without damaging or dismembering the freehold; such as deer in a park, doves in a cote, deeds and charters, etc. 2 Bl. Comm. 427.

This word seems to be compounded of *heir*, and *loom*, that is, a frame, viz. to weave in. Some derive the word loom from the Saxon *loma*, or *geloma*, which signifies utensils or vessels generally. However, this may be, the word *loom*, by time, is

drawn to a more general signification than it bore at the first, comprehending all implements of household, as tables, presses, cupboards, bedsteads, wainscots, and which, by the custom of some countries, having belonged to a house are never inventoried after the decease of the owner as chattels, but accrue to the heir with the house itself. *Minshew*; 2 Poll. & Maitl. 361.

**HEIRS.** Technically, those persons designated by law to succeed to the estate in case of intestacy. *Potter v. Potter*, 306 Ill. 37, 137 N. E. 425, 426. A word used in deeds of conveyance, (either solely, or in connection with others,) where it is intended to pass a fee. It is generally a word of limitation, and is not to be construed as a word of purchase unless there are other controlling words showing such intention by the person using it. *Peacock v. McClusky*, 296 Ill. 87, 129 N. E. 561, 563; *Blue v. Travis*, 152 Ky. 700, 154 S. W. 15, 16; *McMahill v. Schowengerdt* (Mo.) 133 S. W. 605, 606; *Ryan v. Ryan*, 138 Ark. 362, 211 S. W. 183, 184; *In re Christy's Estate*, 245 Pa. 529, 91 A. 939; *Hunting v. Jones* (Tex. Civ. App.) 183 S. W. 858, 860; *In re Barker*, 230 N. Y. 364, 130 N. E. 579, 582. See, also, *Heir*.

In the word "heirs" is comprehended heirs of heirs *in infinitum*. Co. Litt. 7b, 9a; *Larew v. Larew*, 146 Va. 134, 135 S. E. 819, 820; *Peacock v. McClusky*, 296 Ill. 87, 129 N. E. 561, 563.

In Illinois, and in the United States generally, the word "heirs" may have different meanings, just as under the English law the singular form, "heir," might have different meanings, but, if there is no context, the word "heirs" must be held to indicate the indefinite succession by inheritance. *Aetna Life Ins. Co. v. Hoppin* (C. C. A.) 214 F. 928, 932. Under the terms of particular wills, however, *Old Colony Trust Co. v. Jackson*, 243 Mass. 543, 137 N. E. 874, 875; *Branch v. De Wolf*, 38 R. I. 395, 95 A. 857, 858; or under statutes abolishing the rule in *Shelley's Case*, *Menard v. Campbell*, 130 Mich. 583, 147 N. W. 556, 558, Ann. Cas. 1916A, 802; it may be a word of purchase, and is frequently deemed synonymous with "children," *Cultice v. Mills*, 97 Ohio St. 112, 119 N. E. 200, 201; *Van Dusen v. Sharrar*, 186 Iowa, 1032, 173 N. W. 97, 98; *Guy v. Pruitt*, 213 Ala. 422, 104 So. 805, 806; *Texas Co. v. Meador* (Tex. Civ. App.) 243 S. W. 991, 992; *Conover v. Cade*, 184 Ind. 604, 112 N. E. 7, 12; *Davenport v. Hickson* (C. C. A.) 261 F. 983, 984; *Gillilan v. Gillilan*, 278 Mo. 99, 212 S. W. 348, 351; *Walcott v. Robinson*, 214 Mass. 172, 100 N. E. 1109; *Byrd v. Henderson*, 139 Miss. 140, 104 So. 100, 102; *Driskill v. Carwile*, 145 Va. 116, 133 S. E. 773, 774; *Stack v. Leberman*, 154 N. Y. S. 490, 491, 169 App. Div. 92; *Williams v. J. C. Armiger & Bro.*, 129 Md. 222, 98 A. 542, 544.

A devise or bequest to "heirs" primarily means those who are heirs at the testator's death, and it is only when a contrary intention appears that this presumption fails. *In re Bump's Will*, 234 N. Y. 60, 136 N. E. 295, 296; *Brian v. Tylor*, 129 Md. 145, 98 A. 532, 534; *In re Frenheim's Estate*, 156 Minn. 366, 194 N. W. 766, 768; *Schlater v. Lee*, 117 Miss. 701, 78 So. 700, 702; *Dorrance v. Greene*, 41 R. I. 444, 104 A. 12, 14; *Simes v. Ward*, 78 N. H. 533, 103 A. 310, 311.

**Heirs at law shall not be disinherited by conjecture, but only by express words or necessary implication.** *Schoul. Wills* § 479.

**HEIRSHIP.** The quality or condition of being heir, or the relation between the heir and his ancestor. It is a legal right, regulated by law, to be enjoyed subject to the provisions of the statute. *Winke v. Olson*, 164 Wis. 427, 160 N. W. 164, 166.

**HEIRSHIP MOVABLES.** In Scotch law. The movables which go to the heir, and not to the executor, that the land may not go to the heir completely dismantled, such as the best of furniture, horses, cows, etc., but not fungibles. *Bell*; *Hope*, Minor Pr. 538; *Erskine*, Inst. 3. 8. 13-17.

**HELD.** In reference to the decision of a court, decided. Also see *Hold*.

**HELL.** The name formerly given to a place under the exchequer chamber, where the king's debtors were confined. *Rich. Dict.*

**HELM.** Thatch or straw; a covering for the head in war; a coat of arms bearing a crest; the tiller or handle of the rudder of a ship.

**HELOWE-WALL.** The end-wall covering and defending the rest of the building. *Paroch. Antiq.* 573.

**HELING.** A Saxon brass coin, of the value of a half-penny.

**HEMIPLEGIA.** In medical jurisprudence. Unilateral paralysis; paralysis of one side of the body, commonly due to a lesion in the brain, but sometimes originating from the spinal cord, as in "Brown-Sequard's paralysis," unilateral paralysis with crossed *anæsthesia*. In the cerebral form, the *hemiplegia* is sometimes "alternate" or crossed, that is, occurring on the opposite side of the body from the initial lesion.

If the disease comes on rapidly or suddenly, it is called "quick" *hemiplegia*; if slowly or gradually, "chronic." The former variety is more apt to affect the mental faculties than the latter; but, where *hemiplegia* is complete, the operations of the mind are generally much impaired. See *Baughman v. Baughman*, 32 Kan. 538, 4 P. 1003.

**HEMOLDBORH, or HELMELBORCH.** A title to possession. The admission of this old Norse term into the laws of the Conqueror is difficult to be accounted for; it is not found in any Anglo-Saxon law extant. *Whar-ton*.

**HENCEFORTH.** A word of futurity, which, as employed in legal documents, statutes, and the like, always imports a continuity of action or condition from the present time forward, but excludes all the past. *Thomson v. American Surety Co.*, 170 N. Y. 109, 62 N. E. 1073; *Opinion of Chief Justice*, 7 Pick. (Mass.) 128, note.

**HENCHMAN.** A page; an attendant; a herald. See *Barnes v. State*, 88 Md. 347, 41 A. 781. A footman; one who holds himself at the bidding of another. It has come to mean



here a political follower; used in a rather bad sense.

**HENEDPENNY.** A customary payment of money instead of hens at Christmas; a composition for eggs. Cowell.

**HENFARE.** A fine for flight on account of murder. Domesday Book.

**HENGHEN.** In Saxon law. A prison, a goal, or house of correction.

**HENGWYTE.** Sax. In old English law. An acquittance from a fine for hanging a thief. Fleta, lib. 1, c. 47, § 17.

**HENRICUS VETUS.** Henry the Old, or Elder. King Henry I. is so called in ancient English chronicles and charters, to distinguish him from the subsequent kings of that name. Spelman.

**HEORDFÆTE, or HUDEFÆST.** In Saxon law. A master of a family, keeping house, distinguished from a lower class of freemen, viz., *folgeras*, (*folgarit*.) who had no habitations of their own, but were house-retainers of their lords.

**HEORDPENNY.** Peter-pence (*q. v.*).

**HEORDWERCH.** In Saxon law. The service of herdsmen, done at the will of their lord.

**HEPBURN ACT.** The name commonly given to an act of Congress, June 29, 1906, amending §§ 1, 6, 14, 15, 16 and 20 of the Interstate Commerce Act, Feb. 4, 1887, and adding §§ 16a and 24 thereto (49 USCA §§ 1, 6, 11, 14, 15, 16, 16a, 18, 20).

**HEPTARCHY.** A government exercised by seven persons, or a nation divided into seven governments. In the year 560, seven different monarchies had been formed in England by the German tribes, namely, that of Kent by the Jutes; those of Sussex, Wessex, and Essex by the Saxons; and those of East Anglia, Bernicia, and Deira by the Angles. To these were added, about the year 586, an eighth, called the "Kingdom of Mercia," also founded by the Angles, and comprehending nearly the whole of the heart of the kingdom. These states formed what has been designated the "Anglo-Saxon Octarchy," or more commonly, though not so correctly, the "Anglo-Saxon Heptarchy," from the custom of speaking of Deira and Bernicia under the single appellation of the "Kingdom of Northumberland." Wharton.

**HERALD.** In ancient law, a herald was a diplomatic messenger who carried messages between kings or states, and especially proclamations of war, peace, or truce. In English law, a herald is an officer whose duty is to keep genealogical lists and tables, adjust armorial bearings, and regulate the ceremonies at royal coronations and funerals.

**HERALDRY.** The art, office, or science of heralds. Also an old and obsolete abuse of buying and selling precedence in the paper of causes for hearing.

**HERALDS' COLLEGE.** In England. An ancient royal corporation, first instituted by Richard III. in 1483. It comprises three kings of arms, six heralds, and four marshals or pursuivants of arms, together with the earl marshal and a secretary. The heralds' books, compiled when progresses were solemnly and regularly made into every part of the kingdom, to inquire into the state of families, and to register such marriages and descents as were verified to them upon oath, are allowed to be good evidence of pedigrees. The heralds' office is still allowed to make grants of arms and to permit change of names. 3 Starkie, Ev. 843; Wharton.

**HERBAGE.** In English law. An easement or liberty, which consists in the right to pasture cattle on another's ground.

Feed for cattle in fields and pastures. Bract. fol. 222; Co. Litt. 46; Shep. Touch. 97. A right to herbage does not include a right to cut grass, or dig potatoes, or pick apples. Simpson v. Coe, 4 N. H. 303.

**HERBAGIUM ANTERIUS.** The first crop of grass or hay, in opposition to aftermath or second cutting. Paroch. Antiq. 459.

**HERBENGER, or HARBINGER.** An officer in the royal house, who goes before and allots the noblemen and those of the household their lodgings; also an innkeeper.

**HERBERGAGIUM.** Lodgings to receive guests in the way of hospitality. Cowell.

**HERBERGARE.** To harbor; to entertain.

**HERBERGATUS.** Harbored or entertained in an inn. Cowell.

**HERBERY, or HERBURY.** An inn. Cowell.

**HERCIA.** A harrow. Fleta, lib. 2, c. 77.

**HERCIARE.** To harrow. 4 Inst. 270.

**HERCIATURA.** In old English law. Harrowing; work with a harrow. Fleta, lib. 2, c. 82, § 2.

**HERCISCUNDA.** In the civil law. To be divided. *Familia herciscunda*, an inheritance to be divided. *Actio familiae herciscundae*, an action for dividing an inheritance. *Herciscunda* is more commonly used in the civil law. Dig. 10, 2; Inst. 3, 28, 4; Id. 4, 6, 20.

**HERD, n.** An indefinite number, more than a few, of cattle, sheep, horses, or other animals of the larger sorts, assembled and kept together as one drove and under one care and management. Brim v. Jones, 13 Utah, 440, 45 P. 352.

**HERD, v.** To tend, take care of, manage, and control a herd of cattle or other animals, im-

plying something more than merely driving them from place to place. *Phipps v. Grover*, 9 Idaho, 415, 75 P. 65; *Fry v. Hubner*, 35 Or. 184, 57 P. 420.

**HERDER.** One who herds or has charge of a herd of cattle, in the senses above defined. See *Hooker v. McAllister*, 12 Wash. 46, 40 P. 617; *Underwood v. Birdsell*, 6 Mont. 142, 9 P. 922; Rev. Codes N. D. 1899, § 1544a (Comp. Laws 1913, § 2608).

**HERDEWICH.** A grange or place for cattle or husbandry. Mon. Angl. pt. 3.

**HERDWERCH, HEORDWERCH.** Herdsmen's work, or customary labor, done by shepherds and inferior tenants, at the will of the lord. Cowell.

**HEREAFTER.** A word of futurity, always used in statutes and legal documents as indicative of future time, excluding both the present and the past. *Chapman v. Holmes*, 10 N. J. Law, 26; *Tremont & S. Mills v. Lowell*, 165 Mass. 265, 42 N. E. 1134; *Dobbins v. Cragin*, 50 N. J. Eq. 640, 23 A. 172; *Thomas v. Mueller*, 106 Ill. 43.

**HEREBANNUM.** In old English law. A proclamation summoning the army into the field.

A mulct or fine for not joining the army when summoned. Spelman.

A tax or tribute for the support of the army. Du Cange.

**HEREBOTE.** The royal edict summoning the people to the field. Cowell.

**HEREDAD.** In Spanish law. A piece of land under cultivation; a cultivated farm, real estate; an inheritance or heirship.

**HEREDAD YACENTE.** From Lat. "*hereditas jacens*," (*q. v.*) In Spanish law. An inheritance not yet entered upon or appropriated. White, New Recop. b. 2, tit. 19, c. 2, § 8.

**HEREDERO.** In Spanish law. Heir; he who, by legal or testamentary disposition, succeeds to the property of a deceased person. "*Hæres censetur cum defuncto una eademque persona.*" Las Partidas, 7, 9, 13. See *Emeric v. Alvarado*, 64 Cal. 529, 2 P. 433.

**HEREDITAGIUM.** In Sicilian and Neapolitan law. That which is held by hereditary right; the same with *hereditamentum* (*hereditament*) in English law. Spelman.

**HEREDITAMENTS.** Things capable of being inherited, be it corporeal or incorporeal, real, personal, or mixed, and including not only lands and everything thereon, but also heirlooms, and certain furniture which, by custom, may descend to the heir together with the land. Co. Litt. 5b; 2 Bl. Comm. 17; *Nellis v. Munson*, 108 N. Y. 453, 15 N. E. 739; *Owens v. Lewis*, 46 Ind. 508, 15 Am. Rep. 295; *Whitlock v. Greacen*, 48 N. J. Eq. 359, 21 A.

944; *Mitchell v. Warner*, 5 Conn. 497; *New York v. Mabie*, 13 N. Y. 159, 64 Am. Dec. 538; *Ralston Steel Car Co. v. Ralston*, 112 Ohio St. 306, 147 N. E. 513, 516, 39 A. L. R. 334; *Sox v. Miracle*, 35 N. D. 458, 160 N. W. 716, 719.

At common law corporeal hereditaments were physical objects, comprehended under the term land, and were said to lie in livery, while incorporeal hereditaments existed only in contemplation of law, were said to lie in grant and were affiliated with chattel interests. *National Supply Co. v. McLeod*, 116 Kan. 477, 227 P. 350.

The term includes a few rights unconnected with land, but it is generally used as the widest expression for real property of all kinds, and is therefore employed in conveyances after the words "lands" and "tenements," to include everything of the nature of realty which they do not cover. Sweet.

#### Corporeal Hereditaments

Substantial permanent objects which may be inherited. The term "land" will include all such. 2 Bl. Comm. 17; *Sox v. Miracle*, 35 N. D. 458, 160 N. W. 716, 719; *Whitlock v. Greacen*, 48 N. J. Eq. 359, 21 A. 944; *Cary v. Daniels*, 5 Metc. (Mass.) 236; *Gibbs v. Drew*, 16 Fla. 147, 26 Am. Rep. 700.

#### Incorporeal Hereditaments

Anything, the subject of property, which is inheritable and not tangible or visible. 2 Woodd. Lect. 4. A right issuing out of a thing corporate (whether real or personal) or concerning or annexed to or exercisable within the same. 2 Bl. Comm. 20; 1 Washb. Real Prop. 10; *Hegan v. Pendennis Club* (Ky.) 64 S. W. 465; *Whitlock v. Greacen*, 48 N. J. Eq. 359, 21 A. 944; *Stone v. Stone*, 1 R. I. 428. A right growing out of, or concerning, or annexed to, a corporeal thing, but not the substance of the thing itself. *Huston v. Cox*, 103 Kan. 73, 172 P. 992.

**HEREDITARY.** That which is the subject of inheritance.

**HEREDITARY DISEASE.** Physical ailment transmitted or transmissible from parent to child in consequence of the infection of the former or the presence of the disease in his system, and without exposure of the latter to any fresh source of infection or contagion. *South Atlantic Life Ins. Co. v. Hurt's Adm'x*, 115 Va. 398, 79 S. E. 401, 404.

**HEREDITARY RIGHT TO THE CROWN.** The crown of England, by the positive constitution of the kingdom, has ever been descendible; and so continues, in a course peculiar to itself, yet subject to limitation by parliament; but, notwithstanding such limitation, the crown retains its descendible quality, and becomes hereditary in the prince to whom it is limited. 1 Bl. Comm. 191.

**HEREDITARY SUCCESSION.** Inheritance by law; title by descent; the title whereby a

person, on the death of his ancestor, acquires his estate as his heir at law. *Barclay v. Cameron*, 25 Tex. 241; *In re Donahue's Estate*, 36 Cal. 332; *Moffett v. Conley*, 63 Okl. 3, 163 P. 118, 120.

**HEREDITY.** That biological law by which all living beings tend to repeat themselves in their descendants. *Prewitt v. State*, 106 Miss. 82, 63 So. 330, 331, 6 A. L. R. 1476.

**HEREFARE.** Sax. A going into or with an army; a going out to war, (*profectio militaris*); an expedition. *Spelman*.

**HEREGEAT.** A heriot, (*q. v.*)

**HEREGELD.** Sax. In old English law. A tribute or tax levied for the maintenance of an army. *Spelman*.

**HEREMITORIUM.** A place of retirement for hermits. *Mon. Angl. tom. 3, p. 18.*

**HEREMONES.** Followers of an army.

**HERENACH.** An archdeacon. *Cowell*.

**HERES.** Heir; an heir. A form of *hæres*, very common in the civil law. See *Hæres*.

**HERESCHIP.** In old Scotch law. Theft or robbery. 1 *Pitc. Crim. Tr. pt. 2, pp. 26, 89.*

**HERESLITA, HERESSA, HERESSIZ.** A hired soldier who departs without license. 4 *Inst. 128.*

**HERESY.** In English law. An offense against religion, consisting not in a total denial of Christianity, but of some of its essential doctrines, publicly and obstinately avowed. 4 *Bl. Comm. 44, 45.* An opinion on divine subjects devised by human reason, openly taught, and obstinately maintained. 1 *Hale, P. C. 384.* This offense is now subject only to ecclesiastical correction, and is no longer punishable by the secular law. 4 *Steph. Comm. 233.*

**HERETOCH.** A general, leader, or commander; also a baron of the realm. *Du Fresne.*

**HERETOFORE.** This word simply denotes time past, in distinction from time present or time future, and has no definite and precise signification beyond this. *Andrews v. Thayer*, 40 *Conn. 157*; *Miller v. Feather*, 176 *Ky. 268*, 195 *S. W. 449, 451*; *Millers' Mut. Fire Ins. Co. v. City of Austin (Tex. Civ. App.) 210 S. W. 825, 827.*

**HERETUM.** In old records. A court or yard for drawing up guards or military retinue. *Cowell.*

**HEREZELD.** In Scotch law. A gift or present made or left by a tenant to his lord as a token of reverence. *Skene.*

**HERGE.** In Saxon law. Offenders who joined in a body of more than thirty-five to commit depredations.

**HERIGALDS.** In old English law. A sort of garment. *Cowell.*

**HERIOT.** In English law. A customary tribute of goods and chattels, payable to the lord of the fee on the decease of the owner of the land.

Heriots are divided into heriot *service* and heriot *custom*. The former expression denotes such as are due upon a special reservation in a grant or lease of lands, and therefore amount to little more than a mere rent; the latter arise upon no special reservation whatever, but depend solely upon immemorial usage and custom. 2 *Bl. Comm. 422.* See *Adams v. Morse*, 51 *Me. 501.*

**HERISCHILD.** In old English law. A species of military service, or knight's fee. *Cowell.*

**HERISCHULDA.** In old Scotch law. A fine or penalty for not obeying the proclamation made for warfare. *Skene.*

**HERISCINDIUM.** A division of household goods. *Blount.*

**HERISLIT.** Laying down of arms. *Blount.* Desertion from the army. *Spelman.*

**HERISTAL.** The station of an army; the place where a camp is pitched. *Spelman.*

**HERITABLE.** Capable of being taken by descent. A term chiefly used in Scotch law, where it enters into several phrases.

**HERITABLE BOND.** A bond for a sum of money to which is added, for further security of the creditor, a conveyance of land or heritage to be held by the creditor as pledge. 1 *Ross, Conv. 76*; 2 *Ross, Conv. 324.*

**HERITABLE JURISDICTIONS.** Grants of criminal jurisdiction formerly bestowed on great families in Scotland, to facilitate the administration of justice. *Whishaw.* Abolished in effect by *St. 20 Geo. II. c. 50.* *Tomlins.*

**HERITABLE OBLIGATION.** In Louisiana. An obligation is heritable when the heirs and assigns of one party may enforce the performance against the heirs of the other. *Civ. Code La. art. 1997.*

**HERITABLE RIGHTS.** In Scotch law. Rights of the heir; all rights to land or whatever is connected with land, as mills, fishings, tithes, etc.

**HERITABLE SECURITY.** Security constituted by heritable property. *Encyc. Dict.*

**HERITAGE.**

#### In the Civil Law

Every species of immovable which can be the subject of property; such as lands, houses, orchards, woods, marshes, ponds, etc., in whatever mode they may have been acquired, either by descent or purchase. 3 *Toullier, No. 472.*

**In Scotch Law**

Land, and all property connected with land; real estate, as distinguished from movables, or personal estate. Bell.

**HERITOR.** In Scotch law. A proprietor of land. 1 Kames, Eq. Pref.

**HERMANDAD.** In Spanish law. A fraternity formed among different towns and villages to prevent the commission of crimes, and to prevent the abuses and vexations to which they were subjected by men in power. Bouvier.

**HERMAPHRODITE.** In medical jurisprudence. A person of doubtful or double sex; one possessing, really or apparently, and in more or less developed form, some or all of the genital organs of both sexes.

*Hermaphroditus tam masculo quam femina comparatur, secundum praevalentiam sexus incalescentis.* An hermaphrodite is to be considered male or female according to the predominance of the exciting sex. Co. Litt. 8; Bract. fol. 5.

**HERMENEUTICS.** The science or art of construction and interpretation. By the phrase "legal hermeneutics" is understood the systematic body of rules which are recognized as applicable to the construction and interpretation of legal writings.

**HERMER.** A great lord. Jacob.

**HERMOGENIAN CODE.** See Codex Hermogenianus.

**HERnescus.** A heron. Cowell.

**HERNESIUM, or HERNASIUM.** Household goods; implements of trade or husbandry; the rigging or tackle of a ship. Cowell.

**HEROUD, HERAUD.** L. Fr. A herald.

**HERPEX.** A harrow. Spelman.

**HERPICATIO.** In old English law. A day's work with a harrow. Spelman.

**HERRING SILVER.** This was a composition in money for the custom of supplying herrings for the provision of a religious house. Wharton.

**HERSHIP.** The crime, in Scotland, of carrying off cattle by force; it is described as "the masterful driving off of cattle from a proprietor's grounds." Bell.

**HERUS.** Lat. A master. *Servus facit ut herus det*, the servant does [the work] in order that the master may give [him the wages agreed on.] *Herus dat ut servus facit*, the master gives [or agrees to give, the wages,] in consideration of, or with a view to, the servant's doing [the work.] 2 Bl. Comm. 445.

**HESIA.** An easement. Du Cange.

**HEST CORN.** In old records. Corn or grain given or devoted to religious persons or purposes. 2 Mon. Angl. 367b; Cowell.

**HESTA, or HESTHA.** A little loaf of bread. A capon or young cockerel.

**HETÆRARCHA.** The head of a religious house; the head of a college; the warden of a corporation.

**HETÆRIA.** In Roman law. A company, society, or college.

**HEUVELBORH.** Sax. In old English law. A surety, (*warrantus*.)

**HEYLODE.** In old records. A customary burden upon inferior tenants, for mending or repairing hays or hedges.

**HEYMECTUS.** A hay-net; a net for catching conies. Cowell.

**HIBERNAGIUM.** The season for sowing winter corn. Cowell.

**HIDAGE.** An extraordinary tax formerly payable to the crown for every hide of land. This taxation was levied, not in money, but provision of armor, etc. Cowell.

**HIDALGO.** In Spanish law. A noble; a person entitled to the rights of nobility. By *hidalgos* are understood men chosen from good situations in life, (*de buenos lugares*,) and possessed of property, (*algo*.) White, New Recop. b. 1, tit. 5, c. 1.

**HIDALGUIA.** In Spanish law. Nobility by descent or lineage. White, New Recop. b. 1, tit. 5, c. 3, § 4.

**HIDE.** In old English law. A measure of land, being as much as could be worked with one plow. It is variously estimated at from 60 to 100 acres, but was probably determined by local usage. Another meaning was as much land as would support one family or the dwellers in a mansion-house. Also a house; a dwelling-house. A hide was anciently employed as a unit of taxation. 1 Poll. & Maitl. 347, such tax being called *hidegild*.

**HIDE AND GAIN.** In English law. A term anciently applied to arable land. Co. Litt. 85b.

**HIDE LANDS.** In Saxon law. Lands belonging to a hide; that is, a house or mansion. Spelman.

**HIDEL.** In old English law. A place of protection; a sanctuary. St. 1 Hen. VII. cc. 5, 6; Cowell.

**HIDGILD.** A sum of money paid by a vassal or servant to save himself from a whipping, Fleta, l. 1, c. 47, § 20.

**HIERARCHY.** Originally, government by a body of priests. Now, the body of officers in any church or ecclesiastical institution, con-

sidered as forming an ascending series of ranks or degrees of power and authority, with the correlative subjection, each to the one next above. Derivatively, any body of men, taken in their public capacity, and considered as forming a chain of power, as above described.

**HIGH.** This term, as used in various compound legal phrases, is sometimes merely an addition of dignity, not importing a comparison; but more generally it means exalted, either in rank or location, or occupying a position of superiority, and in a few instances it implies superiority in respect to importance, size, or frequency or publicity of use, *e. g.*, "high seas," "highway."

As to high "Bailliff," "Constable," "Crimes," "Justice," "Justiciar," "Prerogative writ," "Probability rule," "School," "Sea," "Sheriff," "Tide," "Treason," and "Water-Mark," see those titles.

**HIGH COMMISSION COURT.** See Court of High Commission.

**HIGH COURT OF ADMIRALTY.** See Court of Admiralty.

**HIGH COURT OF DELEGATES.** See Court of Delegates.

**HIGH COURT OF ERRORS AND APPEALS.** See Court of Errors and Appeals.

**HIGH COURT OF JUSTICE.** See Supreme Court of Judicature.

**HIGH COURT OF PARLIAMENT.** See Parliament.

**HIGH DEGREE OF CARE AND DILIGENCE.** See Care.

**HIGHBINDER.** A rough, one of a Chinese secret society composed of blackmailers. *People v. Ho Kim You*, 141 P. 950, 956, 24 Cal. App. 451.

**HIGHER AND LOWER SCALE.** In the practice of the English supreme court of judicature there are two scales regulating the fees of the court and the fees which solicitors are entitled to charge. The lower scale applies (unless the court otherwise orders) to the following cases: All causes and matters assigned by the judicature acts to the king's bench, or the probate, divorce, and admiralty divisions; all actions of debt, contract, or tort; and in almost all causes and matters assigned by the acts to the chancery division in which the amount in litigation is under £1,000. The higher scale applies in all other causes and matters, and also in actions falling under one of the above classes, but in which the principal relief sought to be obtained is an injunction. *Sweet*.

**HIGHEST PROVED VALUE.** In an action of trover the amount which the jury from a consideration of all the evidence, may find to

be the highest value of the property during the period between the conversion and the trial. *Elder v. Woodruff Hardware & Mfg. Co.*, 16 Ga. App. 255, 85 S. E. 268.

**HIGHNESS.** A title of honor given to princes. The kings of England, before the time of James I., were not usually saluted with the title of "Majesty," but with that of "Highness." The children of crowned heads generally receive the style of "Highness." *Wharton*.

**HIGHWAY.** An easement acquired by the public in the use of a road or way for thoroughfare. *Bolender v. Southern Michigan Telephone Co.*, 182 Mich. 646, 148 N. W. 697, 700.

A free and public road, way, or street; one which every person has the right to use. *Abbott v. Duluth (C. C.)* 104 F. 837; *Shelby County Com'rs v. Castetter*, 7 Ind. App. 309, 33 N. E. 986; *State v. Cowan*, 29 N. C. 248; *In re City of New York*, 135 N. Y. 253, 31 N. E. 1043, 31 Am. St. Rep. 825; *Parsons v. San Francisco*, 23 Cal. 464; *Yale University v. City of New Haven*, 104 Conn. 610, 134 A. 268, 271, 47 A. L. R. 667; *Schlesinger v. City of Atlanta*, 161 Ga. 148, 129 S. E. 861, 867; *Rodgers v. Hess*, 325 Ill. 603, 156 N. E. 811, 813; *Gulf & S. Ir. R. Co. v. Adkinson*, 117 Miss. 118, 77 So. 954, 955; *Illinois Cent. R. Co. v. Bennett (C. C. A.)* 296 F. 436, 437.

The generic name for all kinds of public ways, whether carriage-ways, bridle-ways, foot-ways, bridges, turnpike roads, railroads, canals, ferries or navigable rivers; 6 Mod. 255; *Ang. Highw. c. 1*; 3 Kent 432. *City of St. Louis v. Bell Place Realty Co.*, 259 Mo. 126, 168 S. W. 721, 722; *Shannon v. Martin*, 164 Ga. 872, 139 S. E. 671, 54 A. L. R. 1246. As to bridges, see *Point Bridge Co. v. Pittsburgh Rys. Co.*, 240 Pa. 105, 87 A. 614, 615; *City of Baraboo v. Dwyer*, 166 Wis. 372, 165 N. W. 297, 299; *State v. Vantage Bridge Co.*, 134 Wash. 568, 236 P. 280, 282. As to watercourses, *Cameron Lumber Co. v. Stack-Gibbs Lumber Co.*, 26 Idaho, 626, 144 P. 1114, 1119; *People v. New York & Ontario Power Co.*, 219 App. Div. 114, 219 N. Y. S. 497, 501; *Pappenburg v. State*, 10 Ala. App. 224, 65 So. 418, 419. As to railroads, *Liggett v. Excelsior Powder Mfg. Co.*, 274 Mo. 115, 202 S. W. 372, 373; *Cincinnati, N. O. & T. P. R. Co. v. Ford*, 139 Tenn. 291, 202 S. W. 72; *Barney v. Chicago, St. P., M. & O. Ry. Co.*, 167 Minn. 190, 208 N. W. 821, 822; *Ward v. Erie R. Co.*, 149 N. Y. S. 717, 722, 87 Misc. 365. As to streets and alleys, *Iowa Telephone Co. v. City of Keokuk (D. C.)* 226 F. 82, 87; *Burns v. Kendall*, 96 S. C. 385, 80 S. E. 621, 622; *Richmond, F. & P. R. Co. v. City of Richmond*, 145 Va. 225, 133 S. E. 800, 806; *Byrne v. Wheeling Can Co.*, 72 W. Va. 600, 78 S. E. 758, 759; *Heppes Co. v. City of Chicago*, 260 Ill. 506, 103 N. E. 455, 457.

Highway refers to roadway or street which can be used for travel, as distinguished from way upon which road can be or is being constructed. *Allen v. Jones*, 47 S. D. 603, 201 N. W. 353; *Town of Kenwood Park v. Leonard*, 177 Iowa, 337, 158 N. W. 655, 659.

There is a difference in the shade of meaning conveyed by two uses of the word. Sometimes it signifies right of free passage, in the abstract, not importing anything about the character or construction of the way. Thus, a river is called a "highway;" and it has been not unusual for congress, in granting a privilege of building a bridge, to declare that it shall be a public highway. Again, it has reference to some system of law authorizing the taking a strip of land, and preparing and devoting it to the use of travelers. In this use it imports a roadway upon the soil, constructed under the authority of these laws. Abbott.

#### Commissioners of Highways

Public officers appointed in the several counties and municipalities, in many states, to take charge of the opening, altering, repair, and vacating of highways within their respective jurisdictions.

#### Common Highway

A road to be used by the community at large for any purpose of transit or traffic. *Ham. N. P.* 239; *Railway Co. v. State*, 23 Fla. 546, 3 So. 158, 11 Am. St. Rep. 395.

#### Highway Acts, or Laws

The body or system of laws governing the laying out, repair, and use of highways.

#### Highway Crossing

A place where the track of a railroad crosses the line of a highway.

#### Highway-rate

In English law. A tax for the maintenance and repair of highways, chargeable upon the same property that is liable to the poor-rate.

#### Highway Robbery

See Robbery.

#### Highway Tax

A tax for and applicable to the making and repair of highways. *Stone v. Bean*, 15 Gray (Mass.) 44.

#### Public Highway

One under the control of and kept by the public, established by regular proceedings for the purpose, or generally used by the public for twenty years, or dedicated by the owner of the soil and accepted by the proper authorities and for the maintenance of which they are responsible. *State v. Gross*, 119 N. C. 868, 26 S. E. 91. It includes roads, streets, alleys, lanes, courts, places, trails, and bridges, laid out or erected as such by the public, or, if laid out and erected by others, dedicated or abandoned to the public, or made such in actions for the partition of real property. *Pol. Code Cal.* § 2618; *Patterson v. Munyan*, 93 Cal. 128, 29 P. 250.

#### Royal Highways

There were four royal highways in Yorkshire, three by land and one by water, where the king claimed all forfeitures. *Maitl. Domesd. Book and Beyond* 87.

**HIGHWAYMAN.** A bandit; one who robs travelers upon the highway. *Anderson v. Hartford Accident & Indemnity Co.*, 77 Cal. App. 641, 247 P. 507, 510.

**HIGLER.** In English law. A hawker or peddler. A person who carries from door to door, and sells by retail, small articles of provisions, and the like.

**HIGUELA.** In Spanish law. A receipt given by an heir of a decedent, setting forth what property he has received from the estate.

**HIIS TESTIBUS.** Words formerly used in deeds, signifying *these being witness*. They have been disused since Henry VIII. *Co. Litt.*; Cowell.

**HI-JACKER.** Another name for robber. *Franklin v. State*, 104 Tex. Cr. R. 240, 283 S. W. 802, 803.

**HIKENILD STREET.** One of the four great Roman roads of Britain. More commonly called "Ikenild Street."

**HILARY RULES.** A collection of orders and forms extensively modifying the pleading and practice in the English superior courts of common law, established in Hilary term, 1834. *Stimson*.

**HILARY TERM.** In English law. A term of court, beginning on the 11th and ending on the 31st of January in each year. Superseded (1875) by Hilary sittings, which begin January 11th, and end on the Wednesday before Easter.

**HINDENI HOMINES.** A society of men. The Saxons ranked men into three classes, and valued them, as to satisfaction for injuries, etc., according to their class. The highest class were valued at 1,200s., and were called "*twelf hindmen*;" the middle class at 600s., and called "*scv hindmen*;" the lowest at 200s., called "*twy hindmen*." Their wives were termed "*hindas*." *Brompt. Leg. Alfred.* c. 12.

**HINDER AND DELAY.** To hinder and delay is to do something which is an attempt to defraud, rather than a successful fraud; to put some obstacle in the path, or interpose some time, unjustifiably, before the creditor can realize what is owed out of his debtor's property. See *Walker v. Sayers*, 5 Bush (Ky.) 582; *Burdick v. Post*, 12 Barb. (N. Y.) 186; *Crow v. Beardsley*, 68 Mo. 439; *Burnham v. Brennan*, 42 N. Y. Super. Ct. 63.

**HINDU LAW.** The system of native law prevailing among the Gentoos, and administered by the government of British India.

It is not the law of India or of any defined region. It is the law of castes, class, orders and even families which the Hindus carry about with them. 17 L. Q. R. 209. See Bryce, *Extension of Law in 1 Sel. Essays in Anglo-Amer. Leg. Hist.* 597; Ilbert, *Government of India*; Sir W. Markby (1906); Mulla, *Principles of Hindu Law*.

**HINE, or HIND.** In old English law. A husbandry servant.

**HINEFARE.** In old English law. The loss or departure of a servant from his master. *Domesday*.

**HINEGELD.** A ransom for an offense committed by a servant. *Cowell*.

**HIPOTECA.** In Spanish law. A mortgage of real property.

**HIRCISCUNDA.** See *Herciscunda*.

**HIRE, v.** To purchase the temporary use of a thing, or to stipulate for the labor or services of another. See *Hiring*.

To engage in service for a stipulated reward, as to hire a servant for a year, or laborers by the day or month; to engage a man to temporary service for wages. To "employ" is a word of more enlarged signification. A man hired to labor is employed, but a man may be employed in a work who is not hired. *McCluskey v. Cromwell*, 11 N. Y. 605; *Carter-Mullaly Transfer Co. v. Angell* (Tex. Civ. App.) 181 S. W. 237, 238; *United States v. Blair-Murdock Co.* (D. C.) 228 F. 77, 84.

For definitions of the various species of this class of contracts, under their Latin names, see *Locatio* and following titles.

**HIRE, n.** Compensation for the use of a thing, or for labor or services. *Carr v. State*, 50 Ind. 180; *Learned-Letcher Lumber Co. v. Fowler*, 109 Ala. 169, 19 So. 396.

A bailment in which compensation is to be given for the use of a thing, or for labor and services about it. 2 Kent 456; *Story*, *Bailm.* § 359. The divisions of this species of contract are denoted by Latin names.

**HIREMAN.** A subject. *Du Cange*.

**HIRER.** One who hires a thing, or the labor or services of another person. *Turner v. Cross*, 83 Tex. 218, 18 S. W. 578, 15 L. R. A. 262.

**HIRING.** A contract by which one person grants to another either the enjoyment of a thing or the use of the labor and industry, either of himself or his servant, during a certain time, for a stipulated compensation, or by which one contracts for the labor or services of another about a thing bailed to him for a specified purpose. *Code Ga.* 1882, § 2085 (Civ. Code 1910, § 3476).

Hiring is a contract by which one gives to another the temporary possession and use of

property, other than money, for reward, and the latter agrees to return the same to the former at a future time. *Civ. Code Cal.* § 1925; *Comp. Laws N. D.* 1913, § 6079; *Comp. Laws S. D.* 1929, § 1046.

#### *Synonyms*

"Hiring" and "borrowing" are both contracts by which a qualified property may be transferred to the hirer or borrower, and they differ only in this, that hiring is always for a price, stipend, or recompense, while borrowing is merely gratuitous. 2 Bl. *Comm.* 453; *Neel v. State*, 33 Tex. Cr. R. 408, 26 S. W. 726.

**HIRING AT WILL.** A general or indefinite hiring. *National Cash Register Co. v. Remington Arms Co.*, 209 N. Y. S. 40, 49, 212 App. Div. 343; *Davis v. Pioneer Life Ins. Co. of America*, 181 Mo. App. 353, 172 S. W. 67, 68.

**HIRST, HURST.** In old English law. A wood. *Co. Litt.* 4b.

**HIS.** This pronoun, generically used, may refer to a person of either sex. *Danforth v. Emmons*, 124 Me. 156, 126 A. 821, 823; *Wilmette v. Brachle*, 110 Ill. App. 356, affirmed 209 Ill. 621, 71 N. E. 41. Its use in a written instrument, in referring to a person whose Christian name is designated therein by a mere initial, is not conclusive that the person referred to is a male; it may be shown by parol that the person intended is a female. *Berniaud v. Beecher*, 71 Cal. 38, 11 P. 802.

#### **HIS EXCELLENCY.**

##### *In English Law*

The title of a viceroy, governor general, ambassador, or commander in chief.

##### *In American Law*

This title is given to the governor of Massachusetts by the constitution of that state; and it is commonly given, as a title of honor and courtesy, to the governors of the other states and to the president of the United States. It is also customarily used by foreign ministers in addressing the secretary of state in written communications.

**HIS HONOR.** A title given by the constitution of Massachusetts to the lieutenant governor of that commonwealth. *Mass. Const.* part 2, c. 2, § 2, art. 1. It is also customarily given to some inferior magistrates, as the mayor of a city.

**HIS TESTIBUS.** Lat. These being witnesses. The attestation clause in old deeds and charters.

**HISSA.** A lot or portion; a share of revenue or rent. *Wilson's Gloss.* Ind.

**HITHERTO.** In legal use, this term always restricts the matter in connection with which it is employed to a period of time already passed. *Mason v. Jones*, 13 Barb. (N. Y.) 479.

**HIWISC.** In old English law. A hide of land. According to Maitland (Domesday Book 359), a household.

**HLAF ÆTA.** Sax. A servant fed at his master's cost.

**HLAFORD.** Sax. A lord. 1 Spence, Ch. 36.

**HLAFORDSOCNA.** Sax. A lord's protection. Du Cange.

**HLAFORDSWICE.** Sax. In Saxon law. The crime of betraying one's lord, (*proditio domini*;) treason. Crabb, Eng. Law, 59, 301.

**HLASOCNA.** Sax. The benefit of the law. Du Cange.

**HLOTHBOTE.** In Saxon law. A fine for being present at an unlawful assembly. Spelman.

**HLOTHE.** In Saxon law. An unlawful assembly from eight to thirty-five, inclusive. Cowell.

**HOASTMEN.** In English law. An ancient gild or fraternity at Newcastle-upon-Tyne, who dealt in sea coal. St. 21 Jac. I. c. 3.

**HOBBIT.** A measure of weight in use in Wales, equal to 168 pounds, being made up of four Welsh pecks of 42 pounds each. Hughes v. Humphreys, 26 Eng. L. & Eq. 132.

**HOBLERS.** In old English law. Light horsemen or bowmen; also certain tenants, bound by their tenure to maintain a little light horse for giving notice of any invasion, or such like peril, towards the seaside. Camden, Brit.

**HOC.** Lat. This. *Hoc intuitu*, with this expectation. *Hoc loco*, in this place. *Hoc nomine*, in this name. *Hoc titulo*, under this title. *Hoc voce*, under this word.

**HOC PARATUS EST VERIFICARE.** Lat. This he is ready to verify.

**Hoc quidem perquam durum est, sed ita lex scripta est.** Lat. This indeed is exceedingly hard, but so the law is written; such is the written or positive law. An observation quoted by Blackstone as used by Ulpian in the civil law; and applied to cases where courts of equity have no power to abate the rigor of the law. Dig. 40, 9, 12, 1; 3 Bl. Comm. 430.

**Hoc servabitur quod initio convenit.** This shall be preserved which is useful in the beginning. Dig. 50, 17, 23; Bract. 73b.

**HOCCUS SALTIS.** A hoke, hole, or lesser pit of salt. Cowell.

**HOCK-TUESDAY MONEY.** This was a duty given to the landlord that his tenants and bondmen might solemnize the day on which the English conquered the Danes, being the second Tuesday after Easter week. Cowell.

**HOCKETTOR, or HOCQUETEUR.** A knight of the post; a decayed man; a basket carrier. Cowell.

**HODGE-PODGE ACT.** A name applied to a statute which comprises a medley of incongruous subjects.

**HOG.** This word may include a sow; Shubrick v. State, 2 S. C. 21; a pig; Lavender v. State, 60 Ala. 60; Washington v. State, 58 Ala. 355; and may refer to dead as well as a living animal; Whitson v. Culbertson, 7 Ind. 195; Hunt v. State, 55 Ala. 140; Reed v. State, 16 Fla. 564; *contra*, State v. Hedrick, 272 Mo. 502, 199 S. W. 192, L. R. A. 1918C, 574; and it is synonymous with swine; Rivers v. State, 10 Tex. App. 177.

**HOGA.** In old English law. A hill or mountain. In old English, a *hova*. Grene *hoga*, Grenehov. Domesday; Spelman.

**HOGASTER.** In old English law. A sheep of the second year. Fleta, lib. 2, c. 79, §§ 4, 12. A young hog. Cowell.

**HOGGUS, or HOGIETUS.** A hog or swine. Cowell.

**HOGHENHYNE.** In Saxon law. A house-servant. Any stranger who lodged three nights or more at a man's house in a decenary was called "*hoghenhyne*," and his host became responsible for his acts as for those of his servant.

**HOGSHEAD.** A measure of a capacity containing the fourth part of a tun, or sixty-three gallons. Cowell. A large cask, of indefinite contents, but usually containing from one hundred to one hundred and forty gallons. Webster.

**HOKE DAY (Heck Day).** A day of feasting or mirth kept formerly in England on the second or third Tuesday after Easter; Cent. Dict.; or, as a recent writer concludes, the first Sunday after Easter; 28 L. Q. Rev. 283, where it is suggested that it was originally the great spring festival of the pre-Roman British.

**HOLD, v. 1.** To possess in virtue of a lawful title; as in the expression, common in grants, "to have and to hold," or in that applied to notes, "the owner and holder." Thompson v. Sandford, 13 Ga. 241; Bank of Michigan v. Niles, 1 Doug. (Mich.) 407, 41 Am. Dec. 575; Stansbury v. Hubner, 73 Md. 228, 20 A. 904, 11 L. R. A. 204, 25 Am. St. Rep. 584; Miller v. Oliver, 54 Cal. App. 495, 202 P. 168, 169; In re Williams' Estate, 40 Nev. 241, 161 P. 741, 746, L. R. A. 1917C, 602; Chicago Home for Girls v. Carr, 300 Ill. 478, 133 N. E. 344, 346.

**2.** To be the grantee or tenant of another; to take or have an estate from another. Properly, to have an estate on condition of paying rent, or performing service.



3. To adjudge or decide, spoken of a court, particularly to declare the conclusion of law reached by the court as to the legal effect of the facts disclosed.

4. To maintain or sustain; to be under the necessity or duty of sustaining or proving; as when it is said that a party "holds the affirmative" or negative of an issue in a cause.

5. To bind or obligate; to restrain or constrain; to keep in custody or under an obligation; as in the phrases "hold to bail," "hold for court," "held and firmly bound," etc.

6. To administer; to conduct or preside at; to convoke, open, and direct the operations of; as to hold a court, hold pleas, etc. *Smith v. People*, 47 N. Y. 334.

7. To prosecute; to direct and bring about officially; to conduct according to law; as to hold an election.

8. To possess; to occupy; to be in possession and administration of; as to hold office.

9. To keep; to retain; to maintain possession of or authority over. *Rice v. Fields*, 232 S. W. 385, 192 Ky. 161; *Corn v. Hyde*, 26 N. M. 36, 188 P. 1102, 1103; *Dimock State Bank v. Boehnen*, 46 S. D. 50, 190 N. W. 485.

—**Hold over.** To retain possession as tenant of property leased, after the end of the term. To continue in possession of an office and continue to exercise its functions, after the end of the officer's lawful term. *State v. Simon*, 20 Or. 365, 26 P. 174; *Frost v. Akron Iron Co.*, 1 App. Div. 449, 37 N. Y. S. 374.

—**Hold pleas.** To hear or try causes. 3 Bl. Comm. 35, 298.

**HOLD, n.** In old law. Tenure. A word constantly occurring in conjunction with others, as *freehold*, *leasehold*, *copyhold*, etc., but rarely met with in the separate form.

**HOLDER.** The holder of a bill of exchange, promissory note, or check is the person who has legally acquired possession of the same, by indorsement or delivery, and who is entitled to receive payment of the instrument. *Bowling v. Harrison*, 6 How. 258, 12 L. Ed. 425; *Crocker-Woolworth Nat. Bank v. Nevada Bank*, 139 Cal. 564, 73 P. 456, 63 L. R. A. 245, 96 Am. St. Rep. 169; *Rice v. Hogan*, 8 Dana (Ky.) 135; *Rev. Laws Mass.* 1902, p. 653, § 207 (G. L. [Ter. Ed.] c. 107, § 18); *Pryor v. American Trust & Banking Co.*, 15 Ga. App. 822, 84 S. E. 312, 314; *Utah Implement-Vehicle Co. v. Kenyon*, 30 Idaho, 407, 164 P. 1176, 1177; (*Vernon's Ann. Civ. St. art.* 5948, § 191); *Ford v. Smith* (Tex. Civ. App.) 274 S. W. 166, 167; *Miller v. People's Sav. Bank*, 193 Mo. App. 498, 186 S. W. 547, 550; *Mulert v. National Bank of Tarentum* (C. C. A.) 210 F. 357, 860; *Smith v. Nelson Land & Cattle Co.* (C. C. A.) 212 F. 56, 61.

**HOLDER IN DUE COURSE.** In English law, is "a holder who has taken a bill of exchange (check or note) complete and regular on the face of it, under the following conditions,

namely: (a) That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact. (b) That he took the bill (check or note) in good faith and for value, and that at the time it was negotiated to him he had no notice of any defect in the title of the person who negotiated it." *Bills of Exchange Act, 1882.* (45 & 46 Vict. c. 61, § 29.) And see *Sutherland v. Mead*, 80 App. Div. 103, 80 N. Y. S. 504; *Planters' Bank & Trust Co. v. Felton*, 188 N. C. 384, 124 S. E. 849, 851; *Potter v. Sager*, 98 Misc. 25, 161 N. Y. S. 1088, 1090; *Lewiston Trust & Safe Deposit Co. v. Shackford*, 213 Mass. 432, 100 N. E. 828; *Thomas v. Goodrum* (Mo. Sup.) 231 S. W. 571, 574.

**HOLDES.** Sax. In Saxon law. A military commander. *Spelman.*

#### HOLDING.

##### In English Law

A piece of land held under a lease or similar tenancy for agricultural, pastoral, or similar purposes.

##### In Scotch Law

The tenure or nature of the right given by the superior to the vassal. *Bell.*

##### In General

—**Holding over.** See *Hold, v.*

—**Holding up the hand.** In criminal practice. A formality observed in the arraignment of prisoners. Held to be not absolutely necessary. 1 W. Bl. 3, 4.

**HOLDING COMPANY.** A corporation organized to hold the stock of another or other corporations. Such companies become legally possible by virtue of the legislation, which is said to exist in nearly all the states, which authorizes a corporation to hold and own the capital stock of other corporations.

**HOLIDAY.** A religious festival; a day set apart for commemorating some important event in history; a day of exemption from labor. *Webster.* A day upon which the usual operations of business are suspended and the courts closed, and, generally, no legal process is served. *United Cigar Stores Co. v. Worth-Gyles Grain Co.*, 212 Ill. App. 26.

##### Legal Holiday

A day designated by law as exempt from judicial proceedings, service of process, demand and protest of commercial paper, etc.

##### Public Holiday

A legal holiday.

**HOLM.** An island in a river or the sea. *Spelman.*

Plain grassy ground upon water sides or in the water. *Blount.* Low ground intersected with streams. *Spelman.*

**HOLOGRAFO.** In Spanish law. A holograph. An instrument (particularly a will) wholly in the handwriting of the person executing it; or which, to be valid, must be so written by his own hand.

**HOLOGRAPH.** A will or deed written entirely by the testator or grantor with his own hand. Estate of Billings, 64 Cal. 427, 1 P. 701; Harrison v. Weatherby, 180 Ill. 418, 54 N. E. 237.

**HOLT.** Sax. In old English law. A wood or grove. Spelman; Cowell; Co. Litt. 4b.

**HOLY ORDERS.** In ecclesiastical law. The orders of bishops, (including archbishops,) priests, and deacons in the Church of England. The Roman canonists had the orders of bishop, (in which the pope and archbishops were included,) priest, deacon, subdeacon, psalmist, acolyte, exorcist, reader, ostiarius. 3 Steph. Comm. 55, and note a.

**HOMAGE.** In feudal law. A service (or the ceremony of rendering it) which a tenant was bound to perform to his lord on receiving investiture of a fee, or succeeding to it as heir, in acknowledgment of the tenure. It is described by Littleton as the most honorable service of reverence that a free tenant might do to his lord. The ceremony was as follows: The tenant, being ungirt and with bare head, knelt before the lord, the latter sitting, and held his hands extended and joined between the hands of the lord, and said: "I become your man [*homo*] from this day forward, of life and limb and earthly honor, and to you will be faithful and loyal, and bear you faith, for the tenements that I claim to hold of you, saying the faith that I owe unto our sovereign lord the king, so help me God." The tenant then received a kiss from the lord. Homage could be done only to the lord himself. Litt. § 85; Glanv. lib. 9, c. 1; Bract. fols. 77b, 78-80; Wharton.

"Homage" is to be distinguished from "fealty," another incident of feudalism, and which consisted in the solemn oath of fidelity made by the vassal to the lord, whereas homage was merely an acknowledgment of tenure. If the homage was intended to include fealty, it was called "liege homage;" but otherwise it was called "simple homage." Brown.

**HOMAGE ANCESTRAL.** In feudal law. Homage was called by this name where a man and his ancestors had immemorially held of another and his ancestors by the service of homage, which bound the lord to warrant the title, and also to hold the tenant clear of all services to superior lords. If the tenant aliened in fee, his alienee was a tenant by homage, but not by homage ancestral. Litt. § 143; 2 Bl. Comm. 300.

**HOMAGE JURY.** A jury in a court-baron, consisting of tenants that do homage, who are to inquire and make presentments of the

death of tenants, surrenders, admittances, and the like.

**HOMAGE LIEGE.** That kind of homage which was due to the sovereign alone as supreme lord, and which was done without any saving or exception of the rights of other lords. Spelman.

**HOMAGER.** One who does or is bound to do homage. Cowell.

**HOMAGIO RESPECTUANDO.** A writ to the escheator commanding him to deliver seisin of lands to the heir of the king's tenant, notwithstanding his homage not done. Fitzh. Nat. Brev. 269.

**HOMAGIUM.** L. Lat. Homage (*q. v.*).

**HOMAGIUM LIGIUM.** Liege homage; that kind of homage which was due to the sovereign alone as supreme lord, and which was done without any saving or exception of the rights of other lords. Spelman. So called from *ligando*, (binding,) because it could not be renounced like other kinds of homage.

**Homagium, non per procuratores nec per literas fieri potuit, sed in propria persona tam domini quam tenentis capi debet et fieri.** Co. Litt. 68. Homage cannot be done by proxy, nor by letters, but must be paid and received in the proper person, as well of the lord as the tenant.

**HOMAGIUM PLANUM.** In feudal law. Plain homage; a species of homage which bound him who did it to nothing more than fidelity, without any obligation either of military service or attendance in the courts of his superior. 1 Robertson's Car. V., Appendix, note 8.

**HOMAGIUM REDDERE.** To renounce homage. This was when a vassal made a solemn declaration of disowning and defying his lord; for which there was a set form and method prescribed by the feudal laws. Bract. l. 2, c. 35, § 35.

**HOMAGIUM SIMPLEX.** In feudal law. Simple homage; that kind of homage which was merely an acknowledgment of tenure, with a saving of the rights of other lords. Harg. Co. Litt. note 18, lib. 2.

**HOMBRE BUENO.** In Spanish law. The judge of a district. Also an arbitrator chosen by the parties to a suit. Also a man in good standing; one who is competent to testify in a suit.

**HOME.** That place in which one in fact resides with the intention of residence, or in which he has so resided, and with regard to which he retains residence or to which he intends to return. Dicey, Conf. L. 81. See Langhammer v. Munter, 80 Md. 518, 31 A. 300, 27 L. R. A. 330; King v. King, 155 Mo. 406, 56 S. W. 534; Dean v. Cannon, 37 W. Va.

123, 16 S. E. 444; *Jefferson v. Washington*, 19 Me. 293; *Welch v. Whelpley*, 62 Mich. 15, 23 N. W. 744, 4 Am. St. Rep. 810; *Warren v. Thomaston*, 43 Me. 418, 69 Am. Dec. 69; *O'Hare v. Bismarck Bank*, 178 N. W. 1017, 45 N. D. 641; *Kerby v. Town of Charlestown*, 78 N. H. 301, 99 A. 835, L. R. A. 1917D, 785. Home is not synonymous with domicile, as used in international law, but has a more restricted meaning; *Inhabitants of Jefferson v. Washington*, 19 Me. 293.

Home includes place where one eats, bathes, reads, visits and rests, as well as sleeping place, *Jakeway v. John V. Bauer Co.*, 213 N. Y. S. 193, 195, 213 App. Div. 302; and, as used in deed or will may include care or right of maintenance, *Gwinn v. Hobbs*, 83 Ind. App. 263, 141 N. E. 812, 818; *In re Burr's Estate*, 144 N. Y. S. 926, 927, 83 Misc. 240.

**HOME OFFICE.** The department of state through which the English sovereign administers most of the internal affairs of the kingdom, especially the police, and communicates with the judicial functionaries. As applied to a corporation, its principal office within the state or country where it was incorporated or formed. *Vernon's Ann. Civ. St. art. 4716.*

**HOME PORT.** In maritime law, the home port of a vessel is either the port where she is registered or enrolled, or the port at or nearest to which her owner usually resides, or, if there be more than one owner, the port at or nearest to which the husband, or acting and managing owner resides. *White's Bank v. Smith*, 7 Wall. 651, 19 L. Ed. 211; *The Ellen Holgate (D. C.)* 30 F. 125; *The Albany*, 1 Fed. Cas. 288; *Com. v. Ayer & Lord Tie Co.*, 77 S. W. 688, 25 Ky. Law Rep. 1068. But for some purposes any port where the owner happens at the time to be with his vessel is its home port. *Case v. Woolley*, 6 Dana (Ky.) 27, 32 Am. Dec. 54; *Lever Transp. Co. v. Olinger*, 205 Ala. 22, 87 So. 597, 598.

**HOME RULE.** In constitutional and statutory law, local self-government, or the right thereof. *Attorney General v. Lowrey*, 131 Mich. 639, 92 N. W. 289. In British politics, a programme or plan (or a more or less definitely formulated demand) for the right of local self-government for Ireland under the lead of an Irish national parliament. *Lemaire v. Crockett*, 116 Me. 263, 101 A. 302, 303.

**HOME, or HOMME.** L. Fr. Man; a man.

*Home ne sera puny pur suer des briefes en court le roy, soit il a droit ou a tort.* A man shall not be punished for suing out writs in the king's court, whether he be right or wrong. 2 Inst. 228.

**HOMESOKEN, HOMSOKEN.** See *Hamesecken*.

**HOMESTALL.** A mansion-house. *Dickinson v. Mayer*, 11 Heisk. (Tenn.) 521.

**HOMESTEAD.** The home, the house and the adjoining land where the head of the family dwells; the home farm. The fixed residence of the head of a family, with the land and buildings surrounding the main house. See *Oliver v. Snowden*, 18 Fla. 825, 43 Am. Rep. 338; *In re Allen (Cal.)* 16 P. 319; *McKeough v. McKeough*, 69 Vt. 34, 37 A. 275; *Hoitt v. Webb*, 36 N. H. 158; *Frazer v. Weld*, 177 Mass. 513, 59 N. E. 118; *Lyon v. Hardin*, 129 Ala. 643, 29 So. 777; *Norris v. Kidd*, 28 Ark. 493; *Anderson v. Schertz*, 94 Neb. 390, 143 N. W. 238, 239; *McCray v. Miller*, 78 Okl. 16, 184 P. 781, 782; *Garret v. Getzendaner*, 115 Okl. 12, 242 P. 525, 526; *In re Trammell (D. C.)* 5 F.(2d) 326, 327; *McKethan v. Currie*, 139 La. 145, 71 So. 346, 347.

Technically, and under the modern homestead laws, an artificial estate in land, devised to protect the possession and enjoyment of the owner against the claims of his creditors, by withdrawing the property from execution and forced sale, so long as the land is occupied as a home. *Buckingham v. Buckingham*, 81 Mich. 89, 45 N. W. 504; *Campbell v. Moran*, 71 Neb. 615, 99 N. W. 499; *Iken v. Olenick*, 42 Tex. 198; *Jones v. Britton*, 102 N. C. 166, 9 S. E. 554, 4 L. R. A. 178; *Thomas v. Fulford*, 117 N. C. 667, 23 S. E. 635; *Ellinger v. Thomas*, 64 Kan. 180, 67 P. 529; *Galligher v. Smiley*, 28 Neb. 189, 44 N. W. 187, 26 Am. St. Rep. 319.

#### Business Homestead

In Texas, a place or property (distinct from the home of a family) used and occupied by the head of a family as a place to exercise his calling or business, which is exempt by law. *Alexander v. Lovitt (Tex. Civ. App.)* 56 S. W. 686; *Ford v. Fosgard (Tex. Civ. App.)* 25 S. W. 448; *Spence v. State Nat. Bank of El Paso (Tex. Civ. App.)* 294 S. W. 618, 623. A curious misnomer, the word "homestead" in this phrase having lost entirely its original meaning, and being retained apparently only for the sake of its remote and derivative association with the idea of an exemption.

#### Homestead Corporations

Corporations organized for the purpose of acquiring lands in large tracts, paying off incumbrances thereon, improving and subdividing them into homestead lots or parcels, and distributing them among the shareholders, and for the accumulation of a fund for such purposes. *Civ. Code Cal. § 557.*

#### Homestead Entry

See *Entry*.

#### Homestead Exemption Laws

Laws passed in most of the states allowing a householder or head of a family to designate a house and land as his homestead, and exempting the same homestead from execution for his general debts.

**Homestead Right**

The personal right to the beneficial, peaceful and uninterrupted use of the home property free from claims of creditors. *Hill v. First Nat. Bank*, 79 Fla. 391, 84 So. 190, 192, 20 A. L. R. 270; *Thompson v. Marlin*, 116 Okl. 159, 243 P. 950, 954, 45 A. L. R. 388.

**Probate Homestead**

A homestead set apart by the court for the use of a surviving husband or wife and the minor children out of the common property, or out of the real estate belonging to the deceased. In re *Noah's Estate*, 73 Cal. 590, 15 P. 290, 2 Am. St. Rep. 834.

**Rural Homestead**

See *Urban Homestead, infra*.

**Urban Homestead**

The residence or dwelling place of a family in a city, claimed or set apart as a homestead, including the principal house and lot, and such lots as are used in connection therewith, contributing to its enjoyment, comfort, and convenience. *Ford v. Fosgard* (Tex. Civ. App.) 25 S. W. 447; *Harris v. Matthews*, 36 Tex. 424, 81 S. W. 1204. Nevertheless, property may be located within the corporate limits of a town or city, and still constitute a "rural homestead," or it may be without the corporate limits, and constitute an "urban homestead." *Boerner v. Cicero Smith Lumber Co.* (Tex. Civ. App.) 293 S. W. 632, 636.

**HOMICIDAL.** Pertaining to homicide; relating to homicide, impelling to homicide; as a homicidal mania. (See *Insanity*.)

**HOMICIDE.** The killing of any human creature. 4 Bl. Comm. 177. The killing of one human being by the act, procurement, or omission of another. Pen. Code N. Y. § 179. The act of a human being in taking away the life of another human being. *Sanders v. State*, 113 Ga. 267, 38 S. E. 842; *People v. Hill*, 49 Hun, 432, 3 N. Y. Supp. 564; *Maher v. People*, 10 Mich. 212, 81 Am. Dec. 781; *State v. Lodge*, 9 Houst. (Del.) 542, 33 A. 312; *Com. v. Webster*, 5 Cush. (Mass.) 303, 52 Am. Dec. 711; *State v. Creste*, 86 A. 214, 217, 4 Boyce (Del.) 118; *State v. Krakus*, 93 A. 554, 555, 5 Boyce (Del.) 326; *People v. Austin*, 221 Mich. 635, 192 N. W. 590, 593; *State v. Trent*, 122 Or. 444, 252 P. 975, 977.

Homicide is not necessarily a crime. It is a necessary ingredient of the crimes of murder and manslaughter, but there are other cases in which homicide may be committed without criminal intent and without criminal consequences, as, where it is done in the lawful execution of a judicial sentence, in self-defense, or as the only possible means of arresting an escaping felon. The term "homicide" is neutral; while it describes the act, it pronounces no judgment on its moral or legal quality. See *People v. Connors*, 35 N. Y. S. 475, 13 Misc. 582.

**Classification**

Homicide is ordinarily classified as "justifiable," "excusable," and "felonious." For the definitions

of these terms, and of some other compound terms, see *infra*.

*Culpable homicide*

Described as a crime varying from the very lowest culpability, up to the very verge of murder. *Lord Moncrieff, Arkley*, 72.

*Excusable homicide*

The killing of a human being, either by misadventure or in self-defense. U. S. v. *King* (C. C.) 34 F. 206; *State v. Miller*, 9 Houst. (Del.) 564, 32 Atl. 137; *State v. Reynolds*, 42 Kan. 320, 22 P. 410, 16 Am. St. Rep. 483; *Hopkinson v. People*, 18 Ill. 265; *Bassett v. State*, 44 Fla. 2, 33 South. 264; *Gaunce v. State*, 22 Okl. Cr. 361, 211 P. 517, 518; *Commonwealth v. Principatti*, 260 Pa. 587, 104 A. 53, 57; *Cooper v. State*, 72 Tex. Cr. R. 250, 161 S. W. 1094, 1097; *Jabich v. People*, 58 Colo. 175, 143 P. 1092, 1093. The name itself imports some fault, error, or omission, so trivial, however, that the law excuses it from guilt of felony, though in strictness it judges it deserving of some little degree of punishment. 4 Bl. Comm. 182. It is of two sorts,—either *per infortunium*, by misadventure, or *se defendendo*, upon a sudden affray. Homicide *per infortunium* is where a man, doing a lawful act, without any intention of hurt, unfortunately kills another; but, if death ensue from any unlawful act, the offense is manslaughter, and not misadventure. Homicide *se defendendo* is where a man kills another upon a sudden affray, merely in his own defense, or in defense of his wife, child, parent, or servant, and not from any vindictive feeling. 4 Bl. Comm. 182.

*Felonious homicide*

The wrongful killing of a human being, of any age or either sex, without justification or excuse in law; of which offense there are two degrees, manslaughter and murder. 4 Bl. Comm. 190; 4 Steph. Comm. 111.

*Homicide by misadventure*

The accidental killing of another, where the slayer is doing a lawful act, unaccompanied by any criminally careless or reckless conduct. *State v. Miller*, 9 Houst. (Del.) 564, 32 Atl. 137; U. S. v. *Meagher* (C. C.) 37 F. 879. The same as "homicide *per infortunium*." *State v. McIvor*, 111 A. 618, 617, 1 W. W. Harr. (Del.) 123; *State v. Disalvo*, 121 A. 661, 663, 2 W. W. Harr. (Del.) 232.

*Homicide per infortunium*

Homicide by misfortune, or accidental homicide; as where a man doing a lawful act, without any intention of hurt, unfortunately kills another; a species of excusable homicide. 4 Bl. Comm. 182; 4 Steph. Comm. 101.

*Homicide se defendendo*

Homicide in self-defense; the killing of a person in self-defense upon a sudden affray, where the slayer had no other possible (or, at least, probable) means of escaping from his assailant. 4 Bl. Comm. 183-186; 4 Steph. Comm. 103-105. A species of excusable homicide. Id.; 1 Russ. Crimes, 660.

*Justifiable homicide*

Such as is committed intentionally, but without any evil design, and under such circumstances of necessity or duty as render the act proper, and relieve the party from any shadow of blame; as where a sheriff lawfully executes a sentence of death upon a malefactor, or where the killing takes place in the endeavor to prevent the commission of felony which could not be otherwise avoided. *Moran v.*

People, 163 Ill. 322, 45 N. E. 230; Kilpatrick v. Com., 3 Phila. (Pa.) 238; State v. Miller, 9 Houst. (Del.) 564, 32 Atl. 137; Richardson v. State, 7 Tex. App. 493. "Justifiable homicide" is the taking of a human life under circumstances of justification, as a matter of right, such as self-defense or other causes set out in the statute. Gaunce v. State, 22 Okl. Cr. 361, 211 P. 517, 518. "Justifiable homicide" is the killing of a human being by commandment of the law in execution of public justice; by permission of the law in advancement of public justice; in self-defense; or in defense of habitation, property or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony on either. Paramore v. State, 161 Ga. 166, 129 S. E. 772, 778.

*Negligent homicide*

In Texas, the act of causing the death of another by negligence and carelessness in the performance of a lawful act. Anderson v. State, 27 Tex. App. 177, 11 S. W. 33, 3 L. R. A. 644, 11 Am. St. Rep. 189; Vernon's Ann. Pen. Code art. 1231. Egbert v. State, 76 Tex. Cr. R. 663, 176 S. W. 560, 562.

**HOMICIDIUM.** Lat. Homicide (*q. v.*).

*Homicidium ex justitia*, homicide in the administration of justice, or in the execution of the sentence of the law.

*Homicidium ex necessitate*, homicide from inevitable necessity, as for the protection of one's person or property.

*Homicidium ex casu*, homicide by accident.

*Homicidium ex voluntate*, voluntary or willful homicide. Bract. fols. 120b, 121.

**HOMINATIO.** The mustering of men; the doing of homage.

**HOMINE CAPTO IN WITHERNAMIUM.** A writ to take him that had taken any bond man or woman, and led him or her out of the country, so that he or she could not be replevied according to law. Reg. Orig. 79.

**HOMINE ELIGENDO.** In old English law. A writ directed to a corporation, requiring the members to make choice of a man to keep one part of the seal appointed for statutes merchant, when a former is dead, according to the statute of Acton Burnell. Reg. Orig. 178; Wharton.

**HOMINE REPLEGIANDO.** In English law. A writ which lay to replevy a man out of prison, or out of the custody of any private person, in the same manner that chattels taken in distress may be replevied. Brown.

**HOMINES.** Lat. In feudal law. Men; feudatory tenants who claimed a privilege of having their causes, etc., tried only in their lord's court. Paroch. Antiqu. 15.

**HOMINES LIGII.** Liege men; feudal tenants or vassals, especially those who held immediately of the sovereign. 1 Bl. Comm. 367.

**Hominum causa jus constitutum est.** Law is established for the benefit of man.

**HOMIPLAGIUM.** In old English law. The maiming of a man. Blount.

**HOMME.** Fr. Man; a man. The term "man" as sometimes used may include a woman or women. This is expressly stated in Civ. Code La. art. 3556, No. 1.

**HOMMES DE FIEF.** Fr. In feudal law. Men of the fief; feudal tenants; the peers in the lords' courts. Montesq., Esprit des Lois, liv. 28, c. 27.

**HOMMES FÉODAUX.** Fr. In feudal law. Feudal tenants; the same with *hommes de fief* (*q. v.*). Montesq., Esprit des Lois, liv. 28, c. 36.

**HOMO.** Lat. A man; a human being, male or female; a vassal, or feudal tenant; a retainer, dependent, or servant.

**HOMO CHARTULARIUS.** A slave manumitted by charter.

**HOMO COMMENDATUS.** In feudal law. One who surrendered himself into the power of another for the sake of protection or support. See Commendation.

**HOMO ECCLESIASTICUS.** A church vassal; one who was bound to serve a church, especially to do service of an agricultural character. Spelman.

**HOMO EXERCITALIS.** A man of the army, (*exercitus*;) a soldier.

**HOMO FEODALIS.** A vassal or tenant; one who held a fee, (*feodum*;) or part of a fee. Spelman.

**HOMO FISCALIS, or FISCALINUS.** A servant or vassal belonging to the treasury or *fiscus*.

**HOMO FRANCUS.** In old English law. A freeman. A Frenchman.

**HOMO INGENUUS.** A freeman. A free and lawful man. A yeoman.

**HOMO LIBER.** A freeman.

**HOMO LIGIUS.** A liege man; a subject; a king's vassal. The vassal of a subject.

**HOMO NOVUS.** In feudal law. A new tenant or vassal; one who was invested with a new fee. Spelman. Also one who, after conviction of a crime, had been pardoned, thus "making a new man of him."

**HOMO PERTINENS.** In feudal law. A feudal bondman or vassal; one who *belonged* to the soil, (*qui glebæ adscribitur*.)

**Homo potest esse habilis et inhabilis diversis temporibus.** 5 Coke, 98. A man may be capable and incapable at different times.

**HOMO REGIUS.** A king's vassal.

**HOMO ROMANUS.** A Roman. An appellation given to the old inhabitants of Gaul and other Roman provinces, and retained in the laws of the barbarous nations. Spelman.

**HOMO TRIUM LITTERARUM.** A man of the three letters; that is, the three letters, "f," "u," "r," the Latin word *fur* meaning "thief."

**Homo vocabulum est naturæ; persona juris civilis.** Man (*homo*) is a term of nature; person (*persona*) of civil law. Calvin.

**HOMOLOGACION.** In Spanish law. The tacit consent and approval inferred by law from the omission of the parties, for the space of ten days, to complain of the sentences of arbitrators, appointment of syndics, or assignees of insolvents, settlements of successions, etc. Also the approval given by the judge of certain acts and agreements for the purpose of rendering them more binding and executory. Escriche.

**HOMOLOGARE.** In the civil law. To confirm or approve; to consent or assent; to confess. Calvin.

**HOMOLOGATE.** In modern civil law. To approve; to confirm; as a court *homologates* a proceeding. See Homologation. Literally, to use the *same words* with another; to say the like. *Viales v. Gardenier*, 9 Mart. O. S. (La.) 324. To assent to what another says or writes.

#### HOMOLOGATION.

##### In the Civil Law

Approbation; confirmation by a court of justice; a judgment which orders the execution of some act. Merl. Répert. The term is also used in Louisiana. *Hecker v. Brown*, 104 La. 524, 29 So. 232.

##### In English Law

An estoppel *in pais*. L. R. 3 App. Cas. 1026.

##### In Scotch Law

An act by which a person approves of a deed, the effect of which is to render that deed, though in itself defective, binding upon the person by whom it is homologated. Bell. Confirmation of a voidable deed.

**HOMONYMIÆ.** A term applied in the civil law to cases where a law was repeated, or laid down in the same terms or to the same effect, more than once. Cases of iteration and repetition. 2 Kent, Comm. 489, note.

**HONDHABEND.** Sax. Having in hand. See Handhabend.

**HONESTE VIVERE.** Lat. To live honorably, creditably, or virtuously. One of the three general precepts to which Justinian reduced the whole doctrine of the law, (Inst. 1, 1, 3; Bract. fols. 3, 3b,) the others being *alterum non lædere*, (not to injure others,) and *sum cuique tribuere*, (to render to every man his due.)

**HONESTUS.** Lat. Of good character or standing. *Coram duobus vel pluribus viris*

*legalibus et honestis*, before two or more lawful and good men. Bract. fol. 61.

**HONOR, v.** To accept a bill of exchange, or to pay a note, check, or accepted bill, at maturity and according to its tenor. *Peterson v. Hubbard*, 28 Mich. 199; *Clarke v. Cock*, 4 East, 72; *Lucas v. Groning*, 7 Taunt. 168.

##### Act of honor

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

**HONOR, n.**

##### In English Law

A seigniori of several manors held under one baron or lord paramount. Also those dignities or privileges, degrees of nobility, knighthood, and other titles, which flow from the crown as the fountain of honor. Wharton.

##### In American Law

The customary title of courtesy given to judges of the higher courts, and occasionally to some other officers; as "his honor," "your honor."

##### In General

—**Honor courts.** Tribunals held within honors or seignories.

—**Office of honor.** As used in constitutional and statutory provisions, this term denotes a public office of considerable dignity and importance, to which important public trusts or interests are confided, but which is not compensated by any salary or fees, being thus contrasted with an "office of profit." See *Dickson v. People*, 17 Ill. 193.

**HONORABLE.** A title of courtesy given in England to the younger children of earls, and the children of viscounts and barons; and, collectively, to the house of commons. In America, the word is used as a title of courtesy for various classes of officials, but without any clear lines of distinction.

**HONORARIUM.** In the civil law. An honorary or free gift; a gratuitous payment, as distinguished from hire or compensation for service; a lawyer's or counsellor's fee. Dig. 50, 13, 1, 10-12.

An *honorarium* is a voluntary donation, in consideration of services which admit of no compensation in money; in particular, to advocates at law, deemed to practice for honor or influence, and not for fees. *McDonald v. Napier*, 14 Ga. 89.

**HONORARIUM JUS.** Lat. In Roman law. The law of the prætors and the edicts of the ædiles.

**HONORARY.** As applied to public offices and other positions of responsibility or trust, this term means either that the office or title is bestowed upon the incumbent as a mark

of honor or compliment, without intending to charge him with the active discharge of the duties of the place, or else that he is to receive no salary or other compensation in money, the honor conferred by the incumbency of the office being his only reward. See *Haswell v. New York*, 81 N. Y. 258. In other connections, it means attached to or growing out of some honor or dignity or honorable office, or else it imports an obligation or duty growing out of honor or trust only, as distinguished from legal accountability.

**HONORARY CANONS.** Those without emolument. 3 & 4 Vict. c. 113, § 23.

**HONORARY FEUDS.** Titles of nobility, descendible to the eldest son, in exclusion of all the rest. 2 Bl. Comm. 56.

**HONORARY SERVICES.** In feudal law. Special services to be rendered to the king in person, characteristic of the tenure by grand serjeanty; such as to carry his banner, his sword, or the like, or to be his butler, champion, or other officer, at his coronation. Litt. § 153; 2 Bl. Comm. 73.

**HONORARY TRUSTEES.** Trustees to preserve contingent remainders, so called because they are bound, in honor only, to decide on the most proper and prudent course. Lewin, Trusts, 408.

**HONORIS RESPECTUM.** By reason of honor or privilege. See Challenge.

**HONTFONGENETHEF.** In Saxon law. A thief taken with *hondhabend*; *i. e.*, having the thing stolen in his hand. Cowell.

**HONY.** L. Fr. Shame; evil; disgrace. *Hony soit qui mal y pense*, evil be to him who evil thinks.

**HOO.** In old English law. A hill. Co. Litt. 5b.

**HOOKLAND.** Land plowed and sown every year.

**HOOTCH.** Intoxicating liquor illicitly distilled for beverage purposes. State v. Griffith, 279 S. W. 135, 138, 311 Mo. 630; State v. Vesper, 316 Mo. 115, 289 S. W. 862, 863; State v. Wright, 312 Mo. 626, 280 S. W. 703, 706.

**HOPCON.** In old English law. A valley. Cowell.

**HOPE, n.** In old English law. A valley. Co. Litt. 4b.

**HOPE, v.** As used in a will, this term is a precatory word, rather than mandatory or dispositive, but it is sufficient, in proper cases, to create a trust in or in respect to the property spoken of. See *Cockrill v. Armstrong*, 31 Ark. 539; *Curd v. Field*, 103 Ky. 293, 45 S. W. 92.

**HOPPO.** A Chinese term for a collector; an overseer of commerce.

**HORA.** Lat. An hour; the hour.

**HORA AURORÆ.** In old English law. The morning bell, as *ignitegium* or *coverfeu* (curfew) was the evening bell.

*Hora non est multum de substantia negotii, licet in appello de ea aliquando fiat mentio.* The hour is not of much consequence as to the substance of business, although in appeal it is sometimes mentioned. 1 Bulst. 82.

**HORÆ JURIDICÆ or JUDICIÆ.** Hours during which the judges sat in court to attend to judicial business.

**HORCA.** In Spanish law. A gallows; the punishment of hanging. White, New Recop. b. 2, tit. 19, c. 4, § 1.

**HORDA.** In old records. A cow in calf.

**HORDERA.** In old English law. A treasurer. Du Cange.

**HORDERIUM.** In old English law. A hoard; a treasure, or repository. Cowell.

**HORDEUM.** In old records. Barley. *Hordeum palmale*, beer barley, as distinguished from common barley, which was called "*hordeum quadragesimale*." Blount.

**HORN.** In old Scotch practice. A kind of trumpet used in denouncing contumacious persons rebels and outlaws, which was done with three blasts of the horn by the king's sergeant. This was called "putting to the horn;" and the party so denounced was said to be "at the horn." Bell. See Horning.

**HORN-BOOK.** A primer; a book explaining the rudiments of any science or branch of knowledge. The phrase "horn-book law" is a colloquial designation of the rudiments or most familiar principles of law.

**HORN TENURE.** In old English law. Tenure by cornage; that is, by the service of winding a horn when the Scots or other enemies entered the land, in order to warn the king's subjects. This was a species of grand serjeanty. Litt. § 156; 2 Bl. Comm. 74.

**HORN WITH HORN, or HORN UNDER HORN.** The promiscuous feeding of bulls and cows or all horned beasts that are allowed to run together upon the same common. Spelman.

**HORNGELD.** Sax. In old English law. A tax within a forest, paid for horned beasts. Cowell; Blount.

**HORNING.** In Scotch law. "Letters of horning" is the name given to a judicial process issuing on the decree of a court, by which the debtor is summoned to perform his obligation in terms of the decree, the consequence

of his failure to do so being liability to arrest and imprisonment. It was anciently the custom to proclaim a debtor who had failed to obey such process a rebel or outlaw, which was done by three blasts of the horn by the king's sergeant in a public place. This was called "putting to the horn," whence the name.

**HORNSWOGGLE.** To triumph over; overcome; beat; bedevil. *U. S. Fidelity & Guaranty Co. v. Rochester* (Tex. Civ. App.) 281 S. W. 306, 314.

**HORREUM.** Lat. A place for keeping grain; a granary. A place for keeping fruits, wines, and goods generally; a store-house. Calvin.; Bract. fol. 48.

**HORS.** L. Fr. Out; out of; without.

**HORS DE SON FEE.** Out of his fee. In old pleading, this was the name of a plea in an action for rent or services, by which the defendant alleged that the land in question was out of the compass of the plaintiff's fee. *Mather v. Wood*, 12 Pa. Co. Ct. R. 4.

**HORS PRIS.** Except. Literally translated by the Scotch "out taken."

**HORS WEALH.** In old English law. The wealth, or Briton who had care of the king's horses.

**HORS WEARD.** In old English law. A service or *corvée*, consisting in watching the horses of the lord. *Anc. Inst. Eng.*

**HORSE.** An animal of the genus *equus* and species *caballus*. In a narrow and strict sense, the term is applied only to the male, and only to males of four years old or thereabouts, younger horses being called "colts." But even in this sense the term includes both stallions and geldings. In a wider sense, and as generally used in statutes, the word is taken as *nomen generalissimum*, and includes not only horses strictly so called, but also colts, mares and fillies, and mules and asses. See *Owens v. State*, 38 Tex. 557; *Ashworth v. Mounsey*, L. R. 9 Exch. 187; *Pullen v. State*, 11 Tex. App. 91; *Allison v. Brookshire*, 38 Tex. 201; *State v. Ingram*, 16 Kan. 19; *State v. Dunnavant*, 3 Brev. (S. C.) 10, 5 Am. Dec. 530; *State v. Gooch*, 60 Ark. 218, 29 S. W. 640; *Davis v. Collier*, 13 Ga. 491. Compare *Richardson v. Chicago & A. R. Co.*, 149 Mo. 311, 50 S. W. 782; *In re Greer*, 129 Minn. 520, 152 N. W. 866; *State v. Collins*, 53 Mont. 213, 163 P. 102, 103; *McCarver v. Griffin*, 194 Ala. 634, 69 So. 920, 921, *Ann. Cas.* 1917C, 1172; *Hale v. Commonwealth*, 151 Ky. 639, 152 S. W. 773.

**HORSE GUARDS.** The directing power of the military forces of the kingdom of Great Britain. The commander in chief, or general commanding the forces, is at the head of this department. It is subordinate to the war

office, but the relations between them are complicated. Wharton.

**HORSE POWER.** A unit of power capable of lifting 33,000 pounds a foot a minute. *Foltz Grocery & Baking Co. v. Brown*, 111 Ohio St. 646, 146 N. E. 97, 99; *Fisher Bros. Co. v. Brown*, 111 Ohio St. 602, 146 N. E. 100, 104; *Eastern Pennsylvania Power Co. v. Lehigh Coal & Navigation Co.*, 246 Pa. 72, 92 A. 47, 48, *Ann. Cas.* 1916D, 1000.

#### Net Horse Power

Actually available horse power as distinguished from theoretical horse power. *Kimberly-Clark Co. v. Patten Paper Co.*, 153 Wis. 69, 140 N. W. 1066, 1073.

**HORTUS.** Lat. In the civil law. A garden. Dig. 32, 91, 5.

**HOSPES.** Lat. A guest. 8 Coke, 32.

**HOSPES GENERALIS.** A great chamberlain.

**HOSPITAL.** An institution for the reception and care of sick, wounded, infirm, or aged persons; generally incorporated, and then of the class of corporations called "eleemosynary" or "charitable." See *In re Curtiss* (Sur.) 7 N. Y. S. 207.

#### Public Hospitals

Hospitals which appeal to the public for voluntary contributions, or those which are supported by compulsory contributions in the form of a rate.

**HOSPITALLERS.** The knights of a religious order, so called because they built a hospital at Jerusalem, wherein pilgrims were received. All their lands and goods in England were given to the sovereign by 32 Hen. VIII. c. 24.

**HOSPITATOR.** A host or entertainer.

*Hospitator communis.* An innkeeper. 8 Coke, 32.

*Hospitator magnus.* The marshal of a camp.

**HOSPITIA.** Inns. *Hospitia communia*, common inns. Reg. Orig. 105. *Hospitia curiæ*, inns of court. *Hospitia cancellariæ*, inns of chancery. Crabb, Eng. Law, 428, 429; 4 Reeve, Eng. Law, 120.

**HOSPITICIDE.** One that kills his guest or host.

**HOSPITIUM.** An inn; a household. See *Cromwell v. Stephens*, 2 Daly (N. Y.) 17.

**HOSPODAR.** A Turkish governor in Moldavia or Wallachia.

**HOST.** L. Fr. An army. Britt. c. 22. A military expedition; war. Kelham.

**HOSTAGE.** A person who is given into the possession of the enemy, in a public war, his



freedom (or life) to stand as security for the performance of some contract or promise made by the belligerent power giving the hostage with the other.

**HOSTELAGIUM.** In old records. A right to receive lodging and entertainment, anciently reserved by lords in the houses of their tenants. Cowell.

**HOSTELER.** See Hostler.

**HOSTES.** Lat. Enemies. *Hostes humani generis*, enemies of the human race; *i. e.*, pirates.

**Hostes sunt qui nobis vel quibus nos bellum decernimus; cæteri proditores vel prædones sunt.** 7 Coke, 24. Enemies are those with whom we declare war, or who declare it against us; all others are traitors or pirates.

**HOSTIA.** In old records. The hostbread, or consecrated wafer, in the eucharist. Cowell.

**HOSTICIDE.** One who kills an enemy.

**HOSTILARIA, HOSPITALARIA.** A place or room in religious houses used for the reception of guests and strangers.

**HOSTILE.** Having the character of an enemy; standing in the relation of an enemy. See 1 Kent, Comm. c. 4.

**HOSTILE EMBARGO.** One laid upon the vessels of an actual or prospective enemy.

**HOSTILE POSSESSION.** This term, as applied to an occupant of real estate holding adversely, is not construed as implying actual enmity or ill will, but merely means that he claims to hold the possession in the character of an owner, and therefore denies all validity to claims set up by any and all other persons. *Ballard v. Hansen*, 33 Neb. 861, 51 N. W. 295; *Griffin v. Mulley*, 167 Pa. 339, 31 A. 664.

**HOSTILE WITNESS.** A witness who manifests so much hostility or prejudice under examination in chief that the party who has called him, or his representative, is allowed to cross-examine him, *i. e.*, to treat him as though he had been called by the opposite party. Wharton.

**HOSTILITY.** In the law of nations. A state of open war. "At the breaking out of hostility." 1 Kent, Comm. 60.

An act of open war. "When *hostilities* have commenced." *Id.* 56.

A hostile character. "Hostility may attach only to the person." *Id.*

**HOSTLER.** In Norman and old English law, this was the title of the officer in a monastery charged with the entertainment of guests. It was also applied (until about the time of Queen Elizabeth) to an innkeeper,

and afterwards, when the keeping of horses at livery became a distinct occupation, to the keeper of a livery stable, and then (under the modern form "ostler") to the groom in charge of the stables of an inn. *Cromwell v. Stephens*, 2 Daly (N. Y.) 20. In the language of railroading, an "ostler" or "hostler" at a roundhouse is one whose duty it is to receive locomotives as they come in from the road, care for them in the roundhouse, and have them cleaned and ready for departure when wanted. *Railroad Co. v. Massig*, 50 Ill. App. 666; *Railroad Co. v. Ashling*, 34 Ill. App. 105; *Grannis v. Railroad Co.*, 81 Iowa, 444, 46 N. W. 1067; *Sovereign Camp, W. O. W.*, v. *Scott* (Tex. Civ. App.) 246 S. W. 1107, 1108.

**HOT-WATER ORDEAL.** In old English law. This was a test, in cases of accusation, by hot water; the party accused and suspected being appointed by the judge to put his arms up to the elbows in seething hot water, which, after sundry prayers and invocations, he did, and was, by the effect which followed, judged guilty or innocent. Wharton.

**HOTCHPOT.** The blending and mixing property belonging to different persons, in order to divide it equally. 2 Bl. Comm. 190.

Anciently applied to the mixing and blending of lands given to one daughter in frank marriage, with those descending to her and her sisters in fee-simple, for the purpose of dividing the whole equally among them; without which the daughter who held in frank marriage could have no share in the lands in fee-simple. *Litt.* §§ 267, 268; *Co. Litt.* 177a; 2 Bl. Comm. 190.

*Hotchpot*, or the *putting in hotchpot*, is applied in modern law to the throwing the amount of an advancement made to a particular child, in real or personal estate, into the common stock, for the purpose of a more equal division, or of equalizing the shares of all the children. 2 Kent, Comm. 421, 422. This answers to or resembles the *collatio bonorum*, or *collation* of the civil law. See *Law v. Smith*, 2 R. I. 249; *Ray v. Loper*, 65 Mo. 472; *Jackson v. Jackson*, 28 Miss. 680, 64 Am. Dec. 114; *Thompson v. Carmichael*, 3 Sandf. Ch. (N. Y.) 120; *Page v. Elwell*, 81 Colo. 73, 253 P. 1059, 1061; *In re Farmers' Loan & Trust Co.*, 163 N. Y. S. 961, 965, 99 Misc. 420; *In re Farmers' Loan & Trust Co.*, 168 N. Y. S. 952, 959, 181 App. Div. 642.

**HOTEL.** An inn; a public house or tavern; a house for entertaining strangers or travelers. *St. Louis v. Siegrist*, 46 Mo. 594; *People v. Jones*, 54 Barb. (N. Y.) 316; *Cromwell v. Stephens*, 2 Daly (N. Y.) 19.

#### *Synonyms*

In law, there is no difference whatever between the terms "hotel," "inn," and "tavern," except that in some states a statutory definition has been given to the word "hotel," especially with reference to the grant of licenses to sell liquor, as, that it shall contain a certain number of separate rooms

for the entertainment of guests, or the like. But none of the three terms mentioned will include a boarding house (because that is a place kept for the entertainment of permanent boarders, while a hotel or inn is for travelers and transient guests), nor a lodging house (because the keeper thereof does not furnish food for guests, which is one of the requisites of a hotel or inn), nor a restaurant or eating-house, which furnishes food only and not lodging. See *Martin v. State Ins. Co.*, 44 N. J. Law, 485, 43 Am. Rep. 397; *In re Liquor Licenses*, 4 Montg. Co. Law Rep'r (Pa.) 79; *Kelly v. Excise Com'r's*, 54 How. Prac. (N. Y.) 331; *Carpenter v. Taylor*, 1 Hilt. (N. Y.) 193; *Cromwell v. Stephens*, 2 Daly (N. Y.) 23; *City of Independence v. Richardson*, 117 Kan. 656, 232 P. 1044, 1046; *Kieffer v. Keough* (Tex. Civ. App.) 188 S. W. 44, 46; *Stephens v. State*, 164 Ark. 90, 261 S. W. 37, 38; *Belvedere Hotel Co. v. Williams*, 137 Md. 665, 113 A. 335, 337, 14 A. L. R. 622; *Cole v. State*, 160 Ark. 181, 254 S. W. 476, 477; *City of Birmingham v. Bollas*, 209 Ala. 512, 96 So. 591, 592; *Waite Const. Co. v. Chase*, 188 N. Y. S. 589, 593, 197 App. Div. 327; *Babb v. Elsing-er* (Sup.) 147 N. Y. S. 98, 99; *Satterthwait v. Gibbs*, 288 Pa. 428, 135 A. 862, 864; *Huntley v. Stanchfield*, 174 Wis. 565, 183 N. W. 984, 985; *Dixon v. Robbins*, 246 N. Y. 169, 158 N. E. 63; *Debenham v. Short* (Tex. Civ. App.) 199 S. W. 1147; *City of Ft. Smith v. Gunter*, 106 Ark. 371, 154 S. W. 181, 183; *McClagherty v. Cline*, 128 Tenn. 605, 163 S. W. 801.

**HOUGH.** A valley. Co. Litt. 5b.

**HOUR.** The twenty-fourth part of a natural day; sixty minutes of time.

—**Hour of cause.** In Scotch practice. The hour when a court is met. 3 How. State Tr. 603.

—**Office hours.** See Office.

**HOUSE.** A dwelling; a building designed for the habitation and residence of men. *Satterthwait v. Gibbs*, 288 Pa. 428, 135 A. 862, 863; *Peterson v. Gales*, 191 Wis. 187, 210 N. W. 407, 408, 47 A. L. R. 956; *Morse v. Commonwealth*, 204 Ky. 672, 265 S. W. 37, 38; *Williams v. State*, 72 Tex. Cr. R. 371, 162 S. W. 838, 839; *People v. Franco*, 79 Cal. App. 682, 250 P. 698, 699; *Douglas v. State*, 88 Tex. Cr. R. 295, 225 S. W. 536, 537; *Lewis v. State*, 72 Tex. Cr. R. 377, 162 S. W. 866, 867; *Temperani v. United States* (C. C. A.) 299 F. 365, 366; *First Nat. Bank of Kaufman v. Dismukes* (Tex. Civ. App.) 241 S. W. 199, 200; *Bolin v. Tyrol Inv. Co.*, 273 Mo. 257, 200 S. W. 1059, 1060, L. R. A. 1918C, 869.

"House" means, presumptively, a dwelling house; a building divided into floors and apartments, with four walls, a roof, and doors and chimneys; but it does not necessarily mean precisely this. *Daniel v. Coulsting*, 7 Man. & G. 125; *Surman v. Darley*, 14 Mees. & W. 183.

It may mean any sort of structure or part thereof, whether used for human habitation or not. *Den- nis v. State*, 71 Tex. Cr. R. 162, 153 S. W. 1008; *Earl v. United States* (C. C. A.) 4 F. (2d) 532, 533; *Davis v. State*, 161 Tex. Cr. R. 352, 275 S. W. 1029, 1033; *People v. Coffee*, 52 Cal. App. 118, 198 P. 213, 214; *Thomas v. State*, 95 Tex. Cr. R. 133, 253 S. W. 1062; *Walker v. Terrell* (Tex. Civ. App.) 189 S. W. 75, 78. "House" is not synonymous with "dwelling house."

While the former is used in a broader and more comprehensive sense than the latter, it has a narrower and more restricted meaning than the word "building." *State v. Garity*, 46 N. H. 61.

In the devise of a house, the word "house" is synonymous with "messuage," and conveys all that comes within the curtilage. *Rogers v. Smith*, 4 Pa. 93.

A legislative assembly, or (where the bicameral system obtains) one of the two branches of the legislature; as the "house of lords," "house of representatives." Also a quorum of a legislative body. See *Southworth v. Palmyra & J. R. Co.*, 2 Mich. 287; *Missouri Pac. Ry. Co. v. State of Kansas*, 39 S. Ct. 93, 248 U. S. 276, 63 L. Ed. 239; *State of Ohio v. Cox* (D. C.) 257 F. 334, 346.

The name "house" is also given to some collections of men other than legislative bodies, to some public institutions, and (colloquially) to mercantile firms or joint-stock companies.

#### Ancient House

One which has stood long enough to acquire an easement of support against the adjoining land or building. 3 Kent Comm. 437.

#### Bawdy House

A brothel; a house maintained for purposes of prostitution.

#### Beer House

See Beer.

#### Boarding House

See that title.

#### Duplex House

A double house. *Kenwood Land Co. v. Hancock Inv. Co.*, 155 S. W. 861, 864, 169 Mo. App. 715.

#### Dwelling House

See that title.

#### House-hote

A species of estovers, belonging to a tenant for life or years, consisting in the right to take from the woods of the lessor or owner such timber as may be necessary for making repairs upon the house. See Co. Litt. 41b.

#### House-burning

See Arson.

#### House-duty

A tax on inhabited houses imposed by 14 & 15 Vict. c. 36, in lieu of window-duty, which was abolished.

#### House of Commons

One of the constituent houses of the British parliament, composed of representatives of the counties, cities, and boroughs. The lower house, so called because the commons of the realm, that is, the knights, citizens, and burgesses returned to parliament, representing the whole body of the commons, sit there.

#### House of Correction

A reformatory; a place for the imprisonment of juvenile offenders, or those who have

committed crimes of lesser magnitude. *Ex parte Moon Fook*, 72 Cal. 10, 12 P. 804.

#### House of Delegates

The official title of the lower branch of the legislative assembly of several of the American states, *e. g.*, Maryland and Virginia.

#### House of Ill Fame

A bawdy-house; a brothel; a dwelling allowed by its chief occupant to be used as a resort of persons desiring unlawful sexual intercourse. *McAlister v. Clark*, 33 Conn. 91; *State v. Smith*, 29 Minn. 193, 12 N. W. 524; *Posnett v. Marble*, 62 Vt. 481, 20 A. 813, 11 L. R. A. 162, 22 Am. St. Rep. 126.

The authorities are conflicting as to whether and in what circumstances a house used solely by one woman for illicit intercourse is a house of ill fame. *Fisher v. City of Paragould*, 127 Ark. 263, 192 S. W. 219, 220; *State v. Pyles*, 86 W. Va. 636, 104 S. E. 100, 12 A. L. R. 527; *State v. Gardner*, 174 Iowa, 748, 156 N. W. 747, 752, L. R. A. 1916D, 767, Ann. Cas. 1917D, 239; *State v. Clough*, 181 Iowa, 783, 165 N. W. 59, 60.

#### House of Keys

The name of the lower branch of the legislative assembly or parliament of the Isle of Man, consisting of twenty-four representatives chosen by popular election.

#### House of Lords

The upper chamber of the British parliament. It comprises the archbishops and bishops, (called "Lords Spiritual,") the English peers sitting by virtue of hereditary right, sixteen Scotch peers elected to represent the Scotch peerage under the act of union, and twenty-eight Irish peers elected under similar provisions. The house of lords, as a judicial body, has ultimate appellate jurisdiction, and may sit as a court for the trial of impeachments.

#### House of Refuge

A prison for juvenile delinquents. A house of correction or reformatory.

#### House of Representatives

The name of the body forming the more popular and numerous branch of the congress of the United States; also of the similar branch in many of the state legislatures.

#### House of Worship

A building or place set apart for and devoted to the holding of religious services or exercises or public worship; a church or chapel or place similarly used. *Old South Soc. v. Boston*, 127 Mass. 379; *Lefevre v. Detroit*, 2 Mich. 589; *Washington Heights M. E. Church v. New York*, 20 Hun (N. Y.) 297.

#### Inner House, Outer House

See those titles.

#### Mansion House

See Mansion.

#### Public House

An inn or tavern; a house for the entertainment of the public, or for the entertainment of all who come lawfully and pay regularly, *3 Brewst. 344*; *Whately v. State*, 68 So. 491, 492, 12 Ala. App. 201. A place of public resort, particularly for purposes of drinking or gaming. In a more general sense, any house made public by the occupation carried on in it and the implied invitation to the public to enter, such as inns, taverns, drinking saloons, gambling houses, and perhaps also shops and stores. See *Cole v. State*, 28 Tex. App. 536, 13 S. W. 859, 19 Am. St. Rep. 856; *State v. Barns*, 25 Tex. 655; *Arnold v. State*, 29 Ala. 50; *Lafferty v. State*, 41 Tex. Cr. R. 606, 56 S. W. 623; *Bentley v. State*, 32 Ala. 599; *Brown v. State*, 27 Ala. 50.

#### Tippling House

A place where intoxicating liquors are sold in drams or small quantities to be drunk on the premises, and where men resort for drinking purposes.

**HOUSEAGE.** A fee paid for housing goods by a carrier, or at a wharf, etc.

**HOUSEBREAKING.** In criminal law, Breaking and entering a dwelling-house with intent to commit any felony therein. If done by night, it comes under the definition of "burglary."

Under statute housebreaking may consist in "breaking out" of a house after access had been gained without breaking. *Lawson v. Commonwealth*, 160 Ky. 180, 169 S. W. 587, 588, L. R. A. 1915D, 972.

**HOUSEHOLD.** A family living together. *May v. Smith*, 48 Ala. 488; *Woodward v. Murray*, 18 Johns. (N. Y.) 402; *Arthur v. Morgan*, 112 U. S. 495, 5 S. Ct. 241, 28 L. Ed. 825. Those who dwell under the same roof and compose a family. Webster. A man's family living together constitutes his household, though he may have gone to another state.

Belonging to the house and family; domestic. Webster. The term is an elastic one and includes divers persons. *People v. Tait*, 261 Ill. 197, 103 N. E. 750, 753; *Lafrinz v. Whitney*, 195 App. Div. 131, 186 N. Y. S. 411, 413; *Lafrinz v. Whitney*, 233 N. Y. 107, 134 N. E. 852, 853; *In re Ganey*, 93 N. J. Eq. 389, 116 A. 19, 20; *Rydstrom v. Queen Ins. Co. of America*, 137 Md. 349, 112 A. 586, 587, 14 A. L. R. 212; *In re French (D. C.)* 231 F. 255, 261; *Moore Shipbuilding Corporation v. Industrial Accident Commission*, 185 Cal. 200, 196 P. 257, 259, 13 A. L. R. 676.

**HOUSEHOLD FURNITURE.** See Furniture.

**HOUSEHOLD GOODS.** These words, in a will, include everything of a permanent nature (*i. e.*, articles of household which are not consumed in their enjoyment) that are used in or purchased or otherwise acquired by a testator for his house. 1 *Rop. Leg.* 191; *Mar-*

quam v. Sengfelder, 24 Or. 2, 32 P. 676; Smith v. Findley, 34 Kan. 316, 8 P. 871; In re Hoopes' Estate, 1 Brewst. (Pa.) 465; Peckham v. Peckham, 97 N. J. Eq. 174, 127 A. 93, 94; Kramer v. Beebe, 186 Ind. 349, 115 N. E. 83, 85.

**HOUSEHOLD SERVANTS AND HOUSEHOLD EMPLOYEES.** Those employed in the mansion house, and do not embrace those who work out of doors upon the home place, and not regularly employed to do work within the curtilage. Raines v. Osborne, 184 N. C. 599, 114 S. E. 849.

**HOUSEHOLD STUFF.** This phrase, in a will, includes everything which may be used for the convenience of the house, as tables, chairs, bedding, and the like. But apparel, books, weapons, tools for artificers, cattle, victuals, and choses in action will not pass by those words, unless the context of the will clearly show a contrary intention. 1 Rop. Leg. 206. See Appeal of Hoopes, 60 Pa. 227, 100 Am. Dec. 562.

**HOUSEHOLDER.** The occupier of a house. Brande. More correctly, one who keeps house with his family; the head or master of a family. Webster; 18 Johns. 302. One who has a household; the head of a household. See Greenwood v. Maddox, 27 Ark. 655; Sullivan v. Canan, Wils. (Ind.) 534; Shively v. Lankford, 174 Mo. 535, 74 S. W. 835; In re French (D. C.) 231 F. 255, 261; State v. Roberston, 160 La. 155, 106 So. 728, 729; Peerless Pacific Co. v. Burckhard, 90 Wash. 221, 155 P. 1037, 1038, L. R. A. 1917C, 353, Ann. Cas. 1918B, 247; Gomez v. State, 75 Tex. Cr. R. 239, 170 S. W. 711, 713.

**HOUSEKEEPER.** One who is in actual possession of and who occupies a house, as distinguished from a "boarder," "lodger," or "guest." See Bell v. Keach, 80 Ky. 45; Veile v. Koch, 27 Ill. 131. Head of a family. January v. Marler, 274 Mo. 543, 203 S. W. 817; Gammon v. McDowell, 317 Mo. 1336, 298 S. W. 34, 36.

**HOVEL.** A place used by husbandmen to set their plows, carts, and other farming utensils out of the rain and sun.

A shed; a cottage; a mean house.

**HOWE.** In old English law. A hill. Co. Litt. 5b.

**HOY.** A small coasting vessel, usually sloop-rigged, used in conveying passengers and goods from place to place, or as a tender to larger vessels in port. Webster.

**HOYMAN.** The master or captain of a hoy.

**HUCKSTER.** A petty dealer and retailer of small articles of provisions, particularly farm and garden produce; a hawk; peddler. Mays v. Cincinnati, 1 Ohio St. 272; Lebanon County v. Kline, 2 Pa. Co. Ct. R. 622; Hughes

v. City of Detroit, 217 Mich. 567, 187 N. W. 530, 531.

**HUCUSQUE.** In old pleading. Hitherto. 2 Mod. 24.

**HUDE-GELD.** In old English law. An acquittance for an assault upon a trespassing servant. Supposed to be a mistake or misprint in Fleta for "*hinegeld*." Fleta, lib. 1, c. 47, § 20. Also the price of one's skin, or the money paid by a servant to save himself from a whipping. Du Cange.

**HUE AND CRY.** In old English law. A loud outcry with which felons (such as robbers, burglars, and murderers) were anciently pursued, and which all who heard it were bound to take up, and join in the pursuit, until the malefactor was taken. Bract. fols. 115b, 124; 4 Bl. Comm. 293.

A written proclamation issued on the escape of a felon from prison, requiring all officers and people to assist in retaking him. 3 How. State Tr. 386.

**HUEBRAS.** In Spanish law. A measure of land equal to as much as a yoke of oxen can plow in one day. 2 White, Recop. (38), 49; Strother v. Lucas, 12 Pet. 443, 9 L. Ed. 1137.

**HUI.** Under the law of Hawaii. An association of persons in the ownership of land, members of which ordinarily hold the property as tenants in common. De Fries v. Scott (C. C. A.) 268 F. 952, 959.

**HUIS.** L. Fr. A door. "*Al huis del esglise*," at the door of the church. Bendloe, 133.

**HUISSERIUM.** A ship used to transport horses. Also termed "*uffer*."

**HUISSIERS.** In French law. Marshals; ushers; process-servers; sheriffs' officers. Ministerial officers attached to the courts, to effect legal service of process required by law in actions, to issue executions, etc., and to maintain order during the sitting of the courts.

**HULKA.** In old records. A hulk or small vessel. Cowell.

**HULKS.** A place of punishment for convicts in England, abandoned with the reform in the punishment of convicts which began in England about 1840.

**HULL.** In a statute, 33 USCA § 319, requiring ships of a certain size to carry lights, etc., it includes the fore-castle deck. The Europe, 190 Fed. 475, 111 C. C. A. 307.

**HULLUS.** In old records. A hill. 2 Mon. Angl. 292; Cowell.

**HUMAGIUM.** A moist place. Mon. Angl.

**HUMANITARIAN DOCTRINE.** Another name for the doctrine of the last clear chance. See Last.

**HUNDRED.** Under the Saxon organization of England, each county or shire comprised an indefinite number of *hundreds*, each hundred containing ten *tithings*, or groups of ten families of freeholders or frankpledges. The hundred was governed by a high constable, and had its own court; but its most remarkable feature was the corporate responsibility of the whole for the crimes or defaults of the individual members. The introduction of this plan of organization into England is commonly ascribed to Alfred, but the idea, as well of the collective liability as of the division, was probably known to the ancient German peoples, as we find the same thing established in the Frankish kingdom under Clothaire, and in Denmark. See 1 Bl. Comm. 115; 4 Bl. Comm. 411.

**HUNDRED COURT.** In English law. A larger court-baron, being held for all the inhabitants of a particular *hundred*, instead of a manor. The free suitors are the judges, and the steward the registrar, as in the case of a court-baron. It is not a court of record, and resembles a court-baron in all respects except that in point of territory it is of greater jurisdiction. These courts have long since fallen into desuetude. 3 Bl. Comm. 34, 35; 3 Steph. Comm. 394, 395.

**HUNDRED GEMOTE.** Among the Saxons, a meeting or court of the freeholders of a hundred, which assembled, originally, twelve times a year, and possessed civil and criminal jurisdiction and ecclesiastical powers. 1 Reeve, Eng. Law, 7.

**HUNDRED LAGH.** The law of the hundred, or hundred court; liability to attend the hundred court. Spelman.

**HUNDRED PENNY.** In old English law. A tax collected from the hundred, by the sheriff or lord of the hundred.

**HUNDRED ROLLS.** Rolls embodying the result of investigations made by the commissioners in 1274 as to usurpations of the royal rights. 1 Holdsw. Hist. E. L. 48.

**HUNDRED SECTA.** The performance of suit and service at the hundred court.

**HUNDRED SETENA.** In Saxon law. The dwellers or inhabitants of a hundred. Cowell; Blount. Spelman suggests the reading of *sceatena* from Sax. "*sceat*," a tax.

**HUNDRED-WEIGHT.** A denomination of weight containing, according to the English system, 112 pounds; but in this country, generally, it consists of 100 pounds avoirdupois.

**HUNDREDARIUS.** In old English law. A hundredary or hundredor. A name given to the chief officer of a hundred, as well as to the freeholders who composed it. Spel. voc. "*Hundredus*."

**HUNDREDARY.** The chief or presiding officer of a hundred.

**HUNDREDES EARLDOR, or HUNDREDES MAN.** The presiding officer in the hundred court. Anc. Inst. Eng.

**HUNDREDORS.** In English law. The inhabitants or freeholders of a hundred, anciently the suitors or judges of the hundred court. Persons impaneled or fit to be impaneled upon juries, dwelling within the hundred where the cause of action arose. Crompt. Jur. 217. It was formerly necessary to have some of these upon every panel of jurors. 3 Bl. Comm. 359, 360; 4 Steph. Comm. 370.

The term "hundredor" was also used to signify the officer who had the jurisdiction of a hundred, and held the hundred court, and sometimes the bailiff of a hundred. Termes de la Ley; Cowell.

**HUNG JURY.** A jury so irreconcilably divided in opinion that they cannot agree upon any verdict.

**HUNGER.** The desire to eat. Hunger is no excuse for larceny; 1 Hale, Pl. Cr. 54; 4 Bla. Com. 31. As to death from hunger, see Death.

**HUNTING.** The act of pursuing and taking wild animals; the chase. Commonwealth v. Bailey, 97 S. E. 774, 124 Va. 800; People v. Jacobs, 151 N. Y. S. 522, 165 App. Div. 721; Robinson v. State, 76 S. E. 1061, 11 Ga. App. 847; State v. Gilletto, 120 A. 567, 569, 98 Conn. 702.

**HURDEREFERST.** A domestic; one of a family.

**HURDLE.** In English criminal law. A kind of sledge, on which convicted felons were drawn to the place of execution.

**HURRICANE.** A storm of great violence or intensity, of which the particular characteristic is the high velocity of the wind. There is naturally no exact measure to distinguish between an ordinary storm and a hurricane, but the wind should reach a velocity of at least 50 or 60 miles an hour to be called by the latter name, or, as expressed in some of the cases, it should be sufficient to "throw down buildings." A hurricane is properly a circular storm in the nature of a cyclone. See Pelican Ins. Co. v. Troy Co-op. Ass'n, 77 Tex. 225, 13 S. W. 980; Queen Ins. Co. v. Hudnut Co., 8 Ind. App. 22, 35 N. E. 397; Tyson v. Union Mut. Fire & Storm Co., 2 Montg. Co. Law Rep'r (Pa.) 17.

**HURST, HYRST, HERST, or HIRST.** A wood or grove of trees. Co. Litt. 4b.

**HURT.** In such phrases as "to the hurt or annoyance of another," or "hurt, molested, or restrained in his person or estate," this word is not restricted to physical injuries,

but includes also mental pain, as well as discomfort or annoyance. See *Rowland v. Miller* (Super. N. Y.) 15 N. Y. Supp. 702; *Prunk v. Brooklyn Heights R. Co.*, 68 App. Div. 390, 74 N. Y. Supp. 375; *Thurston v. Whitney*, 2 Cush. (Mass.) 110.

**HURTARDUS, or HURTUS.** A ram or wether.

**HURTO.** In Spanish law. Theft. White, New Recop. b. 2, tit. 20.

**HUSBAND.** A married man; one who has a lawful wife living. The correlative of "wife."

Etymologically, the word signified the "house bond;" the man who, according to Saxon ideas and institutions, held around him the family, for whom he was in law responsible.

**HUSBAND AND WIFE.** One of the great domestic relationships; being that of a man and woman lawfully joined in marriage, by which, at common law, the legal existence of a wife is incorporated with that of her husband.

**HUSBAND LAND.** In old Scotch law. A quantity of land containing commonly six acres. Skene.

**HUSBAND OF A SHIP.** See Ship's Husband.

**HUSBANDMAN.** A farmer; a cultivator or tiller of the ground. The word "farmer" is colloquially used as synonymous with "husbandman," but originally meant a tenant who cultivates leased ground.

**HUSBANDRIA.** In old English law. Husbandry. Dyer, (Fr. Ed.) 35b.

**HUSBANDRY.** Agriculture; cultivation of the soil for food; farming, in the sense of operating land to raise provisions. *Simons v. Lovell*, 7 Heisk. (Tenn.) 516; *McCue v. Tunstead*, 65 Cal. 506, 4 Pac. 510.

**HUSBREC.** In Saxon law. The crime of housebreaking or burglary. Crabb, Eng. Law, 59, 308.

**HUSCARLE.** In old English law. A house servant or domestic; a man of the household. Spelman.

A king's vassal, thane, or baron; an earl's man or vassal. A term of frequent occurrence in Domesday Book.

**HUSFASTNE.** He who holds house and land. Bract. l. 3, t. 2, c. 10.

**HUSGABLUM.** In old records. House rent; or a tax or tribute laid upon a house. Cowell; Blount.

**HUSH-MONEY.** A colloquial expression to designate a bribe to hinder information; pay to secure silence.

**HUSTINGS.** Council; court; tribunal. Apparently so called from being held within a building, at a time when other courts were held in the open air. It was a local court. The county court in the city of London bore this name. There were hustings at York, Winchester, Lincoln, and in other places similar to the London hustings. Also the raised place from which candidates for seats in parliament address the constituency, on the occasion of their nomination. Wharton.

In Virginia, some of the local courts are called "hustings," as in the city of Richmond. *Smith v. Com.*, 6 Grat. (Va.) 696. The municipal courts established (in Virginia) in any city of over 5,000 inhabitants were at one time called *hustings* courts. Cent. Dict.

**HUTESIUM ET CLAMOR.** Hue and cry. See Hue and Cry.

**HUTILAN.** Taxes. Mon. Angl. i. 586.

**HWATA, HWATUNG.** In old English law. Augury; divination.

**HYBERNAGIUM.** In old English law. The season for sowing winter grain, between Michaelmas and Christmas. The land on which such grain was sown. The grain itself; winter grain or winter corn. Cowell.

**HYBRID.** A mongrel; an animal formed of the union of different species, or different genera; also (metaphorically) a human being born of the union of persons of different races.

**HYD.** In old English law. Hide; skin. A measure of land, containing according to some, a hundred acres, which quantity is also assigned to it in the *Dialogus de Scaccario*. It seems, however, that the hide varied in different parts of the kingdom.

**HYDAGE.** See Hidage.

**HYDROMETER.** An instrument for measuring the density of fluids. Being immersed in fluids, as in water, brine, beer, brandy, etc., it determines the proportion of their density, or their specific gravity, and thence their quality. See Rev. St. U. S. § 2918 (19 USCA § 390).

**HYDROSTATIC TEST.** A method of determining whether or not a deceased infant was born alive, involving the removal of the lungs and the placing of them in a vessel of water; if the infant had breathed, the air in the lungs will cause them to float, though they may also float if decomposition has set in and gas has formed in the body. *Morgan v. State*, 256 S. W. 433, 148 Tenn. 417. Called, also, "docimasia pulmonum."

**HYEMS, HIEMS.** Lat. In the civil law. Winter. Dig. 43, 20, 4, 34. Written, in some of the old books, "yems." Fleta, lib. 2, c. 73, §§ 16, 18.

**HYGIENE.** A system of principles or rules designed for the promotion of health. Lunn v. City of Auburn, 85 A. 893, 894, 110 Me. 241.

**HYPNOTISM.** In medical jurisprudence. A psychic or mental state rendering the patient susceptible to suggestion at the will of another.

The hypnotic state is an abnormal condition of the mind and senses, in the nature of trance, artificial catalepsy, or somnambulism, induced in one person by another, by concentration of the attention, a strong effort of volition, and perhaps the exercise of a telepathic power not as yet fully understood, or by mental suggestion, in which condition the mental processes of the subject and to a great extent his will are subjugated and directed by those of the operator.

**HYPOBOLUM.** In the civil law. The name of the bequest or legacy given by the husband to his wife, at his death, above her dowry.

**HYPPOCHONDRIA; HYPOMANIA.** See Insanity.

**HYPOSTASIS.** In medical jurisprudence. (1) The morbid deposition of a sediment of any kind in the body. (2) A congestion or flushing of the blood vessels, as in varicose veins. *Post-mortem hypostasis*, a peculiar lividity of the cadaver.

**HYPOTHEC.** In Scotland, the term "*hypothec*" is used to signify the landlord's right which, independently of any stipulation, he has over the crop and stocking of his tenant. It gives a security to the landlord over the crop of each year for the rent of that year, and over the cattle and stocking on the farm for the current year's rent, which last continues for three months after the last conventional term for the payment of the rent. Bell.

**HYPOTHECA.** "Hypotheca" was a term of the Roman law, and denoted a pledge or mortgage. As distinguished from the term "*pignus*," in the same law, it denoted a mortgage, whether of lands or of goods, in which the subject in pledge remained in the possession of the mortgagor or debtor; whereas in the *pignus* the mortgagee or creditor was in the possession. Such an hypotheca might be either express or implied; express, where the parties upon the occasion of a loan entered into express agreement to that effect; or implied, as, *e. g.*, in the case of the stock and utensils of a farmer, which were subject to the landlord's right as a creditor for rent; whence the Scotch law of hypothec.

The word has suggested the term "hypothecate," as used in the mercantile and mari-

time law of England. Thus, under the factor's act, goods are frequently said to be "hypothecated;" and a captain is said to have a right to hypothecate his vessel for necessary repairs. Brown. See Mackeld. Rom. Law, §§ 334-359.

**HYPOTHECARIA ACTIO.** Lat. In the civil law. An hypothecary action; an action for the enforcement of an *hypotheca*, or right of mortgage; or to obtain the surrender of the thing mortgaged. Inst. 4, 6, 7; Mackeld. Rom. Law, § 356. Adopted in the Civil Code of Louisiana, under the name of "*l'action hypothécaire*," (translated, "action of mortgage.") See Civ. Code La. arts. 1433-1443; Code Prac. La. art. 61.

**HYPOTHECARIII CREDITORES.** Lat. In the civil law. Hypothecary creditors; those who loaned money on the security of an *hypotheca*, (*q. v.*) Calvin.

**HYPOTHECARY ACTION.** The name of an action allowed under the civil law for the enforcement of the claims of a creditor by the contract of hypotheca. Lovell v. Cragin, 136 U. S. 130, 10 Sup. Ct. 1024, 34 L. Ed. 372.

An hypothecary action is a real action, which the creditor brings against the property which has been hypothecated to him by his debtor, in order to have it seized and sold for the payment of his debt. Code Prac. La. art. 61. In the hypothecary action proper, there is no pursuit of the person; the thing mortgaged is the debtor, and the action is directed against it. In this sense, the action is real. *Wisdom v. Parker*, 31 La. Ann. 52.

**HYPOTHECATE.** To pledge a thing without delivering the possession of it to the pledgee. "The master, when abroad, and in the absence of the owner, may *hypothecate* the ship, freight, and cargo, to raise money requisite for the completion of the voyage." 3 Kent, Comm. 171. See *Spect v. Spect*, 88 Cal. 437, 26 Pac. 203, 13 L. R. A. 137, 22 Am. St. Rep. 314; *Ogden v. Lathrop*, 31 N. Y. Super. Ct. 651.

**HYPOTHECATION.** A term borrowed from the civil law. In so far as it is naturalized in English and American law, it means a contract of mortgage or pledge in which the subject-matter is not delivered into the possession of the pledgee or pawnee; or, conversely, a conventional right existing in one person over specific property of another, which consists in the power to cause a sale of the same, though it be not in his possession, in order that a specific claim of the creditor may be satisfied out of the proceeds.

The term is frequently used in our textbooks and reports, particularly upon the law of bottomry and maritime liens; thus a vessel is said to be hypothecated for the demand of one who has advanced money for supplies.

In the common law, there are but few, if any, cases of hypothecation, in the strict sense of the

civil law; that is, a pledge without possession by the pledgee. The nearest approaches, perhaps, are cases of bottomry bonds and claims of materialmen, and of seamen for wages; but these are liens and privileges, rather than hypothecations. Story, Bailm. § 288.

"Hypothecation" is a term of the civil law, and is that kind of pledge in which the possession of the thing pledged remains with the debtor, (the obligation resting in mere contract without delivery;) and in this respect distinguished from "*pignus*," in which possession is delivered to the creditor or pawnee. *Whitney v. Peay*, 24 Ark. 27. See 2 Bell, Comm. 25.

**HYPOTHECATION BOND.** A bond given in the contract of bottomry or *respondentia*.

**HYPOTHÈQUE.** In French law. Hypothecation; a mortgage on real property; the right vested in a creditor by the assignment to him of real estate as security for the payment of his debt, whether or not it be accompanied by possession. See Civ. Code La. art. 3397.

It corresponds to the mortgage of real property in English law, and is a real charge, following the property into whosoever hands it comes. It may be *légal*, as in the case of the charge which the state has over the lands of its accountants, or which a married woman has over those of her husband; *judiciaire*, when it is the result of a judgment of a court of justice; and *conventionnelle*, when it is the result of an agreement of the parties. Brown.

**HYPOTHESIS.** A supposition, assumption, or theory; a theory set up by the prosecution, on a criminal trial, or by the defense, as an explanation of the facts in evidence, and a ground for inferring guilt or innocence, as the case may be, or as indicating a probable or possible motive for the crime.

**HYPOTHETICAL QUESTION.** A combination of assumed or proved facts and circumstances, stated in such form as to constitute a coherent and specific situation or state of facts, upon which the opinion of an expert is asked, by way of evidence on a trial. *Howard v. People*, 185 Ill. 552, 57 N. E. 441; *People v. Durrant*, 116 Cal. 216, 48 P. 85; *Cowley v. People*, 83 N. Y. 464, 38 Am. Rep. 464; *Stearns v. Field*, 90 N. Y. 641.

**HYPOTHETICAL YEARLY TENANCY.** The basis, in England, of rating lands and hereditaments to the poor-rate, and to other rates and taxes that are expressed to be leviable or assessable in like manner as the poor-rate.

**HYRNES.** In old English law. A parish.

**HYSTERIA.** A paroxysmal disease or disorder of the nervous system, more common in females than males, not originating in any anatomical lesion, due to psychic rather than physical causes, and attended, in the acute or convulsive form, by extraordinary manifestations of secondary effects of extreme nervousness.

Hysteria is a state in which ideas control the body and produce morbid changes in its functions. Mæbius. A special psychic state, characterized by symptoms which can also be produced or reproduced by suggestion, and which can be treated by psychotherapy or persuasion, hysteric and hypnotic states being practically equivalent to each other. Babinski. A purely psychic or mental disorder due to hereditary predisposition. Charcot. A state resulting from a psychic lesion or nervous shock, leading to repression or aberration of the sexual instinct. Freud. Hysteria is much more common in women than in men, and was formerly thought to be due to some disorder of the uterus or sexual system; but it is now known that it may occur in men, in children, and in very aged persons of either sex.

In the convulsive form of hysteria, commonly called "hysterics" or "a fit of hysterics," there is nervestorm characterized by loss or abandonment of self-control in the expression of the emotions, particularly grief, by paroxysms of tears or laughter or both together, sensations of constriction as of a ball rising in the throat (*globus hystericus*), convulsive movements in the chest, pelvis, and abdomen, sometimes leading to a fall with apparent unconsciousness, followed by a relapse into semi-unconsciousness or catalepsy. In the non-convulsive forms, all kinds of organic paralyses may be simulated, as well as muscular contractions and spasms, tremor, loss of sensation (*anæsthesia*) or exaggerated sensation (*hyperæsthesia*), disturbances of respiration, disordered appetite, accelerated pulse, hemorrhages in the skin (*stigmata*), pain, swelling, or even dislocation of the joints, and great amenability to suggestion.

**HYSTERO-EPILEPSY.** See Epilepsy.

**HYSTEROPOTMOI.** Those who, having been thought dead, had, after a long absence in foreign countries, returned safely home; or those who, having been thought dead in battle, had afterwards unexpectedly escaped from their enemies and returned home. These, among the Romans, were not permitted to enter their own houses at the door, but were received at a passage opened in the roof. Enc. Lond.

**HYSTEROTOMY.** The Cæsarean operation. See Cæsarean Section.

**HYTHE.** In English law. A port, wharf, or small haven to embark or land merchandise at. Cowell; Blount.