

I

I. The initial letter of the word "*Instituta*," used by some civilians in citing the Institutes of Justinian. Tayl. Civil Law, 24.

I—CTUS. An abbreviation for "*jurisconsultus*," one learned in the law; a juriconsult.

I. E. An abbreviation for "*id est*," that is; that is to say.

I O U. A memorandum of debt, consisting of these letters, ("I owe you,") a sum of money, and the debtor's signature, is termed an "I O U." Kinney v. Flynn, 2 R. I. 329.

IBERNAGIUM. In old English law. The season for sowing winter corn. Also spelled "hibernagium" and "hybernagium."

Ibi semper debet fieri triatio ubi juratores meliorem possunt habere notitiam. 7 Coke, 1*b*. A trial should always be had where the jurors can be the best informed.

IBIDEM. Lat. In the same place; in the same book; on the same page, etc. Abbreviated to "*ibid.*" or "*ib.*"

ICENI. The ancient name for the people of Suffolk, Norfolk, Cambridgeshire, and Huntingdonshire, in England.

ICONA. An image, figure, or representation of a thing. Du Cange.

ICTUS. In old English law. A stroke or blow from a club or stone; a bruise, contusion, or swelling produced by a blow from a club or stone, as distinguished from "*plaga*," (a wound.) Fleta, lib. 1, c. 41, § 3.

ICTUS ORBIS. In medical jurisprudence. A maim, a bruise, or swelling; any hurt without cutting the skin. When the skin is cut, the injury is called a "wound." Bract. lib. 2, tr. 2, cc. 5, 24.

Id certum est quod certum reddi potest. That is certain which can be made certain. 2 Bl. Comm. 143; 1 Bl. Comm. 78; 4 Kent, Comm. 462; Broom, Max. 624.

Id certum est quod certum reddi potest, sed id magis certum est quod de semetipso est certum. That is certain which can be made certain, but that is more certain which is certain of itself. 9 Coke, 47*a*.

ID EST. Lat. That is. Commonly abbreviated "*i. e.*"

Id perfectum est quod ex omnibus suis partibus constat. That is perfect which consists of all its parts. 9 Coke, 9.

Id possumus quod de jure possumus. Lane, 116. We may do only that which by law we are allowed to do.

Id quod est magis remotum, non trahit ad se quod est magis junctum, sed e contrario in omni casu. That which is more remote does not draw to itself that which is nearer, but the contrary in every case. Co. Litt. 164.

Id quod nostrum est sine facto nostro ad alium transferri non potest. That which is ours cannot be transferred to another without our act. Dig. 50, 17, 11.

Id solum nostrum quod debitis deductis nostrum est. That only is ours which remains to us after deduction of debts. Tray. Lat. Max. 227.

IDEM. Lat. The same. According to Lord Coke, "*idem*" has two significations, *sc.*, *idem syllabis seu verbis*, (the same in syllabus or words,) and *idem re et sensu*, (the same in substance and in sense.) 10 Coke, 124*a*.

In Old Practice

The said, or aforesaid; said, aforesaid. Distinguished from "*prædictus*" in old entries, though having the same general signification. Townsh. Pl. 15, 16.

Idem agens et patiens esse non potest. Jenk. Cent. 40. The same person cannot be both agent and patient; *i. e.*, the doer and person to whom the thing is done.

Idem est facere, et non prohibere cum possis; et qui non prohibet, cum prohibere possit, in culpâ est, (aut jubet.) 3 Inst. 158. To commit, and not to prohibit when in your power, is the same thing; and he who does not prohibit when he can prohibit is in fault, or does the same as ordering it to be done.

Idem est nihil dicere, et insufficienter dicere. It is the same thing to say nothing, and to say a thing insufficiently. 2 Inst. 178. To say a thing in an insufficient manner is the same as not to say it at all. Applied to the plea of a prisoner. *Id.*

Idem est non esse, et non apparere. It is the same thing not to be as not to appear. Jenk. Cent. 207. Not to appear is the same thing as not to be. Broom, Max. 165.

Idem est non probari et non esse; non deficit jus, sed probatio. What is not proved and what does not exist are the same; it is not a defect of the law, but of proof.

Idem est scire aut scire debere aut potuisse. To be bound to know or to be able to know is the same as to know.

IDEM PER IDEM. The same for the same. An illustration of a kind that really adds no additional element to the consideration of the question.

Idem semper antecedenti proximo refertur. Co. Litt. 685. "The same" is always referred to its next antecedent.

IDEM SONANS. Sounding the same or alike; having the same sound. A term applied to names which are substantially the same, though slightly varied in the spelling, as "Lawrence" and "Lawrance," and the like. 1 Crompt. & M. 806; 3 Chit. Gen. Pr. 171; Clements v. State, 19 Ala. App. 640, 99 So. 832, 833; Newbrough v. Moore (Mo. Sup.) 202 S. W. 547, 550; Geneva v. Thompson, 200 Iowa, 1173, 206 N. W. 132, 133; Frazier v. State, 19 Ala. App. 322, 97 So. 251; Rhodes v. State, 74 Fla. 230, 76 So. 776; State v. Alva, 18 N. M. 143, 134 P. 209, 210; Smith v. Dwight, 80 Or. 1, 156 P. 573, 575, Ann. Cas. 1918D, 563; Golson v. State, 15 Ala. App. 420, 73 So. 753.

Two names are said to be "*idem sonantes*" if the attentive ear finds difficulty in distinguishing them when pronounced, or if common and long-continued usage has by corruption or abbreviation made them identical in pronunciation. State v. Griffie, 118 Mo. 188, 23 S. W. 878. The rule of "*idem sonans*" is that absolute accuracy in spelling names is not required in a legal document or proceedings either civil or criminal; that if the name, as spelled in the document, though different from the correct spelling thereof, conveys to the ear, when pronounced according to the commonly accepted methods, a sound practically identical with the correct name as commonly pronounced, the name thus given is a sufficient identification of the individual referred to, and no advantage can be taken of the clerical error. Hubner v. Reickhoff, 103 Iowa, 368, 72 N. W. 540, 64 Am. St. Rep. 191. But the doctrine of "*idem sonans*" has been much enlarged by modern decisions, to conform to the growing rule that a variance, to be material, must be such as has misled the opposite party to his prejudice. State v. White, 34 S. C. 59, 12 S. E. 661, 27 Am. St. Rep. 783.

IDENTICAL. Exactly the same for all practical purposes. Carn v. Moore, 74 Fla. 77, 76 So. 337, 340.

IDENTIFICATION. Proof of identity; the proving that a person, subject, or article before the court is the very same that he or it is alleged, charged, or reputed to be; as where a witness recognizes the prisoner at the bar as the same person whom he saw committing the crime; or where handwriting, stolen goods, counterfeit coin, etc., are recognized as the same, which once passed under the observation of the person identifying them. Hall v. Cotton, 167 Ky. 464, 180 S. W. 779, 781, L. R. A. 1916C, 1124.

Identitas vera colligitur ex multitudine signorum. True identity is collected from a multitude of signs. Bac. Max.

IDENTITATE NOMINIS. In English law. An ancient writ (now obsolete) which lay for one taken and arrested in any personal action, and committed to prison, by mistake for another man of the same name. Fitzh. Nat. Brev. 267.

IDENTITY.

In the Law of Evidence

Sameness; the fact that a subject, person, or thing before a court is *the same* as it is represented, claimed, or charged to be. See Burrill, Circ. Ev. 382, 453, 631, 644.

In Patent Law

Such sameness between two designs, inventions, combinations, etc., as will constitute the one an infringement of the patent granted for the other.

To constitute "identity of invention," and therefore infringement, not only must the result obtained be the same, but, in case the means used for its attainment is a combination of known elements, the elements combined in both cases must be the same, and combined in the same way, so that each element shall perform the same function; provided that the differences alleged are not merely colorable according to the rule forbidding the use of known equivalents. Electric Railroad Signal Co. v. Hall Railroad Signal Co., 114 U. S. 87, 5 Sup. Ct. 1069, 29 L. Ed. 96; Latta v. Shawk, 14 Fed. Cas. 1188. "Identity of design" means sameness of appearance, or, in other words, sameness of effect upon the eye,—not the eye of an expert, but of an ordinary intelligent observer. Smith v. Whitman Saddle Co., 148 U. S. 674, 13 Sup. Ct. 768, 37 L. Ed. 606.

IDEO. Lat. Therefore. Calvin.

IDEO CONSIDERATUM EST. Lat. Therefore it is considered. These were the words used at the beginning of the entry of judgment in an action, when the forms were in Latin. They are also used as a name for that portion of the record.

IDEOT. An old form for idiot (*q. v.*).

IDES. A division of time among the Romans. In March, May, July, and October, the Ides were on the 15th of the month; in the remaining months, on the 13th. This method of reckoning is still retained in the chancery of Rome, and in the calendar of the breviary. Wharton.

IDIOCHIRA. Græco-Lat. In the civil law. An instrument privately executed, as distinguished from such as were executed before a public officer. Cod. 8, 18, 11; Calvin.

IDIOCY, IDIOPATHIC INSANITY. See Insanity.

IDIOT. A person who has been without understanding from his nativity, and whom the law, therefore, presumes never likely to attain any. Shelf. Lun. 2. See Insanity. State

v. Haner, 186 Iowa, 1259, 173 N. W. 225; Jones v. Commonwealth, 154 Ky. 752, 159 S. W. 568, 569.

IDIOTA.

In the Civil Law

An unlearned, illiterate, or simple person. Calvin. A private man; one not in office.

In Common Law

An idiot or fool.

IDIOTA INQUIRENDO, WRIT DE. This is the name of an old writ which directs the sheriff to inquire whether a man be an idiot or not. The inquisition is to be made by a jury of twelve men. Fitzh. Nat. Brev. 232. And, if the man were found an idiot, the profits of his lands and the custody of his person might be granted by the king to any subject who had interest enough to obtain them. 1 Bl. Comm. 303.

IDONEUM SE FACERE; IDONEARE SE. To purge one's self by oath of a crime of which one is accused.

IDONEUS. Lat. In the civil and common law. Sufficient; competent; fit or proper; responsible; unimpeachable. *Idoneus homo*, a responsible or solvent person; a good and lawful man. Sufficient; adequate; satisfactory. *Idonea cautio*, sufficient security.

IDONIETAS. In old English law. Ability or fitness (of a parson). Artic. Cleri, c. 13.

IF. In deeds and wills, this word, as a rule, implies a condition precedent, unless it be controlled by other words. 2 Crabb, Real Prop. p. 809, § 2152; Sutton v. West, 77 N. C. 431; Northcutt v. McAllister, 297 Mo. 475, 249 S. W. 398, 401; People v. Bailey, 103 Misc. 366, 171 N. Y. S. 394, 397; Cantrell v. State, 117 Ark. 233, 174 S. W. 521, 523; Muller v. Cox, 98 N. J. Eq. 188, 130 A. 811, 813; Enz v. Bowan, 98 N. J. Eq. 514, 131 A. 159, 161; Wandell v. Johnson, 71 Mont. 73, 227 P. 58, 60; National Surety Co. v. Haley, 58 Okl. 263, 159 P. 292, 295; Mendenhall v. State, 71 Fla. 552, 72 So. 202, 205; Clore v. Clore, 184 Ky. 83, 211 S. W. 208, 209; O'Shea v. Barry, 252 Mass. 510, 147 N. E. 845, 846; State Bank of Eau Gallie v. Rose's Adm'r, 219 Ky. 562, 293 S. W. 1087, 1089.

IFUNGIA. In old English law. The finest white bread, formerly called "cocked bread." Blount.

IGLISE. L. Fr. A church. Kelham. Another form of "eglise."

IGNIS JUDICIUM. Lat. The old judicial trial by fire. Blount.

IGNITEGIUM. In old English law. The curfew, or evening bell. Cowell. See Curfew.

IGNOMINY. Public disgrace; infamy; reproach; dishonor. Ignominy is the opposite of esteem. Wolff, § 145. See Brown v. Kingsley, 38 Iowa, 220.

IGNORAMUS. Lat. "We are ignorant;" "We ignore it." Formerly the grand jury used to write this word on bills of indictment when, after having heard the evidence, they thought the accusation against the prisoner was groundless, intimating that, though the facts might possibly be true, the truth did not appear to them; but now they usually write in English the words "Not a true bill," or "Not found," if that is their verdict; but they are still said to *ignore* the bill. Brown.

IGNORANCE. The want or absence of knowledge.

Ignorance of law is want of knowledge or acquaintance with the laws of the land in so far as they apply to the act, relation, duty, or matter under consideration. *Ignorance of fact* is want of knowledge of some fact or facts constituting or relating to the subject-matter in hand. Marshall v. Coleman, 187 Ill. 556, 58 N. E. 628; Haven v. Foster, 9 Pick. (Mass.) 130, 19 Am. Dec. 353.

Ignorance is not a state of the mind in the sense in which sanity and insanity are. When the mind is ignorant of a fact, its condition still remains sound; the power of thinking, of judging, of willing, is just as complete before communication of the fact as after; the essence or texture, so to speak, of the mind, is not, as in the case of insanity, affected or impaired. Ignorance of a particular fact consists in this: that the mind, although sound and capable of healthy action, has never acted upon the fact in question, because the subject has never been brought to the notice of the perceptive faculties. Meeker v. Boylan, 28 N. J. Law, 274.

Synonyms

"Ignorance" and "error" or "mistake" are not convertible terms. The former is a lack of information or absence of knowledge; the latter, a misapprehension or confusion of information, or a mistaken supposition of the possession of knowledge. Error as to a fact may imply ignorance of the truth; but ignorance does not necessarily imply error. Hutton v. Edgerton, 6 Rich. (S. C.) 489; Culbreath v. Culbreath, 7 Ga. 70, 50 Am. Dec. 375; Langston v. Langston, 147 Ga. 318, 93 S. E. 892, 893.

In General

—**Essential ignorance** is ignorance in relation to some essential circumstance so intimately connected with the matter in question, and which so influences the parties, that it induces them to act in the business. Poth. Vente, nn. 3, 4; 2 Kent, Comm. 367.

—**Non-essential or accidental ignorance** is that which has not of itself any necessary connection with the business in question, and which is not the true consideration for entering into the contract.

—**Involuntary ignorance** is that which does not proceed from choice, and which cannot be overcome by the use of any means of knowledge known to a person and within his power; as the ignorance of a law which has not yet been promulgated.

—**Voluntary ignorance** exists when a party might, by taking reasonable pains, have acquired the necessary knowledge. For example, every man might acquire a knowledge of the laws which have been promulgated. Doct. & Stud. 1, 46; Plowd. 343.

IGNORANTIA. Lat. Ignorance; want of knowledge. Distinguished from mistake, (error,) or wrong conception. Mackeld. Rom. Law, § 178; Dig. 22, 6. Divided by Lord Coke into *ignorantia facti* (ignorance of fact) and *ignorantia juris* (ignorance of law). And the former, he adds, is twofold,—*lectionis et lingue* (ignorance of reading and ignorance of language). 2 Coke, 3b.

Ignorantia eorum quæ quis scire tenetur non excusat. Ignorance of those things which one is bound to know excuses not. Hale, P. C. 42; Broom, Max. 267.

Ignorantia facti excusat. Ignorance of fact excuses or is a ground of relief. 2 Coke, 3b. Acts done and contracts made under mistake or ignorance of a material fact are voidable and relievable in law and equity. 2 Kent, Comm. 491, and notes.

Ignorantia facti excusat, ignorantia juris non excusat. Ignorance of the fact excuses; ignorance of the law excuses not. Every man must be taken to be cognizant of the law; otherwise there is no saying to what extent the excuse of ignorance may not be carried. 1 Coke, 177; Broom, Max. 253.

Ignorantia juris quod quisque tenetur scire, neminem excusat. Ignorance of the [or a] law, which every one is bound to know, excuses no man. A mistake in point of law is, in criminal cases, no sort of defense. 4 Bl. Comm. 27; 4 Steph. Comm. 81; Broom, Max. 253; 7 Car. & P. 456. And, in civil cases, ignorance of the law, with a full knowledge of the facts, furnishes no ground, either in law or equity, to rescind agreements, or reclaim money paid, or set aside solemn acts of the parties. 2 Kent, Comm. 491, and note.

Ignorantia juris sui non præjudicat juri. Ignorance of one's right does not prejudice the right. Lofft, 552.

Ignorantia legis neminem excusat. Ignorance of law excuses no one. 4 Bouv. Inst. no. 3828; 1 Story, Eq. Jur. § 111; 7 Watts, 374.

IGNORATIO ELENCHI. Lat. A term of logic, sometimes applied to pleadings and to arguments on appeal, which signifies a mistake of the question, that is, the mistake

of one who, failing to discern the real question which he is to meet and answer, addresses his allegations or arguments to a collateral matter or something beside the point. See Case upon the Statute for Distribution, Wythe (Va.) 309.

Ignoratis terminis artis, ignoratur et ars. Where the terms of an art are unknown, the art itself is unknown also. Co. Litt. 2a.

IGNORE. To be ignorant of, or unacquainted with.

To disregard willfully; to refuse to recognize; to decline to take notice of. See *Cleburne County v. Morton*, 69 Ark. 48, 60 S. W. 307.

To reject as groundless, false or unsupported by evidence; as when a grand jury *ignores* a bill of indictment.

Ignoscitur ei qui sanguinem suum qualiter redemptum voluit. The law holds him excused from obligation who chose to redeem his blood (or life) upon any terms. Whatever a man may do under the fear of losing his life or limbs will not be held binding upon him in law. 1 Bl. Comm. 131.

IKBAL. Acceptance (of a bond, etc.). Wilson's Gloss. Ind.

IKBAL DAWA. Confession of judgment. Wilson's Gloss. Ind.

IKENILD STREET. One of the four great Roman roads in Britain; supposed to be so called from the *Iceni*.

IKRAH. Compulsion; especially constraint exercised by one person over another to do an illegal act, or to act contrary to his inclination. Wilson's Gloss. Ind.

IKRAR. Agreement, assent, or ratification. Wilson's Gloss. Ind.

IKRAR NAMA. A deed of assent and acknowledgment. Wilson's Gloss. Ind.

ILL. In old pleading. Bad; defective in law; null; naught; the opposite of good or valid.

ILL FAME. Evil repute; notorious bad character. Houses of prostitution, gaming houses, and other such disorderly places are called "houses of ill fame," and a person who frequents them is a person of ill fame. See *Boles v. State*, 46 Ala. 206.

ILLATA ET INVECTA. Lat. Things brought into the house for use by the tenant were so called, and were liable to the *jus hypothecæ* of Roman law, just as they are to the landlord's right of distress at common law.

ILLEGAL. Not authorized by law; illicit; unlawful; contrary to law.

Sometimes this term means merely that which lacks authority of or support from law; but more frequently it imports a violation. Etymologically, the word seems to convey the negative meaning only. But in ordinary use it has a severer, stronger signification; the idea of censure or condemnation for breaking law is usually presented. But the law implied in illegal is not necessarily an express statute. Things are called "illegal" for a violation of common-law principles. And the term does not imply that the act spoken of is immoral or wicked; it implies only a breach of the law. See *State v. Haynorth*, 3 Sneed (Tenn.) 65; *Tiedt v. Carstensen*, 61 Iowa, 334, 16 N. W. 214; *Chadbourne v. Newcasttle*, 48 N. H. 199; *People v. Kelly*, 1 Abb. Prac. N. S. (N. Y.) 437; *Ex parte Schwartz*, 2 Tex. App. 80; *State v. American Surety Co. of New York*, 26 Idaho, 652, 145 P. 1097, 1104, Ann. Cas. 1916E, 209; *Grahl v. United States* (C. C. A.) 261 F. 487, 489; *United States v. Koopmans* (D. C.) 290 F. 545, 546; *Ryan v. Hutchinson*, 161 Iowa, 575, 143 N. W. 433; *Bretz v. El Reno State Bank*, 71 Okl. 283, 177 P. 362, 363; *Uhlmann v. Kin Daw*, 97 Or. 681, 193 P. 435, 437; *Dameron v. Hamilton*, 264 Mo. 103, 174 S. W. 425, 430; *United States v. Mulvey* (C. C. A.) 232 F. 513, 519; *Staaeke v. Routledge*, 111 Tex. 489, 241 S. W. 994, 998; *Meridian Life Ins. Co. v. Dean*, 182 Ala. 127, 62 So. 90, 92; *United States v. Shanahan* (D. C.) 232 F. 169, 171; *United States v. Ali* (D. C.) 7 F.(2d) 728, 730; *Lazarowitz v. Kazan*, 203 N. Y. S. 610, 612, 122 Misc. 202.

ILLEGAL CONDITIONS. All those that are impossible, or contrary to law, immoral, or repugnant to the nature of the transaction.

ILLEGAL CONTRACT. An agreement to do any act forbidden by the law, or to omit to do any act enjoined by the law. *Billingsley v. Clelland*, 41 W. Va. 243, 23 S. E. 816.

ILLEGAL INTEREST. Usury; interest at a higher rate than the law allows. *Parsons v. Babcock*, 40 Neb. 119, 58 N. W. 726.

ILLEGAL TRADE. Such traffic or commerce as is carried on in violation of the municipal law, or contrary to the law of nations. See *Illicit*.

ILLEGALITY. That which is contrary to the principles of law, as contradistinguished from mere rules of procedure. It denotes a complete defect in the proceedings. *Ex parte Schwartz*, 2 Tex. App. 74; *State v. Conover*, 7 N. J. L. 203; *Ex parte Davis*, 118 Or. 693, 247 P. 809, 811; *United States v. Richmond* (C. C. A.) 17 F.(2d) 28, 32; *Bunten v. Rock Springs Grazing Ass'n*, 29 Wyo. 461, 215 P. 244, 254; *United States v. Ness* (C. C. A.) 230 F. 950, 955, Ann. Cas. 1917C, 41; *In re Allen Square Co. v. Krieger*, 217 App. Div. 123, 216 N. Y. S. 458, 462; *United States v. Salomon* (D. C.) 231 F. 461, 463.

ILLEGITIMACY. The condition before the law, or the social *status*, of a bastard; the state or condition of one whose parents were not intermarried at the time of his birth. *Miller v. Miller*, 18 Hun (N. Y.) 509; *Brown v. Belmarde*, 3 Kan. 52.

ILLEGITIMATE. That which is contrary to law; it is usually applied to bastards, or children born out of lawful wedlock.

The Louisiana Code divided illegitimate children into two classes: (1) Those born from two persons who, at the moment when such children were conceived, could have lawfully intermarried; and (2) those who are born from persons to whose marriage there existed at the time some legal impediment. Both classes, however, could be acknowledged and take by devise. *Compton v. Prescott*, 12 Rob. (La.) 56.

ILLEVIABLE. Not leviable; that cannot or ought not to be levied. *Cowell*.

ILLICENCIATUS. In old English law. Without license. *Fleta*, lib. 3, c. 5, § 12.

ILLICIT. Not permitted or allowed; prohibited; unlawful; as an *illicit* trade; *illicit* intercourse. *State v. Miller*, 60 Vt. 90, 12 A. 526; *City of Shreveport v. Maroun*, 134 La. 490, 64 So. 388, 392; *State v. Williams*, 135 La. 692, 65 So. 898, 899; *Hewitt v. State*, 71 Tex. Cr. R. 243, 158 S. W. 1120, 1124.

ILLICIT CONNECTION. Unlawful sexual intercourse. *State v. King*, 9 S. D. 628, 70 N. W. 1046.

ILLICIT COHABITATION. The living together as man and wife of two persons who are not lawfully married, with the implication that they habitually practice fornication. See *Rex v. Kalailoa*, 4 Hawaii, 41; *Thomas v. United States* (D. C.) 14 F.(2d) 228, 229.

ILLICIT DISTILLERY. One carried on without a compliance with the provisions of the laws of the United States relating to the taxation of spirituous liquors. *U. S. v. Johnson* (C. C.) 26 F. 684.

ILLICIT TRADE. Policies of marine insurance usually contain a covenant of warranty against "illicit trade," meaning thereby trade which is forbidden, or declared unlawful, by the laws of the country where the cargo is to be delivered. "It is not the same with 'contraband trade,' although the words are sometimes used as synonymous. Illicit or prohibited trade is one which cannot be carried on without a distinct violation of some positive law of the country where the transaction is to take place." 1 Pars. Mar. Ins. 614.

ILLICITE. Lat. Unlawfully. This word has a technical meaning, and is requisite in an indictment where the act charged is unlawful; as in the case of a riot. 2 Hawk. P. C. c. 25, § 96.

ILLICITUM COLLEGIUM. Lat. An illegal corporation.

ILLITERATE. Unlettered; ignorant; unlearned. Generally used of one who cannot read and write. See *In re Succession of Carroll*, 23 La. Ann. 388.

ILLNESS. In insurance law. A disease or ailment of such a character as to affect the general soundness and healthfulness of the system seriously, and not a mere temporary indisposition which does not tend to undermine or weaken the constitution of the insured. *Prudential Ins. Co. of America v. Sellers*, 54 Ind. App. 326, 102 N. E. 894, 897; *Northwestern Mut. Life Ins. Co. v. Wiggins* (C. C. A.) 15 F.(2d) 646, 648; *National Live Stock Ins. Co. v. Bartlow*, 60 Ind. App. 233, 110 N. E. 224, 225; *The Homesteaders v. Stapp* (Tex. Civ. App.) 205 S. W. 743, 745.

ILLOCABLE. Incapable of being placed out or hired.

ILLUD. Lat. That.

Illud, quod alias licitum non est, necessitas facit licitum; et necessitas inducit privilegium quoad jura privata. Bac. Max. That which is otherwise not permitted, necessity permits; and necessity makes a privilege as to private rights.

Illud, quod alteri unitur, extinguitur, neque amplius per se vacare licet. Godol. Ecc. Law, 169. That which is united to another is extinguished, nor can it be any more independent.

ILLUSION. In medical jurisprudence. An image or impression in the mind, excited by some external object addressing itself to one or more of the senses, but which, instead of corresponding with the reality, is perverted, distorted, or wholly mistaken, the error being attributable to the imagination of the observer, not to any defect in the organs of sense. See *Hallucination*, and see "*Delusion*," under *Insanity*.

ILLUSORY. Deceiving by false appearances; nominal, as distinguished from substantial.

ILLUSORY APPOINTMENT. Formerly the appointment of a merely nominal share of the property to one of the objects of a power, in order to escape the rule that an exclusive appointment could not be made unless it was authorized by the instrument creating the power, was considered illusory and void in equity. But this rule has been abolished in England. (1 Wm. IV. c. 46; 37 & 38 Vict. c. 37.) Sweet. See *Ingraham v. Meade*, 3 Wall. Jr. 32, 13 Fed. Cas. 50.

ILLUSORY APPOINTMENT ACT. The statute 1 Wm. IV. c. 46. This statute enacts that no appointment made after its passing, (July 16, 1830,) in exercise of a power to appoint property, real or personal, among several objects, shall be invalid, or impeached in equity, on the ground that an unsubstantial, illusory, or nominal share only was thereby appointed, or left unappointed, to devolve upon any one or more of the objects of such power; but that the appointment shall be valid in equity, as at law. See, too, 37 & 38 Vict. c. 37. Wharton.

ILLUSTRIOUS. The prefix to the title of a prince of the blood in England.

IMAGINE. In English law. In cases of treason the law makes it a crime to imagine the death of the king. But, in order to complete the crime, this act of the mind must be demonstrated by some overt act. The terms "imagining" and "compassing" are in this connection synonymous. 4 Bl. Comm. 78.

IMAN, IMAM, or IMAUM. A Mohammedan prince having supreme spiritual as well as temporal power; a regular priest of the mosque.

IMBARGO. An old form of "embargo," (*q. v.*) St. 18 Car. II. c. 5.

IMBASING OF MONEY. The act of mixing the specie with an alloy below the standard of sterling. 1 Hale, P. C. 102.

IMBECILITY. See *Insanity*.

IMBEZZLE. An occasional or obsolete form of "embezzle" (*q. v.*)

IMBLADARE. In old English law. To plant or sow grain. Bract. fol. 176b.

IMBRACERY. See *Embracery*.

IMBROCUS. A brook, gutter, or water-passage. Cowell.

IMITATION. The making of one thing in the similitude or likeness of another; as, counterfeit coin is said to be made "in imitation" of the genuine. An imitation of a trade-mark is that which so far resembles the genuine trade-mark as to be likely to induce the belief that it is genuine, whether by the use of words or letters similar in appearance or in sound, or by any sign, device, or other means. Pen. Code N. Y. § 368; *Wagner v. Daly*, 67 Hun, 477, 22 N. Y. S. 493; *State v. Harris*, 27 N. C. 294.

The test of "colorable imitation" is, not whether a difference may be recognized between the names of two competing articles when placed side by side, but whether the difference will be recognized by the purchaser with no opportunity for comparison. *The Best Foods v. Hemphill Packing Co.* (D. C.) 5 F.(2d) 355, 357.

IMMATERIAL. Not material, essential, or necessary; not important or pertinent; not decisive.

IMMATERIAL AVERMENT. An averment alleging with needless particularity or unnecessary circumstances what is material and necessary, and which might properly have been stated more generally, and without such circumstances and particulars; or, in other words, a statement of unnecessary particulars in connection with and as descriptive of what

is material. *Gould*, Pl. c. 3, § 188; *Pharr v. Bachelor*, 3 Ala. 245; *Green v. Palmer*, 15 Cal. 416, 76 Am. Dec. 492; *Dunlap v. Kelly*, 105 Mo. App. 1, 78 S. W. 664; *Bulova v. E. L. Barnett, Inc.*, 111 Misc. 150, 181 N. Y. S. 247, 250.

IMMATERIAL ISSUE. In pleading. An issue taken on an immaterial point; that is, a point not proper to decide the action. *Steph.* Pl. 99, 130; 2 *Tidd*, Pr. 921.

IMMATERIAL VARIANCE. Discrepancy between the pleading and proof of a character so slight that the adverse party cannot say that he was misled thereby. *E. B. Ryan Co. v. Russell*, 52 Mont. 596, 161 P. 307, 308; *Becke v. Forsee* (Mo. App.) 199 S. W. 734, 736.

IMMEDIATE. Present; at once; without delay; not deferred by any interval of time. In this sense, the word, without any very precise signification, denotes that action is or must be taken either instantly or without any considerable loss of time. A reasonable time in view of particular facts and circumstances of case under consideration. *Mullins v. Masonic Protective Ass'n*, 151 Mo. App. 394, 168 S. W. 843, 844; *Macchia v. Scottish Union & National Ins. Co.*, 101 N. J. Law, 258, 128 A. 244, 245; *Windsor Mfg. Co. v. Globe & Rutgers Fire Ins. Co.*, 277 Pa. 374, 121 A. 328, 330; *Southern Casualty Co. v. Landry* (Tex. Civ. App.) 266 S. W. 804, 805; *Central of Georgia Ry. Co. v. Griner & Rustin*, 33 Ga. App. 705, 127 S. E. 878, 880; *In re Webster Loose Leaf Filing Co.* (D. C.) 240 F. 779, 780; *Falls City Plumbing Supply Co. v. Potomac Ins. Co.*, 193 Ky. 734, 237 S. W. 376, 377; *Berkshire Land Co. v. Moran*, 210 Mich. 77, 177 N. W. 205, 207; *United States Fidelity & Guaranty Co. v. Pressler* (Tex. Civ. App.) 185 S. W. 326, 328; *Kerr v. Ætna Casualty & Surety Co.*, 124 Okl. 112, 254 P. 105, 107; *Cheatham v. Head*, 203 Ky. 489, 262 S. W. 622, 624; *United States Casualty Co. v. Johnston Drilling Co.*, 161 Ark. 158, 235 S. W. 890, 891, 34 A. L. R. 727.

Immediately does not, in legal proceedings, necessarily import the exclusion of any interval of time. It is a word of no very definite signification, and is much in subjection to its grammatical connections. *Howell v. Gaddis*, 31 N. J. Law, 313. See, also, *Immediately*.

Not separated in respect to place; not separated by the intervention of any intermediate object, cause, relation, or right. Thus we speak of an action as prosecuted for the "immediate benefit" of A., of a devise as made to the "immediate issue" of B., etc.

IMMEDIATE CAUSE. The last of a series or chain of causes tending to a given result, and which, of itself, and without the intervention of any further cause, directly produces the result or event. A cause may be

immediate in this sense, and yet not "proximate;" and conversely, the proximate cause (that which directly and efficiently brings about the result) may not be immediate. The familiar illustration is that of a drunken man falling into the water and drowning. His intoxication is the proximate cause of his death, if it can be said that he would not have fallen into the water when sober; but the immediate cause of death is suffocation by drowning. See *Davis v. Standish*, 26 Hun (N. Y.) 615; *Deisenrieter v. Kraus-Merkel Malting Co.*, 97 Wis. 279, 72 N. W. 735. Compare *Longbaugh v. Railroad Co.*, 9 Nev. 271. See, also, *Proximate*.

IMMEDIATE CONTROL (of motor vehicle upon approaching or traversing railroad crossing). Such constant control as would enable driver to instantly govern vehicle's movements, including the power to stop within a distance in which such a vehicle, in good mechanical condition, driven by a reasonably skillful driver, and traveling at a lawful rate of speed, could be stopped. *Central of Georgia Ry. Co. v. Burton*, 33 Ga. App. 199, 125 S. E. 868.

IMMEDIATE DESCENT. See *Descent*.

IMMEDIATELY. "It is impossible to lay down any hard and fast rule as to what is the meaning of the word 'immediately' in all cases. The words 'forthwith' and 'immediately' have the same meaning. They are stronger than the expression 'within a reasonable time,' and imply prompt, vigorous action, without any delay, and whether there has been such action is a question of fact, having regard to the circumstances of the particular case." *Cockburn, C. J.*, in *Reg. v. Justices of Berkshire*, 4 Q. B. Div. 471. *Hall v. American Bankers' Ins. Co.*, 315 Ill. 252, 146 N. E. 137, 139; *Board of Com'rs of Park County v. Board of Com'rs of Big Horn County*, 25 Wyo. 172, 166 P. 674, 678; *Rathbun v. Globe Indemnity Co.*, 107 Neb. 18, 184 N. W. 903, 908, 24 A. L. R. 191; *Stewart v. Wilson Printing Co.*, 210 Ala. 624, 99 So. 92, 94; *Second Nat. Bank of Allegheny v. Lash Corporation* (C. C. A.) 299 F. 371, 374; *Empire State Surety Co. v. Northwest Lumber Co.*, 203 F. 417, 420, 121 C. C. A. 527; *Ex parte Menner*, 35 Okl. Cr. 252, 250 P. 541, 542; *Edwards v. Earnest*, 206 Ala. 1, 89 So. 729, 22 A. L. R. 1387; *Mutual Oil & Gas Co. v. Christie*, 115 Okl. 129, 241 P. 474, 476; *Dean v. Clarke*, 53 Cal. App. 30, 199 P. 857, 858; *Chesapeake & O. Ry. Co. v. Perry*, 71 Ind. App. 506, 125 N. E. 414, 416; *National Live Stock Ins. Co. v. Simmons*, 62 Ind. App. 15, 111 N. E. 18, 19; *Bancroft Drainage Dist. v. Chicago, St. P., M. & O. Ry. Co.*, 102 Neb. 455, 167 N. W. 731, 733; *Palmberg v. Kinney*, 65 Or. 220, 132 P. 538, 539; *John B. Stevens & Co. v. Frankfort Marine, Accident & Plate Glass Ins. Co.* (C. C. A.) 207 F. 751, 761; *Oakland Motor Car Co. v. American Fidelity Co.*, 190 Mich. 74, 155

N. W. 729, 732; *Black v. Mullins & Co.*, 86 N. J. Law, 463, 92 A. 281, 282; *Stanber v. Sims Magneto Co.*, 98 N. J. Eq. 38, 129 A. 710, 711.

IMMEMORIAL. Beyond human memory; time out of mind.

IMMEMORIAL POSSESSION. In Louisiana. Possession of which no man living has seen the beginning, and the existence of which he has learned from his elders. Civ. Code La. art. 766.

IMMEMORIAL USAGE. A practice which has existed time out of mind; custom; prescription. *Miller v. Garlock*, 8 Barb. (N. Y.) 154.

IMMEUBLES. Fr. These are, in French law, the immovables of English law. Things are *immeubles* from any one of three causes: (1) From their own nature, *e. g.*, lands and houses; (2) from their destination, *e. g.*, animals and instruments of agriculture when supplied by the landlord; or (3) by the object to which they are annexed, *e. g.*, easements. Brown.

IMMIGRATION. The coming into a country of foreigners for purposes of permanent residence. The correlative term "emigration" denotes the act of such persons in leaving their former country.

IMMINENT. Near at hand; mediate rather than immediate; close rather than touching; impending; on the point of happening. *Furlov v. State*, 72 Fla. 464, 73 So. 362; *Linsley v. State*, 88 Fla. 135, 101 So. 273, 275; *Julius Kessler & Co. v. Southern Ry. Co. in Kentucky*, 200 Ky. 713, 255 S. W. 535, 539.

IMMINENT DANGER. In relation to homicide in self-defense, this term means immediate danger, such as must be instantly met, such as cannot be guarded against by calling for the assistance of others or the protection of the law. *U. S. v. Outerbridge*, 27 Fed. Cas. 390; *State v. West*, 45 La. Ann. 14, 12 So. 7; *State v. Smith*, 43 Or. 109, 71 P. 973. Or, as otherwise defined, such an appearance of threatened and impending injury as would put a reasonable and prudent man to his instant defense. *State v. Fontenot*, 50 La. Ann. 537, 23 So. 634, 69 Am. St. Rep. 455; *Shorter v. People*, 2 N. Y. 201, 51 Am. Dec. 286; *Owen v. State*, 17 Ala. App. 29, 81 So. 365.

Such danger as must be instantly met— which cannot be guarded against by calling on others for assistance. *Palmer v. Midland Valley R. Co.*, 118 Kan. 507, 235 P. 853, 854.

IMMINENTLY DANGEROUS ARTICLE. One that is reasonably certain to place life or limb in peril. *Employers' Liability Assur. Corporation v. Columbus McKinnon Chain Co.* (D. C.) 13 F.(2d) 128.

IMMISCERE. Lat. In the civil law. To mix or mingle with; to meddle with; to join with. Calvin.

IMMITTERE. Lat.

In the Civil Law

To put or let into, as a beam into a wall. Calvin.; Dig. 50, 17, 242, 1.

In Old English Law

To put cattle on a common. *Fleta*, lib. 4, c. 20, § 7.

Immobilia situm sequuntur. Immovable things follow their site or position; are governed by the law of the place where they are fixed. 2 Kent, Comm. 67.

IMMOBILIS. Lat. Immovable. *Immobilia* or *res immobiles*, immovable things, such as lands and buildings. Mackeld. Rom. Law, § 160.

IMMODERATE. Exceeding just, usual, or suitable bounds. *United States v. Oglesby Grocery Co.* (D. C.) 264 F. 691, 695.

IMMORAL. Contrary to good morals; inconsistent with the rules and principles of morality; inimical to public welfare according to the standards of a given community, as expressed in law or otherwise. *Exchange Nat. Bank of Fitzgerald v. Henderson*, 139 Ga. 260, 77 S. E. 36, 37, 51 L. R. A. (N. S.) 549; *State v. Reed*, 53 Mont. 292, 163 P. 477, 479, Ann. Cas. 1917E, 783.

IMMORAL CONSIDERATION. One contrary to good morals, and therefore invalid. Contracts based upon an immoral consideration are generally void.

IMMORAL CONTRACTS. Contracts founded upon considerations *contra bonos mores* are void.

IMMORALITY. That which is *contra bonos mores*. See Immeral.

IMMOVABLES. In the civil law. Property which, from its nature, destination, or the object to which it is applied, cannot move itself, or be removed.

Immovable things are, in general, such as cannot either move themselves or be removed from one place to another. But this definition, strictly speaking, is applicable only to such things as are immovable by their own nature, and not to such as are so only by the disposition of the law. Civ. Code La. art. 462; *Mt. Carmel Fruit Co. v. Webster*, 140 Cal. 183, 73 P. 826; *Sullivan v. Richardson*, 33 Fla. 1, 14 So. 692; *Simmons v. Tremont Lumber Co.*, 81 So. 263, 264, 144 La. 719; *Jones v. Conrad*, 154 La. 860, 98 So. 397, 398; *Breaux v. Ganuchau*, 3 La. App. 481, 482; *Scott v. Brennan*, 3 La. App. 452, 453.

IMMUNITY. Exemption, as from serving in an office, or performing duties which the law generally requires other citizens to perform. *Long v. Converse*, 91 U. S. 113, 23 L. Ed. 233; *Ex parte Levy*, 43 Ark. 54, 51 Am. Rep. 550; *Lonas v. State*, 3 Heisk. (Tenn.) 306; *Dougllass v. Stephens*, 1 Del. Ch. 476. Freedom from duty or penalty. *Leatherwood v. Hill*, 10 Ariz. 243, 89 P. 521, 523. "The term aptly describes an exemption from taxation. *Buchanan v. Knoxville & O. R. Co.*, 71 F. 324, 334, 18 C. C. A. 122.

A particular privilege. Webster, Dict.; Sacramento Orphanage, etc., *Home v. Chambers*, 25 Cal. App. 536, 144 P. 317, 319.

IMPAIR. To weaken, diminish, or relax, or otherwise affect in an injurious manner. *Davey v. Aetna L. Ins. Co.* (C. C.) 20 Fed. 482; *State v. Carew*, 13 Rich. Law (S. C.) 541, 91 Am. Dec. 245; *Swinburne v. Mills*, 17 Wash. 611, 50 P. 489, 61 Am. St. Rep. 932; *Union Gas & Oil Co. v. Diles*, 200 Ky. 188, 254 S. W. 205, 207.

IMPAIRING THE OBLIGATION OF CONTRACTS. A law which impairs the obligation of a contract is one which renders the contract in itself less valuable or less enforceable, whether by changing its terms and stipulations, its legal qualities and conditions, or by regulating the remedy for its enforcement. *Rutland v. Copes*, 15 Rich. Law, 84, 105; *Edwards v. Kearzey*, 96 U. S. 595, 600, 24 L. Ed. 793; *City of Indianapolis v. Robison*, 186 Ind. 660, 117 N. E. 861; *Union Gas & Oil Co. v. Diles*, 200 Ky. 188, 254 S. W. 205, 207.

To "impair the obligation of a contract" within Const. U. S. art. 1, § 10, is to weaken it, lessen its value, or make it worse in any respect or in any degree, and any law which changes the intention and legal effect of the parties, giving to one a greater and to the other a less interest or benefit, or which imposes conditions not included in the contract or dispenses with the performance of those included, impairs the obligation of the contract. *O'Connor v. Hartford Accident & Indemnity Co.*, 97 Conn. 8, 115 A. 484, 486.

A statute "impairs the obligation of a contract" when by its terms it nullifies or materially changes existing contract obligations. *Oil Fork Development Co. v. Huddleston*, 202 Ky. 261, 259 S. W. 334, 335; *Adams v. Greene*, 182 Ky. 504, 206 S. W. 759, 762.

The word "impair" means, according to the standard writers in our language, simply "to diminish; to injure; to make worse," etc. It is remarkable that in framing the provision of the federal Constitution providing that no law should be passed, "impairing the obligation of any contract," the convention did not use the term "lessen" or "decrease" or "destroy," but one more comprehensive, which prohibited making worse in any respect a contract legitimate in its creation. "The object, then, of its provision, may have been to establish an important principle, and that was the entire inviolability of contracts. *Blair v. Williams*, 14 Ky. (4 Litt.) 34, 35; *Lapsley v. Brashears*, 14 Ky. (4 Litt.) 47, 69.

See 2 Story, Const. §§ 1374-1399; 1 Kent, Comm. 413-422; Pom. Const. Law; Black, Const. Law (3d Ed.) p. 720 *et seq.*

IMPALARE. To impound. *Du Cange.*

IMPANEL.

In English Practice

To impanel a jury signifies the entering by the sheriff upon a piece of parchment, termed a "panel," the names of the jurors who have been summoned to appear in court on a certain day to form a jury of the country to hear such matters as may be brought before them. *Brown.*

In American Practice

Besides the meaning above given, "impanel" signifies the act of the clerk of the court in making up a list of the jurors who have been selected for the trial of a particular cause. All the steps of ascertaining who shall be the proper jurors to sit in the trial of a particular case up to the final formation. *People v. Poole*, 284 Ill. 39, 119 N. E. 916; *State v. Superior Court of Whatcom County*, 82 Wash. 284, 144 P. 32, 33; *Karnes v. Commonwealth*, 125 Va. 758, 99 S. E. 562, 563, 4 A. L. R. 1509.

Impaneling has nothing to do with drawing, selecting, or swearing jurors, but means simply making the list of those who have been selected. *Porter v. People*, 7 How. Prac. (N. Y.) 441.

IMPARCARE. In old English law. To impound. Reg. Orig. 92b.

To shut up, or confine in prison. *Inducti sunt in carcerem et imparcati*, they were carried to prison and shut up. Bract. fol. 124.

IMPARGAMENTUM. The right of impounding cattle.

IMPARL. To have license to settle a litigation amicably; to obtain delay for adjustment.

IMPARLANCE. In early practice, imparlance meant time given to either of the parties to an action to answer the pleading of the other. It thus amounted to a continuance of the action to a further day. Literally the term signified leave given to the parties to *talk together*; *i. e.*, with a view to settling their differences amicably. But in modern practice it denotes a time given to the defendant to plead.

A *general imparlance* is the entry of a general prayer and allowance of time to plead till the next term, without reserving to the defendant the benefit of any exception; so that after such an imparlance the defendant cannot object to the jurisdiction of the court, or plead any matter in abatement. This kind of imparlance is always from one term to another. *Colby v. Knapp*, 13 N. H. 175; *Mack v. Lewis*, 67 Vt. 383, 31 Atl. 888.

A *general special imparlance* contains a saving of all exceptions whatsoever, so that the defendant after this may plead not only in abatement, but he may also plead a plea which affects the jurisdiction of the court, as privilege. He cannot, however, plead a tender, and that he was always ready to pay, be-

cause by craving time, he admits that he is not ready, and so falsifies his plea.

A *special imparlance* reserves to the defendant all exceptions to the writ, bill, or count; and therefore after it the defendant may plead in abatement, though not to the jurisdiction of the court. 1 Tidd, Pr. 462, 463.

IMPARSONEE. L. Fr. In ecclesiastical law. One who is inducted and in possession of a benefice. Parson imparsonee, (*persona impersonata*.) Cowell; Dyer, 40.

IMPARTIAL. Favoring neither; disinterested; treating all alike; unbiased; equitable, fair, and just. Tegeler v. State, 9 Okl. Cr. 138, 130 P. 1164, 1165; Sunderland v. U. S. (C. C. A.) 19 F.(2d) 202, 216. The provision of the Bill of Rights requiring that the accused shall have a fair trial by an impartial jury, means that the jury must be not partial, not favoring one party more than another, unprejudiced, disinterested, equitable, and just, and that the merits of the case shall not be prejudged. Duncan v. State, 79 Tex. Cr. R. 206, 184 S. W. 195, 196.

IMPATRONIZATION. In ecclesiastical law. The act of putting into full possession of a benefice.

IMPEACH. To accuse; to charge a liability upon; to sue.

To dispute, disparage, deny, or contradict; as, to impeach a judgment or decree; or as used in the rule that a jury cannot "impeach their verdict." See Wolfgram v. Schoepke, 123 Wis. 19, 100 N. W. 1056.

To proceed against a public officer for crime or misfeasance, before a proper court, by the presentation of a written accusation called "articles of impeachment."

In the Law of Evidence

To call in question the veracity of a witness, by means of evidence adduced for that purpose.

IMPEACHMENT. A criminal proceeding against a public officer, before a *quasi* political court, instituted by a written accusation called "articles of impeachment;" for example, a written accusation by the house of representatives of the United States to the senate of the United States against an officer.

"Impeachment" of the Governor, within the meaning of section 16, art. 6, of the Constitution, is the adoption of articles of impeachment by the House of Representatives, and the presentation thereof to the Senate, and the indication by that body that the same are accepted for the purpose of permitting prosecution thereof, and the impeachment of the Governor operates to suspend him; the duties and emoluments of the office automatically devolving upon the Lieutenant Governor for the remainder of the term or until the disability is removed by the acquittal of the Governor of the charges preferred against him.

State v. Chambers, 96 Okl. 78, 220 P. 890, 891, 30 A. L. R. 1144; People ex rel. Robin v. Hayes, 82 Misc. 165, 143 N. Y. S. 325, 329.

In England, a prosecution by the house of commons before the house of lords of a commoner for treason, or other high crimes and misdemeanors, or of a peer for any crime.

In Evidence

The adducing of proof that a witness is unworthy of belief.

In General

—Articles of impeachment. The formal written allegation of the causes for an impeachment, answering the same purpose as an indictment in an ordinary criminal proceeding.

—Collateral impeachment. The collateral impeachment of a judgment or decree is an attempt made to destroy or evade its effect as an estoppel, by reopening the merits of the cause or showing reasons why the judgment should not have been given or should not have a conclusive effect, in any collateral proceeding, that is, in any action or proceeding other than that in which the judgment was given, or other than an appeal, certiorari, or other direct proceeding to review it.

—Impeachment of annuity. A term sometimes used in English law to denote anything that operates as a hindrance, impediment or obstruction of the making of the profits out of which the annuity is to arise. Pitt v. Williams, 4 Adol. & El. 885.

—Impeachment of waste. Liability for waste committed; or a demand or suit for compensation for waste committed upon lands or tenements by a tenant thereof who, having only a leasehold or particular estate, had no right to commit waste. See 2 Bl. Comm. 283; Sanderson v. Jones, 6 Fla. 480, 63 Am. Dec. 217.

—Impeachment of witness. Adducing proof that a witness who has testified in a cause is unworthy of credit. White v. Railroad Co., 142 Ind. 648, 42 N. E. 456; Com. v. Welch, 111 Ky. 530, 63 S. W. 984; Smith v. State, 109 Ga. 479, 35 S. E. 59; Lenz v. Public Service Ry. Co., 98 N. J. Law, 849, 121 A. 741, 742; Frank v. Wright, 140 Tenn. 535, 205 S. W. 434, 435; Culley v. State, 192 Ind. 687, 138 N. E. 260; Clevenger v. State, 195 Ind. 45, 144 N. E. 524; Krull v. Arman, 110 Neb. 70, 192 N. W. 961, 962.

IMPECHIARE. To impeach, to accuse, or prosecute for felony or treason.

IMPEDE. To obstruct; hinder; check; delay. Erie R. Co. v. Board of Public Utility Com'rs, 89 N. J. Law, 57, 98 A. 13, 19.

IMPEDIATUS. Disabled from mischief by expeditation (*q. v.*). Cowell.

IMPEDIENS. In old practice. One who hinders; an impedient. The defendant or deforciant in a fine was sometimes so called. Cowell; Blount.

IMPEDIMENTO. In Spanish law. A prohibition to contract marriage, established by law between certain persons.

IMPEDIMENTS. Disabilities, or hindrances to the making of contracts, such as coverture, infancy, want of reason, etc.

In the Civil Law.

Bars to marriage.

Absolute impediments are those which prevent the person subject to them from marrying at all, without either the nullity of marriage or its being punishable. *Dirimant impediments* are those which render a marriage void; as where one of the contracting parties is unable to marry by reason of a prior undissolved marriage. *Prohibitive impediments* are those which do not render the marriage null, but subject the parties to a punishment. *Relative impediments* are those which regard only certain persons with respect to each other; as between two particular persons who are related within the prohibited degrees. Bowyer, Mod. Civil Law, 44, 45.

IMPEDITOR. In old English law. A disturber in the action of *quare impedit*. St. Marl. c. 12.

IMPENSÆ. Lat. In the civil law. Expenses; outlays. Mackeld. Rom. Law, § 168; Calvin. Divided into necessary, (*necessariæ*), useful, (*utiles*), and tasteful or ornamental, (*voluptuariæ*.) Dig. 50, 16, 79. See Id. 25, 1.

IMPERATIVE. See Directory.

IMPERATOR. Emperor. The title of the Roman emperors, and also of the Kings of England before the Norman conquest. Cod. 1, 14, 12; 1 Bl. Comm. 242. See Emperor.

IMPERFECT. As used in various legal compound terms, this word means defective or incomplete; wanting in some legal or formal requisite; wanting in legal sanction or effectiveness; as in speaking of imperfect "obligations," "ownership," "rights," "title," "usufruct," or "war." See those nouns.

Imperii majestas est tutelæ salus. Co. Litt. 64. The majesty of the empire is the safety of its protection.

IMPERITIA. Lat. Unskillfulness; want of skill.

Imperitia culpæ adnumeratur. Want of skill is reckoned as *culpa*; that is, as blamable conduct or neglect. Dig. 50, 17, 132.

Imperitia est maxima mechanicorum pœna. Unskillfulness is the greatest punishment of mechanics; [that is, from its effect in making

them liable to those by whom they are employed.] 11 Coke, 54a. The word "*pœna*" in some translations is erroneously rendered "fault."

IMPERIUM. The right to command, which includes the right to employ the force of the state to enforce the laws. This is one of the principal attributes of the power of the executive. 1 Toullier, no. 58.

IMPERSONALITAS. Lat. Impersonality. A mode of expression where no reference is made to any person, such as the expression "*ut dicitur*," (as is said.) Co. Litt. 352b.

Impersonalitas non concludit nec ligat. Co. Litt. 352b. Impersonality neither concludes nor binds.

IMPERTINENCE. Irrelevancy; the fault of not properly pertaining to the issue or proceeding. The introduction of any matters into a bill, answer, or other pleading or proceeding in a suit, which are not properly before the court for decision, at any particular stage of the suit. Story, Eq. Pl. § 266; Harrison v. Perea, 168 U. S. 311, 18 Sup. Ct. 129, 42 L. Ed. 478.

In Practice

A question propounded to a witness, or evidence offered or sought to be elicited, is called "impertinent" when it has no logical bearing upon the issue, is not necessarily connected with it, or does not belong to the matter in hand. On the distinction between pertinency and relevancy, we may quote the following remark of Dr. Wharton: "*Relevancy* is that which conduces to the proof of a *pertinent* hypothesis; a *pertinent* hypothesis being one which, if sustained, would logically influence the issue." 1 Whart. Ev. § 20.

IMPERTINENT.

In Equity Pleading

That which does not belong to a pleading, interrogatory, or other proceeding; out of place; superfluous; irrelevant. Chew v. Eagan, 87 N. J. Eq. 80, 99 A. 611; Huffman v. State, 183 Ind. 698, 109 N. E. 401, 402.

At Law

A term applied to matter not necessary to constitute the cause of action or ground of defense. Cowp. 683; 5 East, 275; Tucker v. Randall, 2 Mass. 283. It constitutes surplusage, (which see.)

IMPESCARÉ. In old records. To impeach or accuse. *Impescatus*, impeached. Blount.

IMPETITIO VASTI. Impeachment of waste, (*q. v.*)

IMPETRARE. In old English practice. To obtain by request, as a writ or privilege. Bract. fols. 57, 172b. This application of the

word seems to be derived from the civil law. Calvin.

IMPETRATION. In old English law. The obtaining anything by petition or entreaty. Particularly, the obtaining of a benefice from Rome by solicitation, which benefice belonged to the disposal of the king or other lay patron. Webster; Cowell.

IMPIER. Umpire, (*q. v.*)

IMPIERMENT. Impairing or prejudicing. Jacob.

IMPIGNORATA. Pledged; given in pledge, (*pignori data*;) mortgaged. A term applied in Bracton to land. Bract. fol. 20.

IMPIGNORATION. The act of pawning or putting to pledge.

Impius et crudelis judicandus est qui libertati non favet. He is to be judged impious and cruel who does not favor liberty. Co. Litt. 124.

IMPLACITARE. Lat. To implead; to sue.

IMPLEAD. In practice. To sue or prosecute by due course of law. *People v. Clarke*, 9 N. Y. 368.

IMPLEADED. Sued or prosecuted; used particularly in the titles of causes where there are several defendants; as "A. B., impleaded with C. D."

IMPLEMENTS. Such things as are used or employed for a trade, or furniture of a house. *Coolidge v. Choate*, 11 Metc. (Mass.) 82.

Whatever may supply wants; particularly applied to tools, utensils, vessels, instruments of labor; as, the implements of trade or of husbandry. *Goddard v. Chaffee*, 2 Allen (Mass.) 395, 79 Am. Dec. 796; *Sallee v. Waters*, 17 Ala. 486; *Rayner v. Whicher*, 6 Allen (Mass.) 294; *In re Slade's Estate*, 122 Cal. 434, 55 Pac. 158; *Chicago, M. & St. P. Ry. Co. v. Powell County*, 76 Mont. 596, 247 P. 1096, 1097; *Busse v. Murray Meat & Live Stock Co.*, 45 Utah, 596, 147 P. 626, 628; *Seiler v. Buckholdt* (Tex. Civ. App.) 293 S. W. 210.

IMPLICATA. A term used in mercantile law, derived from the Italian. In order to avoid the risk of making fruitless voyages, merchants have been in the habit of receiving small adventures, on freight, at so much per cent., to which they are entitled at all events, even if the adventure be lost; and this is called "*implicata*." Wharton.

IMPLICATION. Intendment or inference, as distinguished from the actual expression of a thing in words. In a will, an estate may pass by mere *implication*, without any express words to direct its course. 2 Bl. Comm. 381.

An inference of something not directly declared, but arising from what is admitted or expressed.

In construing a will conjecture must not be taken for implication; but necessary implication means, not natural necessity, but so strong a probability of intention that an intention contrary to that which is imputed to the testator cannot be supposed. 1 Ves. & B. 466.

"Implication" is also used in the sense of "inference;" *i. e.*, where the existence of an intention is inferred from acts not done for the sole purpose of communicating it, but for some other purpose. Sweet.

Necessary implication

In construing a will, necessary implication means not natural necessity, but so strong a probability of intention that an intention contrary to that which is imputed to the testator cannot be supposed. *Wilkinson v. Adam*, 1 Ves. & B. 466; *Gilbert v. Craddock*, 67 Kan. 346, 72 P. 869; *Whitfield v. Garris*, 134 N. C. 24, 45 S. E. 904.

IMPLIED. This word is used in law as contrasted with "express;" *i. e.*, where the intention in regard to the subject-matter is not manifested by explicit and direct words, but is gathered by implication or necessary deduction from the circumstances, the general language, or the conduct of the parties.

As to implied "Abrogation," "Agreement," "Assumpsit," "Condition," "Confession," "Consent," "Consideration," "Contract," "Covenant," "Dedication," "Easement," "Invitation," "Malice," "Notice," "Obligation," "Powers," "Trust," "Use," "Waiver," and "Warranty," see those titles.

IMPORTATION. The act of bringing goods and merchandise into a country from a foreign country. *Cunard Steamship Co. v. Mellon*, 262 U. S. 100, 43 S. Ct. 504, 67 L. Ed. 894, 27 A. L. R. 1306; *United States v. Gully* (D. C.) 9 F.(2d) 959.

IMPORTED. This word, in general, has the same meaning in the tariff laws that its etymology shows, *in porto*, to carry in. To "import" is to bear or carry into. An "imported" article is one brought or carried into a country from abroad. The Conqueror, 49 Fed. 99. See Imports.

IMPORTS. Importations; goods or other property imported or brought into the country from a foreign country.

IMPORTUNITY. Pressing solicitation; urgent request; application for a claim or favor which is urged with troublesome frequency or pertinacity. Webster.

IMPOSE. To levy or exact as by authority; to lay as a burden, tax, duty or charge. *State v. Nickerson*, 97 Neb. 837, 151 N. W. 981, 982; *National Bank of Commerce in St. Louis v. Allen* (C. C. A.) 223 F. 472, 477.

IMPOSITION. An impost; tax; contribution. *Paterson v. Society*, 24 N. J. Law, 400;

Singer Mfg. Co. v. Heppenheimer, 58 N. J. Law, 633, 34 Atl. 1061, 32 L. R. A. 643.

IMPOSSIBILITY. That which, in the constitution and course of nature or the law, no man can do or perform. See *Klauber v. San Diego Street-Car Co.*, 95 Cal. 353, 80 Pac. 555; *Reid v. Alaska Packing Co.*, 43 Or. 429, 73 Pac. 337.

Impossibility is of the following several sorts:

An act is *physically* impossible when it is contrary to the course of nature. Such an impossibility may be either *absolute*, *i. e.*, impossible in any case, (*e. g.*, for A. to reach the moon,) or *relative*, (sometimes called "impossibility in fact,") *i. e.*, arising from the circumstances of the case, (*e. g.*, for A. to make a payment to B., he being a deceased person.) To the latter class belongs what is sometimes called "*practical* impossibility," which exists when the act *can* be done, but only at an excessive or unreasonable cost. An act is *legally* or *juridically* impossible when a rule of law makes it impossible to do it; *e. g.*, for A. to make a valid will before his majority. This class of acts must not be confounded with those which are possible, although forbidden by law, as to commit a theft. An act is *logically* impossible when it is contrary to the nature of the transaction, as where A. gives property to B. expressly for his own benefit, on condition that he transfers it to C. *Sweet*.

Impossibilium nulla obligatio est. There is no obligation to do impossible things. *Dig.* 50, 17, 185; *Broom*, Max. 249.

IMPOSSIBLE CONTRACTS. An impossible contract is one which the law will not hold binding upon the parties, because of the natural or legal impossibility of the performance by one party of that which is the consideration for the promise of the other. 7 *Wait*, Act. & Def. 124.

Impossible contracts, which will be deemed void in the eye of the law, or of which the performance will be excused, are such contracts as cannot be performed, either because of the nature of the obligation undertaken, or because of some supervening event which renders the performance of the obligation either physically or legally impossible. 10 *Amer. & Eng. Enc. Law*, 176.

IMPOSTS. Taxes, duties, or impositions levied for divers reasons. And see *Norris v. Boston*, 4 Metc. (Mass.) 296; *Pacific Ins. Co. v. Soule*, 7 Wall. 435, 19 L. Ed. 95; *Woodruff v. Parham*, 8 Wall. 131, 19 L. Ed. 382; *Dooley v. U. S.*, 183 U. S. 151, 22 Sup. Ct. 62, 43 L. Ed. 128; *Passenger Cases*, 7 How. 407, 12 L. Ed. 702; *City of Madera v. Black*, 181 Cal. 306, 184 P. 397, 400; *Crew Levick Co. v. Commonwealth of Pennsylvania*, 245 U. S. 292, 38 S. Ct. 126, 62 L. Ed. 295.

Impost is a tax received by the prince for such merchandises as are brought into any haven within

his dominions from foreign nations. It may in some sort be distinguished from customs, because customs are rather that profit the prince maketh of wares shipped out; yet they are frequently confounded. *Cowell*.

IMPOTENCE. In medical jurisprudence. Inability to copulate. Properly used of the male; but it has also been used synonymously with "sterility." *Griffeth v. Griffeth*, 162 Ill. 368, 44 N. E. 820; *Payne v. Payne*, 46 Minn. 467, 49 N. W. 230, 24 Am. St. Rep. 240; *Kempf v. Kempf*, 34 Mo. 213; *Turney v. Avery*, 92 N. J. Eq. 473, 113 A. 710; *Kirschbaum v. Kirschbaum*, 92 N. J. Eq. 7, 111 A. 697, 699; *Carmichael v. Carmichael*, 106 Or. 198, 211 P. 916, 918; *Smith v. Smith*, 206 Mo. App. 646, 229 S. W. 398; *Heinemann v. Heinemann*, 245 P. 1082, 1083, 118 Or. 178.

Impotentia excusat legem. Co. Litt. 29. The impossibility of doing what is required by the law excuses from the performance.

IMPOTENTIAM, PROPERTY PROPTER. A qualified property, which may subsist in animals *feræ naturæ* on account of their inability, as where hawks, herons, or other birds build in a person's trees, or conies, etc., make their nests or burrows in a person's land, and have young there, such person has a qualified property in them till they can fly or run away, and then such property expires. 2 *Steph. Comm.* (7th Ed.) 8.

IMPOUND. To shut up stray animals or distrained goods in a pound. *Thomas v. Harries*, 1 Man. & G. 703; *Goodsell v. Dunning*, 34 Conn. 257; *Howard v. Bartlett*, 70 Vt. 314, 40 Atl. 825; *Chenango County Humane Soc. v. Polmatier*, 188 App. Div. 419, 177 N. Y. S. 101, 103.

To take into the custody of the law or of a court. Thus, a court will sometimes *impound* a suspicious document produced at a trial.

IMPRESCRIPTIBILITY. The state or quality of being incapable of prescription; not of such a character that a right to it can be gained by prescription.

IMPRESCRIPTIBLE RIGHTS. Such rights as a person may use or not, at pleasure, since they cannot be lost to him by the claims of another founded on prescription.

IMPRESSION, CASE OF FIRST. One without a precedent; one presenting a wholly new state of facts; one involving a question never before determined.

IMPRESSMENT. A power possessed by the English crown of taking persons or property to aid in the defense of the country, with or without the consent of the persons concerned. It is usually exercised to obtain hands for the royal ships in time of war, by taking seamen engaged in merchant vessels, (1 *Bl. Comm.* 420; *Maud & P. Shipp.* 123;) but in former times impressment of merchant

ships was also practiced. The admiralty issues protections against impressment in certain cases, either under statutes passed in favor of certain callings (*e. g.*, persons employed in the Greenland fisheries) or voluntarily. Sweet.

IMPREST MONEY. Money paid on enlisting or impressing soldiers or sailors.

IMPRETIABILIS. Lat. Beyond price; invaluable.

IMPRIMATUR. Lat. Let it be printed. A license or allowance, granted by the constituted authorities, giving permission to print and publish a book. This allowance was formerly necessary, in England, before any book could lawfully be printed, and in some other countries is still required.

IMPRIMERE. To press upon; to impress or press; to imprint or print.

IMPRIMERY. In some of the ancient English statutes this word is used to signify a printing-office, the art of printing, a print or impression.

IMPRIMIS. Lat. In the first place; first of all.

IMPRISON. To put in a prison; to put in a place of confinement.

To confine a person, or restrain his liberty, in any way.

IMPRISONMENT. The act of putting or confining a man in prison; the restraint of a man's personal liberty; coercion exercised upon a person to prevent the free exercise of his powers of locomotion. *State v. Shaw*, 73 Vt. 149, 50 A. 863; *In re Langslow*, 167 N. Y. 314, 60 N. E. 590; *In re Langan* (C. C.) 123 F. 134; *Steere v. Field*, 22 Fed. Cas. 1221.

It is not a necessary part of the definition that the confinement should be in a place usually appropriated to that purpose; it may be in a locality used only for the specific occasion; or it may take place without the actual application of any physical agencies of restraint, (such as locks or bars,) but by verbal compulsion and the display of available force. See *Pike v. Hanson*, 9 N. H. 491.

Any forcible detention of a man's person, or control over his movements, is imprisonment. *Lawson v. Buzines*, 3 Har. (Del.) 416.

False imprisonment

The unlawful arrest or detention of a person without warrant, or by an illegal warrant, or a warrant illegally executed, and either in a prison or a place used temporarily for that purpose, or by force and constraint without confinement. *Brewster v. People*, 183 Ill. 143, 55 N. E. 640; *Miller v. Fano*, 134 Cal. 103, 66 P. 183; *Filer v. Smith*, 96 Mich. 347, 55 N. W. 999, 35 Am. St. Rep. 603; *Eberling v. State*, 136 Ind. 117, 35 N. E. 1023. False imprisonment consists in the unlawful detention of the person of another, for

any length of time, whereby he is deprived of his personal liberty. Code Ga. 1832, § 2990 (Civ. Code 1910, § 4447); Pen. Code Cal. § 232; *Reilly v. U. S. Fidelity & Guaranty Co.* (C. C. A.) 15 F.(2d) 314, 315; *Mahan v. Adam*, 124 A. 901, 904, 144 Md. 355; *Wax v. McGrath*, 151 N. E. 317, 318, 255 Mass. 340; *James v. MacDougall & Southwick Co.*, 235 P. 812, 813, 814, 134 Wash. 314; *United States v. Curran* (C. C. A.) 297 F. 946, 950, 36 A. L. R. 877; *Brinkman v. Drolesbaugh*, 97 Ohio St. 171, 119 N. E. 451, 452, L. R. A. 1918F, 1132; *Weiler v. Herzfeld-Phillipson Co.*, 189 Wis. 554, 208 N. W. 599, 601; *Grebe v. State*, 113 Neb. 327, 202 N. W. 909, 911; *Gariety v. Fleming*, 121 Kan. 42, 245 P. 1054, 1055; *Waters v. National Woolen Mills*, 142 Ga. 133, 82 S. E. 535, 536; *S. H. Kress & Co. v. Roberts*, 143 Va. 71, 129 S. E. 244, 245; *A. Harris & Co. v. Caldwell* (Tex. Civ. App.) 276 S. W. 298, 299.

The term is also used as the name of the action which lies for this species of injury. 3 Bl. Comm. 138; *Buttrey v. Wilhite*, 208 Ala. 573, 94 So. 585.

IMPRISTI. Adherents; followers. Those who side with or take the part of another, either in his defense or otherwise.

IMPROBABLE. Unlikely to be true, or to occur, not to be readily believed. *New York Life Ins. Co. v. Holck*, 59 Colo. 416, 151 P. 916, 923.

IMPROBATION. In Scotch law. An action brought for the purpose of having some instrument declared false and forged. 1 Forb. Inst. pt. 4, p. 161. The verb "improve" (*q. v.*) was used in the same sense.

IMPROPER. Not suitable; unfit; not suited to the character, time, and place. *Palmer v. Concord*, 48 N. H. 211, 97 Am. Dec. 605. *Wrongful*. 53 Law J. P. D. 65.

IMPROPER FEUDS. These were derivative feuds; as, for instance, those that were originally bartered and sold to the feudatory for a price, or were held upon base or less honorable services, or upon a rent in lieu of military service, or were themselves alienable, without mutual license, or descended indifferently to males or females. Wharton.

IMPROPER INFLUENCE. Undue influence, (*q. v.*). And see *Millican v. Milliean*, 24 Tex. 446.

IMPROPER NAVIGATION. Anything improperly done with the ship or part of the ship in the course of the voyage. L. R. 6 C. P. 563. See, also, 53 Law J. P. D. 65.

IMPROPRIATION. In ecclesiastical law. The annexing an ecclesiastical benefice to the use of a lay person, whether individual or corporate, in the same way as *appropriation* is the annexing of any such benefice to the proper and perpetual use of some spiritual corporation, whether sole or aggregate, to enjoy forever. Brown.

IMPROPRIATE RECTOR. In ecclesiastical law. Commonly signifies a lay rector as opposed to a spiritual rector; just as im-

propriate tithes are tithes in the hands of a lay owner, as opposed to appropriate tithes, which are tithes in the hands of a spiritual owner. *Brown*.

IMPROVE. In Scotch law. To disprove; to invalidate or impeach; to prove false or forged. 1 *Forb. Inst.* pt. 4, p. 162.

To improve a lease means to grant a lease of unusual duration to encourage a tenant, when the soil is exhausted, etc. *Bell*; *Stair*, *Inst.* p. 676, § 23.

To meliorate, make better, mend, repair, as to "improve" a street by grading, parking, curbing, paving, etc. *Des Moines City Ry. v. City of Des Moines*, 205 Iowa, 495, 216 N. W. 284, 287; *Woods v. Postal Telegraph-Cable Co.*, 205 Ala. 236, 87 So. 681, 684, 27 A. L. R. 834; *Royal v. City of Des Moines*, 195 Iowa, 23, 191 N. W. 377, 383.

IMPROVED. Improved land is such as has been reclaimed, is used for the purpose of husbandry, and is cultivated as such, whether the appropriation is for tillage, meadow, or pasture. "Improve" is synonymous with "cultivate." *Clark v. Phelps*, 4 *Cow.* (N. Y.) 190.

IMPROVEMENT. A valuable addition made to property (usually real estate) or an amelioration in its condition, amounting to more than mere repairs or replacement of waste, costing labor or capital, and intended to enhance its value, beauty or utility or to adapt it for new or further purposes. *Spencer v. Tobey*, 22 *Barb.* (N. Y.) 269; *Allen v. McKay*, 120 *Cal.* 332, 52 *P.* 828; *Simpson v. Robinson*, 37 *Ark.* 132; *Lanier v. Lovett*, 25 *Ariz.* 54, 213 *P.* 391, 394; *O'Neill v. Lyric Amusement Co.*, 119 *Ark.* 454, 178 *S. W.* 406, 408; *Realty Dock & Improvement Corp. v. Anderson*, 174 *Cal.* 672, 164 *P.* 4, 7; *Behrens v. Kruse*, 121 *Minn.* 479, 140 *N. W.* 114, 117; *Gale v. Hopkins*, 165 *Minn.* 177, 206 *N. W.* 164, 165; *Anderson v. Sutton*, 301 *Mo.* 50, 254 *S. W.* 854, 857; *People v. Clark*, 296 *Ill.* 46, 129 *N. E.* 583, 588; *McCormick v. Allegheny County*, 263 *Pa.* 146, 106 *A.* 203; *Meyer v. City St. Improvement Co.*, 164 *Cal.* 645, 130 *P.* 215, 216; *Kohn v. City of Missoula*, 50 *Mont.* 75, 144 *P.* 1087, 1089; *South Park Com'rs v. Wood*, 270 *Ill.* 263, 110 *N. E.* 349, 354; *McGovern v. Inhabitants of City of Trenton*, 84 *N. J. Law*, 237, 86 *A.* 539, 540; *City of Rosswell v. Batemen*, 20 *N. M.* 77, 146 *P.* 950, 954, *L. R. A.* 1917D, 365, *Ann. Cas.* 1918D, 426.

In American Land Law

An act by which a locator or settler expresses his intention to cultivate or clear certain land; an act expressive of the actual possession of land; as by erecting a cabin, planting a corn-field, deadening trees in a forest; or by merely marking trees, or even by piling up a brush-heap. *Burrill*. And see

In re Leet Tp. Road, 159 *Pa.* 72, 23 *A.* 238; *Bixler v. Baker*, 4 *Bin.* (Pa.) 217.

An "improvement," under our land system, does not mean a general enhancement of the value of the tract from the occupant's operations. It has a more limited meaning, which has in view the population of our forests, and the increase of agricultural products. All works which are directed to the creation of homes for families, or are substantial steps towards bringing lands into cultivation, have in their results the special character of "improvements," and, under the land laws of the United States and of the several states, are encouraged. Sometimes their minimum extent is defined as requisite to convey rights. In other cases not. But the test which runs through all the cases is always this: Are they real, and made *bona fide*, in accordance with the policy of the law, or are they only colorable, and made for the purpose of fraud and speculation? *Simpson v. Robinson*, 37 *Ark.* 137.

In the Law of Patents

An addition to, or modification of, a previous invention or discovery, intended or claimed to increase its utility or value. See 2 *Kent*, *Comm.* 366-372. And see *Geiser Mfg. Co. v. Frick Co.* (C. C.) 92 *F.* 191; *Joliet Mfg. Co. v. Dice*, 105 *Ill.* 650; *Schwarzwaelder v. Detroit* (C. C.) 77 *F.* 891; *Reese's Appeal*, 122 *Pa.* 392, 15 *A.* 807; *Rheem v. Holliday*, 16 *Pa.* 352; *Allison Bros. Co. v. Allison*, 144 *N. Y.* 21, 38 *N. E.* 956; *Volk v. Volk Mfg. Co.*, 101 *Conn.* 594, 126 *A.* 847, 849. It includes two necessary ideas: the idea of a complete and practical operative art or instrument and the idea of some change in such art or instrument not affecting its essential character but enabling it to produce its appropriate results in a more perfect or economical manner. *Rob. Pat.* § 210.

In General

—**Local improvement.** By common usage, especially as evidenced by the practice of courts and text-writers, the term "local improvements" is employed as signifying improvements made in a particular locality, by which the real property adjoining or near such locality is specially benefited, such as the improvement of highways, grading, paving, curbing, laying sewers, etc. *Illinois Cent. R. Co. v. Decatur*, 154 *Ill.* 173, 38 *N. E.* 626; *Rogers v. St. Paul*, 22 *Minn.* 507; *Crane v. Siloam Springs*, 67 *Ark.* 30, 55 *S. W.* 955; *New York L. Ins. Co. v. Prest* (C. C.) 71 *F.* 816; *In re Western Ave.*, 93 *Wash.* 472, 161 *P.* 381, 384; *Ewart v. Village of Western Springs*, 180 *Ill.* 318, 54 *N. E.* 478; *Ryder's Estate v. City of Alton*, 175 *Ill.* 94, 51 *N. E.* 821; *Smith v. City of Seattle*, 25 *Wash.* 300, 65 *P.* 612; *Cook v. Slocum*, 27 *Minn.* 509, 8 *N. W.* 755; *Walters v. City of Tampa*, 88 *Fla.* 177, 101 *So.* 227, 228.

IMPROVEMENTS. A term used in leases, of doubtful meaning. It would seem to apply principally to buildings, though generally it extends to the amelioration of every description of property, whether real or personal;

but, when contained in any document, its meaning is generally explained by other words. 1 Chit. Gen. Pr. 174.

IMPROVIDENCE, as used in a statute excluding one found incompetent to execute the duties of an administrator by reason of improvidence, means that want of care and foresight in the management of property which would be likely to render the estate and effects of the intestate unsafe, and liable to be lost or diminished in value, in case the administration should be committed to the improvident person. *Coope v. Lowerre*, 1 Barb. Ch. (N. Y.) 45; *In re Flood's Will*, 236 N. Y. 408, 140 N. E. 936, 937; *Nichols v. Smith*, 186 Ala. 587, 65 So. 30, 31; *In re Brinckmann's Estate*, 152 N. Y. S. 543, 543, 89 Misc. 41; *In re Fulper's Estate*, 99 N. J. Eq. 293, 132 A. 834, 843.

IMPROVIDENTLY. A judgment, decree, rule, injunction, etc., when given or rendered without adequate consideration by the court, or without proper information as to all the circumstances affecting it, or based upon a mistaken assumption or misleading information or advice, is sometimes said to have been "improvidently" given or issued.

IMPRUIARE. In old records. To improve land. *Impruiamentum*, the improvement so made of it. Cowell.

IMPUBES. Lat. In the civil law. A minor under the age of puberty; a male under fourteen years of age; a female under twelve. Calvin.; Mackeld. Rom. Law, § 138.

IMPULSE. As to "irresistible" or "uncontrollable" impulse, see *Insanity*.

Impunitas continuum affectum tribuit delinquendi. 4 Coke, 45. Impunity confirms the disposition to commit crime.

Impunitis semper ad deteriora invitatur. 5 Coke, 109. Impunity always invites to greater crimes.

IMPUNITY. Exemption or protection from penalty or punishment. *Dillon v. Rogers*, 36 Tex. 153.

IMPUTATIO. Lat. In the civil law. Legal liability.

IMPUTATION OF PAYMENT. In the civil law. The application of a payment made by a debtor to his creditor.

IMPUTED. As used in legal phrases, this word means attributed vicariously; that is, an act, fact, or quality is said to be "imputed" to a person when it is ascribed or charged to him, not because he is personally cognizant or it or responsible for it, but because another person is, over whom he has control or for whose acts or knowledge he is responsible.

IMPUTED KNOWLEDGE. This phrase is sometimes used as equivalent to "implied notice," *i. e.*, knowledge attributed or charged to a person (often contrary to the fact) because the facts in question were open to his discovery and it was his duty to inform himself as to them. See *Roche v. Llewellyn Iron Works Co.*, 140 Cal. 563, 74 P. 147.

IMPUTED NEGLIGENCE. Negligence which is not directly attributable to the person himself, but which is the negligence of a person who is in privity with him, and with whose fault he is chargeable. *Smith v. Railroad Co.*, 4 App. Div. 493, 38 N. Y. S. 666.

IMPUTED NOTICE. Information as to a given fact or circumstance charged or attributed to a person, and affecting his rights or conduct, on the ground that actual notice was given to some person whose duty was to report it to the person to be affected, as, his agent or his attorney of record.

IN. In the law of real estate, this preposition has always been used to denote the fact of seisin, title, or possession, and apparently serves as an elliptical expression for some such phrase as "in possession," or as an abbreviation for "intitled" or "invested with title." Thus, in the old books, a tenant is said to be "in by lease of his lessor." Litt. § 82.

An elastic preposition in other cases, expressing relation of presence, existence, situation, inclusion, action, etc.; also meaning for, in and about, on, within, etc., according to context. *Hill v. Wilson*, 108 Or. 621, 216 P. 751, 756; *Grainger & Co. v. Johnson* (C. C. A.) 286 F. 833, 834, 33 A. L. R. 315; *Schaefer v. Houck*, 183 App. Div. 283, 171 N. Y. S. 146, 147; *Schmohl v. Travelers' Ins. Co.* (Mo. App.) 189 S. W. 597, 600; *Turner v. Fidelity & Casualty Co. of New York*, 274 Mo. 260, 202 S. W. 1078, 1080, L. R. A. 1918E, 381; *Mississippi Cent. R. Co. v. Pace*, 109 Miss. 667, 68 So. 926, 927; *Ex parte Perry*, 71 Fla. 250, 71 So. 174, 176; *City of Blytheville v. Webb*, 172 Ark. 874, 290 S. W. 589, 590.

IN ACTION. Attainable or recoverable by action; not in possession. A term applied to property of which a party has not the possession, but only a right to recover it by action. Things in action are rights of personal things, which nevertheless are not in possession. See *Chose in Action*.

IN ADVERSUM. Against an adverse, unwilling, or resisting party. "A decree not by consent, but *in adversum*." 3 Story, 318.

In ædificiis lapis male positus non est removens. 11 Coke, 69. A stone badly placed in buildings is not to be removed.

IN ÆQUA MANU. In equal hand. *Fleta*, lib. 3, c. 14, § 2.

IN ÆQUALI JURE. In equal right; on an equality in point of right.

In æquali jure melior est conditio possidentis. In [a case of] equal right the condition of the party in possession is the better. Plowd. 296; Broom, Max. 713.

IN ÆQUALI MANU. In equal hand; held equally or indifferently between two parties. Where an instrument was deposited by the parties to it in the hands of a third person, to keep on certain conditions, it was said to be held *in æquali manu*. Reg. Orig. 28.

IN ALIENO SOLO. In another's land. 2 Steph. Comm. 20.

IN ALIO LOCO. In another place.

In alta prodizione nullus potest esse accessorius sed principalis solummodo. 3 Inst. 138. In high treason no one can be an accessory but only principal.

In alternativis electio est debitoris. In alternatives the debtor has the election.

In ambigua voce legis ea potius accipienda est significatio quæ vitio caret, præsertim cum etiam voluntas legis ex hoc colligi possit. In an ambiguous expression of law, that signification is to be preferred which is consonant with equity, especially when the spirit of the law can be collected from that. Dig. 1, 3, 19; Broom, Max. 576.

In ambiguis casibus semper præsumitur pro rege. In doubtful cases the presumption is always in favor of the king.

In ambiguis orationibus maxime sententia spectanda est ejus qui eas protulisset. In ambiguous expressions, the intention of the person using them is chiefly to be regarded. Dig. 50, 17, 96; Broom, Max. 567.

IN AMBIGUO. In doubt.

In ambiguo sermone non utrumque dicimus sed id duntaxat quod volumus. When the language we use is ambiguous, we do not use it in a double sense, but in the sense in which we mean it. Dig. 34, 5, 3; 2 De G. M. & G. 313.

In Anglia non est interregnum. In England there is no interregnum. Jenk. Cent. 205; Broom, Max. 50.

IN APERTA LUCE. In open daylight; in the day-time. 9 Coke, 65*b*.

IN APICIBUS JURIS. Among the subtleties or extreme doctrines of the law. 1 Kames, Eq. 190. See Apex Juris.

IN ARBITRIUM JUDICIS. At the pleasure of the judge.

IN ARCTA ET SALVA CUSTODIA. In close and safe custody. 3 Bl. Comm. 415.

IN ARTICULO. In a moment; immediately. Cod. 1, 34, 2.

IN ARTICULO MORTIS. In the article of death; at the point of death. Jackson v. Vredenbergh, 1 Johns. (N. Y.) 159.

In atrocioribus delictis punitur affectus licet non sequatur effectus. 2 Rolle R. 82. In more atrocious crimes the intent is punished, though an effect does not follow.

IN AUTRE DROIT. L. Fr. In another's right. As representing another. An executor, administrator, or trustee sues *in autre droit*.

IN BANCO. In bank; in the bench. A term applied to proceedings in the court in bank, as distinguished from the proceedings at *nisi prius*. Also, in the English court of common bench.

IN BEING. In existence or life at a given moment of time, as, in the phrase "life or lives in being" in the rule against perpetuities. An unborn child may, in some circumstances be considered as "in being." Phillips v. Heron, 55 Ohio St. 478, 45 N. E. 720; Hone v. Van Schaick, 3 Barb. Ch. (N. Y.) 509.

IN BLANK. A term applied to the indorsement of a bill or note where it consists merely of the indorser's name, without restriction to any particular indorsee. 2 Steph. Comm. 164.

IN BONIS. Among the goods or property; in actual possession. Inst. 4, 2, 2. *In bonis defuncti*, among the goods of the deceased.

IN BULK. As a whole; as an entirety, without division into items or physical separation in packages or parcels. Standard Oil Co. v. Com., 119 Ky. 75, 82 S. W. 1022; Fitz-Henry v. Munter, 33 Wash. 629, 74 P. 1003; State v. Smith, 114 Mo. 180, 21 S. W. 493; Feldstein v. Fusco, 205 App. Div. 806, 201 N. Y. S. 4, 5; Marlow v. Ringer, 79 W. Va. 568, 91 S. E. 386, 388, L. R. A. 1917D, 619; Mott v. Reeves, 125 Misc. 511, 211 N. Y. S. 375, 380; Fiske Rubber Co. v. Hayes Motor Car Co., 131 Ark. 248, 199 S. W. 96; In re Lipman (D. C.) 201 F. 169, 173.

IN CAMERA. In chambers; in private. A cause is said to be heard *in camera* either when the hearing is had before the judge in his private room or when all spectators are excluded from the court-room.

IN CAPITA. To the heads; by heads or polls. Persons succeed to an inheritance *in capita* when they individually take equal shares. So challenges to individual jurors are challenges *in capita*, as distinguished from challenges to the array.

IN CAPITE. In chief. 2 Bl. Comm. 60. Tenure *in capite* was a holding directly from the king.

IN CASE. If, in the event. *Barmore v. Dar-
ragh* (Tex. Civ. App.) 231 S. W. 472, 478.

**In casu extremæ necessitatis omnia sunt com-
munia.** Hale, P. C. 54. In cases of extreme
necessity, everything is in common.

IN CASU PROVISIO. In a (or the) case pro-
vided. *In tali casu editum et provisum*, in
such case made and provided. Townsh. Pl.
164, 165.

IN CAUSA. In the cause, as distinguished
from *in initialibus* (q. v.) A term in Scotch
practice. 1 Brown, Ch. 252.

IN CHIEF. Principal; primary; directly ob-
tained. A term applied to the evidence ob-
tained from a witness upon his examination
in court by the party producing him.

Tenure in chief, or *in capite*, is a holding
directly of the king or chief lord.

**In civilibus ministerium excusat, in criminalibus
non item.** In civil matters agency (or service)
excuses, but not so in criminal matters. Lofft,
228; Tray. Lat. Max. 243.

In claris non est locus conjecturis. In things
obvious there is no room for conjecture.

IN COMMENDAM. In commendation; as a
commended living. 1 Bl. Comm. 393. See
Commenda.

A term applied in Louisiana to a limited
partnership, answering to the French "*en
commandite*." Civil Code La. art. 2810.

**In commodato hæc pactio, ne dolus præstetur,
rata non est.** In the contract of loan, a stip-
ulation not to be liable for fraud is not valid.
Dig. 13, 7, 17, pr.

IN COMMON. Shared in respect to title, use,
or enjoyment, without apportionment or divi-
sion into individual parts; held by several
for the equal advantage, use, or enjoyment of
all. See *Hewit v. Jewell*, 59 Iowa, 37, 12 N.
W. 738; *Chambers v. Harrington*, 111 U. S.
350, 4 S. Ct. 428, 28 L. Ed. 452; *Walker v.
Dunshee*, 38 Pa. 439.

IN COMMUNI. In common. *Fleta*, lib. 3, c.
4, § 2.

IN CONJUNCTION WITH. In association
with. *Blaisdell v. Inhabitants of Town of
York*, 110 Me. 500, 87 A. 361, 370.

**In conjunctivis, oportet utramque partem esse
veram.** In conjunctives it is necessary that
each part be true. Wing, Max. 13, max. 9. In
a condition consisting of divers parts in the
copulative, both parts must be performed.

IN CONSIDERATIONE INDE. In considera-
tion thereof. 3 Salk. 64, pl. 5.

IN CONSIDERATIONE LEGIS. In consid-
eration or contemplation of law; in abeyance.
Dyer, 102b.

IN CONSIDERATIONE PRÆMISSORUM.
In consideration of the premises. 1 Strange,
535.

IN CONSIMILI CASU. See *Consimili Casu*.

**In consimili casu, consimile debet esse remedi-
um.** Hardr. 65. In similar cases the remedy
should be similar.

IN CONSPECTU EJUS. In his sight or view.
12 Mod. 95.

**In consuetudinibus, non diuturnitas temporis sed
soliditas rationis est consideranda.** In customs,
not length of time, but solidity of reason, is
to be considered. Co. Litt. 141a. The antiq-
uity of a custom is to be less regarded than
its reasonableness.

IN CONTINENTI. Immediately; without any
interval or intermission. Calvin. Sometimes
written as one word "*incontinenti*."

**In contractibus, benigna; in testamentis, benignior;
in restitutionibus, benignissima interpre-
tatio facienda est.** Co. Litt. 112. In contracts,
the interpretation is to be liberal; in wills,
more liberal; in restitutions, most liberal.

**In contractibus, rei veritas potius quam scrip-
tura perspicui debet.** In contracts, the truth of
the matter ought to be regarded rather than
the writing. Cod. 4, 22, 1.

**In contractibus, tacite insunt [veniunt] quæ
sunt moris et consuetudinis.** In contracts, mat-
ters of custom and usage are tacitly im-
plied. A contract is understood to contain
the customary clauses, although they are not
expressed. Story, Bills, § 143; 3 Kent, Comm.
260, note; Broom, Max. 842.

**In contrahenda venditione, ambiguum pactum
contra venditorem interpretandum est.** In the
contract of sale, an ambiguous agreement is
to be interpreted against the seller. Dig. 50,
17, 172. See Id. 18, 1, 21.

**In conventionibus, contrahentium voluntas po-
tius quam verba spectari placuit.** In agree-
ments, the intention of the contracting par-
ties, rather than the words used, should be
regarded. Broom, Max. 551; *Jackson v. Wil-
kinson*, 17 Johns. (N. Y.) 150.

IN CORPORE. In body or substance; in a
material thing or object.

IN CRASTINO. On the morrow. *In crastino
Animarum*, on the morrow of All Souls. 1 Bl.
Comm. 342.

**In criminalibus, probationes debent esse luce
clariiores.** In criminal cases, the proofs ought
to be clearer than light. 3 Inst. 210.

**In criminalibus, sufficit generalis malitia inten-
tionis, cum facto paris gradus.** In criminal
matters or cases, a general malice of intention

is sufficient, [if united] with an act of equal or corresponding degree. Bac. Max. p. 65, reg. 15; Broom, Max. 323.

IN CRIMINALIBUS, VOLUNTAS REPUTABILUR PRO FACTO. In criminal acts, the will will be taken for the deed. 3 Inst. 106.

IN CUJUS REI TESTIMONIUM. In testimony whereof. The initial words of the concluding clause of ancient deeds in Latin, literally translated in the English forms.

IN CUSTODIA LEGIS. In the custody or keeping of the law. 2 Steph. Comm. 74.

IN DELICTO. In fault. See *In Pari Delicto*, etc.

IN DIEM. For a day; for the space of a day. Calvin.

In disjunctivis sufficit alteram partem esse veram. In disjunctives it is sufficient that either part be true. Where a condition is in the disjunctive, it is sufficient if either part be performed. Wing. Max. 13, max. 9; Broom, Max. 592; 7 East, 272.

IN DOMINICO. In demesne. *In dominico suo ut de feodo*, in his demesne as of fee.

IN DORSO. On the back. 2 Bl. Comm. 468; 2 Steph. Comm. 164. *In dorso recordi*, on the back of the record. 5 Coke, 45. Hence the English *indorse*, *indorsement*, etc.

In dubiis, benigniora præferenda sunt. In doubtful cases, the more favorable views are to be preferred; the more liberal interpretation is to be followed. Dig. 50, 17, 56; 2 Kent, Comm. 557.

In dubiis, magis dignum est accipiendum. Branch, Princ. In doubtful cases, the more worthy is to be accepted.

In dubiis, non præsumitur pro testamento. In cases of doubt, the presumption is not in favor of a will. Branch, Princ. But see Cro. Car. 51.

IN DUBIO. In doubt; in a state of uncertainty, or in a doubtful case.

In dubio, hæc legis constructio quam verba ostendunt. In a case of doubt, that is the construction of the law which the words indicate. Branch, Princ.

In dubio, pars mitior est sequenda. In doubt, the milder course is to be followed.

In dubio, pro lege fori. In a doubtful case, the law of the forum is to be preferred. "A false maxim." Meili, Int. L. 151.

In dubio, sequendum quod tutius est. In doubt, the safer course is to be adopted.

IN DUPLO. In double. *Damna in duplo*, double damages. Fleta, lib. 4, c. 10, § 1.

IN EADEM CAUSA. In the same state or condition. Calvin.

IN EMULATIONEM VICINI. In envy or hatred of a neighbor. Where an act is done, or action brought, solely to hurt or distress another, it is said to be *in emulationem vicini*. 1 Kames, Eq. 56.

In eo quod plus sit, semper inest et minus. In the greater is always included the less also. Dig. 50, 17, 110.

IN EQUITY. In a court of equity, as distinguished from a court of law; in the purview, consideration, or contemplation of equity; according to the doctrines of equity.

IN ESSE. In being. Actually existing. Distinguished from *in posse*, which means "that which is not, but may be." A child before birth is *in posse*; after birth, *in esse*.

IN EST DE JURE. (Lat.) It is implied of right or by law.

IN EVIDENCE. Included in the evidence already adduced. The "facts in evidence" are such as have already been proved in the cause.

IN EXCAMBIO. In exchange. Formal words in old deeds of exchange.

IN EXECUTION AND PURSUANCE OF. Words used to express the fact that the instrument is intended to carry into effect some other instrument, as in case of a deed in execution of a power. They are said to be synonymous with "to effect the object of;" U. S. v. Nunnemacher, 7 Biss. 129, Fed. Cas. No. 15,903.

IN EXITU. In issue. *De materia in exitu*, of the matter in issue. 12 Mod. 372.

In expositione instrumentorum, mala grammatica, quod fieri potest, vitanda est. In the construction of instruments, bad grammar is to be avoided as much as possible. 6 Coke, 39; 2 Pars. Cont. 26.

IN EXTENSO. In extension; at full length; from beginning to end, leaving out nothing.

IN EXTREMIS. In extremity; in the last extremity; in the last illness. 2 Bl. Comm. 375, 500; Prince v. Hazleton, 20 Johns. (N. Y.) 502, 11 Am. Dec. 307. *Agens in extremis*, being in extremity. Bract. fol. 373b. Declarations *in extremis*, dying declarations. 1 Greenl. Ev. § 156; Wilson v. Boerem, 15 Johns. (N. Y.) 286; State v. Burton, 111 S. C. 526, 98 S. E. 856, 863. In extremis does not always mean in articulo mortis. In re Mallery's Will, 217 N. Y. S. 489, 492, 127 Misc. 784.

IN FACIE CURIÆ. In the face of the court. Dyer, 28.

IN FACIE ECCLESIÆ. In the face of the church. A term applied in the law of England to marriages, which are required to be solemnized in a parish church or public chapel, unless by dispensation or license. 1 Bl. Comm. 439; 2 Steph. Comm. 288, 289. Applied in Bracton to the old mode of conferring dower. Bract. fol. 92; 2 Bl. Comm. 133.

IN FACIENDO. In doing; in feaſance; in the performance of an act. 2 Story, Eq. Jur. § 1308.

IN FACT. Actual, real; as diſtinguiſhed from implied or inferred. Reſulting from the acts of parties, inſtead of from the act or inſtatement of law.

IN FACTO. In fact; in deed. *In facto dicit*, in fact ſays. 1 Salk. 22, pl. 1.

In facto quod ſe habet ad bonum et malum, magis de bono quam de malo lex intendit. In an act or deed which admits of being conſidered as both good and bad, the law intends more from the good than from the bad; the law makes the more favorable conſtruction. Co. Litt. 78b.

In favorabilibus magis attenditur quod prodeſt quam quod nocet. In things favored, what profits is more regarded than what prejudices. Bac. Max. p. 57, in reg. 12.

IN FAVOREM LIBERTATIS. In favor of liberty.

IN FAVOREM VITÆ. In favor of life.

In favorem vitæ, libertatis, et innocentia, omnia præſumuntur. In favor of life, liberty, and innocence, every preſumption is made. Lofft. 125.

IN FEODO. In fee. Bract. fol. 207; Fleta, lib. 2, c. 64, § 15. *Seiſitus in feodo*, ſeiſed in fee. Fleta, lib. 3, c. 7, § 1.

In fictione juris ſemper æquitas exiſtit. In the fiction of law there is always equity; a legal fiction is always conſiſtent with equity. 11 Coke, 51a; Broom, Max. 127, 130.

IN FIERI. In being made; in proceſs of formation or development; hence, incomplete or inchoate. Legal proceedings are deſcribed as *in fieri* until judgment is entered.

IN FINE. Lat. At the end. Uſed, in references, to indicate that the paſſage cited is at the *end* of a book, chapter, ſection, etc.

IN FORMA PAUPERIS. In the character or manner of a pauper. Deſcribes permiſſion given to a poor perſon to ſue without liability for coſts.

IN FORO. In a (or the) forum, court, or tribunal.

IN FORO CONSCIENTIÆ. In the tribunal of conſcience; conſcientiouſly; conſidered from a moral, rather than a legal, point of view.

IN FORO CONTENTIOSO. In the forum of contention or litigation.

IN FORO ECCLESIASTICO. In an eccleſiaſtical forum; in the eccleſiaſtical court. Fleta, lib. 2, c. 57, § 13.

IN FORO SÆCULARI. In a ſecular forum or court. Fleta, lib. 2, c. 57, § 14; 1 Bl. Comm. 20.

IN FRAUDEM CREDITORUM. In fraud of creditors; with intent to defraud creditors. Inſt. 1, 6, pr. 3.

IN FRAUDEM LEGIS. In fraud of the law. 3 Bl. Comm. 94. With the intent or view of evading the law. *Jackson v. Jackson*, 1 Johns. (N. Y.) 424, 432.

IN FULL. Relating to the whole or *full* amount; as a receipt in full. Complete; giving all details. *Bard v. Wood*, 3 Metc. (Maſſ.) 75.

IN FULL LIFE. Continuing in both physical and civil exiſtence; that is, neither actually dead nor *civilitèr mortuus*.

IN FUTURO. In future; at a future time; the oppoſite of *in præſenti*. 2 Bl. Comm. 166, 175.

IN GENERALI PASSAGIO. In the general paſſage; that is, on the journey to Paleſtine with the general company or body of Cruſaders. This term was of frequent occurrence in the old law of eſſoins, as a means of accounting for the abſence of the party, and was diſtinguiſhed from *simplex paſſagium*, which meant that he was performing a pilgrimage to the Holy Land alone.

In generalibus verſatur error. Error dwells in general expreſſions. *Pitman v. Hooper*, 3 Sumn. 290, Fed. Cas. No. 11,186; *Underwood v. Carney*, 1 Cuſh. (Maſſ.) 292.

IN GENERE. In kind; in the ſame *genus* or claſs; the ſame in quantity and quality, but not individually the ſame. In the Roman law, things which may be given or reſtored *in genere* are diſtinguiſhed from ſuch as muſt be given or reſtored *in ſpecie*; that is, identically. Mackeld. Rom. Law, § 161.

IN GREMIO LEGIS. In the boſom of the law; in the protection of the law; in abeyance. 1 Coke, 131a; T. Raym. 319; *Hooper v. Farmers' Union Warehouse Co.*, 21 Ala. App. 91, 105 So. 725, 726.

IN GROSS. In a large quantity or sum; without division or particulars; by wholesale. Green v. Taylor, 10 Fed. Cas. No. 1,126.

At large; not annexed to or dependent upon another thing. Common in gross is such as is neither appendant nor appurtenant to land, but is annexed to a man's person. 2 Bl. Comm. 34.

IN HAC PARTE. In this behalf; on this side.

IN HÆC VERBA. In these words; in the same words.

In hæredes non solent transire actiones quæ penales ex maleficio sunt. 2 Inst. 442. Penal actions arising from anything of a criminal nature do not pass to heirs.

In his enim quæ sunt favorabilia animæ, quamvis sunt damnosa rebus, fiat aliquando extensio statuti. In things that are favorable to the spirit, though injurious to property, an extension of the statute should sometimes be made. 10 Coke, 101.

In his quæ de jure communi omnibus conceduntur, consuetudo alicujus patriæ vel loci non est alleganda. 11 Coke, 85. In those things which by common right are conceded to all, the custom of a particular district or place is not to be alleged.

IN HOC. In this; in respect to this.

IN IISDEM TERMINIS. In the same terms. 9 East, 487.

IN INDIVIDUO. In the distinct, identical, or individual form; *in specie*. Story, Bailm. § 97.

IN INFINITUM. Infinitely; indefinitely. Imports indefinite succession or continuance.

IN INITIALIBUS. In the preliminaries. A term in Scotch practice, applied to the preliminary examination of a witness as to the following points: Whether he knows the parties, or bears ill will to either of them, or has received any reward or promise of reward for what he may say, or can lose or gain by the cause, or has been told by any person what to say. If the witness answer these questions satisfactorily, he is then examined *in causa*, in the cause. Bell, Dict. "Evidence."

IN INITIO. In or at the beginning. *In initio litis*, at the beginning, or in the first stage of the suit. Bract. fol. 400.

IN INTEGRUM. To the original or former state. Calvin.

IN INVIDIAM. To excite a prejudice.

IN INVITUM. Against an unwilling party; against one not assenting. A term applied to proceedings against an adverse party, to which he does not consent.

IN IPSIS FAUCIBUS. In the very throat or entrance. *In ipsis faucibus* of a port, actually entering a port. 1 C. Rob. Adm. 233, 234.

IN ITINERE. In eyre; on a journey or circuit. In old English law, the justices *in itinere* (or in eyre) were those who made a circuit through the kingdom once in seven years for the purposes of trying causes. 3 Bl. Comm. 58.

In course of transportation; on the way; not delivered to the vendee. In this sense the phrase is equivalent to "*in transitu*."

IN JUDGMENT. In a court of justice; in a seat of judgment. Lord Hale is called "one of the greatest and best men who ever sat in judgment." 1 East, 306.

In judiciis, minori ætati succurritur. In courts or judicial proceedings, infancy is aided or favored. Jenk. Cent. 46, case 89.

IN JUDICIO. In Roman law. In the course of an actual trial; before a judge, (*judex*.) A cause, during its preparatory stages, conducted before the prætor, was said to be *in jure*; in its second stage, after it had been sent to a *judex* for trial, it was said to be *in judicio*.

In judicio non creditur nisi juratis. Cro. Car. 64. In a trial, credence is given only to those who are sworn.

IN JURE. In law; according to law. In the Roman practice, the procedure in an action was divided into two stages. The first was said to be *in jure*; it took place before the prætor, and included the formal and introductory part and the settlement of questions of law. The second stage was committed to the *judex*, and comprised the investigation and trial of the facts; this was said to be *in judicio*.

IN JURE ALTERIUS. In another's right. Hale, Anal. § 26.

In jure, non remota causa sed proxima spectatur. Bac. Max. reg. 1. In law, the proximate, and not the remote, cause is regarded.

IN JURE PROPRIO. In one's own right. Hale, Anal. § 26.

IN JUS VOCARE. To call, cite, or summon to court. Inst. 4, 16, 3; Calvin. *In jus vocando*, summoning to court. 3 Bl. Comm. 279.

IN KIND. In the same kind, class, or genus. A loan is returned "in kind" when not the identical article, but one corresponding and equivalent to it, is given to the lender. See *In Genere*.

IN LAW. In the intendment, contemplation, or inference of the law; implied or inferred

by law; existing in law or by force of law. See In Fact.

IN LECTO MORTALI. On the deathbed. Fleta, lib. 5, c. 28, § 12.

IN LIBERAM ELEMOSINAM. In free alms. Land given for a charitable motive was said to be so given. See Frankalmoin.

IN LIEU OF. Instead of; in place of; in substitution of. State v. Escalade, 150 La. 638, 91 So. 135, 136; Southland Life Ins. Co. v. Hopkins (Tex. Civ. App.) 219 S. W. 254, 263; S. E. Hendricks Co. v. Thomas Pub. Co. (C. C. A.) 242 F. 37, 40; Segale v. Pagni, 48 Nev. 313, 244 P. 1010; Willat Film Corporation v. Central Union Trust Co. of New York, 221 App. Div. 180, 222 N. Y. S. 671, 674; Lamb v. Milliken, 78 Colo. 564, 243 P. 624, 625; Joiner v. Joiner, 117 Miss. 507, 78 So. 369, 370; Holt Mfg. Co. v. Brotherton, 91 Wash. 354, 157 P. 849.

IN LIMINE. On or at the threshold; at the very beginning; preliminarily.

IN LITEM. For a suit; to the suit. Greenl. Ev. § 348.

IN LOCO. In place; in lieu; instead; in the place or stead. Townsh. Pl. 38.

IN LOCO PARENTIS. In the place of a parent; instead of a parent; charged, factitiously, with a parent's rights, duties, and responsibilities. Wetherby v. Dixon, 19 Ves. 412; Brinkerhoff v. Merselis, 24 N. J. Law, 683; Capek v. Kropik, 129 Ill. 509, 21 N. E. 836; Howard v. United States (D. C.) 2 F.(2d) 170, 174; Meisner v. United States (D. C.) 295 F. 866, 868.

In majore summa continetur minor. 5 Coke, 115. In the greater sum is contained the less.

IN MAJOREM CAUTELAM. For greater security. 1 Strange, 105, arg.

IN MALAM PARTEM. In a bad sense, so as to wear an evil appearance.

In maleficiis voluntas spectatur, non exitus. In evil deeds regard must be had to the intention, and not to the result. Dig. 48, 8, 14; Broom, Max. 324.

In maleficio, ratihabitio mandato comparatur. In a case of malfeasance, ratification is equivalent to command. Dig. 50, 17, 152, 2.

In maxima potentia minima licentia. In the greatest power there is the least freedom. Hob. 159.

IN MEDIAS RES. Into the heart of the subject, without preface or introduction.

IN MEDIO. Intermediate. A term applied, in Scotch practice, to a fund held between parties litigant.

In mercibus illicitis non sit commercium. There should be no commerce in illicit or prohibited goods. 3 Kent, Comm. 262, note.

IN MERCY. To be in mercy is to be at the discretion of the king, lord, or judge in respect to the imposition of a fine or other punishment.

IN MISERICORDIA. The entry on the record where a party was in mercy was, "*Ideo in misericordia,*" etc. Sometimes "*misericordia*" means the being quit of all ameracements.

IN MITIORI SENSU. In the milder sense; in the less aggravated acceptation. In actions of slander, it was formerly the rule that, if the words alleged would admit of two constructions, they should be taken in the less injurious and defamatory sense, or *in mitiori sensu*.

IN MODUM ASSISÆ. In the manner or form of an assize. Bract. fol. 183b. *In modum juratæ*, in manner of a jury. Id. fol. 181b.

IN MORA. In default; literally, in delay. In the civil law, a borrower who omits or refuses to return the thing loaned at the proper time is said to be *in mora*. Story, Bailm. §§ 254, 259.

In Scotch Law

A creditor who has begun without completing diligence necessary for attaching the property of his debtor is said to be *in mora*. Bell.

IN MORTUA MANU. Property owned by religious societies was said to be held *in mortua manu*, or in mortmain, since religious men were *civiltiter mortui*. 1 Bl. Comm. 479; Tayl. Gloss.

IN NOMINE DEI, AMEN. In the name of God, Amen. A solemn introduction, anciently used in wills and many other instruments. The translation is often used in wills at the present day.

IN NOTIS. In the notes.

In novo casu, novum remedium apponendum est. 2 Inst. 3. A new remedy is to be applied to a new case.

IN NUBIBUS. In the clouds; in abeyance; in custody of law. *In nubibus, in mare, in terrâ, vel in custodia legis*, in the air, sea, or earth, or in the custody of the law. Tayl. Gloss. In case of abeyance, the inheritance is figuratively said to rest *in nubibus*, or *in gremio legis*.

IN NULLIUS BONIS. Among the goods or property of no person; belonging to no per-

son, as treasure-trove and wreck were anciently considered.

IN NULLO EST ERRATUM. In nothing is there error. The name of the common plea or joinder in error, denying the existence of error in the record or proceedings; which is in the nature of a demurrer, and at once refers the matter of law arising thereon to the judgment of the court. 2 Tidd, Pr. 1173; Booth v. Com., 7 Metc. (Mass.) 285, 287.

In obscura voluntate manumittentis, favendum est libertati. Where the expression of the will of one who seeks to manumit a slave is ambiguous, liberty is to be favored. Dig. 50, 17, 179.

In obscuris, inspicere solere quod verisimilius est, aut quod plerumque fieri solet. In obscure cases, we usually look at what is most probable, or what most commonly happens. Dig. 50, 17, 114.

In obscuris, quod minimum est sequimur. In obscure or doubtful cases, we follow that which is the least. Dig. 50, 17, 9; 2 Kent, Comm. 557.

IN ODIUM SPOLIATORIS. In hatred of a despoiler, robber, or wrong-doer. The Saratoga, 1 Gall. 174, Fed. Cas. No. 12,355; Arthur v. The Cassius, 2 Story, 99, Fed. Cas. No. 564. 1 Greenl. Ev. § 348.

In odium spoliatoris omnia præsumentur. To the prejudice (in condemnation) of a despoiler all things are presumed; every presumption is made against a wrongdoer. 1 Vern. 452.

In omni actione ubi duæ concurrunt districtiones, videlicet, in rem et in personam, illa districtio tenenda est quæ magis timetur et magis ligat. In every action where two distresses concur, that is, *in rem* and *in personam*, that is to be chosen which is most dreaded, and which binds most firmly. Bract. fol. 372; Fleta, l. 6, c. 14, § 28.

In omni re nascitur res quæ ipsam rem exterminat. In everything there arises a thing which destroys the thing itself. Everything contains the element of its own destruction. 2 Inst. 15.

IN OMNIBUS. In all things; on all points. "A case parallel *in omnibus*." 10 Mod. 104.

In omnibus contractibus, sive nominatis sive innominatis, permutatio continetur. In all contracts, whether nominate or innominate, an exchange [of value, *i. e.*, a consideration] is implied. Grav. lib. 2, § 12; 2 Bl. Comm. 444, note.

In omnibus obligationibus in quibus dies non ponitur, præsentis die debetur. In all obligations in which a date is not put, the debt is due on the present day; the liability accrues immediately. Dig. 50, 17, 14.

In omnibus [fere] pœnalibus judiciis, et ætati et imprudentiæ succurritur. In nearly all penal judgments, immaturity of age and imbecility of mind are favored. Dig. 50, 17, 108; Broom, Max. 314.

In omnibus quidem, maxime tamen in jure, æquitas spectanda sit. In all things, but especially in law, equity is to be regarded. Dig. 50, 17, 90; Story, Bailm. § 257.

IN PACATO SOLO. In a country which is at peace.

IN PACE DEI ET REGIS. In the peace of God and the king. Fleta, lib. 1, c. 31, § 6. Formal words in old appeals of murder.

IN PAIS. This phrase, as applied to a legal transaction, primarily means that it has taken place without legal proceedings. Thus a widow was said to make a request *in pais* for her dower when she simply applied to the heir without issuing a writ. (Co. Litt. 32b.) So conveyances are divided into those by matter of record and those by matter *in pais*. In some cases, however, "matters *in pais*" are opposed not only to "matters of record," but also to "matters in writing," *i. e.*, deeds, as where estoppel by deed is distinguished from estoppel by matter *in pais*. (Id. 352a.) Swëet. See, also, Pais.

IN PAPER. A term formerly applied to the proceedings in a cause before the record was made up. 3 Bl. Comm. 406; 2 Burrows, 1098. Probably from the circumstance of the record being always on parchment. The opposite of "on record." 1 Burrows, 322.

IN PARI CAUSA. In an equal cause. In a cause where the parties on each side have equal rights.

In pari causa possessor potior haberi debet. In an equal cause he who has the possession should be preferred. Dig. 50, 17, 128, 1.

IN PARI DELICTO. In equal fault; equally culpable or criminal; in a case of equal fault or guilt. See Rozell v. Vansyckle, 11 Wash. 79, 39 Pac. 270; Middlesboro Home Telephone Co. v. Louisville & N. R. Co., 284 S. W. 104, 107, 214 Ky. 822.

A person who is *in pari delicto* with another differs from a *particeps criminis* in this, that the former term always includes the latter, but the latter does not always include the former. 8 East, 381.

In pari delicto potior est conditio possidentis, [defendentis.] In a case of equal or mutual fault [between two parties] the condition of the party in possession [or defending] is the better one. 2 Burrows, 926. Where each party is equally in fault, the law favors him who is actually in possession. Broom, Max. 290, 729. Where the fault is mutual, the law will leave the case as it finds it. Story, Ag. § 195;

Reaves Lumber Co. v. Cain-Hurley Lumber Co., 279 S. W. 257, 258, 152 Tenn. 339.

IN PARI MATERIA. Upon the same matter or subject. Statutes *in pari materia* are to be construed together. United Society v. Eagle Bank, 7 Conn. 457; State v. Gerhardt, 145 Ind. 439, 44 N. E. 469, 33 L. R. A. 313; People v. New York Cent. Ry. Co., 25 Barb. (N. Y.) 201; Sales v. Barber Asphalt Pav. Co., 166 Mo. 671, 66 S. W. 979; Paltro v. Aetna Casualty & Surety Co., 204 P. 1044, 1046, 119 Wash. 101; Old Homestead Bakery v. Marsh, 242 P. 749, 753, 75 Cal. App. 247; Coates v. Marion County, 189 P. 903, 904, 96 Or. 334; People ex rel. Doscher v. Sisson, 118 N. E. 789, 790, 222 N. Y. 387; McGrath v. Kaelin, 225 P. 34, 35, 66 Cal. App. 41; Dunlap v. Littell, 255 S. W. 280, 282, 200 Ky. 595; People v. Wallace, 126 N. E. 175, 176, 291 Ill. 465; Quality Clothes Shop v. Keeney, 106 N. E. 541, 542, 57 Ind. App. 500; State ex rel. Columbia Nat. Bank of Kansas City v. Davis, 284 S. W. 464, 470, 314 Mo. 373; Jefferson v. Cook, 155 P. 852, 855, 53 Okl. 272.

IN PATIENDO. In suffering, permitting, or allowing.

IN PECTORE JUDICIS. In the breast of the judge. Latch, 180. A phrase applied to a judgment.

IN PEJOREM PARTEM. In the worst part; on the worst side. Latch, 159, 160.

IN PERPETUAM REI MEMORIAM. In perpetual memory of a matter; for preserving a record of a matter. Applied to depositions taken in order to preserve the testimony of the deponent.

IN PERPETUITY. Endless duration; forever. Central R. Co. of New Jersey v. New York Telephone Co., 128 A. 160, 161, 101 N. J. Law, 353.

IN PERPETUUM REI TESTIMONIUM. In perpetual testimony of a matter; for the purpose of declaring and settling a thing forever. 1 Bl. Comm. 86.

IN PERSON. A party, plaintiff or defendant, who sues out a writ or other process, or appears to conduct his case in court himself, instead of through a solicitor or counsel, is said to act and appear *in person*.

IN PERSONAM, IN REM. In the Roman law, from which they are taken, the expressions "*in rem*" and "*in personam*" were always opposed to one another, an act or proceeding *in personam* being one done or directed against or with reference to a specific person, while an act or proceeding *in rem* was one done or directed with reference to no specific person, and consequently against or with reference to all whom it might concern, or "all the world." The phrases were especial-

ly applied to actions; an *actio in personam* being the remedy where a claim against a specific person arose out of an obligation, whether *ex contractu* or *ex maleficio*, while an *actio in rem* was one brought for the assertion of a right of property, easement, *status*, etc., against one who denied or infringed it. See Inst. 4, 6, 1; Gaius, 4, 1, 1-10; 5 Sav. Syst. 13, et seq.; Dig. 2, 4, 7, 8; Id. 4, 2, 9, 1.

From this use of the terms, they have come to be applied to signify the antithesis of "available against a particular person," and "available against the world at large." Thus, *jura in personam* are rights primarily available against specific persons; *jura in rem*, rights only available against the world at large. Hook v. Hoffman, 147 P. 722, 727, 16 Ariz. 540; The Kongsli (D. C.) 252 F. 267, 269; Austin v. Royal League, 147 N. E. 106, 109, 316 Ill. 188; Williamson v. Williamson, 209 S. W. 503, 504, 183 Ky. 435, 3 A. L. R. 799; Beck v. Natalie Oil Co., 78 So. 430, 143 La. 153.

So a judgment or decree is said to be *in rem* when it binds third persons. Such is the sentence of a court of admiralty on a question of prize, or a decree of nullity or dissolution of marriage, or a decree of a court in a foreign country as to the *status* of a person domiciled there.

Lastly, the terms are sometimes used to signify that a judicial proceeding operates on a thing or a person. Thus, it is said of the court of chancery that it acts *in personam*, and not *in rem*, meaning that its decrees operate by compelling defendants to do what they are ordered to do, and not by producing the effect directly. Sweet. See Cross v. Armstrong, 44 Ohio St. 613, 10 N. E. 160; Cunningham v. Shanklin, 60 Cal. 125; Hill v. Henry, 66 N. J. Eq. 150, 57 Atl. 555.

Judgment in Personam

See that title.

In personam actio est, qua cum eo agimus qui obligatus est nobis ad faciendum aliquid vel dandum. The action *in personam* is that by which we sue him who is under obligation to us to do something or give something. Dig. 44, 7, 25; Bract. 101b.

IN PIOS USUS. For pious uses; for religious purposes. 2 Bl. Comm. 505.

IN PLACE. In mining law, rock or mineralized matter is "in place" when remaining as nature placed it, that is, unsevered from the circumjacent rock, or which is fixed solid and immovable in the form of a vein or lode. See Williams v. Gibson, 84 Ala. 228, 4 South. 350, 5 Am. St. Rep. 368; Stevens v. Williams, 23 Fed. Cas. 44; Tabor v. Dexler, 23 Fed. Cas. 615; Leadville Co. v. Fitzgerald, 15 Fed. Cas. 99; Jones v. Prospect Mountain Tunnel Co., 21 Nev. 339, 31 Pac. 645; Duffield v. San Francisco Chemical Co. (C. C. A.) 205 F. 480, 483.

IN PLENA VITA. In full life. Yearb. P. 18 Hen. VI. 2.

IN PLENO COMITATU. In full county court. 3 Bl. Comm. 36.

IN PLENO LUMINE. In public; in common knowledge; in the light of day.

In pœnalibus causis benignius interpretandum est. In penal causes or cases, the more favorable interpretation should be adopted. Dig. 50, 17, (197), 155, 2; Plowd. 86b, 124; 2 Hale, P. C. 365.

IN POSSE. In possibility; not in actual existence. See In Esse.

IN POTESTATE PARENTIS. In the power of a parent. Inst. 1, 8, pr.; Id. 1, 9; 2 Bl. Comm. 498.

IN PRÆMISSORUM FIDEM. In confirmation or attestation of the premises. A notarial phrase.

In præparatoriis ad iudicium favetur actori. 2 Inst. 57. In things preceding judgment the plaintiff is favored.

IN PRÆSENTI. At the present time. 2 Bl. Comm. 166. Used in opposition to *in futuro*. See Van Wyck v. Knevals, 106 U. S. 360, 1 Sup. Ct. 336, 27 L. Ed. 201.

In præsentia majoris potestatis, minor potestas cessat. In the presence of the superior power, the inferior power ceases. Jenk. Cent. 214, c. 53. The less authority is merged in the greater. Broom, Max. 111.

IN PRENDER. L. Fr. In taking. A term applied to such incorporeal hereditaments as a party entitled to them was to *take* for himself; such as common. 2 Steph. Comm. 23; 3 Bl. Comm. 15. See In Render.

In pretio emptionis et venditionis, naturaliter licet contrahentibus se circumvenire. In the price of buying and selling, it is naturally allowed to the contracting parties to overreach each other. 1 Story, Cont. 606.

IN PRIMIS. In the first place. A phrase used in argument.

IN PRINCIPIO. At the beginning.

IN PROMPTU. In readiness; at hand. Usually written *impromptu*.

In propria causa nemo iudex. No one can be judge in his own cause. 12 Code, 13.

IN PROPRIA PERSONA. In one's own proper person.

It is a rule in pleading that pleas to the jurisdiction of the court must be plead *in propria persona*, because if pleaded by attorney they admit the jurisdiction, as an attorney is an officer of the court,

and he is presumed to plead after having obtained leave, which admits the jurisdiction. Lawes, Pl. 91.

In some jurisdictions, however, this rule is no longer recognized. 1 C. J. 255.

In quo quis delinquit, in eo de jure est puniendus. In whatever thing one offends, in that is he rightfully to be punished. Co. Litt. 233b; Wing. Max. 204, max. 58. The punishment shall have relation to the nature of the offense.

IN RE. In the affair; in the matter of; concerning; re. This is the usual method of entitling a judicial proceeding in which there are not adversary parties, but merely some *res* concerning which judicial action is to be taken, such as a bankrupt's estate, an estate in the probate court, a proposed public highway, etc. It is also sometimes used as a designation of a proceeding where one party makes an application on his own behalf, but such proceedings are more usually entitled "*Ex parte* ———."

In re communi melior est conditio prohibentis. In common property the condition of the one prohibiting is the better. In other words, either co-owner has a right of veto against the acts of the other. Gulf Refining Co. of Louisiana v. Carroll, 82 So. 277, 279, 145 La. 299.

In re communi neminem dominorum jure facere quicquam, invito altero, posse. One co-proprietor can exercise no authority over the common property against the will of the other, Dig. 10, 3, 28. In other words, either co-owner has a right of veto against the acts of the other. Gulf Refining Co. of Louisiana v. Carroll, 82 So. 277, 279, 145 La. 299.

In re communi potior est conditio prohibentis. In a partnership the condition of one who forbids is the more favorable.

In re dubia, benigniorem interpretationem sequi, non minus justius est quam tutius. In a doubtful matter, to follow the more liberal interpretation is not less the juster than the safer course. Dig. 50, 17, 192, 1.

In re dubia, magis inficiatio quam affirmatio intelligenda. In a doubtful matter, the denial or negative is to be understood, [or regarded,] rather than the affirmative. Godb. 37.

In re lupanari, testes lupanares admittentur. In a matter concerning a brothel, prostitutes are admitted as witnesses. Van Epps v. Van Epps, 6 Barb. (N. Y.) 320, 324.

In re pari potioem causam esse prohibentis constat. In a thing equally shared [by several] it is clear that the party refusing [to permit the use of it] has the better cause. Dig. 10, 3, 28. A maxim applied to partnerships, where one partner has a right to withhold his assent to the acts of his copartner. 3 Kent, Comm. 45.

In re propria iniquum admodum est alicui licentiam tribuere sententiæ. It is extremely unjust that any one should be judge in his own cause.

IN REBUS (Lat.). In things, cases, or matters.

In rebus manifestis, errat qui auctoritates legum allegat; quia perspicue vera non sunt probanda. In clear cases, he mistakes who cites legal authorities; for obvious truths are not to be proved. 5 Coke, 67a. Applied to cases too plain to require the support of authority; "because," says the report, "he who endeavors to prove them obscures them."

In rebus quæ sunt favorabilia animæ, quamvis sunt damnosa rebus, fiat aliquando extensio statuti. 10 Coke, 101. In things that are favorable to the spirit, though injurious to things, an extension of a statute should sometimes be made.

IN REGARD TO. Concerning; relating to; in respect of; with respect to; about. Hart v. Hart, 181 Iowa, 527, 164 N. W. 849, 850.

IN REM. A technical term used to designate proceedings or actions instituted *against the thing*, in contradistinction to personal actions, which are said to be *in personam*. See *In Personam*.

It is true that, in a strict sense, a proceeding *in rem* is one taken directly against property, and has for its object the disposition of property, without reference to the title of individual claimants; but, in a larger and more general sense, the terms are applied to actions between parties, where the direct object is to reach and dispose of property owned by them, or of some interest therein. Such are cases commenced by attachment against the property of debtors, or instituted to partition real estate, foreclose a mortgage, or enforce a lien. So far as they affect property in this state, they are substantially proceedings *in rem* in the broader sense which we have mentioned. *Pennoyer v. Neff*, 95 U. S. 734, 24 L. Ed. 565; *Continental Gin Co. v. Arnold*, 167 P. 613, 617, 66 Okl. 132, L. R. A. 1918B, 511; *Grannis v. Ordean*, 34 S. Ct. 779, 782, 234 U. S. 385, 58 L. Ed. 1363.

In the strict sense of the term, a proceeding "in rem" is one which is taken directly against property or one which is brought to enforce a right in the thing itself. *Austin v. Royal League*, 316 Ill. 188, 147 N. E. 106, 109.

A divorce suit is a "suit in rem," the essential characteristic of which is found in the power of the state through the decree or judgment of its court to dispose of the subject-matter of the suit, the res, in accordance with the object of the suit, whether that subject-matter be physical property or the status of one or both of the parties litigant, which decree operates immediately and absolutely upon the status of the suitor which is the res in the suit without the necessity of execution, attachment, or contempt proceedings to enforce it. *Lister v. Lister*, 86 N. J. Eq. 30, 97 A. 170, 173.

A proceeding "in rem" is in effect a proceeding against the owner, as well as a proceeding against the goods, for it is his breach of the law which has to be proven to establish the forfeiture, and it is his

property which is sought to be forfeited. *Mack v. Westbrook*, 148 Ga. 690, 98 S. E. 339, 343.

Judgment in Rem

See that title.

Quasi in Rem

A term applied to proceedings which are not strictly and purely *in rem*, but are brought against the defendant personally, though the real object is to deal with particular property or subject property to the discharge of claims asserted; for example, foreign attachment, or proceedings to foreclose a mortgage, remove a cloud from title, or effect a partition. See *Freeman v. Alderson*, 119 U. S. 187, 7 S. Ct. 165, 30 L. Ed. 372; *Hill v. Henry*, 66 N. J. Eq. 150, 57 A. 555.

In rem actio est per quam rem nostram quæ ab alio possidetur petimus, et semper adversus eum est qui rem possidet. The action *in rem* is that by which we seek our property which is possessed by another, and is always against him who possesses the property. Dig. 44, 7, 25; *Bract. fol. 102*.

IN RENDER. A thing is said to lie *in render* when it must be rendered or given by the tenant; as rent. It is said to lie *in prender* when it consists in the right in the lord or other person to *take* something.

See *In Prender*.

In republica maxime conservanda sunt jura belli. In a state the laws of war are to be especially upheld. 2 *Inst.* 58.

IN RERUM NATURA. In the nature of things; in the realm of actuality; in existence. In a dilatory plea, an allegation that the plaintiff is not *in rerum natura* is equivalent to averring that the person named is fictitious. 3 *Bl. Comm.* 301.

In civil law, this phrase is applied to things. *Inst.* 2, 20, 7. It is a broader term than *in rebus humanis*: *e. g.* before quickening, an infant is *in rerum natura*, but not *in rebus humanis*; after quickening, he is *in rebus humanis* as well as *in rerum natura*. *Calvinus, Lex*.

In restitutionem, non in pœnam hæres succedit. The heir succeeds to the restitution, not to the penalty. An heir may be compelled to make restitution of a sum unlawfully appropriated by the ancestor, but is not answerable criminally, as for a penalty. 2 *Inst.* 198.

In restitutionibus benignissima interpretatio facienda est. *Co. Litt.* 112. The most benignant interpretation is to be made in restitutions.

In satisfactionibus non permittitur amplius fieri quam semel factum est. In payments, more must not be received than has been received once for all. 9 *Coke*, 53.

IN SCRINIO JUDICIS. In the writing-case of the judge; among the judge's papers. "That is a thing that rests *in scrinio judicis*, and does not appear in the body of the decree." Hardr. 51.

IN SEPARALI. In several; in severalty. Fleta, lib. 2, c. 54, § 20.

IN SIMILI MATERIA. Dealing with the same or a kindred subject-matter.

IN SIMPLICI PEREGRINATIONE. In simple pilgrimage. Bract. fol. 338. A phrase in the old law of essoins. See In Generali Passagio.

IN SOLIDO. In the civil law. For the whole; as a whole. An obligation *in solido* is one where each of the several obligors is liable for the whole; that is, it is joint and several. Henderson v. Wadsworth, 115 U. S. 264, 6 S. Ct. 140, 29 L. Ed. 377. Possession *in solidum* is exclusive possession.

When several persons obligate themselves to the obligee by the terms "*in solido*," or use any other expressions which clearly show that they intend that each one shall be separately bound to perform the whole of the obligation, it is called an "obligation *in solido*" on the part of the obligors. Civ. Code La. art. 2082.

IN SOLIDUM. For the whole. *Si plures sint fidejussores, quotquot erunt numero, singuli in solidum tenentur*, if there be several sureties, however numerous they may be, they are individually bound for the whole debt. Inst. 3, 21, 4. *In parte sive in solidum*, for a part or for the whole. Id. 4, 1, 16. See Id. 4, 6, 20; Id. 4, 7, 2.

IN SOLO. In the soil or ground. *In solo alieno*, in another's ground. *In solo proprio*, in one's own ground. 2 Steph. Comm. 20.

IN SPECIE. Specific; specifically. Thus, to decree performance *in specie* is to decree specific performance.

In kind; in the same or like form. A thing is said to exist *in specie* when it retains its existence as a distinct individual of a particular class.

IN STATU QUO. In the condition in which it was. See Status Quo. McReynolds v. Harrigfeld, 26 Idaho, 26, 140 P. 1096, 1098; Carpenter v. Mason, 181 Wis. 114, 193 N. W. 973, 974; Rickman v. Houck, 192 Iowa, 340, 184 N. W. 657, 661; Edwards v. Miller, 102 Okl. 189, 228 P. 1105, 1107.

In stipulationibus cum quæritur quid actum sit verba contra stipulatorem interpretanda sunt. In the construction of agreements words are interpreted against the person using them. Thus, the construction of the *stipulatio* is against the stipulator, and the construction

of the *promissio* against the promissor. Dig. 45, 1, 38, 18; Broom, Max. 599.

In stipulationibus, id tempus spectatur quo contrahimus. In stipulations, the time when we contract is regarded. Dig. 50, 17, 144, 1.

IN STIRPES. In the law of intestate succession. According to the roots or stocks; by representation; as distinguished from succession *per capita*. See Per Stirpes; Per Capita.

IN SUBSIDIUM. In aid.

In suo quisque negotio hebetior est quam in alieno. Every one is more dull in his own business than in another's.

IN TANTUM. In so much; so much; so far; so greatly. Reg. Orig. 97, 106.

IN TERMINIS TERMINANTIBUS. In terms of determination; exactly in point. 11 Coke, 40b. In express or determinate terms. 1 Leon. 93.

IN TERROREM. In terror or warning; by way of threat. Applied to legacies given upon condition that the recipient shall not dispute the validity or the dispositions of the will; such a condition being usually regarded as a mere threat.

IN TERROREM POPULI. Lat. To the terror of the people. A technical phrase necessary in indictments for riots. 4 Car. & P. 373.

In testamentis plenius testatoris intentionem scrutamur. In wills we more especially seek out the intention of the testator. 3 Bulst. 103; Broom, Max. 555.

In testamentis plenius voluntates testantium interpretantur. Dig. 50, 17, 12. In wills the intention of testators is more especially regarded. "That is to say," says Mr. Broom, (Max., 568,) "a will will receive a more liberal construction than its strict meaning, if alone considered, would permit."

In testamentis ratio tacita non debet considerari, sed verba solum spectari debent; adeo per divinationem mentis a verbis recedere durum est. In wills an unexpressed meaning ought not to be considered, but the words alone ought to be looked to; so hard is it to recede from the words by guessing at the intention.

IN TESTIMONIUM. Lat. In witness; in evidence whereof.

IN THE FIELD. Any place, on land or water, apart from permanent cantonments or fortifications where military operations are being conducted. Ex parte Gerlach (D. C.) 247 F. 616, 617; Ex parte Jochen (D. C.) 257 F. 200, 205; Ex parte Mikell (D. C.) 253 F. 817, 819; Hines v. Mikell (C. C. A.) 259 F.

28, 30; Ex parte Jochen (D. C.) 257 F. 200, 208.

IN THE PEACE OF THE STATE. In definition of murder as unlawful and felonious killing of human being "in the peace of the state," the quoted phrase means the same as "in the king's peace" under the English common law, and negatives the idea that deceased was actually engaged in waging war against the state. *State v. Corneille*, 96 So. 813, 817, 153 La. 929.

IN TOTIDEM VERBIS. In so many words; in precisely the same words; word for word.

IN TOTO. In the whole; wholly; completely; as the award is void *in toto*.

In toto et pars continetur. In the whole the part also is contained. Dig. 50, 17, 113.

In traditionibus scriptorum, non quod dictum est, sed quod gestum est, inspicitur. In the delivery of writings, not what is said, but what is done, is looked to. 9 Coke, 137a.

IN TRAJECTU. In the passage over; on the voyage over. See Sir William Scott, 3 C. Rob. Adm. 141.

IN TRANSITU. In transit; on the way or passage; while passing from one person or place to another. 2 Kent, Comm. 540-552; *More v. Lott*, 13 Nev. 383; *Amory Mfg. Co. v. Gulf, etc.*, R. Co., 89 Tex. 419, 37 S. W. 856, 59 Am. St. Rep. 65. On the voyage. 1 C. Rob. Adm. 338.

IN UTROQUE JURE. In both laws; *i. e.*, the civil and canon law.

IN VACUO. Without object; without concomitants or coherence.

IN VADIO. In gage or pledge. 2 Bl. Comm. 157.

IN VENTRE SA MERE. L. Fr. In his mother's womb; spoken of an unborn child.

In veram quantitatem fidejussor teneatur, nisi pro certa quantitate accessit. Let the surety be holden for the true quantity, unless he agree for a certain quantity, *Bean v. Parker*, 17 Mass. 597.

In verbis, non verba, sed res et ratio, quærenda est. Jenk. Cent. 132. In the construction of words, not the mere words, but the thing and the meaning, are to be inquired after.

IN VINCULIS. In chains; in actual custody. Gilb. Forum Rom. 97.

Applied also, figuratively, to the condition of a person who is compelled to submit to terms which oppression and his necessities impose on him. 1 Story, Eq. Jur. § 302.

IN VIRIDI OBSERVANTIA. Present to the minds of men, and in full force and operation.

In vocibus videndum non a quo sed ad quid sumatur. In discourses, it is to be considered not from what, but to what, it is advanced. Ellesmere, Postn. 62.

IN WITNESS WHEREOF. The initial words of the concluding clause in deeds: "In witness whereof the said parties have hereunto set their hands," etc. A translation of the Latin phrase "*in cujus rei testimonium.*"

INADEQUATE. Insufficient; disproportionate; lacking in effectiveness or in conformity to a prescribed standard or measure.

INADEQUATE DAMAGES. See Damages.

INADEQUATE PRICE. A term applied to indicate the want of a sufficient consideration for a thing sold, or such a price as would ordinarily be entirely incommensurate with its intrinsic value. *State v. Purcell*, 131 Mo. 312, 33 S. W. 13; *Stephens v. Ozbourne*, 107 Tenn. 572, 64 S. W. 903, 89 Am. St. Rep. 937.

INADEQUATE REMEDY AT LAW. Within the meaning of the rule that equity will not entertain a suit if there is an adequate remedy at law, this does not mean that there must be a failure to collect money or damages at law, but the remedy is considered inadequate if it is, in its nature and character, unfitted or not adapted to the end in view, as, for instance, when the relief sought is preventive rather than compensatory. *Cruickshank v. Bidwell*, 176 U. S. 73, 20 S. Ct. 280, 44 L. Ed. 377; *Safe Deposit & Trust Co. v. Anniston (C. C.)* 96 F. 663; *Crawford County v. Laub*, 110 Iowa, 355, 81 N. W. 590.

INADMISSIBLE. That which, under the established rules of law, cannot be admitted or received; *e. g.*, parol evidence to contradict a written contract.

INADVERTENCE. Heedlessness; lack of attention; failure of a person to pay careful and prudent attention to the progress of a negotiation or a proceeding in court by which his rights may be affected. Used chiefly in statutory enumerations of the grounds on which a judgment or decree may be vacated or set aside; as, "mistake, inadvertence, surprise, or excusable neglect." See *Skinner v. Terry*, 107 N. C. 103, 12 S. E. 118; *Davis v. Steuben School Tp.*, 19 Ind. App. 694, 50 N. E. 1; *Taylor v. Pope*, 106 N. C. 267, 11 S. E. 257, 19 Am. St. Rep. 530; *Thompson v. Connell*, 31 Or. 231, 48 P. 467, 65 Am. St. Rep. 318; *Corona Coal Co. v. Sexton*, 21 Ala. App. 51, 105 So. 716, 717; *San Antonio Brewing Ass'n v. Wolfshohl (Tex. Civ. App.)* 155 S. W. 644, 646; *Tremont Trust Co. v. Burack*, 235 Mass. 398, 126 N. E. 782, 784, 9 A. L. R. 1067; *Gutierrez v. Romero*, 24 Ariz. 382, 210 P. 470, 471; *Brown v. Southwestern Bell Telephone Co. (Mo. App.)* 274 S. W. 876, 879; *Meyerstein v. Burke*, 193 Cal. 105, 222 P. 810; *Reeves v. Lutz*, 179 Mo. App. 61, 162 S. W.

280, 284; *Boise Valley Traction Co. v. Boise City*, 37 Idaho, 20, 214 P. 1037, 1038.

INÆDIFICATIO. Lat. In the civil law. Building on another's land with one's own materials, or on one's own land with another's materials.

INALIENABLE. Not subject to alienation; the characteristic of those things which cannot be bought or sold or transferred from one person to another, such as rivers and public highways, and certain personal rights; *e. g.*, liberty.

INAUGURATION. The act of installing or inducting into office with formal ceremonies, as the coronation of a sovereign, the inauguration of a president or governor, or the consecration of a prelate. A word applied by the Romans to the ceremony of dedicating a temple, or raising a man to the priesthood, after the *augurs* had been consulted.

INBLAURA. In old records. Profit or product of ground. Cowell.

INBOARD. In maritime law, and particularly with reference to the stowage of cargo, this term is contrasted with "outboard." It does not necessarily mean under deck, but is applied to a cargo so piled or stowed that it does not project over the "board" (side or rail) of the vessel. See *Allen v. St. Louis Ins. Co.*, 46 N. Y. Super. Ct. 181.

INBORH. In Saxon law. A security, pledge, or *hypotheca*, consisting of the chattels of a person unable to obtain a personal "borg," or surety.

INBOROW. A forecourt or gate-house. A certain barony was inborow and outborow between England and Scotland. Cowell.

INBOUND COMMON. An uninclosed common, marked out, however, by boundaries.

INC. Incorporated. *Goldberg, Bowen & Co. v. Dimick*, 169 Cal. 187, 146 P. 672, 673.

INCAPACITY. Want of capacity; want of power or ability to take or dispose; want of legal ability to act. *Ellicott v. Ellicott*, 90 Md. 321, 45 A. 183, 48 L. R. A. 58; *Drews' Appeal*, 53 N. H. 320; *Appeal of Cleveland*, 72 Conn. 340, 44 A. 476; *In re Blinn*, 99 Cal. 216, 33 P. 841; *Mulligan v. Bond & Mortgage Guarantee Co.*, 184 N. Y. S. 429, 432, 193 App. Div. 741; *Lumbermen's Reciprocal Ass'n v. Coody* (Tex. Civ. App.) 278 S. W. 856, 858.

Inefficiency; incompetency; lack of adequate power. *Travelers' Ins. Co. v. Richmond* (Tex. Com. App.) 291 S. W. 1085, 1087.

Legal incapacity

This expression implies that the person in view has the right vested in him, but is prevented by some impediment from exercising it; as in the case of minors, *femes covert*, lunatics, etc. An administrator has no right until letters are issued to him. Therefore he cannot benefit (as respects the time

before obtaining letters) by a saving clause in a statute of limitations in favor of persons under a legal incapacity to sue. *Gates v. Brattle*, 1 Root (Conn.) 187.

Total incapacity

In Workmen's Compensation Acts, such disqualification from performing the usual tasks of a workman that he cannot procure and retain employment. *Western Indemnity Co. v. Corder* (Tex. Civ. App.) 249 S. W. 316, 317; *Georgia Casualty Co. v. Ginn* (Tex. Civ. App.) 272 S. W. 601, 603; *Moore v. Peet Bros. Mfg. Co.*, 162 P. 295, 296, 99 Kan. 443. Incapacity for work is total not only so long as the injured employee is unable to do any work of any character, but also while he remains unable, as a result of his injury, either to resume his former occupation or to procure remunerative employment at a different occupation suitable to his impaired capacity. Such period of total incapacity may be followed by a period of partial incapacity, during which the injured employee is able both to procure and to perform work at some occupation suitable to his then-existing capacity, but less remunerative than the work in which he was engaged at the time of his injury. That situation constitutes "partial incapacity." *Austin Bros. Bridge Co. v. Whitmire*, 121 S. E. 345, 346, 31 Ga. App. 560. Synonymous with "total disability." *Consolidation Coal Co. v. Crislip*, 289 S. W. 270, 273, 217 Ky. 371. See *Disability*.

INCARCERATION. Imprisonment; confinement in a jail or penitentiary. This term is seldom used in law, though found occasionally in statutes. When so used, it appears always to mean confinement by competent public authority or under due legal process, whereas "imprisonment" may be effected by a private person without warrant of law, and if unjustifiable is called "false imprisonment." No occurrence of such a phrase as "false incarceration" has been noted. See *Imprisonment*.

INCASTELLARE. To make a building serve as a castle. *Jacob*.

INCAUSTUM, or ENCAUSTUM. Ink. *Fleta*, l. 2, c. 27, § 5.

Incaute factum pro non facto habetur. A thing done unwarily (or unadvisedly) will be taken as not done. *Dig. 28, 4, 1*.

INCENDIARY. A house-burner; one guilty of arson; one who maliciously and willfully sets another person's building on fire.

Incendium ære alieno non exiit debitorem. *Cod. 4, 2, 11*. A fire does not release a debtor from his debt.

INCEPTION. Commencement; opening; initiation. The beginning of the operation of a contract or will, or of a note, mortgage, lien, etc.; the beginning of a cause or suit in court. *Oriental Hotel Co. v. Griffiths*, 88 Tex. 574, 33 S. W. 652, 30 L. R. A. 765, 53 Am. St. Rep. 790; *Sullivan v. Coal Co.*, 94 Tex. 541, 63 S. W. 307; *Marvin v. McCullum*, 20 Johns. (N. Y.) 288; *State v. Bollero*, 112 La. 850, 36 So. 754.

Incerta pro nullis habentur. Uncertain things are held for nothing. Dav. Ir. K. B. 33.

Incerta quantitas vitiat actum. 1 Rolle R. 465. An uncertain quantity vitiates the act.

INCERTÆ PERSONÆ. Uncertain persons, as posthumous heirs, a corporation, the poor, a juristic person, or persons who cannot be ascertained until after the execution of a will. Sohm. Inst. Rom. L. 104, 458.

INCEST. The crime of sexual intercourse or cohabitation between a man and woman who are related to each other within the degrees wherein marriage is prohibited by law. People v. Stratton, 141 Cal. 604, 75 P. 166; State v. Herges, 55 Minn. 464, 57 N. W. 205; Dinkey v. Com., 17 P. 129, 55 Am. Dec. 542; Taylor v. State, 110 Ga. 150, 35 S. E. 161; State v. Sauls, 190 N. C. 810, 130 S. E. 848, 849; Signs v. State, 35 Okl. Cr. 340, 250 P. 938, 940.

INCESTUOSI. Those offspring incestuously begotten. Mack. Rom. L. § 143.

INCESTUOUS ADULTERY. The elements of this offense are that defendant, being married to one person, has had sexual intercourse with another related to the defendant within the prohibited degrees. Cook v. State, 11 Ga. 53, 56 Am. Dec. 410.

INCESTUOUS BASTARDS. Incestuous bastards are those who are produced by the illegal connection of two persons who are relations within the degrees prohibited by law. Civ. Code La. art. 183.

INCH. A measure of length, containing one-twelfth part of a foot; originally supposed equal to three barleycorns.

—Inch of candle. A mode of sale at one time in use among merchants. A notice is first given upon the exchange, or other public place, as to the time of sale. The goods to be sold are divided into lots, printed papers of which, and the conditions of sale, are published. When the sale takes place, a small piece of candle, about an inch long is kept burning, and the last bidder, when the candle goes out, is entitled to the lot or parcel for which he bids. Wharton.

—Inch of water. The unit for the measurement of a volume of water or of hydraulic power, being the quantity of water which, under a given constant head or pressure, will escape through an orifice one inch square (or a circular orifice having a diameter of one inch) in a vertical plane. Jackson Milling Co. v. Chandos, 82 Wis. 437, 52 N. W. 759.

—Miner's inch. The quantity of water which will escape from a ditch or reservoir through an orifice in its side one inch square, the center of the orifice being six inches below the constant level of the water, equivalent to about 1.6 cubic feet of water per minute. Defined by statute in Colorado as "an inch-

square orifice under a five-inch pressure, a five-inch pressure being from the top of the orifice of the box put into the banks of the ditch to the surface of water." Mills' Ann. St. Colo. § 4643 (Comp. Laws 1921, § 4111). See Longmire v. Smith, 26 Wash. 439, 67 P. 246, 58 L. R. A. 308. The standard miner's inch of water, as fixed by St. Cal. 1901, p. 660, is the equivalent of 1½ cubic feet of water per minute measured through any aperture or orifice, making it equivalent to one-fortieth of a second foot. Lillis v. Silver Creek & Pan-oché Land & Water Co., 32 Cal. App. 668, 163 P. 1040, 1043.

INCHARTARE. To give, or grant, and assure anything by a written instrument.

INCHOATE. Imperfect; unfinished; begun, but not completed; as a contract not executed by all the parties. Good v. Crist, 23 Ohio App. 484, 156 N. E. 146, 148; Wainscott v. Haley, 185 Mo. App. 45, 171 S. W. 983, 984; Sterling v. Parker-Washington Co., 185 Mo. App. 192, 170 S. W. 1156, 1159; Long v. Long, 99 Ohio St. 330, 124 N. E. 161, 162, 5 A. L. R. 1343; Bucci v. Popovich, 93 N. J. Eq. 121, 115 A. 95, 98.

INCHOATE DOWER. A wife's interest in the lands of her husband during his life, which may become a right of dower upon his death. Guerin v. Moore, 25 Minn. 465; Dingman v. Dingman, 39 Ohio St. 178; Smith v. Shaw, 150 Mass. 297, 22 N. E. 924.

INCHOATE INSTRUMENT. Instruments which the law requires to be registered or recorded are said to be "inchoate" prior to registration, in that they are then good only between the parties and privies and as to persons having notice. Wilkins v. McCorkle, 112 Tenn. 688, 80 S. W. 834.

INCHOATE INTEREST. An interest in real estate which is not a present interest, but which may ripen into a vested estate, if not barred, extinguished, or divested. Rupe v. Hadley, 113 Ind. 416, 16 N. E. 391; Bever v. North, 107 Ind. 547, 8 N. E. 576; Warford v. Noble (C. C.) 2 Fed. 204.

INCIDENT. This word, used as a noun, denotes anything which inseparably belongs to, or is connected with, or inherent in, another thing, called the "principal." In this sense, a court-baron is incident to a manor. Also, less strictly, it denotes anything which is usually connected with another, or connected for some purposes, though not inseparably. Thus, the right of alienation is incident to an estate in fee-simple, though separable in equity. See Cromwell v. Phipps (Sur.) 1 N. Y. S. 278; Mount Carmel Fruit Co. v. Webster, 140 Cal. 183, 73 P. 826.

INCIDENTAL. Depending upon or appertaining to something else as primary; something necessary, appertaining to, or depending upon another which is termed the principal;

something incidental to the main purpose. *The Robin Goodfellow* (D. C.) 20 F.(2d) 924, 925.

The term "incidental powers," within the rule that a corporation possesses only those powers which its charter confers upon it, either expressly or as incidental to its existence, means such powers as are directly and immediately appropriate to the execution of the powers expressly granted and exist only to enable the corporation to carry out the purpose of its creation. *State ex inf. Harvey v. Missouri Athletic Club*, 170 S. W. 904, 909, 261 Mo. 576, L. R. A. 1915C, 876, Ann. Cas. 1916D, 931; *State ex rel. Barrett v. First Nat. Bank*, 249 S. W. 619, 622, 297 Mo. 397, 30 A. L. R. 918.

INCIDERE. Lat. In the civil and old English law. To fall into. Calvin.

To fall out; to happen; to come to pass. Calvin.

To fall upon or under; to become subject or liable to. *Incidere in legem*, to incur the penalty of a law. *Brissonius*.

INCILE. Lat. In the civil law. A trench. A place sunk by the side of a stream, so called because it is *cut* (*incidatur*) into or through the stone or earth. Dig. 43, 21, 1, 5. The term seems to have included ditches (*fossæ*) and wells, (*putei*).

INCINERATION. Burning to ashes; destruction of a substance by fire, as, the corpse of a murdered person.

INCIPITUR. Lat. It is begun; it begins. In old practice, when the pleadings in an action at law, instead of being recited at large on the issue-roll, were set out merely by their commencements, this was described as entering the *incipitur*; *i. e.*, the beginning.

INCISED WOUND. In medical jurisprudence. A cut or incision on a human body; a wound made by a cutting instrument, such as a razor. *Burrill, Circ. Ev.* 693; *Whart. & S. Med. Jur.* § 808.

INCITE. To arouse; stir up; instigate; set in motion; as, to "incite" a riot. Also, generally, in criminal law to instigate, persuade, or move another to commit a crime; in this sense nearly synonymous with "abet." See *Long v. State*, 23 Neb. 33, 36 N. W. 310. *United States v. Ault* (D. C.) 263 F. 800, 810; *United States v. Strong* (D. C.) 263 F. 789, 796; *State v. Diamond*, 27 N. M. 477, 202 P. 988, 991, 20 A. L. R. 1527; *Piluso v. Spencer*, 36 Cal. App. 416, 172 P. 412, 414.

INCIVILE. Lat. Irregular; improper; out of the due course of law.

Incivile est, nisi tota lege perspecta, una aliqua particula ejus proposita, judicare, vel respondere. It is improper, without looking at the whole of a law, to give judgment or advice, upon a view of any one clause of it. Dig. 1, 3, 24.

Incivile est, nisi tota sententia inspecta, de aliqua parte judicare. It is irregular, or legally improper, to pass an opinion upon any part of a sentence, without examining the whole. *Hob.* 171a.

INCIVISM. Unfriendliness to the state or government of which one is a citizen.

INCLAUSA. In old records. A home close or inclosure near the house. *Paroch. Antiq.* 31; *Cowell*.

INCLOSE. To shut up. "To inclose a jury," in Scotch practice, is to shut them up in a room by themselves. *Bell.* See *Union Pac. Ry. Co. v. Harris*, 28 Kan. 210; *Campbell v. Gilbert*, 57 Ala. 569.

To surround or envelop. *Epstein v. Dryfoos* (D. C.) 229 F. 756, 758; *Ex parte Wisner*, 32 Cal. App. 637, 163 P. 868, 869.

INCLOSED LANDS. Lands which are actually inclosed and surrounded with fences. *Tapsell v. Crosskey*, 7 Mees. & W. 446; *Kimball v. Carter*, 95 Va. 77, 27 S. E. 823, 38 L. R. A. 570; *Daniels v. State*, 91 Ga. 1, 16 S. E. 97. See *Haynie v. State* (Tex. Cr. App.) 75 S. W. 25.

INCLOSURE. In English law. Inclosure is the act of freeing land from rights of common, commonable rights, and generally all rights which obstruct cultivation and the productive employment of labor on the soil.

Land surrounded by some visible obstruction. *Whittet v. Bertsch*, 39 R. I. 31, 97 A. 18, 19, L. R. A. 1916E, 710.

Also, an artificial fence around one's estate. *Porter v. Aldrich*, 39 Vt. 330; *Taylor v. Welbey*, 36 Wis. 44; *Golconda Cattle Co. v. U. S.* (C. C. A.) 201 F. 281, 284. See *Close*.

INCLOSURE ACTS. English statutes regulating the subject of inclosure. The most notable was that of 1801.

INCLOSURE COMMISSION ACT, 1845. The statute 8 and 9 Vict. c. 118, establishing a board of commissioners for England and Wales and empowering them, on the application of persons interested to the amount of one-third of the value of the land, and provided the consent of persons interested to the amount of two-thirds of the land and of the lord of the manor (in case the land be waste of a manor) be ultimately obtained, to inquire into the case and to report to parliament as to the expediency of making the inclosure. 1 Steph. Com. 655.

INCLUDE. (Lat. *in claudere*, to shut in, keep within). To confine within, attain, shut up, contain, inclose, comprise, comprehend, embrace, involve. *Including* may, according to context, express an enlargement and have the meaning of *and* or *in addition to*, or merely specify a particular thing already included within general words theretofore used. *Miller v. Johnston*, 173 N. C. 62, 91 S. E. 593,

597; *Blanck v. Pioneer Mining Co.*, 93 Wash. 26, 159 P. 1077, 1079; *Baker v. Soltan*, 94 N. J. Eq. 544, 118 A. 682, 683; *Jacksonville Terminal Co. v. Blanshard*, 77 Fla. 855, 82 So. 300, 301; *Wyatt v. City of Louisville*, 206 Ky. 432, 267 S. W. 146, 147; *Kennedy v. Industrial Accident Commission of California*, 50 Cal. App. 184, 195 P. 267, 271; *Achelis v. Musgrove*, 212 Ala. 47, 101 So. 670, 672; *Cunningham v. Sizer Steel Corporation (D. C.)* 1 F. (2d) 337, 338; *Decorated Metal Mfg. Co. v. U. S.*, 12 Ct. Cust. App. 140; *In re Sheppard's Estate*, 189 App. Div. 370, 179 N. Y. S. 409, 412; *Rose v. State*, 122 Ark. 509, 184 S. W. 60, 61.

Inclusio unius est exclusio alterius. The inclusion of one is the exclusion of another. The certain designation of one person is an absolute exclusion of all others. 11 Coke, 58b.

INCLUSIVE. Embraced; comprehended; comprehending the stated limits or extremes. Opposed to "exclusive."

INCLUSIVE SURVEY. In land law, one which includes within its boundaries prior claims excepted from the computation of the area within such boundaries and excepted in the grant. *Stockton v. Morris*, 39 W. Va. 432, 19 S. E. 531.

INCOLA. Lat. In the civil law. An inhabitant; a dweller or resident. Properly, one who has transferred his domicile to any country.

Incolas domicilium facit. Residence creates domicile. *Arnold v. United Ins. Co.*, 1 Johns. Cas. (N. Y.) 363, 366.

INCOME. The return in money from one's business, labor, or capital invested; gains, profit, or private revenue. *Braun's Appeal*, 105 Pa. 415; *People v. Davenport*, 30 Hun (N. Y.) 177; *In re Slocum*, 169 N. Y. 153, 62 N. E. 130; *Waring v. Savannah*, 60 Ga. 99.

"Income" is the gain which proceeds from labor, business, or property; commercial revenue, or receipts of any kind, including wages or salaries, the proceeds of agriculture or commerce, the rent of houses, or the return on investments; or the amount of money coming to a person or corporation within a specified time, whether as payment for services, interest, or profit from investment, its usual synonyms being "gain," "profit," "revenue." *Trefry v. Putnam*, 116 N. E. 904, 907, 227 Mass. 522, L. R. A. 1917F, 806. Something derived from property, labor, skill, ingenuity, or sound judgment, or from two or more in combination, or from some other productive source. *Stony Brook R. Corporation v. Boston & M. R. R.*, 260 Mass. 379, 157 N. E. 607, 610, 53 A. L. R. 700. An increase of wealth, out of which money may be taken to satisfy the imposition laid thereon. *Brown v. Long*, 242 Mass. 242, 136 N. E. 188, 189.

"Income" is the gain derived from capital, from labor, or from both combined; something of exchangeable value, proceeding from the property, severed from the capital, however invested or employed, and received or drawn by the recipient for

his separate use, benefit, and disposal. *Eisner v. Macomber*, 40 S. Ct. 189, 252 U. S. 189, 64 L. Ed. 521, 9 A. L. R. 1570; *Goodrich v. Edwards*, 41 S. Ct. 390, 255 U. S. 527, 65 L. Ed. 758; *Noel v. Parrott (C. C. A.)* 15 F.(2d) 669, 672. Money or that which is convertible into money. *State v. Wisconsin Tax Commission*, 187 Wis. 539, 204 N. W. 481, 482.

"Income" means that which comes in or is received from any business or investment of capital, without reference to the outgoing expenditures; while "profits" generally means the gain which is made upon any business or investment when both receipts and payments are taken into account. "Income," when applied to the affairs of individuals, expresses the same idea that "revenue" does when applied to the affairs of a state or nation. *People v. Niagara County*, 4 Hill (N. Y.) 20; *Bates v. Porter*, 74 Cal. 224, 15 P. 732.

"Income" is used in common parlance and in law in contradistinction to "capital." 31 C. J. 397. Income, when not derived from personal exertion, is something produced by capital without impairing such capital, the property being left intact, and nothing can be called income which takes away from the property itself. *Sargent Land Co. v. Von Baumbach (D. C.)* 207 F. 423, 430. Income is something which has grown out of or issued from capital, leaving the capital unimpaired and intact. *Gavit v. Irwin (D. C.)* 275 F. 643, 645.

INCOME TAX. A tax on the yearly profits arising from property, professions, trades, and offices. 2 Steph. Comm. 573. *Levi v. Louisville*, 97 Ky. 394, 30 S. W. 973, 23 L. R. A. 480; *Parker v. Insurance Co.*, 42 La. Ann. 428, 7 So. 599. An income tax is not levied upon property, funds, or profits, but upon the right of an individual or corporation to receive income or profits. *Paine v. City of Oshkosh*, 190 Wis. 69, 208 N. W. 790, 791. Under various constitutional and statutory provisions, a tax on incomes is sometimes said to be an excise tax and not a tax on property, *Hattiesburg Grocery Co. v. Robertson*, 126 Miss. 34, 88 So. 4, 5, 25 A. L. R. 748, nor on business, but a tax on the proceeds arising therefrom, *Young v. Illinois Athletic Club*, 310 Ill. 75, 141 N. E. 369, 371, 30 A. L. R. 985. But in other cases an income tax is said to be a property and not a personal or excise tax; *In re Ponzi (D. C.)* 6 F.(2d) 324, 326; *Commonwealth v. P. Horillard Co.*, 129 Va. 74, 105 S. E. 683, 684; *Kennedy v. Commissioner of Corporations & Taxation*, 256 Mass. 426, 152 N. E. 747, 748 (but see *In re Opinion of the Justices*, 77 N. H. 611, 93 A. 311, 313). An "excise tax" is an indirect charge for the privilege of following an occupation or trade, or carrying on a business; while an "income tax" is a direct tax imposed upon income, and is as directly imposed as is a tax on land. *United States v. Philadelphia, B. & W. R. Co. (D. C.)* 262 F. 188, 190.

Incommodum non solvit argumentum. An inconvenience does not destroy an argument.

INCOMMUNICATION. In Spanish law. The condition of a prisoner who is not permitted to see or to speak with any person

visiting him during his confinement. A person accused cannot be subjected to this treatment unless it be expressly ordered by the judge, for some grave offense, and it cannot be continued for a longer period than is absolutely necessary. This precaution is resorted to for the purpose of preventing the accused from knowing beforehand the testimony of the witnesses, or from attempting to corrupt them and concert such measures as will efface the traces of his guilt. As soon, therefore, as the danger of his doing so has ceased, the interdiction ceases likewise. *Escrache*.

INCOMMUTABLE. Not capable of or entitled to be commuted. See *Commutation*.

INCOMPATIBILITY. Incapability of existing or being exercised together.

Thus the relations of landlord and of tenant cannot exist in one man at the same time in reference to the same land. Two offices may be incompatible either from their nature or by statutory provisions. See U. S. Const. art. 1, § 6, cl. 2; *Com. v. Sheriff & Keeper of Jail*, 4 S. & R. (Pa.) 277; *People v. Green*, 46 How. Pr. (N. Y.) 170; *State v. Buttz*, 9 S. C. 179.

Incompatibility is ordinarily not a ground for divorce; *Trowbridge v. Carlin*, 12 La. Ann. 882; *Pinkney v. Pinkney*, 4 G. Greene (Ia.) 324; though in some states it is. See *Divorce*.

INCOMPATIBLE. Two or more relations, offices, functions, or rights which cannot naturally, or may not legally, exist in or be exercised by the same person at the same time, are said to be incompatible. Thus, the relations of lessor and lessee of the same land, in one person at the same time, are incompatible. So of trustee and beneficiary of the same property. See *People v. Green*, 46 How. Prac. (N. Y.) 170; *Com. v. Sheriff*, 4 Serg. & R. (Pa.) 276; *Regents of University of Maryland v. Williams*, 9 Gill & J. (Md.) 422, 31 Am. Dec. 72; *Commonwealth v. Staunton Mut. Telephone Co.*, 134 Va. 291, 114 S. E. 600, 603.

Public offices are "incompatible" when their functions are inconsistent, their performance resulting in antagonism and a conflict of duty, so that the incumbent of one cannot discharge with fidelity and propriety the duties of both. *State v. Sword*, 196 N. W. 467, 157 Minn. 263; *Haymaker v. State*, 163 P. 248, 249, 22 N. M. 400, L. R. A. 1917D, 210; *Hermann v. Lampe*, 175 Ky. 109, 194 S. W. 122, 126. It is difficult to define with precision this incompatibility. The question must be determined upon the facts of each case. *Dyche v. Davis*, 92 Kan. 971, 142 P. 264, 266.

Public offices are "incompatible" when the incumbent of one has power of removal over the other, or when one has power of supervision over the other, or when the nature and duties of the two render it improper, from consideration of public policy, for one person to retain both. *State v. Wittmer*, 50 Mont. 22, 144 P. 648, 649.

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INCOMPETENCY. Lack of ability, legal qualification, or fitness to discharge the required duty. In *re Leonard's Estate*, 95 Mich. 295, 54 N. W. 1082; In *re Cohn*, 78 N. Y. 252; *Stephenson v. Stephenson*, 49 N. C. 473; *Nehrling v. State*, 112 Wis. 637, 88 N. W. 610; *United States v. Nez Perce County, Idaho (D. C.)* 267 F. 495, 497; *Cafferty v. Southern Tier Pub. Co.*, 226 N. Y. 87, 123 N. E. 76, 77; *James v. Winifred Coal Co.*, 184 Iowa, 619, 169 N. W. 121, 123; *Charley v. Norvel*, 97 Okl. 114, 221 P. 255, 257.

As applied to evidence, the word "incompetent" means not proper to be received; inadmissible, as distinguished from that which the court should admit for the consideration of the jury, though they may not find it worthy of credence.

In New York, the word "incompetency" is used to designate the condition or legal status of a person who is unable or unfitted to manage his own affairs by reason of insanity, imbecility, or feeble-mindedness, and for whom, therefore, a committee may be appointed; and such a person is designated an "incompetent." See Code Civ. Proc. N. Y. § 2320 et seq. (Civil Practice Act, § 1356); In *re Curtiss*, 134 App. Div. 547, 119 N. Y. Supp. 556; In *re Fox*, 138 App. Div. 43, 122 N. Y. Supp. 889.

In French Law

Inability or insufficiency of a judge to try a cause brought before him, proceeding from lack of jurisdiction.

INCONCLUSIVE. That which may be disproved or rebutted; not shutting out further proof or consideration. Applied to evidence and presumptions.

INCONSISTENT. Mutually repugnant or contradictory; contrary, the one to the other, so that both cannot stand, but the acceptance or establishment of the one implies the abrogation or abandonment of the other; as, in speaking of "inconsistent defenses," or the repeal by a statute of "all laws inconsistent herewith." See In *re Hickory Tree Road*, 43 Pa. 142; *Irwin v. Holbrook*, 32 Wash. 349, 73 P. 361; *Swan v. U. S.*, 3 Wyo. 151, 9 P. 931; *Borough of Oakland v. Board of Conservation and Development*, 98 N. J. Law, 99, 118 A. 787, 788; *Commonwealth v. Staunton Mut. Telephone Co.*, 134 Va. 291, 114 S. E. 600, 603; *Van Horn v. City of Des Moines*, 195 Iowa, 840, 191 N. W. 144, 150; *Friedman v. Rodstein (Sup.)* 176 N. Y. S. 554; *Jaloff v. United Auto Indemnity Exchange*, 120 Or. 381, 250 P. 717, 719; *Anderson v. Southern Surety Co.*, 107 Kan. 375, 191 P. 583, 21 A. L. R. 761; *Susznik v. Alger Logging Co.*, 76 Or. 189, 147 P. 922, 924, Ann. Cas. 1917C, 700.

INCONSULTO. Lat. In the civil law. Unadvisedly; unintentionally. Dig. 28, 4, 1.

INCONTINENCE. Want of chastity; indulgence in unlawful carnal connection. Lu-

cas v. Nichols, 52 N. C. 35; State v. Hewlin, 128 N. C. 571, 37 S. E. 952.

INCONVENIENCE. In the rule that statutes should be so construed as to avoid "inconvenience," this means, as applied to the public, the sacrifice or jeopardizing of important public interests or hampering the legitimate activities of government or the transaction of public business, and, as applied to individuals, serious hardship or injustice. See Black, Interp. Laws, 102; Betts v. U. S., 132 F. 237, 65 C. C. A. 452.

INCOPOLITUS. A proctor or vicar.

incorporalia bello non adquiruntur. Incorporal things are not acquired by war. 6 Maule & S. 104.

INCORPORAMUS. We incorporate. One of the words by which a corporation may be created in England. 1 Bl. Comm. 473; 3 Steph. Comm. 173.

INCORPORATE. To create a corporation; to confer a corporate franchise upon determinate persons.

To declare that another document shall be taken as part of the document in which the declaration is made as much as if it were set out at length therein. Railroad Co. v. Cupp, 8 Ind. App. 388, 35 N. E. 703.

INCORPORATED LAW SOCIETY. A society of attorneys and solicitors whose function it is to carry out the acts of parliament and orders of court with reference to article clerks; to keep an alphabetical roll of solicitors; to issue certificates to persons duly admitted and enrolled, and to exercise a general control over the conduct of solicitors in practice, and to bring cases of misconduct before the judges. 3 Steph. Com. 217.

INCORPORATION. The act or process of forming or creating a corporation; the formation of a legal or political body, with the quality of perpetual existence and succession, unless limited by the act of incorporation.

The method of making one document of any kind become a part of another separate document by referring to the former in the latter, and declaring that the former shall be taken and considered as a part of the latter the same as if it were fully set out therein. This is more fully described as "incorporation by reference." If the one document is copied at length in the other, it is called "actual incorporation."

In the civil law. The union of one domain to another.

INCORPOREAL. Without body; not of material nature; the opposite of "corporeal," (*q. v.*).

INCORPOREAL CHATTELS. A class of incorporeal rights growing out of or incident to

things *personal*; such as patent-rights and copyrights. 2 Steph. Comm. 72. See Boreel v. New York, 2 Sandf. (N. Y.) 559.

INCORPOREAL HEREDITAMENTS. See Hereditaments.

INCORPOREAL PROPERTY. In the civil law. That which consists in legal right merely. The same as choses in action at common law.

INCORPOREAL THINGS. In the civil law. Things which can neither be seen nor touched, such as consist in rights only, such as the mind alone can perceive. Inst. 2, 2; Civ. Code La. art. 460; Sullivan v. Richardson, 33 Fla. 1, 14 So. 692.

INCORRIGIBLE. Incapable of being corrected, amended, or improved; with respect to juvenile offenders, unmanageable by parents or guardians. People v. Purcell, 70 Colo. 399, 201 P. 881; In re Hook, 95 Vt. 497, 115 A. 730, 733, 19 A. L. R. 610; Ex parte Roach, 87 Tex. Cr. 370, 221 S. W. 975, 976.

INCORRIGIBLE ROGUE. A species of rogue or offender, described in the statutes 5 Geo. IV. c. 83, and 1 & 2 Vict. c. 38. 4 Steph. Comm. 309.

INCORRUPTIBLE. That which cannot be affected by immoral or debasing influences, such as bribery or the hope of gain or advancement.

INCREASE. The produce of land; also, the offspring of animals. Sorrells v. Sigel-Campion Live Stock Commission Co., 27 Colo. App. 154, 148 P. 279, 280; Stockyards Loan Co. v. Nichols (C. C. A.) 243 F. 511, 513, 1 A. L. R. 547.

INCREASE, AFFIDAVIT OF. Affidavit of payment of increased costs, produced on taxation.

INCREASE, COSTS OF. In English law. It was formerly a practice with the jury to award to the successful party in an action the nominal sum of 40s. only for his costs; and the court assessed by their own officer the actual amount of the successful party's costs; and the amount so assessed, over and above the nominal sum awarded by the jury, was thence called "costs of increase." Lush, Com. Law Pr. 775. The practice has now wholly ceased. Rapal. & Law.

INCREMENTUM. Lat. Increase or improvement, opposed to *decrementum* or abatement.

INCRIMINATE. To charge with crime; to expose to an accusation or charge of crime; to involve oneself or another in a criminal prosecution or the danger thereof; as, in the rule that a witness is not bound to give testimony which would tend to incriminate him.

INCRIMINATING ADMISSION. An acknowledgment of facts tending to establish guilt. *People v. Sovetsky*, 323 Ill. 133, 153 N. E. 615, 616.

INCRIMINATING CIRCUMSTANCE. A fact or circumstance, collateral to the fact of the commission of a crime, which tends to show either that such a crime has been committed or that some particular person committed it. *Davis v. State*, 51 Neb. 301, 70 N. W. 984.

INCRIMINATORY STATEMENT. A statement which tends to establish guilt of the accused or from which, with other facts, his guilt may be inferred, or which tends to disprove some defense. *Shellman v. State*, 157 Ga. 788, 122 S. E. 205, 207.

INCROACHMENT. An unlawful gaining upon the right or possession of another. See *Encroachment*.

INCUPLICATE. To impute blame or guilt; to accuse; to involve in guilt or crime.

INCUPLICATORY. In the law of evidence. Going or tending to establish guilt; intended to establish guilt; criminative. *Burrill*, Circ. Ev. 251, 252.

INCUMBENT. A person who is in present possession of an office; one who is legally authorized to discharge the duties of an office. *State v. McCollister*, 11 Ohio, 50; *State v. Blakemore*, 104 Mo. 340, 15 S. W. 960.

In ecclesiastical law, the term signifies a clergyman who is in possession of a benefice.

INCUMBER. To incumber land is to make it subject to a charge or liability; *e. g.*, by mortgaging it. Incumbrances include not only mortgages and other voluntary charges, but also liens, *lites pendentes*, registered judgments, and writs of execution, etc. *Sweet*. See *Newhall v. Insurance Co.*, 52 Me. 181.

INCUMBRANCE. Any right to, or interest in, land which may subsist in another to the diminution of its value, but consistent with the passing of the fee. *Fitch v. Seymour*, 9 Metc. (Mass.) 467; *Huyek v. Andrews*, 113 N. Y. 81, 20 N. E. 581, 3 L. R. A. 789, 10 Am. St. Rep. 432; *Alling v. Burlock*, 46 Conn. 510; *Demars v. Koehler*, 62 N. J. Law, 203, 41 A. 720, 72 Am. St. Rep. 642; *Lafferty v. Milligan*, 165 Pa. 534, 30 A. 1030; *Stambaugh v. Smith*, 23 Ohio St. 591; *Shunk v. Fuller*, 118 Kan. 682, 236 P. 449, 451; *Ritter v. Hill*, 282 Pa. 115, 127 A. 455, 456; *Westerlund v. Black Bear Mining Co. (C. C. A.)* 203 F. 599, 604; *State v. Anderian*, 159 Minn. 245, 199 N. W. 6, 7; *First Unitarian Society of Iowa City v. Citizens' Savings & Trust Co.*, Iowa City, 162 Iowa, 389, 142 N. W. 87, 88.

A claim, lien, charge, or liability attached to and binding real property. *Harrison v. Railroad Co.*, 91 Iowa, 114, 58 N. W. 1081;

Johnson v. Bridge, 60 Cal. App. 629, 213 P. 512, 513; *Dyer v. Scott*, 253 Mass. 430, 149 N. E. 146, 147; *Butterfield v. Butler*, 50 Okl. 381, 150 P. 1078. An incumbrance may be a mortgage, *Funk v. Voneida*, 11 Serg. & R. (Pa.) 112, 14 Am. Dec. 617; a judgment lien, *Bowman v. Franklin Ins. Co.*, 40 Md. 631; *Willsie v. Ranch Co.*, 7 S. D. 114, 63 N. W. 546; an attachment, *Kelsey v. Remer*, 43 Conn. 129, 21 Am. Rep. 638; *Thatcher v. Valentine*, 22 Colo. 201, 43 Pac. 1031; an inchoate right of dower, *Bigelow v. Hubbard*, 97 Mass. 195; *Long v. Chandler*, 10 Del. Ch. 339, 92 A. 256, 258; *Stone v. Kaufman*, 88 W. Va. 588, 107 S. E. 295, 296; a mechanic's lien, *Redmon v. Insurance Co.*, 51 Wis. 293, 8 N. W. 226, 37 Am. Rep. 830; *State v. Anderson*, 159 Minn. 245, 199 N. W. 6, 8; a lease, *Shunk v. Fuller*, 118 Kan. 682, 236 P. 449, 451; *Estep v. Bailey*, 94 Or. 59, 185 P. 227, 229; *Klippel v. Borgmesser*, 177 Wis. 423, 188 N. W. 654, 655; restriction in deed, *Hyman v. Boyle*, 239 Mich. 357, 214 N. W. 163, 164; *Isaacs v. Schmuck*, 245 N. Y. 77, 156 N. E. 621, 622, 51 A. L. R. 1454; encroachment of a building, *Gamorsil Realty Corporation v. Graef*, 220 N. Y. S. 221, 222, 128 Misc. 596; *Vassar Holding Co. v. Wuensch*, 100 N. J. Eq. 147, 135 A. 88; an easement or right of way, *Krotzer v. Clark*, 178 Cal. 736, 174 P. 657, 658; *Thackeray v. Knight*, 57 Utah, 21, 192 P. 263, 265; *Duxbury v. McCook County*, 48 S. D. 523, 205 N. W. 242, 243; *Strong v. Brinton*, 63 Pa. Super. Ct. 267; *Pritchard v. Rebori*, 135 Tenn. 328, 186 S. W. 121, 123; accrued and unpaid taxes, *Ex parte Helm*, 209 Ala. 1, 95 So. 546; the statutory right of redemption, *Roy v. F. M. Martin & Son*, 16 Ala. App. 650, 81 So. 142, 143.

The term "incumbrance" is sometimes used to denote a burden or charge on personal property as *e. g.* a chattel mortgage on a stock of goods. *Hartford Fire Ins. Co. v. Jones*, 31 Ariz. 8, 250 P. 248, 251.

INCUMBRANCER. The holder of an incumbrance, *e. g.*, a mortgage, on the estate of another. *De Voe v. Rundle*, 33 Wash. 604, 74 P. 836; *Shaeffer v. Weed*, 8 Ill. 514; *Newhall v. Insurance Co.*, 52 Me. 181.

INCUMBRANCES, COVENANT AGAINST. See *Covenant*.

INCUR. To have liabilities cast upon one by act or operation of law, as distinguished from contract, where the party acts affirmatively. *Crandall v. Bryan*, 15 How. Pr. (N. Y.) 56; *Beekman v. Van Dolsen*, 70 Hun, 288, 24 N. Y. S. 414; *Ashe v. Young*, 68 Tex. 123, 3 S. W. 454; *Weinberg Co. v. Heller*, 73 Cal. App. 769, 239 P. 358, 363; *Boise Development Co. v. City of Boise*, 26 Idaho, 347, 143 P. 531, 534.

INCURABLE DISEASE. Any disease which has reached an incurable stage in the patient afflicted therewith, according to general state

of knowledge of the medical profession. *Freeman v. State Board of Medical Examiners*, 54 Okl. 531, 154 P. 56, 57, L. R. A. 1916D, 436; *State Board of Medical Examiners v. Jordan*, 92 Wash. 234, 158 P. 982, 985.

INCURRAMENTUM. L. Lat. The liability to a fine, penalty, or amercement. Cowell.

INDE. Lat. Thence; thenceforth; thereof; thereupon; for that cause.

Inde data leges ne fortior omnia posset. Laws are made to prevent the stronger from having the power to do everything. Dav. Ir. K. B. 36.

INDEBITATUS. Lat. Indebted. *Nunquam indebitatus*, never indebted. The title of the plea substituted in England for *nil debet*.

INDEBITATUS ASSUMPSIT. Lat. Being indebted, he promised or undertook. That form of the action of *assumpsit* in which the declaration alleges a debt or obligation to be due from the defendant, and then avers that, in consideration thereof, he promised to pay or discharge the same.

This form of action is brought to recover in damages the amount of the debt or demand and upon the trial the jury will, according to evidence, give verdict for whole or part of that sum; 3 Bla. Com. 155; Selw. N. P. 68; whereas *debt* and *covenant* proceed directly for the debt, and damages are given only for the detention of the debt.

INDEBITI SOLUTIO. Lat. In the civil and Scotch law. A payment of what is not due. When made through ignorance or by mistake, the amount paid might be recovered back by an action termed "*conditio indebiti*." (Dig. 12, 6.) Bell.

INDEBITUM. In the civil law. Not due or owing. (Dig. 12, 6.) Calvin.

INDEBTEDNESS. The state of being in debt, without regard to the ability or inability of the party to pay the same. See 1 Story, Eq. Jur. 343; 2 Hill, Abr. 421; *McCrea v. First Nat. Bank*, 162 Minn. 455, 203 N. W. 220; *Jewell v. Nuhn*, 173 Iowa, 112, 155 N. W. 174, 177, Ann. Cas. 1918D, 356.

The owing of a sum of money upon a certain and express agreement. *City of Perry v. Johnson*, 106 Okl. 32, 233 P. 679, 680; *Merriman v. Swift & Co.* (Tex. Civ. App.) 204 S. W. 775, 776.

Strictly the word implies an absolute or complete liability. *McCrea v. First Nat. Bank*, 162 Minn. 455, 203 N. W. 220; *West Florida Grocery Co. v. Teutonia Fire Ins. Co.*, 74 Fla. 220, 77 So. 209, 211, L. R. A. 1918B, 968. A contingent liability, such as that of a surety before the principal has made default, does not constitute indebtedness. On the other hand, the money need not be immediately payable. Obligations yet to become due constitute indebtedness, as well as those already due. *St. Louis Perpetual Ins. Co. v. Goodfellow*, 9 Mo. 149. And in a broad sense and in common understanding the word may mean anything that is due, and owing. *Jones v.*

Heinzle, 75 Ind. App. 431, 130 N. E. 815, 816; *City of Perry v. Johnson*, 106 Okl. 32, 233 P. 679, 680.

Involuntary Indebtedness

Of a county, a liability imposed by law, which the county is not privileged to evade or postpone. *Dexter Horton Trust & Savings Bank v. Clearwater County* (D. C.) 235 F. 743, 756; *Wingate v. Clatsop County*, 71 Or. 94, 142 P. 561, 562.

Voluntary Indebtedness

One which a county is at liberty to evade or postpone until means are provided for the payment of the expenses incident thereto; opposed to involuntary indebtedness. *Dexter Horton Trust & Savings Bank v. Clearwater County* (D. C.) 235 F. 743, 756; *Wingate v. Clatsop County*, 71 Or. 94, 142 P. 561, 562.

INDECENCY. An act against good behavior and a just delicacy. *Timmons v. U. S.*, 85 F. 205, 30 C. C. A. 74; *McJunkins v. State*, 10 Ind. 144; *Arbery v. State*, 56 Ind. 328.

This is scarcely a technical term of the law, and is not susceptible of exact definition or description in its juridical uses. The question whether or not a given act, publication, etc., is indecent is for the court and jury in the particular case.

INDECENT. Offensive to common propriety; offending against modesty or delicacy; grossly vulgar; obscene; lewd; *Hutcheson v. State*, 24 Ga. App. 54, 99 S. E. 715; *Darnell v. State*, 72 Tex. Cr. R. 271, 161 S. W. 971; *State v. Pape*, 90 Conn. 98, 96 A. 313, 314; *United States v. Davidson* (D. C.) 244 F. 523, 526.

—**Indecent assault.** The act of a male person taking indecent liberties with the person of a female. *Martin v. Jansen*, 113 Wash. 290, 193 P. 674, 675.

—**Indecent exhibition.** Any exhibition *contra bonos mores*, as the taking a dead body for the purpose of dissection or public exhibition. 2 T. R. 734.

—**Indecent exposure.** Exposure to sight of the private parts of the body in a lewd or indecent manner in a public place. It is an indictable offense at common law, and by statute in many of the states. *State v. Bauguess*, 106 Iowa, 107, 76 N. W. 508. See, further, *Exposure*.

—**Indecent liberties.** In the statutory offense of "taking indecent liberties with the person of a female child," this phrase means such liberties as the common sense of society would regard as indecent and improper. According to some authorities, it involves an assault or attempt at sexual intercourse, (*State v. Kunz*, 90 Minn. 526, 97 N. W. 131.) but according to others, it is not necessary that the liberties or familiarities should have

related to the private parts of the child, (*People v. Hicks*, 98 Mich. 86, 56 N. W. 1102.)

—**Indecent publications.** Such as are offensive to modesty and delicacy; obscene; lewd; tending to the corruption of morals. *Dunlop v. U. S.*, 165 U. S. 486, 17 S. Ct. 375, 41 L. Ed. 799; *U. S. v. Britton* (Com. C.) 17 F. 733; *People v. Muller*, 96 N. Y. 408, 48 Am. Rep. 635.

—**Public indecency.** This phrase has no fixed legal meaning, is vague and indefinite, and cannot, in itself, imply a definite offense. The courts, by a kind of judicial legislation, in England and the United States, have usually limited the operation of the term to public displays of the naked person, the publication, sale, or exhibition of obscene books and prints, or the exhibition of a monster,—acts which have a direct bearing on public morals, and affect the body of society. The Indiana statute punishing public indecency, without defining it, can be construed only as that term is used at common law, where it is limited to indecencies in conduct, and does not extend to indecent words. *McJunkins v. State*, 10 Ind. 140.

INDECIMABLE. In old English law. That which is not titheable, or liable to pay tithe. 2 Inst. 490.

INDEFEASIBLE. That which cannot be defeated, revoked, or made void. This term is usually applied to an estate or right which cannot be defeated.

INDEFENSUS. Lat. In old English practice. Undefended; unadvised by pleading. A defendant who makes no defense or plea. Blount.

INDEFINITE FAILURE OF ISSUE. A failure of issue not merely at the death of the party whose issue are referred to, but at any subsequent period, however remote. 1 Steph. Comm. 562. A failure of issue whenever it shall happen, sooner or later, without any fixed, certain, or definite period within which it must happen. 4 Kent, Comm. 274. *Ander-son v. Jackson*, 16 Johns. (N. Y.) 399, 8 Am. Dec. 330; *Downing v. Wherrin*, 19 N. H. 84, 49 Am. Dec. 139; *Huxford v. Milligan*, 50 Ind. 546.

INDEFINITE NUMBER. A number which may be increased or diminished at pleasure.

INDEFINITE PAYMENT. In Scotch law. Payment without specification. Indefinite payment is where a debtor, owing several debts to one creditor, makes a payment to the creditor, without specifying to which of the debts he means the payment to be applied. See Bell.

Indefinitum æquipollet universali. The undefined is equivalent to the whole. 1 Vent. 368.

Indefinitum supplet locum universalis. The undefined or general supplies the place of the whole. Branch, Princ. 4 Co. 77.

INDEMNIFICATUS. Lat. Indemnified. See Indemnify.

INDEMNIFY. To save harmless; to secure against loss or damage; to give security for the reimbursement of a person in case of an anticipated loss falling upon him. *The Capitaine Faure* (C. C. A.) 10 F.(2d) 950, 954; *New York, N. H. & H. R. Co. v. Board of Water Com'rs of City of Hartford*, 102 Conn. 488, 129 A. 384, 388; *Diamant v. Chestnut*, 204 Mich. 237, 169 N. W. 927, 929; *Hasbrouck v. Carr*, 19 N. M. 586, 145 P. 133, 136.

Also to make good; to compensate; to make reimbursement to one of a loss already incurred by him. *Cousins v. Paxton & Gallagher Co.*, 122 Iowa, 465, 98 N. W. 277; *Weller v. Eames*, 15 Minn. 467 (Gil. 376), 2 Am. Rep. 150; *Frye v. Bath Gas Co.*, 97 Me. 241, 54 A. 395, 59 L. R. A. 444, 94 Am. St. Rep. 500; *City of Springfield v. Clement*, 205 Mo. App. 114, 225 S. W. 120, 125; *U. S. Fidelity & Guaranty Co. v. Williams*, 148 Md. 289, 129 A. 660, 664.

INDEMNIS. Lat. Without hurt, harm, or damage; harmless.

INDEMNITEE. The person who, in a contract of indemnity, is to be indemnified or protected by the other. *Hasbrouck v. Carr*, 19 N. M. 586, 145 P. 133, 136.

INDEMNITOR. The person who is bound, by an indemnity contract, to indemnify or protect the other. *Hasbrouck v. Carr*, 19 N. M. 586, 145 P. 133, 136.

INDEMNITY. A collateral contract or assurance, by which one person engages to secure another against an anticipated loss or to prevent him from being damaged by the legal consequences of an act or forbearance on the part of one of the parties or of some third person. See Civ. Code Cal. § 2772; *Davis v. Phoenix Ins. Co.*, 111 Cal. 409, 43 P. 1115; *Vandiver v. Pollak*, 107 Ala. 547, 19 So. 180, 54 Am. St. Rep. 118; *Henderson-Achert Lithographic Co. v. John Shillito Co.*, 64 Ohio St. 236, 60 N. E. 295, 83 Am. St. Rep. 745; *Wolthausen v. Trimpert*, 93 Conn. 260, 105 A. 687, 688; *U. S. Fidelity & Guaranty Co. v. Bank of Hattiesburg*, 128 Miss. 605, 91 So. 344, 346; *Belk v. Capital Fire Ins. Co.*, 102 Neb. 702, 169 N. W. 262, 263; *National Bank of Tifton v. Smith*, 142 Ga. 663, 83 S. E. 526, 528, L. R. A. 1915B, 1116. Thus, insurance is a contract of indemnity. So an indemnifying bond is given to a sheriff who fears to proceed under an execution where the property is claimed by a stranger.

The term is also used to denote a compensation given to make the person whole from a loss already sustained; as where the government gives indemnity for private property

taken by it for public use. *Proctor v. Dillon*, 235 Mass. 538, 129 N. E. 265, 269.

A legislative act, assuring a general dispensation from punishment or exemption from prosecution to persons involved in offenses, omissions of official duty, or acts in excess of authority, is called an indemnity; strictly it is an act of indemnity.

INDEMNITY AGAINST LIABILITY. A contract to indemnify when liability of person indemnified arises, irrespective of whether person indemnified has suffered actual loss. Indemnity against loss, on the other hand, does not render indemnitor liable until person indemnified makes payment or sustains loss. *City of Topeka v. Ritchie*, 102 Kan. 384, 170 P. 1003, 1004; *North v. Joseph W. North & Son*, 93 N. J. Law, 438, 108 A. 244, 245; *Fenton v. Poston*, 114 Wash. 217, 195 P. 31, 33.

INDEMNITY BOND. A bond for the payment of a penal sum conditioned to be void if the obligor shall indemnify and save harmless the obligee against some anticipated loss.

INDEMNITY CONTRACT. A contract between two parties whereby the one undertakes and agrees to indemnify the other against loss or damage arising from some contemplated act on the part of the indemnitor, or from some responsibility assumed by the indemnitee, or from the claim or demand of a third person, that is, to make good to him such pecuniary damage as he may suffer. See *Wicker v. Hoppeck*, 6 Wall. 99, 18 L. Ed. 752.

INDEMNITY LANDS. Lands granted to railroads, in aid of their construction, being portions of the public domain, to be selected in lieu of other parcels embraced within the original grant, but which were lost to the railroad by previous disposition or by reservation for other purposes. See *Wisconsin Cent. R. Co. v. Price County*, 133 U. S. 496, 10 S. Ct. 341, 33 L. Ed. 687; *Barney v. Winona & St. P. R. Co.*, 117 U. S. 228, 6 S. Ct. 654, 29 L. Ed. 858; *Altschul v. Clark*, 39 Or. 315, 65 P. 991.

INDEMNITY POLICY. As distinguished from general liability policy, a policy on which no action can be maintained except to indemnify for money actually paid. Most v. *Massachusetts Bonding & Ins. Co. (Mo. App.)* 196 S. W. 1064, 1065.

INDEMPNIS. The old form of writing *indemnitas*. Townsh. Pl. 19. So, *indempnificatus* for *indemnificatus*.

INDENIZATION. The act of making a denizen, or of naturalizing.

INDENT, n. In American law. A certificate or indented certificate issued by the government of the United States at the close of the Revolution, for the principal or interest of

the public debt. *Webster*. See *U. S. v. Irwin*, 26 Fed. Cas. 546.

INDENT, v. To cut in a serrated or waving line. In old conveyancing, if a deed was made by more parties than one, it was usual to make as many copies of it as there were parties, and each was cut or indented (either in acute angles, like the teeth of a saw, or in a waving line) at the top or side, to tally or correspond with the others, and the deed so made was called an "indenture." Anciently, both parts were written on the same piece of parchment, with some word or letters written between them through which the parchment was cut, but afterwards, the word or letters being omitted, indenting came into use, the idea of which was that the genuineness of each part might be proved by its fitting into the angles cut in the other. But at length even this was discontinued, and at present the term serves only to give name to the species of deed executed by two or more parties, as opposed to a deed-poll, (*q. v.*) 2 Bl. Comm. 295.

To bind by indentures; to apprentice; as to indent a young man to a shoe-maker. *Webster*.

INDENTURE. A deed to which two or more persons are parties, and in which these enter into reciprocal and corresponding grants or obligations towards each other; whereas a deed-poll is properly one in which only the party making it executes it, or binds himself by it as a deed, though the grantors or grantees therein may be several in number. 3 Washb. Real Prop. 311; *Scott v. Mills*, 10 N. Y. St. Rep. 358; *Bowen v. Beck*, 94 N. Y. 89, 46 Am. Rep. 124; *Hopewell Tp. v. Amwell Tp.*, 6 N. J. Law, 175. See *Indent, v.*

INDENTURE OF A FINE. Indentures made and engrossed at the chirographer's office and delivered to the cognizor and the cognizee, usually beginning with the words: "*Hæc est finalis concordia.*" And then reciting the whole proceedings at length. 2 Bla. Com. 351.

INDENTURE OF APPRENTICESHIP. A contract in two parts, by which a person, generally a minor, is bound to serve another in his trade, art, or occupation for a stated time, on condition of being instructed in the same.

INDEPENDENCE. The state or condition of being free from dependence, subjection, or control. A state of perfect irresponsibility. Political independence is the attribute of a nation or state which is entirely autonomous, and not subject to the government, control, or dictation of any exterior power.

INDEPENDENT. Not dependent; not subject to control, restriction, modification, or limitation from a given outside source.

INDEPENDENT ADVICE. Preliminary benefit of conferring fully and privately upon

the subject of intended will with a person competent to inform testator correctly as to its effect, who is so disassociated from the interest of the beneficiary named therein as to be in a position to advise with the testator impartially and confidentially as to the consequences to those naturally entitled to the testator's bounty. In re Kuhn's Will, 241 P. 1087, 120 Kan. 13.

INDEPENDENT CONTRACT. See Contract.

INDEPENDENT CONTRACTOR. One who, exercising an independent employment, contracts to do a piece of work according to his own methods and without being subject to the control of his employer except as to the result of the work. *People v. Orange County Road Const. Co.*, 175 N. Y. 84, 67 N. E. 129, 65 L. R. A. 33; *Waters v. Pioneer Fuel Co.*, 52 Minn. 474, 55 N. W. 52, 38 Am. St. Rep. 564; *Smith v. Simmons*, 103 Pa. 36, 49 Am. Rep. 113; *Holmes v. Tennessee Coal, etc., Co.*, 49 La. Ann. 1465, 22 So. 403; *Bibb v. Norfolk & W. R. Co.*, 87 Va. 711, 14 S. E. 165; *Louthan v. Hewes*, 138 Cal. 116, 70 P. 1065; *Aubuchon v. Security Const. Co. (Mo. App.)* 291 S. W. 187, 189; *Pyle v. 2-Miracle Concrete Corporation*, 126 Wash. 384, 218 P. 246, 247; *Cole v. City of Durham*, 176 N. C. 289, 97 S. E. 33, 38, 11 A. L. R. 560; *Streby v. State Industrial Accident Commission*, 107 Or. 314, 215 P. 586, 589; *Homewood Rice Land Syndicate v. Suhs*, 142 Ark. 619, 219 S. W. 333, 334; *Hanisko v. Fitzpatrick Bros.*, 232 Mich. 593, 206 N. W. 322, 323; *Fox v. Dunning*, 124 Okl. 228, 255 P. 582, 584; *Bell v. State*, 153 Md. 333, 138 A. 227, 228, 58 A. L. R. 1051.

It is very generally held that the right of control as to the mode of doing the work contracted for is the principal consideration in determining whether one employed is an "independent contractor" or servant. *Thompson v. Twiss*, 90 Conn. 444, 97 A. 328, 330, L. R. A. 1916E, 506. If the employee is merely subject to the control or direction of the employer as to the result to be obtained, he is an independent contractor; if he is subject to the control of the employer as to the means to be employed, he is not an independent contractor. *Gulf Refining Co. v. Wilkinson*, 94 Fla. 664, 114 So. 503; *Marsh v. Beraldi*, 260 Mass. 225, 157 N. E. 347, 349; *Texas Employers' Ins. Ass'n v. Owen (Tex. Com. App.)* 298 S. W. 542, 543; *Wooton v. Dragon Consol. Mining Co.*, 54 Utah, 459, 181 P. 593, 597; *Franklin Coal & Coke Co. v. Industrial Commission*, 296 Ill. 329, 129 N. E. 811, 813; *Clark's Case*, 124 Me. 47, 126 A. 18, 19; *Campagna v. Ziskind*, 287 Pa. 403, 135 A. 124, 125.

It is the reservation of the right of control of essential details, whether express or implied, rather than the actual exercise of the right that distinguishes the relationship of responsible "principal" from that of the employer of an "independent contractor." *Gulf Refining Co. of Louisiana v. Huffman & Weakley*, 155 Tenn. 580, 297 S. W. 199, 201;

Williams v. National Register Co., 157 Ky. 836, 164 S. W. 112, 115; *St. Louis, I. M. & S. Ry. Co. v. Cooper*, 111 Ark. 91, 163 S. W. 160, 161; *Moody v. Industrial Accident Commission (Cal. App.)* 260 P. 967, 970; *Aubuchon v. Security Const. Co. (Mo. App.)* 291 S. W. 187, 189.

INDEPENDENT COVENANT. See Covenant.

Independenter se habet assecuratio a viaggio navis. The voyage insured is an independent or distinct thing from the voyage of the ship. 3 Kent, Comm. 318, note.

INDETERMINATE. That which is uncertain, or not particularly designated; as if I sell you one hundred bushels of wheat, without stating what wheat. 1 Bouv. Inst. no. 950.

INDETERMINATE OBLIGATION. See Obligation.

INDEX. A book containing references, alphabetically arranged, to the contents of a series or collection of volumes; or an addition to a single volume or set of volumes containing such references to its contents.

Index animi sermo. Language is the exponent of the intention. The language of a statute or instrument is the best guide to the intention. Broom, Max. 622.

INDIAN COUNTRY. "Indian country," as the term is used in the federal statutes, is a country to which the Indians retained the right of use and occupancy, involving under certain restrictions freedom of action and of enjoyment in their capacity as a distinct people, and ceases to be such when their title is extinguished, unless by virtue of some reservation expressed at the time and clearly appearing. *United States v. Myers (C. C. A.)* 206 F. 387, 394; *Schaap v. United States (C. C. A.)* 210 F. 853, 855; *Royal Brewing Co. v. Missouri, K. & T. Ry. Co. (D. C.)* 217 F. 146, 148. This term does not necessarily import territory owned and occupied by Indians, but it means all those portions of the United States designated by this name in the legislation of congress. *Waters v. Campbell*, 4 Sawy. 121, Fed. Cas. No. 17,264; *In re Jackson (C. C.)* 40 F. 373.

INDIAN DEPREDATIONS ACTS. As early as May 19, 1796, an act was passed by congress, providing an eventual indemnification to citizens of the United States for depredations committed by Indians in taking or destroying their property; 1 St. L. 472. Other acts of a similar character were passed from time to time. By the act of March 3, 1891, congress conferred on the court of claims jurisdiction of claims for property taken and destroyed by Indians.

INDIAN TRIBE. A separate and distinct community or body of the aboriginal Indian

race of men found in the United States. *Montoya v. U. S.*, 180 U. S. 261, 21 S. Ct. 358, 45 L. Ed. 521; *Cherokee Nation v. Georgia*, 5 Pet. 17, 8 L. Ed. 25; *U. S. v. Candelaria*, 46 S. Ct. 561, 563, 271 U. S. 432, 70 L. Ed. 1023.

INDIANS. The aboriginal inhabitants of North America. *Frazee v. Spokane County*, 29 Wash. 278, 69 P. 782.

INDICARE. Lat. In the civil law. To show or discover. To fix or tell the price of a thing. Calvin. To inform against; to accuse.

INDICATIF. An abolished writ by which a prosecution was in some cases removed from a court-christian to the queen's bench. Enc. Lond.

INDICATION. In the law of evidence. A sign or token; a fact pointing to some inference or conclusion. *Burrill, Circ. Ev.* 251, 252, 263, 275.

INDICATIVE EVIDENCE. This is not evidence properly so called, but the mere suggestion of evidence proper, which may possibly be procured if the suggestion is followed up. Brown.

INDICAVIT. In English practice. A writ of prohibition that lies for a patron of a church, whose clerk is sued in the spiritual court by the clerk of another patron, for tithes amounting to a fourth part of the value of the living. 3 Bl. Comm. 91; 3 Steph. Comm. 711. So termed from the emphatic word of the Latin form. Reg. Orig. 35b, 36.

INDICIA. Signs; indications. Circumstances which point to the existence of a given fact as probable, but not certain. For example, "*indicia* of partnership" are any circumstances which would induce the belief that a given person was in reality, though not ostensibly, a member of a given firm.

The term is much used in the civil law in a sense nearly or entirely synonymous with circumstantial evidence. It denotes facts which give rise to inferences, rather than the inferences themselves.

INDICIUM. In the civil law. A sign or mark. A species of proof, answering very nearly to the circumstantial evidence of the common law. Best, Pres. p. 13, § 11, note; Wills, Circ. Ev. 34.

INDICT. See Indictment.

INDICTABLE. Proper or necessary to be prosecuted by process of indictment. Indictable offenses embrace common-law offenses or statutory offenses the punishments for which are infamous. *Lakes v. Goodloe*, 195 Ky. 240, 242 S. W. 632, 639.

INDICTED. Charged in an indictment with a criminal offense. See Indictment.

INDICTEE. A person indicted.

INDICTIO. In old public law. A declaration; a proclamation. *Indictio belli*, a declaration or indictment of war. An indictment.

INDICTION, CYCLE OF. A mode of computing time by the space of fifteen years, instituted by Constantine the Great; originally the period for the payment of certain taxes. Some of the charters of King Edgar and Henry III. are dated by indictions. Wharton.

INDICTMENT. An accusation in writing found and presented by a grand jury, legally convoked and sworn, to the court in which it is impaneled, charging that a person therein named has done some act, or been guilty of some omission, which, by law, is a public offense, punishable on indictment. Code Iowa 1880, § 4295 (Code 1931, § 13732); Pen. Code Cal. § 917; Code Ala. 1886, § 4364 (Code 1923, § 4525). And see *Grin v. Shine*, 187 U. S. 181, 23 S. Ct. 98, 47 L. Ed. 130; *State v. Walker*, 32 N. C. 236; *Ex parte Hart*, 63 F. 259, 11 C. C. A. 165, 28 L. R. A. 801; *Ex parte Bain*, 121 U. S. 1, 7 S. Ct. 781, 30 L. Ed. 849; *Ex parte Slater*, 72 Mo. 102; *Finley v. State*, 61 Ala. 201; *Bennett v. Kalamazoo Circuit Judge*, 150 N. W. 141, 142, 183 Mich. 200, Ann. Cas. 1916E, 223; *In re Report of Grand Jury of Baltimore City*, 152 Md. 616, 137 A. 370, 372; *People ex rel. Marshall v. Moore*, 167 App. Div. 479, 153 N. Y. S. 10, 14; *Kennedy v. State*, 86 Tex. Cr. R. 450, 216 S. W. 1086.

A presentment differs from an indictment in that it is an accusation made by a grand jury of their own motion, either upon their own observation and knowledge, or upon evidence before them; while an indictment is preferred at the suit of the government, and is usually framed in the first instance by the prosecuting officer of the government, and by him laid before the grand jury, to be found or ignored. An information resembles in its form and substance an indictment, but is filed at the mere discretion of the proper law officer of the government, without the intervention or approval of a grand jury. 2 Story, Const. §§ 1784, 1786; *People ex rel. MacSherry v. Enright*, 184 N. Y. S. 248, 251, 112 Misc. 568; *State ex rel. Pleasant v. Baker*, 133 La. 919, 63 So. 403, 404; *People v. Foster*, 198 Cal. 112, 243 P. 667, 670.

The distinction between a "special presentment" and a bill of indictment, even under the old practice, according to Bishop, Criminal Procedure § 136, was very thin; and even this distinction has been abolished in practice for many years in Georgia. The solicitor is not now required to frame any indictment on a "special presentment," but the "special presentment" of the grand jury is returned into court, and upon it the defendant is arraigned and tried. In other words, it has the same force and effect as a bill of indictment. The only formal difference between the two is that a prosecutor prefers a bill of indictment and a "special presentment" has no prosecutor, but, in theory, originates with the grand jury. Even this difference between a bill of indictment and a "special presentment" no longer exists, and the finding of the grand jury is prepared by the solicitor-general and called a bill of indictment, or a "special presentment," at his will. *Head v. State*, 32 Ga. App. 331, 123 S. E. 34.

In Scotch Law

The form of process by which a criminal is brought to trial at the instance of the lord advocate. Where a private party is a principal prosecutor, he brings his charge in what is termed the "form of criminal letters."

In General

—Joint indictment. When several offenders are joined in the same indictment, such an indictment is called a "joint indictment;" as when principals in the first and second degree, and accessaries before and after the fact, are all joined in the same indictment. 2 Hale, P. C. 173; Brown.

Indictment de felony est contra pacem domini regis, coronam et dignitatem suam, in genere et non in individuo; quia in Angliã non est interregnum. Jenk. Cent. 205. Indictment for felony is against the peace of our lord the king, his crown and dignity in general, and not against his individual person; because in England there is no interregnum.

INDICTOR. He who causes another to be indicted. The latter is sometimes called the "indicttee."

INDIFFERENT. Impartial; unbiased; disinterested. *People v. Vermilyea*, 7 Cow. (N. Y.) 122; *Fox v. Hills*, 1 Conn. 307.

INDIGENA. In old English law. A subject born; one born within the realm, or naturalized by act of parliament. *Co. Litt. 8a*. The opposite of "*alienigena*," (*q. v.*).

INDIGENT. In a general sense, one who is needy and poor, or one who has not sufficient property to furnish him a living nor anyone able to support him to whom he is entitled to look for support. See *Storrs Agricultural School v. Whitney*, 54 Conn. 342, 8 A. 141; *Juneau County v. Wood County*, 109 Wis. 330, 85 N. W. 387; *City of Lynchburg v. Slaughter*, 75 Va. 62. The laws of some of the states distinguish between "paupers" and "indigent persons," the latter being persons who have no property or source of income sufficient for their support aside from their own labor, though self-supporting when able to work and in employment. See *In re Hybart*, 119 N. C. 359, 25 S. E. 963; *People v. Schoharie County*, 121 N. Y. 345, 24 N. E. 830; *Rev. St. Mo. 1899*, § 4894 (*Mo. St. Ann.* § 8664).

INDIGENT INSANE PERSON. An insane person with insufficient estate to pay for his maintenance in the hospital, after providing for those who could claim his support. *Depue v. District of Columbia*, 45 App. D. C. 54, 59; *Massachusetts General Hospital v. Inhabitants of Belmont*, 233 Mass. 190, 124 N. E. 21, 23.

INDIGNITY. In the law of divorce, a species of cruelty addressed to the mind, sensibilities, self-respect, or personal honor of the subject,

rather than to the body, and defined as "unmerited contemptuous conduct towards another; any action towards another which manifests contempt for him; contumely, incivility, or injury accompanied with insult." *Coble v. Coble*, 55 N. C. 395; *Erwin v. Erwin*, 57 N. C. 84; *Hooper v. Hooper*, 19 Mo. 357; *Goodman v. Goodman*, 80 Mo. App. 281; 1 Bish. Mar. & Div. § 826; *O'Hern v. O'Hern*, 206 Mo. App. 651, 228 S. W. 533, 536.

For indignities to be a cause of divorce, there must be series of them or course of conduct as distinguished from isolated indignity. *Wheat v. Wheat* (*Mo. App.*) 279 S. W. 755, 759.

The phrase "indignities to the person," as used in statutes, has reference to bodily indignities, as distinguished from such as may be offered to the mind, sensibilities, or reputation. *Cheatham v. Cheatham*, 10 Mo. 298; *Butler v. Butler*, 1 Pars. Eq. Cas. (Pa.) 329; *Kurtz v. Kurtz*, 38 Ark. 123. But compare *Miller v. Miller*, 78 N. C. 105.

INDIRECT. A term almost always used in law in opposition to "direct," though not the only antithesis of the latter word, as the terms "collateral" and "cross" are sometimes used in contrast with "direct."

As to indirect "Confession," "Contempt," "Evidence," and "Tax," see those titles.

INDISPENSABLE. That which cannot be spared, omitted, or dispensed with.

INDISPENSABLE EVIDENCE. See Evidence.

INDISPENSABLE PARTIES. In a suit in equity, those who not only have an interest in the subject-matter of the controversy, but an interest of such a nature that a final decree cannot be made without either affecting their interests or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. *Shields v. Barrow*, 17 How. 139, 15 L. Ed. 158; *Kendig v. Dean*, 97 U. S. 425, 24 L. Ed. 1061; *Maflow v. Hinde*, 12 Wheat. 193, 6 L. Ed. 599.

INDISTANTER. Forthwith; without delay.

INDITEE. L. Fr. In old English law. A person indicted. *Mirr. c. 1*, § 3; 9 Coke, pref.

INDIVIDUAL. As a noun, this term denotes a single person as distinguished from a group or class, and also, very commonly, a private or natural person as distinguished from a partnership, corporation, or association; but it is said that this restrictive signification is not necessarily inherent in the word, and that it may, in proper cases, include artificial persons. See *Bank of U. S. v. State*, 12 Smedes & M. (Miss.) 460; *State v. Bell Telephone Co.*, 36 Ohio St. 310, 38 Am. Rep. 583; *Pennsylvania R. Co. v. Canal Com'rs*, 21 Pa. 20; *In re New Era Novelty Co.* (D. C.) 241 F. 298, 299.

As an adjective, "individual" means pertaining or belonging to, or characteristic of, one single person, either in opposition to a firm, association, or corporation, or considered in his relation thereto.

INDIVIDUAL ASSETS. In the law of partnership, property belonging to a member of a partnership as his separate and private fortune, apart from the assets or property belonging to the firm as such or the partner's interest therein.

INDIVIDUAL DEBTS. Such as are due from a member of a partnership in his private or personal capacity, as distinguished from those due from the firm or partnership. *Goddard v. Hapgood*, 25 Vt. 360, 60 Am. Dec. 272.

INDIVIDUAL SYSTEM OF LOCATION. A term formerly used in Pennsylvania to designate the location of public lands by surveys, in which the land called for by each warrant was separately surveyed. *Ferguson v. Bloom*, 144 Pa. 549, 23 A. 49.

INDIVIDUALLY. Separately and personally, as distinguished from jointly or officially, and as opposed to collective or associate action or common interest. *Southern Distributing Co. v. Carraway*, 189 N. C. 420, 127 S. E. 427, 428; *Revere Oil Co. v. Bank of Chillicothe* (Tex. Civ. App.) 255 S. W. 219, 220.

INDIVIDUUM. Lat. In the civil law. That cannot be divided. *Calvin*.

INDIVISIBLE. Not susceptible of division or apportionment; inseparable; entire. Thus, a contract, covenant, consideration, etc., may be divisible or indivisible; *i. e.*, separable or entire. *Garon v. Credit Foncier Canadien*, 37 R. I. 273, 92 A. 561, 564. See, also, *Contract*.

INDIVISUM. Lat. That which two or more persons hold in common without partition; undivided.

INDORSAT. In old Scotch law. Indorsed. 2 Pitc. Crim. Tr. 41.

INDORSE. To write a name on the back of a paper or document. Bills of exchange and promissory notes are indorsed by a party's writing his name on the back. *Hartwell v. Hemmenway*, 7 Pick. (Mass.) 117.

"Indorse" is a technical term, having sufficient legal certainty without words of more particular description. *Brooks v. Edson*, 7 Vt. 351.

INDORSEE. The person to whom a bill of exchange, promissory note, bill of lading, etc., is assigned by indorsement.

INDORSEE IN DUE COURSE. An indorsee in due course is one who, in good faith, in the ordinary course of business, and for value, before its apparent maturity or presumptive

dishonor, and without knowledge of its actual dishonor, acquires a negotiable instrument duly indorsed to him, or indorsed generally, or payable to the bearer. *More v. Finger*, 128 Cal. 313, 60 P. 933.

INDORSEMENT. The act of a payee, drawee, accommodation indorser, or holder of a bill, note, check, or other negotiable instrument, in writing his name upon the back of the same, with or without further or qualifying words, whereby the property in the same is assigned and transferred to another.

That which is so written upon the back of a negotiable instrument. *State v. Hearn*, 115 Ohio St. 340, 154 N. E. 244, 245; *Kramer v. Spradlin*, 148 Ga. 805, 98 S. E. 487, 488.

In the law of negotiable instruments, a new and substantive contract by which title to the instrument is transferred and by which indorser becomes a party to the instrument and is liable, on certain conditions for its payment. *Johnson v. Beickey*, 64 Utah, 43, 228 P. 189, 191; *Routier v. Williams*, 52 N. D. 793, 204 N. W. 678, 680. In this respect indorsement differs from a common-law assignment. *Jones County Trust & Savings Bank v. Kurt*, 192-Iowa, 965, 182 N. W. 409, 413.

One who writes his name upon a negotiable instrument, otherwise than as a maker or acceptor, and delivers it, with his name thereon, to another person, is called an "indorser," and his act is called "indorsement."

The word "indorsement" is also used with reference to writs, insurance policies, certificates of stock, etc. The term as used in the Uniform Stock Transfer Act contemplates a writing passing or attempting to pass title or an interest. *Stoltz v. Carroll*, 99 Ohio St. 289, 124 N. E. 226, 231. As applied to a writ or warrant "indorsement" is an entry made on the back thereof. *Gondas v. Gondas*, 99 N. J. Eq. 473, 134 A. 615, 617.

Accommodation indorsement

In the law of negotiable instruments, one made by a third person without any consideration, but merely for the benefit of the holder of the instrument, or to enable the maker to obtain money or credit on it. Unless otherwise explained, it is understood to be a loan of the indorser's credit without restriction. *Citizens' Bank v. Platt*, 135 Mich. 267, 97 N. W. 694; *Peale v. Addicks*, 174 Pa. 543, 34 Atl. 201; *Cozens v. Middleton*, 118 Pa. 622, 12 Atl. 566; *Young v. Exchange Bank of Kentucky*, 152 Ky. 293, 153 S. W. 444, 445, Ann. Cas. 1915B, 148.

Blank indorsement

One made by the mere writing of the indorser's name on the back of the note or bill, without mention of the name of any person in whose favor the indorsement is made, but with the implied understanding that any lawful holder may fill in his own name above the indorsement if he so chooses. See *Thornton v. Moody*, 11 Me. 256; *Scollans v. Rollins*, 179 Mass. 346, 60 N. E. 983, 88 Am. St. Rep. 386; *Malone v. Garver*, 3 Neb. (Unof.) 710, 92 N. W. 726; *Northern Trading Co. v. Drexel State Bank of Chicago*, 37 N. D. 521, 164 N. W. 151, 154; *Aufferheide v. Moeller*, 221 Mo. App. 442, 281 S. W. 965, 967.

Conditional indorsement

One by which the indorser annexes some condition (other than the failure of prior parties to pay) to his liability. The condition may be either precedent or subsequent. 1 Daniel, Neg. Inst. § 697.

Full indorsement

One by which the indorser orders the money to be paid to some particular person by name; it differs from a blank indorsement, which consists merely in the name of the indorser written on the back of the instrument. Kilpatrick v. Heaton, 3 Brev. (S. C.) 92; Lee v. Chillicothe Branch of State Bank, 15 Fed. Cas. 153.

Irregular indorsement

One made by a third person before delivery of the note to the payee; an indorsement in blank by a third person above the name of the payee, or when the payee does not indorse at all. Carter v. Long, 125 Ala. 280, 28 South. 74; Bank of Bellows Falls v. Dorset Marble Co., 61 Vt. 106, 17 Atl. 43; Metropolitan Bank v. Muller, 50 La. Ann. 1278, 24 South. 295, 69 Am. St. Rep. 475.

Proper indorsement

Such indorsement as the law merchant requires to authorize payment to the holder of the instrument. Security State Bank v. State Bank of Brantford, N. D., 31 N. D. 454, 154 N. W. 282, 283.

Qualified indorsement

One which restrains or limits, or qualifies or enlarges, the liability of the indorser, in any manner different from what the law generally imports as his true liability, deducible from the nature of the instrument. Chitty, Bills, 261; Stover Bank v. Welpman (Mo. App.) 284 S. W. 177, 180. A transfer of a bill of exchange or promissory note to an indorsee, without any liability to the indorser. The words usually employed for this purpose are "*sans recours*," without recourse. 1 Bouv. Inst. No. 1138.

Regular indorsement

An indorsement in blank by a third person under the name of the payee or after delivery of the note to him. Bank of Bellows Falls v. Dorset Marble Co., 61 Vt. 106, 17 Atl. 42.

Restrictive indorsement

One which stops the negotiability of the instrument, or which contains such a definite direction as to the payment as to preclude the indorsee from making any further transfer of the instrument. Drew v. Jacock, 6 N. C. 133; Lee v. Chillicothe Branch Bank, 15 Fed. Cas. 153; People's Bank v. Jefferson County Sav. Bank, 106 Ala. 524, 17 South. 723, 54 Am. St. Rep. 59. Defined by statute in some states as an indorsement which either prohibits the further negotiation of the instrument, or constitutes the indorsee the agent of the indorser, or vests the title in the indorsee in trust for or to the use of some other person. Negotiable Instruments Law N. D. § 36 (Comp. Laws 1913, § 6921); Bates' Ann. St. Ohio 1904, § 3172h (Gen. Code, § 8141).

Special indorsement

An indorsement in full, which specifically names the indorsee. Malone v. Garver, 3 Neb. (Unof.) 710, 92 N. W. 726; Carolina Sav. Bank v. Florence Tobacco Co., 45 S. C. 373, 23 S. E. 139.

Special indorsement of writ

In English practice. The writ of summons in an action may, under Order iii. 6, be indorsed with the particulars of the amount sought to be recovered in the action, after giving credit for any payment or set-off; and this special indorsement (as it is called) of the writ is applicable in all actions where the plaintiff seeks merely to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising upon a contract, express or implied, as, for instance, on a bill of exchange, promissory note, check, or other simple contract debt, or on a bond or contract under seal for payment of a liquidated amount of money, or on a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt, or on a guaranty, whether under seal or not. Brown.

INDORSER. He who indorses; *i. e.*, being the payee or holder, writes his name on the back of a bill of exchange, etc.

INDUBITABLE PROOF. Evidence which is not only found credible, but is of such weight and directness as to make out the facts alleged beyond a doubt. Hart v. Carroll, 85 Pa. 511; Jermyn v. McClure, 195 Pa. 245, 45 A. 938.

INDUCEMENT.**In Contracts**

The benefit or advantage which the promisor is to receive from a contract is the inducement for making it. Collins v. Harris, 130 Wash. 394, 227 P. 508, 509; State Bank of Ardock v. Burke, 53 N. D. 777, 208 N. W. 115, 117; E. F. Spears & Sons v. Winkle, 186 Ky. 585, 217 S. W. 691, 692.

In Criminal Evidence

Motive; that which leads or tempts to the commission of crime. Burrill, Circ. Ev. 283.

In Pleading

That portion of a declaration or of any subsequent pleading in an action which is brought forward by way of explanatory introduction to the main allegations. Brown. Houston v. Tyler, 140 Mo. 252, 36 S. W. 654; Consolidated Coal Co. v. Peers, 97 Ill. App. 194; Taverner v. Little, 5 Bing. N. C. 678; Grand v. Dreyfus, 122 Cal. 58, 54 P. 389; Modica v. Martino, 211 App. Div. 516, 207 N. Y. S. 479, 481; McDonald v. Hall, 203 Mich. 431, 170 N. W. 68, 72; Varnes v. Seaboard Air Line Ry. Co., 80 Fla. 624, 86 So. 433, 434; Nolan v. Standard Pub. Co., 67 Mont. 212, 216 P. 571, 574; Kee v. Armstrong, Byrd & Co., 75 Okl. 84, 182 P. 494, 498, 5 A. L. R. 1349.

INDUCIÆ.**In International Law**

A truce; a suspension of hostilities; an agreement during war to abstain for a time from warlike acts.

In Old Maritime Law

A period of twenty days after the safe arrival of a vessel under bottomry, to dispose of the cargo, and raise the money to pay the creditor, with interest.

In Old English Practice

Delay or indulgence allowed a party to an action; further time to appear in a cause. Bract. fol. 352b; Fleta, lib. 4, c. 5, § 8.

In Scotch Practice

Time allowed for the performance of an act. Time to appear to a citation. Time to collect evidence or prepare a defense.

—**Induciæ legales.** In Scotch law. The days between the citation of the defendant and the day of appearance; the days between the test day and day of return of the writ.

INDUCT. To put in enjoyment or possession, especially to introduce into possession of an office or benefice, with customary ceremonies, to bring in, initiate, to be put formally in possession, inaugurate or install. State ex rel. Slattery v. Raupp, 303 Mo. 684, 263 S. W. 834, 835.

INDUCTIO. Lat. In the civil law. Obliteration, by drawing the pen or *stylus* over the writing. Dig. 28, 4; Calvin.

INDUCTION. In ecclesiastical law. The ceremony by which an incumbent who has been instituted to a benefice is vested with full possession of all the profits belonging to the church, so that he becomes seised of the temporalities of the church, and is then complete incumbent. It is performed by virtue of a mandate of induction directed by the bishop to the arch-deacon, who either performs it in person, or directs his precept to one or more other clergymen to do it. Philim. Ecc. Law, 477.

INDULGENCE. In the Roman Catholic Church. A remission of the punishment due to sins, granted by the pope or church, and supposed to save the sinner from purgatory. Its abuse led to the Reformation in Germany. Wharton. Forbearance, (*q. v.*)

INDULTO.**In Ecclesiastical Law**

A dispensation granted by the pope to do or obtain something contrary to the common law.

In Spanish Law

The condonation or remission of the punishment imposed on a criminal for his offense. This power is exclusively vested in the king.

INDUMENT. Endowment, (*q. v.*)

INDUSTRIAL AND PROVIDENT SOCIETIES. Societies formed in England for carrying on any labor, trade, or handicraft, whether wholesale or retail, including the

buying and selling of land and also (but subject to certain restrictions) the business of banking.

INDUSTRIAL SCHOOLS. Schools (established by voluntary contribution) in which industrial training is provided, and in which children are lodged, clothed, and fed, as well as taught.

INDUSTRIAL TRACK. One connecting with main line track and used and equipped for moving freight in carloads to or from one or more industries thereby reached and served, in incidental services such as loading, reloading, or storing, and in incidental switching or yard movements. Gulf, C. & S. F. R. Co. v. Texas & P. R. Co. (C. C. A.) 4 F.(2d) 904, 906, 907; Miller Engineering Co. v. Louisiana Ry. & Nav. Co., 144 La. 786, 81 So. 314, 317.

INDUSTRIAM, PER. Lat. A qualified property in animals *feræ naturæ* may be acquired *per industriam, i. e.*, by a man's reclaiming and making them tame by art, industry, and education; or by so confining them within his own immediate power that they cannot escape and use their natural liberty. 2 Steph. Comm. 5.

INDUSTRY. Any department or branch of art, occupation, or business conducted as a means of livelihood or for profit; especially, one which employs much labor and capital and is a distinct branch of trade. Chicago, R. I. & P. Ry. Co. v. State, 83 Okl. 161, 201 P. 260, 264; City of Rochester v. Rochester Girls' Home (Sup.) 194 N. Y. S. 236, 237.

INEBRIATE. A person addicted to the use of intoxicating liquors; an habitual drunkard.

Any person who habitually, whether continuously or periodically, indulges in the use of intoxicating liquors to such an extent as to stupefy his mind, and to render him incompetent to transact ordinary business with safety to his estate, shall be deemed an inebriate, within the meaning of this chapter: provided, the habit of so indulging in such use shall have been at the time of inquisition of at least one year's standing. Code N. C. 1883, § 1671 (C. S. § 2284). And see In re Anderson, 132 N. C. 243, 43 S. E. 649; State v. Ryan, 70 Wis. 676, 36 N. W. 823; Interdiction of Gasquet, 68 So. 89, 92, 136 La. 957.

INE, CODE OF. A code of the West Saxons dating from 688 to 695. Adopted by Alford, probably with alterations. Seebohm, Tribal Customs, 386.

INELIGIBILITY. Disqualification or legal incapacity to be elected to an office. Thus, an alien or naturalized citizen is ineligible to be elected president of the United States. Carroll v. Green, 148 Ind. 362, 47 N. E. 223; State v. Murray, 28 Wis. 99, 9 Am. Rep. 489.

This incapacity arises from various causes; and a person may be incapable of being elected to one office who may be elected to another.

er; the incapacity may also be perpetual or temporary.

INELIGIBLE. Disqualified to be elected to an office; also disqualified to hold an office if elected or appointed to it. *State v. Murray*, 28 Wis. 99, 9 Am. Rep. 489.

Inesse potest donationi, modus, conditio sive causa; ut modus est; si conditio; quia causa. In a gift there may be manner, condition, and cause; as [*ut*] introduces a manner; if, [*si*,] a condition; because, [*quia*,] a cause. Dyer, 138.

INEST DE JURE. Lat. It is implied of right; it is implied by law.

INEVITABLE. Incapable of being avoided; fortuitous; transcending the power of human care, foresight, or exertion to avoid or prevent, and therefore suspending legal relations so far as to excuse from the performance of contract obligations, or from liability for consequent loss.

INEVITABLE ACCIDENT. An unavoidable accident; one produced by an irresistible physical cause; an accident which cannot be prevented by human skill or foresight, but results from natural causes, such as lightning or storms, perils of the sea, inundations or earthquakes, or sudden death or illness. By irresistible force is meant an interposition of human agency, from its nature and power absolutely uncontrollable. *Brousseau v. The Hudson*, 11 La. Ann. 428; *State v. Lewis*, 107 N. C. 967, 12 S. E. 457, 11 L. R. A. 105; *Russell v. Fagan*, 7 Houst. (Del.) 389, 8 A. 258; *Hall v. Cheney*, 36 N. H. 30; *Newport News & M. V. Co. v. U. S.*, 61 F. 488, 9 C. C. A. 579; *The R. L. Mabey*, 14 Wall. 215, 20 L. Ed. 881; *The Locklilo*, 3 W. Rob. 318; *Early v. Hampton*, 15 Ga. App. 95, 82 S. E. 669, 671; *El Paso Printing Co. v. Glick* (Tex. Civ. App.) 246 S. W. 1076, 1078; *Leland v. Empire Engineering Co.*, 135 Md. 208, 108 A. 570, 575. Inevitable accident occurs where a vessel is pursuing a lawful avocation in a lawful manner, using the proper precautions against danger, and an accident occurs. The highest degree of caution that can be used is not required. It is enough that it is reasonable under the circumstances; such as is usual in similar cases, and has been found by long experience to be sufficient to answer the end in view,—the safety of life and property. *The Grace Girdler*, 7 Wall. 196, 19 L. Ed. 113. Inevitable accident is only when the disaster happens from natural causes, without negligence or fault on either side, and when both parties have endeavored, by every means in their power, with due care and caution, and with a proper display of nautical skill, to prevent the occurrence of the accident. *Sampson v. U. S.*, 12 Ct. Cl. 491; *The Herm* (C. C. A.) 267 F. 373, 374; *The Old Reliable* (C. C. A.) 269 F. 725, 729; *The Fullerton* (C. C. A.) 211 F.

833, 836; *The Lackawanna* (C. C. A.) 210 F. 262, 264.

INEWARDUS. A guard; a watchman. Domesday.

INFALISTATUS. In old English law. Exposed upon the sands, or seashore. A species of punishment mentioned in Hengham. Cowell.

INFAMIA. Lat. Infamy; ignominy or disgrace.

By *infamia juris* is meant infamy established by law as the consequence of crime; *infamia facti* is where the party is supposed to be guilty of such crime, but it has not been judicially proved. *Comm. v. Green*, 17 Mass. 515, 541.

INFAMIS. Lat. In Roman law. A person whose right of reputation was diminished (involving the loss of some of the rights of citizenship) either on account of his infamous avocation or because of conviction for crime. Mackeld. Rom. Law, § 135.

INFAMOUS CRIME. See Crime.

INFAMOUS PUNISHMENT. See Punishment.

INFAMY. A qualification of a man's legal status produced by his conviction of an infamous crime and the consequent loss of honor and credit, which, at common law, rendered him incompetent as a witness, and by statute in some jurisdictions entails other disabilities. *McCafferty v. Guyer*, 59 Pa. 116; *Ex parte Wilson*, 114 U. S. 417, 5 S. Ct. 935, 29 L. Ed. 89; *State v. Clark*, 60 Kan. 450, 56 P. 767.

INFANCY. Minority; the state of a person who is under the age of legal majority,—at common law, twenty-one years. According to the sense in which this term is used, it may denote the condition of the person merely with reference to his years, or the contractual disabilities which non-age entails, or his status with regard to other powers or relations. *Keating v. Railroad Co.*, 94 Mich. 219, 53 N. W. 1053; *Anonymous*, 1 Salk. 44; *Code Miss.* 1892, § 1505 (*Code* 1930, § 1373).

Natural Infancy

A period of non-responsible life, which ends with the seventh year. Wharton.

INFANGENTHEF. In old English law. A privilege of lords of certain manors to judge any thief taken within their fee. See Outfangthef.

INFANS. Lat. In the civil law. A child under the age of seven years; so called "*quasi impos fundi*," (as not having the faculty of speech.) *Cod. Theodos.* 8, 18, 8.

Infans non multum a furioso distat. An infant does not differ much from a lunatic.

Bract. 1. 3, c. 2, § 8; Dig. 50, 17, 5, 40; 1 Story, Eq. Jur. §§ 223, 224, 242.

INFANT. A person within age, not of age, or not of full age; a person under the age of twenty-one years; a minor. Co. Litt. 171b; 1 Bl. Comm. 463-466; 2 Kent, Comm. 233. *Beavers v. Southern Ry. Co.*, 212 Ala. 600, 103 So. 887, 889; *Audsley v. Hale*, 303 Mo. 451, 261 S. W. 117, 123.

INFANTIA. Lat. In the civil law. The period of infancy between birth and the age of seven years. Calvin.

INFANTICIDE. The murder or killing of an infant soon after its birth. The fact of the birth distinguishes this act from "feticide" or "procuring abortion," which terms denote the destruction of the *fetus* in the womb. See, also, *Prolicide*.

INFANTS' MARRIAGE ACT. The statute 18 & 19 Vict. c. 43. By virtue of this act every infant, (if a male, of twenty, or, if a female, of seventeen, years,—section 4,) upon or in contemplation of marriage, may, with the sanction of the chancery division of the high court, make a valid settlement or contract for a settlement of property. Wharton.

INFANZON. In Spanish law. A person of noble birth, who exercises within his domains and inheritance no other rights and privileges than those conceded to him. *Escriche*.

INFECTION. In medical jurisprudence. The transmission of disease or disease germs from one person to another, either directly by contact with morbidly affected surfaces, or more remotely through inhalation, absorption of food or liquid tainted with excremental matter, contact with contaminated clothing or bedding, or other agencies.

A distinction is sometimes made between "infection" and "contagion," by restricting the latter term to the communication of disease by direct contact. See *Grayson v. Lynch*, 163 U. S. 468, 16 Sup. Ct. 1064, 41 L. Ed. 230; *Wirth v. State*, 63 Wis. 51, 22 N. W. 860; *Stryker v. Crane*, 33 Neb. 690, 50 N. W. 1133. But "infection" is the wider term and in proper use includes "contagion," and is frequently extended so as to include the local inauguration of disease from other than human sources, as from miasmas, poisonous plants, etc. In another, and perhaps more accurate sense, contagion is the entrance or lodgment of pathogenic germs in the system as a result of direct contact; infection is their fixation in the system or the inauguration of disease as a consequence. In this meaning, infection does not always result from contagion, and on the other hand it may result from the introduction of disease germs into the system otherwise than by contagion.

Auto-infection

The communication of disease from one part of the body to another by mechanical transmission of virus from a diseased to a healthy part.

Infectious Disease

One capable of being transmitted or communicated by means of infection.

INEFFT. In Scotch law. To give seisin or possession of lands; to invest or enfeoff. 1 Kames, Eq. 215.

INEFFMENT.

In Old Scotch Law

Investiture or infeudation, including both charter and seisin. 1 Forb. Inst. pt. 2, p. 110.

In Later Law

Saisine, or the instrument of possession. Bell.

INFENSARE CURIAM. Lat. An expression applied to a court when it suggested to an advocate something which he had omitted through mistake or ignorance. Spelman.

INFEOFFMENT. The act or instrument of feoffment. In Scotland it is synonymous with "*saisine*," meaning the instrument of possession. Formerly it was synonymous with "investiture." Bell.

INFERENCE. In the law of evidence. A truth or proposition drawn from another which is supposed or admitted to be true. A process of reasoning by which a fact or proposition sought to be established is deduced as a logical consequence from other facts, or a state of facts, already proved or admitted. *Gates v. Hughes*, 44 Wis. 336; *Whitehouse v. Bolster*, 95 Me. 458, 50 A. 240; *Joske v. Irvine*, 91 Tex. 574, 44 S. W. 1059.

An inference is a deduction which the reason of the jury makes from the facts proved, without an express direction of law to that effect. Code Civil Proc. Cal. § 1958; *Puget Sound Electric Ry. v. Benson* (C. C. A.) 253 F. 710, 714; *Glowacki v. North Western Ohio Ry. & Power Co.*, 116 Ohio St. 451, 157 N. E. 21, 23, 53 A. L. R. 1486; *Wright v. Conway*, 34 Wyo. 1, 242 P. 1107, 1110.

A "presumption" and an "inference" are not the same thing, a presumption being a deduction which the law requires a trier of facts to make, an inference being a deduction which the trier may or may not make, according to his own conclusions; a presumption is mandatory, an inference, permissible. *Cross v. Passumpsic Fiber Leather Co.*, 98 A. 1010, 1014, 90 Vt. 397; *Joyce v. Missouri & Kansas Telephone Co.* (Mo. App.) 211 S. W. 900, 901; *State v. Godlasky*, 47 S. D. 36, 195 N. W. 832, 833; *Stumpf v. Montgomery*, 101 Okl. 257, 226 P. 65, 68, 32 A. L. R. 1490.

INFERENCE. In the law of evidence. Operating in the way of inference; argumentative. Presumptive evidence is sometimes termed "inferential." *Com. v. Harman*, 4 Pa. 272.

INFERENCE FACTS. See Fact.

INFERIOR. One who, in relation to another, has less power and is below him; one

who is bound to obey another. He who makes the law is the superior; he who is bound to obey it, the inferior. 1 Bouv. Inst. no. 8.

INFERIOR COURT. This term may denote any court subordinate to the chief appellate tribunal in the particular judicial system; but it is commonly used as the designation of a court of special, limited, or statutory jurisdiction, whose record must show the existence and attaching of jurisdiction in any given case, in order to give presumptive validity to its judgment. See *Ex parte Cuddy*, 131 U. S. 280, 9 S. Ct. 703, 33 L. Ed. 154; *Kempe v. Kennedy*, 5 Cranch, 185, 3 L. Ed. 70; *Grignon v. Astor*, 2 How. 341, 11 L. Ed. 283; *Swift v. Wayne Circuit Judges*, 64 Mich. 479, 31 N. W. 434; *Cole v. Marvin*, 98 Or. 175, 193 P. 828, 830.

The English courts of judicature are classed generally under two heads,—the superior courts and the inferior courts; the former division comprising the courts at Westminster, the latter comprising all the other courts in general, many of which, however, are far from being of inferior importance in the common acceptance of the word. Brown.

INFEUDATION. The placing in possession of a freehold estate; also the granting of tithes to laymen.

INFICIARI. Lat. In the civil law. To deny; to deny one's liability; to refuse to pay a debt or restore a pledge; to deny the allegation of a plaintiff; to deny the charge of an accuser. Calvin.

INFICIATIO. Lat. In the civil law. Denial; the denial of a debt or liability; the denial of the claim or allegation of a party plaintiff. Calvin.

INFIDEL. One who does not believe in the existence of a God who will reward or punish in this world or that which is to come. *Hale v. Everett*, 53 N. H. 54, 16 Am. Rep. 82; *Jackson v. Gridley*, 18 Johns. (N. Y.) 103; *Heirn v. Bridault*, 37 Miss. 226. One who professes no religion that can bind his conscience to speak the truth. 1 Greenl. Ev. § 368. One who does not recognize the inspiration or obligation of the Holy Scriptures, or generally recognized features of the Christian religion. *Gibson v. Ins. Co.*, 37 N. Y. 580.

INFIDELIS.

In Old English Law

An infidel or heathen.

In Feudal Law

One who violated fealty.

INFIDELITAS. In feudal law. Infidelity; faithlessness to one's feudal oath. Spelman.

INFIDUCIARE. In old European law. To pledge property. Spelman.

INFIHT. Sax. An assault made on a person inhabiting the same dwelling.

Infinitum in jure reprobatur. That which is endless is reprobated in law. 12 Coke, 24. Applied to litigation.

INFIRM. Weak, feeble. The testimony of an "infirm" witness may be taken *de bene esse* in some circumstances. See 1 P. Wms. 117.

INFIRMATIVE. In the law of evidence. Having the quality of diminishing force; having a tendency to weaken or render infirm. 3 Benth. Jud. Ev. 14; Best, Pres. § 217. Exculpatory is used by some authors as synonymous. See Wills, Circ. Ev. 120; Best, Pres. § 217.

INFIRMATIVE CONSIDERATION. In the law of evidence. A consideration, supposition, or hypothesis of which the criminative facts of a case admit, and which tends to weaken the inference or presumption of guilt deducible from them. Burrell, Circ. Ev. 153-155.

INFIRMATIVE FACT. In the law of evidence. A fact set up, proved, or even supposed, in opposition to the criminative facts of a case, the tendency of which is to weaken the force of the inference of guilt deducible from them. 3 Benth. Jud. Ev. 14; Best, Pres. § 217, *et seq.*

INFIRMATIVE HYPOTHESIS. A term sometimes used in criminal evidence to denote an hypothesis or theory of the case which assumes the defendant's innocence, and explains the criminative evidence in a manner consistent with that assumption.

INFIRMITY. In an application for insurance an ailment or disease of a substantial character, which apparently in some material degree impairs the physical condition and health of the applicant and increases the chance of his death or sickness and which if known, would have been likely to deter the insurance company from issuing the policy. *Eastern Dist. Piece Dye Works v. Travelers' Ins. Co.*, 234 N. Y. 441, 138 N. E. 401, 404, 26 A. L. R. 1505; *Mutual Life Ins. Co. of New York v. Dodge* (C. C. A.) 11 F.(2d) 486, 489; *Travelers' Ins. Co. v. Pomerantz*, 246 N. Y. 63, 158 N. E. 21, 22.

INFLUENCE. See Undue Influence.

INFORMAL. Deficient in legal form; inartificially drawn up.

INFORMALITY. Want of legal form. See *State v. Gallimon*, 24 N. C. 377; *Franklin v. Mackey*, 16 Serg. & R. (Pa.) 118; *Hunt v. Curry*, 37 Ark. 108.

INFORMATION.

In Practice

An accusation exhibited against a person for some criminal offense, without an indictment. 4 Bl. Comm. 308.

An accusation in the nature of an indictment, from which it differs only in being presented by a competent public officer on his oath of office, instead of a grand jury on their oath. 1 Bish. Crim. Proc. § 141; *People v. Sponsler*, 1 Dak. 289, 46 N. W. 459; *Goddard v. State*, 12 Conn. 452; *State v. Ashley*, 1 Ark. 279; *Clepper v. State*, 4 Tex. 246; *People ex rel. MacSherry v. Enright*, 184 N. Y. S. 248, 251, 112 Misc. 568; *State v. Williams*, 109 Ark. 465, 161 S. W. 159, 161; *People v. Foster*, 198 Cal. 112, 243 P. 667, 670; *State v. Noell*, 220 Mo. App. 883, 295 S. W. 529, 530; *State v. Bowman*, 40 Idaho, 470, 235 P. 577; *Howard v. State*, 143 Tenn. 539, 227 S. W. 36. A written accusation sworn to before a magistrate, upon which an indictment is afterwards founded. *Commonwealth v. Cooke*, 55 Pa. Super. Ct. 435, 439.

The word is also frequently used in the law in its sense of communicated knowledge. *Masline v. New York, N. H. & H. R. Co.*, 95 Conn. 702, 112 A. 639, 640. And affidavits are frequently made, and pleadings and other documents verified, on "information and belief."

In French Law

The act or instrument which contains the depositions of witnesses against the accused. *Poth. Proc. Civil*, § 2, art. 5.

In General

—**Criminal information.** A formal accusation of crime, differing from an indictment only in that it is preferred by a prosecuting officer instead of by a grand jury. *U. S. v. Borger* (C. C.) 7 F. 193; *State v. Barrell*, 75 Vt. 202, 54 A. 183, 98 Am. St. Rep. 813.

—**Information in the nature of a quo warranto.** A proceeding against the usurper of a franchise or office. *Jarman v. Mason*, 102 Okl. 278, 229 P. 459, 460. See *Quo Warranto*.

—**Information of intrusion.** A proceeding instituted by the state prosecuting officer against intruders upon the public domain. See *Gen. St. Mass. c. 141* (Gen. Laws, c. 245); *Com. v. Andre's Heirs*, 3 Pick. (Mass.) 224; *Com. v. Hite*, 6 Leigh (Va.) 588, 29 Am. Dec. 226.

INFORMATUS NON SUM. In practice. I am not informed. A formal answer made by the defendant's attorney in court to the effect that he has not been advised of any defense to be made to the action. Thereupon judgment by default passes.

INFORMER. A person who informs or prefers an accusation against another, whom he

suspects of the violation of some penal statute.

Common Informer

A common prosecutor. A person who habitually ferrets out crimes and offenses and lays information thereof before the ministers of justice, in order to set a prosecution on foot, not because of his office or any special duty in the matter, but for the sake of the share of the fine or penalty which the law allots to the informer in certain cases. Also used in a less invidious sense, as designating persons who were authorized and empowered to bring action for penalties. *U. S. v. Stocking* (D. C.) 87 F. 861; *In re Barker*, 56 Vt. 20.

INFORTIATUM. The name given by the glossators to the second of the three parts or volumes into which the Pandects were divided. It commences with the third title of the twenty-fourth book and ends with the thirty-eighth book. The glossators at Bologna had at first only two parts, the first called "*Digestum Vetus*," (the old Digest,) and the last called "*Digestum Novum*," (the New Digest.) When they afterwards received the middle or second part, they separated from the *Digestum Novum* the beginning it had then, and added it to the second part, from which enlargement the latter received the name "*Infortiatum*." *Mackeld. Rom. Law*, § 110.

INFORTUNIUM, HOMICIDE PER. Where a man doing a lawful act, without intention of hurt, unfortunately kills another.

INFRA. (Lat.) Below, under, beneath, underneath. The opposite of *supra*, above. Thus, we say, *primo gradu est—supra, pater, mater, infra, filius, filia*: in the first degree of kindred in the ascending line, above is the father and the mother, below, in the descending line, son and daughter. *Inst.* 3. 6. 1.

In another sense, this word signifies *within*: as, *infra corpus civitatis*, within the body of the country; *infra præsidia*, within the guards. So of time, *during*: *infra furorem*, during the madness. This use is not classical. The use of *infra* for *intra* seems to have sprung up among the barbarians after the fall of the Roman empire.

INFRA ÆTATEM. Under age; not of age. Applied to minors.

INFRA ANNOS NUBILES. Under marriageable years; not yet of marriageable age.

INFRA ANNUM. Under or within a year. *Bract. fol.* 7.

INFRA ANNUM LUCTÛS. (Within the year of mourning.) The phrase is used in reference to the marriage of a widow within a year after her husband's death, which was prohibited by the civil law.

INFRA BRACHIA. Within her arms. Used of a husband *de jure*, as well as *de facto*. 2

Inst. 317. Also *inter brachia*. Bract. fol. 143b. It was in this sense that a woman could only have an appeal for murder of her husband *inter brachia sua*.

INFRA CIVITATEM. Within the state. 1 Camp. 23, 24.

INFRA CORPUS COMITATUS. Within the body (territorial limits) of a county. In English law, waters which are *infra corpus comitatus* are exempt from the jurisdiction of the admiralty. Waring v. Clarke, 5 How. 441, 451, 12 L. Ed. 226.

INFRA DIGNITATEM CURIÆ. Beneath the dignity of the court; unworthy of the consideration of the court. Where a bill in equity is brought upon a matter too trifling to deserve the attention of the court, it is demurrable, as being *infra dignitatem curiæ*. Smets v. Williams, 4 Paige, Ch. (N. Y.) 364.

INFRA FUROREM. During madness; while in a state of insanity. Bract. fol. 19b.

INFRA HOSPITIUM. Within the inn. When a traveler's baggage comes *infra hospitium*, i. e., in the care and under the custody of the innkeeper, the latter's liability attaches.

INFRA JURISDICTIONEM. Within the jurisdiction. 2 Strange, 827.

INFRA LIGEANTIAM REGIS. Within the king's ligeance. Comb. 212.

INFRA METAS. Within the bounds or limits. *Infra metas forestæ*, within the bounds of the forest. Fleta, lib. 2, c. 41, § 12. *Infra metas hospitii*, within the limits of the household; within the verge. Id. lib. 2, c. 2, § 2.

INFRA PRÆSIDIA. Within the protection; within the defenses. In international law, when a prize, or other captured property, is brought into a port of the captors, or within their lines, or otherwise under their complete custody, so that the chance of rescue is lost, it is said to be *infra præsidia*.

INFRA QUATUOR MARIA. Within the four seas; within the kingdom of England; within the jurisdiction.

INFRA QUATUOR PARIETES. Within four walls. 2 Crabb, Real Prop. p. 106, § 1089.

INFRA REGNUM. Within the realm.

INFRA SEX ANNOS. Within six years. Used in the Latin form of the plea of the statute of limitations.

INFRA TRIDUUM. Within three days. Formal words in old appeals. Fleta, lib. 1, c. 31, § 6; Id. c. 35, § 3.

INFRACTION. A breach, violation, or infringement; as of a law, a contract, a right or duty.

In French law, this term is used as a general designation of all punishable actions.

INFRINGEMENT. A breaking into; a trespass or encroachment upon; a violation of a law, regulation, contract, or right. Used especially of invasions of the rights secured by patents, copyrights, and trademarks. Good-year Shoe Machinery Co. v. Jackson, 112 Fed. 146, 50 C. C. A. 159, 55 L. R. A. 692; Thomson-Houston Electric Co. v. Ohio Brass Co., 80 F. 721, 26 C. C. A. 107.

—**Infringement of patent.** The unauthorized making, using, or selling for practical use, or for profit, of an invention covered by a valid claim of a patent during the life of the patent. It may involve any one or all of the acts of making, using, and selling. Johnston v. Davenport Brick & Tile Co. (D. C.) 237 F. 668, 671; Braun, Bryant & Austin v. McGuire, 201 Cal. 134, 255 P. 808, 810; Lowry v. Hert (D. C.) 273 F. 698, 704; Marsh v. Nichols, Shepard & Co., 128 U. S. 605, 9 S. Ct. 168, 32 L. Ed. 538; Rein v. Clayton, 37 F. 354, 3 L. R. A. 78; see Kirk v. U. S., 163 U. S. 55, 16 S. Ct. 911, 41 L. Ed. 66; Celluloid Mfg. Co. v. American Zylonite Co., 30 F. 437; Badische Anilin & Soda Fabrik v. Mfg. Co., 3 Bann. & A. 235, Fed. Cas. No. 721.

To constitute infringement of a patent claim there must be present in the infringing device or combination every element of such claim or its equivalent, so combined as to produce substantially the same result operating in substantially the same way. Safety Car Heating & Lighting Co. v. Gould Coupler Co. (D. C.) 230 F. 848, 851; Wallicks v. Cantrell, 12 F. 790; Sickels v. Borden, 3 Blatchf. 535, Fed. Cas. No. 12,832; Shaver v. Mfg. Co., 30 F. 68; C. F. Mueller Co. v. Clermont Mach. Co. (D. C.) 20 F.(2d) 413, 415; American Caramel Co. v. Glen Rock Stamping Co. (D. C.) 201 F. 363, 365; Dayton Engineering Laboratories Co. v. Kent (D. C.) 260 F. 187, 189; Anakin Lock Works v. Dillon Lock Works (C. C. A.) 292 F. 45, 48.

—**Contributory infringement.** The intentional aiding of one person by another in the unlawful making or selling of a patented invention; usually done by making or selling one part of the patented invention, or one element of the combination, with the intent and purpose of so aiding. Thomson-Houston Electric Co. v. Specialty Co. (C. C.) 72 F. 1016; Shoe Mach. Co. v. Jackson, 112 F. 146, 50 C. C. A. 159, 55 L. R. A. 692; Thomson-Houston Electric Co. v. Ohio Brass Co., 80 F. 712, 26 C. C. A. 107; Stud Co. v. O'Brien (C. C.) 93 F. 203; Harvey Hubbell, Inc., v. General Electric Co. (C. C. A.) 267 F. 564, 571; Safety Car Heating & Lighting Co. v. Gould Coupler Co. (D. C.) 229 F. 429, 439; New York Scaffolding Co. v. Whitney (C. C. A.) 224 F. 452, 459.

—**Infringement of copyright.** A copy, more or less servile, of a copyrighted work. Mere likeness is insufficient, and an original treatment of a subject, open alike to treatment by the copyright holder and others does not constitute infringement. Pellegrini v. Allegrini

(D. C.) 2 F.(2d) 610, 612; Kirke La Shelle Co. v. Armstrong, 173 App. Div. 232, 159 N. Y. S. 363, 366. There must be appropriation of substantial portions of the copyright matter. Hal E. Roach Studios (D. C.) 18 F.(2d) 126, 127; Eggers v. Sun Sales Corporation (C. C. A.) 263 F. 373, 375.

Under 17 USCA § 1, one transmitting unauthorized performance of copyrighted musical composition by radio from a broadcasting station maintained and operated to stimulate sale of radio products is an "infringer," and is liable therefor. Jerome H. Remick & Co. v. General Electric Co. (D. C.) 16 F.(2d) 829.

—Infringement of trademark. The unauthorized use or colorable imitation of the mark already appropriated by another, on goods of a similar class. Block v. Jung Arch Brace Co. (C. C. A. Ohio) 300 F. 308, 309; Westminister Laundry Co. v. Hesse Envelope Co., 174 Mo. App. 238, 156 S. W. 767, 768; Metcalf v. Hanover Star Milling Co. (C. C. A.) 204 F. 211, 214; National Grocery Co. v. National Stores Corporation, 95 N. J. Eq. 588, 123 A. 740; Saunders System Atlanta Co. v. Drive it Yourself Co. of Georgia, 158 Ga. 1, 123 S. E. 132, 135; Charles S. Cash, Inc., v. Steinbook, 220 App. Div. 569, 222 N. Y. S. 61, 65; Weiss v. Tucker, 129 Misc. 648, 222 N. Y. S. 487, 488; Northam Warren Corporation v. Universal Cosmetic Co. (C. C. A.) 18 F.(2d) 774, 775.

INFRINGER. One who appropriates another's patented invention. Stebler v. Riverside Heights Orange Growers' Ass'n (C. C. A.) 205 F. 735, 739.

INFUGARE. Lat. To put to flight.

INFULA. A coif, or a cassock. Jacob.

INFUSION. In medical jurisprudence. The process of steeping in liquor; an operation by which the medicinal qualities of a substance may be extracted by a liquor without boiling. Also the product of this operation. "Infusion" and "decoction," though not identical, are *ejusdem generis* in law. 3 Camp. 74. See Decoction.

A pharmaceutical operation, which consists in pouring a hot or cold fluid upon a substance whose medical properties it is desired to extract. The product of this operation.

INGE. Meadow, or pasture. Jacob.

INGENIUM. (1) Artifice, trick, fraud; (2) an engine or device. Spelman. (3) A net or hook. (4) A machine, Spelman, Gloss., especially for warlike purposes; also, for navigation of a ship. Du Cange.

INGENUITAS. Lat. Freedom; liberty; the state or condition of one who is free. Also liberty given to a servant by manumission.

INGENUITAS REGNI. In old English law. The freemen, yeomanry, or commonalty of the kingdom. Cowell. Applied sometimes also to the barons.

INGENUITY. Acuteness of understanding. Tolfree v. Wetzler (D. C.) 22 F.(2d) 214.

INGENUUS. In Roman law. A person who, immediately that he was born, was a free person. He was opposed to *libertinus*, or *libertus*, who, having been born a slave, was afterwards manumitted or made free. It is not the same as the English law term "*generosus*," which denoted a person not merely free, but of good family. There were no distinctions among *ingenui*; but among *libertini* there were (prior to Justinian's abolition of the distinctions) three varieties, namely: Those of the highest rank, called "*Cives Romani*;" those of the second rank, called "*Latini Juniani*;" and those of the lowest rank, called "*Dediticii*." Brown.

INGRATITUDE. In Roman law, ingratitude was accounted a sufficient cause for revoking a gift or recalling the liberty of a freedman. Such is also the law of France, with respect to the first case. But the English law has left the matter entirely to the moral sense.

INGRESS, EGRESS, AND REGRESS. These words express the right of a lessee to enter, go upon, and return from the lands in question.

INGRESSU. In English law. An ancient writ of entry, by which the plaintiff or complainant sought an entry into his lands. Abolished in 1833.

INGRESSUS. In old English law. Ingress; entry. The relief paid by an heir to the lord was sometimes so called. Cowell.

INGROSSATOR. An engrosser. *Ingrossator magni rotuli*, engrosser of the great roll; afterwards called "clerk of the pipe." Spelman; Cowell.

INGROSSING. The act of making a fair and perfect copy of any document from a rough draft of it, in order that it may be executed or put to its final purpose.

INGUINAL. A term referring to the groin. Cavalier v. Chevrolet Motor Co. of New York, 189 App. Div. 412, 178 N. Y. S. 489, 490.

INHABIT. Synonymous with dwell, live, sojourn, stay, rest. MacLeod v. Stelle, 43 Idaho, 64, 249 P. 254, 256.

INHABITANT. One who resides actually and permanently in a given place, and has his domicile there. Ex parte Shaw, 145 U. S. 444, 12 S. Ct. 935, 36 L. Ed. 768; The Pizarro, 2 Wheat. 245, 4 L. Ed. 226.

"The words 'inhabitant,' 'citizen,' and 'resident,' as employed in different constitutions to define the qualifications of electors, mean substantially the same thing; and one is an inhabitant, resident, or citizen at the place where he has his domicile or home." Cooley, Const. Lim. *600. But the terms "resident" and "inhabitant" have also been held not synonymous, the latter implying a more fixed and

permanent abode than the former, and importing privileges and duties to which a mere resident would not be subject. *Tazewell County v. Davenport*, 40 Ill. 197; *State, to Use of Knox County Collector, v. Bunce*, 187 Mo. App. 607, 173 S. W. 101, 102.

When relating to municipal rights, powers, or duties, the word inhabitant is almost universally used as signifying precisely the same as domiciled; *Borland v. City of Boston*, 132 Mass. 98, 42 Am. Rep. 424.

INHABITED HOUSE DUTY. A tax assessed in England on inhabited dwelling houses, according to their annual value, (St. 14 & 15 Vict. c. 36; 32 & 33 Vict. c. 14, § 11,) which is payable by the occupier, the landlord being deemed the occupier where the house is let to several persons, (St. 48 Geo. III. c. 55, Schedule B.) Houses occupied solely for business purposes are exempt from duty, although a care-taker may dwell therein, and houses partially occupied for business purposes are to that extent exempt. *Sweet*.

INHERE. To exist in and inseparable from something else; to stick fast. *Majestic Theater Co. v. Lutz*, 210 Ky. 92, 275 S. W. 16, 20.

INHERENT POWER. An authority possessed without its being derived from another. A right, ability, or faculty of doing a thing, without receiving that right, ability, or faculty from another. See, also, "Power."

INHERETRIX. The old term for "heiress." *Co. Litt.* 13a.

INHERIT. To take by inheritance; to take as heir on death of ancestor; to take by descent from ancestor; to take or receive, as right or title, by law from ancestor at his decease. *Condren v. Marlin*, 113 Okl. 259, 241 P. 826, 827; *Warren v. Prescott*, 84 Me. 483, 24 A. 948, 17 L. R. A. 435, 30 Am. St. Rep. 370; *McArthur v. Scott*, 113 U. S. 340, 5 S. Ct. 652, 28 L. Ed. 1015. "To inherit to" a person is a common expression in the books. 2 Bl. Comm. 254, 255; 3 Coke, 41.

The word is also used in its popular sense, as the equivalent of to take or receive. *Manchester v. Loomis*, 191 Iowa, 554, 181 N. W. 415, 442; *Manchester v. Loomis*, 197 Iowa, 1049, 195 N. W. 958, 967.

INHERITABLE BLOOD. Blood which has the purity (freedom from attainder) and legitimacy necessary to give its possessor the character of a lawful heir; that which is capable of being the medium for the transmission of an inheritance.

INHERITANCE. An estate in things real, descending to the heir. 2 Bl. Comm. 201; *In re Donahue's Estate*, 36 Cal. 332; *Dodge's Appeal*, 106 Pa. 220, 51 Am. Rep. 519; *Rountree v. Pursell*, 11 Ind. App. 522, 39 N. E. 747; *Adams v. Akerlund*, 168 Ill. 632, 48 N. E. 454.

Such an estate in lands or tenements or other things as may be inherited by the heir. *Termes de la Ley*.

An estate or property which a man has by descent, as heir to another, or which he may transmit to another, as his heir. *Litt.* § 9.

A perpetuity in lands or tenements to a man and his heirs. *Cowell*; *Blount*.

The method by which children or relatives take property from another at his death. *Priddy v. Green* (Tex. Civ. App.) 220 S. W. 243, 248; *Horner v. Webster*, 33 N. J. Law, 413.

Though "inheritance" in its restricted sense means something obtained through laws of descent and distribution from an intestate, in its popular use it includes property obtained by devise or descent. *Pacheco v. Fernandez* (Tex. Civ. App.) 277 S. W. 197, 198.

"Inheritance" is also used in the old books where "hereditament" is now commonly employed. Thus, *Coke* divides inheritances into corporeal and incorporeal, into real, personal, and mixed, and into entire and several.

In the Civil Law

The succession of the heir to all the rights and property of the estate-leaver. It is either testamentary, where the heir is created by will, or *ab intestato*, where it arises merely by operation of law. *Heinec'* § 484.

In General

—Estate of inheritance. See *Estate*.

—Inheritance act. The English statute of 3 & 4 Wm. IV. c. 106, by which the law of inheritance or descent was considerably modified. 1 Steph. Comm. 359, 500.

—Inheritance tax. A tax on the transfer or passing of estates or property by legacy, devise, or intestate succession; not a tax on the property itself, but on the right to acquire it by descent or testamentary gift. *In re Gihon's Estate*, 169 N. Y. 443, 62 N. E. 561; *Magoun v. Bank*, 170 U. S. 283, 18 S. Ct. 594, 42 L. Ed. 1037; *Smith v. Browning*, 225 N. Y. 358, 122 N. E. 217, 218; *In re Schlesinger's Estate*, 184 Wis. 1, 199 N. W. 951, 952; *In re Watkinson's Estate*, 191 Cal. 591, 217 P. 1073, 1075; *Enochs v. State*, 133 Miss. 107, 97 So. 534, 536; *First Nat. Bank v. Commissioner of Corporations and Taxation*, 258 Mass. 253, 154 N. E. 844, 845. A tax on the succession to, or transfer of, property occasioned by death. *Waddell v. Doughton*, 194 N. C. 537, 140 S. E. 160; *State v. Jones* (Tex. Civ. App.) 290 S. W. 244, 248; *Moody v. Hagen*, 36 N. D. 471, 162 N. W. 704, 708, L. R. A. 1918F, 947, Ann. Cas. 1918A, 933; *Cornett's Ex'rs v. Commonwealth*, 127 Va. 640, 105 S. E. 230, 231; *In re Sherwood's Estate*, 122 Wash. 648, 211 P. 734, 740. "Estate taxes" are based on the power to transmit or the transmission from the dead to the living, while "legacy taxes," or "inheritance taxes," are based on the transmission or right to receive the property. *Frick v. Lewellyn* (D. C.) 298 F. 803, 810.

INHIBITION.

In Ecclesiastical Law

A writ issuing from a superior ecclesiastical court, forbidding an inferior judge to proceed further in a cause pending before him. In this sense it is closely analogous to the writ of *prohibition* at common law.

Also the command of a bishop or ecclesiastical judge that a clergyman shall cease from taking any duty.

In English Law

The name of a writ which forbids a judge from further proceeding in a cause depending before him; it is in the nature of a prohibition. *Termes de la Ley*; Fitzh. N. B. 39.

In Scotch Law

A species of diligence or process by which a debtor is prohibited from contracting any debt which may become a burden on his heritable property, in competition with the creditor at whose instance the inhibition is taken out; and from granting any deed of alienation, etc., to the prejudice of the creditor. Brande.

In the Civil Law

A prohibition which the law makes or a judge ordains to an individual. Hallifax, Civil Law, p. 126.

INHIBITION AGAINST A WIFE. In Scotch law. A writ in the sovereign's name, passing the signet, which prohibits all and sundry from having transactions with a wife or giving her credit. Bell; Ersk. Inst. 1, 6, 26.

INHOC. In old records. A nook or corner of a common or fallow field, inclosed and cultivated. Kennett, Par. Antiq. 297, 298; Cowell.

INHONESTUS. In old English law. Unseemly; not in due order. Fleta, lib. 1, c. 31, § 8.

INHUMAN TREATMENT. In the law of divorce. Such barbarous cruelty or severity as endangers the life or health of the party to whom it is addressed, or creates a well-founded apprehension of such danger. Whaley v. Whaley, 68 Iowa, 647, 27 N. W. 809; Cole v. Cole, 23 Iowa, 433; Evans v. Evans, 82 Iowa, 462, 48 N. W. 809; Thompson v. Thompson, 186 Iowa, 1066, 173 N. W. 55, 5 A. L. R. 710. The phrase commonly employed in statutes is "cruel and inhuman treatment," from which it may be inferred that "inhumanity" is an extreme or aggravated "cruelty."

Iniquissima pax est anteponenda iustissimo bello. The most unjust peace is to be preferred to the justest war. Root v. Stuyvesant, 18 Wend. (N. Y.) 257, 305.

INIQUITY. In Scotch practice. A technical expression applied to the decision of an in-

ferior judge who has decided contrary to law; he is said to have committed iniquity. Bell.

Iniquum est alios permittere, alios inhibere mercaturam. It is inequitable to permit some to trade and to prohibit others. 3 Inst. 181.

Iniquum est aliquem rei sui esse judicem. It is wrong for a man to be a judge in his own cause. Branch, Princ.; 12 Coke, 113.

Iniquum est ingenuis hominibus non esse liberam rerum suarum alienationem. It is unjust that freemen should not have the free disposal of their own property. Co. Litt. 223a; 4 Kent Comm. 131; Hob. 87.

INITIAL. That which begins or stands at the beginning. The first letter of a man's name. See *Elberson v. Richards*, 42 N. J. Law, 70.

INITIAL CARRIER. In the law of bailments. The carrier who first receives the goods and begins the process of their transportation, afterwards delivering them to another carrier for the further prosecution or completion of their journey. See *Beard v. Railway Co.*, 79 Iowa; 527, 44 N. W. 803.

But it has also been defined as the one contracting with the shipper, and not necessarily the one whose line constitutes the first link in transportation. *Knapp v. Minneapolis, St. P. & S. S. M. Ry. Co.*, 33 N. D. 291, 156 N. W. 1019, 1023.

INITIALIA TESTIMONII. In Scotch law. Preliminaries of testimony. The preliminary examination of a witness, before examining him in chief, answering to the *voir dire* of the English law, though taking a somewhat wider range. Wharton.

INITIATE. Commenced; inchoate. *Curtsey initiate* is the interest which a husband has in the wife's lands after a child is born who may inherit, but before the wife dies.

To propose for approval—as schedule of rates. *Idaho Power Co. v. Thompson* (D. C.) 19 F.(2d) 547, 579.

INITIATION FEE. The sum paid on joining an organization for privileges of membership. *Derby v. U. S.* (D. C.) 17 F.(2d) 119, 120.

INITIATIVE. The right of a specified number of the electorate to unite in proposing laws to the legislative body, which, after due consideration, must submit the same to the vote of the people for their approval or disapproval.

In French law. The name given to the important prerogative conferred by the *charte constitutionnelle*, article 16, on the king to propose through his ministers projects of laws. 1 Toullier, no. 39.

INJUNCTION. A prohibitive writ issued by a court of equity, at the suit of a party complainant, directed to a party defendant in the action, or to a party made a defendant for that purpose, forbidding the latter to do

some act, or to permit his servants or agents to do some act, which he is threatening or attempting to commit, or restraining him in the continuance thereof, such act being unjust and inequitable, injurious to the plaintiff, and not such as can be adequately redressed by an action at law. U. S. v. Haggerty (C. C.) 116 F. 515; Dupre v. Anderson, 45 La. Ann. 1134, 13 So. 743; City of Alma v. Loehr, 42 Kan. 368, 22 P. 424; Consolidated Coal & Coke Co. v. Beale (D. C.) 282 F. 934, 935.

An injunction is a writ or order requiring a person to refrain from a particular act. It may be granted by the court in which the action is brought, or by a judge thereof, and when made by a judge it may be enforced as an order of the court. Code Civ. Proc. Cal. § 525.

Final injunction

A final injunction is one granted when the rights of the parties are determined; it may be made mandatory, (commanding acts to be done), and is distinguished from a preliminary injunction, which is confined to the purpose and office of simple prevention or restraining. Southern Pac. R. Co. v. Oakland (C. C.) 58 F. 54.

Interlocutory injunction

An "interlocutory injunction" is one granted prior to the final hearing and determination of the matter in issue, and which is to continue until answer, or until the final hearing, or until the further order of the court. Gas & Electric Securities Co. v. Manhattan & Queens Traction Corporation (C. C. A.) 266 F. 625, 632; Pack v. Carter (C. C. A.) 223 F. 638, 640.

Mandatory injunction

One which (1) commands the defendant to do some positive act or particular thing; (2) prohibits him from refusing (or persisting in a refusal) to do or permit some act to which the plaintiff has a legal right; or (3) restrains the defendant from permitting his previous wrongful act to continue operative, thus virtually compelling him to undo it, as by removing obstructions or erections, and restoring the plaintiff or the place or the subject-matter to the former condition. Bailey v. Schnitzius, 45 N. J. Eq. 178, 16 Atl. 680; Parsons v. Marye (C. C.) 23 F. 121; People v. McKane, 78 Hun, 154, 23 N. Y. Supp. 981; Procter v. Stuart, 4 Okl. 679, 46 P. 501.

Permanent injunction

One intended to remain in force until the final termination of the particular suit. Riggins v. Thompson, 96 Tex. 154, 71 S. W. 14.

Perpetual injunction

Opposed to an injunction *ad interim*; an injunction which finally disposes of the suit, and is indefinite in point of time. Riggins v. Thompson, 96 Tex. 154, 71 S. W. 14; De Florez v. Reynolds (C. C.) 8 F. 438.

Preliminary injunction

An injunction granted at the institution of a suit, to restrain the defendant from doing or continuing some act, the right to which is in dispute, and which may either be discharged or made perpetual, according to the result of the controversy, as soon as the rights of the parties are determined. Darlington Oil Co. v. Pee Dee Oil Co., 62 S. C. 196, 40 S. E. 169;

Appeal of Mammoth Vein Consol. Coal Co., 54 Pa. 188; Allison v. Corson, 88 F. 584, 32 C. C. A. 12; Jesse French Piano Co. v. Forbes, 134 Ala. 302, 32 So. 678, 92 Am. St. Rep. 31. The object of a preliminary injunction is to preserve the status quo until the merits can be heard. Fredericks v. Huber, 180 Pa. 572, 37 A. 90.

Preventive injunction

One which prohibits the defendant from doing a particular act or commands him to refrain from it. Leaksville Woolen Mills v. Spray Water Power & Land Co., 183 N. C. 511, 112 S. E. 24, 25.

Provisional injunction

Another name for a preliminary or temporary injunction or an injunction *pendente lite*.

Special injunction

An injunction obtained only on motion and petition, usually with notice to the other party. Aldrich v. Kirkland, 6 Rich. Law (S. C.) 340. An injunction by which parties are restrained from committing waste, damage, or injury to property. 4 Steph. Comm. 12, note z.

Temporary injunction

A preliminary or provisional injunction, or one granted *pendente lite*; as opposed to a final or perpetual injunction. Jesse French Piano Co. v. Porter, 134 Ala. 302, 32 So. 678, 92 Am. St. Rep. 31.

INJURE. To violate the legal right of another or inflict an actionable wrong. Krom v. Antigo Gas Co., 154 Wis. 528, 143 N. W. 163, 164.

As applied to a building, "injure" means to materially impair or destroy any part of the existing structure. F. W. Woolworth Co. v. Nelson, 204 Ala. 172, 85 So. 449, 451, 13 A. L. R. 820.

INJURES GRAVES. Fr. In French law. Grievous insults or injuries, including personal insults and reproachful language, constituting a just cause of divorce. Butler v. Butler, 1 Pars. Eq. Cas. (Pa.) 344.

INJURIA. Lat. Injury; wrong; the privation or violation of right. 3 Bl. Comm. 2; J. A. & C. E. Bennett v. Winston-Salem Southbound R. Co., 170 N. C. 389, 87 S. E. 133, 134, L. R. A. 1916D, 1074.

INJURIA ABSQUE DAMNO. Injury or wrong without damage. A wrong done, but from which no loss or damage results, and which, therefore, will not sustain an action.

Injuria fit ei cui convicium dictum est, vel de eo factum carmen famosum. An injury is done to him of whom a reproachful thing is said, or concerning whom an infamous song is made. 9 Coke, 60.

Injuria illata judici, seu locum tenenti regis, videtur ipsi regi illata maxime si fiat in exercitum officium. 3 Inst. 1. An jury offered to a judge, or person representing the king, is considered as offered to the king himself, especially if it be done in the exercise of his office.

Injuria non excusat injuriam. One wrong does not justify another. Broom, Max. 395. See 6 El. & Bl. 47.

Injuria non præsumerit. Injury is not presumed. Co. Litt. 232. Cruel, oppressive, or tortious conduct will not be presumed. Best, Ev. p. 336, § 298.

Injuria propria non cadet in beneficium facientis. One's own wrong shall not fall to the advantage of him that does it. A man will not be allowed to derive benefit from his own wrongful act. Branch, Princ.

Injuria servi dominum pertingit. The master is liable for injury done by his servant. Lofft, 229.

INJURIOUS WORDS. In Louisiana. Slander, or libelous words. Civil Code La. art. 3501.

INJURY. Any wrong or damage done to another, either in his person, rights, reputation, or property. Parker v. Griswold, 17 Conn. 298, 42 Am. Dec. 739; Woodruff v. Mining Co., 18 F. 781; Hitch v. Edgecombe County, 132 N. C. 573, 44 S. E. 30; Macauley v. Tierney, 19 R. I. 255, 33 A. 1, 37 L. R. A. 455, 61 Am. St. Rep. 770.

In the Civil Law

A delict committed in contempt or outrage of any one, whereby his body, his dignity, or his reputation is maliciously injured. Voet, Com. ad Pand. 47, t. 10, no. 1.

The words "damage," "loss," and "injury" are used interchangeably, and, within legislative meaning and judicial interpretation, import the same thing. In re City of Pittsburgh, 90 A. 329, 331, 243 Pa. 392, 52 L. R. A. (N. S.) 262.

The term "injury," used to describe an error for which a reversal may be had, means an error which affects the result. Ryan v. State, 8 Okl. Cr. 623, 129 P. 685, 687.

In General

—**Absolute injuries.** Injuries to those rights which a person possesses as being a member of society.

—**Accidental injury.** A bodily injury by accident. Ideal Fuel Co. v. Industrial Commission, 298 Ill. 463, 131 N. E. 649, 650. Within the Workmen's Compensation Act, one which occurs in the course of the employment, unexpectedly, and without the affirmative act or design of the employé; it being something which is unforeseen and not expected by the person to whom it happens. Jakub v. Industrial Commission, 288 Ill. 87, 123 N. E. 263, 264. Any injury to an employé in the course of his employment due to any occurrence referable to a definite time, and of the happening of which he can give notice to his employer, regardless of whether the injury is a visible hurt from external force, or disease or infection induced by sudden and catastrophic exposure. Lerner

v. Rump Bros., 209 N. Y. S. 698, 701, 212 App. Div. 747. The term is to receive a broad and liberal construction with a view to compensating injured employés where injury resulted through some accidental means, unexpected and undesigned and may be the result of mere mischance or miscalculation as to effect of voluntary action. Thomas v. Ford Motor Co., 114 Okl. 3, 242 P. 765, 766. It includes an accident causing injury to the physical structure of the body, notwithstanding a natural weakness predisposing to injury. Wilkins v. Ben's Home Oil Co., 166 Minn. 41, 207 N. W. 183. The words indicate, not so much the existence of an accident, but rather the idea that the injury was unexpected or unintended. Victory Sparkler & Specialty Co. v. Francks, 147 Md. 368, 128 A. 635, 639, 44 A. L. R. 363.

—**Civil injury.** Injuries to person or property, resulting from a breach of contract, delict, or criminal offense, which may be redressed by means of a civil action. Cullinan v. Burkhard, 41 Misc. Rep. 321, 84 N. Y. Supp. 825.

An infringement or privation of the civil rights which belong to individuals, considered merely as individuals. State v. Magee Pub. Co., 224 P. 1028, 1031, 29 N. M. 455, 38 A. L. R. 142.

—**Irreparable injury.** This phrase does not mean such an injury as is beyond the possibility of repair, or beyond possible compensation in damages, or necessarily great damage, but includes an injury, whether great or small, which ought not to be submitted to, on the one hand, or inflicted, on the other; and which, because it is so large or so small, or is of such constant and frequent occurrence, or because no certain pecuniary standard exists for the measurement of damages, cannot receive reasonable redress in a court of law. Sanderlin v. Baxter, 76 Va. 306, 44 Am. Rep. 165; Farley v. Gate City Gaslight Co., 105 Ga. 323, 31 S. E. 193; Wahle v. Reinbach, 76 Ill. 322; Camp v. Dixon, 112 Ga. 872, 38 S. E. 71, 52 L. R. A. 755; Summers v. Parkersburg Mill Co., 77 W. Va. 563, 88 S. E. 1020, 1021; Ahrent v. Sprague, 139 Ark. 416, 214 S. W. 68, 69; Acme Cement Plaster Co. v. American Cement Plaster Co. (Tex. Civ. App.) 167 S. W. 183, 185; Del Monte Live Stock Co. v. Ryan, 24 Colo. App. 340, 133 P. 1048, 1050; Winslow v. Fleischner, 110 Or. 554, 223 P. 922, 925.

Wrongs of a repeated and continuing character, or which occasion damages that are estimated only by conjecture, and not by any accurate standard, are included. Johnson v. Kier, 3 Pittsb. R. (Pa.) 204; Scherman v. Stern, 117 A. 631, 633, 93 N. J. Eq. 626; Bartels Northern Oil Co. v. Jackman, 29 N. D. 236, 150 N. W. 576, 580; Mullens Realty & Ins. Co. v. Klein, 85 W. Va. 712, 102 S. E. 677, 679; Washingtonian Home of Chicago v. City of Chicago, 281 Ill. 110, 117 N. E. 737, 741; Minnis v. Newbro-Gallogly Co., 174 Mich.

635, 140 N. W. 980, 983, 44 L. R. A. (N. S.) 1110; Pradelt v. Lewis, 297 Ill. 374, 130 N. E. 785, 786, 14 A. L. R. 828; Birchfield v. Bourland (Tex. Civ. App.) 187 S. W. 422, 423.

—**Personal injury.** A hurt or damage done to a man's *person*, such as a cut or bruise, a broken limb, or the like, as distinguished from an injury to his property or his reputation. The phrase is chiefly used in connection with actions of tort for negligence. Norris v. Grove, 100 Mich. 256, 58 N. W. 1006; State v. Clayborne, 14 Wash. 622, 45 P. 303; Terre Haute El. Ry. Co. v. Lauer, 21 Ind. App. 466, 52 N. E. 703. But the term is also used (chiefly in statutes) in a much wider sense, and as including any injury which is an invasion of personal rights, and in this signification it may include such injuries as libel or slander, criminal conversation with a wife, seduction of a daughter, and mental suffering. See Delamater v. Russell, 4 How. Prac. (N. Y.) 234; Garrison v. Burden, 40 Ala. 516; McDonald v. Brown, 23 R. I. 546, 51 A. 213, 58 L. R. A. 768, 91 Am. St. Rep. 659; Morton v. Western Union Tel. Co., 130 N. C. 299, 41 S. E. 484; Williams v. Williams, 20 Colo. 51, 37 P. 614; Hood v. Sudderth, 111 N. C. 215, 16 S. E. 397. In Workmen's Compensation Acts, "personal injury" means any harm or damage to the health of an employee, however caused, whether by accident, disease, or otherwise, which arises in the course of and out of his employment, and incapacitates him in whole or in part. Hines v. Norwalk Lock Co., 100 Conn. 533, 124 A. 17, 20; McCarthy v. Globe Automatic Sprinkler Co., 188 N. Y. S. 118, 120, 196 App. Div. 619; Lane v. Horn & Hardart Baking Co., 261 Pa. 329, 104 A. 615, 616, 13 A. L. R. 963; Travelers' Ins. Co. v. Smith (Tex. Civ. App.) 266 S. W. 574, 575; Hanson v. Dickinson, 188 Iowa, 728, 176 N. W. 823, 824. A disease of mind or body which arises in the course of employment with nothing more is not within the Massachusetts act, but it must come from or by an injury, although that injury need not be a single definite act, but may extend over a continuous period of time. In re Maggelet, 228 Mass. 57, 116 N. E. 972, 973, L. R. A. 1918F, 864; Pimental's Case, 235 Mass. 598, 127 N. E. 424, 426. And see In re Madden, 222 Mass. 487, 111 N. E. 379, 383, L. R. A. 1916D, 1,000; Taylor v. Swift & Co., 114 Kan. 431, 219 P. 516, 519. A "personal injury," as that term is used in the Workmen's Compensation Act, refers not to some break in some part of the body, or some wound thereon, or the like, but rather to the consequence or disability that results therefrom. Indian Creek Coal & Mining Co. v. Calvert, 68 Ind. App. 474, 119 N. E. 519, 525.

—**Permanent injury.** An injury that, according to every reasonable probability, will continue throughout the remainder of one's life.

Alabama Great Southern R. Co. v. Taylor, 196 Ala. 37, 71 So. 676, 678.

—**Private injuries.** Infringements of the private or civil rights belonging to individuals considered as individuals.

—**Public injuries.** Breaches and violations of rights and duties which affect the whole community as a community.

—**Real injury.** A *real injury* is inflicted by any act by which a person's honor or dignity is affected.

—**Relative injuries.** Injuries to those rights which a person possesses in relation to the person who is immediately affected by the wrongful act done.

—**Reparable injury.** The general principle is that an injury, the damage from which is merely in the nature of pecuniary loss, and can be exactly and fully repaired by compensation in money, is a "reparable injury" for which a bond of sufficient amount and properly secured may afford an adequate indemnity. Barrow v. Duplantis, 148 La. 149, 86 So. 718, 723.

—**Verbal injury.** A *verbal injury*, when directed against a private person, consists in the uttering contumelious words, which tend to injure his reputation by making him little or ridiculous.

INJUSTICE. The withholding or denial of justice. In law, almost invariably applied to the act, fault, or omission of a court, as distinguished from that of an individual. See Holton v. Olcott, 58 N. H. 598; In re Moulton, 50 N. H. 532.

"Fraud" is deception practised by the party; "injustice" is the fault or error of the court. They are not equivalent words in substance, or in a statute authorizing a new trial on a showing of fraud or injustice. Fraud is always the result of contrivance and deception; injustice may be done by the negligence, mistake, or omission of the court itself. Silvey v. U. S., 7 Ct. Cl. 324.

Injustum est, nisi tota lege inspecta, de una aliqua ejus particula proposita judicare vel respondere. 8 Coke, 117b. It is unjust to decide or respond as to any particular part of a law without examining the whole of the law.

INLAGE. In old English law. To restore to protection of law. To restore a man from the condition of outlawry. Opposed to *utlagare*. Bract. lib. 3, tr. 2, c. 14, § 1; Du Cange.

INLAGATION. Restoration to the protection of law. Restoration from a condition of outlawry.

INLAGE. A person within the law's protection; contrary to *utlagh*, an outlaw. Cowell.

INLAND. Within a country, state or territory; within the same country.

In old English law, inland was used for the demesne (*q. v.*) of a manor; that part which lay next or most convenient for the lord's mansion-house, as within the view thereof, and which, therefore, he kept in his own hands for support of his family and for hospitality; in distinction from outland or utland, which was the portion let out to tenants. Cowell; Kennett; Spelman.

INLAND BILL OF EXCHANGE. A bill of which both the drawer and drawee reside within the same state or country. Otherwise called a "domestic bill," and distinguished from a "foreign bill." Buckner v. Finley, 2 Pet. 589, 7 L. Ed. 528; Lonsdale v. Brown, 15 Fed. Cas. 857; Strawbridge v. Robinson, 10 Ill. 472, 50 Am. Dec. 420.

See Bill.

INLAND NAVIGATION. Within the meaning of the legislation of congress upon the subject, this phrase means navigation upon the rivers of the country, but not upon the great lakes. Moore v. American Transp. Co., 24 How. 38, 16 L. Ed. 674; The War Eagle, 6 Biss. 364, Fed. Cas. No. 17,173; The Garden City (D. C.) 26 F. 773.

INLAND TRADE. Trade wholly carried on at home; as distinguished from commerce, (which see.)

INLAND WATERS. Such waters as canals, lakes, rivers, water-courses, inlets and bays, exclusive of the open sea, though the water in question may open or empty into the ocean. United States v. Steam Vessels of War, 106 U. S. 607, 1 S. Ct. 539, 27 L. Ed. 286; The Cotton Plant, 10 Wall. 581, 19 L. Ed. 983; Cogswell v. Chubb, 1 App. Div. 93, 36 N. Y. S. 1076.

INLANTAL, INLANTALE. Demesne or inland, opposed to *delantala*, or land tenanted. Cowell.

INLAUGHE. Sax. In old English law. Under the law, (*sub lege*.) in a frank-pledge, or decenary. Bract. fol. 125b.

INLAW. To place under the protection of the law. "Swearing obedience to the king in a leet, which doth *inlaw* the subject." Bacon.

INLEASED. In old English law. Entangled, or ensnared. 2 Inst. 247; Cowell; Blount.

INLIGARE. In old European law. To confederate; to join in a league, (*in ligam coire*.) Spelman.

INMATE. A person who lodges or dwells in the same house with another, occupying different rooms, but using the same door for passing in and out of the house. Webster; Jacob.

INN. An inn is a house where a traveler is furnished with everything which he has occasion for while on his way. Thompson v. Lacy, 3 Barn. & Ald. 287; Wintermute v. Clark, 5 Sandf. (N. Y.) 242; Walling v. Potter, 35 Conn. 185; State v. Brown, 112 Kan. 814, 212 P. 663, 664, 31 A. L. R. 338; Waitt Const. Co. v. Chase, 188 N. Y. S. 589, 592, 197 App. Div. 327. And see Hotel.

A house which is held out to the public as a place where transient persons who come will be received and entertained as guests for compensation; as a public house for entertainment for all who choose to visit it. State v. Norval Hotel Co., 103 Ohio St. 361, 133 N. E. 75, 76, 19 A. L. R. 637.

Under the term "inn" the law includes all taverns, hotels, and houses of public general entertainment for guests. Code Ga. 1882, § 2114 (Civ. Code 1910, § 3505).

The words "inn," "tavern," and "hotel" are used synonymously to designate what is ordinarily and popularly known as an "inn" or "tavern," or place for the entertainment of travelers, and where all their wants can be supplied. A restaurant where meals only are furnished is not an inn or tavern. People v. Jones, 54 Barb. (N. Y.) 311; Carpenter v. Taylor, 1 Hilt. (N. Y.) 193.

An inn is distinguished from a private boarding-house mainly in this: that the keeper of the latter is at liberty to choose his guests, while the innkeeper is obliged to entertain and furnish all travelers of good conduct and means of payment with what they may have occasion for, as such travelers, while on their way. Pinkerton v. Woodward, 33 Cal. 537, 91 Am. Dec. 657. Another distinction is that in a boarding-house the guest is under an express contract for a certain time at a certain rate, whereas, in an inn the guest is entertained from day to day upon an implied contract. Willard v. Reinhardt, 2 E. D. Smith (N. Y.) 148. A lodging house does not become an "inn" because a register is kept. Roberts v. Case Hotel Co., 175 N. Y. S. 123, 127, 106 Misc. 481.

Common Inn

A house for the entertainment of travelers and passengers, in which lodging and necessaries are provided for them and for their horses and attendants. Cromwell v. Stephens, 2 Daly (N. Y.) 15. The word "common," in this connection, does not appear to add anything to the common-law definition of an inn, except in so far as it lays stress on the fact that the house is for the entertainment of the general public or for all suitable persons who apply for accommodations.

INNAMIUM. In old English law. A pledge.

INNAVIGABILITY. In insurance law. The condition of being *innavigable*, (*q. v.*) The foreign writers distinguish "innavigability" from "shipwreck." 3 Kent, Comm. 323, and note. The term is also applied to the condition of streams which are not large enough or deep enough, or are otherwise unsuited, for navigation.

INNAVIGABLE. As applied to streams, not capable of or suitable for navigation; impassable by ships or vessels.

As applied to vessels in the law of marine insurance, it means unfit for navigation; so damaged by misadventures at sea as to be no longer capable of making a voyage. See 3 Kent, Comm. 323, note.

INNER BARRISTER. A serjeant or king's counsel, in England, who is admitted to plead within the bar.

INNER HOUSE. The name given to the chambers in which the first and second divisions of the court of session in Scotland hold their sittings. See Outer House.

INNINGS. In old records. Lands recovered from the sea by draining and banking. Cowell.

INNKEEPER. One who keeps an *inn* or house for the lodging and entertainment of travelers. The keeper of a common inn for the lodging and entertainment of travelers and passengers, their horses and attendants, for a reasonable compensation. Story, Bailm. § 475. One who keeps a tavern or coffee-house in which lodging is provided. 2 Steph. Comm. 133. See Inn.

One who receives as guests all who choose to visit his house, without any previous agreement as to the time of their stay, or the terms. His liability as innkeeper ceases when his guest pays his bill, and leaves the house with the declared intention of not returning, notwithstanding the guest leaves his baggage behind him. *Wintermute v. Clark*, 5 Sandf. (N. Y.) 242.

The words "innkeeper" and "hotel keeper" are synonymous, but each is distinct from a "boarding house keeper," in that the innkeeper has no right to select his guests, but must receive every one applying for accommodation who conducts himself in a proper manner, etc., while the keeper of a boarding house is one who maintains a house for the accommodation of those who enter under contract for entertainment at a certain rate for a certain period at an agreed compensation. *McClagherty v. Cline*, 128 Tenn. 605, 163 S. W. 801. One who entertains strangers occasionally, although he may receive compensation for it, is not an innkeeper. *State v. Matthews*, 19 N. C. 424; *Bonner v. Welborn*, 7 Ga. 296; 1 Morr. 184.

INNOCENCE. The absence of guilt.

INNOCENT. Free from guilt; acting in good faith and without knowledge of incriminatory circumstances, or of defects or objections.

INNOCENT AGENT. In criminal law. One who, being ignorant of any unlawful intent on the part of his principal, is merely the instrument of the guilty party in committing an offense; one who does an unlawful act at the solicitation or request of another, but who, from defect of understanding or ignorance of the inculpatory facts, incurs no legal guilt. *Smith v. State*, 21 Tex. App. 107, 17

S. W. 552; *State v. Carr*, 28 Or. 389, 42 P. 215.

INNOCENT CONVEYANCES. A technical term of the English law of conveyancing, used to designate such conveyances as may be made by a leasehold tenant without working a forfeiture. These are said to be lease and re-lease, bargain and sale, and, in case of a life-tenant, a covenant to stand seised. See 1 Chit. Pr. 243.

INNOCENT PURCHASER. One who, by an honest contract or agreement, purchases property or acquires an interest therein, without knowledge, or means of knowledge sufficient to charge him in law with knowledge, of any infirmity in the title of the seller. *Hanchett v. Kimbark* (Ill.) 2 N. E. 517; *Gerson v. Pool*, 31 Ark. 90; *Stephens v. Olson*, 62 Minn. 295, 64 N. W. 898; *King Cattle Co. v. Joseph*, 158 Minn. 481, 198 N. W. 798, 800; *Burdg v. Scott*, 111 Kan. 610, 208 P. 668, 673; *Lipsitz v. Rice* (Tex. Civ. App.) 233 S. W. 594, 596; *Degenhart v. Cartier*, 58 Mont. 245, 192 P. 259, 260.

INNOCENT TRESPASS. A trespass to land, committed, not recklessly, but through inadvertence or mistake, or in good faith, under an honest belief that the trespasser was acting within his legal rights. *Elk Garden Big Vein Mining Co. v. Gerstell*, 131 S. E. 152, 153, 100 W. Va. 472.

INNOCENT TRESPASSER. One who enters another's land unlawfully, but inadvertently or unintentionally, or in the honest, reasonable belief of his own right so to do, and removes sand or other material therefrom, is an "innocent trespasser." *American Sand & Gravel Co. v. Spencer*, 55 Ind. App. 523, 103 N. E. 426, 427.

INNOCENT WOMAN. One who has never had illicit intercourse with a man. *State v. Cline*, 170 N. C. 751, 87 S. E. 106, 107.

INNOMINATE. In the civil law. Not named or classed; belonging to no specific class; ranking under a general head. A term applied to those contracts for which no certain or precise remedy was appointed, but a general action on the case only. Dig. 2, 1, 4, 7, 2; Id. 19, 4, 5.

INNOMINATE CONTRACTS, literally, are the "unclassified" contracts of Roman law. They are contracts which are neither *re, verbis, literis*, nor *consensu* simply, but some mixture of or variation upon two or more of such contracts. They are principally the contracts of *permutatio, de aestimato, precarium*, and *transactio*. Brown.

INNONIA. In old English law. A close or inclosure, (*clausum, inclausura*.) Spelman.

INNOTESCIMUS. Lat. We make known. A term formerly applied to letters patent,

derived from the emphatic word at the conclusion of the Latin forms. It was a species of exemplification of charters of feoffment or other instruments not of record. 5 Coke, 54a.

INNOVATION. In Scotch law. The exchange of one obligation for another, so as to make the second obligation come in the place of the first, and be the only subsisting obligation against the debtor. Bell. The same with "novation," (*q. v.*)

INNOXIARE. In old English law. To purge one of a fault and make him innocent.

INNS OF CHANCERY. So called because anciently inhabited by such clerks as chiefly studied the framing of writs, which regularly belonged to the cursitors, who were officers of the court of chancery. There are nine of them,—Clement's, Clifford's, and Lyon's Inn; Furnival's, Thavies', and Symond's Inn; New Inn; and Barnard's and Staples' Inn. These were formerly preparatory colleges for students, and many entered them before they were admitted into the inns of court. They consist chiefly of solicitors, and possess corporate property, hall, chambers, etc., but perform no public functions like the inns of court. Wharton.

INNS OF COURT. These are certain private unincorporated associations, in the nature of collegiate houses, located in London, and invested with the exclusive privilege of calling men to the bar; that is, conferring the rank or degree of a barrister. They were founded probably about the beginning of the fourteenth century. The principal inns of court are the Inner Temple, Middle Temple, Lincoln's Inn, and Gray's Inn. (The two former originally belonged to the Knights Templar; the two latter to the earls of Lincoln and Gray respectively.) These bodies now have a "common council of legal education," for giving lectures and holding examinations. The inns of chancery, distinguishable from the foregoing, but generally classed with them under the general name, are the buildings known as "Clifford's Inn," "Clement's Inn," "New Inn," "Staples' Inn," and "Barnard's Inn." They were formerly a sort of collegiate houses in which law students learned the elements of law before being admitted into the inns of court, but they have long ceased to occupy that position.

INNUENDO. This Latin word (commonly translated "meaning") was the technical beginning of that clause in a declaration or indictment for slander or libel in which the meaning of the alleged libelous words was explained, or the application of the language charged to the plaintiff was pointed out. Hence it gave its name to the whole clause; and this usage is still retained, although an equivalent English word is now substituted.

Thus, it may be charged that the defendant said "he (*meaning* the said plaintiff) is a perjurer."

An "innuendo" in pleading in libel action is a statement by plaintiff of construction which he puts upon words which are alleged to be libelous and which meaning he will induce jury to adopt at trial. Burr v. Winnett Times Pub. Co., 80 Mont. 70, 258 P. 242, 244; Express Pub. Co. v. Wilkins (Tex. Civ. App.) 218 S. W. 614, 616; Commonwealth v. Szliakys, 254 Mass. 424, 150 N. E. 190, 191; Vinson v. O'Malley, 25 Ariz. 552, 220 P. 393, 395, 37 A. L. R. 877; Collins v. Pub. Co., 152 Pa. 187, 25 A. 546, 34 Am. St. Rep. 636; Buckstaff v. Viall, 84 Wis. 129, 54 N. W. 111.

The word is also used, (though more rarely,) in other species of pleadings, to introduce an explanation of a preceding word, charge, or averment.

It is said to mean no more than the words "*id est*," "*scilicet*," or "meaning," or "afore-said," as explanatory of a subject-matter sufficiently expressed before; as "such a one, *meaning* the defendant," or "such a subject, *meaning* the subject in question." Cowp. 683. It is only explanatory of some matter already expressed. It serves to point out where there is precedent matter, but never for a new charge. It may *apply* what is *already expressed*, but cannot add to or enlarge or change the sense of the previous words. 1 Chit. Pl. 422. See Grand v. Dreyfus, 122 Cal. 58, 54 P. 389; Naulty v. Bulletin Co., 206 Pa. 123, 55 A. 862; Cheetham v. Tillotson, 5 Johns. (N. Y.) 438; Quinn v. Prudential Ins. Co., 116 Iowa, 522, 90 N. W. 349; Dickson v. State, 34 Tex. Cr. R. 1, 30 S. W. 807, 53 Am. St. Rep. 694; Age-Herald Pub. Co. v. Waterman, 188 Ala. 272, 66 So. 16, 19, Ann. Cas. 1916E, 900; Sturdivant v. Duke, 155 Ky. 100, 159 S. W. 621, 48 L. R. A. (N. S.) 615; Wisner v. Nichols, 165 Iowa, 15, 143 N. W. 1020, 1024; Ventresca v. Kissner, 105 Conn. 533, 136 A. 90, 92; Kee v. Armstrong, Byrd & Co., 75 Okl. 84, 182 P. 494, 498, 5 A. L. R. 1349.

The office of an "innuendo" is to explain the words published, and to give to them their true meaning, and it cannot introduce new matter, add to or enlarge the sense of those words, or impute to them a meaning not warranted by the publication, when taken alone, or read in connection with the inducement and colloquium. Bowie v. Evening News, 129 A. 797, 800, 148 Md. 569; Estelle v. Daily News Pub. Co., 99 Neb. 397, 156 N. W. 645, 646; Hills v. Press Co., 202 N. Y. S. 678, 680, 122 Misc. 212; Skelley v. St. Louis & S. F. R. Co., 176 Mo. App. 156, 161 S. W. 877, 878; York v. Mims, 179 Ky. 525, 200 S. W. 918, 920; Morris v. Evans, 22 Ga. App. 11, 95 S. E. 385, 386; Fitzpatrick v. Age-Herald Pub. Co., 184 Ala. 510, 63 So. 980, 51 L. R. A. (N. S.) 401, Ann. Cas. 1916B, 753; Crossland v. Freeman, 7 Boyce (Del.) 195, 105 A. 145; People v. Spielman, 318 Ill. 482, 149 N. E. 466, 469; Dreb- in v. Jewish World Pub. Co., 262 Pa. 169, 105 A. 58, 59.

Its office is to set a meaning upon words or language of doubtful or ambiguous import which alone would not be actionable. Rall v. National Newspaper Ass'n, 198 Mo. App. 463, 192 S. W. 129, 134.

INOFFICIOSUM. In the civil law. Inofficious; contrary to natural duty or affection. Used of a will of a parent which disinherited a child without just cause, or that of a child which disinherited a parent, and which could be contested by *querela inofficiosi testamenti*. Dig. 2, 5, 3, 13; Paulus, lib. 4, tit. 5, § 1.

INOFFICIOUS TESTAMENT. A will not in accordance with the testator's natural affection and moral duties. Williams, Ex'rs (7th Ed.) 38; Stein v. Wilzinski, 4 Redf. Sur. (N. Y.) 450; In re Willford's Will (N. J.) 51 A. 502. But particularly, in the civil law, a will which deprives the heirs of that portion of the estate to which the law entitles them, and of which they cannot legally be disinherited. Mackeld. Rom. Law, § 714; Civ. Code La. art. 3556, subd. 16. A testament contrary to the natural duty of the parent, because it totally disinherited the child, without expressly giving the reason therefor.

INOFICIOCIDAD. In Spanish law. Every thing done contrary to a duty or obligation assumed, as well as in opposition to the piety and affection dictated by nature: *inofficiosum dicitur id omne quod contra pietatis officium factum est*. The term applies especially to testaments, donations, dower, etc., which may be either revoked or reduced when they affect injuriously the rights of creditors or heirs.

INOPS CONSILII. Lat. Destitute of counsel; without legal counsel. A term applied to the acts or condition of one acting without legal advice, as a testator drafting his own will.

INORDINATUS. An intestate.

INPENY and OUTPENY. In old English law. A customary payment of a penny on entering into and going out of a tenancy, (*pro exitu de tenura, et pro ingressu*.) Spelman.

INQUEST. A body of men appointed by law to inquire into certain matters. The grand jury is sometimes called the "grand inquest."

The judicial inquiry made by a jury summoned for the purpose is called an "inquest." The finding of such men, upon an investigation, is also called an "inquest." People v. Coombs, 36 App. Div. 284, 55 N. Y. S. 276; Davis v. Bibb County, 116 Ga. 23, 42 S. E. 403.

The inquiry by a coroner, termed a "coroner's inquest," into the manner of the death of any one who has been slain, or has died suddenly or in prison.

This name is also given to a species of proceeding under the New York practice, allowable where the defendant in a civil action has not filed an affidavit of merits nor verified his answer. In such case the issue may be taken up, out of its regular order, on plaintiff's motion, and tried without the admission of any affirmative defense.

An inquest is a trial of an issue of fact where the plaintiff alone introduces testimony. The defendant is entitled to appear at the taking of the inquest, and to cross-examine the plaintiff's witnesses; and, if he do appear, the inquest must be taken before a jury, unless a jury be expressly waived by him. Haines v. Davis, 6 How. Prac. (N. Y.) 118.

The term "inquest," as applied to Surrogates' Courts, is a term of larger significance than as applied to proceedings at common law, and includes the exercise of the surrogate's function to determine all the circumstances concerning the genuineness of a will offered for probate, and the validity of its execution, without reference to whether there is a contest or not; his judicial power arising only after he has determined that the will is genuine and validly executed. In re Hermann's Will, 145 N. Y. S. 291, 297, 83 Misc. 283.

In General

—Coroner's inquest. See Coroner.

—Inquest of lunacy. See Lunacy.

—Inquest, arrest of. See Arrest.

—Inquest of office. In English practice. An inquiry made by the king's (or the queen's) officer, his sheriff, coroner, or escheator, *virtute officii*, or by writ sent to them for that purpose, or by commissioners specially appointed, concerning any matter that entitles the king to the possession of lands or tenements, goods or chattels; as to inquire whether the king's tenant for life died seised, whereby the reversion accrues to the king; whether A., who held immediately of the crown, died without heir, in which case the lands belong to the king by escheat; whether B. be attainted of treason, whereby his estate is forfeited to the crown; whether C., who has purchased land, be an alien, which is another cause of forfeiture, etc. 3 Bl. Comm. 258. These *inquests of office* were more frequent in practice during the continuance of the military tenures than at present; and were devised by law as an authentic means to give the king his right by solemn matter of record. Id. 258, 259; 4 Steph. Comm. 40, 41. Sometimes simply termed "*office*," as in the phrase "*office found*," (*q. v.*) See Atlantic & P. R. Co. v. Mingus, 165 U. S. 413, 17 S. Ct. 348, 41 L. Ed. 770; Baker v. Shy, 9 Heisk. (Tenn.) 89.

—Inquest of sheriffs. An inquest which directs a general inquiry as to the methods in which the sheriffs had been conducting the local government of the country (1170). 1 Holdsw. H. E. L. 21.

INQUILINUS. In Roman law. A tenant; one who hires and occupies another's house; but particularly, a tenant of a hired house in a city, as distinguished from *colonus*, the

hirer of a house or estate in the country. Calvin.

INQUIRENDO. An authority given to some official person to institute an inquiry concerning the crown's interests.

INQUIRY, WRIT OF. A writ sued out by a plaintiff in a case where the defendant has let the proceedings go by default, and an interlocutory judgment has been given for damages generally, where the damages do not admit of calculation. It issues to the sheriff of the county in which the *venue* is laid, and commands him to inquire, by a jury of twelve men, concerning the amount of damages. The sheriff thereupon tries the cause in his sheriff's court, and some amount must always be returned to the court. But the return of the inquest merely informs the court, which may, if it choose, in all cases assess damages and thereupon give final judgment. 2 Archb. Pr., Waterman ed. 952; 3 Bla. Com. 398; 3 Chitty, Stat. 495, 497.

INQUISITIO. In old English law. An inquisition or inquest. *Inquisitio post mortem*, an inquisition after death. An inquest of office held, during the continuance of the military tenures, upon the death of every one of the king's tenants, to inquire of what lands he died seised, who was his heir, and of what age, in order to entitle the king to his marriage, wardship, relief, primer seisin, or other advantages, as the circumstances of the case might turn out. 3 Bl. Comm. 258. *Inquisitio patriæ*, the inquisition of the country; the ordinary jury, as distinguished from the grand assise. Bract. fol. 15b.

INQUISITION. In practice. An inquiry or inquest; particularly, an investigation of certain facts made by a sheriff, together with a jury impaneled by him for the purpose. The instrument of writing on which their decision is made is also called an inquisition.

In its broadest sense, "inquisition," includes any judicial inquiry. Phillips v. Vesells, 126 A. 51, 2 W. W. Harr. (Del.) 490.

INQUISITION AFTER DEATH. See Inquisitio.

INQUISITION OF LUNACY. See Lunacy.

INQUISITOR. A designation of sheriffs, coroners *super visum corporis*, and the like, who have power to inquire into certain matters.

In Ecclesiastical Law

The name of an officer who is authorized to inquire into heresies, and the like, and to punish them. A judge.

INROLL. A form of "enroll," used in the old books. 3 Rep. Ch. 63, 73; 3 East, 410.

INROLLMENT. See Enrollment.

INSANE. Unsound in mind; of unsound mind; deranged, disordered, or diseased in mind. Violently deranged; mad.

INSANITY. Unsoundness of mind; madness; mental alienation or derangement; a morbid psychic condition resulting from disorder of the brain, whether arising from malformation or defective organization or morbid processes affecting the brain primarily or diseased states of the general system implicating it secondarily, which involves the intellect, the emotions, the will, and the moral sense, or some of these faculties, and which is characterized especially by their non-development, derangement, or perversion, and is manifested, in most forms, by delusions, incapacity to reason or to judge, or by uncontrollable impulses. In law, such a want of reason, memory, and intelligence as prevents a man from comprehending the nature and consequences of his acts or from distinguishing between right and wrong conduct. See *Crosswell v. People*, 13 Mich. 427, 87 Am. Dec. 774; *Johnson v. Insurance Co.*, 83 Me. 182, 22 A. 107; *McNeil v. Relief Ass'n*, 40 App. Div. 581, 58 N. Y. S. 122; *Haile v. Railroad Co.*, 60 F. 560, 9 C. C. A. 134, 23 L. R. A. 774; *Meyers v. Com.*, 83 Pa. 136; *Somers v. Pumphrey*, 24 Ind. 245; *Frazer v. Frazer*, 2 Del. Ch. 263; *Buchanan v. Wilson*, 97 Neb. 369, 149 N. W. 802, 806; *In re Guilbert's Estate*, 46 Cal. App. 55, 188 P. 807, 810.

"Insanity" does not include certain states of transitory mental disorder, such as trances, epilepsy, hysteria, and delirium, *Martin v. Fraternal Reserve Life Ass'n*, 200 Ill. App. 359, 364, and from both the pathologic and the legal definitions are to be excluded temporary mental aberrations caused by or accompanying alcoholic or other intoxication and the delirium of fever.

The distinction between the medical and the legal idea of insanity has, perhaps, not been better stated than by Ray, who is quoted by Ordonaux, and again by Witthaus & Becker: "*Insanity in medicine* has to do with a prolonged departure of the individual from his natural mental state arising from bodily disease." "*Insanity in law* covers nothing more than the relation of the person and the particular act which is the subject of judicial investigation. The legal problem must resolve itself into the inquiry, whether there was mental capacity and moral freedom to do or abstain from doing the particular act." 1 Whitt. & Beck. Med. Jur. 181; *U. S. v. Faulkner*, 35 F. 730.

Other definitions

Insanity is a manifestation of disease of the brain, characterized by a general or partial derangement of one or more faculties of the mind, and in which, while consciousness is not abolished, mental freedom is perverted, weakened, or destroyed. Hammond, *Nervous System*, 332. The prolonged departure, without any adequate cause, from the states of feeling and modes of thinking usual to the individual in health. Bouvier. By insanity is not meant (in law) a total deprivation of reason, but only an inability, from defect of perception, memory, and judgment, to do the act in question, [with an intel-

ligent apprehension of its nature and consequences.] So, by a lucid interval is not meant a perfect restoration to reason, but a restoration so far as to be able, beyond doubt, to comprehend and to do the act with such reason, memory, and judgment as to make it a legal act. *Frazer v. Frazer*, 2 Del. Ch. 263.

Eccentricities and idiosyncracies, however gross, do not constitute "insanity." In *re Hansen's Will*, 50 Utah, 207, 167 P. 256, 261.

Synonyms

—**Lunacy.** Lunacy, at the common law, was a term used to describe the state of one who, by sickness, grief, or other accident, has wholly lost his memory and understanding. Co. Litt. 246*b*, 247*a*; *Com. v. Haskell*, 2 Brewst. (Pa.) 496. It is distinguished from idiocy, an idiot being one who from his birth has had no memory or understanding, while lunacy implies the possession and subsequent loss of mental powers. *Bicknell v. Spear*, 38 Misc. Rep. 389, 77 N. Y. S. 920. On the other hand, lunacy is a total deprivation or suspension of the ordinary powers of the mind, and is to be distinguished from imbecility, where there is a more or less advanced decay and feebleness of the intellectual faculties. In *re Vanauken*, 10 N. J. Eq. 186, 195; *Odell v. Buck*, 21 Wend. (N. Y.) 142. As to all other forms of insanity, lunacy was originally distinguished by the occurrence of lucid intervals, and hence might be described as a periodical or recurrent insanity. In *re Anderson*, 132 N. C. 243, 43 S. E. 649; *Hiatt v. Shull*, 36 W. Va. 563, 15 S. E. 146. But while these distinctions are still observed in some jurisdictions, they are more generally disregarded; so that, at present, in inquisitions of lunacy and other such proceedings, the term "lunacy" has almost everywhere come to be synonymous with "insanity," *Smith v. Hickenbottom*, 57 Iowa, 733, 11 N. W. 664, 667, and is used as a general description of all forms of derangement or mental unsoundness, this rule being established by statute in many states and by judicial decisions in others, In *re Clark*, 175 N. Y. 139, 67 N. E. 212; *Smith v. Hickenbottom*, 57 Iowa, 733, 11 N. W. 664; *Cason v. Owens*, 100 Ga. 142, 28 S. E. 75; In *re Hill*, 31 N. J. Eq. 203. Cases of arrested mental development would come within the definition of lunacy, that is, where the patient was born with a normal brain, but the cessation of mental growth occurred in infancy or so near it that he never acquired any greater intelligence or discretion than belongs to a normally healthy child. Such a subject might be scientifically denominated an "idiot," but not legally, for in law the latter term is applicable only to congenital amentia. The term "lucid interval" means not an apparent tranquility or seeming repose, or cessation of the violent symptoms of the disorder, or a simple diminution or remission of the disease, but a temporary cure—an intermission so clearly marked that it perfectly resembles a return of health; and it must be such a restoration of the faculties as enables the patient beyond

doubt to comprehend the nature of his acts and transact his affairs as usual; and it must be continued for a length of time sufficient to give certainty to the temporary restoration of reason. *Godden v. Burke*, 35 La. Ann. 160, 173; *Ricketts v. Joliff*, 62 Miss. 440; *Ekin v. McCracken*, 11 Phila. (Pa.) 534; *Frazer v. Frazer*, 2 Del. Ch. 260.

—**Idiocy** is congenital amentia, that is, a want of reason and intelligence existing from birth and due to structural defect or malformation of the brain. It is a congenital obliteration of the chief mental powers, and is defined in law as that condition in which the patient has never had, from his birth, even the least glimmering of reason; for a man is not legally an "idiot" if he can tell his parents, his age, or other like common matters. This is not the condition of a deranged mind, but that of a total absence of mind, so that, while idiocy is generally classed under the general designation of "insanity," it is rather to be regarded as a natural defect than as a disease or as the result of a disease. It differs from "lunacy," because there are no lucid intervals or periods of ordinary intelligence. See In *re Beaumont*, 1 Whart. (Pa.) 53, 29 Am. Dec. 33; *Clark v. Robinson*, 88 Ill. 502; *Crosswell v. People*, 13 Mich. 427, 87 Am. Dec. 774; *Hiatt v. Shull*, 36 W. Va. 563, 15 S. E. 146; *Thompson v. Thompson*, 21 Barb. (N. Y.) 128; In *re Owings*, 1 Bland (Md.) 386, 17 Am. Dec. 311; *Francke v. His Wife*, 29 La. Ann. 304; *Hall v. Unger*, 11 Fed. Cas. 261; *Bicknell v. Spear*, 38 Misc. Rep. 389, 77 N. Y. S. 920.

—**Imbecility.** A more or less advanced decay and feebleness of the intellectual faculties; that weakness of mind which, without depriving the person entirely of the use of his reason, leaves only the faculty of conceiving the most common and ordinary ideas and such as relate almost always to physical wants and habits. It varies in shades and degrees from merely excessive folly and eccentricity to an almost total vacuity of mind or amentia, and the test of legal capacity, in this condition, is the stage to which the weakness of mind has advanced, as measured by the degree of reason, judgment, and memory remaining. It may proceed from paresis or general paralysis, from senile decay, or from the advanced stages of any of the ordinary forms of insanity; and the term is rather descriptive of the consequences of insanity than of any particular type of the disease. See *Calderon v. Martin*, 50 La. Ann. 1153, 23 South. 909; *Delafield v. Parish*, 1 Redf. (N. Y.) 115; *Campbell v. Campbell*, 130 Ill. 466, 22 N. E. 620, 6 L. R. A. 167; *Messenger v. Bliss*, 35 Ohio St. 592.

Mere imbecility or weakness of mind, however great, is not "insanity." There must be a total want of understanding. *Johnson v. Millard*, 110 Neb. 830, 195 N. W. 485, 487.

—**Non compos mentis.** Lat. Not of sound mind. A generic term applicable to all insane persons, of whatsoever specific type the insanity may be and from whatever cause arising, provided there be an entire loss of reason, as distinguished from mere weakness of mind. *Somers v. Pumphrey*, 24 Ind. 244; *In re Beaumont*, 1 Whart. (Pa.) 53; *Burnham v. Mitchell*, 34 Wis. 136; *Dennett v. Dennett*, 44 N. H. 537, 84 Am. Dec. 97; *Potts v. House*, 6 Ga. 350, 50 Am. Dec. 329; *Jackson v. King*, 4 Cow. (N. Y.) 207, 15 Am. Dec. 354; *Stanton v. Wetherwax*, 16 Barb. (N. Y.) 262.

—**Derangement.** This term includes all forms of mental unsoundness, except of the natural born idiot. *Hiatt v. Shull*, 36 W. Va. 563, 15 S. E. 147.

—**Delusion** is sometimes loosely used as synonymous with insanity. But this is incorrect. Delusion is not the substance but the evidence of insanity. *Ryan v. People*, 60 Colo. 425, 153 P. 756, 757, L. R. A. 1917F, 646, Ann. Cas. 1917C, 605. The presence of an insane delusion is a recognized test of insanity in all cases except amentia and imbecility, and where there is no frenzy or raving madness; and in this sense an insane delusion is a fixed belief in the mind of the patient of the existence of a fact which has no objective existence but is purely the figment of his imagination, and which is so extravagant that no sane person would believe it under the circumstances of the case, the belief, nevertheless, being so unchangeable that the patient is incapable of being permanently disabused by argument or proof. (*Walker v. Struthers*, 273 Ill. 387, 112 N. E. 961, 966.) The characteristic which distinguishes an "insane" delusion from other mistaken beliefs is that it is not a product of the reason but of the imagination, that is, not a mistake of fact induced by deception, fraud, insufficient evidence, or erroneous reasoning, but the spontaneous conception of a perverted imagination, having no basis whatever in reason or evidence. *Riggs v. Missionary Soc.*, 35 Hun (N. Y.) 658; *Buchanan v. Pierie*, 205 Pa. 123, 54 Atl. 583, 97 Am. St. Rep. 725; *Gass v. Gass*, 3 Humph. (Tenn.) 283; *Dew v. Clarke*, 3 Add. 79; *In re Bennett's Estate*, 201 Pa. 485, 51 Atl. 336; *In re Scott's Estate*, 128 Cal. 57, 60 Pac. 527; *Smith v. Smith*, 48 N. J. Eq. 566, 25 Atl. 11; *Guiteau's Case* (D. C.) 10 Fed. 170; *State v. Lewis*, 20 Nev. 333, 22 Pac. 241; *In re White*, 121 N. Y. 406, 24 N. E. 935; *Potter v. Jones*, 20 Or. 239, 25 Pac. 769, 12 L. R. A. 161; *Dibble v. Currier*, 142 Ga. 855, 83 S. E. 949, 950, Ann. Cas. 1916C, 1; *Kraus v. State*, 108 Neb. 331, 187 N. W. 895, 897; *Burris v. Burris*, 210 Ky. 731, 276 S. W. 820, 821; *Farmer v. Davis*, 289 Ill. 392, 124 N. E. 640, 642; *In re Hansen's Will*, 52 Utah, 554, 177 P. 982, 987; *Schweitzer v. Bean*, 154 Ark. 223, 242 S. W. 63, 66; *In re Russell's Estate*, 189 Cal. 759, 210 P. 249, 254.

An "insane delusion" is an idea or belief which springs spontaneously from a diseased or perverted mind without reason or without foundation in fact. It is distinguishable from a belief which is founded upon prejudice or aversion, no matter how unreasonable or unfounded the prejudice or aversion may be, and if it is the product of a reasoning mind, no matter how slight the evidence on which it is based, it cannot be classed as an insane delusion. *Coffey v. Miller*, 160 Ky. 415, 169 S. W. 852, 854, Ann. Cas. 1916C, 30; *In re Barlum's Estate*, 240 Mich. 393, 215 N. W. 299, 300.

As to the distinctions between "Delusion" and "Illusion" and "Hallucination," see those titles.

Forms and Varieties of Insanity

Without attempting a scientific classification of the numerous types and forms of insanity, (as to which it may be said that there is as yet no final agreement among psychologists and alienists either as to analysis or nomenclature,) definitions and explanations will here be appended of the compound and descriptive terms most commonly met with in medical jurisprudence. And, first, as to the origins or causes of the disease:

—**Choreic insanity** is insanity arising from chorea, the latter being a nervous disease, more commonly attacking children than adults, characterized by irregular and involuntary twitchings of the muscles of the limbs and face, popularly called "St. Vitus' dance."

—**Congenital insanity** is that which exists from the birth of the patient, and is (in law) properly called "idiocy." See *supra*.

—**Cretinism** is a form of imperfect or arrested mental development, which may amount to idiocy, with physical degeneracy or deformity or lack of development; endemic in Switzerland and some other parts of Europe, but the term is applied to similar states occurring elsewhere.

—**Delirium tremens.** A disease of the nervous system, induced by the excessive and protracted use of intoxicating liquors, *Ætna Life Ins. Co. v. Deming*, 123 Ind. 384, 24 N. E. 86, 87, usually occurring in habitual drinkers after a few days' total abstinence from liquors, but sometimes resulting directly and immediately from drunkenness, *Erwin v. State*, 10 Tex. App. 700, 702; *Knickerbocker Life Ins. Co. v. Foley*, 105 U. S. 350, 354, 26 L. Ed. 1055; *Evers v. State*, 31 Tex. Cr. R. 318, 20 S. W. 744, 748, 18 L. R. A. 421, 37 Am. St. Rep. 811; and affecting the brain so as to produce incoherence and lack of continuity in the intellectual processes, a suspension or perversion of the power of volition, and delusions, particularly of a terrifying nature, but not generally prompting to violence except in the effort to escape from imaginary dangers.

It is recognized in law as a form of insanity, and may be of such a nature or intensity as to render the patient legally incapable of committing a crime. *United States v. McGlue*, 1 Curt. 1, 26 Fed. Cas. 1093; *Insurance Co. v. Deming*, 123 Ind. 384, 24 N. E. 86; *Macconnehey v. State*, 5 Ohio St. 77; *Erwin v. State*, 10 Tex. App. 700; *Carter v. State*, 12 Tex. 500, 62 Am. Dec. 539. In some states the insanity of alcoholic intoxication is classed as "temporary," where induced by the voluntary recent use of ardent spirits and carried to such a degree that the person becomes incapable of judging the consequences or the moral aspect of his acts, and "settled," where the condition is that of *delirium tremens*. Settled insanity, in this sense, excuses from civil or criminal responsibility; temporary insanity does not. The ground of the distinction is that the former is a remote effect of imbibing alcoholic liquors and is not voluntarily incurred, while the latter is a direct result voluntarily sought for. *Evers v. State*, 31 Tex. Cr. R. 318, 20 S. W. 744, 18 L. R. A. 421, 37 Am. St. Rep. 811; *Macconnehey v. State*, 5 Ohio St. 77; *Carter v. State*, 12 Tex. 500, 506, 62 Am. Dec. 539; *State v. Kidwell*, 62 W. Va. 466, 59 S. E. 494, 495, 13 L. R. A. (N. S.) 1024.

—**Folie brightique.** A French term sometimes used to designate an access of insanity resulting from nephritis or "Bright's disease." See *In re McKean's Will*, 31 Misc. 703, 66 N. Y. S. 44.

—**Idiopathic insanity** is such as results from a disease of the brain itself, lesions of the cortex, cerebral anemia, etc.

—**Paranoia.** "Paranoia" is a form of mental distress known as delusionary insanity, and a person afflicted with it has delusions which dominate, but do not destroy, the mental capacity, and, though sane as to other subjects, as to the delusion and its direct consequences the person is insane. *Mounger v. Gandy*, 110 Miss. 133, 69 So. 817, 818.

—**Pellagrous insanity.** Insanity caused by or derived from pellagra, which is an endemic disease of southern Europe, (though not confined to that region,) characterized by erythema, digestive derangement, and nervous affections. (Cent. Dict.)

It is sometimes characterized as logical perversion, and is said to have "misplaced the antiquated term monomania, which not only implied that the delusion was restricted to one subject, but was otherwise insufficient and misleading;" 2 *Clevenger, Med. Jur.* 880. The memory, emotions, judgment, and conceptions are in most cases unimpaired, though each of these mental divisions may be involved; *id.* It is characterized by systematized delusions, the term taking the place of "monomania" or "partial insanity"; *Taylor v. McClintock*, 87 Ark. 243, 112 S. W. 405.

—**Polynuritic insanity** is insanity arising from an inflammation of the nerves, of the kind

called "polynuritis" or "multiple neuritis" because it involves several nerves at the same time. This is often preceded by tuberculosis and almost always by alcoholism, and is characterized specially by delusions and falsification of the memory. It is otherwise called "Korssakoff's disease." (Kraepelin.)

—**Puerperal insanity** is mental derangement occurring in women at the time of child-birth or immediately after: it is also called "*eclampsia parturientium*."

—**Syphilitic insanity** is *paresis* or progressive imbecility resulting from the infection of *syphilis*. It is sometimes called (as being a sequence or result of that disease) "*metasyphilis*" or "*parasyphilis*."

—**Tabetic dementia.** A form of mental derangement or insanity complicated with "*tubes dorsalis*" or *locomotor ataria*, which generally precedes, or sometimes follows, the mental attack. As to insanity resulting from cerebral embolism, see *Embolism*: from epilepsy, see *Epilepsy*. As to chronic alcoholism as a form of insanity, see *Alcoholism*.

—**Traumatic insanity** is such as results from a wound or injury, particularly to the head or brain, such as fracture of the skull or concussion of the brain.

General Descriptive and Clinical Terms

—**Affective insanity.** A modern comprehensive term descriptive of all those forms of insanity which affect or relate to the feelings and emotions and hence to the ethical and social relations of the individual.

—**Circular insanity.** Another name for maniacal-depressive insanity, which see.

—**"Emotional insanity"** or *mania transitoria* applies to the case of one in the possession of his ordinary reasoning faculties who allows his passions to convert him into a temporary maniac. *Mutual L. Ins. Co. v. Terry*, 15 Wall. 580, 583, 21 L. Ed. 236.

In a criminal case the law rejects the doctrine of what is called emotional insanity, which begins on the eve of the criminal act, and leaves off when it is committed. *People v. Kernaghan*, 72 Cal. 609, 14 P. 566, 568; *Graves v. State*, 45 N. J. Law (19 Vroom) 347, 350, 46 Am. Rep. 778.

—**Habitual insanity.** Such insanity as is, in its nature, continuous and chronic. *Wright v. Market Bank* (Tenn. Ch. App.) 60 S. W. 623, 624.

—**Folie circulaire.** The French name for circular insanity or maniacal-depressive insanity.

—**General paralysis.** *Dementia paralytica* or *paresis*.

—**Involuntal insanity.** That which sometimes accompanies the "involution" of the

physical structure and physiology of the individual, the reverse of their "evolution," hence practically equivalent to the imbecility of old age or senile dementia.

—**Katatonía.** A form of insanity distinguished by periods of acute mania and melancholia and especially by cataleptic states or conditions; the "insanity of rigidity." (Kahlbaum.) A type of insanity characterized particularly by "stereotypism," an instinctive inclination to purposeless repetition of the same expressions of the will, and "negativism," a senseless resistance against every outward influence. (Kraepelin.)

—**Legal insanity.** Legal insanity is a disorder of the intellect, and is distinguished from "moral insanity," which is a disorder of the feelings and propensities. In re Forman's Will, 54 Barb. 274, 291; *Bensberg v. Washington University*, 251 Mo. 641, 158 S. W. 330, 336. A disease of the brain, rendering a person incapable of distinguishing between right and wrong with respect to the offense charged. *State v. Privitt*, 175 Mo. 207, 75 S. W. 457, 459.

—**Maniacal-depressive insanity.** A form of insanity characterized by alternating periods of high maniacal excitement and of depressed and stuporous conditions in the nature of or resembling melancholia, often occurring as a series or cycle of isolated attacks, with more or less complete restoration to health in the intervals. (Kraepelin.) This is otherwise called "circular insanity" or "circular stupor."

—**Moral insanity.** A morbid perversion of the feelings, affections, or propensities, but without any illusions or derangement of the intellectual faculties; irresistible impulse or an incapacity to resist the prompting of the passions, though accompanied by the power of discerning the moral or immoral character of the act. Moral insanity is not admitted as a bar to civil or criminal responsibility for the patient's acts, unless there is also shown to be intellectual disturbance, as manifested by insane delusions or the other recognized criteria of legal insanity. *Leache v. State*, 22 Tex. App. 279, 3 S. W. 539, 58 Am. Rep. 638; In re Forman's Will, 54 Barb. (N. Y.) 291; *State v. Leehman*, 2 S. D. 171, 49 N. W. 3; *Taylor v. McClintock*, 87 Ark. 243, 112 S. W. 405, 412; *Bensberg v. Washington University*, 251 Mo. 641, 158 S. W. 330, 336.

In a very few of the states where moral insanity is recognized as a defense, it means an incapacity of resistance, as where there was an entire destruction of the freedom of the will, although the person perceived the moral or immoral character of the act. *State v. Leehman*, 49 N. W. 3, 5, 2 S. D. 171.

—**Psychoneurosis.** Mental disease without recognizable anatomical lesion, and without evidence and history of preceding chronic

mental degeneration. Under this head come *melancholia*, *mania*, *primary acute dementia*, and *mania hallucinatoria*. Cent. Dict. "Neurosis," in its broadest sense, may include any disease or disorder of the mind, and hence all the forms of insanity proper. But the term "psychoneurosis" is now employed by Freud and other European specialists to describe that class of exaggerated individual peculiarities or idiosyncrasies of thought towards special objects or topics which are absent from the perfectly normal mind, and which yet have so little influence upon the patient's conduct or his general modes of thought that they cannot properly be described as "insanity" or as any form of "mania," especially because ordinarily unaccompanied by any kind of delusions. At most, they lie on the debatable border-land between sanity and insanity. These idiosyncrasies or obsessions may arise from superstition, from a real incident in the patient's past history upon which he has brooded until it has assumed an unreal importance or significance, or from general neurasthenic conditions. Such, for example, are a terrified shrinking from certain kinds of animals, unreasonable dread of being shut up in some enclosed place or of being alone in a crowd, excessive fear of being poisoned, groundless conviction of irredeemable sinfulness, and countless other prepossessions, which may range from mere weak-minded superstition to actual monomania.

—**Partial insanity**, as a legal term, may mean either monomania (see *infra*) or an intermediate stage in the development of mental derangement. In the former sense, it does not relieve the patient from responsibility for his acts, except where instigated directly by his particular delusion or obsession. *Com. v. Mosler*, 4 Pa. 264; *Com. v. Barner*, 199 Pa. 335, 49 A. 60; *Trich v. Trich*, 165 Pa. 586, 30 A. 1053. In the latter sense, it denotes a clouding or weakening of the mind, not inconsistent with some measure of memory, reason, and judgment. But the term, in this sense, does not convey any very definite meaning, since it may range from mere feeble-mindedness to almost the last stages of imbecility. *Appeal of Dunham*, 27 Conn. 205; *State v. Jones*, 50 N. H. 369, 383, 9 Am. Rep. 242.

—**Recurrent insanity.** Insanity which returns from time to time, hence equivalent to "lunacy" (see *supra*) in its common-law sense, as a mental disorder broken by lucid intervals. There is no presumption that fitful and exceptional attacks of insanity are continuous. *Leache v. State*, 22 Tex. App. 279, 3 S. W. 538, 58 Am. Rep. 638.

—**Settled insanity.** The term applied to delirium tremens, which is a kind of insanity produced by alcoholism, caused by the breaking down of the person's system by long-contin-

ued or habitual drunkenness, and brought on by abstinence from drink. It is thus termed, to distinguish it from "temporary insanity," or drunkenness directly resulting from drink. Evers v. State, 20 S. W. 744, 748, 31 Tex. Cr. R. 318, 18 L. R. A. 421, 37 Am. St. Rep. 811.

—**Temporary delusion.** The word implies unsoundness or derangement of mind or intellect, not a mere temporary or slight delusion, which might be occasioned by fever or accident. Karow v. New York Continental Ins. Co., 15 N. W. 27, 31, 57 Wis. 56, 46 Am. Rep. 17.

Other Forms of Insanity

—**Amentia, dementia, and mania.** The classification of insanity into these three types or forms, though once common, has of late given way to a more scientific nomenclature, based chiefly on the origin or cause of the disease in the particular patient and its clinical history. These terms, however, are still occasionally encountered in medical jurisprudence, and the names of some of their subdivisions are in constant use.

—**Amentia.** A total lack of intelligence, reason, or mental capacity. Sometimes so used as to cover imbecility or dotage, or even as applicable to all forms of insanity; but properly restricted to a lack of mental capacity due to original defective organization of the brain (idiocy) or arrested cerebral development, as distinguished from the degeneration of intellectual faculties which once were normal.

—**Dementia.** A form of insanity resulting from degeneration or disorder of the brain (ideopathic or traumatic, but not congenital) and characterized by general mental weakness and decrepitude, forgetfulness, loss of coherence, and total inability to reason, but not accompanied by delusions or uncontrollable impulses. Pyott v. Pyott, 90 Ill. App. 221; Hall v. Unger, 2 Abb. U. S. 510, Fed. Cas. No. 5,949; Dennett v. Dennett, 44 N. H. 531, 84 Am. Dec. 97; People v. Lake, 2 Parker, Cr. R. (N. Y.) 218. By some writers dementia is classed as a terminal stage of various forms of insanity, and hence may follow mania, for example, as its final condition. Among the sub-divisions of dementia should be noticed the following: *Acute primary dementia* is a form of temporary dementia, though often extreme in its intensity, and occurring in young people or adolescents, accompanied by general physical debility or exhaustion and induced by conditions likely to produce that state, as malnutrition, overwork, dissipation, or too rapid growth. *Dementia paralytica* is a progressive form of insanity, beginning with slight degeneration of the physical, intellectual, and moral powers, and leading to complete loss of mentality, or imbecility, with general paralysis. Also called paresis, parietic

dementia, or cirrhosis of the brain, or (popularly) "softening of the brain." *Dementia præcox.* A term applicable either to the early stages of dementia or to the dementia of adolescence, but more commonly applied to the latter. It is often (but not invariably) attributable to onanism or self-abuse, and is characterized by mental and moral stupidity, absence of any strong feeling of the impressions of life or interest in its events, blunting or obscuration of the moral sense, weakness of judgment, flightiness of thought, senseless laughter without mirth, automatic obedience, and apathetic despondency. (Kraepelin.) *Senile dementia.* Dementia occurring in persons of advanced age, and characterized by slowness and weakness of the mental processes and general physical degeneration, verging on or passing into imbecility, indicating the breaking down of the mental powers in advance of bodily decay. Hielt v. Shull, 36 W. Va. 563, 15 S. E. 146; Pyott v. Pyott, 191 Ill. 280, 61 N. E. 88; McDaniel v. McCoy, 68 Mich. 332, 36 N. W. 84; Hamon v. Hamon, 180 Mo. 685, 79 S. W. 422; Graham v. Deuterma, 91 N. E. 61, 62, 244 Ill. 124; Hibbard v. Baker, 104 N. W. 399, 400, 141 Mich. 124. *Toxic dementia.* Weakness of mind or feeble cerebral activity, approaching imbecility, resulting from continued administration or use of slow poisons or of the mere active poisons in repeated small doses, as in cases of lead poisoning and in some cases of addiction to such drugs as opium or alcohol.

—**Dementia præcox paranoid.** "Dementia præcox paranoid" is a medical term indicating that form of dementia in which the patient exhibits ideas of persecution and has delusions. Rasmussen v. George Benz & Sons, 210 N. W. 75, 76, 168 Minn. 319.

—**Dipsomania.** An irresistible impulse to indulge in intoxication, either alcohol or other drugs—opiums. This mania, or dipsomania, is classed as one of the minor forms of insanity. Repeated intoxication for a number of years, which is entirely voluntary, is not dipsomania. One having the power to refrain from the use of intoxicants, and who becomes intoxicated voluntarily, is not affected with dipsomania. Ballard v. State, 28 N. W. 271, 273, 19 Neb. 609; State v. Reidell, 9 Houst. (Del.) 470, 14 Atl. 550; Ballard v. State, 19 Neb. 609, 28 N. W. 271; State v. Potts, 6 S. E. 657, 659, 100 N. C. 457.

—**Erotomania.** A form of mania similar to nymphomania, except that the present term is applied to patients of both sexes, and that (according to some authorities) it is applicable to all cases of excessive sexual craving irrespective of origin; while *nymphomania* is restricted to cases where the disease is caused by a local disorder of the sexual organs reacting on the brain. In erotomania, there is often an absence of any lesion of the intellectual powers. See Krafft-Ebing, *Psycho-*

pathia Sexualis, Chaddock's ed. And it is to be observed that the term "*erotomania*" is now often used, especially by French writers, to describe a morbid propensity for "falling in love" or an exaggerated and excited condition of amativeness or love-sickness, which may affect the general physical health, but is not necessarily correlated with any sexual craving, and which, though it may unnaturally color the imagination and distort the subject's view of life and affairs, does not at all amount to insanity, and should not be so considered when it leads to crimes of violence, as in the common case of a rejected lover who kills his mistress.

—**Fit of mania.** A fit of mania includes a temporary depression or aberration of the mind, which sometimes accompanies or follows intoxication, and is often accompanied by delusions, hallucinations, and illusions. *Gunter v. State*, 3 South. 600, 607, 83 Ala. 96.

—**Homicidal mania.** A form of mania in which the morbid state of the mind manifests itself in an irresistible inclination or impulse to commit homicide, prompted usually by an insane delusion either as to the necessity of self-defense or the avenging of injuries, or as to the patient being the appointed instrument of a superhuman justice. *Com. v. Sayre*, 5 Wkly. Notes Cas. (Pa.) 425; *Com. v. Mosler*, 4 Pa. 266.

—**Hypomania.** A mild or slightly developed form or type of mania.

—**Kleptomania.** A species (or symptom) of mania, consisting in an irresistible propensity to steal. *Looney v. State*, 10 Tex. App. 525, 38 Am. Rep. 646; *State v. Reidell*, 9 *Houst. (Del.)* 470, 14 *Atl.* 550; *Lowe v. State*, 70 S. W. 206, 44 *Tex. Cr. R.* 224 (citing *Hurst v. State*, 40 *Tex. Cr. R.* 378, 46 S. W. 635, 50 S. W. 719).

—**Mania.** That form of insanity in which the patient is subject to hallucinations and illusions, accompanied by a high state of general mental excitement, sometimes amounting to fury. See *Hall v. Unger*, 2 *Abb. U. S.* 510, 11 *Fed. Cas.* 261; *People v. Lake*, 2 *Parker Cr. R. (N. Y.)* 218; *Smith v. Smith*, 47 *Miss.* 211; *In re Gannon's Will*, 2 *Misc.* 329, 21 *N. Y. Supp.* 960; *Dyar v. Dyar*, 131 S. E. 535, 541, 161 *Ga.* 615; *State ex rel. Bevan v. Williams*, 316 *Mo.* 665, 291 S. W. 481, 482. In the case first above cited, the following description is given by Justice Field: "Mania is that form of insanity where the mental derangement is accompanied with more or less of excitement. Sometimes the excitement amounts to a fury. The individual in such cases is subject to hallucinations and illusions. He is impressed with the reality of events which have never occurred, and of things which do not exist, and acts more or less in conformity with his belief in these particulars. The mania may be general, and af-

fect all or most of the operations of the mind; or it may be partial, and be confined to particular subjects. In the latter case it is generally termed 'monomania.'" In a more popular but less scientific sense, "mania" denotes a morbid or unnatural or excessive craving, issuing in impulses of such fixity and intensity that they cannot be resisted by the patient in the enfeebled state of the will and blurred moral concepts which accompany the disease. It is used in this sense in such compounds as "homicidal mania," "dipsomania," and the like.

—**Mania a potu.** Delirium tremens, or a species of temporary insanity resulting as a secondary effect produced by the excessive and protracted indulgence in intoxicating liquors. See *State v. Hurley*, *Houst. Cr. Cas. (Del.)* 28, 35.

—**Mania fanatica.** A form of insanity characterized by a morbid state of religious feeling. *Ekin v. McCracken*, 11 *Phila. (Pa.)* 540.

—**Mania transitoria.** The term applies to the case of one in the possession of his ordinary reasoning faculties, who allows his passions to convert him into a temporary maniac. *Mutual Life Ins. Co. v. Terry*, 82 U. S. (15 *Wall.*) 580, 583, 21 *L. Ed.* 236.

—**Melancholia.** Melancholia is a form of insanity the characteristics of which are extreme mental depression, with delusions and hallucinations, the latter relating especially to the financial or social position of the patient or to impending or threatened dangers to his person, property, or reputation, or issuing in distorted conceptions of his relations to society or his family or of his rights and duties in general. *Connecticut Mut. L. Ins. Co. v. Groom*, 86 Pa. 92, 27 *Am. Rep.* 689; *State v. Reidell*, 9 *Houst. (Del.)* 470, 14 *Atl.* 551; *People v. Krist*, 168 *N. Y.* 19, 60 *N. E.* 1057; *In re Dolbeer's Estate*, 86 *Pac.* 695, 703, 149 *Cal.* 227, 9 *Ann. Cas.* 795. *Hypochondria* or *hypochondriasis*. A form of melancholia in which the patient has exaggerated or causeless fears concerning his health or suffers from imaginary disease. *Towiphobia*. Morbid dread of being poisoned; a form of insanity manifesting itself by an excessive and unfounded apprehension of death by poison.

—**Megalomania.** The so-called "delirium of grandeur" or "folie de grandeur;" a form of mania in which the besetting delusion of the patient is that he is some person of great celebrity or exalted rank, historical or contemporary.

—**Methomania.** An irresistible craving for alcoholic or other intoxicating liquors, manifested by the periodical recurrence of drunken debauches. *State v. Savage*, 89 *Ala.* 1, 7 *South.* 183, 7 *L. R. A.* 426.

—**Monomania.** “*Monomania*” is a perversion of the understanding in regard to a single object or a small number of objects, with the predominance of mental excitement, as distinguished from “*mania*,” which means a condition in which the perversion of the understanding embraces all kinds of objects, and is accompanied with general mental excitement. Appeal of Dunham, 27 Conn. 192, 206; State v. John, 30 N. C. 330, 337, 49 Am. Dec. 396; Schuff v. Ransom, 79 Ind. 458, 464; Freed v. Brown, 55 Ind. 310, 317; People v. Lake, 2 Parker, Cr. R. (N. Y.) 215, 218; Hall v. Unger (U. S.) 11 Fed. Cas. 261, 263. A perversion or derangement of the reason or understanding with reference to a single subject or small class of subjects, with considerable mental excitement and delusions, while, as to all matters outside the range of the peculiar infirmity, the intellectual faculties remain unimpaired and function normally. Hopps v. People, 31 Ill. 390, 83 Am. Dec. 231; In re Black’s Estate, Myr. Prob. (Cal.) 27; Owing’s Case, 1 Bland (Md.) 388, 17 Am. Dec. 311; Merritt v. State, 39 Tex. Cr. R. 70, 45 S. W. 21; In re Gannon’s Will, 2 Misc. 329, 21 N. Y. Supp. 960; Bohler v. Hicks, 48 S. E. 306, 307, 120 Ga. 800.

—**Necrophilism.** A form of affective insanity manifesting itself in an unnatural and revolting fondness for corpses, the patient desiring to be in their presence, to caress them, to exhume them, or sometimes to mutilate them, and even (in a form of sexual perversion) to violate them.

—**Nymphomania.** A form of mania characterized by a morbid, excessive, and uncontrollable craving for sexual intercourse. This term is applied only to women. The term for a corresponding mania in men is “*satyriasis*.”

—**Oikei mania,** a form of insanity manifesting itself in a morbid state of the domestic affections, as an unreasonable dislike of wife or child without cause or provocation. Ekin v. McCracken, 11 Phila. (Pa.) 540.

—**Paranoia.** Monomania in general, or the obsession of a delusion or system of delusions which dominate without destroying the mental capacity, leaving the patient sane as to all matters outside their particular range, though subject to perverted ideas, false beliefs, and uncontrollable impulses within that range; and particularly, the form of monomania where the delusion is as to wrongs, injuries, or persecution inflicted upon the patient and his consequently justifiable resentment or revenge. Winters v. State, 61 N. J. Law, 613, 41 Atl. 220; People v. Braun, 158 N. Y. 558, 53 N. E. 529; Flanagan v. State, 103 Ga. 619, 30 S. E. 550. Paranoia is called by Kraepelin “*progressive systematized insanity*,” because the delusions of being wronged or of persecution and of excessive self-esteem develop quite slowly, without inde-

pendent disturbances of emotional life or of the will becoming prominent, and because there occurs regularly a mental working up of the delusion to form a delusory view of the world,—in fact, a system,—leading to a derangement of the stand-point which the patient takes up towards the events of life.

—**Pyromania.** Incendiarism; a form of affective insanity in which the mania takes the form of an irresistible impulse to burn or set fire to things.

—**Sebastomania.** Religious insanity; demonomania.

—**Toxicomania.** An excessive addiction to the use of toxic or poisonous drugs or other substances; a form of mania or affective insanity characterized by an irresistible impulse to indulgence in opium, cocaine, chloral, alcohol, etc.

Specific Definitions and Applications in Law

There are numerous legal proceedings where insanity may be shown, and the rule for establishing mental capacity or the want of it varies according to the object or purpose of the proceeding. Among these may be enumerated the following: A criminal prosecution where insanity is alleged as a defense; a proceeding to defeat a will on the ground of the insanity of the testator; a suit to avoid a contract (including that of marriage) for similar reasons; a proceeding to secure the commitment of a person alleged to be insane to an asylum; a proceeding to appoint a guardian or conservator for an alleged lunatic; a plea or proceeding to avoid the effect of the statute of limitations on account of insanity. What might be regarded as insanity in one of such cases would not necessarily be so regarded in another. No definite rule can be laid down which would apply to all cases alike. Snyder v. Snyder, 142 Ill. 60, 31 N. E. 303; Clarke v. Irwin, 63 Neb. 539, 88 N. W. 783. But the following rules or tests for specific cases have been generally accepted and approved:

In criminal law and as a defense to an accusation of crime, insanity means such a perverted and deranged condition of the mental and moral faculties as to render the person incapable of distinguishing between right and wrong, or to render him at the time unconscious of the nature of the act he is committing, or such that, though he may be conscious of it and also of its normal quality, so as to know that the act in question is wrong, yet his will or volition has been (otherwise than voluntarily) so completely destroyed that his actions are not subject to it but are beyond his control. Or, as otherwise stated, insanity is such a state of mental derangement that the subject is incompetent of having a criminal intent, or incapable of so controlling his will as to avoid doing the act in question. Davis v. U. S., 165 U. S. 373, 17 S.

Ct. 360, 41 L. Ed. 750; *Doherty v. State*, 73 Vt. 380, 50 A. 1113; *Butler v. State*, 102 Wis. 364, 78 N. W. 590; *Rather v. State*, 25 Tex. App. 623, 9 S. W. 69; *Lowe v. State*, 118 Wis. 641, 96 N. W. 424; *Genz v. State*, 59 N. J. Law, 488, 37 A. 69, 59 Am. St. Rep. 619; *In re Guiteau* (D. C.) 10 Fed. 164; *People v. Finley*, 38 Mich. 482; *People v. Hoin*, 62 Cal. 120, 45 Am. Rep. 651; *Carr v. State*, 96 Ga. 284, 22 S. E. 570; *Wilcox v. State*, 94 Tenn. 106, 28 S. W. 312; *State v. Holloway*, 156 Mo. 222, 56 S. W. 734; *Hotema v. U. S.*, 186 U. S. 413, 22 S. Ct. 895, 46 L. Ed. 1225.

An insane person cannot be legally charged with a criminal intent; *State v. Brown*, 36 Utah 46, 102 P. 641, 24 L. R. A. (N. S.) 545.

In *Coleman's* case, in New York it was held that the "test of the responsibility for criminal acts, when insanity is asserted, is the capacity of the accused to distinguish between right and wrong at the time and with respect to the act which is the subject of inquiry." 1 N. Y. Cr. Rep. 1. With variations of expression this is the prevailing doctrine of the American courts; *Mutual Life Ins. Co. v. Terry*, 15 Wall. 590, 21 L. Ed. 236; *People v. Pico*, 62 Cal. 50; *State v. Windsor*, 5 Harr. (Del.) 512; *State v. Danby*, 1 *Houst. Cr. Cas.* (Del.) 166; *State v. West*, 1 *Houst. Cr. Cas.* (Del.) 371; *Humphreys v. State*, 45 Ga. 190; *Com. v. Heath*, 11 *Gray* (Mass.) 303; *Cunningham v. State*, 56 *Miss.* 269, 21 *Am. Rep.* 360; *People v. Finley*, 38 *Mich.* 482; *State v. Shippey*, 10 *Minn.* 223 (Gil. 178), 88 *Am. Dec.* 70; *State v. Erb*, 74 *Mo.* 199; *State v. Kotovsky*, 74 *Mo.* 247; *Hawe v. State*, 11 *Neb.* 537, 10 *N. W.* 452, 38 *Am. Rep.* 375; *State v. Spencer*, 21 *N. J. L.* 196; *State v. Brandon*, 53 *N. C.* 463; *Thomas v. State*, 40 *Tex.* 60; *Dove v. State*, 3 *Heisk.* (Tenn.) 348; *Dunn v. People*, 109 *Ill.* 635; *State v. Alexander*, 30 *S. C.* 74, 8 *S. E.* 440, 14 *Am. St. Rep.* 879; *Com. v. Winnemore*, 1 *Brewst.* (Pa.) 356; *Com. v. Mosler*, 4 *Pa.* 264; *U. S. v. Shults*, 6 *McLean*, 121, *Fed. Cas. No.* 16,286; *Walker v. People*, 88 *N. Y.* 86; *Loeffner v. State*, 10 *Ohio St.* 599; *Parker v. State*, 91 *Tex. Cr. R.* 68, 238 *S. W.* 943, 946; *People v. Williams*, 184 *Cal.* 590, 194 *P.* 1019, 1020; *Roe v. State*, 17 *Okl. Cr.* 587, 191 *P.* 1048, 1051; *State v. Alie*, 82 *W. Va.* 601, 96 *S. E.* 1011, 1014; *Perkins v. United States* (C. C. A.) 223 *F.* 408, 415. The capacity to distinguish between right and wrong has been held not to be a safe test in all cases; *State v. Felter*, 25 *Iowa*, 67, per *Dillon*, C. J.; *Mutual Life Ins. Co. v. Terry*, 15 *Wall.* 580, 21 *L. Ed.* 236. See also *Brown v. Com.*, 78 *Pa.* 122.

Insane delusion is of no avail as a defense unless, if true, the facts supposed to exist would have excused the crime. *Thurman v. State*, 32 *Neb.* 224, 49 *N. W.* 338; *People v. Taylor*, 138 *N. Y.* 398, 34 *N. E.* 275; *Smith v. State*, 55 *Ark.* 259, 18 *S. W.* 237; *Bolling v. State*, 54 *Ark.* 588, 16 *S. W.* 658; *State v. Gut*, 13 *Minn.* 341 (Gil. 315); *Bovard v. State*, 30 *Miss.* 600; *State v. Huting*, 21

Mo. 464; *Gibson, C. J.*, in *Com. v. Mosler*, 4 *Pa.* 264; *State v. Simms*, 71 *Mo.* 538.

Irresistible impulse to commit a crime is defined as that uncontrollable impulse produced by a disease of the mind, when that disease is sufficient to override judgment and obliterate the sense of right as to the acts done, and deprives the accused of power to choose between them. 36 *W. Va.* 729, 15 *S. E.* 982, 18 *L. R. A.* 224. It was recognized as a defense in *Stevens v. State*, 31 *Ind.* 485, 99 *Am. Dec.* 634; *Blackburn v. State*, 23 *Ohio St.* 146; *Mutual Life Ins. Co. v. Terry*, 15 *Wall.* 580, 21 *L. Ed.* 236; but it is held that no impulse, however irresistible, is a defense, where there is a knowledge as to the particular act between right and wrong; *State v. Brandon*, 53 *N. C.* 463; *State v. Miller*, 111 *Mo.* 542, 20 *S. W.* 243; *Lovegrove v. State*, 31 *Tex. Cr. R.* 491, 21 *S. W.* 191; *People v. Clendennin*, 91 *Cal.* 35, 27 *P.* 418; *Thomas v. State*, 71 *Miss.* 345, 15 *So.* 237; *Patterson v. State*, 86 *Ga.* 70, 12 *S. E.* 174; *Wilcox v. State*, 94 *Tenn.* 106, 28 *S. W.* 312; *Tayl. Med. Jur.* 720; and that it was a crime morally, and punishable by the laws of the country; *State v. Alexander*, 30 *S. C.* 74, 8 *S. E.* 440, 14 *Am. St. Rep.* 879; *Williams v. State*, 50 *Ark.* 511, 9 *S. W.* 5; *Newman v. State*, 99 *Tex. Cr. R.* 363, 269 *S. W.* 440, 442; *Wade v. State*, 18 *Ala. App.* 322, 92 *So.* 97, 99.

Mere frenzy or ungovernable passion which controls the will and motives is not insanity sufficient to excuse crime. *Garner v. State*, 112 *Miss.* 317, 73 *So.* 50, 51.

What is sometimes called moral insanity, as distinguished from mental unsoundness, is not a defense to a charge of crime. *Whart. & St. Med. Jur.* §§ 164, 174; *Tayl. Med. Jur.* 677; 6 *Jur.* 201; 4 *Cox, C. C.* 149; *Com. v. Heath*, 11 *Gray* (Mass.) 303; *Flanagan v. People*, 52 *N. Y.* 467, 11 *Am. Rep.* 731; *People v. McDonnell*, 47 *Cal.* 134; *People v. Kerrigan*, 73 *Cal.* 222, 14 *P.* 849; *Guiteau's Case* (D. C.) 10 *F.* 161; *State v. Potts*, 100 *N. C.* 457, 6 *S. E.* 657; *People v. Wood*, 126 *N. Y.* 269, 27 *N. E.* 362; *Flanagan v. People*, 52 *N. Y.* 469, 11 *Am. Rep.* 731; but see *Smith v. Com.*, 1 *Duv.* (Ky.) 224; *Scott v. Com.*, 4 *Metc.* (Ky.) 227, 83 *Am. Dec.* 461; *Andersen v. State*, 43 *Conn.* 514, 21 *Am. Rep.* 669; *St. Louis Mut. Life Ins. Co. v. Graves*, 6 *Bush* (Ky.) 268.

Testamentary capacity includes an intelligent understanding of the testator's property, its extent and items, and of the nature of the act he is about to perform, together with a clear understanding and purpose as to the manner of its distribution and the persons who are to receive it. Lacking these, he is not mentally competent. The presence of insane delusions is not inconsistent with testamentary capacity, if they are of such a nature that they cannot reasonably be supposed to have affected the dispositions made by the will; and the same is true of the various forms of monomania and of all kinds of eccentricity and personal idiosyncrasy. But

imbecility, senile dementia, and all forms of systematized mania which affect the understanding and judgment generally disable the patient from making a valid will. See *Harrison v. Rowan*, 3 Wash. C. C. 585, Fed. Cas. No. 6,141; *Smee v. Smee*, 5 Prob. Div. 84; *Banks v. Goodfellow*, 39 Law J. R., Q. B., 248; *Wilson v. Mitchell*, 101 Pa. 495; *Whitney v. Twombly*, 136 Mass. 147; *Lowder v. Lowder*, 58 Ind. 540; *In re Halbert's Will*, 15 Misc. 308, 37 N. Y. S. 757; *Den v. Vancleve*, 5 N. J. Law, 660; *In re Guilbert's Estate*, 46 Cal. App. 55, 188 P. 807, 810; *Rodney v. Burton*, 4 Boyce (Del.) 171, 86 A. 826, 829; *Carnahan v. Hamilton*, 265 Ill. 508, 107 N. E. 210, 215, Ann. Cas. 1916C, 21; *Trustees of Epworth Memorial Methodist Church v. Overman*, 185 Ky. 773, 215 S. W. 942, 944; *Rodgers v. Fleming* (Tex. Civ. App.) 295 S. W. 326, 331; *In re Herr's Estate*, 251 Pa. 223, 96 A. 464, 466. To constitute "senile dementia," incapacitating one to make a will, there must be such a failure of the mind as to deprive the testator of intelligent action. *Gates v. Cole*, 137 Iowa, 613, 115 N. W. 236, 237, 238.

As a ground for avoiding or annulling a contract or conveyance, insanity does not mean a total deprivation of reason, but an inability, from defect of perception, memory, and judgment, to do the act in question or to understand its nature and consequences. *Frazer v. Frazer*, 2 Del. Ch. 260; *Durrett v. McWhorter*, 161 Ga. 179, 129 S. E. 870, 874. The insanity must have entered into and induced the particular contract or conveyance; it must appear that it was not the act of the free and untrammelled mind, and that on account of the diseased condition of the mind the person entered into a contract or made a conveyance which he would not have made if he had been in the possession of his reason. *Dewey v. Allgire*, 37 Neb. 6, 55 N. W. 276, 40 Am. St. Rep. 468; *Dennett v. Dennett*, 44 N. H. 537, 84 Am. Dec. 97.

Insanity sufficient to justify the annulment of a marriage means such a want of understanding at the time of the marriage as to render the party incapable of assenting to the contract of marriage. The morbid propensity to steal, called "kleptomania," does not answer this description. *Lewis v. Lewis*, 44 Minn. 124, 46 N. W. 323, 9 L. R. A. 505, 20 Am. St. Rep. 559. The marriage of a person insane was held void in *Inhabitants of Middleborough v. Inhabitants of Rochester*, 12 Mass. 363; *Gathings v. Williams*, 27 N. C. 487, 44 Am. Dec. 49; *Powell v. Powell*, 18 Kan. 371, 26 Am. Rep. 774; *Wightman v. Wightman*, 4 Johns. Ch. (N. Y.) 343; *L. R. 1 P. & D. 335*; *Waymire v. Jetmore*, 22 Ohio St. 271; *True v. Ranney*, 21 N. H. 52, 53 Am. Dec. 164. A marriage contracted while one party was insane from *delirium tremens* was held void; *Clement v. Mattison*, 3 Rich. (S. C.) 93; but mere weakness of mind not amounting to derangement is not sufficient; *Rawdon v. Rawdon*, 28 Ala. 565; *Crump v. Morgan*, 38 N. C.

91, 40 Am. Dec. 447; and for that merely, or intoxication, a court has no power to declare a marriage null and void; *Elzey v. Elzey*, 1 Houst. (Del.) 308. The same degree of mental capacity which enables a person to make a valid deed or will is sufficient to enable him to marry; *Inhabitants of Atkinson v. Inhabitants of Medford*, 46 Me. 510.

Insanity is not a defense in an action of tort; but damages are compensatory and not punitive; *McIntyre v. Sholty*, 121 Ill. 660, 13 N. E. 239, 2 Am. St. Rep. 140; *Lassone v. R. R.*, 66 N. H. 345, 24 A. 902, 17 L. R. A. 525; *Williams v. Hays*, 143 N. Y. 442, 38 N. E. 449, 26 L. R. A. 153, 42 Am. St. Rep. 743; *Meyer v. Ry. Co.*, 54 F. 116, 4 C. C. A. 221.

One is "insane," so as to make self-destruction an accident, within the meaning of an insurance policy compensating death by accident, where he is so mentally diseased as to be incapable of understanding the nature of the act and unable to distinguish between right and wrong. *London Guarantee & Accident Co. v. Officer*, 78 Colo. 441, 242 P. 989, 991.

As a ground for restraining the personal liberty of the patient, it may be said in general that the form of insanity from which he suffers should be such as to make his going at large a source of danger to himself or to others, though this matter is largely regulated by statute, and in many places the law permits the commitment to insane asylums and hospitals of persons whose insanity does not manifest itself in homicidal or other destructive forms of mania, but who are incapable of caring for themselves and their property or who are simply fit subjects for treatment in hospitals and other institutions specially designed for the care of such patients. See, for example, *Gen. St. Kan. 1901*, § 6570 (*Rev. St. 1923*, § 76—1203).

To constitute insanity such as will authorize the appointment of a guardian or conservator for the patient, there must be such a deprivation of reason and judgment as to render him incapable of understanding and acting with discretion in the ordinary affairs of life; a want of sufficient mental capacity to transact ordinary business and to take care of and manage his property and affairs. See *Snyder v. Snyder*, 142 Ill. 60, 31 N. E. 303; *In re Wetmore's Guardianship*, 6 Wash. 271, 33 P. 615.

Insanity as a plea or proceeding to avoid the effect of the statute of limitations means practically the same thing as in relation to the appointment of a guardian. On the one hand, it does not require a total deprivation of reason or absence of understanding. On the other hand, it does not include mere weakness of mind short of imbecility. It means such a degree of derangement as renders the subject incapable of understanding the nature of the particular affair and his rights and remedies in regard to it and incapable of taking discreet and intelligent action. See

Burnham v. Mitchell, 34 Wis. 134. The time of sanity required in order to allow the statute to begin to run is such as will enable the party to examine his affairs and institute an action, and is for the jury; **Clark's Executor v. Trail's Adm'rs**, 1 Metc. (Ky.) 35.

There are a few other legal rights or relations into which the question of insanity enters, such as the capacity of a witness or of a voter; but they are governed by the same general principles. The test is capacity to understand and appreciate the nature of the particular act and to exercise intelligence in its performance. A witness must understand the nature and purpose of an oath and have enough intelligence and memory to relate correctly the facts within his knowledge. So a voter must understand the nature of the act to be performed and be able to make an intelligent choice of candidates. In either case, eccentricity, "crankiness," feeble-mindedness not amounting to imbecility, or insane delusions which do not affect the matter in hand, do not disqualify. See **District of Columbia v. Armes**, 107 U. S. 521, 2 S. Ct. 840, 27 L. Ed. 618; **Clark v. Robinson**, 88 Ill. 502.

Insanus est qui, abjecta ratione, omnia cum impetu et furore facit. He is insane who, reason being thrown away, does everything with violence and rage. 4 Coke, 128.

INSCRIBERE. Lat. In the civil law. To subscribe an accusation. To bind one's self, in case of failure to prove an accusation, to suffer the same punishment which the accused would have suffered had he been proved guilty. Calvin.

INSCRIPTIO. Lat. In the civil law. A written accusation in which the accuser undertakes to suffer the punishment appropriate to the offense charged, if the accused is able to clear himself of the accusation. Calvin; Cod. 9, 1, 10; Id. 9, 2, 16, 17.

INSCRIPTION.

In Evidence

Anything written or engraved upon a metallic or other solid substance, intended for great durability; as upon a tombstone, pillar, tablet, medal, ring, etc.

In Civil Law

An engagement which a person who makes a solemn accusation of a crime against another enters into that he will suffer the same punishment, if he has accused the other falsely, which would have been inflicted upon him had he been guilty. Code, 9. 1. 10; 9. 2. 16 and 17.

In Modern Civil Law

The entry of a mortgage, lien, or other document at large in a book of public records; corresponding to "recording" or "registration."

INSCRIPTIONES. The name given by the old English law to any written instrument by which anything was granted. Blount.

INSECT POWDER. "Insect powder" is a dry powder used to kill or expel insects; an insecticide or insectifuge. **Parke, Davis & Co. v. U. S. (C. C. A.)** 255 F. 933, 935.

INSECURE. "Insecure" means unsafe and dangerous. **Sabol v. St. Louis Cooperage Co.**, 313 Mo. 527, 282 S. W. 425, 430.

INSENSIBLE. In pleading. Unintelligible; without sense or meaning, from the omission of material words, etc. **Steph. Pl.** 377. See **Union Sewer Pipe Co. v. Olson**, 82 Minn. 187, 84 N. W. 756.

INSETENA. In old records. An inditch; an interior ditch; one made within another, for greater security. **Spelman.**

INSIDIATORES VIARUM. Lat. Highwaymen; persons who lie in wait in order to commit some felony or other misdemeanor.

INSIGNIA. Ensigns or arms; distinctive marks; badges; *indicia*; characteristics.

INSILIARIUS. An evil counsellor. **Cowell.**

INSILIUM. Evil advice or counsel. **Cowell.**

INSIMUL. Lat. Together; jointly. **Townsh. Pl.** 44.

INSIMUL COMPUTASSENT. They accounted together. The name of the count in *assumpsit* upon an account stated; it being averred that the parties had settled their accounts together, and defendant engaged to pay plaintiff the balance. **Fralely v. Bispham**, 10 Pa. 325, 51 Am. Dec. 486; **Loventhal v. Morris**, 103 Ala. 332, 15 So. 672.

INSIMUL TENUIT. One species of the writ of *formedon* brought against a stranger by a coparcener on the possession of the ancestor, etc. **Jacob.**

INSINUACION. In Spanish law. The presentation of a public document to a competent judge, in order to obtain his approbation and sanction of the same, and thereby give it judicial authenticity. **Escrache.**

INSINUARE. Lat. In the civil law. To put into; to deposit a writing in court, answering nearly to the modern expression "to file." *Si non mandatum actis insinuatum est*, if the power or authority be not deposited among the records of the court. **Inst.** 4, 11, 3.

To declare or acknowledge before a judicial officer; to give an act an official form.

INSINUATIO. Lat. In old English law. Information or suggestion. *Es insinuatione*, on the information. **Reg. Jud.** 25, 50.

INSINUATION. In the civil law. The transcription of an act on the public registers like

our recording of deeds. It was not necessary in any other alienation but that appropriated to the purpose of donation. *Inst.* 2, 7, 2.

INSINUATION OF A WILL. In the civil law. The first production of a will, or the leaving it with the registrar, in order to its probate. *Cowell*; *Blount*.

INSULATION. In medical jurisprudence. Sunstroke or heat-stroke; heat prostration.

INSOLVENCY. The condition of a person who is insolvent; inability to pay one's debts; lack of means to pay one's debts. Such a relative condition of a man's assets and liabilities that the former, if all made immediately available, would not be sufficient to discharge the latter. Or the condition of a person who is unable to pay his debts as they fall due, or in the usual course of trade and business. See *Dewey v. St. Albans Trust Co.*, 56 Vt. 475, 48 Am. Rep. 803; *Toof v. Martin*, 13 Wall. 47, 20 L. Ed. 481; *Miller v. Southern Land & Lumber Co.*, 53 S. C. 364, 31 S. E. 281; *Leitch v. Hollister*, 4 N. Y. 215; *Silver Valley Mining Co. v. North Carolina Smelting Co.*, 119 N. C. 417, 25 S. E. 954; *French v. Andrews*, 81 Hun, 272, 30 N. Y. Supp. 796; *Appeal of Bowersox*, 100 Pa. 438, 45 Am. Rep. 387; *Van Riper v. Poppenhausen*, 43 N. Y. 75; *Phipps v. Harding*, 70 F. 470, 17 C. C. A. 203, 30 L. R. A. 513; *Shone v. Lucas*, 3 Dowl. & R. 218; *Herrick v. Borst*, 4 Hill (N. Y.) 652; *Atwater v. American Exch. Nat. Bank*, 152 Ill. 605, 38 N. E. 1017; *Ruggles v. Cannedy*, 127 Cal. 290, 53 P. 916, 46 L. R. A. 371; *O'Bryan v. State*, 197 N. W. 609, 610, 111 Neb. 733; *National Exch. Bank v. Simpson*, 78 W. Va. 309, 88 S. E. 1088, 1090; *Frank v. Stearns*, 111 Neb. 101, 195 N. W. 949, 951.

Independent of statute, it may generally be said that insolvency, when applied to a person, firm, or corporation engaged in trade, means inability to pay debts as they become due in the usual course of business. *Parker v. First Nat. Bank*, 96 Okl. 70, 220 P. 39; *Bushman v. Bushman*, 311 Mo. 551, 279 S. W. 122, 126; *Manning v. Middle States Oil Corporation*, 15 Del. Ch. 321, 137 A. 79, 81; *Steele v. Allen*, 240 Mass. 394, 134 N. E. 401, 402, 20 A. L. R. 1203; *Oklahoma Moline Plow Co. v. Smith*, 41 Okl. 498, 139 P. 285, 287; *Woodman v. Butterfield*, 116 Me. 241, 101 A. 25, 29.

The mere fact that a corporation or an individual is unable to pay its debts upon a particular day does not constitute "insolvency." *Wiggins Co. v. McMinnville Motor Car Co.*, 111 Or. 123, 225 P. 314, 317, and a bank is not "insolvent" if its assets are sufficient to meet its obligations within a reasonable time, although it did not have cash sufficient for its daily needs. *Dunlap v. Seattle Nat. Bank*, 161 P. 364, 368, 93 Wash. 568.

A man may be fully able to pay his debts, if he will, and yet in the eye of the law he is insolvent, if his property is so situated that it cannot be reached by process of law, and subjected, without his consent, to the pay-

ment of his debts. *Pelham v. Chattahoochee Grocery Co.*, 156 Ala. 500, 47 So. 172.

Under *Bankr. Act July 1, 1898*, c. 541, § 1, cl. 15, 30 Stat. 545 (11 USCA § 1), and section 3a, cl. 4, as amended by *Act Feb. 5, 1903*, c. 487, § 2, 32 Stat. 797 (11 USCA § 21), a person shall be deemed insolvent within the provisions of the act whenever the aggregate of his property shall not at a fair valuation be sufficient in amount to pay his debts. In *re Wm. S. Butler Co.* (C. C. A.) 207 F. 705, 709; *Anderson v. Myers* (C. C. A.) 296 F. 101, 103; *Mountain States Power Co. v. A. L. Jordan Lumber Co.* (C. C. A.) 293 F. 502, 507.

As to the distinction between bankruptcy and insolvency, see *Bankruptcy*.

—Insolvency laws. *Insolvency laws* are generally statutory provisions by which the property of the debtor is surrendered for his debts; and upon this condition, and the assent of a certain proportion of his creditors, he is discharged from all further liabilities; *Bartlet v. Prince*, 9 Mass. 431; *Otis v. Warren*, 16 Mass. 53; 2 Kent 321; *Ingr. Insolv.* 9. Insolvency, according to some of the state statutes, may be of two kinds, voluntary and involuntary. *Voluntary insolvency* is the case in which the debtor institutes the proceedings, and is desirous of availing himself of the insolvent laws, and petitions for that purpose whereas *involuntary insolvency* is where the proceedings are instituted by the creditors *in invitum*, and so the debtor forced into insolvency.

—Insolvency fund. In English law. A fund, consisting of moneys and securities, which, at the time of the passing of the bankruptcy act, 1861, stood, in the Bank of England, to the credit of the commissioners of the insolvent debtors' court, and was, by the twenty-sixth section of that act, directed to be carried by the bank to the account of the accountant in bankruptcy. Provision has now been made for its transfer to the commissioners for the reduction of the national debt. *Robs. Bankr.* 20, 56.

—Open insolvency. The condition of one who has no property, within the reach of the law, applicable to the payment of any debt. *Hardesty v. Kinworthy*, 8 Blackf. (Ind.) 305; *Somerby v. Brown*, 73 Ind. 356.

INSOLVENT. (Lat. *in*, privative, *solvo*, to pay). The condition of a person who is unable to pay his debts. 2 Bla. Com. 285, 471; *Brouwer v. Harbeck*, 9 N. Y. 589.

One who cannot or does not pay; one who is unable to pay his debts; one who is not solvent; one who has not means or property sufficient to pay his debts. See *Insolvency*.

One who is unable to pay commercial paper in the due course of business. *Warren v. Nat. Bank*, 10 Blatchf. 493, Fed. Cas. No. 17,202; *Clarke v. Mott*, 4 Cal. Unrep. Cas. 80, 33 P. 884.

Other definitions

One who is unable to pay his debts as they fall due in the usual course of trade or business; 2 Kent 389; 1 M. & S. 338; Lee v. Kilbourn, 3 Gray (Mass.) 600; Mitchell v. Bradstreet Co., 116 Mo. 226, 22 S. W. 358, 724, 20 L. R. A. 138, 38 Am. St. Rep. 592; although his assets in value exceed the amount of his liability; In re Ramazzina, 110 Cal. 488, 42 P. 970; or the embarrassment is only temporary; Langham v. Lanier, 7 Tex. Civ. App. 4, 26 S. W. 255; but it is held that mere inability to pay debts promptly as they mature is not conclusive; Mensing v. Atchison (Tex. Civ. App.) 26 S. W. 509; and that one who has sufficient property subject to legal process to satisfy all legal demands is not insolvent; Smith v. Collins, 94 Ala. 394, 10 South. 334. A corporation is insolvent when its assets are insufficient for the payment of its debts, and it has ceased to do business, or has taken, or is in the act of taking, a step which will practically incapacitate it from conducting the corporate enterprise with reasonable prospect of success, or its embarrassments are such that early suspension and failure must ensue; Corey v. Wadsworth, 99 Ala. 68, 11 So. 350, 23 L. R. A. 618, 42 Am. St. Rep. 29. A bank is insolvent when the cash value of its assets realizable in a reasonable time is not equal to its liabilities exclusive of stock liabilities; Ellis v. State, 138 Wis. 513, 119 N. W. 1110, 20 L. R. A. (N. S.) 444, 131 Am. St. Rep. 1022.

INSOLVENT LAW. See Insolvency Laws.

INSPECT. To look, to view or oversee for the purpose of ascertaining the quality or condition of the thing. U. S. v. A. Bentley & Sons Co. (D. C.) 293 F. 229, 239.

INSPECTATOR. A prosecutor or adversary.

INSPECTION. "Inspection" means more than perusal, and means a critical examination, close or careful scrutiny, a strict or prying examination, or an investigation. In re Becker, 192 N. Y. S. 754, 756, 200 App. Div. 178.

The examination or testing of food, fluids, or other articles made subject by law to such examination, to ascertain their fitness for use or commerce. People v. Compagnie Generale Transatlantique (C. C.) 10 F. 361; Id., 107 U. S. 59, 2 S. Ct. 87, 27 L. Ed. 383; Turner v. Maryland, 107 U. S. 38, 2 S. Ct. 44, 27 L. Ed. 370.

The examination by a private person of public records and documents; or of the books and papers of his opponent in an action, for the purpose of better preparing his own case for trial.

Reasonable Inspection

A "reasonable inspection," as relates to duty of employer to provide employé with proper instrumentalities with which to work, does not mean such an inspection as would necessarily or infallibly disclose a defect if one existed, but only such inspection as reasonably prudent man, in the exercise of ordinary care, would make. Alabama & V. R. Co. v. Fountain, 145 Miss. 515, 111 So. 153, 154.

INSPECTION LAWS. Laws authorizing and directing the inspection and examination of various kinds of merchandise intended for sale, especially food, with a view to ascertaining its fitness for use, and excluding unwholesome or unmarketable goods from sale, and directing the appointment of official inspectors for that purpose. See Const. U. S. art. 1, § 10, cl. 2; Story, Const. § 1017, et seq. Gibbons v. Ogden, 9 Wheat. 202, 6 L. Ed. 23; Clintsman v. Northrop, 8 Cow. (N. Y.) 45; Patapsco Guano Co. v. Board of Agriculture, 171 U. S. 345, 18 Sup. Ct. 862, 41 L. Ed. 191; Turner v. State, 55 Md. 263.

INSPECTION OF DOCUMENTS. This phrase refers to the right of a party, in a civil action, to inspect and make copies of documents which are essential or material to the maintenance of his cause, and which are either in the custody of an officer of the law or in the possession of the adverse party.

INSPECTION, TRIAL BY. A mode of trial formerly in use in England, by which the judges of a court decided a point in dispute, upon the testimony of their own senses, without the intervention of a jury. This took place in cases where the fact upon which issue was taken must, from its nature, be evident to the court from ocular demonstration, or other irrefragable proof; and was adopted for the greater expedition of a cause. 3 Bl. Comm. 331.

INSPECTOR. The name given to certain officers whose duties are to examine and inspect things over which they have jurisdiction.

Officers whose duty it is to examine the quality of certain articles of merchandise, food, weights and measures, etc.

INSPECTORSHIP, DEED OF. In English law. An instrument entered into between an insolvent debtor and his creditors, appointing one or more persons to inspect and oversee the winding up of such insolvent's affairs on behalf of the creditors.

INSPEXIMUS (Lat.). We have seen. A word sometimes used in letters patent, reciting a grant, *inspeximus* such former grant, and so reciting it verbatim; it then grants such further privileges as are thought convenient. 5 Co. 54.

INSTALL. To place in a seat, give a place to, to set, place, or instate in an office, rank, or order, etc. State ex rel. Slattery v. Raupp, 303 Mo. 684, 263 S. W. 834, 835.

INSTALLATION. The ceremony of inducting or investing with any charge, office, or rank, as the placing a bishop into his see, a dean or prebendary into his stall or seat, or a knight into his order. Wharton.

The act by which an officer is put in public possession of the place he is to fill. The president of the United States, or a governor, is

installed into office, by being sworn agreeably to the constitution and laws.

Installation of machinery means to place in position where it will reasonably accomplish purposes for which it is set up. Long v. Ulmer Machinery Co., 77 Cal. App. 66, 246 P. 113, 116.

INSTALLMENTS. Different portions of the same debt payable at different successive periods as agreed. Brown.

INSTANCE.

In Pleading and Practice

Solicitation, properly of an earnest or urgent kind. An act is often said to be done at a party's "special *instance* and request." Miller v. Mutual Grocery Co., 214 Ala. 62, 106 So. 396.

"Instance" does not imply the same degree of obligation to obey as does "command." Feore v. Trammel, 213 Ala. 293, 104 So. 808, 813.

In the Civil and French Law

A general term, designating all sorts of actions and judicial demands. Dig. 44, 7, 58.

In Ecclesiastical Law

Causes of *instance* are those proceeded in at the solicitation of some party, as opposed to causes of office, which run in the name of the judge. Hallifax, Civil Law, p. 156.

In Scotch Law

That which may be insisted on at one diet or course of probation. Wharton.

INSTANCE COURT. In English law. That division or department of the court of admiralty which exercises all the ordinary admiralty jurisdiction, with the single exception of prize cases, the latter belonging to the branch called the "Prize Court." The term is sometimes used in American law for purposes of explanation, but has no proper application to admiralty courts in the United States, where the powers of both instance and prize courts are conferred without any distinction. 3 Kent, Comm. 355, 378; The Betsey, 3 Dall. 6, 1 L. Ed. 485; The Emulous, 1 Gall. 563, Fed. Cas. No. 4,479.

INSTANCIA. In Spanish law. The institution and prosecution of a suit from its commencement until definitive judgment. The first instance, "*primera instancia*," is the prosecution of the suit before the judge competent to take cognizance of it at its inception; the second instance, "*secunda instancia*," is the exercise of the same action before the court of appellate jurisdiction; and the third instance, "*tercera instancia*," is the prosecution of the same suit, either by an application of revision before the appellate tribunal that has already decided the cause, or before some higher tribunal, having jurisdiction of the same. Escriche.

Instans est finis unius temporis et principium alterius. An instant is the end of one time and the beginning of another. Co. Litt. 185.

INSTANT. Present, current, as instant case. Webster, Dict.

INSTANTANEOUS. An "instantaneous" crime is one which is fully consummated or completed in and by a single act (such as arson or murder) as distinguished from one which involves a series or repetition of acts. See U. S. v. Owen (D. C.) 32 Fed. 537.

A death resulting within a few moments from a continuing injury is "instantaneous" within a statute respecting right of action for death. Beach v. City of St. Joseph, 192 Mich. 296, 158 N. W. 1045, 1046.

INSTANTER. Immediately; instantly; forthwith; without delay. Trial *instanter* was had where a prisoner between attainder and execution pleaded that he was not the same who was attainted.

When a party is ordered to plead *instanter*, he must plead the same day. The term is usually understood to mean within twenty-four hours. Rex v. Johnson, 6 East, 583; Smith v. Little, 53 Ill. App. 160; State v. Clevenger, 20 Mo. App. 627; Fentress v. State, 16 Tex. App. 83; Champlin v. Champlin, 2 Edw. Ch. (N. Y.) 329.

INSTANTLY. Immediately; directly; without delay; at once.

INSTAR. Lat. Likeness; the likeness, size, or equivalent of a thing. *Instar dentium*, like teeth. 2 Bl. Comm. 295. *Instar omnium*, equivalent or tantamount to all. Id. 146; 3 Bl. Comm. 231.

INSTAURUM. In old English deeds. A stock or store of cattle, and other things; the whole stock upon a farm, including cattle, wagons, plows, and all other implements of husbandry. 1 Mon. Angl. 548b; Fleta, lib. 2, c. 72, § 7. *Terra instaurata*, land ready stocked.

INSTIGATION. Incitation; urging; solicitation. The act by which one incites another to do something, as to commit some crime or to commence a suit. State v. Fraker, 148 Mo. 143, 49 S. W. 1017.

INSTIRPARE. To plant or establish.

INSTITOR. Lat. In the civil law. A clerk in a store; an agent.

INSTITORIA ACTIO. Lat. In the civil law. The name of an action given to those who had contracted with an *institor* (*q. v.*) to compel the principal to performance. Inst. 4, 7, 2; Dig. 14, 3, 1; Story, Ag. § 426.

INSTITORIAL POWER. The charge given to a clerk to manage a shop or store. 1 Bell, Comm. 506, 507.

INSTITUTE, v. To inaugurate or commence; as to institute an action. Com. v. Duane, 1

Binn. (Pa.) 608, 2 Am. Dec. 497; Franks v. Chapman, 61 Tex. 580; Post v. U. S., 161 U. S. 583, 16 Sup. Ct. 611, 40 L. Ed. 816; Ballard v. Cash, 191 Ky. 312, 230 S. W. 48, 49; Latham v. Latham, 178 N. C. 12, 100 S. E. 131, 132.

To set up, to originate, to introduce. Brown v. City of Portland, 97 Or. 600, 190 P. 722, 724.

To nominate, constitute, or appoint; as to institute an heir by testament. Dig. 28, 5, 65.

INSTITUTE, n.

In the Civil Law

A person named in the will as heir, but with a direction that he shall pass over the estate to another designated person, called the "substitute."

In Scotch Law

The person to whom an estate is first given by destination or limitation; the others, or the heirs of tailzie, are called "substitutes."

INSTITUTES. A name sometimes given to text-books containing the elementary principles of jurisprudence, arranged in an orderly and systematic manner. For example, the Institutes of Justinian, of Gaius, of Lord Coke.

—**Institutes of Gaius.** An elementary work of the Roman jurist Gaius; important as having formed the foundation of the Institutes of Justinian, (*q. v.*) These Institutes were discovered by Niebuhr in 1816, in a *codex rescriptus* of the library of the cathedral chapter at Verona, and were first published at Berlin in 1820. Two editions have since appeared. Mackeld. Rom. Law, § 54.

—**Institutes of Justinian.** One of the four component parts or principal divisions of the *Corpus Juris Civilis*, being an elementary treatise on the Roman law, in four books. This work was compiled from earlier sources, (resting principally on the Institutes of Gaius,) by a commission composed of Tribonian and two others, by command and under direction of the emperor Justinian, and was first published November 21, A. D. 533.

—**Institutes of Lord Coke.** The name of four volumes by Lord Coke, published A. D. 1628. The first is an extensive comment upon a treatise on tenures, compiled by Littleton, a judge of the common pleas, *temp.* Edward IV. This comment is a rich mine of valuable common-law learning, collected and heaped together from the ancient reports and Year Books, but greatly defective in method. It is usually cited by the name of "Co. Litt.," or as "1 Inst." The second volume is a comment upon old acts of parliament, without systematic order; the third a more methodical treatise

on the pleas of the crown; and the fourth an account of the several species of courts. These are cited as 2, 3, or 4 "Inst.," without any author's name. Wharton.

—**Theophilus' Institutes.** A paraphrase of Justinian, made, it is believed, soon after A. D. 533. This paraphrase maintained itself as a manual of law until the eighth or tenth century. This text was used in the time of Hexabiblos of Harmenipulus, the last of the Greek jurists. It is also conjectured that Theophilus was not the editor of his own paraphrase, but that it was drawn up by some of his pupils after his explanations and lectures, inasmuch as it contains certain barbarous phrases, and the texts of the manuscripts vary greatly from each other.

INSTITUTIO HÆREDIS. Lat. In Roman law. The appointment of the *hæres* in the will. It corresponds very nearly to the nomination of an executor in English law. Without such an appointment the will was void at law, but the *prætor* (*i. e.*, equity) would, under certain circumstances, carry out the intentions of the testator. Brown.

INSTITUTION. The commencement or inauguration of anything. The first establishment of a law, rule, rite, etc. Any custom, system, organization, etc., firmly established. An elementary rule or principle.

An establishment, specially one of public character or one affecting a community. State v. Clausen, 85 Wash. 260, 148 P. 28, 32, Ann. Cas. 1916B, 810.

The term "institution" is sometimes used as descriptive of an establishment or place where the business or operations of a society or association is carried on; at other times it is used to designate the organized body. Benjamin Rose Institute v. Myers, 92 Ohio St. 252, 110 N. E. 924, 926, 927, L. R. A. 1916D, 1170; Bartling v. Wait, 96 Neb. 532, 148 N. W. 507, 509.

In Practice

The commencement of an action or prosecution; as, A. B. has instituted a suit against C. D. to recover damages for trespass.

In Political Law

A law, rite, or ceremony enjoined by authority as a permanent rule of conduct or of government. Webster.

An organized society, established either by law or the authority of individuals, for promoting any object, public or social. Dodge v. Williams, 46 Wis. 70, 1 N. W. 92, 50 N. W. 1103; State v. Edmondson, 88 Ohio St. 625, 106 N. E. 41, 44.

A system or body of usages, laws, or regulations, of extensive and recurring operation, containing within itself an organism by which it effects its own independent action, continuance, and generally its own further development. Its object is to generate, effect, regulate, or sanction a succession of acts, transactions, or productions of a peculiar kind or

class. We are likewise in the habit of calling single laws or usages "institutions," if their operation is of vital importance and vast scope, and if their continuance is in a high degree independent of any interfering power. Lieb. Civil Lib. 300.

In Corporation Law

An organization or foundation, for the exercise of some public purpose or function; as an asylum or a university. By the term "institution" in this sense is to be understood an establishment or organization which is permanent in its nature, as distinguished from an enterprise or undertaking which is transient and temporary. *Humphries v. Little Sisters of the Poor*, 29 Ohio St. 206; *Indianapolis v. Sturdevant*, 24 Ind. 391.

In Ecclesiastical Law

A kind of investiture of the spiritual part of the benefice, as induction is of the temporal; for by institution the care of the souls of the parish is committed to the charge of the clerk. Brown.

In Civil Law

The appointment of an heir; the act by which a testator nominates one or more persons to succeed him in all his rights active and passive. Halifax, Anal. 39; Pothier, *Tr. des Donations testamentaires*, c. 2, s. 1, § 1; La Civ. Code, art. 1598 (Civ. Code, art. 1605); Dig. 28. 5; 1, 1; 28. 6. 1, 2, § 4.

In Jurisprudence

The plural form of this word ("institutions") is sometimes used as the equivalent of "institutes," to denote an elementary textbook of the law.

In General

—**Public Institution.** One which is created and exists by law or public authority, e. g., an asylum, charity, college, university, school-house, etc. *Henderson v. Shreveport Gas, Electric Light & Power Co.*, 134 La. 39, 63 So. 616, 618, 51 L. R. A. (N. S.) 448.

INSTITUTIONES. Lat. Works containing the elements of any science; institutions or institutes. One of Justinian's principal law collections, and a similar work of the Roman jurist Gaius, are so entitled. See Institutes.

INSTRUCT. To convey information as a client to an attorney, or as an attorney to a counsel; to authorize one to appear as advocate; to give a case in charge to the jury.

INSTRUCTION.

In French Criminal Law

The first process of a criminal prosecution. It includes the examination of the accused, the preliminary interrogation of witnesses, collateral investigations, the gathering of evidence, the reduction of the whole to or-

der, and the preparation of a document containing a detailed statement of the case, to serve as a brief for the prosecuting officers, and to furnish material for the indictment.

—**Juges d'instruction.** In French law. Officers subject to the *procureur impérial* or *général*, who receive in cases of criminal offenses the complaints of the parties injured, and who summon and examine witnesses upon oath, and, after communication with the *procureur impérial*, draw up the forms of accusation. They have also the right, subject to the approval of the same superior officer, to admit the accused to bail. They are appointed for three years, but are re-eligible for a further period of office. They are usually chosen from among the regular judges. Brown.

In Common Law

Order given by a principal to his agent in relation to the business of his agency.

In Practice

A detailed statement of the facts and circumstances constituting a cause of action made by a client to his attorney for the purpose of enabling the latter to draw a proper declaration or procure it to be done by a pleader.

In Trial Practice

A direction given by the judge to the jury concerning the law of the case; a statement made by the judge to the jury informing them of the law applicable to the case in general or some aspect of it; an exposition of the rules or principles of law applicable to the case or some branch or phase of it, which the jury are bound to accept and apply. *Lehman v. Hawks*, 121 Ind. 541, 23 N. E. 670; *Boggs v. U. S.*, 10 Okl. 424, 63 P. 969; *Lawler v. McPheeters*, 73 Ind. 579; *Davis v. State*, 155 Ark. 245, 244 S. W. 750, 752; *Hanson v. Kent & Purdy Paint Co.*, 36 Okl. 583, 129 P. 7.

The generally accepted meaning of the word instruction, when applied to courts, means a direction that is to be obeyed. *State v. Downing*, 23 Idaho, 540, 130 P. 461, 462.

—**Peremptory instruction.** An instruction given by a court to a jury which the latter must obey implicitly; as an instruction to return a verdict for the defendant, or for the plaintiff, as the case may be.

INSTRUMENT. A written document; a formal or legal document in writing, such as a contract, deed, will, bond, or lease. *State v. Phillips*, 157 Ind. 481, 62 N. E. 12; *Cardenas v. Miller*, 108 Cal. 250, 39 P. 783, 49 Am. St. Rep. 84; *Benson v. McMahon*, 127 U. S. 457, 8 S. Ct. 1240, 32 L. Ed. 234; *Abbott v. Campbell*, 69 Neb. 371, 95 N. W. 592.

Anything reduced to writing, a document of a formal or solemn character, a writing given as a means of affording evidence. *Smith v. Smith* (Ind. App.) 110 N. E. 1013, 1014.

A document or writing which gives formal expression to a legal act or agreement, for the purpose of creating, securing, modifying, or terminating a right; a writing executed and delivered as the evidence of an act or agreement.

In the law of evidence. Anything which may be presented as evidence to the senses of the adjudicating tribunal. 1 Whart. Ev. § 615.

INSTRUMENT OF APPEAL. The document by which an appeal is brought in an English matrimonial cause from the president of the probate, divorce, and admiralty division to the full court. It is analogous to a petition. Browne, Div. 322.

INSTRUMENT OF EVIDENCE. Instruments of evidence are the *media* through which the evidence of facts, either disputed or required to be proved, is conveyed to the mind of a judicial tribunal; and they comprise persons and living things as well as writings. Best, Ev. § 123, 1 Whart. Ev. § 615.

INSTRUMENT OF SAISINE. An instrument in Scotland by which the delivery of "saisine" (*i. e.*, seisin, or the feudal possession of land) is attested. It is subscribed by a notary, in the presence of witnesses, and is executed in pursuance of a "precept of saisine," whereby the "grantor of the deed" desires "any notary public to whom these presents may be presented" to give saisine to the intended grantee or grantees. It must be entered and recorded in the registers of saisines. Mozley & Whitley.

INSTRUMENTA. Lat. That kind of evidence which consists of writings not under seal; as court-rolls, accounts, and the like. 3 Co. Litt. 487.

INSTRUMENTAL. Serviceable, helpful. Culp v. Browne (Tex. Civ. App.) 235 S. W. 675, 678.

INSUBORDINATION. "Insubordination" is the state of being insubordinate; disobedience to constituted authority. United States v. Krafft (C. C. A.) 249 F. 919, 925, L. R. A. 1918F, 402.

Refusal to obey some order which a superior officer is entitled to give and have obeyed. Garvin v. Chambers, 195 Cal. 212, 232 P. 696, 701; Sheehan v. Board of Police Com'rs of City and County of San Francisco, 197 Cal. 70, 239 P. 844, 847.

"Insubordination" by a servant imports a willful disregard of express or implied directions of the employer and refusal to obey reasonable orders. MacIntosh v. Abbot, 231 Mass. 180, 120 N. E. 383.

Insubordination is not synonymous with incompetency. Cafferty v. Southern Tier Pub. Co., 173 N. Y. S. 774, 186 App. Div. 136.

INSUCKEN MULTURES. A quantity of corn paid by those who are thirled to a mill. See Thirlage.

INSUFFICIENCY. In equity pleading. The legal inadequacy of an answer in equity which does not fully and specifically reply to some one or more of the material allegations, charges, or interrogatories set forth in the bill. White v. Joy, 13 N. Y. 89; Houghton v. Townsend, 8 How. Prac. (N. Y.) 446; Hill v. Fair Haven & W. R. Co., 75 Conn. 177, 52 A. 725.

INSULA. Lat. An island; a house not connected with other houses, but separated by a surrounding space of ground. Calvin.

INSULATE. To separate from conducting bodies by means of nonconductors, as to prevent the transfer of electricity or heat. Mauney v. Electric Const. Co., 210 Ala. 554, 98 So. 874, 877; Terre Haute, I. & E. Traction Co. v. Hayes, 195 Ind. 638, 145 N. E. 569, 570.

INSUPER. Lat. Moreover; over and above. An old exchequer term, applied to a charge made *upon* a person in his account. Blount.

INSURABLE INTEREST. Such a real and substantial interest in specific property as will prevent a contract to indemnify the person interested against its loss from being a mere wager policy. Mutual F. Ins. Co. v. Wagner (Pa.) 7 A. 104; Insurance Co. v. Brooks, 131 Ala. 614, 30 So. 876; Berry v. Insurance Co., 132 N. Y. 49, 30 N. E. 254, 28 Am. St. Rep. 548; Strong v. Insurance Co., 10 Pick. (Mass.) 43, 20 Am. Dec. 507; Insurance Co. v. Winsmore, 124 Pa. 61, 16 A. 516.

Such an interest as will make the loss of the property of pecuniary damage to the insured; a right, benefit, or advantage arising out of the property or dependent thereon, or any liability in respect thereof, or any relation thereto or concern therein, of such a nature that it might be so affected by the contemplated peril as to directly damnify the insured. 2 Joyce, Ins. §§ 887, 888. German Ins. Co. v. Hyman, 34 Neb. 704, 52 N. W. 401, 402; Getchell v. Mercantile & Manufacturers' Mut. Fire Ins. Co., 109 Me. 274, 83 A. 801, 802, 42 L. R. A. (N. S.) 135, Ann. Cas. 1913E, 738; Plum Trees Lime Co. v. Keeler, 92 Conn. 1, 101 A. 509, 511, Ann. Cas. 1918E, 831; Banner Laundry Co. v. Great Eastern Casualty Co., 148 Minn. 29, 180 N. W. 997, 999; Tischendorf v. Lynn Mut. Fire Ins. Co., 190 Wis. 33, 208 N. W. 917, 919, 45 A. L. R. 856.

Every interest in property, or any relation thereto, or liability in respect thereof, of such a nature that a contemplated peril might directly damnify the insured, is an insurable interest. Civil Code Cal. § 2546; Rev. Codes N. D. 1899, § 4450 (Comp. Laws 1913, § 6466); Civ. Code S. D. 1903, § 1802 (Rev. Code 1919, § 1374); Civ. Code Mont. 1895, § 3400 (Rev. Codes 1921, § 8070).

In the case of life insurance, a reasonable expectation of pecuniary benefit from the continued life of another; also, a reasonable ground, founded upon the relation of the parties to each other, either pecuniary or of blood or affinity, to expect some benefit or advantage from the continuance of the life of the assured. *Insurance Co. v. Schaefer*, 94 U. S. 460, 24 L. Ed. 251; *Warnock v. Davis*, 104 U. S. 779, 26 L. Ed. 924; *Rombach v. Insurance Co.*, 35 La. Ann. 234, 48 Am. Rep. 239; *State v. Willett*, 171 Ind. 296, 86 N. E. 68, 71, 23 L. R. A. (N. S.) 197; *Brett v. Warnick*, 44 Or. 511, 75 P. 1061, 1064, 102 Am. St. Rep. 639; *First Nat. Bank of Lockney v. Livesay (Tex.)* 37 S.W.(2d) 765, 767; *National Life & Accident Ins. Co. v. Ball*, 157 Miss. 163, 127 So. 268; *Colgrove v. Lowe*, 343 Ill. 360, 175 N. E. 569, 572.

INSURANCE. A contract whereby, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by specified perils. The party agreeing to make the compensation is usually called the "insurer" or "underwriter;" the other, the "insured" or "assured;" the agreed consideration, the "premium;" the written contract, a "policy;" the events insured against, "risks" or "perils;" and the subject, right, or interest to be protected, the "insurable interest." 1 Phil. Ins. §§ 1-5.

Insurance is a contract whereby one undertakes to indemnify another against loss, damage, or liability arising from an unknown or contingent event. Civil Code, Cal. § 2527; Civil Code, Dak. § 1474 (Comp. Laws 1913, N. D. § 6458; Rev. Code 1919, S. D. § 1365). See *People v. Rose*, 174 Ill. 310, 51 N. E. 246, 44 L. R. A. 124; *Barnes v. People*, 168 Ill. 425, 48 N. E. 91; *Com. v. Wetherbee*, 105 Mass. 160; *State v. Vigilant Ins. Co.*, 30 Kan. 585, 2 P. 840; *Com. v. Provident Bicycle Ass'n*, 178 Pa. 636, 36 A. 197, 36 L. R. A. 589; *Com. v. Equitable Ben. Ass'n*, 137 Pa. 412, 18 A. 1112; *Tyler v. New Amsterdam F. Ins. Co.*, 4 Rob. (N. Y.) 155; *Commonwealth v. Metropolitan Life Ins. Co.*, 254 Pa. 510, 98 A. 1072, 1073.

Classification

—**Accident insurance** is that form of insurance which undertakes to indemnify the assured against expense, loss of time, and suffering resulting from accidents causing him physical injury, usually by payment at a fixed rate per week while the consequent disability lasts, and sometimes including the payment of a fixed sum to his heirs in case of his death by accident within the term of the policy. See *Employers' Liability Assur. Corp. v. Merrill*, 155 Mass. 404, 29 N. E. 529.

—**Burglary insurance.** Insurance against loss of property by the depredations of burglars and thieves.

—**Casualty insurance.** This term is generally used as equivalent to "accident" insurance.

See *State v. Federal Inv. Co.*, 48 Minn. 110, 50 N. W. 1028. But in some states it means insurance against accidental injuries to property, as distinguished from accidents resulting in bodily injury or death. See *Employers' Liability Assur. Corp. v. Merrill*, 155 Mass. 404, 29 N. E. 529.

—**Commercial insurance** is a term applied to indemnity agreements, in the form of insurance bonds or policies, whereby parties to commercial contracts are to a designated extent guaranteed against loss by reason of a breach of contractual obligations on the part of the other contracting party; to this class belong policies of contract credit and title insurance. *Cowles v. Guaranty Co.*, 32 Wash. 120, 72 Pac. 1032, 98 Am. St. Rep. 838.

—**Employers' insurance.** Employers' insurance policies are of two sorts, the "liability" contract, which obligates the insurer to pay the loss without first requiring that the assured do so, and the "indemnity" contract, which obligates the insurer to reimburse only after the employer has paid the debt to the injured employee. *Davies v. Maryland Casualty Co.*, 154 P. 1116, 1117, 89 Wash. 571, L. R. A. 1916D, 395, 398.

—**Employer's liability insurance.** In this form of insurance the risk insured against is the liability of the assured to make compensation or pay damages for an accident, injury, or death occurring to a servant or other employee in the course of his employment, either at common law or under statutes imposing such liability on employers.

—**Fidelity insurance** is that form of insurance in which the insurer undertakes to guaranty the fidelity of an officer, agent, or employee of the assured, or rather to indemnify the latter for losses caused by dishonesty or a want of fidelity on the part of such a person. See *People v. Rose*, 174 Ill. 310, 51 N. E. 246, 44 L. R. A. 124.

—**Fire insurance.** A contract of insurance by which the underwriter, in consideration of the premium, undertakes to indemnify the insured against all losses in his houses, buildings, furniture, ships in port, or merchandise, by means of accidental fire happening within a prescribed period. 3 Kent, Comm. 370; *Mutual L. Ins. Co. v. Allen*, 138 Mass. 27, 52 Am. Rep. 245; *Durham v. Fire & Marine Ins. Co. (C. C.)* 22 Fed. 470.

—**Fraternal insurance.** The form of life or accident insurance furnished by a fraternal beneficial association, consisting in the undertaking to pay to a member, or his heirs in case of death, a stipulated sum of money, out of funds raised for that purpose by the payment of dues or assessments by all the members of the association.

—**Guaranty or fidelity insurance** is a contract whereby one, for a consideration, agrees to

indemnify another against loss arising from the want of integrity or fidelity of employees and persons holding positions of trust, or embezzlements by them, or against the insolvency of debtors, losses in trade, loss by non-payment of notes, or against breaches of contract. See *People v. Rose*, 174 Ill. 310, 51 N. E. 246, 44 L. R. A. 124; *Cowles v. United States Fidelity & Guaranty Co.*, 32 Wash. 120, 72 Pac. 1032; *People v. Potts*, 106 N. E. 524, 526, 264 Ill. 522; *Employers' Liability Assur. Corporation v. Citizens' Nat. Bank of Peru*, 151 N. E. 396, 399, 85 Ind. App. 169; *O'Shea v. North American Hotel Co.*, 191 N. W. 321, 327, 109 Neb. 317; *John Church Co. v. Aetna Indemnity Co.*, 80 S. E. 1093, 1095, 13 Ga. App. 826.

—**Industrial insurance.** Small policies issued in consideration of weekly premium payments. *Life & Casualty Ins. Co. v. King*, 195 S. W. 585, 588, 137 Tenn. 685.

—**Life insurance.** That kind of insurance in which the risk contemplated is the death of a particular person; upon which event (if it occurs within a prescribed term, or, according to the contract, whenever it occurs) the insurer engages to pay a stipulated sum to the legal representatives of such person, or to a third person having an insurable interest in the life of such person.

—**Live-stock insurance.** Insurance upon the lives, health, and good condition of domestic animals of the useful kinds, such as horses and cows.

—**Marine insurance.** A contract whereby, for a consideration stipulated to be paid by one interested in a ship, freight, or cargo, subject to the risks of marine navigation, another undertakes to indemnify him against some or all of those risks during a certain period or voyage. 1 Phil. Ins. 1. A contract whereby one party, for a stipulated premium, undertakes to indemnify the other against certain perils or sea-risks to which his ship, freight, and cargo, or some of them, may be exposed during a certain voyage, or a fixed period of time. 3 Kent, Comm. 253. Marine insurance is an insurance against risks connected with navigation, to which a ship, cargo, freightage, profits, or other insurable interest in movable property may be exposed during a certain voyage or a fixed period of time. Civ. Code Cal. § 2655. A contract of marine insurance is one by which a person or corporation, for a stipulated premium, insures another against losses occurring by the casualties of the sea. Code Ga. 1882, § 2824. (Civ. Code 1910, § 2515).

—**Old line life insurance.** Insurance on a level or flat rate plan where, for a fixed premium payable without condition at stated intervals, a certain sum is to be paid upon death without condition. *Mattero v. Central Life Ins. Co.*, 215 S. W. 750, 751, 202 Mo. App. 293;

McPike v. Supreme Ruling of the Fraternal Mystic Circle, 173 S. W. 71, 187 Mo. App. 679.

—**Plate-glass insurance.** Insurance against loss from the accidental breaking of plate-glass in windows, doors, show-cases, etc.

—**Steam boiler insurance.** Insurance against the destruction of steam boilers by their explosion, sometimes including indemnity against injuries to other property resulting from such explosion.

—**Title insurance.** Insurance against loss or damage resulting from defects or failure of title to a particular parcel of realty, or from the enforcement of liens existing against it at the time of the insurance. This form of insurance is taken out by a purchaser of the property or one loaning money on mortgage, and is furnished by companies specially organized for the purpose, and which keep complete sets of abstracts or duplicates of the records, employ expert title-examiners, and prepare conveyances and transfers of all sorts. A "certificate of title" furnished by such a company is merely the formally expressed professional opinion of the company's examiner that the title is complete and perfect (or otherwise, as stated), and the company is liable only for a want of care, skill, or diligence on the part of its examiner; whereas an "insurance of title" warrants the validity of the title in any and all events. It is not always easy to distinguish between such insurance and a "guaranty of title" given by such a company, except that in the former case the maximum limit of liability is fixed by the policy, while in the latter case the undertaking is to make good any and all loss resulting from defect or failure of the title.

—**Tornado insurance.** Insurance against injuries to crops, timber, houses, farm buildings, and other property from the effects of tornadoes, hurricanes, and cyclones.

Other Compound and Descriptive Terms

—**Additional insurance.** To constitute prohibited "additional insurance" both policies must be on same subject-matter and on same interest therein. *Clower v. Fidelity-Phenix Fire Ins. Co. of New York*, 220 Mo. App. 1112, 296 S. W. 257, 260; *Hackett v. Cash*, 72 So. 52, 54, 196 Ala. 403; *Hurst Home Ins. Co. v. Deatley*, 194 S. W. 910, 911, 175 Ky. 728, L. R. A. 1917E, 750.

—**Assessment life insurance policy.** A contract by which payments to insured are not unalterably fixed, but dependent on collection of assessments necessary to pay amounts insured, while an "old-line policy" unalterably fixes premiums and definitely and unchangeably fixes insurer's liability. *Clark v. Metropolitan Life Ins. Co.*, 135 A. 357, 358, 126 Me. 7.

—Concurrent insurance. That which to any extent insures the same interest against the same casualty, at the same time, as the primary insurance, on such terms that the insurers would bear proportionately the loss happening within the provisions of both policies. *Rubber Co. v. Assur. Co.*, 64 N. J. Law, 580, 46 A. 777; *Corkery v. Insurance Co.*, 99 Iowa, 382, 68 N. W. 792; *Coffee Co. v. Insurance Co.*, 110 Iowa, 423, 81 N. W. 707, 80 Am. St. Rep. 311; *McPherson Mercantile Co. v. Reliance Ins. Co. of Philadelphia*, 101 Kan. 522, 168 P. 323, 325; *Globe & Rutgers Fire Ins. Co. v. Alaska-Portland Packers' Ass'n (C. C. A.)* 205 F. 32, 34, 49 L. R. A. (N. S.) 374; *Connecticut Fire Ins. Co. v. Union Mercantile Co.*, 161 Ky. 718, 171 S. W. 407, 409; *Camden Fire Ins. Ass'n v. Sutherland (Tex. Civ. App.)* 278 S. W. 907, 914.

—Double insurance. See Double.

—General and special insurance. In marine insurance a general insurance is effected when the perils insured against are such as the law would imply from the nature of the contract considered in itself and supposing none to be specified in the policy; in the case of special insurance, further perils (in addition to implied perils) are expressed in the policy. *Vandenhuevel v. United Ins. Co.*, 2 Johns. Cas. (N. Y.) 127.

—Insurance adjuster. One undertaking to ascertain and report the actual loss to the subject-matter of insurance due to the peril insured against. *Laws Wash.* 1911, p. 163, § 2.

—Insurance agent. An agent employed by an insurance company to solicit risks and effect insurances. Agents of insurance companies are called "general agents" when clothed with the general oversight of the companies' business in a state or large section of country, and "local agents" when their functions are limited and confined to some particular locality. See *McKinney v. Alton*, 41 Ill. App. 512; *State v. Accident Ass'n*, 67 Wis. 624, 31 N. W. 229; *Civ. Code Ga.* 1895, § 2064 (*Civ. Code* 1910, § 2443).

—Insurance broker. A broker through whose agency insurances are effected. 3 Kent, *Comm.* 260; *Farber v. American Automobile Ins. Co.*, 191 Mo. App. 307, 177 S. W. 675, 679; *Rosedale Securities Co. v. Home Ins. Co. of New York*, 120 Kan. 415, 243 P. 1023, 1024; *State v. Geddes*, 127 Md. 166, 96 A. 353. See Broker.

—Insurance commissioner. A public officer in several of the states, whose duty is to supervise the business of insurance as conducted in the state by foreign and domestic companies, for the protection and benefit of policy-holders, and especially to issue licenses, make periodical examinations into the condition of such companies, or receive, file, and

publish periodical statements of their business as furnished by them.

—Insurance company. A corporation or association whose business is to make contracts of insurance. They are either mutual companies or stock companies. A "mutual" insurance company is one whose fund for the payment of losses consists not of capital subscribed or furnished by outside parties, but of premiums mutually contributed by the parties insured, or in other words, one in which all persons insured become members of the association and contribute either cash or assessable premium notes, or both, to a common fund, out of which each is entitled to indemnity in case of loss. *Mygatt v. Insurance Co.*, 21 N. Y. 65; *Insurance Co. v. Hoge*, 21 How. 35, 16 L. Ed. 61; *Given v. Rettew*, 162 Pa. 638, 29 A. 703. A "stock" company is one organized according to the usual form of business corporations, having a capital stock divided into shares, which, with current income and accumulated surplus, constitutes the fund for the payment of losses, policy-holders paying fixed premiums and not being members of the association unless they also happen to be stockholders.

—Insurance policy. See Policy.

—Insurance premium. The consideration paid by insured to insurer for insurance protection. *Alyea-Nichols Co. v. U. S.* (D. C.) 12 F.(2d) 998, 1005. See Premium.

—Mutual insurance. That form of insurance in which each person insured becomes a member of the company, and the members reciprocally engage to indemnify each other against losses, any loss being met by an assessment laid upon all the members. A mutual life insurance association is one in which the individual member is at once an insurer of his fellow members and in turn is insured by them. *Filley v. Illinois Life Ins. Co.*, 93 Kan. 193, 144 P. 257, 259, L. R. A. 1915D, 134.

—Over-insurance. Insurance effected upon property, either in one or several companies, to an amount which, separately or in the aggregate, exceeds the actual value of the property.

—Reinsurance. Insurance of an insurer; a contract by which an insurer procures a third person (usually another insurance company) to insure him against loss or liability by reason of the original insurance. *Civ. Code Cal.* § 2646; *Insurance Co. v. Insurance Co.*, 38 Ohio St. 15, 43 Am. Rep. 413.

—Specific insurance. That provided by a policy under the terms of which the insurance in the event of loss is to be distributed among the several items of property, a specific amount to each item. *Wilson & Co. v. Hartford Fire Ins. Co.*, 300 Mo. 1, 254 S. W. 266, 282.

—**Term insurance.** Insurance for a fixed time. *Gilley v. Missouri State Life Ins. Co.*, 116 Tex. 43, 285 S. W. 807. Insurance covering only losses occurring before expiration of stated term. *Ætna Casualty & Surety Co. v. Commercial State Bank of Rantoul (D. C.)* 13 F.(2d) 474, 476.

INSURE. To engage to indemnify a person against pecuniary loss from specified perils. To act as an insurer. *U. S. Fidelity & Guaranty Co. v. Williams*, 148 Md. 289, 129 A. 660, 664.

INSURED. The person who obtains insurance on his property, or upon whose life an insurance is effected. *Kierce v. Lumbermen's Ins. Co. of Philadelphia*, 162 Minn. 277, 202 N. W. 730, 731; *Healy v. Prudential Ins. Co. of America (Sup.)* 140 N. Y. S. 505, 506; *Thompson v. Northwestern Mut. Life Ins. Co.*, 161 Iowa, 446, 143 N. W. 518.

INSURER. The underwriter or insurance company with whom a contract of insurance is made.

The person who undertakes to indemnify another by a contract of insurance is called the "insurer," and the person indemnified is called the "insured." Civil Code Cal. § 2538.

INSURGENT. One who participates in an insurrection; one who opposes the execution of law by force of arms, or who rises in revolt against the constituted authorities.

A distinction is often taken between "insurgent" and "rebel," in this: that the former term is not necessarily to be taken in a bad sense, inasmuch as an insurrection, though extralegal, may be just and timely in itself; as where it is undertaken for the overthrow of tyranny or the reform of gross abuses. According to Webster, an insurrection is an incipient or early stage of a rebellion.

INSURRECTION. A rebellion, or rising of citizens or subjects in resistance to their government. See Insurgent.

Insurrection shall consist in any combined resistance to the lawful authority of the state, with intent to the denial thereof, when the same is manifested, or intended to be manifested, by acts of violence. Code Ga. 1882, § 4315 (Pen. Code 1910, § 55). And see *Allegheny County v. Gibson*, 90 Pa. 417, 35 Am. Rep. 670; *Boon v. Ætna Ins. Co.*, 40 Conn. 584; *In re Charge to Grand Jury (D. C.)* 62 Fed. 830.

INTAKERS. In old English law. A kind of thieves inhabiting Redesdale, on the extreme northern border of England; so called because they *took in* or received such booties of cattle and other things as their accomplices, who were called "outparters," brought in to them from the borders of Scotland. *Spelman; Cowell.*

INTAKES. Temporary inclosures made by customary tenants of a manor under a special custom authorizing them to inclose part

of the waste until one or more crops have been raised on it. *Elton, Common*, 277.

INTANGIBLE PROPERTY. Used chiefly in the law of taxation, this term means such property as has no intrinsic and marketable value, but is merely the representative or evidence of value, such as certificates of stock, bonds, promissory notes, and franchises. See *Western Union Tel. Co. v. Norman (C. C.)* 77 Fed. 26; *In re Hanson's Estate*, 119 Misc. 100, 195 N. Y. S. 255; *Standard Oil Co. v. Howe (C. C. A.)* 257 F. 481, 485; *Appeal of Silberman*, 105 Conn. 192, 134 A. 778, 785; *Moulton v. Long*, 243 Mass. 129, 137 N. E. 297, 298; *Welch v. City of Boston*, 221 Mass. 155, 109 N. E. 174, Ann. Cas. 1917D, 946; *Illinois Cent. R. R. Co. v. Carr*, 302 Ill. 172, 134 N. E. 138, 141; *In re Zook's Estate*, 317 Mo. 986, 296 S. W. 778, 779; *People ex rel. Hanover Nat. Bank of City of New York v. Goldfogle*, 234 N. Y. 345, 137 N. E. 611, 612; *City of Richmond v. Drewry-Hughes Co.*, 122 Va. 178, 90 S. E. 635; *In re Boshart's Estate*, 107 Misc. 697, 177 N. Y. S. 567, 573.

INTEGER. Lat. Whole; untouched. *Res integra* means a question which is new and undecided. 2 Kent, Comm. 177.

INTEGRITY. As occasionally used in statutes prescribing the qualifications of public officers, trustees, etc., this term means soundness of moral principle and character, as shown by one person dealing with others in the making and performance of contracts, and fidelity and honesty in the discharge of trusts; it is synonymous with "probity," "honesty," and "uprightness." *In re Bauquier's Estate*, 88 Cal. 302, 26 Pac. 178; *In re Gordon's Estate*, 142 Cal. 125, 75 Pac. 672.

INTELLIGIBILITY. In pleading. The statement of matters of fact directly (excluding the necessity of inference or argument to arrive at the meaning) and in such appropriate terms, so arranged, as to be comprehensible by a person of common or ordinary understanding. See *Merrill v. Everett*, 38 Conn. 48; *Davis v. Trump*, 43 W. Va. 191, 27 S. E. 397, 64 Am. St. Rep. 849; *Jennings v. State*, 7 Tex. App. 358; *Ash v. Purnell (Com. Pl.)* 11 N. Y. Supp. 54.

INTEMPERANCE. Habitual intemperance is 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 an innocent party. Civ. Code Cal. § 106. And see *Mowry v. Home L. Ins. Co.*, 9 R. I. 355; *Zeigler v. Com. (Pa.)* 14 Atl. 238; *Tatum v. State*, 63 Ala. 149; *Elkins v. Buschner (Pa.)* 16 Atl. 104; *State v. Latham*, 174 Ala. 281, 61 So. 351; *Deadwyler v. Grand Lodge K. P. of North America, South America, Europe, Asia, Africa, and Australia*, 131 S. C. 335, 126 S. E. 437; *State v. Pratt*, 192

Ala. 116, 68 So. 255, 256, Ann. Cas. 1917D, 990; *Hope v. The Maccabees*, 91 N. J. Law, 148, 102 A. 689, 691, 1 A. L. R. 455; *Andrews v. United States Casualty Co.*, 154 Wis. 82, 142 N. W. 487, 490.

INTEND. To design, resolve, purpose. To apply a rule of law in the nature of presumption; to discern and follow the probabilities of like cases.

INTENDANT. One who has the charge, management, or direction of some office, department, or public business.

Used in the constitutional and statutory law of some European governments to designate a principal officer of state corresponding to the cabinet ministers or secretaries of the various departments of the United States government, as, "intendant of marine," "intendant of finance."

The term was also used in Alabama to designate the chief executive officer of a city or town, having practically the same duties and functions as a mayor. See Const. Ala. 1901, § 176; *Intendant and Council of Greensboro v. Mullins*, 13 Ala. 341.

INTENDED TO BE RECORDED. This phrase is frequently used in conveyances, when reciting some other conveyance which has not yet been recorded, but which forms a link in the chain of title. In Pennsylvania, it has been construed to be a covenant, on the part of the grantor, to procure the deed to be recorded in a reasonable time. *Penn v. Preston*, 2 Rawle (Pa.) 14.

INTENDED WIFE. Betrothed. *Mace v. Grand Lodge, A. O. U. W. of Massachusetts*, 234 Mass. 299, 125 N. E. 569.

INTENDENTE. In Spanish law. The immediate agent of the minister of finance, or the chief and principal director of the different branches of the revenue, appointed in the various departments in each of the provinces into which the Spanish monarchy is divided. *Escrache*.

INTENDMENT OF LAW. The true meaning, the correct understanding or intention of the law; a presumption or inference made by the courts. *Co. Litt.* 78.

Common Intendment

The natural and usual sense; the common meaning or understanding; the plain meaning of any writing as apparent on its face without straining or distorting the construction.

INTENT.

I. In Criminal Law and the Law of Evidence

Purpose; formulated design; a resolve to do or forbear a particular act; aim; determination. In its literal sense, the stretching

of the mind or will towards a particular object.

"Intent" expresses mental action at its most advanced point, or as it actually accompanies an outward, corporal act which has been determined on. *Intent* shows the presence of *will* in the act which consummates a crime. It is the exercise of intelligent will, the mind being fully aware of the nature and consequences of the act which is about to be done, and with such knowledge, and with full liberty of action, willing and electing to do it. *Burrill, Circ. Ev.* 284, and notes.

—**General intent.** An intention, purpose, or design, either without specific plan or particular object, or without reference to such plan or object.

2. Meaning; etc.

Meaning; purpose; signification; intendment; applied to words or language. See *Certainty*.

—**Common intent.** The natural sense given to words.

INTENTIO. Lat.

In the Civil Law

The formal complaint or claim of a plaintiff before the praetor.

In Old English Law

A count or declaration in a real action, (*narratio*.) *Bract. lib.* 4, tr. 2, c. 2; *Flota*, lib. 4, c. 7; *Du Cange*.

Intentio caeca mala. A blind or obscure meaning is bad or ineffectual. 2 *Bulst.* 179. Said of a testator's intention.

Intentio inservire debet legibus, non leges intentioni. The intention [of a party] ought to be subservient to [or in accordance with] the laws, not the laws to the intention. *Co. Litt.* 314a, 314b.

Intentio mea imponit nomen operi meo. *Hob.* 123. My intent gives a name to my act.

INTENTION. Meaning; will; purpose; design. "The *intention* of the testator, to be collected from the whole will, is to govern, provided it be not unlawful or inconsistent with the rules of law." 4 *Kent, Comm.* 534.

"Intention," when used with reference to the construction of wills and other documents, means the sense and meaning of it, as gathered from the words used therein. Parol evidence is not ordinarily admissible to explain this. When used with reference to civil and criminal responsibility, a person who contemplates any result, as not unlikely to follow from a deliberate act of his own, may be said to intend that result, whether he desire it or not. Thus, if a man should, for a wager, discharge a gun among a multitude of people, and any should be killed, he would be deemed guilty of intending the death of such person; for every man is presumed to intend the natural consequence of his own actions. Intention is often confounded with motive, as when we speak of a man's "good intentions." *Mozley & Whitley*.

INTENTIONE. A writ that lay against him who entered into lands after the death of a tenant in dower, or for life, etc., and held out to him in reversion or remainder. Fitzh. Nat. Brev. 203.

INTER. Lat. Among; between.

INTER ALIA. Among other things. A term anciently used in pleading, especially in reciting statutes, where the whole statute was not set forth at length. *Inter alia enactatum fuit*, among other things it was enacted. See Plowd. 65.

Inter alias causas acquisitionis, magna, celebris, et famosa est causa donationis. Among other methods of acquiring property, a great, much-used, and celebrated method is that of gift. Bract. fol. 11.

INTER ALIOS. Between other persons; between those who are strangers to a matter in question.

Inter alios res gestas aliis non posse præjudicium facere sæpe constitutum est. It has been often settled that things which took place between other parties cannot prejudice. Code 7, 60, 1, 2.

INTER APICES JURIS. Among the subtleties of the law. See Apex Juris.

Inter arma silent leges. In time of war the laws are silent. Cicero, *pro Milone*. It applies as between the state and its external enemies; and also in cases of civil disturbance where extrajudicial force may supersede the ordinary process of law. Salmond, Jurispr. 641.

INTER BRACHIA. Between her arms. Fleta, lib. 1, c. 35, §§ 1, 2.

INTER CÆTEROS. Among others; in a general clause; not by name, (*nominatim*.) A term applied in the civil law to clauses of disinheritance in a will. Inst. 2, 13, 1; Id. 2, 13, 3.

INTER CANEM ET LUPUM. (Lat. Between the dog and the wolf.) The twilight; because then the dog seeks his rest, and the wolf his prey. 3 Inst. 63.

INTER CONJUGES. Between husband and wife.

INTER CONJUNCTAS PERSONAS. Between conjunct persons. By the act 1621, c. 18, all conveyances or alienations between conjunct persons, unless granted for onerous causes, are declared, as in a question with creditors, to be null and of no avail. Conjunct persons are those standing in a certain degree of relationship to each other; such, for example, as brothers, sisters, sons, uncles, etc. These were formerly excluded as witnesses, on account of their relationship; but this, as a ground of exclusion, has been abolished. Tray. Lat. Max.

INTER FAUCES TERRÆ. (Between the jaws of the land.) A term used to describe a roadstead or arm of the sea enclosed between promontories or projecting headlands.

INTER PARES. Between peers; between those who stand on a level or equality, as respects diligence, opportunity, responsibility, etc.

INTER PARTES. Between parties. Instruments in which two persons unite, each making conveyance to, or engagement with, the other, are called "papers *inter partes*." Smith v. Emery, 12 N. J. Law, 60.

Judgment Inter Partes

See Judgment in Personam.

INTER QUATUOR PARIETES. Between four walls. Fleta, lib. 6, c. 55, § 4.

INTER REGALIA. In English law. Among the things belonging to the sovereign. Among these are rights of salmon fishing, mines of gold and silver, forests, forfeitures, casualties of superiority, etc., which are called "*regalia minora*," and may be conveyed to a subject. The *regalia majora* include the several branches of the royal prerogative, which are inseparable from the person of the sovereign. Tray. Lat. Max.

INTER RUSTICOS. Among the illiterate or unlearned.

INTER SE, INTER SESE. Among themselves. Story, Partn. § 405.

INTER VIRUM ET UXOREM. Between husband and wife.

INTER VIVOS. Between the living; from one living person to another. Where property passes by conveyance, the transaction is said to be *inter vivos*, to distinguish it from a case of succession or devise. So an ordinary gift from one person to another is called a "gift *inter vivos*," to distinguish it from a donation made in contemplation of death, (*mortis causa*.)

INTERCALARE. Lat. In the civil law. To introduce or insert among or between others; to introduce a day or month into the calendar; to intercalate. Dig. 50, 16, 98, pr.

INTERCEDERE. Lat. In the civil law. To become bound for another's debt.

INTERCHANGEABLY. By way of exchange or interchange. This term properly denotes the method of signing deeds, leases, contracts, etc., executed in duplicate, where each party signs the copy which he delivers to the other. Roosevelt v. Smith, 17 Misc. Rep. 323, 40 N. Y. S. 381.

INTERCOMMON. To enjoy a common mutually or promiscuously with the inhabitants or

tenants of a contiguous township, vill, or manor. 2 Bl. Comm. 33; 1 Crabb, Real Prop. p. 271, § 290.

INTERCOMMUNING. Letters of intercommuning were letters from the Scotch privy council passing (on their act) in the king's name, charging the lieges not to reset, supply, or intercommune with the persons thereby denounced; or to furnish them with meat, drink, house, harbor, or any other thing useful or comfortable; or to have any intercourse with them whatever,—under pain of being reputed art and part in their crimes, and dealt with accordingly; and desiring all sheriffs, bailies, etc., to apprehend and commit such rebels to prison. Bell.

INTERCOURSE. Communication; literally, a *running* or passing *between* persons or places; commerce. As applied to two persons, the word standing alone, and without a descriptive or qualifying word, does not import sexual connection. *People v. Howard*, 143 Cal. 316, 76 P. 1116.

INTERDICT.

In Roman Law

A decree of the prætor by means of which, in certain cases determined by the edict, he himself directly commanded what should be done or omitted, particularly in causes involving the right of possession or a *quasi* possession. In the modern civil law, interdicts are regarded precisely the same as actions, though they give rise to a summary proceeding. Mackeld. Rom. Law, § 258.

Interdicts are either prohibitory, restorative, or exhibitory; the first being a prohibition, the second a decree for restoring possession lost by force, the third a decree for the exhibiting of accounts, etc. Heinec. § 1206.

An interdict was distinguished from an "action," (*actio*), properly so called, by the circumstance that the prætor himself decided in the first instance, (*principaliter*), on the application of the plaintiff, without previously appointing a *judex*, by issuing a decree commanding what should be done, or left undone. Gaius, 4, 139. It might be adopted as a remedy in various cases where a regular action could not be maintained, and hence interdicts were at one time more extensively used by the prætor than the *actiones* themselves. Afterwards, however, they fell into disuse, and in the time of Justinian were generally dispensed with. Mackeld. Rom. Law, § 258; Inst. 4, 15, 8.

In Ecclesiastical Law

An ecclesiastical censure, by which divine services are prohibited to be administered either to particular persons or in particular places.

In Scotch Law

An order of the court of session or of an inferior court, pronounced on cause shown, for stopping any act or proceedings complained of as illegal or wrongful. It may be resorted to as a remedy against any encroachment either on property or possession, and is a pro-

tection against any unlawful proceeding. Bell.

INTERDICTION.

In French Law

Every person who, on account of insanity, has become incapable of controlling his own interests, can be put under the control of a guardian, who shall administer his affairs with the same effect as he might himself. Such a person is said to be "*interdit*," and his *status* is described as "*interdiction*." Arg. Fr. Merc. Law, 562.

In The Civil Law

A judicial decree, by which a person is deprived of the *exercise* of his civil rights.

In French-Canadian Law

A proceeding instituted for the purpose of obtaining a curator of the person and property, and includes the calling of a family council and a petition to the court or its prothonotary, followed by a hearing. *In re Methot's Will*, 98 A. 839, 840, 87 N. J. Eq. 256.

In International Law

An "interdiction of commercial intercourse" between two countries is a governmental prohibition of commercial intercourse, intended to bring about an entire cessation for the time being of all trade whatever. See *The Edward*, 1 Wheat. 272, 4 L. Ed. 86.

In General

—**Interdiction of fire and water.** Banishment by an order that no man should supply the person banished with fire or water, the two necessities of life.

INTERDICTUM SALVIANUM. Lat. In Roman law. The Salvian interdict. A process which lay for the owner of a farm to obtain possession of the goods of his tenant who had pledged them to him for the rent of the land. Inst. 4, 15, 3.

Interdum evenit ut exceptio quæ prima facie justa videtur, tamen inique noceat. It sometimes happens that a plea which seems *prima facie* just, nevertheless is injurious and unequal. Inst. 4, 14, 1, 2.

INTERESSE. Lat. Interest. The interest of money; also an interest in lands.

—**Interesse termini.** An interest in a term. That species of interest or property which a lessee for years acquires in the lands demised to him, before he has actually become possessed of those lands; as distinguished from that property or interest vested in him by the demise, and also reduced into possession by an actual entry upon the lands and the assumption of ownership therein, and which is then termed an "estate for years." Brown.

—**Pro interesse suo.** For his own interest; according to, or to the extent of, his individual

interest. Used (in practice) to describe the intervention of a party who comes into a suit for the purpose of protecting interests of his own which may be involved in the dispute between the principal parties or which may be affected by the settlement of their contention.

INTEREST.

In Property

The most general term that can be employed to denote a property in lands or chattels. In its application to lands or things real, it is frequently used in connection with the terms "estate," "right," and "title," and, according to Lord Coke, it properly includes them all. *Co. Litt.* 345b. See *Ragsdale v. Mays*, 65 Tex. 257; *Hurst v. Hurst*, 7 W. Va. 297; *New York v. Stone*, 20 Wend. (N. Y.) 142; *State v. McKellop*, 40 Mo. 185; *Loventhal v. Home Ins. Co.*, 112 Ala. 116, 20 So. 419, 33 L. R. A. 258, 57 Am. St. Rep. 17.

More particularly it means a right to have the advantage accruing from anything; any right in the nature of property, but less than title; a partial or undivided right; a title to a share.

The terms "interest" and "title" are not synonymous. A mortgagor in possession, and a purchaser holding under a deed defectively executed, have, both of them, absolute as well as insurable interests in the property, though neither of them has the legal title. *Hough v. City F. Ins. Co.*, 29 Conn. 20, 76 Am. Dec. 581.

—**Absolute or conditional.** That is an absolute interest in property which is so completely vested in the individual that he can by no contingency be deprived of it without his own consent. So, too, he is the owner of such absolute interest who must necessarily sustain the loss if the property is destroyed. The terms "interest" and "title" are not synonymous. A mortgagor in possession, and a purchaser holding under a deed defectively executed, have, both of them, absolute, as well as insurable, interests in the property, though neither of them has the legal title. "Absolute" is here synonymous with "vested," and is used in contradistinction to contingent or conditional. *Hough v. City F. Ins. Co.*, 29 Conn. 10, 76 Am. Dec. 581; *Garver v. Hawkeye Ins. Co.*, 69 Iowa, 202, 28 N. W. 555; *Washington F. Ins. Co. v. Kelly*, 32 Md. 421, 431, 3 Am. Rep. 149; *Elliott v. Ashland Mut. F. Ins. Co.*, 117 Pa. 548, 12 A. 676, 2 Am. St. Rep. 703; *Williams v. Buffalo German Ins. Co.* (C. C.) 17 F. 63.

In Insurance

—**Interest or no interest.** These words, inserted in an insurance policy, mean that the question whether the insured has or has not an insurable interest in the subject-matter is waived, and the policy is to be good irrespective of such interest. The effect of such a clause is to make it a *wager* policy.

—**Interest policy.** In insurance. One which actually, or *prima facie*, covers a substantial

and insurable interest; as opposed to a *wager* policy.

In English Law

—**Interest suit.** An action in the probate branch of the high court of justice, in which the question in dispute is as to which party is entitled to a grant of letters of administration of the estate of a deceased person. *Wharton*.

In General

—**Joint interest.** One owned by several persons in equal shares by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy, or when granted or devised to executors or trustees as joint tenants. *Civ. Code Cal.* § 683.

In The Law Of Evidence

"Interest," in a statute that no witness shall be excluded by interest in the event of the suit, means "concern," "advantage," "good," "share," "portion," "part," or "participation." *Fitch v. Bates*, 11 Barb. (N. Y.) 471; *Morgan v. Johnson*, 87 Ga. 382, 13 S. E. 710.

A relation to the matter in controversy, or to the issue of the suit, in the nature of a prospective gain or loss, which actually does, or presumably might, create a bias or prejudice in the mind, inclining the person to favor one side or the other.

For Money

Interest is the compensation allowed by law or fixed by the parties for the use or forbearance or detention of money. *Civ. Code Cal.* § 1915; *Williams v. Scott*, 83 Ind. 408; *Kelsey v. Murphy*, 30 Pa. 341; *Williams v. American Bank*, 4 Metc. (Mass.) 317; *Beach v. Peabody*, 188 Ill. 75, 58 N. E. 680.

—**Classification—Conventional interest** is interest at the rate agreed upon and fixed by the parties themselves, as distinguished from that which the law would prescribe in the absence of an explicit agreement. *Fowler v. Smith*, 2 Cal. 568; *Vernon's Ann. Civ. St. art.* 5069.

—**Legal interest.** That rate of interest prescribed by the laws of the particular state or country as the highest which may be lawfully contracted for or exacted, and which must be paid in all cases where the law allows interest without the assent of the debtor. *Towslee v. Durkee*, 12 Wis. 485; *American, etc., Ass'n v. Harn* (Tex. Civ. App.) 62 S. W. 75; *Beals v. Amador County*, 35 Cal. 633.

—**Simple interest** is that which is paid for the principal or sum lent, at a certain rate or allowance, made by law or agreement of parties.

—**Compound interest** is interest upon interest, where accrued interest is added to the principal sum, and the whole treated as a new principal, for the calculation of the interest for the next period.

—**Ex-interest.** In the language of stock exchanges, a bond or other interest-bearing security is said to be sold “ex-interest” when the vendor reserves to himself the interest already accrued and payable (if any) or the interest accruing up to the next interest day.

—**Interest, maritime.** See Maritime Interest.

—**Interest upon interest.** Compound interest.

Interest reipublicæ ne maleficia remaneant impunita. It concerns the state that crimes remain not unpunished. Jenk. Cent. pp. 30, 31, case 59; Wing. Max. 501.

Interest reipublicæ ne sua quis male utatur. It concerns the state that persons do not misuse their property. 6 Coke, 36a.

Interest reipublicæ quod homines conserventur. It concerns the state that [the lives of] men be preserved. 12 Coke, 62.

Interest reipublicæ res judicatas non rescindi. It concerns the state that things adjudicated be not rescinded. 2 Inst. 360. It is matter of public concern that solemn adjudications of the courts should not be disturbed. See Best, Ev. p. 41, § 44.

Interest reipublicæ suprema hominum testamenta rata haberi. It concerns the state that men's last wills be held valid, [or allowed to stand.] Co. Litt. 236b.

Interest reipublicæ ut carceres sint in tuto. It concerns the state that prisons be safe places of confinement. 2 Inst. 589.

Interest (imprimis) reipublicæ ut pax in regno conservetur, et quæcunque paci adversentur provide declinentur. It especially concerns the state that peace be preserved in the kingdom, and that whatever things are against peace be prudently avoided. 2 Inst. 158.

Interest reipublicæ ut quilibet re sua bene utatur. It is the concern of the state that every one uses his property properly.

Interest reipublicæ ut sit finis litium. It concerns the state that there be an end of lawsuits. Co. Litt. 303. It is for the general welfare that a period be put to litigation. Broom, Max. 331, 343.

INTERFERE. To check; hamper; hinder; disturb; intervene. State v. Estes, 185 N. C. 752, 117 S. E. 581, 582; Conger v. Italian Vineyard Co., 186 Cal. 404, 199 P. 503; Highway Trailer Co. v. Janesville Electric Co., 187 Wis. 161, 204 N. W. 773, 779.

INTERFERENCE. In patent law, this term designates a collision between rights claimed or granted; that is, where a person claims a patent for the whole or any integral part of the ground already covered by an existing patent or by a pending application. Milton v. Kingsley, 7 App. D. C. 540; Dederick v.

Fox (C. C.) 56 F. 717; Nathan Mfg. Co. v. Craig (C. C.) 49 F. 370.

Strictly speaking, an “interference” is declared to exist by the patent office whenever it is decided by the properly constituted authority in that bureau that two pending applications (or a patent and a pending application), in their claims or essence, cover the same discovery or invention, so as to render necessary an investigation into the question of priority of invention between the two applications or the application and the patent, as the case may be. Lowrey v. Cowles Electric Smelting, etc., Co. (C. C.) 68 F. 372.

INTERIM. Lat. In the mean time; meanwhile. An assignee *ad interim* is one appointed between the time of bankruptcy and appointment of the regular assignee. 2 Bell, Comm. 355.

INTERIM COMMITTUR. “In the mean time, let him be committed.” An order of court (or the docket-entry noting it) by which a prisoner is committed to prison and directed to be kept there until some further action can be taken, or until the time arrives for the execution of his sentence.

INTERIM CURATOR. In English law. A person appointed by justices of the peace to take care of the property of a felon convict, until the appointment by the crown of an administrator or administrators for the same purpose. Mozley & Whitley.

INTERIM FACTOR. In Scotch law. A judicial officer elected or appointed under the bankruptcy law to take charge of and preserve the estate until a fit person shall be elected trustee. 2 Bell, Comm. 357.

INTERIM OFFICER. One appointed to fill the office during a temporary vacancy, or during an interval caused by the absence or incapacity of the regular incumbent.

INTERIM ORDER. One made in the mean time, and until something is done.

INTERIM RECEIPT. A receipt for money paid by way of premium for a contract of insurance for which application is made. If the risk is rejected, the money is refunded, less the *pro rata* premium.

INTERLAQUEARE. In old practice. To link together, or interchangeably. Writs were called “*interlaqueata*” where several were issued against several parties residing in different counties, each party being summoned by a separate writ to warrant the tenant, together with the other warrantors. Fleta, lib. 5, c. 4, § 2.

INTERLINEATION. The act of writing between the lines of an instrument; also what is written between lines. Morris v. Vanderen, 1 Dall. 67, 1 L. Ed. 38; Russell v. Eubanks, 84 Mo. 88.

INTERLOCUTOR. In Scotch practice. An order or decree of court; an order made in open court. 2 Swint. 362; Arkley, 32.

INTERLOCUTOR OF RELEVANCY. In Scotch practice. A decree as to the relevancy of a libel or indictment in a criminal case. 2 Alis. Crim. Pr. 373.

INTERLOCUTORY. Provisional; temporary; not final. Something intervening between the commencement and the end of a suit which decides some point or matter, but is not a final decision of the whole controversy. *Mora v. Sun Mut. Ins. Co.*, 13 Abb. Prac. (N. Y.) 310.

As to interlocutory "Costs," "Decree," "Judgment," "Order," and "Sentence," see those titles.

INTERLOPERS. Persons who run into business to which they have no right, or who interfere wrongfully; persons who enter a country or place to trade without license. Webster.

INTERMARRIAGE. In the popular sense, this term denotes the contracting of a marriage relation between two persons considered as members of different nations, tribes, families, etc., as, between the sovereigns of two different countries, between an American and an alien, between Indians of different tribes, between the scions of different clans or families. But, in law, it is sometimes used (and with propriety) to emphasize the mutuality of the marriage contract and as importing a reciprocal engagement by which each of the parties "marries" the other. Thus, in a pleading, instead of averring that "the plaintiff was married to the defendant," it would be proper to allege that "the parties intermarried" at such a time and place.

INTERMEDDLE. To interfere with property or the conduct of business affairs officiously or without right or title. *McQueen v. Babcock*, 41 Barb. (N. Y.) 339; *In re Shinn's Estate*, 166 Pa. 121, 30 A. 1026, 45 Am. St. Rep. 656. Not a technical legal term, but sometimes used with reference to the acts of an executor *de son tort* or a *negotiorum gestor* in the civil law.

INTERMEDIARY. In modern civil law. A broker; one who is employed to negotiate a matter between two parties, and who for that reason is considered as the mandatary (agent) of both. Civ. Code La. art. 3016.

INTERMEDIATE. Intervening; interposed during the progress of a suit, proceeding, business, etc., or between its beginning and end.

INTERMEDIATE ACCOUNT. In probate law. An account of an executor, administrator, or guardian filed subsequent to his first or initial account and before his final account. Specifically in New York, an ac-

count filed with the surrogate for the purpose of disclosing the acts of the person accounting and the state or condition of the fund in his hands, and not made the subject of a judicial settlement. Code Civ. Proc. N. Y. 1899, § 2514, subd. 9 (Surrogate's Court Act, § 314, subd. 9).

INTERMEDIATE ORDER. An order made between the commencement of the action and its final determination, incident to and during its progress, which does not determine the cause but only some intervening matter relating thereto; one that is not directly appealable. *Miami Copper Co. v. Strohl*, 14 Ariz. 410, 130 P. 605, 608; *Overton v. City of Sioux Falls*, 47 S. D. 135, 196 N. W. 297, 298; *People v. Kahn*, 155 App. Div. 812, 140 N. Y. S. 618, 619; *In re New Utrecht Ave. in City of New York*, 172 N. Y. S. 286, 288; *Hallgren v. Sunset Paint Co.*, 28 Ariz. 176, 236 P. 689, 690; *Peters v. Berkeley*, 219 App. Div. 261, 219 N. Y. S. 709, 714; *Chippeaux v. Western Coal & Mining Co.*, 124 Kan. 475, 260 P. 625, 626; *People v. Priori*, 163 N. Y. 99, 57 N. E. 85; *Boyce v. Wabash Ry. Co.*, 63 Iowa, 70, 18 N. W. 673, 50 Am. Rep. 730; *State v. O'Brien*, 18 Mont. 1, 43 P. 1091; *Hymes v. Van Cleef*, 61 Hun, 618, 15 N. Y. S. 341.

INTERMEDIATE TOLL. Toll for travel on a toll road, paid or to be collected from persons who pass thereon at points between the toll gates, such persons not passing by, through, or around the toll gates. *Hollingworth v. State*, 29 Ohio St. 552.

INTERMITTENT EASEMENT. See Easement.

INTERMIXTURE OF GOODS. Confusion of goods; the confusing or mingling together of goods belonging to different owners in such a way that the property of neither owner can be separately identified or extracted from the mass. See *Smith v. Sanborn*, 6 Gray (Mass.) 134. And see Confusion of Goods.

INTERN. To restrict or shut up a person, as a political prisoner, within a limited territory.

INTERNAL. Relating to the interior; comprised within boundary lines; of interior concern or interest; domestic, as opposed to foreign.

INTERNAL COMMERCE. See Commerce.

INTERNAL IMPROVEMENTS. With reference to governmental policy and constitutional provisions restricting taxation or the contracting of public debts, this term means works of general public utility or advantage, designed to promote facility of intercommunication, trade, and commerce, the transportation of persons and property, or the development of the natural resources of the state, such as railroads, public highways, turnpikes, and canals, bridges, the improvement of rivers

and harbors, systems of artificial irrigation, and the improvement of water powers; but it does not include the building and maintenance of state institutions. See *Guernsey v. Burlington*, 11 Fed. Cas. 99; *Rippe v. Becker*, 56 Minn. 100, 57 N. W. 331, 22 L. R. A. 857; *State v. Froehlich*, 115 Wis. 32, 91 N. W. 115, 58 L. R. A. 757, 95 Am. St. Rep. 894; *U. S. v. Dodge County*, 110 U. S. 156, 3 S. Ct. 590, 28 L. Ed. 103; *In re Senate Resolution*, 12 Colo. 285, 21 P. 483; *Savannah v. Kelly*, 108 U. S. 184, 2 S. Ct. 468, 27 L. Ed. 696; *Blair v. Cumming County*, 111 U. S. 363, 4 S. Ct. 449, 28 L. Ed. 457; *Welch v. Cogan*, 126 Md. 1, 94 A. 384, 387; *State v. Craighead County*, 114 Ark. 278, 169 S. W. 964, 965; *State v. Bone Creek Tp., Butler County*, 109 Neb. 202, 190 N. W. 586, 587; *State v. Bone Creek Township*, 109 Neb. 202, 190 N. W. 586; *State v. Bone Creek Tp., Butler County*, 109 Neb. 202, 193 N. W. 767; *State v. Knapp*, 99 Kan. 852, 163 P. 181, 182, L. R. A. 1917C, 1034; *State v. Babcock*, 161 Minn. 80, 200 N. W. 843, 844; *Shenandoah Lime Co. v. Mann*, 115 Va. 865, 80 S. E. 753, 755, Ann. Cas. 1915C, 973; *State v. Donald*, 160 Wis. 21, 151 N. W. 331, 346.

INTERNAL POLICE. A term sometimes applied to the police power, or power to enact laws in the interest of the public safety, health, and morality, which is inherent in the legislative authority of each state, is to be exercised with reference only to its domestic affairs and its own citizens, and is not surrendered to the federal government. See *Cheboygan Lumber Co. v. Delta Transp. Co.*, 100 Mich. 16, 58 N. W. 630.

INTERNAL REVENUE. In the legislation and fiscal administration of the United States, revenue raised by the imposition of taxes and excises on domestic products or manufactures, and on domestic business and occupations, inheritance taxes, and stamp taxes; as broadly distinguished from "customs duties," *i. e.*, duties or taxes on foreign commerce or on goods imported. See Rev. St. U. S. tit. 35, § 3140 et seq.

INTERNAL WATERS. Such as lie wholly within the body of the particular state or country. *The Garden City (D. C.)* 26 F. 773.

INTERNATIONAL COMMERCE. See Commerce.

INTERNATIONAL LAW. The law which regulates the intercourse of nations; the law of nations. 1 Kent, Comm. 1, 4. The customary law which determines the rights and regulates the intercourse of independent states in peace and war. 1 Wildm. Int. Law, 1.

The system of rules and principles, founded on treaty, custom, precedent, and the consensus of opinion as to justice and moral obligation, which civilized nations recognize as binding upon them in their mutual dealings

and relations. *Heirn v. Bridault*, 37 Miss. 230; *U. S. v. White (C. C.)* 27 F. 201.

Public international law is the body of rules which control the conduct of independent states in their relations with each other.

Private international law is that branch of municipal law which determines before the courts of what nation a particular action or suit should be brought, and by the law of what nation it should be determined; in other words, it regulates private rights as dependent on a diversity of municipal laws and jurisdictions applicable to the persons, facts, or things in dispute, and the subject of it is hence sometimes called the "conflict of laws." Thus, questions whether a given person owes allegiance to a particular state where he is domiciled, whether his *status*, property, rights, and duties are governed by the *lex situs*, the *lex loci*, the *lex fori*, or the *lex domicilii*, are questions with which private international law has to deal. *Sweet*; *Roche v. Washington*, 19 Ind. 55, 81 Am. Dec. 376.

INTERNUNCIO. A minister of a second order, charged with the affairs of the papal court in countries where that court has no nuncio.

INTERNUNCIUS. A messenger between two parties; a go-between. Applied to a broker, as the agent of both parties. 4 C. Rob. Adm. 204.

INTERPELLATE. To address with a question, especially when formal and public; originally used with respect to proceedings in the French legislature; used in reference to questions by the court to counsel during an argument.

INTERPELLATION. In the civil law. The act by which, in consequence of an agreement, the party bound declares that he will not be bound beyond a certain time. Wolff, Inst. Nat. § 752.

INTERPLEA. 1. A plea by which a person sued in respect to property disclaims any interest in it and demands that rival claimants shall litigate their titles between themselves and relieve him from responsibility. *Bennett v. Wolverton*, 24 Kan. 286. See Interpleader.

2. In Missouri, a statutory proceeding, serving as a substitute for the action of replevin, by which a third person intervenes in an action of attachment, sets up his own title to the specific property attached, and seeks to recover the possession of it. See *Rice v. Sally*, 176 Mo. 107, 75 S. W. 398; *Spooner v. Ross*, 24 Mo. App. 603; *State v. Barker*, 26 Mo. App. 491; *Brownwell, etc., Car. Co. v. Barnard*, 139 Mo. 142, 40 S. W. 762.

INTERPLEADER. When two or more persons claim the same thing (or fund) of a third, and he, laying no claim to it himself,

is ignorant which of them has a right to it, and fears he may be prejudiced by their proceeding against him to recover it, he may file a bill in equity against them, the object of which is to make them litigate their title between themselves, instead of litigating it with him, and such a bill is called a "bill of interpleader." *Brown. Hall v. San Jacinto State Bank* (Tex. Civ. App.) 255 S. W. 506, 509; *Alton & Peters v. Merritt*, 145 Minn. 426, 177 N. W. 770, 771; *Goggin v. Mutual Aid Union* (Mo. App.) 213 S. W. 522, 523; *Jax Ice & Cold Storage Co. v. South Florida Farms Co.*, 91 Fla. 593, 109 So. 212, 218, 48 A. L. R. 957; *Gorham v. Hall*, 172 Ark. 744, 290 S. W. 357, 358.

By the statute 1 & 2 Wm. IV. c. 58, summary proceedings at law were provided for the same purpose, in actions of assumpsit, debt, detainee, and trover. And the same remedy is known, in one form or the other, in most or all of the United States.

Under the Pennsylvania practice, when goods levied upon by the sheriff are claimed by a third party, the sheriff takes a rule of interpleader on the parties, upon which, when made absolute, a feigned issue is framed, and the title to the goods is tested. The goods, pending the proceedings, remain in the custody of the defendant upon the execution of a forthcoming bond. *Bouvier*.

INTERPOLATE. To insert words in a complete document.

INTERPOLATION. The act of interpolating; the words interpolated.

INTERPRET. To construe; to seek out the meaning of language; to translate orally from one tongue to another.

Interpretare et concordare leges legibus, est optimus interpretandi modus. To interpret, and [in such a way as] to harmonize laws with laws, is the best mode of interpretation. 8 Coke, 169a.

Interpretatio chartarum benigne facienda est, ut res magis valeat quam pereat. The interpretation of deeds is to be liberal, that the thing may rather have effect than fail. *Broom, Max.* 543.

Interpretatio fienda est ut res magis valeat quam pereat. *Jenk. Cent.* 198. Such an interpretation is to be adopted that the thing may rather stand than fall.

Interpretatio talis in ambiguis semper fienda est ut evitetur inconveniens et absurdum. In cases of ambiguity, such an interpretation should always be made that what is inconvenient and absurd may be avoided. 4 Inst. 328.

INTERPRETATION. The art or process of discovering and expounding the meaning of a statute, will, contract, or other written document. *People v. Com'rs of Taxes*, 95 N. Y. 559; *Rome v. Knox*, 14 How. Prac. (N. Y.)

272; *Ming v. Pratt*, 22 Mont. 262, 56 P. 279; *Tallman v. Tallman*, 3 Misc. Rep. 465, 23 N. Y. S. 734; *Pressed Steel Car Co. v. Union Pac. R. Co.* (C. C. A.) 297 F. 788, 790; *Adney v. Kraus*, 174 Wis. 610, 183 N. W. 988, 990; *Dick v. King*, 73 Mont. 456, 236 P. 1093, 1095; *Hane v. Kintner*, 111 Ohio St. 297, 145 N. E. 326, 329; *Roberts v. Portland Water Dist.*, 124 Me. 63, 126 A. 162, 163; *Cohn-Hall-Marx Co. v. Vanosdall*, 25 Ohio App. 360, 157 N. E. 908, 909.

The discovery and representation of the true meaning of any signs used to convey ideas. *Lieb. Herm.*

"Construction" is a term of wider scope than "interpretation;" for, while the latter is concerned only with ascertaining the sense and meaning of the subject-matter, the former may also be directed to explaining the legal effects and consequences of the instrument in question. Hence interpretation precedes construction, but stops at the written text.

Interpretation and construction of written instruments are not the same. A rule of construction is one which either governs the effect of an ascertained intention, or points out what the court should do in the absence of express or implied intention, while a rule of interpretation is one which governs the ascertainment of the meaning of the maker of the instrument. In *re Union Trust Co.*, 151 N. Y. S. 246, 249, 89 Misc. 69.

Close interpretation (interpretatio restricta) is adopted if just reasons, connected with the formation and character of the text, induce us to take the words in their narrowest meaning. This species of interpretation has generally been called "literal," but the term is inadmissible. *Lieb. Herm.* 54.

Extensive interpretation (interpretatio extensiva), called, also, "liberal interpretation" adopts a more comprehensive signification of the word. *Id.* 58.

Extravagant interpretation (interpretatio excedens) is that which substitutes a meaning evidently beyond the true one. It is therefore not genuine interpretation. *Id.* 59.

Free or unrestricted interpretation (interpretatio soluta) proceeds simply on the general principles of interpretation in good faith, not bound by any specific or superior principle. *Id.* 59.

Limited or restricted interpretation (interpretatio limitata) is when we are influenced by other principles than the strictly hermeneutic ones. *Id.* 60.

Predestined interpretation (interpretatio predestinata) takes place if the interpreter, laboring under a strong bias of mind, makes the text subservient to his preconceived views or desires. This includes artful interpretation, (*interpretatio vaser*), by which the interpreter seeks to give a meaning to the text other than the one he knows to have been intended. *Id.* 60.

It is said to be either "legal," which rests on the same authority as the law itself, or "doctrinal," which rests upon its intrinsic reasonableness. Legal interpretation may be either "authentic," when it is expressly

provided by the legislator, or "usual," when it is derived from unwritten practice. Doctrinal interpretation may turn on the meaning of words and sentences, when it is called "grammatical," or on the intention of the legislator, when it is described as "logical." When logical interpretation stretches the words of a statute to cover its obvious meaning, it is called "extensive;" when, on the other hand, it avoids giving full meaning to the words, in order not to go beyond the intention of the legislator, it is called "restrictive." Holl. Jur. 344.

As to *strict* and *liberal* interpretation, see Construction.

In the civil law, *authentic* interpretation of laws is that given by the legislator himself, which is obligatory on the courts. *Customary* interpretation (also called "usual") is that which arises from successive or concurrent decisions of the court on the same subject-matter, having regard to the spirit of the law, jurisprudence, usages, and equity; as distinguished from "authentic" interpretation, which is that given by the legislator himself. Houston v. Robertson, 2 Tex. 26.

INTERPRETATION CLAUSE. A section of a statute which defines the meaning of certain words occurring frequently in the other sections.

INTERPRETER. A person sworn at a trial to interpret the evidence of a foreigner or a deaf and dumb person to the court. Amory v. Fellowes, 5 Mass. 226; People v. Lem Deo, 132 Cal. 199, 64 P. 266.

INTERREGNUM. An interval between reigns. The period which elapses between the death of a sovereign and the election of another. The vacancy which occurs when there is no government.

INTERROGATOIRE. In French law. An act which contains the interrogatories made by the judge to the person accused, on the facts which are the object of the accusation, and the answers of the accused. Poth. Proc. Crim. c. 4, art. 2, § 1.

INTERROGATORIES. A set or series of written questions drawn up for the purpose of being propounded to a party in equity, a garnishee, or a witness whose testimony is taken on deposition; a series of formal written questions used in the judicial examination of a party or a witness. In taking evidence on depositions, the interrogatories are usually prepared and settled by counsel, and reduced to writing in advance of the examination.

Interrogatories are either *direct* or *cross*, the former being those which are put on behalf of the party calling a witness; the latter are those which are interposed by the adverse party.

INTERRUPTIO. Lat. Interruption. A term used both in the civil and common law of prescription. Calvin.

Interruptio multiplex non tollit præscriptionem semel obtentam. 2 Inst. 654. Frequent interruption does not take away a prescription once secured.

INTERRUPTION. The occurrence of some act or fact, during the period of prescription, which is sufficient to arrest the running of the statute of limitations. It is said to be either "natural" or "civil," the former being caused by the act of the party; the latter by the legal effect or operation of some fact or circumstance. Innerarity v. Mims, 1 Ala. 674; Carr v. Foster, 3 Q. B. 588; Flight v. Thomas, 2 Adol. & El. 701.

Interruption of the possession is where the right is not enjoyed or exercised continuously; interruption of the right is where the person having or claiming the right ceases the exercise of it in such a manner as to show that he does not claim to be entitled to exercise it.

In Scotch Law

The true proprietor's claiming his right during the course of prescription. Bell.

INTERSECTION. The point of intersection of two roads is the point where their middle lines intersect. In re Springfield Road, 73 Pa. 127.

"Intersection" may apply where street or highway runs into but without crossing another. Thrush v. Lingo Lumber Co. (Tex. Civ. App.) 262 S. W. 551, 553; Pangborn v. John Widdicomb Co., 223 Mich. 181, 193 N. W. 817, 31 A. L. R. 485; Manly v. Abernethy, 167 N. C. 220, 83 S. E. 343; Buckley v. White, 137 Md. 124, 111 A. 777, 778; Murphy v. Philadelphia Rapid Transit Co., 285 Pa. 399, 132 A. 194, 195; Bettilyon v. C. E. Smith & Son, 96 Conn. 16, 112 A. 649, 650; Mapp v. Holland, 138 Va. 519, 122 S. E. 430, 431, 37 A. L. R. 478; Muther v. Capps, 38 Cal. App. 721, 177 P. 882, 884; Sullivan v. Chauvenet, 282 Mo. 649, 222 S. W. 759, 762; McCaa v. Thomas, 207 Ala. 211, 92 So. 414, 416; Mitchell v. Raymond, 181 Wis. 591, 195 N. W. 855, 857, 35 A. L. R. 1115; Rohde v. Knock, 101 Conn. 439, 126 A. 335, 336; Lawrence v. Goodwill, 44 Cal. App. 440, 186 P. 781, 783.

INTERSTATE. Between two or more states; between places or persons in different states; concerning or affecting two or more states politically or territorially.

INTERSTATE COMMERCE. Traffic, intercourse, commercial trading, or the transportation of persons or property between or among the several states of the Union, or from or between points in one state and points in another state; commerce between two states, or between places lying in different states. Gibbons v. Ogden, 9 Wheat. 194, 6 L. Ed. 23; Wabash, etc. R. Co. v. Il-

Illinois, 118 U. S. 557, 7 S. Ct. 4, 30 L. Ed. 244; Louisville & N. R. Co. v. Railroad Com'rs (C. C.) 19 F. 701; Levin v. Fisher, 217 Mich. 681, 187 N. W. 328, 329; Lloyd v. North Carolina Ry. Co., 162 N. C. 485, 78 S. E. 489, 493; State of Missouri v. Kansas Natural Gas Co., 263 U. S. 298, 44 S. Ct. 544, 545, 68 L. Ed. 1027; Public Utilities Commission for State of Kansas v. Landon, 249 U. S. 236, 39 S. Ct. 268, 269, 63 L. Ed. 577; Board of Trade of City of Chicago v. Olsen, 262 U. S. 1, 43 S. Ct. 470, 471, 67 L. Ed. 839; Cheney Bros. Co. v. Commonwealth of Massachusetts, 246 U. S. 147, 38 S. Ct. 295, 297, 62 L. Ed. 632; Northwestern Mut. Life Ins. Co. v. State of Wisconsin, 247 U. S. 132, 38 S. Ct. 444, 446, 62 L. Ed. 1025; Binderup v. Pathé Exch., 263 U. S. 291, 44 S. Ct. 96, 99, 68 L. Ed. 308; United Shoe Machinery Corporation v. U. S., 258 U. S. 451, 42 S. Ct. 363, 368, 66 L. Ed. 708; Shafer v. Farmers' Grain Co. of Embden, 268 U. S. 189, 45 S. Ct. 481, 485, 69 L. Ed. 909; Victor Talking Mach. Co. v. Lucker, 128 Minn. 171, 150 N. W. 790, 791; State v. Knights of Ku Klux Klan, 117 Kan. 564, 232 P. 254, 260, 37 A. L. R. 1267; Kirmeyer v. State of Kansas, 236 U. S. 568, 35 S. Ct. 419, 59 L. Ed. 721; Western Union Telegraph Co. v. Foster, 247 U. S. 105, 38 S. Ct. 438, 439, 62 L. Ed. 1006, 1 A. L. R. 1278.

INTERSTATE COMMERCE ACT. The act of congress of February 4, 1887 (49 USCA § 1 et seq.), designed to regulate commerce between the states, and particularly the transportation of persons and property, by carriers, between interstate points, prescribing that charges for such transportation shall be reasonable and just, prohibiting unjust discrimination, rebates, draw-backs, preferences, pooling of freights, etc., requiring schedules of rates to be published, establishing a commission to carry out the measures enacted, and prescribing the powers and duties of such commission and the procedure before it.

INTERSTATE COMMERCE COMMISSION. A commission created by the interstate commerce act (*q. v.*) to carry out the measures therein enacted, composed of five persons, appointed by the President, empowered to inquire into the business of the carriers affected, to enforce the law, to receive, investigate, and determine complaints made to them of any violation of the act, make annual reports, hold stated sessions, etc.

INTERSTATE EXTRADITION. The reclamation and surrender, according to due legal proceedings, of a person who, having committed a crime in one of the states of the Union, has fled into another state to evade justice or escape prosecution.

INTERSTATE LAW. That branch of private international law which affords rules and principles for the determination of controver-

sies between citizens of different states in respect to mutual rights or obligations, in so far as the same are affected by the diversity of their citizenship or by diversity in the laws or institutions of the several states.

INTERVENER. An intervener is a person who voluntarily interposes in an action or other proceeding with the leave of the court.

INTERVENING AGENCY. To render an original wrong a remote cause, an "intervening agency," must be independent of such wrong, adequate to produce the injury, so interrupting the natural sequence of events as to produce a result different from what would have been produced, and one that could not have been reasonably expected from the original wrong. *Lemos v. Madden*, 28 Wyo. 1, 200 P. 791, 795.

INTERVENING CAUSE. The "intervening cause," which will relieve of liability for an injury, is an independent cause which intervenes between the original wrongful act or omission and the injury, turns aside the natural sequence of events, and produces a result which would not otherwise have followed and which could not have been reasonably anticipated. *Hartman v. Atchison, T. & S. F. Ry. Co.*, 94 Kan. 184, 146 P. 335, 336, L. R. A. 1915D, 563. An "intervening cause" is an act of an independent agency which destroys the causal connection between the negligent act of the defendant and the wrongful injury; the independent act being the immediate cause, in which case damages are not recoverable because the original wrongful act is not the proximate cause. *Davenport v. McClellan*, 88 N. J. Law, 653, 96 A. 921. An "intervening efficient cause" is a new and independent force which breaks the causal connection between the original wrong and injury, and itself becomes direct and immediate cause of injury. *Phillabaum v. Lake Erie & W. R. Co.*, 315 Ill. 131, 145 N. E. 806, 808.

INTERVENING DAMAGES. See *Damages*.

INTERVENTION.

In International Law

Intervention is such an interference between two or more states as may (according to the event) result in a resort to force; while mediation always is, and is intended to be and to continue, peaceful only. Intervention between a sovereign and his own subjects is not justified by anything in international law; but a remonstrance may be addressed to the sovereign in a proper case. *Brown*.

In English Ecclesiastical Law

The proceeding of a third person, who, not being originally a party to the suit or proceeding, but claiming an interest in the subject-matter in dispute, in order the better to protect such interest, interposes his claim. 2

Chit. Pr. 492; 3 Chit. Commer. Law, 633; 2 Hagg. Const. 137; 3 Phillim. Ecc. Law, 586.

In the Civil Law

The act by which a third party demands to be received as a party in a suit pending between other persons.

The intervention is made either for the purpose of being joined to the plaintiff, and to claim the same thing he does, or some other thing connected with it; or to join the defendant, and with him to oppose the claim of the plaintiff, which it is his interest to defeat. Poth. Proc. Civile, pt. 1, c. 2, § 7, no. 3.

In Practice

A proceeding in a suit or action by which a third person is permitted by the court to make himself a party, either joining the plaintiff in claiming what is sought by the complaint, or uniting with the defendant in resisting the claims of the plaintiff, or demanding something adversely to both of them. Logan v. Greenlaw (C. C.) 12 Fed. 16; Fischer v. Hanna, 8 Colo. App. 471, 47 Pac. 303; Gale v. Frazier, 4 Dak. 196, 30 N. W. 138; Reay v. Butler (Cal.) 7 Pac. 671; La Mesa, Lemon Grove & Spring Valley Irr. Dist. v. Halley, 195 Cal. 739, 235 P. 999; Van Der Veer v. Union Trust Co., 73 Ind. App. 336, 126 N. E. 38, 39; Oatman v. Boone (Tex. Civ. App.) 244 S. W. 398, 400; Zeiting v. Hargadine-McKittrick Dry Goods Co., 298 Mo. 461, 250 S. W. 913, 916; Gorham v. Hall, 172 Ark. 744, 290 S. W. 357, 358; Adler v. Seaman (C. C. A.) 266 F. 828, 832.

INTESTABILIS. Lat. A witness incompetent to testify. Calvin.

INTESTABLE. One who has not testamentary capacity; e. g., an infant, lunatic, or person civilly dead.

INTESTACY. The state or condition of dying without having made a valid will, or without having disposed by will of a part of his property. In re Shestack's Estate, 267 Pa. 115, 110 A. 166; Brown v. Mugway, 15 N. J. Law, 331.

INTESTATE. Without making a will. A person is said to die intestate when he dies without making a will, or dies without leaving anything to testify what his wishes were with respect to the disposal of his property after his death. The word is also often used to signify the person himself. Thus, in speaking of the property of a person who died intestate, it is common to say "the intestate's property;" i. e., the property of the person dying in an intestate condition. Brown. See In re Cameron's Estate, 47 App. Div. 120, 62 N. Y. Supp. 187; Messmann v. Egenberger, 46 App. Div. 46, 61 N. Y. Supp. 536; Code Civ. Proc. N. Y. 1899, § 2514, subd. 1 (Surrogate's Court Act, § 314, subd. 1).

Besides the strict meaning of the word as

above given, there is also a sense in which intestacy may be partial; that is, where a man leaves a will which does not dispose of his whole estate, he is said to "die intestate" as to the property so omitted.

INTESTATE LAWS. Statutes which provide and prescribe the devolution of estates of persons who die without disposing of their estates by law, will or testament. Fullbright v. Boardman, 159 Ga. 162, 125 S. E. 44, 46, 37 A. L. R. 532; In re Rogers' Estate (Mo. Sup.) 250 S. W. 576, 578; Ford v. United States (C. C. A.) 205 F. 130, 134.

INTESTATE SUCCESSION. A succession is called "intestate" when the deceased has left no will, or when his will has been revoked or annulled as irregular. Therefore the heirs to whom a succession has fallen by the effects of law only are called "heirs *ab intestato*." Civ. Code La. art. 1096.

INTESTATO. Lat. In the civil law. Intestate; without a will. Calvin.

INTESTATUS. Lat. In the civil and old English law. An intestate; one who dies without a will. Dig. 50, 17, 7.

Intestatus decedit, qui aut omnino testamentum non fecit; aut non jure fecit; aut id quod fecerat ruptum irritumque factum est; aut nemo ex eo hæres existit. A person dies intestate who either has made no testament at all or has made one not legally valid; or if the testament he has made be revoked, or made useless; or if no one becomes heir under it. Inst. 3, 1, pr.

INTIMACY. As generally applied to persons, it is understood to mean a proper, friendly relation of the parties, but it is frequently used to convey the idea of an improper relation; an intimacy at least disreputable and degrading. Collins v. Pub. Co., 152 Pa. 187, 25 Atl. 546, 34 Am. St. Rep. 636. See McCarty v. Coffin, 137 Mass. 478, 32 N. E. 649.

INTIMATION.

In the Civil Law

A notification to a party that some step in a legal proceeding is asked or will be taken. Particularly, a notice given by the party taking an appeal, to the other party, that the court above will hear the appeal.

In Scotch Law

A formal written notice, drawn by a notary, to be served on a party against whom a stranger has acquired a right or claim; e. g., the assignee of a debt must serve such a notice on the debtor, otherwise a payment to the original creditor will be good.

In English Law

INTIMIDATION. Unlawful coercion; duress; putting in fear. Michaels v. Hillman,

112 Misc. 395, 183 N. Y. S. 195, 200; Kayser v. Fitzgerald, 109 Misc. 27, 178 N. Y. S. 130, 134; Tanner v. State, 24 Ga. App. 132, 100 S. E. 44; Webb v. Cooks', Waiters' & Waitresses' Union, No. 748 (Tex. Civ. App.) 205 S. W. 465, 467; McMichael v. Atlanta Envelope Co., 151 Ga. 776, 108 S. E. 226, 229, 26 A. L. R. 149; Burns v. Lackey, 171 Ky. 21, 186 S. W. 909, 913; Southwick v. State, 126 Ark. 188, 189 S. W. 843, 844.

Every person commits a misdemeanor, punishable with a fine or imprisonment, who wrongfully uses violence to or *intimidates* any other person, or his wife or children, with a view to compel him to abstain from doing, or to do, any act which he has a legal right to do, or abstain from doing. (St. 38 & 39 Vict. c. *86, § 7.) This enactment is chiefly directed against outrages by trades-unions. Sweet. There are similar statutes in many of the United States. See Payne v. Railroad Co., 13 Lea (Tenn.) 514, 49 Am. Rep. 666; Embry v. Com., 79 Ky. 441.

INTIMIDATION OF VOTERS. This, by statute in several of the states, is made a criminal offense. Under an early Pennsylvania act, it was held that, to constitute the offense of intimidation of voters, there must be a pre-conceived intention for the purpose of intimidating the officers or interrupting the election. *Respublica v. Gibbs*, 3 Yeates (Pa.) 429.

INTITLE. An old form of "entitle." 6 Mod. 304.

INTOL and UTTOL. In old records. Toll or custom paid for things imported and exported, or bought in and sold out. Cowell.

INTOLERABLE CRUELTY. In the law of divorce, this term denotes extreme cruelty, cruel and inhuman treatment, barbarous, savage, and inhuman conduct, and is equivalent to any of those phrases. *Shaw v. Shaw*, 17 Conn. 193; *Morehouse v. Morehouse*, 70 Conn. 420, 39 Atl. 516; *Blain v. Blain*, 45 Vt. 544.

INTOXICATING LIQUOR. Any liquor used as a beverage, and which, when so used in sufficient quantities, ordinarily or commonly produces entire or partial intoxication; any liquor intended for use as a beverage or capable of being so used, which contains alcohol, either obtained by fermentation or by the additional process of distillation, in such proportion that it will produce intoxication when imbibed in such quantities as may practically be drunk. *Intoxicating Liquor Cases*, 25 Kan. 767, 37 Am. Rep. 284; *Com'rs v. Taylor*, 21 N. Y. 173; *People v. Hawley*, 3 Mich. 339; *State v. Oliver*, 26 W. Va. 431, 53 Am. Rep. 79; *Sebastian v. State*, 44 Tex. Cr. R. 508, 72 S. W. 850; *Worley v. Spurgeon*, 38 Iowa, 465. See, also, *Alcoholic Liquors*.

INTOXICATION. The state of being poisoned; the condition produced by the administration or introduction into the human system

of a poison. But in its popular use this term is restricted to *alcoholic* intoxication, that is, drunkenness or inebriety, or the mental and physical condition induced by drinking excessive quantities of alcoholic liquors, and this is its meaning as used in statutes, indictments, etc. See *Sapp v. State*, 116 Ga. 182, 42 S. E. 410; *State v. Pierce*, 65 Iowa, 85, 21 N. W. 195; *Wadsworth v. Dunnam*, 98 Ala. 610, 13 South. 599; *Ring v. Ring*, 112 Ga. 854, 38 S. E. 330; *State v. Kelley*, 47 Vt. 296; *Com. v. Whitney*, 11 Cush. (Mass.) 477.

INTRA. Lat. In; near; within. "*Infra*" or "*inter*" has taken the place of "*intra*" in many of the more modern Latin phrases.

INTRA ANNI SPATIUM. Within the space of a year. Cod. 5, 9, 2. *Intra annate tempus*. Id. 6, 30, 19.

INTRA FIDEM. Within belief; credible. Calvin.

INTRA LUCTUS TEMPUS. Within the time of mourning. Cod. 9, 1, auth.

INTRA MCENIA. Within the walls (of a house.) A term applied to domestic or *menial* servants. 1 Bl. Comm. 425.

INTRA PARIETES. Between walls; among friends; out of court; without litigation. Calvin.

INTRA PRÆSIDIA. Within the defenses. See *Infra Præsidia*.

INTRA QUATUOR MARIA. Within the four seas. Shep. Touch. 378.

INTRA VIRES. An act is said to be *intra vires* ("within the power") of a person or corporation when it is within the scope of his or its powers or authority. It is the opposite of *ultra vires*, (*q. v.*) *Pittsburgh, etc., R. Co. v. Dodd*, 115 Ky. 176, 72 S. W. 827.

INTRALIMINAL. In mining law, the term "intraliminal rights" denotes the right to mine, take, and possess all such bodies or deposits of ore as lie within the four planes formed by the vertical extension downward of the boundary lines of the claim; as distinguished from "extraliminal," or more commonly "extralateral," rights. See *Jefferson Min. Co. v. Anchoria-Leland Mill. & Min. Co.*, 32 Colo. 176, 75 Pac. 1073, 64 L. R. A. 925.

INTRAMURAL. Within the walls. The powers of a municipal corporation are "intramural" and "extramural"; the one being the powers exercised within the corporate limits, and the other being those exercised without. *State v. Port of Astoria*, 154 P. 399, 404, 79 Or. 1.

INTRARE MARISCUM. L. Lat. To drain a marsh or low ground, and convert it into herbage or pasture.

INTRASTATE COMMERCE. See *Commerce*.

INTRINSECUM SERVITIUM. Lat. Common and ordinary duties with the lord's court.

INTRODUCTION. The part of a writing which sets forth preliminary matter, or facts tending to explain the subject.

INTROMISSION.

In Scotch Law

The assumption of authority over another's property, either legally or illegally. The irregular intermeddling with the effects of a deceased person, which subjects the party to the whole debts of the deceased, is called "*vitious intromission.*" Kames, Eq. b. 3, c. 8, § 2.

Necessary Intromission

That kind of intromission or interference where a husband or wife continues in possession of the other's goods after their decease, for preservation. Wharton.

In English Law

Dealings in stock, goods, or cash of a principal coming into the hands of his agent, to be accounted for by the agent to his principal. *Stewart v. McKean*, 29 Eng. Law & Eq. 391.

INTRONISATION. In French ecclesiastical law. Enthronement. The installation of a bishop in his episcopal see.

INTRUDER. One who enters upon land without either right of possession or color of title. *Miller v. McCullough*, 104 Pa. 630; *Russel v. Chambers*, 43 Ga. 479. In a more restricted sense, a stranger who, on the death of the ancestor, enters on the land, unlawfully, before the heir can enter. *Williams v. Alt*, 123 N. E. 499, 500, 226 N. Y. 283, aff 174 N. Y. S. 460, 462, 186 App. Div. 235.

INTRUSION. A species of injury by ouster or amotion of possession from the freehold, being an entry of a stranger, after a particular estate of freehold is determined, before him in remainder or reversion. *Hulick v. Scovil*, 9 Ill. 170; *Boylan v. Deinzer*, 45 N. J. Eq. 485, 18 Atl. 121.

The name of a writ brought by the owner of a fee-simple, etc., against an intruder. *New Nat. Brev.* 453. Abolished by 3 & 4 Wm. IV. c. 57.

INTRUST. To confer a trust upon; to deliver to another something in trust or to commit something to another with a certain confidence regarding his care, use or disposal of it. *State v. Ugland*, 187 N. W. 237, 239, 48 N. D. 841.

INTUITUS. Lat. A view; regard; contemplation. *Diverso intuitu*, (*q. v.*) with a different view.

INUNDATION. The overflow of waters by coming out of their bed.

Inundations may arise from three causes: from public necessity, as in defence of a place it may be necessary to dam the current of a stream, which will cause an inundation to the upper lands; they may be occasioned by an invincible force, as by the accidental fall of a rock in the stream, or by a natural flood or freshet; or they may result from the erection of works on the stream. In the first case, the injury caused by the inundation is to be compensated as other injuries done in war; in the second, as there was no fault of any one, the loss is to be borne by the unfortunate owner of the estate; in the last, when the riparian proprietor is injured by such works as alter the level of the water where it enters or where it leaves the property on which they are erected, the person injured may recover damages for the injury thus caused to his property by the inundation; 9 Co. 59; 1 B. & Ald. 258; *Sumner v. Tileston*, 7 Pick. (Mass.) 198; *Bailey v. City of New York*, 3 Hill (N. Y.) 531, 38 Am. Dec. 669; *Tillotson v. Smith*, 32 N. H. 90, 64 Am. Dec. 355; *Merritt v. Parker*, 1 N. J. Law, 460; *Williams v. Gale*, 3 Har. & J. (Md.) 231; *Ohio & M. R. Co. v. Nuetzel*, 43 Ill. App. 108. See Dam; Backwater; Irrigation; Waters; Water Course.

INURE. To take effect; to result. *Cedar Rapids Water Co. v. Cedar Rapids*, 118 Iowa, 234, 91 N. W. 1081; *Hinson v. Booth*, 39 Fla. 333, 22 South. 687; *Holmes v. Tallada*, 125 Pa. 133, 17 Atl. 238, 3 L. R. A. 219, 11 Am. St. Rep. 880; *Salzer v. Jackson*, 232 P. 412, 414, 105 Okl. 212; *Malachowski v. Varro*, 244 P. 936, 938, 76 Cal. App. 207.

INUREMENT. Use; user; service to the use or benefit of a person. *Dickerson v. Colgrove*, 100 U. S. 583, 25 L. Ed. 618.

Inutilis labor et sine fructu non est effectus legis. Useless and fruitless labor is not the effect of law. *Co. Litt.* 127b. The law forbids such recoveries whose ends are vain, chargeable, and unprofitable. *Id.*; *Wing.* Max. p. 110, max. 38.

INVADIARE. To pledge or mortgage lands.

INVADIATIO. A pledge or mortgage.

INVADIATUS. One who is under pledge; one who has had sureties or pledges given for him. *Spelman.*

INVALID. Vain; inadequate to its purpose; not of binding force or legal efficacy; lacking in authority or obligation. *Hood v. Perry*, 75 Ga. 312; *State v. Casteel*, 110 Ind. 174, 11 N. E. 219; *Mutual Ben. L. Ins. Co. v. Winne*, 20 Mont. 20, 49 Pac. 446; *Avery & Co. v. Sorrell*, 121 S. E. 828, 829, 157 Ga. 476; *Dreidlein v. Manger*, 220 P. 1107, 1108, 69 Mont. 155; *Columbian Nat. Fire Ins. Co. v. Dixie Co-op. Mail Order House* (Tex. Civ. App.) 261 S. W. 174, 179.

INVASION. An encroachment upon the rights of another; the incursion of an army for conquest or plunder. *Webster.* See *Ætina Ins. Co. v. Boon*, 95 U. S. 129, 24 L. Ed. 395.

INVASIONES. The inquisition of serjeanties and knights' fees. Cowell.

INVECTA ET ILLATA. Lat. In the civil law. Things carried in and brought in. Articles brought into a hired tenement by the hirer or tenant, and which became or were pledged to the lessor as security for the rent. Dig. 2, 14, 4, pr. The phrase is adopted in Scotch law. See Bell.

Inveniens libellum famosum et non corrumpens punitur. He who finds a libel and does not destroy it is punished. Moore, 813.

INVENT. To find out something new; to devise, contrive, and produce something not previously known or existing, by the exercise of independent investigation and experiment; particularly applied to machines, mechanical appliances, compositions, and patentable inventions of every sort. To create. E. W. Bliss Co. v. United States, 39 S. Ct. 42, 43, 248 U. S. 37, 63 L. Ed. 112.

INVENTIO.

In The Civil Law

Finding; one of the modes of acquiring title to property by occupancy. Heinecc. lib. 2, tit. 1, § 350.

In Old English Law

A thing found; as goods or treasure-trove. Cowell. The plural, "*inventiones*," is also used.

INVENTION. In patent law. The act or operation of finding out something new; the process of contriving and producing something not previously known or existing, by the exercise of independent investigation and experiment. Also the article or contrivance or composition so invented. See Leidersdorf v. Flint, 15 Fed. Cas. 260; Smith v. Nichols, 21 Wall. 118, 22 L. Ed. 566; Hollister v. Manufacturing Co., 113 U. S. 72, 5 Sup. Ct. 717, 28 L. Ed. 901; Murphy Mfg. Co. v. Excelsior Car Roof Co. (C. C.) 70 Fed. 495.

A new and useful means of obtaining an end. Harmon Paper Co. v. Prager (C. C. A.) 287 F. 841, 843.

A concept or thing evolved from the mind. "Invention" is not a revelation of something which existed and was unknown, but the creation of something which did not exist before, and possessing elements of novelty and utility in kind and measure different from, and greater than, what the art might expect from skilled workers. Pyrene Mfg. Co. v. Boyce (C. C. A.) 292 F. 480, 481.

"An invention, in the sense of the patent law, means the finding out—the contriving, the creating of something which did not exist, and was not known before, and which can be made useful and advantageous in the pursuits of life, or which can add to the enjoyment of mankind." Conover v. Roach, 4 Fish. 12, Fed. Cas. No. 3,125.

"Not every improvement is invention; but to entitle a thing to protection it must be the product

of some exercise of the inventive faculties, and it must involve something more than what is obvious to persons skilled in the art to which it relates." Rosenwasser v. Berry (C. C.) 22 F. 841.

"Invention" involves the exercise of the creative mind. Aeolian Co. v. Wanamaker (D. C.) 221 F. 668, 668.

Inventive skill has been defined as that intuitive faculty of the mind put forth in the search for new results, or new methods, creating what had not before existed, or bringing to light what lay hidden from vision; it differs from a suggestion of that common experience which arose spontaneously and by a necessity of human reasoning in the minds of those who had become acquainted with the circumstances with which they had to deal. Hollister v. Mfg. Co., 113 U. S. 72, 5 Sup. Ct. 717, 28 L. Ed. 901.

Invention, in the nature of improvements, is the double mental act of discerning, in existing machines, processes or articles, some deficiency, and pointing out the means of overcoming it. General Electric Co. v. Electric Co., 174 F. 246, 98 C. C. A. 154.

An "invention" differs from a "discovery." The former term is properly applicable to the contrivance and production of something that did not before exist; while discovery denotes the bringing into knowledge and use of something which, although it existed, was before unknown. Thus, we speak of the "discovery" of the properties of light, electricity, etc., while the telescope and the electric motor are the results of the process of "invention."

INVENTOR. One who finds out or contrives some new thing; one who devises some new art, manufacture, mechanical appliance, or process; one who invents a patentable contrivance. See Sparkman v. Higgins, 22 Fed. Cas. 879; Henderson v. Tompkins (C. C.) 60 Fed. 764.

INVENTORY. A detailed list of articles of property; a list or schedule of property, containing a designation or description of each specific article; an itemized list of the various articles constituting a collection, estate, stock in trade, etc., with their estimated or actual values. In law, the term is particularly applied to such a list made by an executor, administrator, or assignee in bankruptcy. See Silver Bow Min. Co. v. Lowry, 5 Mont. 618, 6 Pac. 62; Lloyd v. Wyckoff, 11 N. J. Law, 224; Roberts, etc., Co. v. Sun Mut. L. Ins. Co., 19 Tex. Civ. App. 338, 48 S. W. 559; Southern F. Ins. Co. v. Knight, 111 Ga. 622, 36 S. E. 821, 52 L. R. A. 70, 78 Am. St. Rep. 216.

INVENTUS. Lat. Found. *Thesaurus inventus*, treasure-trove. *Non est inventus*, [he] is not found.

INVERITARE. To make proof of a thing. Jacob.

INVEST. To loan money upon securities of a more or less permanent nature, or to place it in business ventures or real estate, or otherwise lay it out, so that it may produce a revenue or income. Drake v. Crane, 127 Mo. 85, 29 S. W. 990, 27 L. R. A. 653; Stramann

v. Scheeren, 7 Colo. App. 1, 42 Pac. 191; Una v. Dodd, 39 N. J. Eq. 186.

To clothe one with the possession of a fief or benefice. See Investiture.

INVESTIGATION. To follow up step by step by patient inquiry or observation; to trace or track mentally; to search into; to examine and inquire into with care and accuracy; to find out by careful inquisition; examination; the taking of evidence; a legal inquiry. Lukert v. Eldridge, 49 Mont. 46, 139 P. 999, 1001; People ex rel. Fennell v. Wilmot, 127 Misc. 791, 217 N. Y. S. 477, 479; In re McLaughlin, 124 Misc. 766, 210 N. Y. S. 68, 71; Application of Gilchrist, 130 Misc. 456, 224 N. Y. S. 210, 219.

INVESTITIVE FACT. The fact by means of which a right comes into existence; *e. g.*, a grant of a monopoly, the death of one's ancestor. Holl. Jur. 132.

INVESTITURE. A ceremony which accompanied the grant of lands in the feudal ages, and consisted in the open and notorious delivery of possession in the presence of the other vassals, which perpetuated among them the *era* of their new acquisition at the time when the art of writing was very little known; and thus the evidence of the property was reposed in the memory of the neighborhood, who, in case of disputed title, were afterwards called upon to decide upon it. Brown.

In Ecclesiastical Law

Investiture is one of the formalities by which the election of a bishop is confirmed by the archbishop. See Phillim. Ecc. Law, 42, et seq.

INVIOABILITY. The attribute of being secured against violation. The persons of ambassadors are inviolable.

INVITATION. In the law of negligence, and with reference to trespasses on realty, invitation is the act of one who solicits or incites others to enter upon, remain in, or make use of, his property or structures thereon, or who so arranges the property or the means of access to it or of transit over it as to induce the reasonable belief that he expects and intends that others shall come upon it or pass over it. See Sweeney v. Old Colony & N. R. Co., 10 Allen (Mass.) 373, 87 Am. Dec. 644; Wilson v. New York, N. H. & H. R. Co., 18 R. I. 491, 29 A. 258; Wright v. Boston & A. R. Co., 142 Mass. 300, 7 N. E. 866.

Thus the proprietor of a store, theatre or amusement park "invites" the public to come upon his premises for such purposes as are connected with its intended use. Again, the fact that safety gates at a railroad crossing, which should be closed in case of danger, are left standing open, is an "invitation" to the traveler on the highway to cross. Roberts v. Delaware & H. Canal Co., 177 Pa. 183, 35 Atl. 723. So, bringing a passenger train on a rail-

road to a full stop at a regular station is an "invitation to alight."

License distinguished

A license is a passive permission on the part of the owner of premises, with reference to other persons entering upon or using them, while an invitation implies a request, solicitation or desire that they should do so. An invitation may be inferred where there is a common interest or mutual advantage; while a license will be inferred where the object is the mere pleasure or benefit of the person using it. Bennett v. Louisville & N. R. Co., 102 U. S. 580, 26 L. Ed. 235; Weldon v. Philadelphia, W. & B. R. Co., 2 Pennewill (Del.) 1, 43 Atl. 159. An owner owes to a licensee no duty as to the condition of the premises (unless imposed by statute) save that he should not knowingly let him run upon a hidden peril or willfully cause him harm; while to one invited he is under the obligation to maintain the premises in a reasonably safe and secure condition. Beehler v. Daniels, 18 R. I. 563, 29 Atl. 6, 27 L. R. A. 512, 49 Am. St. Rep. 790.

Express and implied

An invitation may be *express*, when the owner or occupier of the land by words invites another to come upon it or make use of it or of something thereon; or it may be *implied* when such owner or occupier by acts or conduct leads another to believe that the land or something thereon was intended to be used as he uses them, and that such use is not only acquiesced in by the owner or occupier, but is in accordance with the intention or design for which the way or place or thing was adapted and prepared and allowed to be used. Turress v. New York, S. & W. R. Co., 61 N. J. Law, 314, 40 Atl. 614; Purrey v. New York Cent. R. Co., 67 N. J. Law, 270, 51 Atl. 505; Lepnick v. Gaddis, 72 Miss. 200, 16 So. 213, 26 L. R. A. 686, 48 Am. St. Rep. 547; Plummer v. Dill, 156 Mass. 426, 31 N. E. 128, 32 Am. St. Rep. 463; Sesler v. Rolfe Coal & Coke Co., 51 W. Va. 318, 41 S. E. 216; Allen v. Yazoo & M. V. R. Co., 111 Miss. 267, 71 So. 386, 388; Robinson v. Leighton, 122 Me. 309, 119 A. 809, 810, 30 A. L. R. 1386; Milauskis v. Terminal R. Ass'n of St. Louis, 286 Ill. 547, 122 N. E. 78, 81; Johnson v. Atlas Supply Co. (Tex. Civ. App.) 183 S. W. 31, 33; Frear v. Manchester Traction, Light & Power Co., 83 N. H. 64, 139 A. 86, 89, 61 A. L. R. 1280; Petree v. Davison-Paxon-Stokes Co., 30 Ga. App. 490, 118 S. E. 697, 698; Railroad Co. v. O'Malley, 107 Ill. App. 600; Smith v. Sunday Creek Co., 74 W. Va. 606, 82 S. E. 608, 609; City of Shawnee v. Drake, 69 Okl. 209, 171 P. 727, 729, L. R. A. 1918D, 810; Nolan v. Metropolitan St. Ry. Co., 250 Mo. 602, 157 S. W. 637, 641; St. Louis & S. F. R. Co. v. Stacy, 77 Okl. 165, 171 P. 870, 874; Wilmes v. Chicago Great Western Ry. Co., 175 Iowa, 101, 156 N. W. 877, 890, L. R. A. 1917F, 1024; Gasch v. Rounds, 93 Wash. 317, 160 P. 962, 964; Coburn v. Village of Swanton, 95 Vt. 320, 115 A. 153, 156; Bush v. Weed Lumber Co., 63 Cal. App. 426, 218 P. 618, 620; Polluck v. Minneapolis & St. L. R. Co., 44 S. D. 249, 183 N. W. 859, 862.

INVITED ERROR. See Error.

INVITEE. One who is at a place upon the invitation of another. Crossgrove v. Atlantic Coast Line R. Co., 30 Ga. App. 462, 118 S. E. 694, 695; Carr v. Wallace Laundry Co., 31 Idaho, 266, 170 P. 107; Kinsman v. Barton & Co., 141 Wash. 311, 251 P. 563, 564; Missouri, K. & T. Ry. Co. of Texas v. Bailey (Tex. Civ. App.) 186 S. W. 230, 231; Jonosky v. Northern

Pac. Ry. Co., 57 Mont. 63, 187 P. 1014, 1015; Lange v. St. Johns Lumber Co., 115 Or. 337, 237 P. 696, 698; L. E. Meyers' Co. v. Logue's Adm'r, 212 Ky. 802, 280 S. W. 107, 109; McCullen v. Fishell Bros. Amusement Co., 198 Mo. App. 130, 199 S. W. 439, 441; Fleckenstein v. Great Atlantic & Pacific Tea Co., 91 N. J. Law, 145, 102 A. 700, L. R. A. 1918C, 179; Crossgrove v. Atlantic Coast Line R. Co., 30 Ga. App. 462, 118 S. E. 694; Campbell v. Sutliff, 193 Wis. 370, 214 N. W. 374, 375, 53 A. L. R. 771; Moohr v. Victoria Inv. Co., 144 Wash. 387, 258 P. 43, 46.

INVITO. Lat. Being unwilling. Against or without the assent or consent.

Ab invito

By or from an unwilling party. A transfer *ab invito* is a compulsory transfer.

Invito debitore

Against the will of the debtor.

Invito domino

The owner being unwilling; against the will of the owner; without the owner's consent. In order to constitute larceny, the property must be taken *invito domino*.

Invito beneficium non datur. A benefit is not conferred on one who is unwilling to receive it; that is to say, no one can be compelled to accept a benefit. Dig. 50, 17, 69; Broom, Max. 699, note.

INVOICE. In commercial law. An account of goods or merchandise sent by merchants to their correspondents at home or abroad, in which the marks of each package, with other particulars, are set forth. Marsh. Ins. 408; Dane, Abr. Index. See Merchants' Exch. Co. v. Weisman, 132 Mich. 353, 93 N. W. 870; Southern Exp. Co. v. Hess, 53 Ala. 22; Cramer v. Oppenstein, 16 Colo. 495, 27 P. 713; Stone v. First Nat. Bank, 100 Or. 528, 198 P. 244. "Invoices" are written itemized accounts sent to a purchaser by the seller of merchandise. Cobb & Seal Shoe Store v. Aetna Ins. Co., 78 S. C. 388, 58 S. E. 1099; Garner Mfg. Co. v. Cornelius Lumber Co., 165 Ark. 119, 262 S. W. 1011, 1014; Wilmot v. Minneapolis Automobile Trade Ass'n, 169 Minn. 140, 210 N. W. 861, 862; Larkin Co. v. New York, C. & St. L. R. Co., 98 Misc. 446, 162 N. Y. S. 870, 871.

A list or account of goods or merchandise sent or shipped by a merchant to his correspondent, factor, or consignee, containing the particular marks of each description of goods, the value, charges, and other particulars. Jac. Sea Laws, 302.

A writing made on behalf of an importer, specifying the merchandise imported, and its true cost or value. And. Rev. Law, § 294.

INVOICE BOOK. A book in which invoices are copied.

INVOICE PRICE of goods means the prime cost. Le Roy v. United Ins. Co., 7 Johns. (N. Y.) 343.

INVOLUNTARY. Without will or power of choice; opposed to volition or desire. Curry v. Federal Life Ins. Co., 221 Mo. App. 626, 287 S. W. 1053, 1056. An involuntary act is that which is performed with constraint (*q. v.*) or with repugnance, or without the will to do it. An action is involuntary, then, which is performed under duress. Wolff Inst. Nat. § 5.

INVOLUNTARY DEPOSIT. In the law of bailments, one made by the accidental leaving or placing of personal property in the possession of another, without negligence on the part of the owner, or, in cases of fire, shipwreck, inundation, riot, insurrection, or the like extraordinary emergencies, by the owner of personal property committing it out of necessity to the care of any person. Civ. Code S. D. 1903, § 1354 (Rev. Codes 1919, § 971).

INVOLUNTARY DISCONTINUANCE. In practice. A discontinuance is involuntary where, in consequence of technical omission, misleading, or the like, the suit is regarded as out of court, as where the parties undertake to refer a suit that is not referable, or omit to enter proper continuances. Hunt v. Griffin, 49 Miss. 748.

INVOLUNTARY MANSLAUGHTER. The unintentional killing of a person by one engaged in an unlawful, but not felonious act. 4 Steph. Comm. 52.

INVOLUNTARY PAYMENT. One obtained by fraud, oppression, or extortion, or to avoid the use of force to coerce it, or to obtain the release of the person or property from detention. Parcher v. Marathon County, 52 Wis. 388, 9 N. W. 23, 38 Am. Rep. 745; Wolfe v. Marshal, 52 Mo. 168; Corkle v. Maxwell, 6 Fed. Cas. 555.

INVOLUNTARY SERVITUDE. The condition of one who is compelled by force, coercion, or imprisonment, and against his will, to labor for another, whether he is paid or not. See State v. West, 42 Minn. 147, 43 N. W. 845; Ex parte Wilson, 5 S. Ct. 935, 114 U. S. 417, 29 L. Ed. 89; Thompson v. Benton, 117 Mo. 83, 22 S. W. 863, 20 L. R. A. 462, 38 Am. St. Rep. 639; In re Slaughterhouse Cases, 16 Wall. 69, 21 L. Ed. 394; Robertson v. Baldwin, 17 S. Ct. 326, 165 U. S. 275, 41 L. Ed. 715.

As to involuntary "Bankruptcy," "Indebtedness," "Nonsuit," and "Trust," see those titles.

IOTA. The minutest quantity possible. Iota is the smallest Greek letter. The word "jot" is derived therefrom.

Ipsæ leges cupiunt ut jure regantur. Co. Litt. 174. The laws themselves require that they should be governed by right.

IPSE. Lat. He himself; the same; the very person.

IPSE DIXIT. He himself said it; a bare assertion resting on the authority of an individual.

IPSISSIMIS VERBIS. In the identical words; opposed to "substantially." Townsend v. Jemison, 7 How. 719, 12 L. Ed. 880; Summons v. State, 5 Ohio St. 346.

IPSO FACTO. By the fact itself; by the mere fact. By the mere effect of an act or a fact. Barber Asphalt Paving Co. v. Hayward, 248 Mo. 280, 154 S. W. 140, 141.

In English ecclesiastical law

A censure of excommunication in the ecclesiastical court, immediately incurred for divers offenses, after lawful trial.

IPSO JURE. By the law itself; by the mere operation of law. Calvin.

IPSWICH, DOMESDAY OF. The earliest extant record of any borough court with elective officers sitting regularly and administering a customary law of the sea. Black Book of Admiralty, Vol. II. It was abolished by 5 & 6 Will. IV. c. 76. Its twelve "capital portmen" were elected from the most fit, wealthy and discreet of the judges.

Ira furor brevis est. Anger is a short insanity. Beardsley v. Maynard, 4 Wend. (N. Y.) 336, 355.

IRA MOTUS. Lat. Moved or excited by anger or passion. A term sometimes formerly used in the plea of *son assault demesne*. 1 Tidd, Pr. 645.

IRADE. A decree of the Sultan.

IRE AD LARGUM. Lat. To go at large; to escape; to be set at liberty.

IRENARCHA. In Roman law. An officer whose duties are described in Dig. 5, 4, 18, 7. See Id. 48, 3, 6; Cod. 10, 75. Literally, a peace-officer or magistrate.

IRRATIONAL. Unreasonable, foolish, absurd; a person may be irrational in such sense, and still not be insane in the legal sense. Lee v. State, 30 Okl. Cr. 14, 234 P. 654, 655.

IRRECUSABLE. A term used to indicate a certain class of contractual obligations recognized by the law which are imposed upon a person without his consent and without regard to any act of his own. They are distinguished from recusable obligations which are the result of a voluntary act on the part of a person on whom they are imposed by law.

A clear example of an irrecusable obligation is the obligation imposed on every man not to strike another without some lawful excuse. A recusable obligation is based upon some act of a person bound, which is a condition precedent to the genesis of the obligation. These terms were first suggested by Prof. Wigmore in 8 Harv. Law Rev. 200. See Harr. Contr. 6.

IRREGULAR. Not according to rule; improper or insufficient, by reason of departure from the prescribed course.

As to irregular "Deposit," "Indorsement," "Process," and "Succession," see those titles.

IRREGULARITY. The doing or not doing that, in the conduct of a suit at law, which, conformably with the practice of the court, ought or ought not to be done. Doe ex dem. Cooper v. Harter, 2 Ind. 252. Violation or nonobservance of established rules and practices. The want of adherence to some prescribed rule or mode of proceeding; consisting either in omitting to do something that is necessary for the due and orderly conducting of a suit, or doing it in an unseasonable time or improper manner. Coulter v. Board of Com'rs of Bernalillo County, 22 N. M. 24, 158 P. 1086; Ex parte Davis, 118 Or. 693, 247 P. 809, 811; Ex parte Lyde, 17 Okl. Cr. 618, 191 P. 606, 607; Mitter v. Black Diamond Coal Co., 28 Wyo. 439, 206 P. 152, 156; 1 Tidd, Pr. 512. And see McCain v. Des Moines, 174 U. S. 168, 19 S. Ct. 644, 43 L. Ed. 936; Emeric v. Alvarado, 64 Cal. 529, 2 P. 418; Hall v. Munger, 5 Lans. (N. Y.) 113; Corn Exch. Bank v. Blye, 119 N. Y. 414, 23 N. E. 805; Salter v. Hilgen, 40 Wis. 365; Turrill v. Walker, 4 Mich. 183. "Irregularity" is the technical term for every defect in practical proceedings, or the mode of conducting an action or defense, as distinguishable from defects in pleadings. 3 Chit. Gen. Pr. 509.

The term is not synonymous with illegality. City of Tampa v. Palmer, 89 Fla. 514, 105 So. 115, 117. "Irregularity" is a want of adherence to some prescribed rule or mode of proceeding, while "illegality" denotes a radical defect. United States v. Salmon (D. C.) 231 F. 461, 463; U. S. v. Richmond (C. C. A.) 17 F.(2d) 28, 32. "Illegality" in the assessment of a tax is a substantial defect contrary to law and leaving the proceeding with nothing to stand on, while an "irregularity" is a formal defect contrary only to the practice authorized by law, and relating rather to the manner of doing the act than to the act itself. Bunten v. Rock Springs Grazing Ass'n, 29 Wyo. 461, 215 P. 244, 254.

Under statutes authorizing the modification or setting aside of judgments, "irregularity" is some departure from the prescribed procedure in the trial, or in the determination of the action, not evidenced by a ruling or an order. Duncan v. Wilkins, 103 Okl. 221, 229 P. 801, 802; American Nat. Bank of Tucumcari v. Tarpley, 31 N. M. 667, 250 P. 18, 20. But under a statute providing for relief against an irregularity in obtaining a judgment, the term has no fixed legal meaning, and in every instance the question is one of fact, dependent upon the circum-

stances of each case. *Nation v. Savely*, 127 Okl. 117, 260 P. 32, 34.

The "irregularity" which, under a South Carolina statute, will not vitiate the formation of a corporation, refers to a deviation from minor statutory provisions. *Meyer v. Brunson*, 104 S. C. 84, 88 S. E. 359, 360.

Irregularity in the proceedings of the court, as used in a California statute pertaining to new trials, relates to matters occurring during the trial, and not after it. *Diamond v. Superior Court of California in and for City and County of San Francisco*, 189 Cal. 732, 210 P. 36, 37.

In Canon Law

Any impediment which prevents a man from taking holy orders.

In General

—Legal irregularity. An irregularity occurring in the course of some legal proceeding. A defect or informality which, in the technical view of the law, is to be accounted an irregularity.

IRRELEVANCY. The absence of the quality of relevancy, as in evidence or pleadings. The quality or state of being inapplicable or impertinent to a fact or argument.

Irrelevancy, in an answer, consists in statements which are not material to the decision of the case; such as do not form or tender any material issue. *People v. McCumber*, 18 N. Y. 321, 72 Am. Dec. 515; *Walker v. Hewitt*, 11 How. Prac. (N. Y.) 398; *Carpenter v. Bell*, 1 Rob. (N. Y.) 715; *Smith v. Smith*, 50 S. C. 54, 27 S. E. 545. See, also, Irrelevant.

IRRELEVANT. Not relevant; not relating or applicable to the matter in issue; not supporting the issue. *Crump v. Lanham*, 67 Okl. 33, 163 P. 43, 44. Evidence is irrelevant where it has no tendency to prove or disprove any issue involved. *Malone v. State*, 16 Ala. App. 185, 76 So. 469, 470.

IRRELEVANT ALLEGATION. One which has no substantial relation to the controversy between the parties to the suit, and which cannot affect the decision of the court. *Wayte v. Bowker Chemical Co.*, 196 App. Div. 665, 187 N. Y. S. 276, 277; the test of any allegation being whether it tends to constitute a cause of action or a defense. *Isaacs v. Solomon*, 159 App. Div. 675, 144 N. Y. S. 876, 877. An allegation is irrelevant, where the issue made by its denial has no effect upon the cause of action or no connection with the allegation. *Germofert Mfg. Co. v. Castles*, 97 S. C. 389, 81 S. E. 665, 666. In this connection, "redundant" is almost a synonym for "irrelevant." *Plank v. Hopkins*, 35 S. D. 243, 151 N. W. 1017, 1019.

IRRELEVANT ANSWER. See Answer.

IRREMOVABILITY. The status of a pauper in England, who cannot be legally removed

from the parish or union in which he is receiving relief, notwithstanding that he has not acquired a settlement there. 3 Steph. Comm. 60. Thus a pauper who has resided in a parish during the whole of the preceding year is irremovable, in view of Stat. 28 and 29 Vict. c. 79, § 8.

IRREPARABLE DAMAGES. See Damages.

IRREPARABLE INJURY. See Injury.

IRREPLEVIABLE. That cannot be replevied or delivered on sureties. Spelled, also, "irreplevisable." Co. Litt. 145; 13 Edw. I. c. 2.

IRRESISTIBLE FORCE. A term applied to such an interposition of human agency as is, from its nature and power, absolutely uncontrollable; as the inroads of a hostile army. Story, Bailm. § 25.

IRRESISTIBLE IMPULSE. Used chiefly in criminal law, this term means an impulse to commit an unlawful or criminal act which cannot be resisted or overcome by the patient because insanity or mental disease has destroyed the freedom of his will and his power of self-control and of choice as to his actions. See *McCarty v. Com.*, 114 Ky. 620, 71 S. W. 658; *State v. Knight*, 95 Me. 467, 50 A. 276, 55 L. R. A. 373; *Leache v. State*, 22 Tex. App. 279, 3 S. W. 539, 58 Am. Rep. 638; *State v. Peel*, 23 Mont. 358, 59 P. 169, 75 Am. St. Rep. 529. And see Insanity.

IRREVOCABLE. Which cannot be revoked or recalled.

IRREVOCABLE LETTER. A confirmed irrevocable letter of credit, irrevocable letter, or a confirmed credit is a contract to pay on compliance with its terms, and needs no formal acknowledgment or acceptance other than is therein stated. *Lamborn v. National Park Bank of New York*, 240 N. Y. 520, 148 N. E. 664, 665.

IRRIGATION. The operation of watering lands for agricultural purposes by artificial means. In its primary sense, a sprinkling or watering; specifically, the application of water to lands for the raising of agricultural crops and other products of the soil. *Platte Water Co. v. Irrigation Co.*, 12 Colo. 529, 21 P. 711; *City and County of Denver v. Brown*, 56 Colo. 216, 138 P. 44, 49.

IRRIGATION COMPANY. A private corporation, authorized and regulated by statute in several states, having for its object to acquire exclusive rights to the water of certain streams or other sources of supply, and to convey it by means of ditches or canals through a region where it can be beneficially used for agricultural purposes, and either dividing the water among stockholders, or making contracts with consumers, or furnishing a supply to all who apply at fixed rates.

IRRIGATION DISTRICT. A public and quasi-municipal corporation authorized by law in several states, comprising a defined region or area of land which is susceptible of one mode of irrigation from a common source and by the same system of works. These districts are created by proceedings in the nature of an election under the supervision of a court, and are authorized to purchase or condemn the lands and waters necessary for the system of irrigation proposed and to construct necessary canals and other works, and the water is apportioned ratably among the land-owners of the district. See *Colburn v. Wilson*, 23 Idaho 337, 130 P. 381; *Indian Cove Irr. Dist. v. Prideaux*, 25 Idaho, 112, 136 P. 618, 621, Ann. Cas. 1916A, 1218; *Nampa & Meridian Irr. Dist. v. Briggs*, 27 Idaho, 84, 147 P. 75, 82.

IRRITANCY. In Scotch law. The happening of a condition or event by which a charter, contract, or other deed, to which a clause irritant is annexed, becomes void.

IRRITANT. In Scotch law. Avoiding or making void; as an irritant clause. See *Irritancy*.

IRRITANT CLAUSE. In Scotch law. A provision by which certain prohibited acts specified in a deed are, if committed, declared to be null and void. A *resolutive* clause dissolves and puts an end to the right of a proprietor on his committing the acts so declared void.

IRROGARE. Lat. In the civil law. To impose or set upon, as a fine. Calvin. To inflict, as a punishment. To make or ordain, as a law.

IRROTULATIO. L. Lat. An enrolling; a record.

IS. This word, although normally referring to the present, *Cunningham v. Moser*, 91 Okl. 44, 215 P. 758, 759; *Jenkins v. First Nat. Bank*, 73 Mont. 110, 236 P. 1085, 1087; often has a future meaning, but is not synonymous with "shall have been." *State v. Jorgenson*, 25 N. D. 539, 142 N. W. 450, 462, 49 L. R. A. (N. S.) 67.

IS QUI COGNOSCIT. Lat. The cognizor in a fine. *Is cui cognoscitur*, the cognizee.

ISH. In Scotch law. The period of the termination of a tack or lease. 1 Bligh, 522.

ISLAND. A piece of land surrounded by water. *Webber v. Pere Marquette Boom Co.*, 62 Mich. 626, 30 N. W. 469; *Goff v. Cogle*, 118 Mich. 307, 76 N. W. 489, 42 L. R. A. 161.

An island that arises in the bed of a stream usually first presents itself as a sand bar; *Cox v. Arnold*, 129 Mo. 337, 31 S. W. 592, 50 Am. St. Rep. 450; *Glassell v. Hansen*, 135 Cal. 547, 67 P. 964; *Holman v. Hodges*, 112 Iowa, 714, 84 N. W. 950, 53 L. R. A. 673, 84 Am. St. Rep. 367; a bar, before it will sup-

port vegetation of any kind, may become valuable for fishing, hunting, as a shooting park, for the harvest of ice, for pumping sand, etc. If further deposits of alluvion upon it would make it more valuable, the law of accretion should still apply; *Fowler v. Wood*, 73 Kan. 511, 85 P. 763, 6 L. R. A. (N. S.) 162, 117 Am. St. Rep. 534.

Land in a navigable stream which is surrounded by water only in times of high water is not an island within the rule that the state takes title to newly formed islands in navigable streams. *Payne v. Hall*, 192 Iowa, 780, 185 N. W. 912, 915.

ISOLATED TRANSACTION. This term, in connection with the rule that single or isolated transactions do not violate a statute prohibiting foreign corporations from doing business within a state without first filing a copy of their charter, may be inapplicable to a single transaction consummated in furtherance of a corporation's business, where it is shown that the corporation in question is a foreign corporation, with its principal office in a town in a sister state near the state line, and that it has solicited business generally in tributary territory within the adjoining state. *Dahl Implement & Lumber Co. v. Campbell*, 45 N. D. 239, 178 N. W. 197, 198.

ISSINT. A law French term, meaning "thus," "so," giving its name to part of a plea in debt. A term formerly used to introduce a statement that special matter already pleaded amounts to a denial.

An example of this form of plea, which is sometimes called the special general issue, occurs in *Bauer v. Roth*, 4 Rawle (Pa.) 83.

ISSUABLE. In practice. Leading or tending to, or producing, an issue; relating to an issue or issues. See *Colquitt v. Mercer*, 44 Ga. 433.

ISSUABLE DEFENSE. A technical expression meaning a plea to the merits, properly setting forth a legal defense, as distinguished from a plea in abatement, or any plea going only to delay the case. *Adamson v. Reagin*, 143 Ga. 306, 84 S. E. 965.

ISSUABLE PLEA. A plea to the merits; a traversable plea. A plea such that the adverse party can join issue upon it and go to trial. It is true a plea in abatement is a plea, and, if it be properly pleaded, issues may be found on it. In the ordinary meaning of the word "plea," and of the word "issuable," such pleas may be called "issuable pleas," but, when these two words are used together, "issuable plea," or "issuable defense," they have a technical meaning, to-wit, pleas to the merits. *Colquitt v. Mercer*, 44 Ga. 434.

ISSUABLE TERMS. In the former practice of the English courts, Hilary term and Trinity term were called "issuable terms," because the issues to be tried at the assizes were made up at those terms. 3 Bl. Comm. 353. But the distinction is superseded by the provisions of the judicature acts of 1873 and 1875.

ISSUE, v. To send forth; to emit; to promulgate; as, an officer *issues* orders, process *issues* from a court. To put into circulation; as, the treasury *issues* notes. To send out, to send out officially; to deliver, for use, or authoritatively; to go forth as authoritative or binding. *Stokes v. Paschall* (Tex. Civ. App.) 243 S. W. 611, 614.

A writ is "issued" when it is delivered to an officer, with the intent to have it served; *Wilkins v. Worthen*, 62 Ark. 401, 36 S. W. 21; *Michigan Ins. Bk. v. Eldred*, 130 U. S. 693, 9 Sup. Ct. 690, 32 L. Ed. 1080; *Webster v. Sharpe*, 116 N. C. 466, 21 S. E. 912; *Ferguson v. Estes & Alexander* (Tex. Civ. App.) 214 S. W. 465, 466.

When used with reference to a writ of error, *State v. Brown*, 103 N. J. Law, 519, 138 A. 370; a writ of scire facias, *In re Johns' Estate*, 253 Pa. 532, 98 A. 719, 720; a writ of attachment, *McMaster v. Ruby*, 80 Or. 476, 157 P. 782, 784; corporate stock, *Cattlemen's Trust Co. of Fort Worth v. Turner* (Tex. Civ. App.) 182 S. W. 438, 441; a bond, *Klutts v. Jones*, 20 N. M. 230, 148 P. 494, 499; *Travis v. First Nat. Bank*, 210 Ala. 620, 98 So. 890, 891; *Steinbruck v. Milford Tp.*, 100 Kan. 93, 163 P. 647; *State v. School Board of Tecumseh Rural High School Dist. No. 4*, 110 Kan. 779, 204 P. 742, 744; a deed, *Wyman v. Hageman*, 318 Ill. 64, 148 N. E. 852, 855; a note, *Poster v. Security Bank & Trust Co.* (Tex. Com. App.) 288 S. W. 438, 440; an insurance policy, *Coleman v. New England Mut. Life Ins. Co.*, 236 Mass. 552, 129 N. E. 288, 289; *National Liberty Ins. Co. v. Norman* (C. C. A.) 11 F.(2d) 59, 61; and the like, the term is ordinarily construed as importing delivery to the proper person, or to the proper officer for service, etc. But it does not invariably have such a meaning. *Estabrook & Co. v. Consolidated Gas, Electric Light & Power Co. of Baltimore*, 122 Md. 643, 90 A. 523, 524.

In financial parlance the term "issue" seems to have two phases of meaning. "Date of issue" when applied to notes, bonds, etc., of a series, usually means the arbitrary date fixed as the beginning of the term for which they run, without reference to the precise time when convenience or the state of the market may permit of their sale or delivery. When the bonds are delivered to the purchaser, they will be "issued" to him, which is the other meaning of the term. *Turner v. Roseberry Irr. Dist.*, 33 Idaho, 746, 198 P. 465, 467. See, also, *Anderson v. Mutual Life Ins. Co. of New York*, 164 Cal. 712, 130 P. 726, 727, Ann. Cas. 1914B, 903.

ISSUE, n. The act of issuing, sending forth, emitting or promulgating; the giving a thing its first inception; as the issue of an order or a writ.

In Pleading

A single, certain, and material point, deduced by the pleadings of the parties, which is affirmed on the one side and denied on the other. *Whitney v. Borough of Jersey Shore*, 266 Pa. 537, 109 A. 767, 769; *Village of Oak Park v. Eldred*, 265 Ill. 605, 107 N. E. 145, 146. A single certain and material point arising out of the allegations of the parties, and it should generally be made up of an affirmative and a negative. *Cowen Co. v. Houck Mfg. Co.* (C. C. A.) 249 F. 285, 287; *Simmons v. Hagner*, 140 Md. 248, 117 A. 759, 760. A fact put in controversy by the pleadings. *Shea v. Hillsborough Mills*, 78 N. H.

57, 96 A. 293, 294. The disputed point or question to which the parties in an action have narrowed their several allegations, and upon which they are desirous of obtaining the decision of the proper tribunal. When the plaintiff and defendant have arrived at some specific point or matter affirmed on the one side, and denied on the other, they are said to be at issue. See *Knaggs v. Cleveland-Cliffs Iron Co.* (C. C. A.) 287 F. 314, 316; *First Nat. Bank v. District Court of Hardin County*, 193 Iowa, 561, 187 N. W. 457, 458. (But as used in a rule of court, a case is not "at issue" where nothing but a demurrer has been filed, presenting no issue except a question of law as to the sufficiency of the complaint. *Arnett v. Hardwick*, 27 Ariz. 179, 231 P. 922, 923.) The question so set apart is called the "issue," and is designated, according to its nature, as an "issue in fact" or an "issue in law." *Brown*; *Martin v. City of Columbus*, 101 Ohio St. 1, 127 N. E. 411, 413.

Issues arise upon the pleadings, when a fact or conclusion of law is maintained by the one party and controverted by the other. They are of two kinds: (1) Of law; and (2) of fact. Rev. Code Iowa 1880, § 2737 (Code 1931, § 11426); Code Civ. Proc. Cal. § 588; Comp. St. Wyo. 1910, § 4451 (Rev. St. 1931, § 89-1202); *Berglar v. University City* (Mo. App.) 190 S. W. 620, 622; *General Electric Co. v. Sapulpa & I. Ry. Co.*, 49 Okl. 376, 153 P. 189, 193.

The entry of the pleadings. 1 *Chitty*, Pl. 630.

Issues are classified and distinguished as follows:

General and special. The former is a plea which traverses and denies, briefly and in general and summary terms, the whole declaration, indictment, or complaint, without tendering new or special matter. See *Steph. Pl.* 155; *Tilden v. E. A. Stevenson & Co.* (Del. Super.) 132 A. 739, 740; *McAllister v. State*, 94 Md. 290, 50 A. 1046; *Standard Loan & Acc. Ins. Co. v. Thornton*, 97 Tenn. 1, 40 S. W. 136. Examples of the general issue are "not guilty," "*non assumpti*," "*nil debet*," "*non est factum*." The latter is formed when the defendant chooses one single material point, which he traverses, and rests his whole case upon its determination.

Material and immaterial. They are so described according as they do or do not bring up some material point or question which, when determined by the verdict, will dispose of the whole merits of the case, and leave no uncertainty as to the judgment. *Pearson v. Pearson*, 104 Misc. 675, 173 N. Y. S. 563, 565.

Formal and informal. The former species of issue is one framed in strict accordance with the technical rules of pleading. The latter arises when the material allegations of the declaration are traversed, but in an inartificial or untechnical mode. In the latter case, the defect is cured by verdict, by the statute 32 Hen. VIII. c. 30.

A *collateral* issue is an issue taken upon

matter *aside* from the intrinsic merits of the action, as upon a plea in abatement; or *aside* from the direct and regular order of the pleadings, as on a demurrer. 2 Archb. Pr. K. B. 1, 6, bk. 2, pts. 1, 2; Strickland v. Maddox, 4 Ga. 394. The term "collateral" is also applied in England to an issue raised upon a plea of diversity of person, pleaded by a criminal who has been tried and convicted, in bar of execution, viz., that he is not the same person who was attainted, and the like. 4 Bl. Comm. 396. Matters collateral to the main issue are those which do not constitute an essential element of the offense embraced within the charge. State v. English, 308 Mo. 695, 274 S. W. 470, 474.

Real or feigned. A real or actual issue is one formed in a regular manner in a regular suit for the purpose of determining an actual controversy. A feigned issue is one made up by direction of the court, upon a supposed case, for the purpose of obtaining the verdict of a jury upon some question of fact collaterally involved in the cause. Such issues are generally ordered by a court of equity, to ascertain the truth of a disputed fact. They are also used in courts of law, by the consent of the parties, to determine some disputed rights without the formality of pleading; and by this practice much time and expense are saved in the decision of a cause. 3 Bla. Comm. 452. The name is a misnomer, inasmuch as the *issue* itself is upon a real, material point in question between the parties, and the circumstances only are fictitious.

Common issue is the name given to the issue raised by the plea of *non est factum* to an action for breach of covenant.

This is so called because it denies the deed only, and not the breach, and does not put the whole declaration in issue, and because there is no general issue to this form of action. 1 Chitty, Pl. 482; Gould, Pl. c. 6, pt. 1, § 7.

In Real Law

Descendants. All persons who have descended from a common ancestor. Edmundson v. Leigh, 189 N. C. 196, 126 S. E. 497, 499. Offspring; progeny; descent; lineage; lineal descendants. Gardner v. Anderson, 114 Kan. 778, 227 P. 743, 747; In re Schuster's Will, 181 N. Y. S. 500, 503, 111 Misc. 534; Wilkins v. Rowan, 107 Neb. 180, 185 N. W. 437, 439; Manning v. Manning, 229 Mass. 527, 118 N. E. 676, 678; Beaty v. Calliss, 294 Ill. 424, 128 N. E. 547, 549; Security Trust & Safe Deposit Co. v. Lockwood, 13 Del. Ch. 274, 118 A. 225, 226; Connertin v. Concanon, 122 Or. 387, 259 P. 290, 291; Allen v. Reed, 17 F.(2d) 666, 667, 57 App. D. C. 78; Rhode Island Hospital Trust Co. v. Bridgham, 42 R. I. 161, 106 A. 149, 153, 5 A. L. R. 185; Hoadley v. Beardsley, 89 Conn. 270, 93 A. 535, 538; Turner v. Monteiro, 127 Va. 537, 103 S. E. 572, 575, 13 A. L. R. 383; In re Book's Will, 89 N. J. Eq. 509, 105 A. 878,

879; 3 Ves. 257; 17 Ves. 481; 19 Ves. 547; 1 Rep. Leg. 90.

In this sense, the word includes not only a child or children, but all other descendants in whatever degree; and it is so construed generally in deeds. But, when used in wills, it is, of course, subject to the rule of construction that the intention of the testator, as ascertained from the will, is to have effect, rather than the technical meaning of the language used by him; and hence issue may, in such a connection, be restricted to children, or to descendants living at the death of the testator, where such an intention clearly appears. Abbott; Sibley v. Perry, 7 Ves. Jun. 523, 529; Ralph v. Carrick, 11 Ch. D. 873, 883; Barmore v. Darragh (Tex. Civ. App.) 231 S. W. 472, 479; Daskam v. Lockwood, 103 Conn. 54, 130 A. 92, 94; Tantum v. Campbell, 83 N. J. Eq. 361, 91 A. 120, 122; Davenport v. Hickson (C. C. A.) 261 F. 983, 985; Deacon v. St. Louis Union Trust Co., 271 Mo. 669, 197 S. W. 261, 266; Carlisle v. Carlisle, 243 Pa. 116, 89 A. 873, 874; Etheridge v. Eagles-Home Realty Co., 179 N. C. 407, 102 S. E. 609; Newcomb v. Newcomb, 197 Ky. 801, 248 S. W. 198, 200; Horner v. Haase, 177 Iowa, 115, 158 N. W. 548, 549; In re Rynear's Estate, 224 N. Y. S. 606, 607, 130 Misc. 804.

The word "issue" in a will is generally a word of limitation; In re Packer's Estate, 246 Pa. 116, 92 A. 70, 74; Baxter v. Early, 131 S. C. 374, 127 S. E. 607; Bonnycastle v. Lilly, 153 Ky. 334, 156 S. W. 374, L. R. A. 1916B, 1076; and when so used, is sometimes said to be equivalent to "heirs of the body"; Rhode Island Hospital Trust Co. v. Bridgham, 42 R. I. 161, 106 A. 149, 152, 5 A. L. R. 185; Parrish v. Hodges, 178 N. C. 133, 100 S. E. 256; Middletown Trust Co. v. Gaffey, 96 Conn. 61, 112 A. 689, 690. But it has been pointed out in other cases that this word is not as strong a word of limitation as the words "heirs of the body," Adams v. Verner, 102 S. C. 7, 86 S. E. 211, 214; City Nat. Bank v. Slocum (C. C. A.) 272 F. 11, 18; and yields readily to a context indicating its use as a word of purchase, Stout v. Good, 245 Pa. 383, 91 A. 613, 615; Eversmeyer v. McCollum, 171 Ark. 117, 233 S. W. 379, 382; Ford v. McBrayer, 171 N. C. 420, 88 S. E. 736, 737; Yarrington v. Freeman, 201 Ky. 135, 255 S. W. 1034.

The word is commonly held to include only legitimate issue. Page v. Roddie, 92 Okl. 236, 213 P. 1092, 1095; King v. Thissell, 222 Mass. 140, 109 N. E. 880; Hardesty v. Mitchell, 302 Ill. 369, 134 N. E. 745, 746, 24 A. L. R. 565; Love v. Love, 179 N. C. 115, 101 S. E. 562, 563; *contra*: Eaton v. Eaton, 88 Conn. 286, 91 A. 198, 198.

In Business Law

A class or series of bonds, debentures, etc., comprising all that are emitted at one and the same time.

ISSUE IN FACT. In pleading. An issue taken upon or consisting of matter of *fact*, the fact only, and not the law, being disputed, and which is to be tried by a jury. 3 Bl. Comm. 314, 315; Co. Litt. 126a; 3 Steph. Comm. 572. An issue which arises upon a denial in the answer of a material allegation of the complaint or in the reply of a material allegation in the answer. Rev. Codes, Mont. § 6793 (Rev. Code 1921, § 9395). See, also, Code Civ. Proc. Cal. § 590; Comp. St. Wyo. 1910, § 4452 (Rev. St. 1931, § 89-1203). The "issues of fact" which, if presented by the pleadings and supported by evidence, must be

submitted to the jury, where requested, are only the independent ultimate facts which go to make up plaintiff's cause of action and defendant's ground of defense. *Texas City Transp. Co. v. Winters* (Tex. Com. App.) 222 S. W. 541, 542.

ISSUE IN LAW. In pleading. An issue upon matter of law, or consisting of matter of law, being produced by a demurrer on the one side, and a joinder in demurrer on the other. 3 Bl. Comm. 314; 3 Steph. Comm. 572, 580. See Code Civ. Proc. Cal. § 589. The term "issue" may be so used as to include one of law raised by demurrer to the complaint, as well as one raised by answer. *Fruth v. Bolt*, 39 S. D. 371, 164 N. W. 270, 271.

ISSUE ROLL. In English practice. A roll upon which the issue in actions at law was formerly required to be entered, the roll being entitled of the term in which the issue was joined. 2 Tidd. Pr. 733. It was not, however, the practice to enter the issue at full length, if triable by the country, until after the trial, but only to make an *incipitur* on the roll. Id. 734. It was abolished by the rules of Hilary Term, 1834. Moz. & W. Dict.

ISSUES. In English law. The goods and profits of the lands of a defendant against whom a writ of *distringas* or *distress infinite* has been issued, taken by virtue of such writ. 3 Bl. Comm. 280; 1 Chit. Crim. Law, 351.

ISSUES AND PROFITS, as applied to real estate, comprehend every available return therefrom, whether it arise above or below the surface. *Minner v. Minner*, 84 W. Va. 679, 100 S. E. 509, 510.

ISSUES ON SHERIFFS. Fines and amercements inflicted on sheriffs for neglects and defaults, levied out of the issues and profits of their lands. Toml.

ISTIMRAR. Continuance; perpetuity; especially a farm or lease granted in perpetuity by government or a zemindar (*q. v.*). *Wilson's Gloss. Ind.*

ISTIMRARDAR. The holder of a perpetual lease. Moz. & W.

ITA EST. Lat. So it is; so it stands. In modern civil law, this phrase is a form of attestation added to exemplifications from a notary's register when the same are made by the successor in office of the notary who made the original entries.

ITA LEX SCRIPTA EST. Lat. So the law is written. Dig. 40, 9, 12; *Allen v. Cook*, 26 Barb. (N. Y.) 374, 380; *Hemphill's Appeal*, 18 Pa. 306. See *Monson v. Chester*, 22 Pick. (Mass.) 389. The law must be obeyed notwithstanding the apparent rigor of its application. 3 Bl. Comm. 430. We must be

content with the law as it stands, without inquiring into its reasons. 1 Bl. Comm. 32.

ITA QUOD. Lat.

In Old Practice

So that. Formal words in writs. *Ita quod habeas corpus*, so that you have the body. 2 Mod. 180.

The name of the stipulation in a submission to arbitration which begins with the words "so as [*ita quod*] the award be made of and upon the premises."

In Old Conveyancing

So that. An expression which, when used in a deed, formerly made an estate upon condition. Litt. § 329. Sheppard enumerates it among the three words that are most proper to make an estate conditional. *Shep. Touch.* 121, 122.

Ita semper fiat relatio ut valeat dispositio. 6 Coke, 76. Let the interpretation be always such that the disposition may prevail.

ITA TE DEUS ADJUVET. Lat. So help you God. The old form of administering an oath in England, generally in connection with other words, thus: *Ita te Deus adjuvet, et sacrosancta Dei Evangelia*, So help you God, and God's holy Evangelists. *Ita te Deus adjuvet et omnes sancti*, So help you God and all the saints. *Willes*, 338.

Ita utere tuo ut alienum non lædas. Use your own property and your own rights in such a way that you will not hurt your neighbor, or prevent him from enjoying his. Frequently written, "*Sic utere tuo*," etc., (*q. v.*)

ITEM. Also; likewise; in like manner; again; a second time. This word was formerly used to mark the beginning of a new paragraph or division after the first, whence is derived the common application of it to denote a separate or distinct particular of an account or bill. See *Horwitz v. Norris*, 60 Pa. 282; *Baldwin v. Morgan*, 73 Miss. 276, 18 So. 919; *Callaghan v. Boyce*, 17 Ariz. 433, 153 P. 773, 782; *Innis, Pearce & Co. v. G. H. Poppenberg, Inc.*, 210 N. Y. S. 761, 762, 213 App. Div. 789.

An article; a single detail of any kind. *Board of Education of Prince George's County v. County Com'rs of Prince George's County*, 131 Md. 658, 102 A. 1007, 1010. A separate entry in an account or a schedule, or a separate particular in an enumeration of a total. *People v. Brady*, 277 Ill. 124, 115 N. E. 204, 206.

The word is sometimes used as a verb. "The whole [costs] in this case that was thus *itemed* to counsel." *Bunb.* p. 164, case 233.

ITEMIZE. To set down by items. *People v. Lowden*, 285 Ill. 618, 121 N. E. 188. To state each item or article separately. *Hartford Fire Ins. Co. v. Walker* (Tex. Civ. App.) 153

S. W. 398, 400. Used almost entirely with reference to accounts. *J. F. Rappell Co. v. City of Manitowoc*, 182 Wis. 141, 195 N. W. 399, 401. See, also, *Banner Oil & Gas Co. v. Gordon* (Tex. Civ. App.) 235 S. W. 945, 948; *Dorough v. Reliance Ins. Co.* (Tex. Civ. App.) 289 S. W. 703, 704; *Board of Education of Prince George's County v. County Com'rs of Prince George's County*, 131 Md. 658, 102 A. 1007, 1010; *Lewis v. National Fire Ins. Underwriters*, 136 Miss. 576, 101 So. 296, 297.

ITER. Lat.

In the Civil Law

A way; a right of way belonging as a servitude to an estate in the country, (*prædium rusticum*.) The right of way was of three kinds: (1) *iter*, a right to walk, or ride on horseback, or in a litter; (2) *actus*, a right to drive a beast or vehicle; (3) *via*, a full right of way, comprising right to walk or ride, or drive beast or carriage. Heinec. § 408. Or, as some think, they were distinguished by the width of the objects which could be rightfully carried over the way; *e. g.*, *via*, 8 feet; *actus*, 4 feet, etc. Mackeld. Rom. Law, § 290; Bract. fol. 232; 4 Bell, H. L. Sc. 390.

In old English Law

A journey, especially a circuit made by a justice in eyre, or itinerant justice, to try causes according to his own mission. Du Cange; Bract. lib. 3, cc. 11, 12, 13.

In Maritime Law

A way or route. The route or direction of a voyage; the route or way that is taken to make the voyage assured. Distinguished from the voyage itself.

Iter est jus eundi, ambulandi hominis; non etiam jumentum agendi vel vehiculum. A way is the right of going or walking, and does not include the right of driving a beast of burden or a carriage. Co. Litt. 56a; Inst. 2, 3, pr.; Mackeld. Rom. Law, § 318.

ITERATIO. Lat. Repetition. In the Roman law, a bonitary owner might liberate a slave, and the quiritary owner's repetition (*iteratio*) of the process effected a complete manumission. Brown.

ITINERA. Eyres, or circuits. 1 Reeve, Eng. Law, 52.

ITINERANT. Wandering; traveling; applied to justices who make circuits. Also applied in various statutory and municipal laws (in the sense of traveling from place to place) to certain classes of merchants, traders, and salesmen. See *Shiff v. State*, 84 Ala. 454, 4 So. 419; *Twining v. Elgin*, 33 Ill. App. 357; *Rev. Laws Mass. 1902*, p. 595, c. 65, § 1 (Gen. Laws, c. 101, § 1); *West v. Mt. Sterling* (Ky.) 65 S. W. 122.

ITINERANT VENDOR. This term is variously defined in statutes; *e. g.*, a person engaged in transient business either in one locality or in traveling from place to place selling goods, who, for the purpose of carrying on such business, sells goods at retail from a car. *Rev. St. Me. c. 45, § 15* (*Rev. St. 1930*, c. 46, § 25). See, also, *Laws Mont. 1911*, c. 110, § 1; *St. Cal. 1903*, p. 284, § 3.

ITS. This term does not necessarily import legal ownership, but may signify merely possession, or the temporary use of. See *Campbell v. Canadian Northern Ry. Co.*, 124 Minn. 245, 144 N. W. 772, 773.

IULE. In old English law. Christmas.